

**REPORT OF THE  
VIRGINIA CODE COMMISSION**

**The Revision of  
Title 3.1 of the  
Code of Virginia**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 43**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2007**



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*Report of the  
Virginia Code Commission on  
The Revision of Title 3.1 of the Code of Virginia*

**Richmond, Virginia  
November 2007**

**To: The Honorable Timothy Kaine, Governor of Virginia  
and  
The General Assembly of Virginia**

The Virginia Code Commission has completed the revision of Title 3.1 (Agriculture, Horticulture and Food) in accordance with its authority granted pursuant to § 30-152 of the Code of Virginia. Since the title has not been revised since 1966, the current recodification presents an opportunity to: (i) organize the laws in more logical manner; (ii) remove obsolete and duplicative provisions; and (iii) improve the structure and clarity of the agriculture laws.

The Commission was assisted by the Recodification Work Group, whose members include representatives of the agricultural industry and the Department of Agriculture and Consumer Services. In particular, the Commission wishes to express its gratitude to Donna Pugh Johnson of the Virginia Agribusiness Council; Martha Moore of the Virginia Farm Bureau; and Perida Giles, Rebecca Askew, and Roy Seward of the Department for the time and effort they contributed to the revision of this title. The Commission also wants to extend its appreciation to representatives of the various sectors of the industry and the 36 Department staff persons whose expertise proved to be an invaluable resource in explaining the numerous programs and policies.

The Virginia Code Commission recommends that the General Assembly enact legislation during the 2008 Session to implement the revisions proposed in this report.

Respectfully submitted,

Delegate R. Steven Landes, *Chairman*  
Senator John S. Edwards, *Vice Chairman*  
Delegate Robert Hurt  
Senator Ryan T. McDougale  
The Honorable James F. Almand  
Robert L. Calhoun  
Frank S. Ferguson  
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## **EXECUTIVE SUMMARY**

### **INTRODUCTION**

Title 3.1 (Agriculture, Horticulture and Food) is the statutory authority under which the Department of Agriculture and Consumer Services, the Board of Agriculture and Consumer Services, and the various commodity-related boards promote and regulate agricultural and horticultural industries, protect food supplies, and ensure the proper care of domestic animals. During the more than 40 years since the last revision of this title, it has become necessary to: (i) organize the laws in more logical manner; (ii) remove obsolete and duplicative provisions; and (iii) improve the structure and clarity of the agriculture statutes.

### **ORGANIZATION OF TITLE 3.2**

Proposed Title 3.2 (Agriculture, Animal Care, and Food) consists of 65 chapters divided into five subtitles: Subtitle I (General Provisions; Protection and Promotion of Agriculture); Subtitle II (Boards, Councils, Foundations, and Commissions); Subtitle III (Production and Sale of Agricultural Products); Subtitle IV (Food and Drink; Weights and Measures); and Subtitle V (Domestic Animals).

Subtitle I contains Chapters 1 through 10 and addresses the preservation of agricultural lands and the promotion of the agricultural industry. In addition to setting out the duties and responsibilities of the Department of Agriculture and Consumer Services, the Commissioner of Agriculture and Consumer Services, and the Office of Consumer Affairs, the first chapter includes several new provisions. These sections provide title-wide definitions and the authority to adopt regulations governing the conduct of referenda and replace existing sections throughout the current title. Proposed Chapter 2 (Preservation of Farm and Forest Lands) has been created by combining existing Chapter 3.3 (Office of Farmland Preservation) and Chapter 3.2 (Protection of Farm and Forest Lands) as articles within this new chapter. Subtitle I also includes the agricultural stewardship statutes that currently appear in Title 10.1 (Conservation). These provisions were moved to this title because the Commissioner of Agriculture and Consumer Services is charged with carrying out this law.

Subtitle II contains Chapters 11 through 31 and establishes the various commodity-related boards, councils, and foundations formed to promote the agricultural industry in the Commonwealth. The subtitle is divided in Parts A, B, C, and D. Part A consists of Chapter 11 (General Provisions). It begins with a listing of the special funds associated with these various collegial bodies and the reporting requirements for commodity boards. Part B contains all the commodity boards and prescribes their powers and duties. These boards are authorized to conduct a referendum to determine whether a tax should be imposed on each producer of the particular commodity. The proceeds generated from the tax are deposited in a special fund used to support research, education, publicity, and development of that sector of the industry. In keeping with current practice, each fund has been formally established in its respective chapter as a special nonreverting fund. While these funds already exist, the new language provides that the interest earned on the moneys in the fund will remain in the fund, and not revert to the general fund. Part C contains five chapters, with each chapter devoted to a board, council, or foundation associated with a specific product. One of these, the Wine Board (Chapter 30), is unique in its authority to engage in revenue-producing activities such as charging entrance and participation fees for events. Finally, Part D contains Chapter 31 (Tobacco Indemnification and

Community Revitalization Commission), which creates the Tobacco Indemnification and Community Revitalization Commission. The Commission is responsible for determining which tobacco farmers should receive moneys from the Master Settlement Agreement and distributing the funds to the farmers and tobacco-dependent communities for community revitalization.

Subtitle III contains Chapters 32 through 50 and provides for the production and sale of agricultural products through a system of grading, licensing, certification, and registration. The sections in these chapters have been organized in a similar sequence, with a definitions section placed first, followed by agency administrative responsibilities, licensing or registration requirements, enforcement provisions and, finally, penalties.

Subtitle IV contains Chapters 51 through 58 and sets standards for consumer protection. These laws: (i) prescribe standards for ensuring the wholesomeness and safety of food products, including proper labeling practices; and (ii) protect the consumer by establishing standards for the instruments and devices used in weighing and measuring commodities.

Subtitle V contains Chapters 59 through 65 and provides for the regulation of domestic animals in the Commonwealth. Chapter 59 (General Provisions) is a new chapter that includes subtitle-wide definitions and describes the general powers of the State Veterinarian. Chapter 60 (Livestock and Poultry) includes the powers and duties of the Board, Commissioner, and State Veterinarian to control and eradicate contagious or infectious diseases affecting livestock and poultry. Chapter 61 (Cattle Branding and Registration) sets out the requirements for branding and registration of the brand of cattle. Chapters 62 (Equine Activity Liability) and 63 (Ox Activity Liability) contain similar provisions describing the liability of the sponsor of an activity using these animals and his responsibility to protect participants. Similarly, Chapter 64 (Agritourism Activity Liability) describes the liability of an agritourism professional when conducting agritourism activities. Chapter 65 (Comprehensive Animal Care) prescribes the standards of care that owners of domestic animals and operators of facilities must meet. This chapter also details the role and responsibilities of animal control officers in enforcing animal protection laws.

### **Repealed Chapters and Articles**

During the revision process, the Code Commission became aware of a number of articles and chapters that are either unnecessary or obsolete, and have therefore been deleted. A chapter drafting note describes the reason for the repeal of each of the following chapters and articles:

Chapter 5.2, *Rural Virginia Development Foundation* (§ 3.1-27.37 et seq.)

Chapter 9, Article 1, *Produce Market Authorities* (§ 3.1-47 et seq.)

Chapter 9, Article 2, *Produce Market Loan Fund* (§ 3.1-65 et seq.)

Chapter 21, Article 6, *Licensing Creameries, Plants and Stations* (§ 3.1-563 et seq.)

Chapter 23.1, *Nurseries, Nurserymen, Horticulture and Floriculture* (§ 3.1-646.1 et seq.)

Chapter 27, Article 6, *Certified Hatchery Products* (§ 3.1-771 et seq.)

Chapter 27, Article 8.1, *Promotion of Sale and Use of Poultry* (§ 3.1-796.01 et seq.)

Chapter 27, Article 9, *Quality Mark for Eggs* (§ 3.1-796.1 et seq.)

### **Other Affected Titles**

In addition to the transfer of existing Chapter 5 of Title 10.1 to proposed Title 3.2, one chapter and one article are transferred from existing Title 3.1 to other titles. Chapter 4.2 (§ 3.1-22.6 et seq.), Chippokes Plantation Farm Foundation, is moved to Title 10.1 because the Plantation is operated as a state park under the authority of the Department of Conservation and

Recreation. Article 4 of Chapter 13 (§ 3.1-177 et seq.), Musk Thistle and Curled Thistle, has been moved to Title 15.2 since the law gives localities the authority to control the growth of these weeds. Consistent with Code Commission policy, the Southern Dairy Compact (existing Article 2.1 of Chapter 21) appears in its entirety in this report but will be transferred to Compacts Volume appearing as Chapter 33 of Title 3.2; an explanatory note will appear in its place directing the reader to the Compacts Volume.

An outline denoting the difference in the organization of Title 3.1 and Title 3.2 is included in the Appendix.

### **Changes Made Repeatedly Throughout Title 3.2**

An explanation of the significant changes made in each chapter is provided in a note that precedes each chapter. Each section is followed by a drafting note describing any changes made in the section. If a section drafting note states "no change," the section contains no changes other than renumbering and updated cross-references. If a drafting note states "technical changes," the section contains changes to the text. These technical changes may range from the insertion of clarifying punctuation to a thorough modernization of archaic writing style. When sections contain structural or substantive changes, such as the deletion or addition of language, the drafting note describes the reason for the proposed change.

Many of the technical changes arose from the Code Commission's determination that terminology should be clear, consistent, and modern. Among these changes, the following list provides a representative sample of the most significant.

- Use of the term "adopt regulations" rather than "promulgate regulations." The term "adopt regulations" means the process by which regulations are put into effect and include the promulgation, revision or amendment, and formal acceptance of a regulation by an agency that has exercised its regulation-making authority in accordance with law. In its revision of Titles 2.1, 9, 63.1, and 37.1, the Code Commission adopted the use of this term instead of "promulgate" because it is more widely used.
- The term "rule" is deleted when used in conjunction with "regulation" since it has the same meaning and is therefore redundant.
- The terms "duly authorized agent" or "his designee" are deleted when referring to the Commissioner of Agriculture and Consumer Services' authority to delegate "tasks." Section 2.2-604 of the Code of Virginia gives the chief executive officer the authority to ". . .delegate or assign any officer or employee of his agency any tasks required to be performed by him or the agency. . ."
- The term "court of competent jurisdiction" has been changed to "appropriate court."
- References made to "county, city or town" have been changed to "locality."
- Throughout Title 3.1 special funds are mentioned into which various fees and charges are deposited. While these funds are given specific accounting codes by the Department, a number of these accounts are not statutorily authorized as special nonreverting funds. The

Code Commission has statutorily established these funds using standardized language and identified how the moneys deposited in each fund may be expended.

- The sections "not set out" that appear only in the Acts of Assembly are viewed by the Code Commission as policy statements and therefore have been deleted.
- The terms "Act," "Law," and "Virginia" have been deleted when used as part of the title of a specific law such as the Virginia Pesticide Control Act, the Virginia Fertilizer Act, the Equine Activity Liability Act, the Virginia Commercial Feed Act, and the Virginia Cotton Board. There is one exception. The use of the term Virginia Quality Label remains since it is the name of a specific program that identifies specific products by placement of this term on the product label.
- References are made to the Department of Agriculture and Consumer Services' relationship with the U.S. Secretary of Agriculture in carrying out certain ministerial responsibilities, including entering cooperative state-federal agreements. The Code Commission believes, because these are typically undertaken at the agency level, it is appropriate to replace references to the U.S. Secretary of Agriculture with U.S. Department of Agriculture.
- Throughout this title reference is made to the United States Department of Agriculture. The term "United States" is being replaced by the abbreviation "U.S."

**TITLE 3.2**  
**AGRICULTURE, ANIMAL CARE, AND FOOD**  
***Proposed Organization***

Subtitle I  
General Provisions; Protection and Promotion of Agriculture

- Chapter 1. General Provisions.
  - Article 1. Department and Commissioner of Agriculture and Consumer Services.
  - Article 2. Board of Agriculture and Consumer Services.
  - Article 3. Office of Consumer Affairs.
- Chapter 2. Preservation of Farm and Forest Lands.
  - Article 1. Office of Farmland Preservation.
  - Article 2. Protection of Farm and Forest Lands.
- Chapter 3. Right to Farm.
- Chapter 4. Agricultural Stewardship.
- Chapter 5. Farmer Major Drought, Flood, and Hurricane Disaster Assistance.
- Chapter 6. Return and Future Administration of Assets of Virginia Rural Rehabilitation Corporation.
- Chapter 7. Tree and Crop Pests.
  - Article 1. Pests.
  - Article 2. Pest Control Compact.
- Chapter 8. Noxious Weeds.
- Chapter 9. Nuisance Birds.
- Chapter 10. Endangered Plant and Insect Species.

Subtitle II  
Boards, Councils, Foundations, and Commissions

Part A. General Provisions.

- Chapter 11. General Provisions.

Part B. Commodity Boards.

- Chapter 12. Apple Board.
- Chapter 13. Cattle Industry Board.
- Chapter 14. Corn Board.
- Chapter 15. Cotton Board.
- Chapter 16. Egg Board.
- Chapter 17. Horse Industry Board.
  - Article 1. Horse Industry Board.
  - Article 2. Equine Infectious Anemia Test Fee.
  - Article 3. Equine Feed Assessment.
- Chapter 18. Potato Board.
- Chapter 19. Peanut Board.
- Chapter 20. Pork Industry Board.
- Chapter 21. Sheep Industry Board.
- Chapter 22. Small Grains Board.
- Chapter 23. Soybean Board.
- Chapter 24. Bright Flue-Cured Tobacco Board.

- Chapter 25. Dark-Fired Tobacco Board.  
Part C. Other Commodity-Related Boards, Councils, and Foundations.
- Chapter 26. Aquaculture Advisory Board.
- Chapter 27. Marine Products Board.
- Chapter 28. Plant Pollination Advisory Board.
- Chapter 29. Agricultural Council.
- Chapter 30. Wine Board.
- Part D. Tobacco Indemnification and Community Revitalization Commission.
- Chapter 31. Tobacco Indemnification and Community Revitalization Commission.

Subtitle III  
Production and Sale of Agricultural Products

- Chapter 32. Milk Commission.
- Chapter 33. Southern Dairy Compact.
- Chapter 34. Certification of Agricultural Products.
- Chapter 35. Farmers Market System.
- Chapter 36. Fertilizer.
- Chapter 37. Agricultural Liming Materials.
- Chapter 38. Plants and Plant Products Inspection.
- Chapter 39. Pesticide Control.
  - Article 1. General Provisions.
  - Article 2. Licensing and Registration.
  - Article 3. Pesticide Application and Certification.
  - Article 4. Marine Antifoulant Paints.
  - Article 5. Violations, Penalties and Proceedings in Case of Violations.
- Chapter 40. Seeds.
  - Article 1. Seeds.
  - Article 2. Certified Seed Board.
- Chapter 41. Seed Potatoes.
- Chapter 42. Implementation of Tobacco Master Settlement Agreement.
  - Article 1. Requirements for Tobacco Product Manufacturers.
  - Article 2. Escrow Funds Contributed to the Commonwealth.
  - Article 3. Enforcement of Requirements for Tobacco Product Manufacturers.
- Chapter 43. Grades, Marks, and Brands.
  - Article 1. General Provisions.
  - Article 2. Virginia Quality Label.
  - Article 3. Grain Handlers.
- Chapter 44. Beekeeping.
- Chapter 45. Grading, Packing, and Marking of Apples.
- Chapter 46. Controlled Atmosphere Storage of Apples and Peaches.
- Chapter 47. Sale of Farm Produce.
  - Article 1. General Provisions.
  - Article 2. Commission Merchants.
  - Article 3. Dealers in Agricultural Produce.
  - Article 4. Dealers in Grain Products.
  - Article 5. Cotton Handlers.
- Chapter 48. Commercial Feed.

- Chapter 49. Animal Remedies.  
Chapter 50. Farm Machinery and Equipment.

Subtitle IV  
Food and Drink; Weights and Measures

- Chapter 51. Food and Drink.  
Article 1. General Provisions.  
Article 2. Sanitary Requirements.  
Article 3. Adulteration, Misbranding, and False Advertising.  
Article 4. Seizures, Prosecutions, Penalties, and Enforcement.  
Chapter 52. Milk, Milk Products, and Dairies.  
Article 1. General Provisions.  
Article 2. Standards of Quality, Grading, and Sanitary Standards.  
Article 3. Ice Cream and Similar Products.  
Article 4. Babcock and Other Machine Tests.  
Chapter 53. Eggs and Hatchery Products.  
Chapter 54. Slaughterhouses, Meat, and Dressed Poultry.  
Article 1. General Provisions.  
Article 2. Inspection, Slaughter, and Official Marks.  
Article 3. Enforcement and Penalties.  
Article 4. Smithfield Hams.  
Chapter 55. Vinegar.  
Chapter 56. Weights and Measures.  
Chapter 57. Weights and Measures Service Agencies and Technicians.  
Chapter 58. Public Weighmasters.

Subtitle V  
Domestic Animals

- Chapter 59. General Provisions.  
Chapter 60. Livestock and Poultry.  
Article 1. Contagious and Infectious Diseases.  
Article 2. Disposal of Dead Poultry.  
Article 3. Prohibitions on Feeding Garbage to Swine.  
Article 4. Shooting Enclosures.  
Chapter 61. Cattle Branding and Registration.  
Chapter 62. Equine Activity Liability.  
Chapter 63. Ox Activity Liability.  
Chapter 64. Agritourism Activity Liability.  
Chapter 65. Comprehensive Animal Care.  
Article 1. General Provisions.  
Article 2. Animal Welfare.  
Article 3. Transportation and Sale of Animals.  
Article 4. Boarding Establishments and Groomers.  
Article 5. Rabies Control and Licensing of Dogs and Cats.  
Article 6. Authority of Local Governing Bodies.  
Article 7. Animal Control Officers and Humane Investigators.  
Article 8. Search, Seizure, Impounding, and Enforcement.

Article 9. Cruelty to Animals.

Article 10. Mandatory Sterilization of Dogs and Cats Adopted from Releasing Agencies.

Article 11. Hybrid Canines.

Article 12. Miscellaneous Provisions.



TITLE 3.2.

*Agriculture, Animal Care, and Food.*

*Subtitle I.*

*General Provisions; Protection and Promotion of Agriculture.*

CHAPTER 1.

GENERAL PROVISIONS.

**Chapter Drafting Note: Created three articles: (i) the Department and Commissioner of Agriculture and Consumer Services; (ii) the Board of Agriculture and Consumer Services; and (iii) the Office of Consumer Affairs. Created title-wide definitions in proposed § 3.2-100, Definitions, for standard usage of the terms "Board," "Commissioner," and "Department." These definitions have replaced numerous chapter-specific definitions of the same terms. Created a title-wide provision for regulations governing the conduct of referenda in proposed § 3.2-112, Regulations governing the conduct of referenda. This section has replaced numerous sections in Subtitle II, Boards, Councils, Foundations, and Commissions, reiterating the same information. Combined sections that assigned specific powers to the Commissioner, such as existing §§ 3.1-14.4 and 3.1-14.01, into proposed § 3.2-102, General powers and duties of the Commissioner.**

~~CHAPTER 3~~

*Article 1.*

*Department and Commissioner of Agriculture and Consumer Services.*

*§ 3.2-100. Definitions.*

*As used in this title, unless the context requires a different meaning:*

*"Board" means the Board of Agriculture and Consumer Services.*

*"Commissioner" means the Commissioner of Agriculture and Consumer Services.*

*"Department" means the Department of Agriculture and Consumer Services.*

**Drafting Note: New section. The definitions of these terms apply title-wide.**

~~§ 3.1-8 3.2-101. Appointment; term; powers and duties; vacancy Department continued; appointment of Commissioner; agriculture education.~~

~~There~~ *A. The Department of Agriculture and Consumer Services is continued. The Department shall be under the management and control of a Commissioner of Agriculture and Consumer Services in this title hereinafter sometimes referred to as the Commissioner, who shall be appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of the Governor. The Department shall be under the management and control of the Commissioner. The Commissioner shall prepare, approve and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations. He shall be vested with such powers and duties as are herein set out, and such other powers and duties as may be prescribed by law. Any vacancy in the office of the Commissioner shall be filled by appointment by the Governor pursuant to the provisions of Article V, Section 10 of the Constitution of Virginia.*

*B. There shall be established, within the Department, to be administered by the Department of Agriculture Education at Virginia Polytechnic Institute and State University, a unit of specialists in agriculture education. The unit shall: (i) assist in developing and revising local agriculture curricula to integrate the Standards of Learning; (ii) provide professional development for agriculture instructional personnel to improve the quality of agriculture education; (iii) conduct site visits to the schools providing agriculture education; and (iv) seek*

*the input of business and industry representatives regarding the content and direction of agriculture education programs in the public schools of the Commonwealth.*

*1. Any required reduction in the Department's budget shall be reflected in a proportional reduction in the operation of the agriculture education unit. The reduction in the allocation for operation of the agriculture education unit shall not exceed the percentage reduction provided for in the appropriation act for the Department.*

*2. In the event that additional funds are not allocated for these positions, the Department shall not be required to absorb the costs of these positions.*

**Drafting Note: The Code currently contains no statutory language establishing the Department, so it has been added here. Language regarding the Commissioner's management of appropriations is unnecessary because such issues are covered in § 2.2-603. The Commissioner's powers and duties are moved to proposed § 3.2-102, General powers and duties of the Commissioner. The language in subsection B is moved from existing § 3.1-14.2.**

~~§ 3.1-14.2. Agriculture education.~~

~~A. There shall be established, within the Department of Agriculture and Consumer Services, to be administered by the Department of Agriculture Education at Virginia Polytechnic Institute and State University, a unit of specialists in agriculture education. The unit shall (i) assist in developing and revising local agriculture curricula to integrate the Standards of Learning, (ii) provide professional development for agriculture instructional personnel to improve the quality of agriculture education, (iii) conduct site visits to the schools providing agriculture education, and (iv) seek the input of business and industry representatives regarding the content and direction of agriculture education programs in the public schools of the Commonwealth.~~

~~B. Any required reduction in the Department's budget shall be reflected in a proportional reduction in the operation of the agriculture education unit; however, the reduction in the allocation for operation of the agriculture education unit shall not exceed the percentage reduction provided for in the appropriation act for the Department.~~

~~C. In the event that additional funds are not allocated for these positions, the Department shall not be required to absorb the costs of these positions.~~

**Drafting Note: Deleted section and moved to subsection B of proposed § 3.2-101, Department continued; appointment of Commissioner; agriculture education.**

~~§ 3.1-9. Residence during term of office.~~

~~The Commissioner, during his term of office, shall reside in the immediate vicinity of the seat of government.~~

**Drafting Note: Deleted section. The requirement is obsolete.**

~~§ 3.1-10. Executive officer of Board.~~

~~The Commissioner shall be the executive officer of the Board, and shall see that its orders are carried out, and shall have immediate direction of all of the work of the Department.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-102, General powers and duties of the Commissioner.**

~~§ 3.1-11. Appointment of State Chemist.~~

~~The Commissioner shall appoint a qualified person to be known as the State Chemist. Such person shall be the chief chemist of the Department and his duties shall be such as are prescribed by law or by the Commissioner. His salary shall be such as may be provided in accordance with law for the purpose.~~

**Drafting Note: Deleted section. This section is archaic—there is no longer a State Chemist.**

~~§ 3.1-12. Appointment and control of other employees.~~

~~The Commissioner shall, subject to the approval of the Board, appoint the employees of the Department, who shall be under his direction and control and who shall receive the salaries provided in accordance with law for the purpose.~~

**Drafting Note: Deleted section. This provision is unnecessary; language regarding the Commissioner's direction of the Department, ability to appoint and delegate to staff, and employee salaries appears in §§ 2.2-602 and 2.2-604.**

~~§ 3.1-13. How expenses and salaries paid.~~

~~All salaries and expenses of the Department, and all expenditures, shall be paid by the State Treasurer upon warrants drawn by the Comptroller upon vouchers signed by the Commissioner, or by such other person as may be designated by the Board.~~

**Drafting Note: Deleted section. Payment of executive branch agency expenses is addressed in Title 2.2.**

~~§ 3.1-14 3.2-102. Powers—General powers and duties in general; rules and regulations of Board of Agriculture and Consumer Services; records to be held in confidence of the Commissioner.~~

~~A. 1—The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and duties herein provided, and such other powers and duties as may be prescribed by law, including those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of the laws relating to the subject of his Department, and he shall investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizer and compost, and for the inducement of immigration and capital, and he shall be especially charged with the supervision of the trade in commercial fertilizers as will best protect the interests of the farmers with the enforcement of the laws which are or may be enacted in this Commonwealth concerning the sale of commercial fertilizers, seed and food products, with authority in the Board of Agriculture and Consumer Services to make rules and regulations governing the same, and to publish them as required by law. He shall ensure that, unless an intent is expressly stated otherwise, the term "horse" or "equine," when used in this title, shall be considered to mean an agricultural or livestock animal.~~

~~2. He shall be charged with the inducement of capital and immigration, by the dissemination of information relative to the advantages of soil, climate, healthfulness and markets of this Commonwealth, and to resources and industrial opportunities offered in the Commonwealth as he may deem useful, and also with investigation adapted to promote the improvement of milk and beef cattle and other stock.~~

~~3. He, or his duly authorized representative, shall have~~

~~Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides,~~

*agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.*

*B. In addition, the Commissioner shall:*

*1. Have the authority, in the same manner as provided in § 59.1-308.2, to inquire into consumer complaints regarding violations of § 46.2-1231 or § 46.2-1233.1 involving businesses engaged in towing vehicles or to refer the complaint directly to the appropriate local enforcement officials;*

~~4. He, or his duly authorized representative, shall establish~~ *2. Establish mechanisms by which to receive complaints and related inquiries from Virginia the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such mechanisms shall include, but are not limited to, establishing a statewide, toll-free telephone hotline to be administered by the Department; publicizing the existence of such hotline through public service announcements on television and radio and in newspapers and other media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the Department through computer networks such as the Internet, the World Wide Web, America On Line, and Virginia On Line.*

~~5. He, or his duly authorized representative, shall establish~~ *3. Establish and administer programs which that facilitate resolution of complaints and related inquiries from Virginia the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such programs shall be developed in cooperation with the Office of the Attorney General and may utilize paid or unpaid personnel, law schools or other institutions of higher education, community dispute resolution centers, or any other private or public entity, including any local offices of consumer affairs established pursuant to § 15.1-23.2 which 15.2-963 that volunteer to participate in a program.*

He shall submit an annual written report on or before January 15 to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation, and Natural Resources on his activities pursuant to this subdivision and subdivision 42 of this subsection during the preceding calendar year.

~~6. He shall have such other powers and duties as are prescribed by law.~~

~~B. The Commissioner shall hold the following records of the Department in confidence unless otherwise directed by the Governor or Board:~~

- ~~1. Schedules of work for regulatory inspection;~~
  - ~~2. Trade secrets and commercial or financial information supplied by individuals or business entities to the Department;~~
  - ~~3. Reports of criminal violations made to the Department by persons outside the Department;~~
  - ~~4. Records of active investigations until the investigations are closed;~~
  - ~~5. Financial records of applicants for assistance from the Virginia Farm Loan Revolving Account except those records which are otherwise a matter of public record;~~
  - ~~6. Tax returns required by the agricultural commodity commissions established pursuant to this title to the extent necessary to protect the privacy of individual taxpayers.~~
- 4. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational*

*institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products.*

*5. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-207. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section.*

**Drafting Note: The language in the first sentence is moved from existing § 3.1-8 and includes new cross-references to the Commissioner's powers and duties provided in § 2.2-601 and Title 59.1. Section 2.2-601 contains the general powers for the departments established in Title 2.2. The Department is not established in Title 2.2 so the reference is added here to clarify the Commissioner's powers. The proposed language in the second sentence is from existing § 3.1-10. Existing subsection B, regarding confidential records, is moved to proposed § 3.2-103, Records to be held in confidence. The proposed language in subdivision B4, regarding the farm-to-school website, is moved from existing § 3.1-14.4. The proposed language in subdivision B5, regarding the Commissioner's power to assist distribution of wines from farm wineries, is moved from existing § 3.1-14.01. The provision requiring that the term "horse" or "equine" be used is deleted and moved to proposed § 3.2-5900, Definitions, where "livestock" is defined to include all equine animals and "horse" is defined to mean any stallion, colt, gelding, mare, or filly.**

~~§ 3.1-14.01. Power of Commissioner; nonstock corporation to assist distribution of farm winery wine.~~

~~A. The Commissioner of Agriculture and Consumer Services shall establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-207.~~

~~B. The board of directors of such corporation shall be composed of the Commissioner of Agriculture and Consumer Services and four members appointed by the Board of Agriculture and Consumer Services (the Board), including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees~~

~~submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including, but not limited to, reporting the quantity of wine distributed for each winery and farm winery during the preceding year.~~

~~C. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section.~~

**Drafting Note: Deleted and moved to subdivision B5 of proposed § 3.2-102, General powers and duties of the Commissioner.**

~~§ 3.1-14.4. Commissioner to establish farm to school website.~~

~~The Commissioner shall establish and maintain a farm to school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including but not limited to the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products.~~

**Drafting Note: Deleted and moved to subdivision B4 of proposed § 3.2-102, General powers and duties of the Commissioner.**

~~§ 3.2-103. Records to be held in confidence.~~

~~The Commissioner shall hold the following records of the Department in confidence unless otherwise directed by the Governor or the Board:~~

- ~~1. Schedules of work for regulatory inspection;~~
- ~~2. Trade secrets and commercial or financial information supplied by individuals or business entities to the Department;~~
- ~~3. Reports of criminal violations made to the Department by persons outside the Department;~~
- ~~4. Records of active investigations until the investigations are closed;~~
- ~~5. Financial records of applicants for assistance from the Virginia Farm Loan Revolving Account except those records that are otherwise a matter of public record;~~
- ~~6. Tax returns required by the agricultural commodity boards established pursuant to this title to the extent necessary to protect the privacy of individual taxpayers.~~

**Drafting Note: New section. The language is moved from subsection B of existing § 3.1-14.**

~~§ 3.1-14.1 3.2-104. Service Commissioner may serve on board of national tobacco trust entity.~~

~~The Commissioner is authorized to may serve in his official capacity on the board of directors of any entity established to ensure the implementation in the Commonwealth of a national tobacco trust established to provide payments to tobacco growers and tobacco quota owners to ameliorate adverse economic consequences resulting from a national settlement of states' claims against tobacco manufacturers.~~

**Drafting Note: Technical changes.**

~~§ 3.1-17. Commissioner may collect specimens of natural history.~~

~~The Commissioner, or his properly designated agent, may take, capture, or collect game birds, game animals, and song and insectivorous birds, and fish, at such seasons and by such means as may be necessary, when the same are taken, captured, or collected as specimens of natural history. He may ship the same out of this Commonwealth, under the label of his office, to be mounted, or for Commonwealth exhibition.~~

**Drafting Note: Deleted section. The provision is archaic.**

~~§ 3.1-17.1 3.2-105. Century Farm Program.~~

~~The Commissioner shall establish a century farm program to honor farm families in Virginia the Commonwealth whose property has been in the same family for 100 years or more.~~

In order to be eligible for recognition under the program, a farm shall: (i) have been owned by the same family for at least 100 consecutive years; (ii) be lived on, or actually farmed by, a descendent of the original ~~owner, owners;~~ and (iii) gross ~~over more than~~ \$2,500 annually from the sale of farm products. At the discretion of the Commissioner, a farm that does not gross ~~over more than~~ \$2,500 annually but is being used for a bona fide silvicultural purpose may be recognized under the program.

**Drafting Note: Technical changes.**

~~§ 3.1-741.2~~ 3.2-106. Horse breeder incentive program ~~authorized.~~

A. It is the policy of the Commonwealth to encourage the growth of all segments of its agricultural industry. The General Assembly finds that the horse breeding industry has a significant impact on the Commonwealth's economy and that it is to the Commonwealth's benefit to encourage, expand, and develop horse breeding farms with programs providing financial incentives to breeders ~~which~~ that will encourage and supplement private capital.

B. To the extent that public or private funds ~~now or hereafter~~ become available, the Department of Agriculture and Consumer Services is ~~authorized to~~ may establish a program of financial incentives designed to encourage, expand, and develop the breeding of horses in ~~Virginia~~ the Commonwealth. The Department shall adopt appropriate regulations for the administration of the program. Such regulations shall provide for the distribution of financial awards to breeders only to the extent that public funds made available to the Department for the program are matched dollar for dollar by private funds. The regulations shall also provide that no single breeder shall receive, in any one calendar year, more than ~~ten~~ 10 percent of the public funds made available to the Department for the program during that year. Awards made under any such incentive program shall be limited to horses foaled in ~~Virginia~~ which the Commonwealth that are owned by breeders who are actively engaged in the breeding of horses in ~~Virginia~~ the Commonwealth.

**Drafting Note: This provision is also moved to proposed Chapter 1, General Provisions, from existing Chapter 27, Livestock and Poultry, since it authorizes the Department to establish a program unrelated to animal health.**

~~§ 3.1-15~~ 3.2-107. Testing samples of products delivered to laboratories; prescribing and collecting fees; *Laboratory Fee Fund established; disposition of moneys.*

A. The Commissioner of ~~Agriculture and Consumer Services~~ is ~~authorized to~~ may have tested samples of manufactured, processed, or natural products delivered to laboratories operated by the Division of Consolidated Laboratory Services or the Department of ~~Agriculture and Consumer Services~~ and to prescribe and collect reasonable fees for the services rendered ~~or performed.~~

B. All fees and moneys collected or received by the Commissioner or the Department of ~~Agriculture and Consumer Services~~ in its official capacity for the testing of samples of manufactured, processed, or natural products shall be paid into a Special Fund Account, and are hereby appropriated to be used at the discretion of the Commissioner for such part or parts of the costs of the testing provided for in § 3.1-15 as he may deem advisable *the Laboratory Fee Fund.*

C. *There is hereby created in the state treasury a special nonreverting fund to be known as the Laboratory Fee Fund, hereinafter referred to as the Fund. The Fund shall be established on the books of the Comptroller. All fees collected pursuant to this section shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of the costs of the testing provided for in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.*

**Drafting Note: Proposed subsection C is moved from existing § 3.1-16 and adopts model language used to establish special funds. Current practice is to avoid the use of unnamed special funds. The special fund is already established and no substantive changes have been made, but interest in the fund will now remain in the fund and no longer revert to the general fund.**

~~§ 3.1-16. Same; disposition of moneys collected.~~

~~All fees and moneys collected or received by the Commissioner or the Department of Agriculture and Consumer Services in its official capacity for the testing of samples of manufactured, processed or natural products shall be paid into a Special Fund Account, and are hereby appropriated to be used at the discretion of the Commissioner for such part or parts of the costs of the testing provided for in § 3.1-15 as he may deem advisable.~~

**Drafting Note: Deleted and moved to subsections B and C of proposed § 3.2-107, Testing samples of products delivered to laboratories; prescribing and collecting fees; Laboratory Fee Fund established; disposition of moneys.**

~~§ 3.1-14.53.2-108.~~ Department to establish a program to support new and emerging crops and technologies.

A. From such funds as may be appropriated for such purposes and from gifts, donations, grants, bequests, and other funds as may be received, the Department shall establish a program to:

1. Encourage the production of alternative crops in the Commonwealth that may be used as a feedstock for energy generation and transportation, thereby supporting ~~Virginia~~ farmers and farm communities in their efforts to: (i) sustain and enhance economically viable business opportunities in agriculture; (ii) reduce nonpoint source pollution in the Chesapeake Bay and other waters of the Commonwealth; (iii) restore depleted soils; (iv) provide wildlife habitat; (v) reduce greenhouse gases; and (vi) reduce the country's dependence on foreign supplies of energy;

2. Assist the development of bioenergy feedstock crop technologies, including but not limited to, seed stock supplies, production technology, harvest equipment, transportation infrastructure and storage facilities;

3. Identify and assist in the development of commercially viable bioenergy market opportunities, including recruitment, expansion and establishment of renewable bioenergy businesses in Virginia; and

4. Promote the aquaculture of the species that are natives to or reside within the waters of the Chesapeake Bay and the Virginia Coast, in concert with the efforts of Virginia higher education institutions and the Virginia Marine Resources Commission, with a focus on assisting "traditional watermen" who rely on harvesting marine fish and shellfish. This effort shall also include watermen who are viable working participants of the aquaculture industry as contract growers, cooperatives or other business entities.

B. The Department shall provide funds in the form of grants to accomplish the objectives described in subsection A. The Department shall develop guidelines for the operation of the program that shall include, at a minimum, eligibility criteria for receiving grant awards, financial accountability for receiving grant awards, allowable uses of grant funds, and agricultural programmatic priorities. The Department shall consult with the Department of Conservation and Recreation and the U.S. Department of Agriculture's Natural Resources Conservation Service, when appropriate, to ensure compatibility with existing cost-share and other agricultural incentive programs.

**Drafting Note: Technical changes.**

## CHAPTER 1

### Article 2.



Board of Agriculture and Consumer Services.

~~§ 3.1-13.2-109. Appointment, Board of Agriculture and Consumer Services; appointments; qualifications; and terms of office.~~

~~The Board of Agriculture and Consumer Services, in this title sometimes referred to as the is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government and may adopt regulations in accordance with the provisions of this title. The Board, shall be composed consist of one member from each congressional district, at least seven of whom shall be practical currently practicing farmers, appointed by the Governor for a term of four years, and confirmed by the General Assembly. The presidents of the Virginia Polytechnic Institute and State University and Virginia State University shall be ex officio members of the Board. No member of the Board, except the ex officio members, shall be eligible for more than two successive terms; provided that persons heretofore or hereafter appointed to fill vacancies may serve two additional successive terms after the terms of the vacancies they were appointed to fill have expired. All vacancies in the membership of the Board shall be filled by the Governor for the unexpired term.~~

**Drafting Note: Added clarification establishing the Board as a policy board. As provided in § 2.2-2100, a policy board may promulgate public policies and adopt regulations if specifically charged by statute, as it is here.**

~~§ 3.1-2 3.2-110. Meetings Officers of the Board; meetings.~~

~~A. The Board shall annually elect a president, vice president, and secretary.~~

~~B. The Board shall meet at least three times a year for the transaction of business; but special. Special meetings thereof may be had held at any time upon the call of the president of the Board, the request of the Commissioner of Agriculture and Consumer Services, or the written request of a majority of the Board members of the Board made in writing.~~

**Drafting Note: Proposed subsection A is moved from existing § 3.1-3.**

~~§ 3.1-3. Election of president and employment of clerk to act as secretary.~~

~~The Board shall annually elect a president and shall employ a clerk, who may be a member of the Board, to act as secretary. Such secretary shall receive such compensation as may be provided in accordance with law.~~

**Drafting Note: Deleted and moved to subsection A of proposed § 3.2-110, Officers of the Board; meetings. The language has been amended to reflect the current Board practice of annually electing a president, vice president, and secretary. A clerk is not employed to act as secretary.**

~~§ 3.1-4 3.2-111. Powers in general General powers and duties of the Board.~~

~~A. The Board shall be charged with all matters tending to the promotion of the agricultural interests of the Commonwealth. It shall have power to receive and, hold in trust, and administer any donation made to it for the advancement of the agricultural interests of the Commonwealth and to administer the same.~~

~~B. The Board shall have power to purchase or lease land, not to exceed one thousand 1,000 acres, for the programs of the Department, and it shall regulate and prescribe the salaries of such officers and employees of the Department who shall be employed in such programs.~~

~~C. The Board shall also be required to advise the Governor on the state of the agricultural industry and to further advise him on a course of action to include, but be not limited to, one that will promote its promoting the development of the industry; to encourage encouraging persons, agencies, organizations, and industries to implement a development program and counsel the same in this development develop the industry; to work working closely with all agencies concerned with rural resources development and coordinate; coordinating efforts toward maximum farm and off-farm employment; to examine examining marketing procedures and new techniques for selling Virginia's the Commonwealth's farm products; and to formulate~~

*formulating plans for developing new markets for such products; and such other matters as the Governor may request.*

~~The Board shall, unless an intent is expressly stated otherwise, interpret the term "horse" or "equine" when used in this title to mean an agricultural or livestock animal.~~

*D. The Board shall not adopt any regulation that prohibits or restricts a person, his immediate family, or his guests from consuming products or commodities grown or processed on his property provided that the products or commodities are not offered for sale to the public.*

*E. The Board shall oversee the development of a farmers market system.*

**Drafting Note: Proposed subsection D is moved from existing § 3.1-14.3. Proposed subsection E is moved from subsection B of existing § 3.1-4.1. The provision requiring that the term "horse" or "equine" be used is deleted and moved to proposed § 3.2-5900, Definitions, where "livestock" is defined to include all equine animals and "horse" is defined to mean any stallion, colt, gelding, mare, or filly.**

~~§ 3.1-14.3. Right to consume farm products.~~

~~No regulation shall prohibit or restrict a person, his immediate family, or his guests from consuming products or commodities grown or processed on his property provided that the products or commodities are not offered for sale to the public.~~

**Drafting Note: Deleted and moved to subsection D of proposed § 3.2-111, General powers and duties of the Board.**

*§ 3.2-112. Regulations governing the conduct of referenda.*

*The Board shall adopt regulations governing the ballots to be used in any referendum, the conduct of any referendum, canvassing the results thereof, and declaring the results of any referendum provided for in this title. The Board shall fix the date, hours, and voting places with respect to the holding of any referendum and may provide for voting by mail. No requirement of this section shall be governed by Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.*

**Drafting Note: New section. This section is adopted from similar provisions reiterated in the chapters establishing the various commodity boards and creates a general provision enabling the Board to adopt regulations governing the conduct of referenda held under Subtitle II, Boards, Councils, Foundations, and Commissions. The existing provisions have been deleted from each commodity board and a cross-reference to this section is added. Those sections include §§ 3.1-22.59, 3.1-636.2, 3.1-684.6, 3.1-684.25, 3.1-684.45, 3.1-796.06, 3.1-1036, 3.1-1068, and 3.1-1084. The last sentence, which provides an exemption to the Administrative Process Act, currently appears in existing § 3.1-1084. It is included here to reflect past and current referenda practice.**

~~§ 3.1-4.1. Additional powers of the Board.~~

~~A. All commodity commissions established within the Department shall report their activities to the Board on an annual basis. This report will be in a format as prescribed by the Board. The Board may review activities of the commodity commissions and make such recommendations concerning their programs as it deems fit.~~

~~B. The Board shall oversee the development of a farmers' market system.~~

**Drafting Note: Deleted and moved subsection A to proposed § 3.2-1101, Commodity boards reporting requirements, in the general provisions chapter of Subtitle II. Subsection B is moved to proposed § 3.2-111, General powers and duties of the Board.**

~~§ 3.1-6. Assaying minerals.~~

~~The Board shall be charged with the assaying for the benefit of the owners thereof of any minerals found in this Commonwealth.~~

**Drafting Note: Deleted section. The provision is archaic and has not been amended since 1966. The Department does not assay minerals. Currently, the Division of Mines, Minerals and Energy is charged with the responsibility for investigating, examining, maintaining records, and preparing maps of minerals found in the Commonwealth in § 45.1-386.**

## CHAPTER 3.1

### Article 3.

#### ~~Administrator-Office~~ of Consumer Affairs.

~~§ 3.1-18.1~~ 3.2-113. ~~Position created; appointment and term~~ *Office of Consumer Affairs.*

There is hereby created in the Department of Agriculture and Consumer Services the position of ~~Administrator~~ *Office* of Consumer Affairs, *hereinafter referred to as the Office*. The ~~Administrator shall be appointed by, and shall serve at the pleasure of, the Commissioner of Agriculture and Consumer Services.~~

**Drafting Note: Replaced language referring to the Administrator of Consumer Affairs with the Office of Consumer Affairs to reflect current Departmental practice.**

~~§ 3.1-18.2~~ 3.2-114. Powers and duties of *Office*.

A. The ~~Administrator of Consumer Affairs-Office~~ shall have only such powers as may be necessary to perform the following duties:

1. Promote consumer education in cooperation with the Department of Education and inform the public of policies, decisions and legislation affecting consumers;;

2. Serve as a central coordinating agency and clearinghouse for receiving and investigating complaints by ~~Virginia~~ *the Commonwealth's* consumers of illegal, fraudulent, deceptive or dangerous practices and referring appropriate complaints to the federal, state and local departments or agencies charged with enforcement of consumer laws;;

3. Maintain records of consumer complaints and their eventual disposition, which records shall be open for public inspection, provided that information disclosing the business interests of any person, trade secrets, or the names of customers shall be held confidential except to the extent that disclosure of such matters may be necessary for the enforcement of laws;;

4. Enter into agreements or accept commissions from federal agencies; *and*

5. Exercise such powers and perform such duties as requested by the Commissioner ~~of the Department of Agriculture and Consumer Services, or his designee,~~ under the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

B. If the department or agency to which a complaint is referred pursuant to subdivision A 2 determines that the matter cannot be settled at an administrative level, the complaint together with all supporting evidence may be transmitted to the appropriate enforcement officer for such legal action as may be necessary.

C. The responsibility of the ~~Administrator-Office~~ in these matters shall not be limited to those areas of peculiar interest to the Department of Agriculture and Consumer Services, but shall embrace the consumer programs and responsibilities of all the departments and agencies of the Commonwealth.

**Drafting Note: Technical changes.**

~~§ 3.1-18.3~~ 3.2-115. Payment of expenses of ~~office~~ *Office*.

The expenses of the ~~office of the Administrator of Consumer Affairs-Office~~ shall be paid from funds provided for that purpose by law; ~~provided, however, that in addition thereto the~~ *The* Commissioner may supplement such funds from appropriations made to the Department ~~of Agriculture and Consumer Services~~ for discretionary purposes.

**Drafting Note: Technical changes.**

## CHAPTER 3.32.

### *PRESERVATION OF FARM AND FOREST LANDS.*

**Chapter Drafting Note: Only technical changes have been made in this chapter.**

### Article 1.

Office of Farmland Preservation.

~~§ 3.1-18.9~~ 3.2-200. Agricultural Vitality Program continued as Office of Farmland Preservation.

The Agricultural Vitality Program within the Department is continued and hereafter shall be known as the Office of Farmland Preservation.

**Drafting Note: No changes.**

~~§ 3.1-18.10~~ 3.2-201. Powers and duties of Office of Farmland Preservation.

The Office of Farmland Preservation shall have the following powers and duties:

1. To develop, in cooperation with the Department of Business Assistance, the Virginia Farm Bureau Federation, the American Farmland Trust, the Virginia Land Conservation Foundation, the Virginia Outdoors Foundation, the Virginia Association of Counties, and the Virginia Cooperative Extension, (i) model policies and practices that may be used as a guide to establish local purchase of development rights programs; (ii) criteria for the certification of local purchase of development rights programs as eligible to receive grants, loans or other funds from public sources; and (iii) methods and sources of revenue for allocating funds to localities to purchase agricultural conservation easements;

2. To create programs to educate the public about the importance of farmland preservation to the quality of life in the Commonwealth;

3. To provide technical, professional, and other assistance to farmers on matters related to farmland preservation; and

4. To administer the Virginia Farm Link program established pursuant to ~~§ 3.1-18.11~~ 3.2-202.

**Drafting Note: Technical changes.**

~~§ 3.1-18.11~~ 3.2-202. Virginia Farm Link program.

There is hereby created the Virginia Farm Link program to provide assistance to retiring farmers and individuals seeking to become active farmers in the transition of farm businesses and properties from retiring farmers to active farmers. Such assistance shall include, ~~but not be limited to~~, (i) assistance in the preparation of business plans for the transition of business interests; (ii) assistance in the facilitation of transfers of existing properties and agricultural operations to interested buyers; (iii) information on innovative farming methods and techniques; and (iv) research assistance on agricultural, financial, marketing, and other matters.

**Drafting Note: Technical changes.**

~~§ 3.1-18.12~~ 3.2-203. Reporting requirements.

The Commissioner shall submit a written report on the operation of the Office of Farmland Preservation by December 1 of each year to the chairmen of the House Committee on Agriculture, *Chesapeake and Natural Resources* and the Senate Committee on Agriculture, Conservation and Natural Resources. The provisions of this chapter shall not preclude local purchase of development rights programs established pursuant to ~~Chapter 17~~ *the Open-Space Land Act* (§ 10.1-1700 et seq.) ~~of Title 10.1~~ from being eligible to receive grants, loans, or other funds from public sources.

**Drafting Note: Chapter 17 (§ 10.1-1700 et seq.) of Title 10.1 refers to the Open-Space Land Act.**

CHAPTER 3.2

Article 2.

Protection of Farm and Forest Lands.

~~§ 3.1-18.8~~ 3.2-204. Review of capital projects.

In preparing its report on each major state project, as required in Article 2 (§ 10.1-1188 et seq.) of Chapter 11.1 of Title 10.1, each state agency shall demonstrate that it has considered the

impact that project would have on farm and forest lands as required in §§ ~~3.1-18.4 and 3.1-18.5~~ 3.2-205, and further has adequately considered alternatives and mitigating measures. The Department of Environmental Quality, in conducting its review of each major state project, shall ensure that such consideration has been demonstrated and shall incorporate its evaluation of the effects that project would have on farm and forest lands in its comments to the Governor. The procedures for review of highway and road construction projects established in accordance with subsection B of § 10.1-1188 shall include provisions requiring that the factors listed in § ~~3.1-18.5~~ 3.2-205 are considered as part of the review of each project.

**Drafting Note: Existing § 3.1-18.4 has been deleted as a policy statement, thus there is no corresponding cross-reference to proposed Title 3.2.**

~~§ 3.1-18.5~~ 3.2-205. Characteristics to be considered in evaluating impacts on farm and forest lands.

A. In preparing environmental impact reports in accordance with § ~~3.1-18.8~~ 3.2-204, state agencies shall consider the impact of the major state project on all farm and forest lands that:

1. Have soil classified as capability class I, II, III, or IV;
2. Have an exceptional combination of physical characteristics for the production of food, feed, fiber, forest products, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion;
3. Are valuable for production of specific high-value food and fiber crops, such as fruits, vegetables, and nursery crops and have a special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of such crops when treated and managed according to acceptable farming methods;
4. Are of statewide or local importance for the production of food, feed, fiber, forest products, forage, or oilseed crops;
5. Have been recognized under a state program such as the Clean Water Farm Award or the Century Farm Program;
6. Are part of an agricultural or forestal district or are participating in a use value assessment and taxation program for real estate devoted to agricultural, horticultural, or forest use in accordance with the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1; or
7. Make a significant contribution to the local economy or the rural character of the area ~~in which~~ where the land is located.

B. The governing body of each ~~county, city and town~~ locality, with the cooperation of the ~~United States~~ U.S. Department of Agriculture, may designate the important farmlands within its jurisdiction. In designating important farmlands the governing body shall demonstrate that adequate provision has been made for nonagricultural uses within its jurisdiction.

C. As used in this chapter, "farmland" includes all land defined as follows:

"Important farmland," other than prime or unique farmland, is land that is of statewide or local importance for the production of food, feed, fiber, forage, nursery, oilseed, or other agricultural crops, as determined by the appropriate state agency or local government agency; ~~either or both~~, and that the ~~United States Secretary~~ U.S. Department of Agriculture determines should be considered as farmland for the purposes of this chapter;

"Prime farmland" is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, nursery, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion. Prime farmland includes land that possesses the above characteristics but is being used currently to produce livestock and timber. It does not include land already in or committed to urban development or water storage; and

"Unique farmland" is land other than prime farmland that is used for production of specific high-value food and fiber crops, as determined by the ~~United States Secretary~~ U.S.

*Department of Agriculture.* It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods.

**Drafting Note: Technical changes.**

~~§ 3.1-18.6 3.2-206.~~ Certain agencies to prepare plans for implementation of policy; Secretary of Commerce and Trade responsibilities.

~~Each of the following agencies—~~*The Department of Transportation, Department of Health, Department of Conservation and Recreation, State Corporation Commission, and Department of Environmental Quality* shall *each* prepare a plan for the implementation of the policies set forth in this chapter:

- ~~1. Department of Transportation;~~
- ~~2. Department of Health;~~
- ~~3. Department of Conservation and Recreation;~~
- ~~4. State Corporation Commission;~~
- ~~5. Department of Environmental Quality.~~

The plan shall contain an analysis of the impact ~~which~~*that* the agency's regulations and projects have on the conversion of farm and forest lands. The plan shall be updated and submitted to the Secretary of Agriculture and Forestry and the Secretary of Natural Resources annually. The Secretary of Agriculture and Forestry shall review the plan in consultation with the Commissioner ~~of Agriculture and Consumer Services~~ and the State Forester, and may recommend improvements to the plan. The Secretary of Agriculture and Forestry shall submit a written report by December 1 of each year to the chairmen of the House Committee on Agriculture, *Chesapeake and Natural Resources* and the Senate Committee on Agriculture, Conservation and Natural Resources on the impacts of state agency actions on the conversion of farm and forest lands.

**Drafting Note: Technical changes.**

~~3.1-18.4. Duties of public agencies generally.~~

~~A. The General Assembly finds that farm and forest lands are being converted to nonagricultural use. The loss of this land undermines the Commonwealth's food and forest production capabilities. Agriculture, forestry, and related enterprises comprise a significant segment of the Commonwealth's economy and play a critical role in defining the character of the Commonwealth, and their preservation should be encouraged.~~

~~The policies and actions of various state agencies account for a significant portion of farm and forest lands being converted to nonagricultural use. Where possible, state policies and actions should encourage the preservation of farm and forest lands.~~

~~B. All agencies of the Commonwealth, in promulgating regulations and undertaking capital projects, shall encourage the preservation of farm and forest lands.~~

~~C. For the purposes of receiving federal funds, state agencies and local governments, either or both, with the cooperation of the United States Department of Agriculture, may designate state and locally important soils, which include prime, unique, and locally important farmland. However, individual participation in any state program that is based partially or wholly upon such designation shall be contingent upon the consent of the landowner.~~

**Drafting Note: Deleted section. This section is deleted as a policy statement. It is currently not set out in the Code.**

CHAPTER 4.53.

RIGHT TO FARM ACT.

**Chapter Drafting Note: The definitions of "agricultural operation" and "production agriculture and silviculture" have been deleted from existing §§ 3.1-22.28 and 3.1-22.29 and moved into a new section, proposed § 3.2-300, Definitions.**

§ 3.2-300. *Definitions.*

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

*"Agricultural operation" means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.*

*"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.*

**Drafting Note: New section. The definition for "agricultural operation" is moved from subsection B of existing § 3.1-22.29. The definition for "production agriculture and silviculture" is moved from existing § 3.1-22.28.**

~~§ 3.1-22.28~~ 3.2-301. Right to farm; restrictive ordinances.

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no county shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. ~~For the purpose of this section, "production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.~~ However, ~~counties~~ *Counties* may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No ~~county, city or town~~ *locality* shall enact zoning ordinances ~~which~~ *that* would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

**Drafting Note: The definitions of "production agriculture and silviculture" are moved to proposed § 3.2-300, Definitions.**

~~§ 3.1-22.29~~ 3.2-302. When agricultural operations do not constitute nuisance.

A. No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, if such operations are conducted in accordance with existing best management practices and comply with existing laws and regulations of the Commonwealth. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or its appurtenances.

~~B. For the purposes of this chapter, "agricultural operation" shall mean any operation devoted to the bona fide production of crops, or animals, or fowl, including but not limited to the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery and floral products; and the production and harvest of products from silviculture activity.~~

~~C. The provisions of subsection A shall not affect or defeat the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on the account of any overflow of lands of any such person, firm, or corporation.~~

~~D. Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a~~

nuisance or providing for abatement thereof as a nuisance in the circumstance set forth in this section are and shall be null and void; ~~however, the~~. The provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any such agricultural operation or any of its appurtenances.

**Drafting Note: Moved the definition of “agricultural operation” to proposed § 3.2-300, Definitions. Deleted "firm or corporation" because the Code-wide definition of the term "person" in § 1-230 includes both such entities.**

~~Title 10.1~~

~~CHAPTER 54.~~

~~Article 3.1~~

*AGRICULTURAL STEWARDSHIP.*

**Chapter Drafting Note: This chapter has been moved from Chapter 5 of Title 10.1, Conservation. "Board" is specifically defined for this chapter as the Soil and Water Conservation Board. Added definitions have been included from the general definitions provision of Chapter 5 of Title 10.1.**

~~§ 10.1-559.1~~ 3.2-400. Definitions.

As used in this ~~article~~ *chapter*, unless the context requires a different meaning:

"Agricultural activity" means any activity used in the production of food and fiber, including, ~~but not limited to~~, farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural stewardship plan" or "plan" means a site-specific plan for an agricultural activity to manage, through use of stewardship measures, one or more of the following: soil, water, plants, plant nutrients, pest controls, wastes, and animals.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

*"Board" means the Soil and Water Conservation Board.*

"Complaint" means an allegation made by any person to the Commissioner that an owner's or operator's agricultural activity is creating or, if not changed, will create pollution and that states the location and nature of such agricultural activity.

*"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1.*

"Informal fact-finding conference" means an informal fact-finding conference conducted in accordance with § 2.2-4019.

"Operator" means any person who exercises managerial control over any agricultural activity.

"Owner" means any person who owns land ~~on which~~ *where* an agricultural activity occurs.

~~"Person" means an individual, a partnership, an association, a corporation or any government or unit of government.~~

"Pollution" means any alteration of the physical, chemical, or biological properties of any state waters resulting from sedimentation, nutrients, or toxins.

"State waters" means all water, on the surface or in the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Stewardship measures" or "measures" means measures for controlling the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution ~~which~~ *that* reflect the pollutant reduction achievable through the application of the best available nonpoint pollution control methods, technologies, processes, siting criteria, operating methods, or other alternatives. "Stewardship measures" or "measures" includes: (i) agricultural water



quality protection management measures described in the Virginia Agricultural Best Management Practices Manual; and (ii) agricultural water quality protection management measures contained in the ~~United States~~U.S. Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide.

**Drafting Note: Added definitions are from § 10.1-500, Definitions, in Chapter 5, Soil and Water Conservation, of Title 10.1. The definition for "person" is deleted since a Code-wide definition is in § 1-230.**

~~§ 10.1-559.2~~ 3.2-401. Exclusions from ~~article~~ chapter.

This ~~article~~ chapter shall not apply to any agricultural activity to which: (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of ~~this title~~ Title 10.1; or (ii) a permit issued by the State Water Control Board, applies.

**Drafting Note: Technical changes.**

~~§ 10.1-559.3~~ 3.2-402. Complaint; investigation; agricultural stewardship plan.

A. After April 1, 1997, upon receiving a complaint, unless the complaint was made anonymously, the Commissioner shall request that the directors of the district ~~in which~~ where the land lies determine the validity of the information within ~~twenty-one~~ 21 days. The Commissioner may investigate or ask the directors of the district to investigate an anonymous complaint.

B. The district chairman may, on behalf of the district, act upon or reject the Commissioner's request. If the district declines to act, it shall within five days so advise the Commissioner, who shall determine the validity of the complaint.

C. If, after investigating a complaint, the Commissioner determines that substantial evidence exists to prove that an agricultural activity is creating or will create pollution, the Commissioner shall notify the owner or operator by registered mail, return receipt requested. If, after investigation, the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances ~~which~~ that could not have been reasonably anticipated, or determines that the pollution is not a threat to human health, animal health, or aquatic life, water quality or recreational or other beneficial uses, the Commissioner may forego any additional action. Copies of the notice shall be sent to the district ~~in which~~ where the agricultural activity is located. The notice shall state that, within ~~sixty~~ 60 days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan ~~which~~ that includes stewardship measures needed to prevent or cease the pollution. The district shall review the plan and, if the plan includes such measures, the Commissioner shall approve the plan within ~~thirty~~ 30 days after he receives it. Upon approving the owner's or operator's plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved. The owner or operator shall begin implementing the approved agricultural stewardship plan within six months of the date ~~on which~~ that the owner or operator received the notice that the agricultural activity is creating or will create pollution.

D. The plan shall include an implementation schedule, and implementation of the plan shall be completed within a period specified by the Commissioner, based upon the seasons and other temporal considerations so that the period is that during which the possibility of success in establishment or construction of the measures required in the plan is the greatest, which shall not exceed ~~eighteen~~ 18 months from receipt of notice. ~~However, the~~ The Commissioner may grant an extension of up to 180 days if: (i) a hardship exists; and (ii) the request for an extension was made not later than ~~sixty~~ 60 days before the scheduled completion date. The Commissioner shall, within ~~thirty~~ 30 days of receiving the request, inform the owner or operator whether or not an extension has been granted.

E. After implementing the approved plan according to the provisions of ~~the~~ this chapter, the owner or operator shall maintain the stewardship measures established pursuant to the plan. The owner or operator may change the agricultural activity so long as the Commissioner is notified.

F. If the Commissioner determines that substantial evidence does not exist to prove that an agricultural activity is creating or will create pollution or that any pollution was caused by unusual weather events or other exceptional circumstances or that the pollution is not a threat to human health, animal health, or aquatic life or recreational or other beneficial uses, he shall inform the complainant and the owner or operator of his determination. Upon approving the owner's or operator's agricultural stewardship plan, the Commissioner shall inform the owner or operator and the complainant that a plan has been approved.

**Drafting Note: Technical changes.**

~~§ 10.1-559.4 3.2-403.~~ Issuance of corrective orders.

A. If any owner or operator who has been issued a notice under ~~§ 10.1-559.3 3.2-402~~ fails to submit an agricultural stewardship plan, begin actively implementing the plan, complete implementation of the plan, or maintain the stewardship measures as provided in ~~§ 10.1-559.3 3.2-402~~, the Commissioner shall issue a corrective order to such owner or operator. The order shall require that such activity be accomplished within a stated period of time.

B. A corrective order issued pursuant to subsection A shall be issued only after an informal fact-finding conference, with reasonable notice being given to the owner or operator, or both, of the time, place, and purpose thereof, and shall become effective not less than five days after date of delivery to the last known address as provided in subsection C. The corrective order shall be suspended pending appeal by the recipient made within five days after delivery of such order to the last known address of the owner or operator.

C. The Commissioner shall mail a copy of the corrective order by certified mail, return receipt requested, sent to the last known address of the owner or operator, or by personal delivery by an agent of the Commonwealth.

D. Notwithstanding other provisions of this ~~article~~ *chapter*, if the Commissioner determines that a recurring polluting condition ~~which~~*that* is the subject of an approved plan is occurring or that an emergency condition exists due to runoff from an agricultural activity ~~which~~*that* is causing or is likely to cause an imminent or substantial danger to: (i) the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other beneficial uses, the Commissioner may issue, without advance notice, informal fact-finding conference, or hearing, an emergency corrective order. Such order may direct the owner or operator of the agricultural activity, or both, to cease immediately all or part of the agricultural activity; and to implement specified stewardship measures or any necessary emergency measures within a stated period of time. Following the issuance of an emergency corrective order, the Commissioner shall provide the opportunity for a hearing or an informal fact-finding conference, after reasonable notice as to the time and place thereof, to the owner or operator, for the purpose of affirming, modifying, amending, or canceling the emergency corrective order.

E. The Commissioner shall not issue a corrective order to any land owner or operator if the person is:

1. Actively implementing the agricultural stewardship plan ~~which~~*that* has been reviewed by the district ~~in which~~*where* the agricultural activity is located and approved by the Commissioner, or

2. Actively implementing stewardship measures that have failed to prevent pollution, if the Commissioner determines that the pollution is a direct result of unusual weather events or other exceptional circumstances ~~which~~*that* could not have been reasonably anticipated.

**Drafting Note: Technical changes.**

~~§ 10.1-559.5 3.2-404.~~ Right of entry; court enforcement.

A. The district or the Commissioner ~~or his designee~~ may enter land ~~which~~*that* is the subject of a complaint, after notice to the owner or operator, to determine whether the agricultural activity is causing or will cause pollution of state waters.

B. Upon failure of any owner or operator to allow the Commissioner ~~or his designee~~ entry in accordance with subsection A, to implement stewardship measures in the time specified in a corrective order, or to maintain stewardship measures in accordance with subsection E of § ~~10.1-559.3 3.2-402~~, the Commissioner may present to the circuit court of the county or city ~~in~~ ~~which~~ ~~where~~ the land is located, a petition asking the court to require the owner or operator to allow the Commissioner ~~or his designee~~ entry or to carry out such measures within a specified time. If the owner or operator fails to implement the stewardship measures specified in the court order, the Commissioner ~~or his representative~~ may enter the land involved and implement the measures. The Commissioner ~~shall have the authority~~ may to recover the costs of implementing the stewardship measures from the owner or operator.

**Drafting Note: Technical changes.**

§ ~~10.1-559.6 3.2-405~~. Appeal.

Decisions of the Commissioner may be appealed by persons aggrieved to the ~~Virginia Soil and Water Conservation Board~~ and thereafter to the circuit court in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The imposition of any civil penalty shall be suspended pending such appeals.

**Drafting Note: Deleted “Virginia Soil and Water Conservation” since the Board is now defined in proposed § 3.2-400, Definitions.**

§ ~~10.1-559.7 3.2-406~~. Penalties; injunctions; enforcement actions.

A. Any person violating § ~~10.1-559.4 3.2-403~~ or § ~~10.1-559.5 3.2-404~~ shall be subject to a civil penalty not to exceed \$5,000 for every violation assessed by the Commissioner or Board. Each day the violation continues ~~shall constitute~~ ~~is~~ a separate offense. Payments to satisfy such penalties shall be deposited in a nonreverting, special fund to be used by the Department of Conservation and Recreation to provide financial assistance to persons implementing measures specified in the Virginia Agricultural Best Management Practices Manual. No person who has been assessed a civil penalty under this section shall be eligible for such financial assistance until the violation has been corrected and the penalty paid.

B. In determining the amount of any penalty, factors to be considered shall include ~~but not be limited to~~ the willfulness of the violation, any history of noncompliance, the actions of the owner or operator in notifying, containing and cleaning up any discharge, the damage or injury to state waters or the impairment of its uses, and the nature and degree of injury to or interference with general health, welfare and property.

C. The Attorney General shall, upon request, bring an action for an injunction or other appropriate legal action on behalf of the Commissioner or Board to enforce the provisions of this ~~article~~ *chapter*.

**Drafting Note: Technical changes.**

§ ~~10.1-559.8 3.2-407~~. Liens.

If a person who is required to pay a civil penalty under this chapter fails to do so, the Commissioner may transmit a true copy of the order assessing such penalty to the clerk of the circuit court of any county or city wherein it is ascertained that the person owing such penalty has any estate; and the clerk to whom such copy is transmitted shall record it, as a judgment is required by law to be recorded, and shall index it in the name of the Commonwealth as well as in the name of the person owing the civil penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property within such locality of the person owing the civil penalty in the amount of the civil penalty. The Commissioner and Board may collect civil penalties ~~which~~ ~~that~~ are owed in the same manner as provided by law in respect to judgment of a *circuit* court ~~of record~~.

**Drafting Note: Technical changes.**

§ ~~10.1-559.9 3.2-408~~. Guidelines to be published by Commissioner; report.

A. In consultation with the districts, the Department of *Conservation and Recreation*, and interested persons, the Commissioner shall develop guidelines for the implementation of this ~~article~~ *chapter*. These guidelines shall address, among other things, the conduct of investigations, sources of assistance for owners and operators, and intergovernmental cooperation. Within ~~ninety~~-90 days of the effective date of this section, the Commissioner shall submit the proposed guidelines to the Registrar of Regulations for publication in the Virginia Register of Regulations. At least ~~thirty~~-30 days shall be provided for public comment after the publication of the proposed guidelines. After the close of the public comment period, the Commissioner shall consider the comments that he has received and may incorporate any changes into the guidelines that he deems appropriate. He shall develop a written summary and analysis of the comments, which shall be made available to the public upon request. Thereafter, the Commissioner shall submit final guidelines for publication in the Register. The guidelines shall become effective on April 1, 1997. The Commissioner may alter the guidelines periodically after his proposed changes have been published in the Register and a public comment period has been provided.

B. The Commissioner shall compile a report by August 31 annually listing the number of complaints received, the nature of each complaint, the actions taken in resolution of each complaint, and any penalties ~~which~~*that* may have been assessed. The Commissioner shall have the discretion to exclude and keep confidential specific information regarding ongoing investigations. The Commissioner shall: (i) provide the report to the Board, the Department of *Conservation and Recreation*, and to every district; (ii) publish notice in the Virginia Register that the report is available; and (iii) make the report available to the public upon request.

**Drafting Note: Technical changes.**

~~§ 10.1-559.10 3.2-409. Local ordinances~~*Ordinances.*

A. Any ~~county, city or town~~-*locality* may adopt an ordinance creating a complaint, investigation, and agricultural stewardship plan development program. Ordinances adopted ~~pursuant to this section~~*hereunder* may contain only provisions ~~which~~*that* parallel §§ ~~10.1-559.2 3.2-401 and 10.1-559.3 3.2-402~~. No such ordinance shall provide for the imposition of civil or criminal sanctions against an operator or owner who fails to implement a plan. If an owner or operator fails to implement a plan, the local governing body shall submit a complaint to the Commissioner as provided in § ~~10.1-559.3 3.2-402~~.

B. This section shall not apply to any ordinance: (i) in existence on July 1, 1996; or (ii) adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.).

**Drafting Note: Technical changes.**

~~§ 10.1-559.11 3.2-410. Construction of~~*article chapter.*

Nothing in this ~~article~~ *chapter* shall be construed as duplicative of regulations governing agricultural practices under the Chesapeake Bay Preservation Act.

**Drafting Note: Technical changes.**

CHAPTER 4.35.

~~THE VIRGINIA FARMER MAJOR DROUGHT, FLOOD, AND HURRICANE  
DISASTER ACT ASSISTANCE.~~

**Chapter Drafting Note: Special fund model language has been included in proposed § 3.2-506, Farmers Major Disaster Fund established, because current practice avoids the use of unnamed special funds. Existing § 3.1-22.14 is a policy statement currently not set out in the Code and is shown here as stricken.**

~~§ 3.1-22.13. Title.~~

~~This chapter may be cited as the "Virginia Farmer Major Drought, Flood and Hurricane Disaster Act."~~

**Drafting Note: Deleted as unnecessary.**

~~§ 3.1-22.173.2-500.~~ Definitions.

A. For the purposes of this chapter,

"major disaster" means any hurricane, flood, or drought which would warrant a disaster declaration request by the Governor pursuant to the provisions of Section 301 of Public Law 93-288, 42 U.S.C. 5141.

B. For the purposes of this chapter, "farmer" ~~As used in this chapter, unless the context requires a different meaning:~~

"Farmer" means any person who derives at least ~~seventy five per centum~~ 75 percent of his gross income from a farming operation in ~~this~~the Commonwealth as reported on his federal income tax forms the previous year, or a farmer who receives or is eligible to receive a federal loan and who owns or leases land ~~which~~that would be eligible for special tax assessments pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 15. ~~Provided, however, it~~32 of Title 58.1. It shall not be necessary for any locality to adopt an ordinance pursuant to § 58.1-3231 in order to effectuate the provisions of this ~~subsection~~section relating to special tax assessments.

C. For the purposes of this chapter, "person" shall mean any natural person, firm, partnership, association, corporation, or any other legal entity.

"Major disaster" means any hurricane, flood, or drought that would warrant a disaster declaration request by the Governor pursuant to the provisions of Section 301 of Public Law 93-288, 42 U.S.C. 5141.

**Drafting Note: Alphabetized definitions. Deleted the definition of "person" because it is previously defined in Title 1 to mean any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.**

~~§ 3.1-22.14.~~ Findings; declaration of intent.

~~The General Assembly of Virginia finds that farming is Virginia's largest industry and is necessary to the health and welfare of all of the citizens of this Commonwealth; that farming operations are particularly susceptible to the effects of natural disasters; that a large majority of farms in this Commonwealth are single family farms with limited capability to recover from a major disaster; and that present State and federal programs to provide relief for farmers after natural disasters are too inadequate and untimely in many instances to encourage farmers to survive and to continue operations. It is the intent of the General Assembly by this chapter to provide supplemental relief to farmers affected by major disasters.~~

**Drafting Note: Deleted section. This section is deleted as a policy statement. It is currently not set out in the Code.**

~~§ 3.1-22.16~~ 3.2-501. Declaration by Governor.

~~The provisions of this chapter shall be effective from the time that the Governor of this Commonwealth makes a request pursuant to Section 301 of Public Law 93-288, 42 U.S.C. 5141, until the Governor declares that the effects of the disaster have been abated.~~

**Drafting Note: Technical changes.**

~~§ 3.1-22.21~~ 3.2-502. Administration.

~~The Commissioner of Agriculture and Consumer Services shall establish administrative procedures necessary to give effect the purposes of to this chapter including the promulgation adoption of rules and regulations.~~

**Drafting Note: Technical changes.**

~~§ 3.1-22.15~~ 3.2-503. Duties of Extension Division of Virginia Polytechnic Institute and State University.

A. Personnel of the Extension Division of Virginia Polytechnic Institute and State University shall inform local governing bodies of ~~this~~the Commonwealth whenever agricultural conditions are present in such localities ~~which~~that would warrant the declaration of a disaster pursuant to Section 301 of Public Law 93-288, 42 U.S.C. 5141.

B. Personnel of the Extension Division of Virginia Polytechnic Institute and State University shall provide farmers and local governing bodies with such assistance and information as is available concerning federal and state disaster relief programs.

**Drafting Note: Technical changes.**

~~§ 3.1-22.18~~ 3.2-504. Loans.

The Governor or his designee may approve a loan to any farmer who has suffered the effects of a major disaster upon the recommendation of the Commissioner of ~~Agriculture and Consumer Services~~ and subject to the following terms and conditions:

~~A1.~~ The assistance provided for in this section shall not be extended unless the farmer has applied for and received approval for a loan exceeding the amount requested pursuant hereto from any federal agency providing disaster relief loans. Upon approval of a loan by such federal agency, *the Governor or his designee may approve a loan not exceeding to exceed \$10,000 may be approved by the Governor or his designee.*

~~B2.~~ The loan shall be available only for operating expenses for the farming operation.

~~C3.~~ No interest shall be charged for the loan.

~~D4.~~ Repayment shall be made within one year or upon receipt of loan funds from any federal agency providing disaster relief, whichever is sooner. The ~~Virginia Department of Agriculture and Consumer Services~~ may require the farmer to provide sufficient security or to make provision for direct payment from federal lending agencies of the entire amount of the loan made pursuant to this chapter as a condition of granting the loan.

~~E5.~~ A maximum of \$10,000 may be loaned any one farmer. ~~Provided, however, the~~ *The Governor at his discretion may reduce or increase the maximum amount of the loan.*

~~F6.~~ The availability of loans provided for in this section shall be based on and subject to the moneys accumulated in the Farmers Major Disaster Fund established in ~~§ 3.1-22.20~~ 3.2-506.

**Drafting Note: Technical changes.**

~~§ 3.1-22.19~~ 3.2-505. Emergency services.

A. The Commissioner of ~~Agriculture and Consumer Services~~ is hereby authorized to ~~may~~ develop and initiate programs of general relief to farmers affected by major disasters and to expend moneys from the Farmers Major Disaster Fund in order to implement such programs. Programs created pursuant hereto shall include but not be limited to the following:

1. Programs to assist farmers in their feed needs including the supplying of feed at cost.

2. Programs to provide supplemental manpower to those state and federal agencies involved in relief efforts to aid farmers.

B. Any locality may develop and initiate a grant program to supply emergency financial assistance to farmers in the locality to offset a portion of any operating losses resulting from a major disaster as declared by the Governor pursuant to § 44-146.17.

**Drafting Note: Technical changes.**

~~§ 3.1-22.20~~ 3.2-506. ~~Disaster fund created~~ *Farmers Major Disaster Fund established.*

~~All loans made pursuant to this chapter shall be paid from a special fund of the state treasury titled the Farmers Major Disaster Fund. The Governor may allocate moneys to such fund from appropriations made to the Governor for disaster planning and operations pursuant to the declaration of the state disaster under Chapter 3.2 (§ 44-146.13 et seq.) of Title 44.~~ *There is hereby created in the state treasury a special nonreverting fund to be known as the Farmers Major Disaster Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys allocated by the Governor from appropriations made to the Governor for disaster planning and operations pursuant to the declaration of the state disaster under Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund*

*shall be used solely for the purposes of emergency services programs pursuant to § 3.2-505 and all loans made pursuant to this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.*

**Drafting Note: Adopted model language to establish a special fund. Current practice avoids the use of unnamed special funds. This special fund is already established, but interest earned will remain in the fund and will no longer revert to the general fund.**

## CHAPTER 56.

### RETURN AND FUTURE ADMINISTRATION OF ASSETS OF VIRGINIA RURAL REHABILITATION CORPORATION.

**Chapter Drafting Note: Only technical and grammatical changes have been made in this chapter. The style of the legal citation to the federal Rural Rehabilitation Corporation Trust Liquidation Act has been updated to reflect current drafting practice.**

~~§ 3.1-233.2-600.~~ Commissioner designated to apply for and receive trust assets held by United States.

The Commissioner of ~~Agriculture and Consumer Services of the Commonwealth of Virginia~~ is hereby designated as the Commonwealth official to make application to and receive from the ~~Secretary U.S. Department of Agriculture of the United States~~, or any other proper federal official, pursuant and subject to the provisions of ~~Public Law 499, 81st Congress, approved May 3, 1950~~ the federal Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440 et seq.), the trust assets, either funds or property, held by the United States as trustee ~~in~~ on behalf of the Virginia Rural Rehabilitation Corporation.

**Drafting Note: Updated convention of citation.**

~~§ 3.1-24~~ 3.2-601. Agreements of Commissioner with ~~United States Secretary U.S. Department of Agriculture as to administration of assets.~~

The Commissioner of ~~Agriculture and Consumer Services~~, with the advice of the Board of ~~Agriculture~~, is ~~authorized to~~ may enter into agreements with the ~~Secretary U.S. Department of Agriculture of the United States~~ pursuant to § 2 (f) of the ~~aforsaid act of Congress of the United States~~ federal Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440 et seq.), upon such terms and conditions and for such periods of time as may be mutually agreeable, authorizing the ~~Secretary U.S. Department of Agriculture of the United States~~ to accept, administer, expend, and use in the Commonwealth of ~~Virginia~~ all or any part of such trust assets for carrying out the purposes of Titles I and II of the Bankhead-Jones Farm Tenant Act, in accordance with the applicable provisions of Title IV thereof, as now or hereafter amended, and ~~to~~ may do any and all things necessary to effectuate and carry out the purposes of said agreements.

**Drafting Note: Updated citation style to reflect current legal practice.**

~~§ 3.1-25~~ 3.2-602. Virginia Farm Loan Revolving Account.

Notwithstanding any other provisions of law, funds and the proceeds of the trust assets ~~which~~ that are not authorized to be administered by the ~~Secretary U.S. Department of Agriculture of the United States~~ under the provisions of ~~§ 3.1-24, 3.2-601~~ shall be paid to and received by the Commissioner of ~~Agriculture and Consumer Services~~ and by him paid into the state treasury for credit to an account to be known as the "Virginia Farm Loan Revolving Account." The entire amount so received, together with any moneys appropriated for such purposes, is hereby appropriated out of the Virginia Farm Loan Revolving Account for expenditure by the Commissioner of ~~Agriculture and Consumer Services~~ for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Virginia Rural Rehabilitation Corporation, as may from time to time be agreed upon by the Commissioner of ~~Agriculture and~~

~~Consumer Services and the Secretary~~ U.S. Department of Agriculture of the United States, subject to the applicable provisions of said ~~Public Law 499~~ the federal Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440 et seq.), or for the purposes of § ~~3.1-24~~ 3.2-601. Such expenditure shall be paid by the State Treasurer on warrants of the Comptroller issued on vouchers signed by the Commissioner of Agriculture and Consumer Services.

**Drafting Note: Updated citation style to reflect current legal practice.**

~~§ 3.1-26~~ 3.2-603. Further powers of Commissioner; delegation of such powers to Secretary of Agriculture.

The Commissioner of Agriculture and Consumer Services is authorized and empowered to may:

~~(a)~~ 1. Collect, compromise, adjust, or cancel claims and obligations arising out of or administered under this chapter or under any mortgage, lease, contract, or agreement entered into or administered pursuant to this chapter and, if in his judgment, necessary and advisable, pursue the same to final collection in any *appropriate* court having jurisdiction;

~~(b)~~ 2. Bid for and purchase at any execution, foreclosure, or other sale, or otherwise to acquire property upon which where the Commissioner of Agriculture and Consumer Services has a lien by reason of judgment or execution, or which that is pledged, mortgaged, conveyed, or which otherwise secures any loan or other indebtedness owing to or acquired by the Commissioner of Agriculture and Consumer Services under this chapter; and

~~(c)~~ 3. Accept title to any property so purchased or acquired; to operate or lease such property for such period as may be deemed necessary to protect the investment therein; and to sell or otherwise dispose of such property in a manner consistent with the provisions of this chapter.

The authority herein contained may be delegated to the ~~Secretary~~ U.S. Department of Agriculture of the United States with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to § ~~3.1-24~~ 3.2-601.

**Drafting Note: Technical changes.**

~~§ 3.1-27~~ 3.2-604. United States and Secretary Liability of the U.S. Department of Agriculture to be held free from liability.

The United States and the Secretary of Agriculture thereof, shall be held free from liability by virtue of the transfer of the assets to the Commissioner of Agriculture and Consumer Services of the Commonwealth of Virginia pursuant to this chapter.

**Drafting Note: Technical changes.**

## CHAPTER ~~13-7~~.

### TREE AND CROP PESTS.

**Chapter Drafting Note: This chapter is organized into two articles, Pests and the Pest Control Compact. Existing Article 4 of Chapter 13, Musk Thistle and Curled Thistle, has been moved to Title 15.2, Counties, Cities, and Towns, since it deals with the power of localities to control these weeds.**

#### Article ~~6-1~~.

##### Virginia Pest Law *Pests*.

~~§ 3.1-188.20~~ 3.2-700. Definitions.

The following terms when As used in this article, except where unless the context otherwise requires, shall have the meaning respectively ascribed to them in this section a different meaning:

A. "Board". The Board of Agriculture and Consumer Services.



~~B. "Commissioner".—The Commissioner of the Department of Agriculture and Consumer Services or any other person to whom authority to act in his stead has been or hereafter may be delegated.~~

~~C. "Pest".—Insect, disease, parasitic plant, or other organism of any character whatever, in any living stage, vertebrate or invertebrate, causing or capable of causing injury or damage to any plant or part thereof or any processed, manufactured, or other product of plants, or otherwise creating a public nuisance.~~

~~D. "Certificate" means a document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with a pest.~~

~~"Host".—Any means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.~~

~~E. "Infested".—Actually means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.~~

~~F. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move or allow to be moved.~~

~~"Permit" means a document issued or authorized by the Commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.~~

~~"Person".—Any individual, firm, partnership, corporation, company, means the term as defined in § 1-230. The term also means any society, or association, or other business entity.~~

~~"Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move or allow to be moved.~~

~~H. "Pest" means an insect, disease, parasitic plant, or other organism of any character whatever, in any living stage, vertebrate or invertebrate, causing or capable of causing injury or damage to any plant or part thereof or any processed, manufactured, or other product of plants, or otherwise creating a public nuisance.~~

~~"Regulated article".—Any means any article of any character carrying or capable of carrying the pest against which the quarantine is directed.~~

~~I. "Certificate".—A document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with a pest.~~

~~J. "Permit".—A document issued or authorized by the Commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.~~

**Drafting Note: Definitions have been alphabetized and the title-wide definitions of "Board" and "Commissioner" have been deleted.**

~~§ 3.1-188.21 3.2-701. Administration; rules and regulations.~~

~~A. It shall be the duty of the The Commissioner to shall protect the agricultural, horticultural, and other interests of the Commonwealth from plant pests and, either in person or by his assistants, supervise and direct the execution of this article and rules and regulations adopted pursuant hereto. The Commissioner shall have the responsibility for administration of the provisions of this article. The Commissioner is authorized to assign functions provided for in this article to any unit of the Department of Agriculture and Consumer Services and to delegate any authority provided for in this article to any officer thereof, or any other person, to be exercised under the general supervision of the Commissioner hereunder.~~

~~B. The Board shall promulgate such rules and regulations as are necessary for the efficient execution of the provisions of this article.~~

**Drafting Note: Language regarding the general responsibilities of the Commissioner is deleted as unnecessary. The general powers of the Commissioner are cited in § 2.2-604 and proposed § 3.2-102, General powers and duties of the Commissioner. Deleted language in subsection B that authorizes the Board to promulgate rules and regulations since they have**

**such powers as a policy board under proposed Chapter 1, General Provisions and § 2.2-2100.**

~~§ 3.1-188.22 3.2-702.~~ Abundance surveys; eradication or suppression of pests; ~~right of entry; reports of Commissioner; appeals to Board.~~

The Commissioner, ~~through his assistants~~ shall direct abundance surveys for plant pests and ~~is authorized to~~ *may* carry out operations or measures to locate, ~~to~~ suppress, control, ~~or~~ eradicate, ~~or to~~ prevent, or retard the spread of pests. When the Commissioner determines that a new or dangerous or highly injurious plant pest exists within the Commonwealth or that an established pest requires control and the nature of the pest dictates immediate action, he may proceed with eradication or suppression. Provided further, that whenever the Commissioner ~~or his agents~~ *intends* to go upon any property for the purpose of eradicating or suppressing pests, ~~said Commissioner or his agents~~ *he* shall before entering upon any such property, give a written notice to the owner or occupant thereof at least ~~twenty-four~~ 24 hours prior to such entry, setting forth in detail the purpose or purposes for which such entry shall be made.

In the event the Commissioner determines a plant pest does not require immediate action, he shall report his findings, including the nature of the pest and method of proposed treatment, to the Board in writing and to the property owners or persons in charge of the property concerned by printing a copy thereof, at least once, in at least one newspaper of general circulation in the locality concerned. In case of objection to the action proposed, an appeal shall lie to the Board. Such appeal ~~must~~ *shall* be taken within seven days from the issue of the notice and shall act as a stay of proceedings insofar as the property of the person noting the appeal is concerned until it is heard and decided.

**Drafting Note: Technical changes.**

~~§ 3.1-188.23 3.2-703.~~ Authority to quarantine ~~Commonwealth or portion thereof.~~

The Board ~~is authorized to~~ *may* quarantine ~~this-the~~ the Commonwealth or any portion thereof when ~~they determine-it determines~~ that such action is necessary to prevent or retard the spread of a pest into, within, or from ~~this-the~~ the Commonwealth. Before a quarantine is adopted, the Board shall, after due public notice, hold a public hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), at which hearing any interested party may appear and be heard either in person or by attorney. Notwithstanding the provisions of § 2.2-4002 or any other law to the contrary, the Commissioner may impose a temporary quarantine for a period not to exceed ~~ninety~~ 90 days. A public hearing, as provided herein, shall be held if it appears that a quarantine for more than the ~~ninety-day~~ 90-day period will be necessary to prevent or retard the spread of the pest. The Commissioner shall give notice of the establishment of the quarantine in a newspaper having general circulation in the area affected by the quarantine. The Commissioner may limit the application of the temporary or permanent quarantine to the infested area and appropriate environs, to be known as the regulated areas, and may without further hearing extend or reduce the regulated area upon publication of a notice to that effect in a newspaper having general circulation in the area affected by the quarantine or by direct written notice to those concerned. Any temporary quarantine imposed by the Commissioner or any extensions or reductions in the regulated areas pursuant to this section shall be reviewed by the Board at its next regularly scheduled meeting, such review by the Board shall be made within ~~ninety~~ 90 days of the Commissioner's action.

Following establishment of a quarantine, no person shall move any regulated article described in the quarantine or move the pest against which the quarantine is established, within, from, into, or through ~~this-the~~ the Commonwealth contrary to regulations.

The regulations may restrict the movement of the pest and any regulated articles from the regulated area in ~~this-the~~ the Commonwealth into or through other parts of ~~this-the~~ the Commonwealth or other states and from the regulated area in other states into or through ~~this-the~~ the Commonwealth and shall impose such inspection, disinfection, certification, or permit and other requirements as

the Commissioner deems necessary to effectuate the purposes of this article. The Commissioner may issue administrative instructions relating to the enforcement of regulations ~~pertaining to but not limited to~~ *including* acceptable certification procedures, regulated articles, and exemptions.

**Drafting Note: Technical changes.**

~~§ 3.1-188.24~~ 3.2-704. Quarantine against regulated articles in other states.

When the Board ~~shall have~~ *has* good reason to believe ~~of [in]~~ the existence of infested regulated articles in localities in other states, territories, or countries, or that conditions exist ~~therein which~~ *that*, in the judgment of the Board, render the importation of such regulated articles from such localities a menace to the health of ~~this-the~~ Commonwealth, the Board shall, by proclamation, prohibit the importation of any regulated article from any locality of other states, territories, or countries, into ~~this-the~~ Commonwealth.

**Drafting Note: Technical changes.**

~~§ 3.1-188.25~~ 3.2-705. Authority for abatement and other emergency measures; compensation to property owners.

Whenever the Commissioner finds any article that is infested or reasonably believed to be infested or a host or pest exists on any property or is in transit in ~~this-the~~ Commonwealth, he may require full information as to origin, number and destination of same and, upon giving notice to the owner or his agent in possession thereof, seize, quarantine, treat, or otherwise dispose of such pest, host, or article in such manner as the Commissioner deems necessary to suppress, control, eradicate, ~~or to prevent~~, or retard the spread of a pest; or the Commissioner may order such owner or agent to so treat or otherwise dispose of the pest, host, or article. The owner of any property destroyed or ordered to be treated or otherwise disposed of under this section may, in an action against ~~this-the~~ Commonwealth in the appropriate court, recover just compensation for any property so destroyed or the reasonable costs of disposal of any property so ordered if he establishes that the property was not a pest, or a host, or an infested article.

**Drafting Note: Technical changes.**

~~§ 3.1-188.26~~ 3.2-706. Authority for inspections; warrants.

To effectuate the purpose of this article, the Commissioner may, with a warrant or with the consent of the owner, make reasonable inspections of any property in ~~this-the~~ Commonwealth and may, without a warrant, stop and inspect, in a reasonable manner, any means of conveyance moving within ~~this-the~~ Commonwealth, upon probable cause that it contains or carries any pest, host, or other regulated article subject to this article, and may make any other reasonable inspection of any property or means of conveyance for which, under the Constitution of the United States and the Constitution of ~~this-the~~ Commonwealth, no warrant is required.

In accordance with § 19.2-52, the appropriate persons ~~in this Commonwealth~~ have authority to issue warrants for such inspections upon a showing by the Commissioner that there is probable cause to believe that there exists in or on the property to be inspected a pest, host, or other regulated article subject to this article.

**Drafting Note: Technical changes.**

~~§ 3.1-188.27~~ 3.2-707. Cooperation with *other* agencies ~~of federal and state governments and public and private organizations.~~

~~A. The~~ *When the* Commissioner is authorized to cooperate with any agency of the federal government in such operations and measures as he deems *it* necessary to suppress, control, eradicate, ~~or to prevent~~, or retard the spread of any pest, ~~including the right to~~ *he may cooperate with:*

A1. *Any agency of the federal government, and may expend state funds on federal lands;:*

~~B2. The Commissioner is authorized to cooperate with any agencies~~ *Any agency of an adjacent states in such operations and measures as he deems necessary to locate, suppress, control, or eradicate, or to prevent or retard the spread of any pest. Provided, however, that* ~~state~~

if the use of funds appropriated to carry out this article, for operations in *an adjacent states must* ~~beare~~ approved in advance by the Governor or his designee.;

~~€3. The Commissioner is authorized to cooperate with any agencies~~Any agency of a local governments—government within the Commonwealth in such operations and measures as he deems necessary to suppress, control, eradicate, or to prevent or retard the spread of any pest.;

and

~~D4. The Commissioner is authorized to cooperate with public~~Any public and private organizations within the Commonwealth in such operations and measures as he deems necessary to suppress, control, eradicate, or to prevent or retard the spread of any pest.

**Drafting Note: Technical changes.**

~~§ 3.1-188.27:13.2-708.~~ Cooperative Suppression Program Fund established.

The Cooperative Suppression Program Fund is hereby established as a special fund on the books of the State Comptroller, and all moneys credited to such fund are hereby appropriated for the purpose set forth in the ~~Virginia Department of Agriculture and Consumer Services'~~ Department's Gypsy Moth Cooperative Suppression Program Guidelines and shall be used exclusively for the administration of the Cooperative Suppression Program. Moneys for such fund may be derived from appropriations from the general fund of the state treasury; grants of private or government money designated for specified activities pursuant to the Suppression Program; fees for services rendered pursuant to the Suppression Program; payment for products, equipment, or material or any other thing supplied by the Commissioner; payment for educational publications, materials or supplies provided by the Commissioner, and grants, bequests and donations. All funds collected for, appropriated, or received by the Commissioner shall be paid into the state treasury to the credit of the Gypsy Moth Cooperative Suppression Program Fund. No part of such fund shall revert to the general fund of the state treasury.

**Drafting Note: Technical changes**

~~§ 3.1-188.283.2-709.~~ Authority for compensation to growers in infested areas.

The Commissioner, when he determines that it is necessary to fulfill the objectives of this article, may authorize the payment of reasonable compensation to growers in infested areas for eliminating or not planting host crops, or otherwise controlling the target pest, pursuant to instructions issued by the Commissioner or for losses or expenses resulting from the destruction of any host or regulated articles. ~~Provided, however, no~~No payment shall be authorized for the destruction of regulated articles moved in violation of any regulation or any hosts planted contrary to instructions issued by the Commissioner.

**Drafting Note: Technical changes.**

~~§ 3.1-188.293.2-710.~~ Penalties.

A. Any person who violates any of the provisions of this article, or who alters, forges, or counterfeits, or uses without authority any certificate or permit or other document provided for in this article or in the regulations of the Board ~~provided for in this article, shall be guilty~~ *adopted hereunder is guilty* of a Class 1 misdemeanor.

B. Any person who has knowingly moved any regulated article into ~~this~~*the* Commonwealth from any quarantined area of any other state, which regulated article has not been treated or handled under provisions of the quarantine and regulations in effect at the point of origin, ~~shall be~~*is* guilty of a Class 1 misdemeanor.

**Drafting Note: Technical changes**

~~§ 3.1-188.303.2-711.~~ Costs of administration; reimbursements to Commonwealth.

Costs of administering this law shall be borne by the Commonwealth; ~~provided, however, that the.~~ *The* costs for services, products, or articles that the Commissioner determines are beyond the reasonable scope of the law, shall be paid by the persons affected to the State Treasurer. The Commissioner shall cause all reimbursements to be promptly credited to the State fund from which expended, regardless of the date the costs were incurred or collected.

**Drafting Note: Technical changes.**

~~§ 3.1-188.31:13.2-712.~~ Permit required to sell, *and* transport, ~~etc.~~, plant pests.

No person shall sell, barter, offer for sale, ~~or~~ move, transport, deliver, ship, or offer for shipment into or within ~~this~~the Commonwealth any plant pests in any living stage without first obtaining a permit from the Commissioner. Such permit shall be issued only after it has been determined that the plant pests are not injurious, are generally present already, or are for scientific purposes subject to specified safeguards.

**Drafting Note: Technical changes.**

~~§ 3.1-188.31:23.2-713.~~ Judicial review.

Judicial review of any action of the Board, ~~or the Commissioner, or his assistants~~ shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: Technical changes.**

Article 4.

~~Musk Thistle and Curled Thistle.~~

~~§ 3.1-177. Definitions.~~

~~The words "musk thistle" when used in this article mean the weed designated as Carduus nutans L., a biennial weed of the Compositae family.~~

~~The words "curled thistle" when used in this article mean the weed designated as Carduus acanthoides L., an annual and biennial weed of the Compositae family.~~

**Drafting Note: Deleted and moved to Title 15.2, Counties, Cities and Towns. It will be added as a new subsection to § 15.2-902, Authority of locality to control certain noxious weeds. That section currently authorizes localities to control the growth of Johnson grass and multiflora rose.**

~~§ 3.1-177.1. Localities may adopt musk thistle or curled thistle ordinance.~~

~~Any county, city or town may by ordinance control the growth of musk thistle or curled thistle. Any such musk thistle or curled thistle growing in the locality may be declared a public nuisance and noxious weed, harmful to plant and grass growth and to pastures, and may be destroyed.~~

**Drafting Note: Deleted and moved to § 15.2-902, Authority of locality to control certain noxious weeds.**

Article 5-2.

Pest Control Compact.

~~§ 3.1-188.33.2-714. Definitions.~~

~~As used in this compact~~article, unless the context clearly requires a different construction meaning:

~~(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.~~

~~(b) "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.~~

~~(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this section.~~

~~(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.~~

~~(e) "Insurance fund" means the Pest Control Insurance Fund established pursuant to this compact.~~

~~(f) "Governing board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.~~

~~(g) "Executive committee" means the committee established pursuant to § 3.1-188.63.2-719 of this compact.~~

*"Executive head" means the Governor.*

*"Governing board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.*

*"Insurance fund" means the Pest Control Insurance Fund established pursuant to this compact.*

*"Pest" means any invertebrate animal, pathogen, parasitic plant, or similar or allied organism that can cause disease or damage in any crops, trees, shrubs, grasses, or other plants of substantial value.*

*"Requesting state" means a state that invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.*

*"Responding state" means a state requested to undertake or intensify measures to control or eradicate one or more pests.*

**Drafting Note: Alphabetized and consolidated definitions into one section. Deleted definition of "state," which is provided Code-wide in § 1-245.**

~~§ 3.1-188.1 3.2-715.~~ Compact enacted into law and entered into.

The Pest Control Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein when the form of the compact is substantially the same as the compact entered into by the Commonwealth of Virginia.

**Drafting Note: Technical changes.**

~~§ 3.1-188.2 3.2-716.~~ Findings.

The party states find that:

~~(a)1.~~ In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately seven billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

~~(b)2.~~ Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests ~~which~~*that* present serious dangers to them.

~~(c)3.~~ The migratory character of pest infestations make it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

~~(d)4.~~ While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

**Drafting Note: Technical changes.**

~~§ 3.1-188.4 3.2-717.~~ The insurance fund.

There is hereby established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations ~~which~~*that* states may be called upon to engage in pursuant to this compact. The insurance fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by

the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

**Drafting Note: Special fund model language is not added to the Pest Control Insurance Fund because it is not a special fund maintained here in Virginia. The fund is established and administered through the multi-state Pest Control Compact. The money in the fund is a combination of contributions from the member states.**

~~§ 3.1-188.5~~ 3.2-718. The insurance fund, internal operations and management.

~~(a)~~A. The insurance fund shall be administered by a governing board and executive committee as hereinafter provided. The actions of the governing board and executive committee pursuant to this compact shall be deemed the actions of the insurance fund.

~~(b)~~B. The members of the governing board shall be entitled to one vote each on such board. No action of the governing board shall be binding unless taken at a meeting at which a majority of the total number of votes on the governing board are cast in favor thereof. Action of the governing board shall be only at a meeting at which a majority of the members are present.

~~(c)~~C. The insurance fund shall have a seal ~~which~~*that* may be employed as an official symbol and ~~which~~*that* may be affixed to documents and otherwise used as the governing board may provide.

~~(d)~~D. The governing board shall elect annually, from among its members, a chairman, a vice-chairman, a secretary, and a treasurer. The chairman may not succeed himself. The governing board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the governing board. The governing board shall make provision for the bonding of such of the officers and employees of the insurance fund as may be appropriate.

~~(e)~~E. Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the insurance fund and shall fix the duties and compensation of such personnel. The governing board in its bylaws shall provide for the personnel policies and programs of the insurance fund.

~~(f)~~F. The insurance fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

~~(g)~~G. The insurance fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, ~~firm, association or corporation~~, and may receive, utilize and dispose of the same. Any donation, gift, or grant accepted by the governing board pursuant to this paragraph or services borrowed pursuant to subsection ~~(f)~~ of this section *F* shall be reported in the annual report of the insurance fund. Such report shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender.

~~(h)~~H. The governing board shall adopt bylaws for the conduct of the business of the insurance fund and shall have the power to amend and rescind these bylaws. The insurance fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

~~(j)~~I. The insurance fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The insurance fund may make such additional reports as it may deem desirable.

~~(j)~~J. In addition to the powers and duties specifically authorized and imposed, the insurance fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

**Drafting Note: Deleted “firm, association or corporation” because the Code-wide definition of “person” in § 1-230 includes such entities.**

~~§ 3.1-188.6~~ 3.2-719. Compact and insurance fund administration.

~~(a)~~A. In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

~~(1)~~1. Assist in the coordination of activities pursuant to the compact in his state; and

~~(2)~~2. Represent his state on the governing board of the insurance fund.

~~(b)~~B. If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the governing board of the insurance fund by not to exceed three representatives. Any such representative ~~or representatives~~ of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the governing board or on the executive committee thereof.

~~(c)~~C. The governing board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the insurance fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the insurance fund. Additional meetings of the governing board shall be held on call of the chairman, the executive committee, or a majority of the membership of the governing board.

~~(d)~~D. At such times as it may be meeting, the governing board shall pass upon applications for assistance from the insurance fund and authorize disbursements therefrom. When the governing board is not in session, the executive committee thereof shall act as agent of the governing board, with full authority to act for it in passing upon such applications.

~~(e)~~E. The executive committee shall be composed of the chairman of the governing board and four additional members of the governing board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The governing board shall make such geographic groupings. If there is representation of the United States on the governing board, one such representative may meet with the executive committee. The chairman of the governing board shall be chairman of the executive committee. No action of the executive committee shall be binding unless taken at a meeting at which at least four members of such committee are present and vote in favor thereof. Necessary expenses of each of the five members of the executive committee incurred in attending meetings of such committee, when not held at the same time and place as meetings of the governing board, shall be charges against the insurance fund.

**Drafting Note: The plural of representative is deleted because, in the Code of Virginia, any word used in the singular includes the plural and vice versa, as provided in § 1-227.**

~~§ 3.1-188.7~~ 3.2-720. Assistance and reimbursement.

~~(a)~~A. Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.



2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

~~(b)~~B. Whenever a party state is threatened by a pest not present within its borders but present within another party state, whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the governing board to authorize expenditures from the insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys made available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

~~(c)~~C. In order to apply for expenditures from the insurance fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances ~~which~~*that* occasion the request for the invoking of the compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass, or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in subdivision 3—do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in subdivision 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions ~~which~~*that* in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the insurance fund in one year or less, or whether the request is for an installment in a program ~~which~~*that* is likely to continue for a longer period of time.

6. Such other information as the governing board may require consistent with the provisions of this compact.

~~(d)~~D. The governing board or executive committee shall give due notice of any meeting at which an application for assistance from the insurance fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

~~(e)~~E. Upon the submission as required by subsection ~~(c)~~ of this section C and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the governing board or executive committee shall authorize support of the program. The governing board or the executive committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the governing board or executive committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

~~(f)~~F. A requesting state ~~which~~*that* is dissatisfied with a determination of the executive committee shall upon notice in writing given within ~~twenty~~ 20 days of the determination with

which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the governing board. Determinations of the executive committee shall be reviewable only by the governing board at one of its regular meetings, or at a special meeting held in such manner as the governing board may authorize.

~~(g)~~G. Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the insurance fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the insurance fund. The governing board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

~~(h)~~H. Before authorizing the expenditure of moneys from the insurance fund pursuant to an application of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance or participation ~~which~~*that* may be available from the federal government and shall request the appropriate agency ~~or agencies~~ of the federal government for such assistance and participation.

~~(i)~~I. The insurance fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance fund, cooperating federal agencies, states and any other entities concerned.

**Drafting Note: Technical changes.**

~~§ 3.1-188.8~~ 3.2-721. Advisory and technical committees.

The governing board may establish advisory and technical committees composed of Commonwealth, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the governing board or executive committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the insurance fund being considered by such board or committee and the board or committee may receive and consider the same; provided that any participant in a meeting of the governing board or executive committee held pursuant to *subsection D of § 3.1-188.7 (d) 3.2-720* of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the governing board or executive committee makes its disposition of the application.

**Drafting Note: Technical changes.**

~~§ 3.1-188.9~~ 3.2-722. Relations with nonparty jurisdictions.

~~(a)~~A. A party state may make application for assistance from the insurance fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the governing board or executive committee in the same manner as an application with respect to a pest within a party state, except as provided in this section.

~~(b)~~B. At or in connection with any meeting of the governing board or executive committee held pursuant to *subsection D of § 3.1-188.7 (d) 3.2-720* of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the governing board or executive committee may provide. A nonparty state shall not be entitled to review of any determination made by the executive committee.

~~(c)~~C. The governing board or executive committee shall authorize expenditures from the insurance fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The governing board or executive committee may set any conditions ~~which~~*that* it deems appropriate with respect to the expenditure of moneys from the insurance fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as

it may deem necessary or appropriate to protect the interests of the insurance fund with respect to expenditures and activities outside of party states.

**Drafting Note: Technical changes.**

~~§ 3.1-188.10~~ 3.2-723. Finance.

~~(a)~~A. The insurance fund shall submit to the executive head or designated officer or officers of each party state a budget for the insurance fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

~~(b)~~B. Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: One tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the insurance fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

~~(c)~~C. The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account." The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all moneys not included in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the governing board shall reduce its budget requests on a pro rata basis in such manner as to keep the claims account within such maximum limit. Any moneys in the claims account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

~~(d)~~D. The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with moneys available to it under *subsection G of § 3.1-188.5* ~~(g)~~ 3.2-718 of this compact, provided that the governing board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund makes use of moneys available to it under *subsection G of § 3.1-188.5* ~~(g)~~ 3.2-718 hereof, the insurance fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

~~(e)~~E. The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the insurance fund shall be subject to the audit and accounting procedures established under its bylaws. ~~However, all~~All receipts and disbursements of funds handled by the insurance fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the insurance fund.

~~(f)~~F. The accounts of the insurance fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the insurance fund.

**Drafting Note: Technical changes.**

~~§ 3.1-188.11~~ 3.2-724. Entry into force and withdrawal.

~~(a)~~A. This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

~~(b)~~B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

**Drafting Note: No changes.**

~~§ 3.1-188.12~~ 3.2-725. Construction and severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**Drafting Note: No changes.**

~~§ 3.1-188.13~~ 3.2-726. Cooperation by state departments and agencies.

Consistent with law and within available appropriations, the departments, agencies and officers of ~~this~~the Commonwealth may cooperate with the insurance fund established by the Pest Control Compact.

**Drafting Note: Technical changes.**

~~§ 3.1-188.14~~ 3.2-727. Bylaws and amendments to be filed with the Department ~~of Agriculture and Consumer Services~~.

Pursuant to *subsection H of § 3.1-188.5* ~~(h)~~ 3.2-718, copies of bylaws and amendments thereto shall be filed with the Department ~~of Agriculture and Consumer Services~~.

**Drafting Note: Technical changes.**

~~§ 3.1-188.15~~ 3.2-728. Commissioner ~~of Agriculture and Consumer Services~~ designated compact administrator.

The compact administrator for ~~this~~the Commonwealth shall be the Commissioner ~~of Agriculture and Consumer Services~~. The duties of the compact administrator shall be deemed a regular part of the duties of his office.

**Drafting Note: Technical changes.**

~~§ 3.1-188.16~~ 3.2-729. Governor or Commissioner may request assistance from fund.

Within the meaning of *subsection B of § 3.1-188.7* ~~(b)~~ 3.2-720 or *subsection A of § 3.1-188.9* ~~(a)~~ 3.2-722, a request or application for assistance from the insurance fund may be made by the Governor or the Commissioner ~~of Agriculture and Consumer Services~~ whenever in their judgment the conditions qualifying ~~this~~the Commonwealth for such assistance exist and it would be in the best interest of ~~this~~the Commonwealth to make such request.

**Drafting Note: Technical changes.**

~~§ 3.1-188.17~~ 3.2-730. Disposition of payments to Commonwealth.

The department, agency, or officer expending or becoming liable for an expenditure on account of a control or eradication program undertaken or intensified pursuant to the compact shall have credited to his account in the state treasury the amount or amounts of any payments made to ~~this~~the Commonwealth to defray the cost of such program, or any part thereof, or as reimbursement thereof.

**Drafting Note: Technical changes.**

~~§ 3.1-188.18~~. Definition of "executive head".

As used in the compact, with reference to ~~this~~ Commonwealth, the term "executive head" shall mean the Governor.

**Drafting Note: Deleted and moved to proposed § 3.2-714, Definitions.**

~~§ 3.1-188.19 3.2-731.~~ Effective date.

The effective date shall be July 1, 1970.

**Drafting Note: No changes.**

CHAPTER ~~17.2-8.~~

NOXIOUS ~~WEED LAW~~WEEDS.

**Chapter Drafting Note: Only technical and grammatical changes are made to this chapter. The definitions are alphabetized and terms previously defined title-wide and Code-wide have been deleted.**

~~§ 3.1-296.11.~~ Title.

This chapter shall be known as the "Noxious Weed Law."

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 3.1-296.12 3.2-800.~~ Definitions.

The following definitions shall apply in the interpretation and enforcement of *As used in this chapter, unless the context requires a different meaning:*

~~(1) "Board" means the Board of Agriculture and Consumer Services.~~

*"Certificate" means a document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with a noxious weed.*

~~(2) "Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services, or his authorized representatives.~~

~~(3) "Person" means any individual, partnership, firm, corporation, company, society, association, the Commonwealth or any department, agency, or subdivision thereof, or any other entity.~~

*"Infested" means the establishment of a noxious weed or exposure to such weed, which would be reasonable cause to believe that establishment could occur.*

*"Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.*

~~(4) "Noxious weed" means any living plant, not widely disseminated, or part thereof, declared by the Board through rules and regulations under this chapter, to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health or the economy.~~

*"Permit" means a document issued or authorized by the Commissioner to provide for movement of regulated articles to restricted destinations for limited handling, utilization, processing, or for scientific purposes.*

~~(5) "Quarantine" means a legal declaration by the Board that specifies:~~

~~(a) The (i) the noxious weed.~~

~~(b) The; (ii) the articles to be regulated.~~

~~(c) Conditions; (iii) conditions governing movement.~~

~~(d) Exemptions; and (iv) exemptions.~~

~~(6) "Infested" means the establishment of a noxious weed or exposure to such weed, which would be reasonable cause to believe that establishment could occur.~~

~~(7) "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move or allow to be moved.~~

~~(8) "Person" means the term as defined in § 1-230. The term also means any society.~~

"Regulated article" means any article of any character as described in this chapter or in the quarantine carrying or capable of carrying a noxious weed against which this chapter or the quarantine is directed.

~~(9) "Certificate" means a document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with a noxious weed.~~

~~(10) "Permit" means a document issued or authorized by the Commissioner to provide for movement of regulated articles to restricted destinations for limited handling, utilization, processing, or for scientific purposes.~~

**Drafting Note: Deleted the definitions of "Board" and "Commissioner" as superfluous and alphabetized the remaining terms. Deleted "rules and" from "rules and regulations" under the definition of "noxious weed" because the terms "rules" and "regulations" are defined in § 2.2-4001 to mean the same thing: "Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws. The definition of "person" is included because it is broader than previously defined.**

~~§ 3.1-296.13~~ 3.2-801. Powers and duties of Commissioner.

~~It shall be the duty of the~~*The* Commissioner ~~to~~*shall* exercise or perform the powers and duties imposed upon him by this chapter.

The Commissioner shall make surveys for noxious weeds and when the Commissioner determines that an infestation exists within the Commonwealth, he may request the Board to declare the weed to be noxious under this chapter and the Board shall proceed as specified in § ~~3.1-296.14~~ 3.2-802.

The Commissioner in coordination with the Department of Game and Inland Fisheries shall develop a plan for the identification and control of noxious weeds in the surface waters and lakes of the Commonwealth.

The Commissioner may cooperate with any person or any agency of the federal government in carrying out the provisions of this chapter.

Expenses incurred on property owned or controlled by the federal government shall be reimbursed and refunded to the appropriation from which they were expended.

The Commissioner may, upon request, cooperate with federal, other state agencies, or political subdivisions in the enforcement of the narcotics laws to the extent of preventing the spread of and destroying marijuana or hemp, Cannabis species, or other plants that produce drugs ~~which~~*that* have been condemned for destruction under the narcotics laws, and the expenses incurred shall be reimbursed and shall be refunded to the appropriation from which they were expended. Such drug producing plants are hereby declared noxious and subject to all provisions of this chapter pertaining to eradication and spread subject to the above conditions.

**Drafting Note: Technical changes.**

~~§ 3.1-296.14~~ 3.2-802. Powers and duties of Board; quarantine.

~~It shall be the duty of the~~*The* Board ~~to~~*shall* establish by regulation, after a public hearing, those weeds deemed to be noxious weeds not otherwise so declared by the terms of this chapter. The Board may establish a statewide quarantine and ~~provide rules and adopt~~ regulations pertaining to regulated articles and conditions governing movement, under which the Commissioner shall proceed to eradicate or suppress and prevent the dissemination of noxious weeds in the Commonwealth, and shall ~~establish such~~*adopt* other rules and regulations as are necessary to carry out the purpose of this chapter. The Board ~~shall also have the power to prescribe by rules and may adopt~~ regulations ~~the conditions~~ governing *the* movement of regulated articles entering ~~this~~*the* Commonwealth from without. Following the establishment of a quarantine, no person shall move any noxious weed or any regulated article described in the quarantine from any regulated area without a valid permit or certificate.

Subsequent to the declaration of a quarantine by the Board, the Commissioner shall limit the application of the ~~rules and~~ regulations pertinent to such quarantine to the infested portion of the Commonwealth and appropriate environs, which would be known as the regulated area and may, without further hearing, extend the regulated area to include additional portions of the Commonwealth upon publication of a notice to that effect in a newspaper distributed in the extended area or by direct written notice to those concerned.

**Drafting Note: Technical changes.**

~~§ 3.1-296.15~~ 3.2-803. Cost of controlling noxious weeds.

The cost of controlling or eradicating noxious weeds on all property owned or controlled by a State department or political subdivision thereof or control authority, agency, commission, or board, including highways, roadways, streets, alleys, and rights-of-way, shall be paid by the entity out of funds appropriated for its use. When it is not feasible for the entity to conduct the control program, the Commissioner may proceed with the control and the entity shall reimburse the cost and these moneys shall be refunded to the appropriation from which they were expended.

**Drafting Note: Technical changes.**

~~§ 3.1-296.16~~ 3.2-804. Prohibited acts; ~~permit to transport, etc.~~, noxious weeds.

No person shall violate any provisions of ~~the law~~ *this chapter* or any ~~rule and~~ regulation ~~promulgated thereunder~~ *adopted hereunder*. No person shall move, transport, deliver, ship, or offer for shipment into or within ~~this~~ *the* Commonwealth any noxious weed, or part thereof, without first obtaining a permit from the Commissioner. Such permit shall be issued only after it has been determined that the noxious weed is generally present already or it is for scientific purposes subject to prescribed safeguards.

**Drafting Note: Technical changes.**

~~§ 3.1-296.17~~ 3.2-805. Authority to stop sale or delivery of noxious weeds, ~~etc.~~

The Commissioner, in order to prevent the introduction or dissemination of noxious weeds, ~~is hereby authorized to~~ *may* stop delivery, stop sale, seize, destroy, treat, or order returned to the point of origin, at the owner's expense, any noxious weed, article, or substance whatsoever, if transported or moved within ~~this~~ *the* Commonwealth, or ~~exists if existing~~ on any premise, or brought into ~~this~~ *the* Commonwealth from any place outside thereof, if such is found by him to be infested with any noxious weed subject to *the provisions of* this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-296.19~~ 3.2-806. Access to plants or plant products, ~~or other articles or substances suspected of being infested~~; State and local police cooperation upon request.

The Commissioner shall have access to plants or plant products or any other article or substance suspected of being infested with a noxious weed for inspection and shall be provided with full information as to origin and destination of same by the person in possession of any plants or other articles.

State and local police, upon request in specific instances, shall cooperate with the Commissioner in the enforcement of this chapter. This chapter shall supersede any ~~local~~ ordinances in the Commonwealth insofar as carrying out its intent.

**Drafting Note: Technical changes.**

~~§ 3.1-296.20~~ 3.2-807. Inspection of premises and conveyances.

To effectuate the purpose of this chapter, the Commissioner may make reasonable inspections of any premises in ~~this~~ *the* Commonwealth and any property therein or thereon and may stop and inspect in a reasonable manner any means of conveyance moving within ~~this~~ *the* Commonwealth when there is probable cause to believe it maintains or carries any noxious weed subject to *the provisions of* this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-296.21~~ 3.2-808. Injunctions.

The Commissioner or landowner affected is ~~authorized to~~ *may* apply to any *appropriate* court of competent jurisdiction for an injunction and such court may grant a temporary or permanent injunction restraining a person from violating or continuing the violation of any provision of this chapter, or the Commissioner from the enforcement of any provision of this chapter, when the court determines that the testimony and evidence presented warrants such action, without reference to adequacy of any remedy existing at law.

**Drafting Note: Technical changes.**

~~§ 3.1-296.18~~ 3.2-809. Penalty for violation.

Any person who fails or refuses to comply with *the provisions of* this chapter or the rules and regulations adopted thereunder shall be deemed *hereunder is* guilty of a *Class 1* misdemeanor and if convicted shall be punished as provided by ~~§ 18.2-12~~.

**Drafting Note: Contains a reference to § 18.2-12, which states that “a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.” Classified penalty and deleted cross-reference.**

CHAPTER ~~38~~ 9.

NUISANCE BIRD ~~LAW~~ BIRDS.

**Chapter Drafting Note: Only technical and grammatical changes are made to this chapter. Obsolete sections and previously defined title-wide definitions have been deleted. Several sections have been combined into proposed § 3.2-901, Powers and duties of Commissioner.**

~~§ 3.1-1011~~. Short title.

The short title of this chapter shall be known and cited as the "~~Nuisance Bird Law~~."

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 3.1-1012~~ 3.2-900. Definitions.

~~For the purpose of~~ *As used in* this chapter, *unless the context requires a different meaning*:

(1) "~~Nuisance birds~~" means blackbirds, red-winged blackbirds, grackles, cowbirds, pigeons, and starlings, or any other species so declared by regulations of the Board when causing or about to cause economic losses in the Commonwealth; becoming detrimental to the public health and welfare; defacing or defiling public or private property or otherwise creating a public nuisance.

(2) "~~Board~~" means the Board of Agriculture and Consumer Services of the Commonwealth of Virginia.

(3) "~~Commissioner~~" means the Commissioner of Agriculture and Consumer Services of the Commonwealth of Virginia.

(4) "~~Person~~" means any individual, partnership, company, corporation, society or association *the term as defined in § 1-230. The term also means any society.*

**Drafting Note: The definitions of "Board" and "Commissioner" and "Department" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions.**

~~§ 3.1-1016~~. Board may adopt rules and regulations.

The Board may provide rules and regulations under which the Commissioner may carry out the purposes of this chapter.

**Drafting Note: Deleted section. The Board has the authority to adopt regulations as a policy board under proposed § 3.2-109, Board of Agriculture and Consumer Services; appointments; qualifications; and terms of office.**

~~§ 3.1-1013~~ 3.2-901. Powers and duties of Commissioner to conduct investigations, make surveys, develop plan of action, demonstrate and render technical assistance.



A. The Commissioner, ~~or his representatives~~, shall conduct investigations and surveys to determine economic losses or public nuisances caused by nuisance birds and may develop a plan of action when he has determined that they are causing or about to cause economic losses in the Commonwealth, are detrimental to the public health and welfare, or otherwise create a public nuisance.

B. The Commissioner may ~~demonstrate and/or render~~ provide technical assistance to persons for the suppression of any nuisance birds when it has been determined that they are defacing or defiling public or private property.

C. *The Commissioner may appoint an advisory committee to evaluate facts in any particular situation and to make recommendations to him on the course of action. Plan of action programs shall be selected and executed so as to protect human life, other birds, and wildlife.*

D. *The Commissioner may upon receipt of a complaint of a nuisance bird problem from an individual property owner, tenant, or sharecropper, make an investigation and determine the degree of assistance required. If after such investigation the Commissioner finds suppression necessary, he shall recommend acceptable means and methods.*

E. *The Commissioner may provide assistance and cooperate with federal agencies, other state agencies, other states, political subdivisions of the Commonwealth, public and private agencies, organizations, institutions, and persons in the exercise of the duties imposed upon him by this chapter. Any plan of action conducted by the Commissioner under the provisions of this chapter shall be consistent with other applicable state and federal laws. Money accepted from any cooperator or person shall be deposited to a special nuisance bird fund to be expended in the enforcement of this chapter.*

**Drafting Note: Proposed subsection C is moved from existing § 3.1-1014. Proposed subsection D is moved from existing § 3.1-1015. Proposed subsection E is moved from existing § 3.1-1019.**

~~§ 3.1-1014. Advisory committee; protection of human life, other birds, etc.~~

~~The Commissioner may appoint an advisory committee to evaluate facts in any particular situation and to make recommendations to him on the course of action. Plan of action programs shall be selected and executed so as to protect human life, other birds, and wildlife.~~

**Drafting Note: Deleted and moved to subsection C of proposed § 3.2-901, Powers and duties of Commissioner.**

~~§ 3.1-1015. Commissioner to investigate and advise upon complaints.~~

~~The Commissioner may upon receipt of a complaint of a nuisance bird problem from an individual property owner, tenant or sharecropper, make an investigation and determine the degree of assistance required. If after such investigation the Commissioner finds suppression necessary, he shall recommend acceptable means and methods.~~

**Drafting Note: Deleted and moved to subsection D of proposed § 3.2-901, Powers and duties of Commissioner.**

~~§ 3.1-1017. Commissioner may delegate his authority.~~

~~All authority vested in the Commissioner by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the Department of Agriculture and Consumer Services or other cooperators as the Commissioner may from time to time designate for such purpose.~~

**Drafting Note: Deleted section. The Commissioner's ability to delegate authority is provided for in § 2.2-604.**

~~§ 3.1-1018.~~

~~Reserved.~~

**Drafting Note: Deleted section.**

~~§ 3.1-1019. Commissioner authorized to cooperate with other agencies.~~

~~The Commissioner is authorized to provide assistance and to cooperate with federal agencies, other state agencies, other states, political subdivisions of the Commonwealth of Virginia, public and private agencies, organizations, institutions, and persons in the exercise of the duties imposed upon him by this chapter. Any plan of action conducted by the Commissioner under the provisions of this chapter shall be consistent with other applicable state and/or federal laws. Money accepted from any cooperator or person shall be deposited to a special nuisance bird fund to be expended in the enforcement of this chapter.~~

**Drafting Note: Deleted and moved to subsection E of proposed § 3.2-901, Powers and duties of Commissioner.**

## CHAPTER 3910.

### ENDANGERED PLANT AND INSECT SPECIES ~~ACT~~.

**Chapter Drafting Note: The chapter has been organized to clarify distinctions between endangered species and threatened species. Terms with Code-wide and title-wide definitions have been deleted. References to a state botanist have been deleted as obsolete. The dates for the wild ginseng harvest season have been omitted with reference to the controlling federal program administered by the U.S. Fish and Wildlife Service.**

~~§ 3.1-1020. Short title.~~

~~This chapter shall be known and may be cited as the "Endangered Plant and Insect Species Act."~~

**Drafting Notes: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 3.1-1021 3.2-1000. Definitions.~~

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

~~"Board" means the Board of Agriculture and Consumer Services.~~

~~"Candidate species" means those species formally recommended by the Director of the Department of Conservation and Recreation or other reliable data sources in writing to and accepted by the Commissioner for presentation to the Board of Agriculture and Consumer Services for listing under the Virginia Endangered Plant and Insect Species Act~~*this chapter*.

~~"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designee.~~

~~"Department" means the Department of Agriculture and Consumer Services.~~

~~"Endangered species" means any species or variety of plant life or insect life determined by the Board to be in danger of extinction throughout all or a significant part of its range other than a species determined by the Commissioner not to be in the best interest of the welfare of man.~~

~~"Insect" or "insect life" means any species of the class Insecta.~~

~~"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, agent, department, or instrumentality of the federal government, of any state or political subdivision thereof, or of any foreign government.~~

~~"Plant" or "plant life" means any member of the plant kingdom, including spores, leaves, stems, branches, flowers, seeds, roots, and other parts or products thereof.~~

~~"Proposed species" means any candidate species authorized by the Board for consideration for listing as endangered or threatened or endangered under the Endangered Plant and Insect Species Act~~*the provisions of this chapter*.

~~"Species" includes any species or variety of plant life or insects.~~

~~"Take" means, in reference to plants and insects, to collect, pick, cut, or dig up for the purpose of resale.~~

"Threatened species" means any species determined by the Board to be likely to become an endangered species within the foreseeable future throughout all or a significant portion of its native range.

**Drafting Notes: Technical changes.**

~~§ 3.1-1022 3.2-1001. Powers and duties of Commissioner; appointment of State Botanist and assistants; cooperative agreements; programs; permits; funding; when endangered or threatened species may be taken, etc.~~

For the purpose of effectively administering this chapter, the Commissioner ~~shall have the following powers and duties may:~~

~~A. It shall be the duty of the Commissioner of Agriculture and Consumer Services to exercise or perform the powers and duties imposed upon him by this chapter.~~

~~B. It shall be the duty of the Commissioner to appoint a competent person as State Botanist and such other assistants as he deems necessary, who shall advise and assist the Commissioner in carrying out the provisions of this chapter.~~

~~C. In carrying out the program authorized by this chapter the Commissioner may enter into cooperative agreements with federal and state agencies, political subdivisions of the Commonwealth or with private persons or groups for the administration and management of any area or program established under this chapter.~~

~~D. The Commissioner may establish 1. Establish programs as are deemed necessary for the management of endangered or threatened or endangered species. The Commissioner may issue a permit under certain circumstances for the taking, possessing, buying, selling, transporting, exporting or shipping of any endangered or threatened species which appears on the state list of endangered or threatened species for scientific, biological, or educational purposes or for propagation in order to ensure their survival, provided that such action does not violate federal laws or regulations.~~

~~E. The Commissioner may accept 2. Accept funds for a special account or other gifts or grants from any source for use in the furtherance of this chapter. Funds collected for services on articles determined by the Commissioner to be beyond the scope of this chapter shall revert to the fund from which expended.~~

~~F. The Commissioner may enter 3. Enter into reciprocal agreements with responsible officers of other states under which any part of this chapter would benefit.~~

~~G. Upon 4. Issue a permit authorizing the removal, taking, or destruction of threatened or endangered species on the state list upon good cause shown and where necessary to alleviate damage to property, the impact on progressive development, or protect human health, endangered or threatened species on the state list may be removed, taken, or destroyed but only in accordance with a permit issued by the Commissioner provided that such action does not violate federal laws or regulations.~~

~~5. Stop sale, seize, or return to point of origin at the owner's expense, any threatened or endangered species or part thereof if the Commissioner determines the owner has violated any of the provisions of this chapter or the regulations adopted hereunder. Any threatened or endangered species or part thereof seized may be disposed of at the discretion of the Commissioner.~~

~~6. Seek, in those situations where permission to enter property is denied by the owner or occupant, an administrative inspection warrant signed by any judge of any circuit court whose territorial jurisdiction encompasses the property to be inspected, authorizing the Commissioner to make inspections or develop other biological data for the proper management of any threatened or endangered species. The issuance of an administrative inspection warrant pursuant hereto shall conform, insofar as is practicable, to the requirements and guidelines set forth in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 relating to the issuance of inspection warrants in connection with the manufacturing or emitting of a toxic substance.~~

**Drafting Note: Existing subsection B is deleted as archaic—the Commissioner has not appointed a State Botanist for many years. Existing subsection C is deleted because proposed § 3.2-102, General powers and duties of the Commissioner, contains broad language authorizing the Commissioner to enter into agreements with federal, state, and local governments, land grant universities and other organizations. Language from existing subsection D is moved to proposed § 3.2-1004, Threatened or endangered species; prohibitions. Proposed subsections 5 and 6 are moved from subsections A and C of existing § 3.1-1024. The reference to Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 provides for inspection warrants.**

~~§ 3.1-1025 3.2-1002. Powers and duties of Board; listing—~~*Listing of rare threatened and endangered species; powers of Board; further powers of Commissioner.*

~~A. The Board may prescribe and adopt regulations including, but not limited to, the listing of endangered or threatened or endangered species, their taking, quotas, seasons, buying, selling, possessing, monitoring of movement, investigating, protecting, or any other need in furtherance of the purposes of this chapter.~~

~~B. The Commissioner may conduct investigations of species of plants and insects to develop information relating to the population, distribution, habitat needs, limiting factors, and other biological and ecological data in order to determine management measures necessary to assure their continued ability to sustain themselves successfully. As a result of this investigation and recommendations received regarding candidate species from the Director of the Department of Conservation and Recreation and from other reliable data, the Board shall approve proposed species to be added to or deleted from the list of threatened species or the list of endangered species, or to be transferred from one list to the other.~~

~~The Commissioner may permit the taking of a threatened species when the Board has determined that its abundance in the Commonwealth justifies a controlled harvest which is not in violation of federal laws or regulations. The Commissioner shall take the necessary action to conserve, protect, restore, or propagate endangered and threatened species.~~

~~C. The Board may adopt regulations to permit and control the commercial harvest of certain threatened species that would prevent that species from becoming endangered or extinct.~~

~~D. The Commissioner may conduct investigations of species of plants and insects, in order to develop information relating to the population, distribution, habitat needs, limiting factors, and other biological and ecological data in order to determine management measures necessary to assure their continued ability to sustain themselves successfully. As a result of this investigation and recommendations received regarding candidate species from the Director of the Department of Conservation and Recreation and from other reliable data, the Board shall approve proposed species to be added to or deleted from the list of endangered species or the list of threatened species, or to be transferred from one list to the other.~~

**Drafting Note: Moved existing subsections B and C to proposed § 3.2-1005, Harvesting of threatened species; further powers of Board and Commissioner. This proposed section now covers only the listing of threatened and endangered species.**

~~§ 3.1-1023 3.2-1003. Prohibitions on taking, possession, etc., of endangered or threatened Threatened and endangered species; prohibitions.~~

~~A. It shall be unlawful for any person to dig, take, cut, process, or otherwise collect, remove, transport, possess, sell, offer for sale, or give away any species native to or occurring in the wild in Virginia—the Commonwealth that are listed in this chapter or rules and the regulations promulgated pursuant thereto—adopted hereunder as threatened or endangered, other than from such person's own land, except in accordance with the provisions of this chapter or the rules and regulations adopted pursuant to this chapter by the Board hereunder.~~

*B. The Commissioner may require any person possessing endangered species or parts thereof to present such species or parts thereof for inspection and to give full information as to their origin and destination.*

**Drafting Notes: Proposed subsection B is moved from subsection B of existing § 3.1-1024.**

*§ 3.2-1004. When Commissioner may permit taking of threatened or endangered species.*

*The Commissioner may issue a permit under certain circumstances for the taking, possessing, buying, selling, transporting, exporting, or shipping of any threatened or endangered species that appear on the state list of threatened or endangered species for scientific, biological, or educational purposes or for propagation to ensure their survival, provided that such action does not violate federal laws or regulations.*

**Drafting Note: New section. Language is moved from subsection D of existing § 3.1-1022.**

*§ 3.2-1005. Harvesting of threatened species; further powers of Board and Commissioner.*

*A. The Board may adopt regulations to permit and control the commercial harvest of certain threatened species that would prevent that species from becoming endangered or extinct.*

*B. The Commissioner may permit the taking of a threatened species when the Board has determined that its abundance in the Commonwealth justifies a controlled harvest that is not in violation of federal laws or regulations. The Commissioner shall take the necessary action to conserve, protect, restore, or propagate threatened and endangered species.*

**Drafting Note: New section. Proposed subsections A and B are from existing § 3.1-1025, subsections C and B, respectively. This proposed section is created to emphasize that the two subsections apply to threatened species only, and not to endangered species.**

~~§ 3.1-1024. Power of Commissioner to regulate sale and movement of endangered and threatened species.~~

~~A. The Commissioner or his assistants are hereby authorized to stop sale, to seize or return to point of origin at the owner's expense, any endangered or threatened species, or part thereof possessed, transported or moved within this Commonwealth or brought into this Commonwealth from any place outside thereof if such is found by him or his duly authorized agents to be in violation of this chapter or the rules and regulations promulgated pursuant thereto. Products or species seized may be disposed of at the discretion of the Commissioner.~~

~~B. The Commissioner may demand of any person possessing endangered species or parts thereof to present such species or parts thereof for inspection and to give full information as to its origin and destination.~~

~~C. In those situations in which permission to enter is denied by the owner or occupant, the Commissioner is hereby authorized to seek an administrative inspection warrant signed by any judge of any circuit court whose territorial jurisdiction encompasses the property to be inspected, authorizing the Commissioner or his designated representative to make inspections or develop other biological data for the proper management of any endangered or threatened species. The issuance of an administrative inspection warrant pursuant hereto shall conform, insofar as is practicable, to the requirements and guidelines set forth in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 relating to the issuance of inspection warrants in connection with the manufacturing or emitting of a toxic substance.~~

**Drafting Note: Deleted section and moved subsections A and C to subdivisions 5 and 6 of proposed § 3.2-1001, Powers and duties of Commissioner. Subsection B is moved to subsection B of proposed § 3.2-1003, Threatened and endangered species, prohibitions.**

~~§ 3.1-1026~~ *3.2-1006. License required to buy threatened species; records of purchases.*

~~A. It shall be unlawful for any person to buy any threatened species or part thereof, which is listed in this chapter or rules and regulations promulgated pursuant thereto~~ *adopted hereunder*, without first obtaining a license to do so from the Commissioner. ~~Provided, however, that the provisions of this~~ *This* section shall not apply to the purchase or sale of real property upon which

such threatened species or part thereof may be located. Application forms shall be provided by the Commissioner and shall be completed and returned with a fee of ~~ten dollars~~ \$10 made payable to the Treasurer of Virginia. Licenses shall expire on December 31 annually and there shall be no abatement in the annual fee. Licenses may be revoked at any time by the Commissioner for good cause.

B. The buyer of any threatened species or part thereof shall maintain and keep records of all purchases for the preceding ~~twelve~~ 12 months on forms prescribed by the Commissioner. Records shall be sent or otherwise provided to the Commissioner within ~~thirty~~ 30 days following the expiration of the license. Records shall be made available to the Commissioner ~~or his assistants~~ during normal business hours for examination or information.

**Drafting Notes: Technical changes.**

~~§ 3.1-1027.2-1007.~~ Wild ginseng declared threatened plant species; ~~license; harvesting season.~~

The indigenous plant, *Panax quinquefolius* L., of the Araliaceae family, commonly referred to as ginseng, is hereby declared a threatened plant species when it occurs in the wild. All persons buying wild ginseng or otherwise accepting this plant or part thereof for resale shall be licensed to do so and shall acquire wild ginseng or parts thereof in accordance with *the provisions of this chapter and the rules and regulations established by the authority of this chapter adopted hereunder.* The wild ginseng harvest season shall be ~~August 15 to December 31 annually set by the Board.~~ If any person takes wild ginseng, other than from his own land, on any other date it shall be deemed a violation of this chapter.

**Drafting Notes: The dates for the wild ginseng harvest season have been amended to comply with the federal ginseng exportation program. This will facilitate improved conservation of this threatened plant. The export of ginseng from the United States is regulated by the U.S. Fish and Wildlife Services. For several years, the U.S. Fish and Wildlife Services has requested that the annual harvest of wild ginseng in Virginia be delayed to begin on September 15th. The inclusion of a wild ginseng harvest season in the Code has prevented compliance with the U.S. Fish and Wildlife Services request and hinders conservation of the plant. Delay in the harvest date would allow seeds to fully mature and facilitate better repopulation of harvested plants in the wild. The Board currently has the authority to adopt regulations for harvesting threatened species under proposed § 3.2-1005, Harvesting of threatened species; further powers of Board and Commissioner.**

~~§ 3.1-1027.1~~ 3.2-1008. Export certificate required for export of ginseng; ~~exception; records.~~

All persons who have ginseng either wild or artificially propagated in any quantity and who wish to export any amount out of the Commonwealth shall obtain an export certificate from the ~~Department of Agriculture and Consumer Services.~~ *The provisions of this paragraph* ~~This section~~ shall not apply to persons exporting ginseng for personal or individual use in quantities not exceeding eight ounces in any calendar year. To obtain an export certificate, an individual shall keep accurate records of the year of harvest and the county of origin of the ginseng. In the case of dealers, a person shall keep accurate records of purchases, quantity purchased, whether the ginseng was wild or cultivated, county of origin, and the name of the seller. Such records shall be presented to the Commissioner ~~or his assistants~~ for inspection.

**Drafting Notes: Technical changes.**

~~§ 3.1-1028~~ 3.2-1009. Virginia birch declared endangered species.

Virginia birch or round-leaf birch, *Betula uber* of the Betulaceae family, is hereby declared an endangered species as defined herein and is subject to *the provisions of this chapter* ~~in order to preserve those specimens known to occur in this~~ *the* Commonwealth.

**Drafting Notes: Technical changes.**

~~§ 3.1-1029~~ 3.2-1010. Enforcement of chapter; summons.

Any conservation police officer or law-enforcement officer as defined in § 9.1-101, excluding certain Alcoholic Beverage Control Board members, may enforce *the provisions of* this chapter and the regulations ~~promulgated under this chapter~~ *adopted hereunder* as well as those who are so designated by the Commissioner. Those designated by the Commissioner ~~are hereby authorized to~~ *may* issue a summons to any ~~violation of the provisions~~ *person who violates any provision* of this chapter to appear at a time and place to be specified in such summons.

**Drafting Notes: Technical changes.**

~~§ 3.1-1030~~ 3.2-1011. Penalty.

Any person who violates any provision of this chapter or the ~~rules and~~ regulations ~~promulgated thereto shall be~~ *adopted hereunder* is guilty of a Class 1 misdemeanor.

**Drafting Notes: Technical changes.**

## *Subtitle II.*

### *Boards, Councils, Foundations, and Commissions.*

#### *Part A. General Provisions.*

#### CHAPTER ~~411~~.

#### ~~DEDICATED FUNDS-GENERAL PROVISIONS.~~

**Chapter Drafting Note: The list of special funds in § 3.2-1100, Diversion of dedicated revenues, have been alphabetized and updated to show all special funds in this subtitle. Sections 3.2-1101, Commodity boards reporting requirements, and 3.2-1102, Collection of delinquent assessments; civil action, have been added to create consistent provisions for all commodity boards. The provisions were modeled on language found in existing sections for the Cotton Board.**

~~§ 3.1-6.1~~ 3.2-1100. Diversion of dedicated revenues.

A. The unexpended balances of the following special funds shall not be diverted or expended for any purpose other than each fund's intended purpose unless authorized by a specific act of Assembly. The special funds are:

1. ~~Virginia Dark Fired Tobacco Promotion Fund (§ 3.1-315)~~*Apple Fund* (§ 3.2-1206);
2. ~~Virginia Bright Flue Cured Tobacco Promotion Fund (§ 3.1-332)~~*Peanut Fund* (§ 3.2-1906);
3. ~~Apple Merchandising Fund (§ 3.1-626)~~*Plant Pollination Fund* (§ 3.2-2806);
4. ~~Peanut Fund (§ 3.1-662)~~*Virginia Agricultural Foundation Fund* (§ 3.2-2905);
5. ~~Virginia Soy Bean Fund (§ 3.1-684.17)~~*Virginia Bright Flue-Cured Tobacco Promotion Fund* (§ 3.2-2407);
6. ~~Virginia Pork Industry Fund (§ 3.1-763.11)~~*Virginia Cattle Industry Fund* (§ 3.2-1305);
7. ~~Virginia Egg Fund (§ 3.1-796.11:8)~~*Virginia Corn Fund* (§ 3.2-1411);
8. ~~Virginia Cattle Industry Fund (§ 3.1-796.26)~~*Virginia Cotton Fund* (§ 3.2-1511);
9. ~~Virginia Corn Fund (§ 3.1-1047)~~*Virginia Dark-Fired Tobacco Promotion Fund* (§ 3.2-2506);
10. ~~Virginia Wine Promotion Fund (§ 3.1-1064.6)~~*Virginia Egg Fund* (§ 3.2-1605);
11. ~~Virginia Marine Products Fund (§ 3.1-684.63)~~*Virginia Horse Industry Promotion and Development Fund* (§ 3.2-1704);
12. ~~Virginia Agricultural Foundation Fund (§ 3.1-22.5); and~~*Virginia Marine Products Fund* (§ 3.2-2705);
13. ~~Virginia Milk Commission (§ 3.1-426)~~*Virginia Milk Commission* (§ 3.2-3220);
14. *Virginia Pork Industry Fund* (§ 3.2-2005)
15. *Virginia Potato Fund* (§ 3.2-1810)

16. Virginia Sheep Industry Promotion and Development Fund (§ 3.2-2111);
17. Virginia Small Grains Fund (§ 3.2-2211);
18. Virginia Soybean Fund (§ 3.2-2311); and
19. Virginia Wine Promotion Fund (§ 3.2-3005).

*B. No provision of this subtitle shall be construed to give any board the authority to expend funds for legislative or political activity.*

**Drafting Note: The funds are alphabetized and the special funds that had not been included in the original list have been added to the list. All of the funds are established special funds contained in Subtitle II. Proposed subsection B is moved from existing § 3.1-796.24 in the Cattle Board. Although this language did not appear in all of the boards, it does reflect past and current practice.**

*§ 3.2-1101. Commodity boards reporting requirements.*

*All commodity boards established within the Department shall report their activities to the Board on an annual basis. This report shall be in a format as prescribed by the Board. The Board may review activities of the commodity boards and make such recommendations concerning their programs as it deems fit.*

**Drafting Note: New section. Language is moved from subsection A of existing § 3.1-4.1.**

*§ 3.2-1102. Collection of delinquent assessments; civil action.*

*Except as provided in §§ 3.2-1721, 3.2-1812, 3.2-2408, and 3.2-2509, the Tax Commissioner shall immediately notify any person who fails to pay an assessment pursuant to Part B of this subtitle and shall add a five percent penalty to the amount due. If such deficiency is not paid within 30 days after the date of such notice, then the amount of the deficiency shall bear interest, in accordance with § 58.1-15, from the date the amount was due, and the Tax Commissioner shall collect any interest as part of the delinquent amount. If any person is delinquent in any payment of the money due or interest thereon, then the amount shall be collected by civil action in the name of the Commonwealth at the direction of the Tax Commissioner, and any person adjudged to be in default shall pay the cost of such action. The Attorney General, at the request of the Tax Commissioner, shall institute action in an appropriate court for the collection of any money due under Part B of this subtitle, including interest thereon. The Tax Commissioner may waive or remit such penalty, or portion thereof, in his discretion for good cause shown.*

**Drafting Note: New section. This section will not apply to the Horse Industry Board, the Potato Board, the Bright Flue-Cured Tobacco Board, and the Dark-Fired Tobacco Board. The Commissioner of Agriculture and Consumer Services collects the Potato Tax and the Equine Feed Assessment; the two tobacco boards each collect their own tax. Provisions for collecting delinquent taxes are provided for in each of the three boards. The proposed language is based on existing § 3.1-1102 from the Cotton Board. This section is created to provide a standard section that applies to all commodity boards for the collection of delinquent assessments. Similar language appeared in each of the commodity boards. That language is deleted and a cross-reference is added in each board to refer back to this section. In this section the word "handler" is replaced with "person." The last sentence is added from existing § 3.1-796.27 of the Cattle Industry Board.**

*§ 3.2-1103. Duty of law enforcement officers.*

*It shall be the duty of all state and local law-enforcement officers to assist in the enforcement of this subtitle.*

**Drafting Note: New section. This section replaces existing §§ 3.1-318, 3.1-335, and 3.1-796.28 and now applies to the entire subtitle.**

*Part B. Commodity Boards.*

CHAPTER 23-12.



Article 2

VIRGINIA STATE APPLE BOARD; EXCISE TAX ON APPLES.

**Chapter Drafting Note: Changes to the organization of the chapter bring consistency to the administration of all commodity boards. Special fund language has been added to proposed § 3.2-1206, Apple Fund; established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Existing § 3.1-636.2 has been deleted and replaced by a title-wide provision in proposed § 3.2-112, Regulations governing the conduct of referenda. Similarly, existing § 3.1-636.10 has been deleted and replaced by a title-wide provision in proposed § 3.2-1102, Collections of delinquent assessments; civil action.**

~~§ 3.1-618.3.2-1200.~~ Definitions.

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

"Board" means the ~~Virginia State Apple Board.~~

"District" means one of the districts set forth in ~~§ 3.1-632~~ 3.2-1205.

"Member" means a member of the *Apple Board*.

"Producer" means any person who, in a calendar year, grows or causes to be grown within the Commonwealth, for sale, a minimum of 5,000 tree run bushels of apples.

"Tree run bushel" means a container, with a content of not less than 2,140 cubic inches or more than 2,500 cubic inches, of apples that have not yet been graded or sized.

**Drafting Note: Deleted the definition of "Board" to eliminate potential confusion with the title-wide definition that refers to the Board of Agriculture and Consumer Services.**

~~§ 3.1-634 3.2-1201. Composition of Apple Board; qualifications and terms of members; chairman; compensation~~ composition and appointment of members.

A. The ~~Virginia State Apple Board is hereby established~~ continued within the Department of Agriculture and Consumer Services. The *Apple Board* shall consist of nine members elected as provided in ~~§ 3.1-634.1~~, with three members representing each district. Each member ~~must~~ shall be a citizen of ~~Virginia who is the Commonwealth and~~ engaged in producing apples in ~~Virginia and the Commonwealth with~~ a majority of ~~whose~~ his apple production ~~occurs~~ occurring in the district he represents.

~~Members shall be elected for terms of three years.~~

~~The Board shall elect one of its members as chairman. The members of the Board shall serve without compensation, but they may be reimbursed for actual expenses incurred in attending meetings of the Board.~~

B. *The Commissioner shall hold a special election in each district to elect each member of the Apple Board. The special election shall be held by secret ballot at least 30 days but not more than 90 days before the expiration of the term of office of any member. The Commissioner shall appoint the candidate receiving the highest number of votes in the special election as a member. The Apple Board may adopt and enforce regulations governing the conduct of special elections and voting therein. Such regulations shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. A producer shall be eligible to vote only in the district where the majority of his apple production occurs.*

**Drafting Note: Proposed subsection B is moved from existing § 3.1-634.1. The third to last sentence is moved to proposed § 3.2-1202, Apple Board membership terms. The last paragraph is moved to proposed § 3.2-1203, Apple Board officers and compensation.**

~~§ 3.1-634.1. Special election; voting requirements; filling unexpired terms; method of voting.~~

A. ~~The Commissioner of Agriculture and Consumer Services shall hold a special election in each district to elect each member. The special election shall be held by secret ballot at least~~

~~30 days but not more than 90 days before the expiration of the term of office of any member. The candidate receiving the highest number of votes in the special election shall thereupon be appointed by the Commissioner of Agriculture and Consumer Services as a member. In the case of a vacancy occurring other than by the expiration of the term of office, such vacancy shall be filled within at least 30 days but not more than 90 days before or after the vacancy by a special election held to elect a member for the unexpired term. The Board may adopt and enforce rules governing the conduct of special elections and voting therein. Such rules shall be exempt from Article 2 (§ 2.2-4007 et seq.) of the Administrative Process Act.~~

~~B. A producer shall be eligible to vote only in the district where the majority of his apple production occurs.~~

~~C. Elections shall be held at the end of each calendar year.~~

**Drafting Note: Deleted section and moved subsections A and B are moved to subsection B of proposed § 3.2-1201, Apple Board; composition and appointment of members. Language concerning the filling of vacancies is moved to proposed § 3.2-1202, Apple Board membership terms. Subsection C is deleted because it is contradictory to the language concerning the timing of elections in subsection A. The intent of subsection C was to establish the production season as a calendar year, not a fiscal year, to coincide with the apple harvest. The definition of producer now contains language to address this matter.**

*§ 3.2-1202. Apple Board membership terms.*

*The terms for appointments to the Apple Board shall be for three years.*

*If a vacancy occurs before the expiration of any term of office, the Commissioner shall fill such vacancy within 30 days after the vacancy by a special election held to elect a member for the unexpired term.*

**Drafting Note: New section. Language enumerating the length of membership is moved from existing § 3.1-634. Language concerning filling vacancies is moved from existing § 3.1-634.1.**

*§ 3.2-1203. Apple Board officers and compensation.*

*The Apple Board shall elect one of its members as chairman and such other officers as deemed appropriate. Members of the Apple Board shall serve without compensation, but may be reimbursed for actual expenses incurred in attending meetings of the Apple Board.*

**Drafting Note: New section. Language taken from the last paragraph of existing § 3.1-634.**

~~§ 3.1-635~~ *3.2-1204. Powers and duties of Apple Board; report.*

A. The *Apple Board* may:

1. Administer, manage and make expenditures from the Apple Fund;

2. Plan and conduct campaigns of research, education, publicity, and industry development for the purpose of enhancing the viability and profitability of the Virginia apple industry;

3. Make contracts to accomplish the purposes of this ~~article~~ *chapter*;

4. Cooperate with other state, regional, ~~and~~ national, and international organizations in research concerning education on promotion of apples, and expend moneys of the Apple Fund for such purposes;

5. Establish committees of the *Apple Board* to address horticultural and such other issues as the *Apple Board* deems pertinent to the Virginia apple industry; and

6. Do whatever else may be necessary to effectuate the purposes of this ~~article~~ *chapter*.

B. The chairman shall make a report at least annually, furnishing *Apple Board* members with a statement of total receipts and disbursements of the *Apple Board* for the year. The chairman shall annually file with the Commissioner a copy of the report and audit that is required by ~~§ 3.1-626~~ *under the Apple Fund*.

**Drafting Notes: Technical changes.**

~~§ 3.1-632~~ *3.2-1205. Commercial apple-producing districts of Virginia designated.*

The commercial apple-producing districts of ~~Virginia~~ *the Commonwealth* are as follows:  
*Area I.* Northern Virginia District - Clarke, Fairfax, Frederick, and Loudoun Counties, and the City of Winchester.

*Area II.* Central Virginia District - Accomack, Fauquier, King William, Lancaster, Madison, Middlesex, Northampton, Northumberland, Orange, Page, Rappahannock, Richmond, Rockingham, Shenandoah, Warren, and Westmoreland Counties.

*Area III.* Southern Virginia District - Albemarle, Amherst, Augusta, Bedford, Botetourt, Buckingham, Carroll, Charlotte, Dickenson, Franklin, Floyd, Giles, Grayson, Halifax, Hanover, Henry, Isle of Wight, James City, Lee, Louisa, Lunenburg, Montgomery, Nelson, Nottoway, Patrick, Pittsylvania, Prince Edward, Pulaski, Roanoke, Rockbridge, Russell, Smyth, Southampton, Surry, Wise, and Wythe Counties.

~~In any case in which~~ *Whenever* the commercial production of apples begins in any ~~county or city-locality~~ not included above, such ~~county or city-locality~~ shall become a part of the nearest district ~~which~~ *that* has the lowest commercial apple production according to production records of the Department of Agriculture and Consumer Services.

**Drafting Note: Technical changes.**

~~§ 3.1-626~~ 3.2-1206. Apple Fund; ~~audit~~ *established.*

~~All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a~~ *There is hereby created in the state treasury a special nonreverting fund to be known as the "Apple Fund," hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of* ~~All moneys credited to the Apple Fund shall be used exclusively for the~~ administration and enforcement of this ~~article~~ *chapter*, including the payment for personal services and expenses of agents of the *Apple Board* and the payment of rent, services, materials, and supplies necessary to effectuate the purposes and objects of this ~~article~~ *chapter*, or as specifically provided in any referendum ratified pursuant to this ~~article~~ *chapter*. *Expenditures and disbursements from the Fund shall be made by the Apple Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Apple Board. The Auditor of Public Accounts shall audit all the accounts of the Apple Board as provided for in § 30-133. The unexpended balance of the Apple Fund at the end of each year shall not be transferred to the general fund of the state treasury, but shall remain in the Apple Fund.*

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. This section incorporates existing § 3.1-627.**

~~§ 3.1-627.~~ How moneys expended.

~~All moneys collected under this article shall be expended by the Board by warrants of the Comptroller on the state treasury issued on vouchers signed by the duly authorized officer of the Board.~~

**Drafting Note: Deleted and moved to proposed § 3.2-1206, Apple Fund established.**

~~§ 3.1-636~~ 3.2-1207. Bond of employees.

All employees of the *Apple Board* handling money under this ~~article~~ *chapter* shall be required to furnish surety bonds.

**Drafting Note: Technical changes.**

~~§ 3.1-636.1~~ 3.2-1208. Referendum on question of levying apple excise tax.

The Board of Agriculture and Consumer Services shall authorize the holding of a referendum as set forth in this article. The Commissioner of Agriculture and Consumer Services, hereinafter referred to as the Commissioner, or his designated agents, shall be fully empowered and directed to hold and conduct a referendum on the question of whether or not the producers of apples in the Commonwealth are willing to pay an excise tax on apples to support additional research, education, publicity, and industry development of the Virginia apple industry. The amount of tax to be voted upon in the referendum shall be 2.5 cents per tree run bushel of apples grown by producers in the Commonwealth. The cost of conducting a referendum under this section shall be paid by the Virginia State Horticultural Society.

**Drafting Note: Technical changes.**

~~§ 3.1-636.2. Rules governing ballots and conduct of referendum.~~

~~The Board of Agriculture and Consumer Services shall adopt rules governing the ballots to be used, the conduct of a referendum, the method for canvassing the results thereof, and the method for declaring the results of any referendum provided for in this article. The Board of Agriculture and Consumer Services shall fix the date, hours, and voting places with respect to the holding of the referendum and may provide for voting by mail. No requirement of this section shall be governed by Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.~~

**Drafting Note: Deleted section. This provision has been replaced by a title-wide provision contained in § 3.2-112, Regulations governing the conduct referenda.**

~~§ 3.1-636.33.2-1209. Management of referendumreferenda; Commissioner's duties; notice.~~

A. The Commissioner shall, under the ~~rules~~ regulations adopted by the Board of Agriculture and Consumer Services pursuant to § 3.1-636.23.2-112, arrange for the use of any polling places if necessary.

B. The Commissioner shall, at least 60 days before the date on which a referendum is to be held, mail notice to the clerk of the circuit court in each locality where apples are produced. The clerk of the court shall post the notice on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall, at least 60 days prior to the holding of any referendum under this article, publish notice of the referendum in a newspaper of daily general circulation in Richmond, Virginia, and send a notice of the referendum to a newspaper of general circulation in each locality where apples are produced.

The notice shall contain the date, hours, voting places, and method of voting in the referendum; the amount of assessment to be collected, the means by which the assessment will be collected, and the general purposes for ~~how~~ which the assessment will be used; and the ~~rules~~ regulations adopted by the Board of Agriculture and Consumer Services pursuant to § 3.1-636.23.2-112.

C. The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots, certificates, and supplies required for the referendum.

D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and shall notify, by mail, each member of the Board of Agriculture and Consumer Services of the results.

**Drafting Note: The reference to existing § 3.1-636.2 has been replaced with the reference to the title-wide provisions regarding the conduct of referenda.**

~~§ 3.1-636.43.2-1210. Questions to be printed on ballots.~~

The question to be printed on the ballots used in the referendum held under § 3.1-636.43.2-1208, shall be:

Do you favor the levy of an excise tax of 2.5 cents per tree run bushel of ungraded apples grown in the Commonwealth for sale by producers of at least 5,000 tree run bushels per calendar year, to be paid into the Apple Fund and distributed as follows: up to 40 percent paid to the U.S. Apple Association for publicity and industry development; up to 20 percent paid to the Virginia

State Horticultural Society for education and industry development; up to 20 percent paid to the Virginia Apple Research Program for research; up to 10 percent to be used for administration of this article; and up to 10 percent to be held in the Apple Fund as a reserve with: (i) a maximum amount of \$125,000; and (ii) a requirement that any appropriation from the reserve receive at least two-thirds of the votes of the members of the Apple Board? If the maximum amount of the reserve fund is met, then the amount of that 10 percent distribution that exceeds the reserve fund shall be divided equally among the U.S. Apple Association, the Virginia State Horticultural Society, and the Virginia Apple Research Program.

\_\_\_ Yes

\_\_\_ No

**Drafting Note: Technical changes.**

~~§ 3.1-636.53.2-1211.~~ Persons eligible to vote.

Any producer, ~~as defined in § 3.1-618,~~ in the year preceding the date of the referendum held pursuant to this article shall be eligible to vote in such referendum if he so certifies on forms approved by the Commissioner. Any person, ~~as defined in § 1-230,~~ who meets these requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in any other respect. Such person may vote provided that he is a resident of the Commonwealth or qualified to do business in the Commonwealth. Any person who is not an individual shall vote by its authorized representative.

**Drafting Note: Technical changes.**

~~§ 3.1-636.63.2-1212. Referendum~~ *Referenda* results; action of Governor.

If the Governor finds the referendum in order and that more than one-half of those voting are in favor of the excise tax on apples pursuant to ~~§ 3.1-636.43.2-1210,~~ then the Governor shall so proclaim. Upon such proclamation by the Governor, the excise tax on apples shall be established. If the Governor finds that more than one-half of those voting are in opposition to the excise tax on apples pursuant to ~~§ 3.1-636.43.2-1210,~~ then the Governor shall not so proclaim and the excise tax on apples shall not be established.

**Drafting Note: Technical changes.**

~~§ 3.1-636.73.2-1213. Subsequent referendum~~ *Referenda*.

The Board of Agriculture and Consumer Services, upon petition by at least 10 percent of the producers in the Commonwealth as determined by the Commissioner, shall provide for a referendum on the continuation of the Apple Board or amending the excise tax on apples if established pursuant to ~~§ 3.1-636.13.2-1208.~~ The Board of Agriculture and Consumer Services shall not act on such a petition for conducting a ~~subsequent~~ referendum until at least five years have passed since the last referendum. Any referendum held under this section shall be conducted in accordance with this ~~article~~ *chapter*.

**Drafting Note: Technical changes.**

~~§ 3.1-636.83.2-1214. Subsequent referendum~~ *Referenda* results; action of Governor.

If the Governor finds a ~~subsequent referendum~~ *any referenda* held pursuant to this article in order and that more than one-half of those voting are in opposition to the continuation of the Apple Board, then the Governor shall so proclaim and upon such proclamation the Apple Board shall be discontinued. If the Governor finds that more than one-half of those voting are in favor of the continuation of the Apple Board, then the Governor shall not so proclaim and the Apple Board shall continue.

If the Governor finds that more than one-half of those voting are in favor of amending the excise tax on apples, then he shall so proclaim and upon such proclamation the excise tax shall be amended as stated in the referendum. If the Governor finds that more than one-half of those voting are in opposition ~~to~~ amending the excise tax on apples, then he shall not so proclaim and the excise tax on apples shall not be amended.

**Drafting Note: Technical changes.**

~~§ 3.1-636.9~~3.2-1215. Disposition of excise tax by producer; reports.

A. Every producer shall submit to the Tax Commissioner the excise tax levied on apples grown in the Commonwealth in a calendar year, by January 31 of the following year. The Tax Commissioner shall promptly pay the assessments into the Virginia state treasury to the credit of the Virginia Apple Fund.

B. Every producer shall complete reports on forms furnished by the Tax Commissioner, submit such reports to the Tax Commissioner along with the excise tax submitted pursuant to subsection A, and keep copies of the reports for a period of not less than three years from the time the report was produced. Notwithstanding the provisions of § 58.1-3, upon request, the Tax Commissioner shall provide to the Apple Board or the Commissioner copies of reports submitted pursuant to this section.

**Drafting Note: Technical changes.**

~~§ 3.1-636.10. Collection of delinquent excise tax; civil action.~~

~~The Tax Commissioner shall immediately notify any producer who fails to pay the excise tax pursuant to § 3.1-636.9 when due and shall add a five percent penalty to the amount due. If such deficiency is not paid within 30 days after the date of such notice, then the amount of the deficiency shall bear interest, in accordance with § 58.1-15, from the date the amount was due, and the Tax Commissioner shall collect any interest as part of the delinquent amount. If any person is delinquent in any payment of the money due or interest thereon, then the amount shall be collected by civil action in the name of the Commonwealth at the direction of the Tax Commissioner, and any person adjudged to be in default shall pay the cost of such action. The Attorney General, at the request of the Tax Commissioner, shall institute action in a court of competent jurisdiction for the collection of any money due under this chapter, including interest thereon. The Tax Commissioner may waive or remit such penalty, or portion thereof, in his discretion for good cause shown.~~

**Drafting Note: Deleted section. The collection of delinquent taxes for all commodities boards is addressed in proposed § 3.2-1102, Collections of delinquent assessments; civil action.**

~~§ 3.1-636.11~~3.2-1216. Records to be kept by producer.

Every producer shall maintain a complete record of the apples grown by him and shall preserve the records for at least three years from the time such apples are grown. The records shall be established and maintained as required by the Tax Commissioner and shall be open to the inspection of the Tax Commissioner ~~or his duly authorized agents.~~

**Drafting Note: The Tax Commissioner, like the Commissioner of Agriculture and Consumer Services, has the authority to employ agents under § 2.2-602, Duties of agencies and their appointing authorities.**

~~§ 3.1-636.12~~3.2-1217. Falsification of records; misdemeanor.

~~It shall be~~is a Class 1 misdemeanor:

1. For any producer to fail to submit to the Tax Commissioner any report required under this article within 60 days after the time such report is required to be submitted.

2. For any producer knowingly to report falsely to the Tax Commissioner any information required under this article.

3. For any producer to fail to keep a complete record of the apples grown by him or to not preserve such records for a period of at least three years from the time such apples are grown.

**Drafting Note: Technical changes.**

## CHAPTER 27-1-13.

### VIRGINIA-CATTLE INDUSTRY BOARD.

**Chapter Drafting Note:** A number of sections have been deleted as obsolete. Existing § 3.1-796.12, which is currently not set out in the Code, is deleted because it is a policy statement. Similarly, subdivision 3 of existing § 3.1-796.14, has been deleted as a policy statement. References to the initial referendum setting up the Cattle Industry Board in existing § 3.1-796.15 have been replaced with a reference to the 1983 Act of Assembly creating the Board. Existing §§ 3.1-796.16, 3.1-796.18, 3.1-396.19, and 3.1-796.20 have also been deleted as obsolete since the Cattle Industry Board has already been established. Existing § 3.1-796.17 is deleted as unnecessary because it is now addressed through proposed § 3.2-112, Regulations governing the conduct of referenda. Special fund language has been added to proposed § 3.2-1305, Virginia Cattle Industry Fund; established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Provisions relating to the collection of delinquent assessments in existing § 3.1-796.27 have been replaced with a reference to the title-wide provision in proposed § 3.2-1102, Collections of delinquent assessments; civil action. Changes to the organization of the chapter bring consistency to the administration of all commodity boards.

~~§ 3.1-796.12. Declaration of Policy.~~

~~It is hereby declared to be in the interest of the public welfare that owners of cattle shall be authorized and encouraged to act jointly and in cooperation with cattle handlers, processors, dealers, and others to increase efficient production, distribution, use, and sale of cattle, beef, veal and their products; and it is the intent and purpose of this chapter to authorize and provide for a promotional program for the cattle industry and the financing thereof pursuant to the provisions of this chapter. It is further declared that the cattle industry of this State is in the public interest since, among other things:~~

~~(1) The production, processing, handling, purchasing, manufacturing, marketing and distributing of cattle, beef, veal and their products constitutes an important industry of the State which not only provides substantial revenues for the State and its political subdivisions, and a means of livelihood for many thousands of its population, but also furnishes essential foods that are vital to the public health and welfare.~~

~~(2) Stabilization, maintenance, and expansion of the cattle industry of Virginia, the nation, and foreign markets is necessary to assure the consuming public an adequate supply of foods which are indispensable in a proper human diet, and to provide a source of tax revenue for the State and its political subdivisions as well as to help provide and maintain an adequate standard of living for a great segment of the population of this State who are engaged in the cattle industry.~~

~~(3) The importance of beef, veal and their products in human nutrition and the maintenance of a high level of public health requires that the public be protected against misrepresentation and deception by dissemination of inaccurate information pertaining to healthful qualities of beef, veal and their products, their various classifications, the food values and industrial and medicinal uses thereof. Therefore it is in the public interest to disseminate information on the methods, care, and precautions necessary for proper production, processing, manufacture, and distribution; the necessary cost and expenses thereof; and the necessity and desirability on the part of the public of using and consuming beef, veal and their products of the highest standards of quality.~~

**Drafting Note: Deleted section. This section is deleted as a policy statement. It is currently not set out in the Code.**

~~§ 3.1-796.13 3.2-1300. Definitions.~~

~~For the purposes of As used in this chapter, unless the context requires a different meaning:~~

~~"Board" means the Virginia Cattle Industry Board.~~

~~"Cattle" as used in § 3.1-796.27 means beef cattle sold in Virginia for slaughter or feeding purposes, veal calves sold for slaughter or feeding purposes, and dairy cattle being sold for immediate slaughter providing such animals are sold for a consideration in excess of twenty 20 dollars \$20 per head in the Commonwealth.~~

~~"Commission" means the Virginia Cattle Industry Board.~~

~~"Handler" includes means, at the point where the cattle are weighed or traded and the value determined, operators of all stockyards, livestock dealerships, slaughter houses slaughterhouses, packing plants, and livestock auction markets or any other person or business entity making purchase that purchases from a producer.~~

~~"Processor" or "packer" means any person, firm, corporation, association or cooperative who or which that slaughters cattle.~~

~~"Producer" means a any person, firm, corporation, association, or cooperative and any and all other business units, devices and arrangements which are engaged in the business of raising cattle, or who or which sell selling dairy cattle for slaughter.~~

~~"Virginia Cattle Industry Task Force" means a task force appointed by the Commissioner of Agriculture and Consumer Services to advise the Commissioner on the institution of a self-help program for Virginia's cattle industry.~~

**Drafting Note: The definition of "Board" is deleted because of the title-wide definition in proposed § 3.2-100, Definitions. The definitions of "Commission" and "Virginia Cattle Industry Task Force" are deleted as obsolete. The definition of "handler" is amended by adding language from subsection (b) of existing § 3.1-796.26. Deleted "or business entity" from the definition of "handler" and "firm, corporation, association, or cooperative" from the definition of "producer" because such entities fall within the Code-wide definition of "person" provided in § 1-230.**

~~§ 3.1-796.14. Purposes of chapter.~~

~~The purposes of this chapter are:~~

~~(1) To enable the cattle industry to improve its markets through activities to develop, maintain, and expand the state, national and foreign markets for cattle, beef, veal and their products produced, processed, or manufactured in this Commonwealth.~~

~~(2) To authorize and enable the Board herein created to formulate and effectuate, directly or in cooperation with other agencies and instrumentalities specified in this chapter, sales stimulation and consumer or other educational programs designed to increase the use and consumption of beef, veal and their products.~~

~~(3) To provide funds for the administration of this chapter.~~

**Drafting Note: Deleted and moved subdivisions (1) and (2) to subsections A and B of proposed § 3.2-1304, Powers and duties of the Cattle Industry Board. Subdivision (3) is deleted as a policy statement. Policy statements are no longer set out in the Code.**

~~§ 3.1-796.15 3.2-1301. Commission continued as Cattle Industry Board; subject to referendum; membership composition and appointment of members.~~

~~(1) A. The Virginia Cattle Industry Commission Board, established by the passage of a referendum held pursuant to Chapter 375 of the 1983 Acts of Assembly, is continued within the Virginia Department of Agriculture and Consumer Services is continued and shall hereafter be known as the Virginia Cattle Industry Board. The Board shall be subject to a referendum of the cattle producers who qualify to vote. Any producer who affirms an ownership of ten or more cattle on January 1 or July 1 preceding the advertised qualifying date, shall be eligible to vote in this referendum. A simple majority of those voting is necessary for the establishment of the Board.~~

~~The Cattle Industry Board shall be composed of fifteen 15 members, each of whom shall be a citizen of the United States and a resident of the Commonwealth. Each member shall have been actively engaged in the type of production or business that he will represent on the Cattle~~



*Industry Board for at least five years, shall derive a substantial proportion of his income from such production or business, and shall continue to be actively engaged in such production or business during his term.*

*B. The Governor shall appoint the members, who represent the various segments of the industry and shall be appointed by the Governor from those recommended in subsection (2) hereof as follows:*

*(a) 1. Seven commercial beef cattle producers, one from each feeder cattle production area of the Commonwealth.*

~~Such~~*The seven areas shall be designated by the Virginia Cattlemen's Association in general accordance with feeder cattle marketing practices.*

~~(b)~~ *2. Two dairymen.*

~~(c)~~ *3. One commercial cattle feeder.*

~~(d)~~ *4. Two purebred beef cattle breeders.*

~~(e)~~ *5. Two livestock market operators.*

~~(f)~~ *6. One meat packer or processor.*

~~(2) The Governor shall choose the members of the Board~~*C. Such appointments shall be chosen from those recommended as follows the following recommendations made through the Commissioner:*

~~(a) 1. Each of the seven beef cattle producing areas shall recommend two producers to the Virginia Cattlemen's Association. The Virginia Cattlemen's Association shall recommend through the Commissioner of Agriculture and Consumer Services these fourteen~~ *14 commercial beef cattle producers (two from each area), and at least one representative from each feeder cattle production area of the Commonwealth shall be appointed to the Virginia Cattle Industry Board.*

~~(b) 2. The Virginia Cattle Feeders Association shall recommend through the Commissioner of Agriculture and Consumer Services two commercial cattle feeders.~~

~~(c) 3. The Virginia State Dairymen's Association shall recommend through the Commissioner of Agriculture and Consumer Services four dairymen.~~

~~(d) 4. The Beef Cattle Improvement Association shall recommend through the Commissioner of Agriculture and Consumer Services four purebred beef cattle breeders, provided that not more than one be nominated from each of the four predominant breeder associations.~~

~~(e) 5. The Virginia Association of Livestock Market Operators shall recommend through the Commissioner of Agriculture and Consumer Services four livestock market operators.~~

~~(f) 6. The Virginia Cattlemen's Association shall recommend through the Commissioner of Agriculture and Consumer Services two persons, each of whom shall be either a processor or a packer.~~

**Drafting Note: The first sentence is amended to continue the Cattle Industry Board and to reference its creation. A reference to the Acts of Assembly is added to provide a means to locate the original language for the initial referendum that was held to create the Cattle Industry Board. The language establishing the initial referendum creating the Cattle Industry Board is deleted as obsolete since the initial referendum has been held. This chapter does not include any language providing for subsequent referenda, so any reference to a referendum is deleted as obsolete. Incorporates existing § 3.1-796.21 in the second paragraph of subsection A.**

~~§ 3.1-796.21. Qualifications of members of Board.~~

~~Each member of the Board shall have the following qualifications which shall continue during his term of office:~~

~~(1) A citizen of the United States.~~

~~(2) A resident of Virginia.~~

~~(3) Each shall have been actively engaged in the type of production or business which he will represent on the Board for a period of at least five years, and shall derive a substantial proportion of his income from such type of production or business.~~

**Drafting Note: Deleted and moved to subsection A of proposed § 3.2-1301, Cattle Industry Board; composition and appointment of members.**

~~§ 3.1-796.223.2-1302. Terms of members; vacancies; expenses; meetings; officers; annual report~~*Cattle Industry Board membership terms.*

~~(a) Of the members initially appointed, three shall be appointed for terms of one year; four for terms of two years; four for terms of three years; and four for terms of four years. Subsequent A. The terms for appointments to the Cattle Industry Board shall be for terms of four years each, except appointments to fill vacancies, which shall be for the unexpired terms. No Cattle Industry Board member may serve more than two consecutive full terms. In any case where~~Whenever a new appointment is made, the person receiving the appointment shall be a representative of the same segment of the industry as his predecessor and nominated as before.

~~(b)B. The Governor shall immediately declare the office of any member of the Cattle Industry Board vacant when he finds that the member no longer is actively engaged in the type of beef or dairy production or business he was engaged in at the time of his appointment; is no longer a resident of Virginia the Commonwealth; or is unable to perform the duties of his office.~~

~~(c) The members of the Board shall serve without compensation but shall be reimbursed for actual expenses incurred in attending meetings of the Board.~~

~~(d) The Board shall establish a meeting place anywhere within the Commonwealth of Virginia, but the selection of the location shall be guided by consideration for the convenience of the majority of those most likely to have business with the Board or to be affected by this chapter.~~

~~(e) The first Board appointed shall meet, as soon as practicable, for the purpose of organizing at the call of the Commissioner of Agriculture and Consumer Services. It shall elect a chairman and vice chairman from among its members and a secretary treasurer who may or may not be from among its members. It shall adopt a general statement of policy for guidance and shall transact such other business as is necessary to start the work of the Board. Thereafter, the Board shall meet each six months and at such other times as called by the chairman. The chairman may call special meetings at any time and shall call a special meeting when requested by five or more members of the Board.~~

~~(f) Annual report. An annual report shall be made by the Board to the Commissioner of Agriculture and Consumer Services and shall be published as a public record to include a statement on receipts and itemized disbursements of the Virginia Beef Cattle Fund.~~

**Drafting Note: The first sentence is deleted as obsolete. Subsections (c) and (e) are moved to proposed § 3.2-1303, Cattle Industry Board officers and compensation. The third sentence in subsection (e) is deleted as obsolete. Subsections (d) and (f) are moved to proposed § 3.2-1304, Powers and duties of Cattle Industry Board.**

*§ 3.2-1303. Cattle Industry Board officers and compensation.*

*A. The Cattle Industry Board shall elect a chairman and such other officers as deemed appropriate who may or may not be from among its members. The Cattle Industry Board shall meet each six months and at such other times as called by the chairman. The chairman may call special meetings at any time and shall call a special meeting when requested by five or more members of the Cattle Industry Board.*

*B. Members shall serve without compensation but shall be reimbursed for actual expenses incurred in attending meetings of the Cattle Industry Board.*

**Drafting Note: New section. Language is moved from subsections (c) and (e) of existing § 3.1-796.22.**

*§ 3.1-796.23 3.2-1304. Powers and duties of Cattle Industry Board.*

A. *The Cattle Industry Board may improve cattle industry markets through activities to develop, maintain, and expand the state, national, and foreign markets for cattle, beef, veal, and their products produced, processed, or manufactured in the Commonwealth.*

B. *The Cattle Industry Board may formulate and effectuate, directly or in cooperation with other agencies and instrumentalities specified in this chapter, sales stimulation and consumer or other educational programs designed to increase the use and consumption of beef, veal, and their products.*

C. *The Cattle Industry Board shall engage in the research, education, and promotion of the use and sale of beef and beef products, and shall have the following powers and duties:*

(1) 1. To enter into contracts as the *Cattle Industry Board* deems necessary for the experimental development of new or improved markets or marketing methods.

(2) 2. To conduct or contract for scientific research and services to discover and develop the commercial value of beef and veal and their products.

(3) 3. To make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out research in keeping with the intent of this chapter.

(4) 4. To disseminate reliable information founded upon the research conducted under this chapter and other sources, showing the uses of beef, veal, and their products.

(5) 5. To cooperate with any local, state, or national organization or agency engaged in work or activities similar to that of the *Cattle Industry Board* and enter into contracts with such organizations or agencies for carrying on joint programs.

(6) 6. To act jointly and in cooperation with the federal and state governments, or any agency thereof in the administration of any program of the government or governmental agency deemed by the *Cattle Industry Board* as beneficial to the production, marketing, ~~and/or~~ or promotion of the beef and veal industry of ~~this~~the Commonwealth and expend funds in connection ~~therewith provided that~~with such programs *provided they* are compatible with the powers conferred by this chapter.

(7) 7. To enter into contracts ~~which~~that it deems appropriate to the carrying out of the purposes of the *Cattle Industry Board* as authorized by this chapter.

(8) 8. To study and inform producers concerning state and federal legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas, and other matters concerning the beef and veal industry.

(9) 9. To borrow money not in excess of estimates of its revenue from the current year's tax.

(10) 10. To appoint subordinate officers and employees of the *Cattle Industry Board* and prescribe their duties and fix their compensation within the limitations of the Virginia Personnel Act (§ 2.2-2900 et seq.).

(11) 11. To acquire and maintain such office space and equipment as necessary to carry out the duties of the *Cattle Industry Board*.

(12) 12. From the tax revenues it receives, to contract with organizations, ~~such as, but not limited to,~~ including the National Livestock and Meat Board, to carry out work and programs, approved by the *Cattle Industry Board*, on a national basis.

D. *The Cattle Industry Board shall establish a meeting place anywhere within the Commonwealth, but the selection of the location shall be guided by consideration for the convenience of the majority of those most likely to have business with the Cattle Industry Board or to be affected by this chapter.*

E. *The Cattle Industry Board may adopt regulations necessary to carry out the purpose of this chapter.*

*F. An annual report shall be made by the Cattle Industry Board to the Commissioner and shall be published as a public record to include a statement on receipts and itemized disbursements of the Virginia Cattle Industry Fund.*

**Drafting Note: Proposed subsections A and B are moved from existing § 3.1-796.14. Proposed subsections D and F are moved from subsections (d) and (f) of existing § 3.1-796.22. Proposed Subsection E is moved from existing § 3.1-796.24.**

~~§ 3.1-796.24. Rules and regulations; expenditures for legislative and political activity not authorized.~~

~~The Board is authorized to promulgate rules and regulations necessary to carry out the intent and purpose of this chapter. No provision of this chapter shall be construed to give the Board the authority to expend funds for legislative or political activity.~~

**Drafting Note: Deleted section and moved the first sentence to subsection E of proposed § 3.2-1304, Powers and duties of Cattle Industry Board. The last sentence is moved to subsection B of proposed § 3.2-1100, Diversion of dedicated revenues, which appears in the general provisions chapter of this subtitle.**

~~§ 3.1-796.16. Arrangement for and management of referendum; notice; reimbursement for costs.~~

~~The Commissioner, with the assistance of the Virginia Cooperative Extension Service and the Virginia Cattle Industry Task Force shall arrange for and manage the referendum referred to under subsection (1) of § 3.1-796.15.~~

~~The Commissioner shall, sixty days before the date upon which a referendum is to be held, fix, determine and publicly announce by posting on the front door or public bulletin board of the courthouse in each county in which cattle are produced a notice specifying the date, hours, and polling places or other ways for voting in such referendum. In addition, the notice shall state the purpose for which the Virginia Cattle Industry Board is created, its powers, and the amount and means of collecting the tax levied in support of the Board, as well as the purposes for which the proceeds of such levy shall be expended.~~

~~Upon the passage of the referendum, the cost of holding the referendum shall be reimbursed by the Board to the Department of Agriculture and Consumer Services. Costs shall not include the payment for services of any employee of the Department or the Virginia Cooperative Extension Service.~~

**Drafting Note: Deleted section. The referendum was held and passed. The Cattle Industry Board was created in 1984.**

~~§ 3.1-796.17. Rules governing ballots, conduct of referendum, etc.~~

~~The Board of Agriculture and Consumer Services shall adopt rules governing the ballots to be used in the referendum, the conduct of the referendum, canvassing the results thereof, and declaring the results of the referendum. Such rules shall be adopted after consultation with the Virginia Cattle Industry Task Force.~~

**Drafting Note: Deleted section. This provision has been replaced by a title-wide provision contained in § 3.2-112, Regulations governing the conduct referenda.**

~~§ 3.1-796.18. Date, hours, voting places, etc., for referendum; voting by mail; publication of notice.~~

~~The Board of Agriculture and Consumer Services after consultation with the Virginia Cattle Industry Task Force shall fix the date, areas, hours, voting places, rules and regulations with respect to the holding of such referendum and may provide for voting by mail if it deems it advisable, and the Board shall mail copies of the same to be published in each newspaper of general circulation in the counties in which the referendum is to be held at least sixty days before the holding of any such referendum under this chapter. Such notice, so published shall contain in addition to the other information herein required the amount of the tax proposed to be levied and the purposes for which the proceeds shall be expended.~~

**Drafting Note: Deleted section. The referendum was held and passed. The Cattle Industry Board was created in 1984.**

~~§ 3.1-796.19. Distribution of ballots, supplies, etc., for referendum; canvass and publication of results.~~

~~The Commissioner with the assistance of the Virginia Cattle Industry Task Force and the Virginia Cooperative Extension Service shall prepare and distribute in advance of such referendum all necessary ballots, certificates and supplies required for such referendum and shall under the rules and regulations adopted and promulgated by the Board of Agriculture and Consumer Services and with the assistance of the Virginia Cattle Industry Task Force and the Virginia Cooperative Extension Service arrange for the use of the necessary polling places. He shall, within ten days after such referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.~~

**Drafting Note: Deleted section. The referendum was held and passed. The Cattle Industry Board was created in 1984.**

~~§ 3.1-796.20. Form of ballot for referendum.~~

~~On the face of the ballot used in the referendum referred to in subsection (1) of § 3.1-796.15 shall be printed the purpose for which the Virginia Cattle Industry Board is created and the amount of and purpose for which the tax is levied. This statement may be the same statement required to be furnished in the notice of referendum provided for by § 3.1-796.16. The question to be printed on the ballot following the required statement shall be as follows:~~

~~"Do you favor the creation of the Virginia Cattle Industry Board?"~~

~~(-) Yes~~

~~(-) No."~~

**Drafting Note: Deleted section. The referendum was held and passed. The Cattle Industry Board was created in 1984.**

~~§ 3.2-1305. Virginia Cattle Industry Fund established.~~

~~There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Cattle Industry Fund, hereinafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All funds collected pursuant to § 3.2-1306 shall be paid into the state treasury and credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.~~

~~All moneys credited to the Fund shall be used exclusively as set forth in this chapter. The Auditor of Public Accounts shall audit all the accounts of the Cattle Industry Board as is provided for in § 30-133. Expenditures and disbursements from the Fund shall be made by the Cattle Industry Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Cattle Industry Board.~~

**Drafting Note: New section. Language is taken from subsection (c) of existing § 3.1-796.26 and modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-796.25. Tax Commissioner authorized to collect tax on cattle sold.~~

~~In order for the Board to carry out the provisions of this chapter, the Tax Commissioner shall collect for the Virginia Cattle Industry Board the following assessment from the handler for all cattle and calves, when sold in Virginia, twenty five cents per head on all cattle and calves with the exception of dairy cows going back to farms for milk production, and those animals selling for less than twenty dollars per head.~~

**Drafting Note: Deleted and moved to subsection A of proposed § 3.2-1306, Collection and disposition of assessment by handler; reports.**

~~§ 3.1-796.263.2-1306. Reports to Tax Commissioner; collection and disposition of tax assessment by handler; records to be kept by handlers reports.~~

~~(a) Reports to the Tax Commissioner shall be made—A. Every handler shall deduct 25 cents per head from the proceeds of sale owed by him to the respective owners of all cattle and calves when sold in the Commonwealth, with the exception of dairy cows going back to farms for milk production and those animals selling for less than \$20 per head. The handler shall remit such assessments to the Tax Commissioner on or before the last day of the month following the end of each calendar quarter.~~

~~B. Every handler shall complete reports on forms furnished and prescribed by the Tax Commissioner and submit such reports to the Tax Commissioner along with the assessments collected pursuant to subsection A. Each form-report shall include a statement on of the number of cattle which have been handled and the amount of money which has been collected, and any other information deemed necessary by the Tax Commissioner to carry out his functions. Notwithstanding the provisions of § 58.1-3, upon request, the Tax Commissioner is authorized to provide the Cattle Industry Board with a list of taxpayers and amounts paid.~~

~~(b) The handlers shall deduct from the proceeds of sale owed by them to the respective owners of cattle the contribution as authorized by § 3.1-796.25 of this chapter.~~

~~For purposes of this chapter the handler shall be the handler at the point at which the cattle are weighed or traded and the value determined.~~

~~(c) All funds collected shall be paid into the state treasury to the credit of the Virginia Cattle Industry Board. Such funds shall be credited on the Comptroller's books to a fund known as the Virginia Cattle Industry Fund. All moneys credited to the Virginia Cattle Industry Fund shall be used exclusively as set forth in this chapter. The Auditor of Public Accounts shall audit all the accounts of the Board as is provided for in § 30-133. The unexpended balance of the Virginia Cattle Industry Fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

~~(d) The funds collected by the handler from proceeds of sales are due to the Tax Commissioner on or before the last day of the month following the end of each calendar quarter.~~

~~(e) The handler shall keep a complete record of the number of cattle subject to payment bought by him for a period of not less than three years. Such record shall be open for inspection by the Tax Commissioner or his duly authorized agents, and shall be established and maintained as required by the Tax Commissioner.~~

~~C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.~~

**Drafting Note: Incorporates existing § 3.1-796.25 into proposed subsection A. Moved the language that further defines "handler" in existing subsection (b) to the chapter's definition of "handler" in proposed section § 3.2-1300, Definitions. Subsection (c) is moved to proposed § 3.2-1305, Virginia Cattle Industry Fund established. Subsection (d) is incorporated into proposed subsection A. Subsection (e) is moved to proposed § 3.2-1307, Records to be kept by handler. The second to last sentence is added as a cross-reference to proposed § 3.2-1102, Collections of delinquent assessments; civil action, concerning collection of delinquent assessments that is proposed in Chapter 11, General Provisions. Similar language appeared under each commodity board, so the language was moved to the general provisions section, and a cross-reference was added to each commodity board.**

~~§ 3.2-1307. Records to be kept by handler.~~

~~Every handler shall keep a complete record of the number of cattle subject to payment bought by him for a period of not less than three years. Such record shall be open for inspection by the Tax Commissioner, and shall be established and maintained as required by the Tax Commissioner.~~

**Drafting Note: New section. Language is moved from subsection (e) of existing § 3.1-796.26 for consistency among the commodity boards.**

~~§ 3.1-796.273.2-1308. Collection of delinquent taxes; misdemeanors; prosecutions~~  
~~Falsification of records; misdemeanor.~~

~~(a) If the money due is not paid when due, the Tax Commissioner shall immediately notify the violator of such deficiency and shall add thereto a penalty of five percent of the amount due. If such deficiency is not paid within thirty days from the date of such notice, the same shall bear interest, in accordance with § 58.1-15, from the date the same was due, which shall be collected as part of the delinquent amount. The Tax Commissioner may waive or remit the penalty of five percent, or portion thereof, in its discretion for good cause shown. If any person is delinquent in any payment of the money owed or interest thereon, the amount shall be collected by civil action in the name of the Commonwealth of Virginia at the direction of the Tax Commissioner, and the person adjudged to be in default shall pay the cost of such action. The Attorney General of Virginia, at the request of the Tax Commissioner, shall forthwith institute action in the proper court for the collection of the amount of any money past due under this chapter, including interest thereon.~~

~~(b) It shall be a Class 1 misdemeanor for:~~

~~1. For any first handler to fail to submit to the Tax Commissioner any statement or report required in this chapter within sixty days from the time such statement or report is required to be submitted to the Tax Commissioner under this chapter.~~

~~(c) It shall be a misdemeanor for 2. For any first handler knowingly to report falsely to the Tax Commissioner the number of taxable cattle handled by him during any period or to falsify the records.~~

~~(d) Prosecution shall be initiated by the attorney for the Commonwealth or otherwise, in any county or city of the Commonwealth.~~

**Drafting Note: Subsection (a) is deleted and a cross-reference to proposed § 3.2-1102, Collections of delinquent assessments, civil action, is added to proposed § 3.2-1306, Collection and disposition of assessment by handler; reports. Subsection (d) is deleted as unnecessary.**

~~§ 3.1-796.28. Duty of law enforcement officers.~~

~~It shall be the duty of all state and county law enforcement officers to assist in the enforcement of this chapter.~~

**Drafting Note: This section is deleted and moved to a subtitle-wide provision in proposed § 3.2-1103, Duty of law enforcement officers.**

#### ~~CHAPTER 40-14.~~

#### ~~VIRGINIA CORN ACT BOARD.~~

**Chapter Drafting Note: A number of sections have been deleted as obsolete. Existing § 3.1-1031, which is currently not set out in the Code, is deleted because it is a policy statement. The definition of "farmer" is deleted, and "farmer" is replaced throughout the chapter with "producer" for clarification and consistency. References to the initial referendum setting up the Corn Industry Board have been replaced with a reference to the 1980 Acts of Assembly creating the Board. Existing §§ 3.1-1033 and 3.1-1040 have also been deleted as obsolete since the Corn Industry Board has already been established. Existing §§ 3.1-1036 and 3.1-1037 have been replaced by the title-wide provision in proposed § 3.2-112, Regulations governing the conduct of referenda. Special fund language has been added to proposed § 3.2-1411, Virginia Corn Fund; established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Provisions relating to the collection of delinquent assessments in existing § 3.1-1046 have been replaced with a reference to the title-wide provision in proposed § 3.2-**

**1102, Collections of delinquent assessments; civil action. Increased the amount of time a handler must keep records from two years to three years for consistency among the commodity boards. Other changes to the organization of the chapter also bring consistency to the administration of all commodity boards.**

~~§ 3.1-1031. Legislative findings; purpose of chapter.~~

~~The General Assembly finds and declares that corn is important to the prosperity of this Commonwealth and is a major source of income to a large segment of the Commonwealth's population. Additional market development, education, publicity, research and promotion of the sale and use of corn is required to enhance the economical production and orderly marketing of corn and will be beneficial to the Commonwealth as a whole.~~

**Drafting Note: Deleted section. Policy statements are no longer set out in the Code.**

~~§ 3.1-1032 3.2-1400. Declaration of public interest; definitions *Definitions.*~~

~~The General Assembly hereby declares it to be in the public interest that farmers producing corn be permitted to express in a separate referendum whether assessments should be levied upon corn with revenues therefrom to be used in encouraging an expanded program of market development, education, publicity, research and the promotion of the sale and use of corn. The word "farmer," as used in this chapter, shall include all producers of corn in this Commonwealth as defined in § 3.1-1035. The word "county" shall include also cities and towns in which corn is a source of income. The word "corn" shall include unless the context requires a different meaning:~~

~~"Corn" means all corn sold except sugar corn, popcorn, and ornamental corn.~~

~~"Country buyer" means any person who buys corn from a producer.~~

~~"Exporter" means any person offering corn for export sale.~~

~~"Handler" means any processor, dealer, shipper, country buyer, exporter, or any other business entity that purchases corn from a producer. The term shall also mean any person that buys, accepts for shipment, or otherwise acquires property in corn from a producer, and includes a mortgagee, pledgee, lienor, or other person having a claim against the producer, when the actual or constructive possession of corn is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim. The term shall also mean a producer who transports and sells his corn outside of the Commonwealth.~~

~~"Processor" means any person who changes the physical form or characteristic of corn for the purpose of preparing it for sale.~~

~~"Producer" means any person who grew corn in the Commonwealth and sold corn during the preceding three years.~~

~~"Seedsman" means any person who offers corn seeds for sale.~~

**Drafting Note: Additional definitions are moved from existing §§ 3.1-1043 and 3.1-1044. The definition of "farmer" is deleted, and "farmer" is replaced throughout the chapter with "producer" for clarification and consistency. The definition of "producer" is modified by replacing the word "farmer" with the word "person" to capture all of the legal entities included within the definition of "person" as that term is defined in the Code-wide § 1-230. As such, the additional references to firms and associations have been deleted as redundant. Deleted the definition of county and replaced the term with locality as it appears throughout the chapter. A definition for locality appears in § 1-221. Also, in the definition of "producer," "past" is replaced with "preceding" for clarification.**

~~§ 3.1-1043 3.2-1401. Virginia Corn Commission continued as Virginia Corn Board; composition; and appointment and terms; vacancies; officers; expenses; powers and duties of members.~~

~~The Virginia Corn Commission within the Virginia Department of Agriculture and Consumer Services Board, established by the passage of a referendum held pursuant to Chapter 395 of the 1980 Acts of Assembly, is continued and shall hereafter be known as the Virginia Corn~~



~~Board within the Department.~~ The Virginia-Corn Board shall be composed of ~~eleven~~ 11 members appointed by the Governor and confirmed in accordance with § 2.2-107 from nominations by the several producer organizations representing corn producers. ~~The several producer~~ *These organizations representing corn producers shall nominate at least two producers from each producer-production area of corn as defined in § 3.2-1410 herein:* Area I: the Counties of Accomack, Northampton, and Isle of Wight; the Cities of Suffolk, Chesapeake, and Virginia Beach; Area II: the Counties of Southampton, Sussex, Surry, Prince George, Dinwiddie, Greensville, and Brunswick; Area III: the Counties of Westmoreland, Northumberland, Richmond, Lancaster, Essex, Middlesex, Mathews, King and Queen, Gloucester, King William, New Kent, York, Charles City and James City, and the City of Newport News; Area IV: the Counties of Henrico, Hanover, Caroline, King George, Goochland, Louisa, Spotsylvania, Stafford, Fluvanna, Orange, Culpeper, Albemarle, Greene and Madison; Area V: the Counties of Prince William, Fairfax, Fauquier, Loudoun, Rappahannock, Warren, Clarke, Page, Shenandoah, and Frederick; Area VI: the Counties of Mecklenburg, Lunenburg, Nottoway, Amelia, Chesterfield, Halifax, Charlotte, Prince Edward, Cumberland, Powhatan, Pittsylvania, Campbell, Appomattox, Buckingham, Bedford, Amherst and Nelson; Area VII: the Counties of Henry, Franklin, Roanoke, Botetourt, Rockbridge, Augusta, Rockingham, Patrick, Floyd, Montgomery, Craig, Alleghany, Bath, Highland, Carroll, Pulaski, Giles, Grayson, Wythe, Bland, Smyth, Tazewell, Washington, Russell, Buchanan, Scott, Wise, Dickenson and Lee. The Governor shall appoint at least one producer from each *producer-production* area as herein described and the membership of the Virginia Corn Board shall be composed of a majority of producers. The Governor shall appoint one member, if available, from each of the following classifications: seedsman, processor, country buyer, and exporter.

For the purpose of this chapter, the term "producer" shall mean any farmer who produced and sold corn during the past three years; "seedsman" shall mean any person or firm who offers corn seeds for sale; "processor" shall mean any person or firm who changes the physical form or characteristic of corn for the purpose of preparing it for sale; "country buyer" shall mean any person or firm who buys corn from the producer; and "exporter" shall mean any person or firm offering corn for export sale.

The initial appointments shall be as follows: four members for a term of three years; four members for a term of two years; and three members for a term of one year; appointments thereafter shall be for three year terms. Vacancies occurring before the expiration of such terms shall be filled by the Governor for the unexpired term. If possible such vacancies shall be filled from the producer area or classification from which the vacancy occurred from nominations as described in the provisions of this section. The Virginia Corn Board shall elect a chairman, vice chairman and such other officers as may be required. The Virginia Corn Board shall have charge of the management and expenditure of the Virginia Corn Fund established in the state treasury. The Virginia Corn Board may establish an executive committee and charge it with such powers, duties and functions as is deemed proper. The members of the Virginia Corn Board shall not receive compensation for attendance at meetings of the Virginia Corn Board, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.

The Virginia Corn Board shall have power to expend funds to provide for programs of market development, education, publicity, research and the promotion of the sale and use of corn; to manage the funds so as to accumulate a reserve for contingencies; to establish an office and employ such technical, professional and other assistants as may be required; and to contract for market development, publicity, research, advertising and other promotional services.

The Board may enter into an agreement with the Federal Commodity Credit Corporation to collect the specified assessment on all corn pledged as collateral for a commodity credit corporation price support loan or purchase by the Federal Commodity Credit Corporation under its loan or purchase programs.

~~The chairman of the Virginia Corn Board shall make a report at each annual meeting of the Virginia Corn Board and furnish the members of the Virginia Corn Board with a statement of the total receipts and disbursements for the year. He shall file a copy of such report with the Commissioner and the several producer organizations representing corn producers, and shall make copies of such report available for publication.~~

**Drafting Note:** A reference to the Acts of Assembly is added in the first paragraph since original referendum language is being deleted as obsolete throughout this chapter. This reference provides the option to locate the original language for the referendum that created the Board. The subsequent deleted language is moved to proposed § 3.2-1402, Corn Board membership terms; proposed § 3.2-1403, Corn Board officers and compensation; and proposed § 3.2-1404, Powers and duties of Corn Board. The enumeration of localities in the production districts has been moved to proposed § 3.2-1410, Production areas designated.

*§ 3.2-1402. Corn Board membership terms.*

*The terms for appointments to the Corn Board shall be three years. The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term. If possible, vacancies shall be filled from the production area or classification from which the vacancy occurred from nominations as described in § 3.2-1410.*

**Drafting Note:** New section. Language is moved from existing § 3.1-1043.

*§ 3.2-1403. Corn Board officers and compensation.*

*A. The Corn Board shall elect a chairman and such other officers as deemed appropriate.*

*B. Members of the Corn Board shall not receive compensation for attendance at meetings of the Corn Board, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.*

**Drafting Note:** New section. Language is moved from existing § 3.1-1043.

*§ 3.2-1404. Powers and duties of Corn Board.*

*A. The Corn Board shall have charge of the management and expenditure of the Virginia Corn Fund established in the state treasury.*

*B. The Corn Board may expend funds to provide for programs of market development, education, publicity, research, and the promotion of the sale and use of corn; to manage the funds so as to accumulate a reserve for contingencies; to establish an office and employ such technical, professional, and other assistants as may be required; and to contract for market development, publicity, research, advertising, and other promotional services.*

*C. The Corn Board may establish an executive committee and charge it with such powers, duties, and functions as is deemed proper.*

*D. The Corn Board may enter into an agreement with the Federal Commodity Credit Corporation to collect the specified assessment on all corn pledged as collateral for a commodity credit corporation price support loan or purchase by the Federal Commodity Credit Corporation under its loan or purchase programs.*

*E. The chairman of the Corn Board shall make an annual report to the Corn Board, including a statement of the total receipts and disbursements for the year, and shall file a copy of the report with the Commissioner.*

**Drafting Note:** New section. Language is moved from existing § 3.1-1043. Language is deleted from subsection E to reflect current Corn Board practices. The chairman does not file a copy of the report with the "producer organizations representing corn producers," and "making copies of the report available for publication" is obsolete since the report is a public document under the Freedom of Information Act.

~~§ 3.1-1033. Petition for referendum on question of assessment for market development, education, promotion; action of Board and Commissioner thereon; amount of assessment; expenses of referendum.~~

~~The State Board of Agriculture and Consumer Services, hereinafter referred to as the "Board," upon a petition being filed with it by the Virginia Corn Growers Association, Inc., hereinafter referred to as the "Association," requesting a referendum and upon finding that sufficient interest exists among the producers of corn in the Commonwealth to justify a referendum, shall authorize the holding of a referendum as hereinafter set forth. The Commissioner of Agriculture and Consumer Services, hereinafter referred to as the "Commissioner," or his designated agents, shall thereupon be fully empowered and directed to hold and conduct a referendum on the question of whether or not the farmers in this Commonwealth who are the producers of corn are of the opinion that additional market development, education, publicity, research and promotion of the use and sale of corn is required. If approved in the referendum authorized by this chapter, the assessment shall be one cent per bushel. Upon filing the petition under the authority of this section, the Association shall thereby agree to pay all expenses and costs of holding such referendum, if the Board authorizes and directs the referendum to be held. The expenses mentioned herein shall not include payment for services of any employee of the Virginia Department of Agriculture and Consumer Services, or Virginia Polytechnic Institute and State University. Upon the passage of such referendum and the creation of the Virginia Corn Board, the cost of holding the referendum shall be reimbursed to the Association by the Board.~~

**Drafting Note: Deleted section. The Corn Board was established by referendum in 1980.**

~~§ 3.1-1041 3.2-1405. Subsequent referenda~~*Referenda.*

~~If the Governor issues a proclamation under § 3.1-1039, then no other referendum shall be held on corn which was the subject of the proclamation except that the *The* Board, on a *upon* petition presented by a group of corn producers representing at least ~~ten per centum~~ *10 percent* of the number of the Commonwealth's corn producers which voted in the next preceding referendum on this subject *as determined by the Commissioner*, may provide for a referendum on the continuation of the assessment. ~~The Board shall not act on such a petition for conducting a referendum until at least five years have passed from the time the Virginia Corn Board was established.~~ If the Governor shall determine that a simple majority of those voting are not in favor of the assessment, the Board shall hold no new ~~referendum~~*referenda* for at least one year after the Governor has declared his findings, and then only after receiving a petition signed by at least ~~ten per centum~~ *10 percent* of the number of the Commonwealth's corn producers ~~which voted in the most recent referendum.~~ The cost of conducting any such referendum as above prescribed shall come from funds paid into the Virginia Corn Fund as defined in § ~~3.1-1047 3.2-1411.~~ *The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.*~~

**Drafting Note: Deleted obsolete language and added new language that vests authority in the Commissioner to determine the number of corn producers in Virginia. The original language is antiquated as it originally applied to a much larger group of corn producers in 1980 when the law was passed. The last sentence provides a cross-reference to proposed § 3.2-112, Regulations governing the conduct of referenda, since existing § 3.1-1036 is deleted.**

~~§ 3.1-1036. Rules governing ballots, conduct of referendum, canvassing, etc.~~

~~The Board shall further adopt rules governing the ballots to be used in the referendum, the conduct of the referendum, canvassing the results thereof, and declaring the results of the referendum.~~

**Drafting Note: Deleted section and moved to Article 2 of proposed Chapter 1, Board of Agriculture and Consumer Services. The new section is cross-referenced above as § 3.2-112, Regulations governing the conduct of referenda.**

~~§ 3.1-1034 3.2-1406. Commissioner to arrange for and manage referendum~~*Management of referenda; Commissioner's duties; notice to be posted.*

A. The Commissioner shall arrange for and manage any referendum conducted under this chapter.

~~B. The Commissioner is directed~~ *shall*, ~~sixty~~ 60 days before the date upon which a referendum is to be held, to mail notice to the clerk of the circuit court in each county in which locality where corn is produced. ~~The notice shall contain the date, hours, and method of voting in such referendum, the amount of assessment to be collected, the means by which such assessment shall be collected, the general purposes for which the assessments will be used, and the rules and regulations adopted by the Board pursuant to § 3.1-1036.~~ The clerk of the circuit court shall post the notice and rules and regulations on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. *The Commissioner shall give notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and shall send a notice of the referendum to a newspaper of general circulation in each locality where corn is produced, at least 60 days prior to the holding of any referendum under this chapter. The notice shall contain the date, hours, and method of voting in such referendum, the amount of assessment to be collected, the means by which such assessment shall be collected, the general purposes for which the assessments will be used, and the regulations adopted by the Board pursuant to this chapter.*

C. *The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots, certificates, and supplies required for such referendum and shall, under regulations adopted by the Board, arrange for the use of polling places, if necessary.*

D. *The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.*

**Drafting Note: Proposed subsection B is moved, in part, from existing § 3.1-1039. Proposed subsections C and D are moved from existing § 3.1-1038.**

~~§ 3.1-1037. Date of referendum; areas, hours, voting places, etc.; publication of notice.~~

~~The Board shall fix the date, areas, hours, voting places, rules and regulations with respect to the holding of any referendum provided for in this chapter and the Board may provide for voting by mail if it deems advisable. The Commissioner shall give general notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and is directed to send a notice of the referendum to a newspaper of general circulation in each county in which corn is produced, at least sixty days prior to the holding of any referendum under this chapter. Such notice shall contain the date, hours, and method of voting in such referendum, the amount of assessment to be collected, the means by which such assessment shall be collected, the general purposes for which the assessments will be used, and the rules and regulations adopted by the Board pursuant to § 3.1-1036.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-1406, Management of referenda; Commissioner's duties; notice. Language regarding the Board adopting regulations governing the conduct of referenda is deleted because it is now referenced in proposed § 3.2-112, Regulations governing the conduct of referenda.**

~~§ 3.1-1038. Distribution of ballots; canvass; declaration and certification of results.~~

~~The Commissioner shall prepare and distribute in advance of such referendum all necessary ballots, certificates and supplies required for such referendum and shall, under rules and regulations adopted and promulgated by the Board, arrange for the use of polling places, if necessary. He shall, within ten days after such referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-1406, Management of referenda; Commissioner's duties; notice.**

~~§ 3.1-1042~~ 3.2-1407. Question to be printed on ballots.

The question to be printed on the ballots used in a referendum held ~~under~~ pursuant to this chapter shall be as follows:

"Do you favor additional market development, education, publicity, research, and the promotion of the sale and use of corn and the *continuation of the* levy of an assessment of one cent per bushel in accordance with the provisions of the ~~Virginia-Corn Act~~ *Board law*?

- For
- Against."

**Drafting Note: Amended to be consistent with § 3.2-1405, Referenda, which allows for a referendum on the continuation of the assessment.**

~~§ 3.1-1035~~ 3.2-1408. Persons eligible to vote.

Each ~~farmer~~ *producer* who sold corn in two of the past three years next preceding the date of the referendum held pursuant to this chapter shall be eligible to vote in such referendum, provided that he shall so certify sale and point of sale on forms ~~which shall be approved by the Board~~. Any person meeting such requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in other respects. ~~A farmer may be a natural person, partnership, or corporation. The vote of a partnership shall be cast by one of the general partners. The corporation shall vote by its president, general manager or such other person as may be authorized by the corporation to cast its vote. Any person who is not an individual shall vote by its authorized representative.~~

**Drafting Note: "Farmer" has been changed to "producer" throughout the chapter. The definition of producer includes a person. The last two sentences are deleted and replaced with new language to capture all business entities, including partnerships and corporations.**

~~§ 3.1-1039~~ 3.2-1409. ~~Action~~ *Referenda results; action* of Governor ~~if a simple majority of voters favor assessment.~~

If the Governor finds ~~the~~ *any* referendum in order and that at least a simple majority of those voting are in ~~favor~~ *opposition to the continuation* of the assessment ~~for the purpose of conducting programs in market development, education, publicity, research and the promotion of the sale and use of~~ *on* corn, he shall so proclaim and establish within the Virginia Department of Agriculture and Consumer Services a Virginia Corn Board as defined in ~~§ 3.1-1043~~ *and upon such proclamation the assessment on corn shall be discontinued. If the Governor finds that at least a simple majority of those voting are in favor of the continuation of the assessment on corn, the Governor shall not so proclaim.*

**Drafting Note: Language is updated to reflect that this section applies to subsequent referenda, and not the original 1980 referendum establishing the Corn Board. No provisions exist specifically for subsequent referenda results in this chapter. The new language is modeled after language from the Cotton Board's subsequent referenda.**

~~§ 3.1-1040. Action of Governor if referendum out of order or if less than a simple majority of voters favor assessment.~~

If the Governor finds ~~the~~ referendum out of order, or that at least a simple majority of those voting are not in favor of the assessment ~~for the purpose of conducting programs of market development, education, publicity, research and the promotion of the sale and use of~~ corn, he shall not establish within the Virginia Department of Agriculture and Consumer Services a Corn Board under this chapter.

**Drafting Note: This section is deleted as obsolete, as the Corn Board was established by referendum in 1980.**

§ 3.2-1410. *Production areas designated.*

*The following production areas are designated for the purposes of this chapter:*

*Area I: the Counties of Accomack, Northampton, and Isle of Wight and the Cities of Suffolk, Chesapeake, and Virginia Beach;*

*Area II: the Counties of Southampton, Sussex, Surry, Prince George, Dinwiddie, Greenville, and Brunswick;*

*Area III: the Counties of Westmoreland, Northumberland, Richmond, Lancaster, Essex, Middlesex, Mathews, King and Queen, Gloucester, King William, New Kent, York, Charles City, and James City and the City of Newport News;*

*Area IV: the Counties of Henrico, Hanover, Caroline, King George, Goochland, Louisa, Spotsylvania, Stafford, Fluvanna, Orange, Culpeper, Albemarle, Greene, and Madison;*

*Area V: the Counties of Prince William, Fairfax, Fauquier, Loudoun, Rappahannock, Warren, Clarke, Page, Shenandoah, and Frederick;*

*Area VI: the Counties of Mecklenburg, Lunenburg, Nottoway, Amelia, Chesterfield, Halifax, Charlotte, Prince Edward, Cumberland, Powhatan, Pittsylvania, Campbell, Appomattox, Buckingham, Bedford, Amherst, and Nelson;*

*Area VII: the Counties of Henry, Franklin, Roanoke, Botetourt, Rockbridge, Augusta, Rockingham, Patrick, Floyd, Montgomery, Craig, Alleghany, Bath, Highland, Carroll, Pulaski, Giles, Grayson, Wythe, Bland, Smyth, Tazewell, Washington, Russell, Buchanan, Scott, Wise, Dickenson, and Lee.*

**Drafting Note: New section. Language moved from existing § 3.1-1043.**

~~§ 3.1-10473.2-1411. Virginia Corn Fund; Board may cooperate with other agencies engaged in promotional activities established.~~

~~All moneys levied and collected under the provisions of this chapter shall be credited on the Comptroller's books to a fund to be known as the "Virginia Corn Fund." There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Corn Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys credited to the Virginia Corn Fund levied and collected under the provisions of this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. are hereby appropriated Moneys in the Fund shall be used solely for the purposes set forth in this chapter. In carrying out the purposes of this chapter, the Corn Board shall have the authority to may cooperate with other state, regional, national, and international agricultural organizations in market development, education, publicity, research, and the promotion of the sale and use of corn. The proceeds from such activities shall be promptly paid into the Virginia Corn Fund. The Auditor of Public Accounts shall audit all the accounts of the Corn Board as provided for in § 30-133.~~

~~The unexpended balance of the Virginia Corn Fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

~~Expenditures and disbursements from the Fund shall be made by the Corn Board on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the Corn Board.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language and incorporates language from existing § 3.1-1048. Updated language in the fifth sentence by changing "biennium" to "fiscal year" to reflect current budget language. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-1048. Expenditures.~~

~~All moneys collected under this chapter shall be expended by the Virginia Corn Board by warrants of the Comptroller of the state treasury issued on vouchers signed by the duly authorized officer of the Board.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-1411, Virginia Corn Fund established.**

~~§ 3.1-1044 3.2-1412. Handler to deduct~~ *Collection and disposition of assessment from payment to farmer; report and payment by handler; reports.*

~~For the purpose of carrying out the provisions of this chapter, the processor, dealer, shipper, country buyer, exporter or any other business entity, hereinafter referred to as "the handler," of corn who purchases from the farmer~~ *A. Every handler shall deduct from payments for corn made to the a farmer producer for corn the amount of the assessment levied thereon, and shall remit such assessment to the Virginia Tax Commissioner in the manner and at the time hereinafter provided pursuant to this chapter.*

~~"Handler" also means any person, public or private corporation, the Federal Commodity Credit Corporation, or any association or partnership buying, accepting for shipment, or otherwise acquiring property in corn from a producer, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the producer, when the actual or constructive possession of such corn is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim. A farmer that transports and sells his corn out of the Commonwealth is considered the handler.~~ *B. A report to the Virginia Tax Commissioner shall be on forms prescribed and furnished by the Virginia Tax Commissioner, and shall be a statement of the gross volume of corn which has been handled by the handler and shall be filed with the Virginia Tax Commissioner covering corn handled during the preceding period, as set forth by the Virginia Tax Commissioner. The Virginia Tax Commissioner shall set forth the filing date or dates for reports and assessments and the period or periods to be covered after consultation with the Virginia Grain Producers Association and Corn Board. The assessment levied on corn shall be due and payable by the handler on the same day as the report is due. Such *The assessment shall be paid to the Virginia Tax Commissioner and be promptly paid into the state treasury to the credit of the Virginia Corn Fund.**

*C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.*

**Drafting Note: "Farmer" is changed to "producer" to reflect current practice. Definitions of "handler" are moved to proposed § 3.2-1400, Definitions. Subsection C is added to provide a cross-reference to proposed § 3.2-1102, Collection of delinquent assessments; civil action, in the general provisions chapter.**

~~§ 3.1-1046. Interest on assessment; collection of delinquent assessment.~~

~~The assessment imposed under the provisions of this chapter and unpaid on the date on which such assessment was due and payable shall bear interest at the rate of one per centum per month from and after such due date until paid. If any person defaults in any payment of the assessment or interest thereon, the amount shall be collected by a civil action in the name of the Commonwealth and the person adjudged in default shall pay the costs of such action. The Attorney General at the request of the Virginia State Tax Commissioner shall institute such action in the proper court for the collection of the amount of any assessment past due under this chapter including interest thereon.~~

**Drafting Note: Deleted section. A cross-reference to the general provision in proposed § 3.2-1102, Collection of delinquent assessments; civil action, is added to proposed § 3.2-1412, Collection and disposition of assessment by handler; reports.**

~~§ 3.1-1045 3.2-1413. Records to be kept by handlers.~~

~~The Every handler shall keep a complete record of the corn which has been handled by him, and shall preserve such records for a period of not less than two~~ *three years from the time such the corn was handled. Such records shall be open to the inspection of the Virginia State Tax Commissioner and his duly authorized agents, and shall be established and maintained as required by the Virginia State Tax Commissioner.*

**Drafting Note: Changed the amount of time a handler must keep records from two years to three years for consistency among the commodity boards.**

~~§ 3.1-1049 3.2-1414. Violation a misdemeanor~~ *Falsification of records; misdemeanor.*

It ~~shall be~~ is a Class 1 misdemeanor ~~for~~:

1. ~~For any handler knowingly to report falsely to the Virginia State Tax Commissioner the quantity of corn handled by him during any period or.~~
2. ~~For any handler to falsify the records of the corn handled by him, or.~~
3. ~~For any handler to preserve such record~~ the records of the corn handled by him for a period of not less than ~~two~~ three years from the time such corn was handled.

**Drafting Note: Technical changes.**

## CHAPTER 44-15.

### VIRGINIA COTTON BOARD.

**Chapter Drafting Note: Changes to the organization of the chapter bring consistency to the administration of all commodity boards. A number of sections have been deleted as obsolete. Existing § 3.1-1082 has been deleted as a policy statement. Sections related to the original referendum have been deleted since the Cotton Board has already been established. A citation to the original Acts of Assembly is included as a reference. Special fund language has been added to proposed § 3.2-1511, Virginia Cotton Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Existing § 3.1-1084, Regulations governing ballots, conduct of referenda, canvassing, etc., has been deleted and replaced by a title-wide provision in proposed § 3.2-112, Regulations governing the conduct of referenda. Similarly, existing § 3.1-1102 has been deleted and replaced by a title-wide provision in proposed § 3.2-1102, Collections of delinquent assessments; civil action. The duration of time a handler must retain records has increased from two to three years for consistency among commodity boards.**

~~§ 3.1-1084~~ 3.2-1500. Definitions.

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

~~"Agriculture Board" means the Virginia Board of Agriculture and Consumer Services.~~

"Assessment" means moneys to be collected as authorized by this chapter.

"Bale" means a closely pressed package of *ginned* cotton ~~which has been ginned and that~~ weighs approximately 480 pounds.

~~"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.~~

"Cotton" means the field crop of the genus *Gossypium* grown to be further processed into consumable goods.

~~"Cotton Board" means the Virginia Cotton Board.~~

"Farming unit" means any sole proprietorship, corporation, or partnership and includes land owned and leased by any such business entity.

~~"Fiscal year" means July 1 through the following June 30.~~

"Gin" means to remove seed and foreign matter from cotton and make it into a bale.

"Handler" means a commercial enterprise ~~which~~ that gins cotton.

~~"Locality" means county, city, or town.~~

"Producer" means any ~~farmer~~ person who grows, harvests, and sells cotton in Virginia.

**Drafting Note: The definitions of "Agriculture Board" and "Commissioner" are deleted as unnecessary because they appear in the title-wide definitions in proposed § 3.2-100, Definitions. The definition of "locality" has been deleted since it appears as a Code-wide definition in § 1-221. Fiscal year is deleted because it is previously defined in § 2.2-805. In the definition of "producer," "farmer" is changed to "person" to capture all of the legal**



entities included within the definition of "person" in § 1-230 and because "farmer" is not defined.

~~§ 3.1-1082. Declaration of public interest.~~

~~Subject to the provisions of § 3.1-1090, the General Assembly hereby declares it to be in the public interest that producers be permitted to express in a referendum whether an assessment should be levied upon cotton, with revenues therefrom to be used in encouraging an expanded program of research concerning, education on, and promotion of the growth and use of cotton.~~

**Drafting Note: Deleted section. Policy statements are no longer set out in the Code.**

~~§ 3.1-1083. Petition for referendum on question of levying an assessment; action of Agriculture Board thereon.~~

~~The Agriculture Board, upon a petition being filed with it by the Virginia Cotton Growers Association, Inc., or the Virginia Farm Bureau Federation, requesting a referendum and, upon finding that sufficient interest exists among producers in this Commonwealth to justify a referendum, shall authorize a referendum as set forth in this chapter. The Commissioner, or his designated agents, shall thereupon be fully empowered and directed to conduct a referendum on the question of whether or not the producers in this Commonwealth are of the opinion that such additional research concerning, education on, and promotion of the growth and use of cotton is required.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1-1093 3.2-1501. Cotton Board; Composition composition and appointment of members; quorum.~~

~~If the Governor issues a proclamation under § 3.1-1088 and the *The Cotton Board, established by the passage of a referendum held pursuant to Chapter 873 of the 1997 Acts of Assembly, is established, the continued within the Department. The Cotton Board shall be composed of eight members appointed by the Governor, each of whom shall be a resident of Virginia and a producer in Virginia. The Governor shall be guided in his appointments from nominations made by the following agricultural organizations: (i) the Virginia Cotton Growers Association, Inc.;*~~ (ii) the Virginia Farm Bureau Federation; and (iii) any other organization within the Commonwealth that is recognized by the ~~United States~~U.S. Department of Agriculture as a certified cotton grower organization representing Virginia producers pursuant to guidelines authorized by the Cotton Research and Promotion Act (7 U.S.C. §§ 2101-2118). Each such agricultural organization may nominate producers from each production area. The Governor shall appoint a producer residing in each such production area. If no producer resides in a particular production area, the Governor shall appoint a qualified producer from any other production area. Five members of the Cotton Board shall constitute a quorum.

**Drafting Note: The first sentence is added to continue the Cotton Board and to reference its means of origin. A reference to the Acts of Assembly is added to provide the option to locate the original language for the referendum that created the Cotton Board. The original referendum language establishing the initial referendum that created the Cotton Board is deleted as obsolete throughout this chapter.**

~~§ 3.1-1094 3.2-1502. Terms Cotton Board membership terms.~~

~~The Governor shall make the following initial appointments to the Cotton Board: three producers for three year terms; two producers for two year terms; and two producers for one-year terms. The Governor shall appoint a producer residing in Production Area VIII no later than September, 25, 1999, for a term which will expire September 25, 2002. Thereafter *The terms for appointments to the Cotton Board shall be for three-year terms three years.* The Governor shall fill any vacancy occurring before the expiration of any term through appointment of a qualified producer for the unexpired term. If possible, such vacancies shall be filled from the production area from which the vacancy occurred. No person may serve more than two consecutive three-year terms.~~

**Drafting Note: Deleted obsolete language providing for the staggering of initial appointments to the Board.**

~~§ 3.1-1095 3.2-1503. Officers; Cotton Board officers and compensation; powers and duties.~~

~~A. The Cotton Board shall elect a chairman, vice chairman, and such other officers as the Cotton Board deems necessary.~~

~~The Cotton Board shall have charge of the Virginia Cotton Fund established in the Virginia state treasury and such other officers as deemed appropriate.~~

~~B. Members of the Cotton Board shall be reimbursed for all actual expenses incurred in the attendance of meetings of the Cotton Board and any other Cotton Board-related activities as authorized by the Cotton Board.~~

**Drafting Note: Deleted language is moved to subsection A of proposed § 3.2-1504, Powers and duties of Cotton Board.**

~~§ 3.2-1504. Powers and duties of Cotton Board.~~

~~A. The Cotton Board shall have charge of the Virginia Cotton Fund established in the Virginia state treasury.~~

~~B. The Cotton Board may expend funds and enter into contracts in order to effectuate the purposes of this chapter.~~

~~C. The Cotton Board may cooperate with other state, regional, national, and international organizations in research concerning, education on, and promotion of cotton and may expend moneys from the Virginia Cotton Fund for such purpose.~~

**Drafting Note: New section. Proposed subsection A is from existing § 3.1-1095; proposed subsection B is from existing § 3.1-1096; and proposed subsection C is from existing § 3.1-1097.**

~~§ 3.1-1096. Expenditures and contracts.~~

~~The Cotton Board may expend funds and enter into contracts in order to effectuate the purposes of this chapter.~~

**Drafting Note: Deleted section and moved to subsection B of proposed § 3.2-1504, Powers and duties of Cotton Board.**

~~§ 3.1-1097. Cooperation with other organizations.~~

~~The Cotton Board may cooperate with other state, regional, national, and international organizations in research concerning, education on, and promotion of cotton and may expend moneys from the Virginia Cotton Fund for such purpose.~~

**Drafting Note: Deleted section and moved to subsection C of proposed § 3.2-1504, Powers and duties of Cotton Board.**

~~§ 3.1-1089 3.2-1505. Subsequent referendaReferenda.~~

~~If the Governor issues a proclamation pursuant to § 3.1-1088 and the Cotton Board is established, then no other referendum shall be held except that the Agriculture-The Board, upon petition by at least 10 percent of the producers in the Commonwealth as determined by the Commissioner, shall provide for either a referendum on the continuation of the Cotton Board and the assessment on cotton by a maximum of \$0.15 per bale. Any referendum held under this section shall be conducted in accordance with §§ 3.1-1084 through 3.1-1087 this chapter. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.~~

**Drafting Note: Added new language that vests authority in the Commissioner to determine the number of cotton producers in Virginia. The last sentence provides a cross-reference to proposed § 3.2-112, Regulations governing the conduct of referenda, since existing § 3.1-1084 is deleted.**

~~§ 3.1-1084. Rules governing ballots, conduct of referendum, canvassing, etc.~~

~~The Agriculture Board shall adopt rules governing the ballots to be used, the conduct of the referendum, canvassing the results thereof, and declaring the results of any referendum~~

~~provided for in this chapter. The Agriculture Board shall fix the date, hours, and voting places with respect to the holding of the referendum and may provide for voting by mail. No requirement of this section shall be governed by Article 2 (§ 2.2 4006 et seq.) of the Administrative Process Act.~~

**Drafting Note: Deleted and moved to proposed § 3.2-112, Regulations governing the conduct of referenda. The new section is cross-referenced above in proposed § 3.2-1505, Referenda.**

~~§ 3.1-1085~~ 3.2-1506. Management of ~~referendum~~referenda; Commissioner's duties; notice.

A. The Commissioner shall, under the ~~rules~~regulations adopted by the ~~Agriculture~~Board pursuant to ~~§ 3.1-1084~~ 3.2-112, arrange for the use of any polling places, if necessary.

B. The Commissioner shall, at least ~~sixty~~ 60 days before the date on which a referendum is to be held, mail notice to the clerk of the circuit court in each locality where cotton is produced. The clerk of the court shall post the notice on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall, at least ~~sixty~~ 60 days prior to the holding of any referendum under this chapter, publish notice of the referendum in a newspaper of daily general circulation in Richmond, Virginia, and send a notice of the referendum to a newspaper of general circulation in each locality ~~in which~~ where cotton is produced.

~~Such~~The notice shall contain the date, hours, voting places, and method of voting in the referendum; the amount of assessment to be collected, the means by which the assessment will be collected, and the general purposes for ~~which~~how the assessment will be used; and the ~~rules~~ regulations adopted by the ~~Agriculture~~Board pursuant to ~~§ 3.1-1084~~ 3.2-112.

C. *The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots, certificates, and supplies required for the referendum.*

D. *The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and shall notify, by mail, each member of the Board of the results.*

**Drafting Note: Proposed subsections C and D are moved from existing § 3.1-1087.**

~~§ 3.1-1094~~ 3.2-1507. Questions to be printed on ballots.

A. The question to be printed on the ballots used in a referendum authorized in ~~§ 3.1-1089~~ 3.2-1505 on the continuation of the Cotton Board shall be:

Do you favor the continuation of the ~~Virginia~~Cotton Board for the purpose of research ~~concerning~~, education~~on~~, and promotion of the growth and use of cotton?

B. The question to be printed on the ballots used in a referendum authorized in ~~§ 3.1-1089~~3.2-1505 on allowing the Cotton Board to increase the assessment on cotton by a maximum of \$0.15 per bale of cotton shall be:

Do you favor authorizing the Cotton Board to increase the assessment on cotton by a maximum of \$0.15 per bale of cotton ginned in the Commonwealth to support research, education, and promotion of the growth and use of cotton?

**Drafting Note: Technical changes.**

~~§ 3.1-1086~~ 3.2-1508. Persons eligible to vote.

Any person in the Commonwealth who produced at least one bale of cotton in the Commonwealth in the fiscal year preceding any referendum held pursuant to this chapter shall be eligible to vote in such referendum, provided that he so certifies on forms prepared by the Commissioner. Completed certification forms shall include the following information: (i) the full name, address, and, if applicable, title of producer if a partner or corporate officer; (ii) the name and locality of each handler of that producer's cotton in the fiscal year preceding the referendum; and (iii) any other information deemed necessary by the Commissioner to carry out the Commissioner's duties under this section. Any person who meets the requirements of this section

shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in other respects. ~~Natural persons, partnerships, or corporations~~ *Such person* may vote provided that ~~such person is~~ *they are* a resident of the Commonwealth or qualified to do business in the Commonwealth. ~~The vote of a partnership shall be cast by one of the general partners. A corporation shall vote by its president, general manager, or such other person as may be authorized by the corporation to vote. Any person who is not an individual shall vote by its authorized representative.~~ Only one person per farming unit shall be eligible to vote in any referendum.

**Drafting Note: The deleted language is replaced with new language that captures all business entities, including partnerships and corporations.**

~~§ 3.1-1087. Distribution of ballots, etc.; canvass and declaration of results.~~

~~The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots, certificates, and supplies required for the referendum. The Commissioner shall, within ten days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and shall notify, by mail, each member of the Agriculture Board of the results.~~

**Drafting Note: Deleted and moved to subsections C and D of proposed § 3.2-1506, Management of referenda, Commissioner's duties; notice.**

~~§ 3.1-1088. Referendum results; action of Governor.~~

~~If the Governor finds the referendum in order, that at least fifty percent of those who have met the requirements of § 3.1-1086 have voted and that a majority of those voting are in favor of the assessment for the purpose of conducting programs in research concerning, education on, and promotion of the growth and use of cotton, the Governor shall so proclaim. Upon such proclamation by the Governor, the Virginia Cotton Board, within the Virginia Department of Agriculture and Consumer Services, shall be established. The Governor shall appoint members to the Cotton Board in accordance with § 3.1-1093 within 180 days after the proclamation. If the Governor finds that one half or more of those voting are in opposition to the assessment for the purpose of conducting programs in research concerning, education on, and promotion of the growth and use of cotton, then the Governor shall not so proclaim and the Cotton Board shall not be established.~~

**Drafting Note: Deleted section. The Cotton Board has already been established.**

~~§ 3.1-10903.2-1509. Subsequent referendum~~ *Referenda* results; action of Governor.

~~If the Governor finds any separate referendum held pursuant to § 3.1-1089~~ *this chapter* in order, that at least 50 percent of those who have met the requirements of § 3.1-10863.2-1508 have voted, and that a majority of those voting are in opposition to the continuation of the Cotton Board or in opposition to allowing the Cotton Board to increase the assessment on cotton, then the Governor shall so proclaim and upon such proclamation either the Cotton Board will be discontinued or the assessment on cotton will not be increased. If the Governor finds that one-half or more of those voting are in favor of the continuation of the Cotton Board or are in favor of allowing the Cotton Board to increase the assessment on cotton, then the Governor shall so proclaim, and either the Cotton Board shall continue or the Cotton Board shall be authorized to increase the assessment on cotton by a maximum of \$0.15 per bale. The cost of conducting a referendum under this section shall be from funds paid into the Virginia Cotton Fund as established in § 3.1-11013.2-1511.

**Drafting Note: Technical changes.**

~~§ 3.1-1092 3.2-1510. Production areas designated; addition of localities.~~

The following production areas are ~~hereby~~ designated for the purposes of this chapter:

Area I: The Cities of Chesapeake, Virginia Beach and Suffolk;

Area II: Isle of Wight County;

Area III: Charles City, Henrico, New Kent, Essex, King and Queen, King William, Lancaster, and Northumberland Counties;

Area IV: Surry and Prince George Counties;

Area V: Southampton County;

Area VI: Dinwiddie, Sussex, and Amelia Counties;

Area VII: Brunswick, Greenville, and Campbell Counties; and

Area VIII: Accomack and Northampton Counties.

~~In any case in which~~ *If* the production of cotton occurs in any locality that is not part of a production area as designated in this section, such locality shall be part of the nearest adjacent production area. If there are two or more nearest adjacent production areas, such locality shall be part of that production area ~~which~~ *that* had the lowest cotton production in the most recent calendar year according to the records of the ~~Virginia Department of Agriculture and Consumer Services.~~

**Drafting Note: Technical changes.**

§ ~~3.1-1104~~ 3.2-1511. Virginia Cotton Fund ~~created; purpose; revenue producing activities of Cotton Board~~ *established.*

~~A. The Cotton Board shall establish, administer, manage and make expenditures from a special, nonreverting fund~~ *There is hereby created* in the state treasury a *special nonreverting fund* to be known as the Virginia Cotton Fund, *hereafter referred to as "the Fund."* ~~The Cotton Board shall establish and administer the Fund~~ *The Fund shall be established on the books of the Comptroller. All assessments paid pursuant to § 3.2-1512 shall be paid into the state treasury and credited to the Fund.*

*The Cotton Board, to help defray the costs of Cotton Board programs, may sell printed materials, rent exhibit space at meetings, and engage in any revenue-producing activity related to research, education, and promotion of the growth and use of cotton. The Cotton Board shall promptly pay the proceeds of any such revenue-producing activities into the Fund.*

*Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of carrying out the provisions of this chapter. ~~No provision of this chapter shall be construed to give the Cotton Board the authority to expend funds for legislative or political activity.~~ The Fund shall consist of assessments paid pursuant to § 3.1-1098. The unexpended balance of the Fund at the end of the biennium shall not revert to the general fund of the state treasury, but shall remain in the Fund. Expenditures and disbursements from the Fund shall be made by the Cotton Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Cotton Board.*

~~B. The Auditor of Public Accounts shall audit all the accounts of the Cotton Board as provided in § 30-133.~~

~~C. All money collected under this chapter shall be expended by the Cotton Board by warrants of the State Comptroller on vouchers signed by a duly authorized officer of the Cotton Board.~~

~~D. The Cotton Board, to help defray the costs of Cotton Board programs, may sell printed materials, rent exhibit space at meetings, and engage in any revenue-producing activity related to research concerning, education on, and promotion of the growth and use of cotton. The Cotton Board shall promptly pay the proceeds of any such revenue-producing activities into the Virginia Cotton Fund.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Language is deleted in existing subsection A prohibiting the**

**Cotton Board from expending funds for legislative or political activity. This language is moved to subsection B in proposed § 3.2-1100, Diversion of dedicated revenues, to apply to all of the commodity boards. Subsection D is moved to the second paragraph for better flow.**

~~§ 3.1-1098 3.2-1512. Handler to collect assessment for cotton ginned; collection~~  
*Collection and disposition of assessment by handler; reports.*

A. Every handler shall collect *an assessment of 85 cents per bale* from the owner of all cotton that the handler gins for any owner ~~an assessment of eighty five cents per bale~~ and shall remit such assessment to the Tax Commissioner on or before the last day of the month following the end of each calendar quarter. Such assessment shall be in addition to any moneys collected by the handler as authorized by the Cotton Research and Promotion Act (7 U.S.C. §§ 2101-2118). The Tax Commissioner shall promptly pay the assessments into the ~~Virginia~~ state treasury to the credit of the Virginia Cotton Fund.

B. Every handler shall complete reports on forms furnished by the Tax Commissioner, submit such reports to the Tax Commissioner along with the assessments submitted pursuant to subsection A, and keep copies of the reports for a period of not less than ~~two~~ *three* years from the time the report was produced. Each report shall consist of information for the calendar quarter preceding the month such report is due and shall include the following: (i) the number of bales that the handler has ginned; (ii) the dollar amount of assessments collected by the handler; (iii) a list of those from whom an assessment has been collected for cotton ginned by the handler; (iv) the dollar amounts of all assessments collected from each owner of cotton ginned by the handler; and (v) any other information deemed necessary by the Tax Commissioner to carry out his duties under this chapter. Notwithstanding the provisions of § 58.1-3, upon request, the Tax Commissioner shall provide to the Cotton Board or the Commissioner copies of reports submitted pursuant to this section.

*C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.*

**Drafting Note: Changed the amount of time a handler must keep records from two years to three years for consistency among the commodity boards. Proposed subsection C provides a cross-reference to proposed § 3.2-1102, Collection of delinquent assessments; civil action, because existing § 3.1-1102 is deleted below. Similar language appeared under each commodity board, so the language was moved to the general provisions section, and a cross-reference was added to each commodity board.**

~~§ 3.1-1102. Collection of delinquent assessments; prosecutions.~~

~~If any handler fails to pay assessment money pursuant to § 3.1-1098 when due, the Tax Commissioner shall immediately notify the handler of such deficiency and shall add thereto a penalty of five percent of the amount due. If such deficiency is not paid within thirty days after the date of such notice, the amount of the deficiency shall bear interest, in accordance with § 58.1-15, from the date the amount was due, and the Tax Commissioner shall collect any interest as part of the delinquent amount. If any handler is delinquent in any payment of the money due or interest thereon, the amount shall be collected by civil action in the name of the Commonwealth at the direction of the Tax Commissioner, and any handler adjudged to be in default shall pay the cost of such action. The Attorney General, at the request of the Tax Commissioner, shall without delay institute action in a court of competent jurisdiction for the collection of any money due under this chapter, including interest thereon.~~

**Drafting Note: Deleted section. A cross-reference to the proposed general provision in proposed § 3.2-1102, Collection of delinquent assessments; civil action, is added to proposed § 3.2-1512, Collection and disposition of assessment by handler; reports.**

~~§ 3.1-1099 3.2-1513. Records to be kept by handler.~~

Every handler shall maintain the following records for all cotton ginned by the handler for the owner of the cotton:

1. Full name and address of the owner of the cotton;
2. Date the cotton was ginned by the handler for such owner;
3. Number of bales ginned; and
4. Dollar amount of assessment collected by the handler from the owner.

The handler shall maintain such records for a period of not less than ~~two~~-three years from the time the cotton was ginned. Such records shall be open to the inspection of the Tax Commissioner ~~and his duly authorized agents~~, and shall be established and maintained as required by the Tax Commissioner.

**Drafting Note: Changed the amount of time a handler must keep records from two years to three years for consistency among the commodity boards. The Tax Commissioner, like the Commissioner of Agriculture and Consumer Services, has the authority to employ agents under § 2.2-602, Duties of agencies and their appointing authorities.**

~~§ 3.1-1100. Assessment for initial referendum; expiration.~~

~~A. Beginning July 1, 1997, until sufficient moneys are collected to pay the cost of conducting the initial referendum, a fee of eighty five cents per bale is hereby assessed on any cotton sold within the Commonwealth. The Tax Commissioner shall collect the assessment and shall pay any proceeds to the Department of Agriculture and Consumer Services for the purpose of conducting an initial referendum on the question of establishing a Cotton Board. No initial referendum may be held until sufficient funds to pay the cost of such referendum are collected.~~

~~B. If the initial referendum fails, any assessments collected in excess of the amount necessary to conduct such referendum shall be paid to the Tidewater Agricultural Research and Extension Center, Suffolk, Virginia, for use in cotton research or cotton related educational activities. If the referendum is approved, such assessments shall be collected and administered in accordance with this chapter.~~

~~C. The provisions of this section shall expire on the date the Governor proclaims that the referendum has been approved.~~

**Drafting Note: Deleted section. The referendum was approved and, in accordance with subsection C, this section expired on the date the Governor proclaimed the referendum was approved.**

~~§ 3.1-1103 3.2-1514. Misdemeanors; prosecution *Falsification of records; misdemeanor.*~~

~~It shall be a Class 1 misdemeanor:~~

~~1. For any handler to fail to submit to the Tax Commissioner any report required pursuant to § 3.1-1098 3.2-1512 within sixty-60 days after the time such report is required to be submitted.~~

~~2. For any handler knowingly to report falsely to the Tax Commissioner any information required pursuant to § 3.1-1098 3.2-1512.~~

~~3. For any producer knowingly to report falsely to the Commissioner any information required pursuant to § 3.1-1086 3.2-1508.~~

~~Prosecution shall be initiated by the attorney for the Commonwealth in any city or county within the Commonwealth.~~

**Drafting Note: The last sentence is deleted as unnecessary.**

## CHAPTER ~~27~~ 16.

### Article 10

#### VIRGINIA EGG BOARD.

**Chapter Drafting Note: The term “huckster” is deleted as obsolete. Special fund language has been added to proposed § 3.2-1605, Virginia Egg Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Existing § 3.1-796.11:7 has been deleted and replaced by a title-**

**wide provision in proposed § 3.2-1102, Collections of delinquent assessments; civil action. The duration of time a handler must retain records has increased from two to three years for consistency among commodity boards.**

~~§ 3.1-796.11:1. Legislative findings; purpose of article.~~

~~The General Assembly finds and declares that eggs are important to the prosperity of this State and are a major source of income to a large segment of the State's population. Additional research, education, publicity, advertising and other means of promoting the sale and use of eggs are required to enhance the economical production or the marketing of eggs and will be beneficial to the State as a whole. This legislation is adopted in furtherance of these purposes.~~

**Drafting Note: Deleted section. This section is deleted as a policy statement. It is currently not set out in the Code.**

~~§ 3.2-1600. Definitions.~~

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

~~"Eggs for consumption" means eggs that are actually consumed in Virginia or sold at a location in Virginia.~~

~~"Eggs for use" means eggs that are incorporated into another product at a Virginia location so as to lose their character as eggs.~~

~~"Handler" means any person who operates a grading station, a packer, distributor, or other person who purchases, sells, or handles eggs that are used at the wholesale level for consumption in Virginia or, a farmer who packs, processes, or otherwise performs the functions of a handler. The term shall also mean any person in Virginia who purchases eggs, or the liquid equivalent thereof, from anyone other than a registered handler for use or consumption at wholesale in the Commonwealth. The functions of a handler include the sale, distribution, or other disposition of eggs at the wholesale level for use or consumption in Virginia regardless of where the eggs were produced or purchased.~~

~~"Registered handler" means any person who has registered with the Tax Commissioner to receive monthly return forms and report the egg tax.~~

**Drafting Note: New section. Definitions are moved from existing § 3.1-796.11:4. The phrase "consumed eggs" is changed to "eggs for consumption" to reflect use of the phrase in the chapter. The term "huckster," which had been included in the definition of "handler," is deleted as antiquated.**

~~§ 3.1-796.11:2 3.2-1601. Virginia Egg Commission continued as Virginia Egg Board; composition and; appointment and terms of members; vacancies; officers; compensation; powers and duties.~~

~~The Virginia Egg Commission within the Virginia Department of Agriculture and Consumer Services Board is continued and shall hereafter be known as the Virginia Egg Board within the Department. The Egg Board shall be composed of seven members appointed by the Governor and confirmed in accordance with § 2.2-107 from nominations submitted to him by the Virginia Egg Council. The terms of the members shall run concurrently with the term of the Governor making the appointment. Vacancies occurring before the expiration of the term shall be filled for the unexpired term. The Egg Board shall elect a chairman, a vice chairman and such other officers as may be required. The Egg Board shall have charge of the management and expenditures of the Virginia Egg Fund established in the state treasury. The Egg Board may establish an executive committee and charge it with such powers, duties and functions as the Egg Board deems proper.~~

~~The members of the Egg Board shall be paid a per diem of ten dollars while transacting official business for the Egg Board and shall be entitled to be reimbursed for expenses incurred in connection with their attendance at regular or special meetings of the Egg Board.~~

~~The Egg Board shall have power to expend funds to provide for programs of research, education, publicity, advertising and other promotion of eggs, which are the subject of the tax~~



~~levy in accordance with the provisions of this article; to manage the fund so as to accumulate a reserve for contingencies; to establish an office and employ such technical, professional, and other assistants as may be required; to contract for research, publicity, advertising and other promotional services; and to take all such measures as will assist in strengthening and promoting the best interest of farmers producing eggs on which the tax has been levied in accordance with the provisions of this article.~~

~~The chairman of the Egg Board shall make a report at each annual meeting of the Egg Board and furnish the members of the Egg Board with a statement of the total receipts and disbursements for the year. He shall file a copy of such report with the Commissioner and shall make copies of such report available for publication.~~

~~The Auditor of Public Accounts shall audit the accounts of the Egg Board as provided for in § 30-133.~~

**Drafting Note: Deleted paragraphs are moved to proposed § 3.2-1602, Egg Board membership terms, proposed § 3.2-1603, Egg Board officers and compensation, and proposed § 3.2-1604, Powers and duties of Egg Board.**

*§ 3.2-1602. Egg Board membership terms.*

*The terms of the members of the Egg Board shall run concurrently with the term of the Governor making the appointments. Vacancies occurring before the expiration of the term shall be filled for the unexpired term.*

**Drafting Note: New section. Language is moved from existing § 3.1-796.11:2.**

*§ 3.2-1603. Egg Board officers and compensation.*

*A. The Egg Board shall elect a chairman and such other officers as deemed appropriate.*

*B. The members of the Egg Board shall be paid a per diem of \$10 while transacting official business for the Egg Board and shall be entitled to be reimbursed for expenses incurred in connection with their attendance at regular or special meetings of the Egg Board.*

**Drafting Note: New section. Language is moved from existing § 3.1-796.11:2.**

*§ 3.2-1604. Powers and duties of Egg Board.*

*A. The Egg Board shall have charge of the management and expenditures of the Virginia Egg Fund established in the state treasury.*

*B. The Egg Board may expend funds to provide for programs of research, education, publicity, advertising, and other promotion of eggs that are the subject of the tax levy; manage the Virginia Egg Fund so as to accumulate a reserve for contingencies; establish an office and employ such technical, professional, and other assistants as may be required; contract for research, publicity, advertising, and other promotional services; and take measures to strengthen and promote the best interest of farmers producing eggs on which the tax has been levied in accordance with the provisions of this chapter.*

*C. The Egg Board may establish an executive committee and charge it with such powers, duties, and functions as the Egg Board deems proper.*

*D. The chairman of the Egg Board shall make a report at each annual meeting of the Egg Board and furnish the members of the Egg Board with a statement of the total receipts and disbursements for the year. He shall file a copy of the report with the Commissioner and make copies of the report available for publication.*

*E. The Auditor of Public Accounts shall audit the accounts of the Egg Board as provided for in § 30-133.*

**Drafting Note: New section. Language is moved from existing § 3.1-796.11:2.**

~~§ 3.1-796.11:8 3.2-1605. Virginia Egg Fund; Board may cooperate with other agencies established.~~

*There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Egg Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under the provisions of this article*

~~chapter shall be credited on the Comptroller's books to a fund to be known as the "Virginia Egg Fund." All moneys credited to the Virginia Egg Fund are hereby appropriated for the purposes set forth in this article and shall be used paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used exclusively for the purposes set out in this article chapter.~~

~~In carrying out the purposes of this article, the Egg Board shall have the authority to may cooperate with other state, regional, and national agricultural organizations in research, education, publicity, advertising, and other promotional activities.~~

~~Expenditures and disbursements from the Fund shall be made by the Egg Board on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the Egg Board.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language and incorporates language from existing § 3.1-796.11:9. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-796.11:9. Expenditures.~~

~~All moneys collected under this article shall be expended by the Virginia Egg Board by warrants of the Comptroller on the state treasury issued on vouchers signed by the duly authorized officer of the Board.~~

~~The unexpended balance of the Virginia Egg Fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

**Drafting Note: Deleted section. Language is incorporated into the special fund language in § 3.2-1605, Virginia Egg Fund; established.**

~~§ 3.1-796.11:3 3.2-1606. Levy of tax; rules and regulations.~~

~~There is hereby levied on eggs purchased or sold for use or consumption in Virginia~~the Commonwealth~~ an excise tax of five cents per ~~thirty dozen~~ 30-dozen case or, if the eggs are purchased or sold in other than shell form, ~~eleven-11 cents per hundred-100~~ pounds of liquid eggs or liquid equivalent; ~~however, such~~. Such excise tax shall be levied only once. The Tax Commissioner, with the advice and consent of the Egg Board, may ~~promulgate rules and adopt~~ regulations as are necessary for the interpretation, administration, and enforcement of this tax.~~

**Drafting Note: Technical changes.**

~~§ 3.1-796.11:4 3.2-1607. Handler to remit tax to Tax Commissioner; report and payment of tax Collection and disposition of tax by handler; definition and functions of handler reports.~~

~~A. For the purpose of carrying out the provisions of this article, the Every handler shall collect the tax imposed by this article~~chapter~~ from the person who purchases eggs for use or consumption in Virginia~~the Commonwealth~~ and shall remit such~~the~~ tax or assessment to the Tax Commissioner in the manner and at the time hereinafter provided. Reports to ~~by the 20th day of each month.~~~~

~~B. Every handler shall complete reports on forms furnished by the Tax Commissioner and submit the reports to~~shall be on forms prescribed and furnished by the Tax Commissioner together with the tax submitted pursuant to subsection A. and Each report shall be include~~ a statement of the gross volume of taxed eggs on which the tax is levied which has that have been packed, processed, purchased, sold, or handled by the handler and shall be filed with the Commissioner by the twentieth day of each month. A copy of the completed form~~report~~ shall simultaneously be filed with the Virginia Egg Board. The Tax Commissioner may disclose to the duly authorized officer of the Egg Board tax information relating to the egg tax. The tax levied on eggs shall be due and payable by the handler on the same day that the report is due. Such tax shall be paid to the Tax Commissioner and after subtraction of the direct cost of the one time~~

~~cost to change the forms required by this article shall be promptly paid from the state treasury to the credit of the Virginia Egg Fund.~~

~~B. The term "handler" means any person who operates a grading station, a packer, huckster, distributor or other person who purchases, sells, or handles eggs that are used at the wholesale level for consumption in Virginia or a farmer who packs, processes or otherwise performs the functions of a handler. The term "handler" includes any person in Virginia who purchases eggs, or the liquid equivalent thereof, from anyone other than a "registered handler" for use or consumption at wholesale in Virginia.~~

~~For purposes of this article, the functions of a handler of eggs include the sale, distribution or other disposition of eggs at the wholesale level for use or consumption in Virginia regardless of where the eggs were produced or purchased.~~

~~The term "registered handler" means any person who has registered with the Tax Commissioner for receiving monthly return forms and reporting the egg promotion tax.~~

~~C. Every person, whether inside or outside this Commonwealth, who engages in business in the Commonwealth as a handler is required to *shall* register, and to collect, and pay the tax on all eggs sold or delivered to anyone other than a registered handler for storage, use, or consumption in ~~this~~ *the* Commonwealth. Such handlers shall maintain a certificate of registration, file returns, and perform all other duties required of handlers.~~

~~Eggs shall be deemed to be "used" in Virginia if, at a Virginia location, they are incorporated into another product so as to lose their character as eggs. Eggs shall be deemed to be "consumed" in Virginia if they are actually consumed in Virginia or sold at a location in Virginia.~~

~~D. Any tax that is not paid when due shall be collected pursuant to § 3.2-1102.~~

**Drafting Note: The last sentence of proposed subsection B is deleted as obsolete. The deleted definitions are moved to proposed § 3.2-1600, Definitions. Proposed subsection D provides a cross-reference to proposed § 3.2-1102, Collections of delinquent assessments; civil action.**

~~§ 3.1-796.11:5 3.2-1608. Exemptions.~~

~~The eggs of any producer selling less than 500 cases per year, or the liquid equivalent thereof, and sales of eggs between registered handlers *The following categories of eggs* shall be exempt from the tax levied by this article pursuant to this chapter:~~

- ~~1. The eggs of any producer selling less than 500 cases per year, or the liquid equivalent thereof.~~
- ~~2. Eggs when sold between registered handlers.~~

~~The Tax Commissioner shall provide a mechanism for returning taxes paid by exempt persons.~~

**Drafting Note: Technical changes.**

~~§ 3.1-796.11:7. Interest on tax; collection of delinquent tax.~~

~~The tax imposed under the provisions of this article and unpaid on the date on which the tax was due and payable shall bear interest at the rate determined in accordance with § 58.1-15 from and after such due date until paid. If any person defaults in any payment of the tax or interest thereon, the amount shall be assessed in accordance with § 58.1-1812 and collected in the same manner as state taxes under Subtitle I (§ 58.1-100 et seq.) of Title 58.1.~~

**Drafting Note: Deleted section. A cross-reference to the general provision in proposed § 3.2-1102, Collection of delinquent assessments; civil action, is added to proposed § 3.2-1607, Collection and disposition of tax by handler; reports. Similar language for collecting delinquent taxes appeared under each commodity board, so the language was moved to the general provisions section, and a cross-reference was added to each commodity board.**

~~§ 3.1-796.11:6 3.2-1609. Records to be kept by handlers.~~

~~The~~ Every handler shall keep a complete record of the eggs subject to the provisions of this article which have been *chapter that are* packed, processed, or handled by him and shall preserve such records for a period of not less than three years from the time ~~such~~ the eggs were packed, processed, or handled. Such records shall be open for inspection by the Tax Commissioner and his duly authorized agents and shall be established and maintained as required by the Tax Commissioner.

**Drafting Note: The Tax Commissioner, like the Commissioner of Agriculture and Consumer Services, has the authority to employ agents under § 2.2-602, Duties of agencies and their appointing authorities.**

§ ~~3.1-796.11:10~~ 3.2-1610. ~~Misdemeanors; —penalties~~ Falsification of records; *misdemeanor*.

It shall be a Class 1 misdemeanor for:

1. For any handler knowingly to report falsely to the ~~Virginia Department of Taxation~~ Tax Commissioner the quantity of shell or processed eggs handled by him during any period.

2. For any handler to falsify the records of the eggs processed, *packed*, or handled by him.

3. For any handler to fail to ~~keep~~ maintain a complete record of the eggs processed, *packed*, or handled by him, or to preserve such records for a period of not less than at least three years from the time such eggs are processed, *packed*, or handled.

**Drafting Note: Technical changes.**

## CHAPTER 4.817.

### HORSE INDUSTRY BOARD ACT.

**Chapter Drafting Note: This is a relatively new chapter, passed during the 2006 Session. Thus, the only non-technical changes are the deletion of existing §§ 3.1-22.53 and 3.1-22.59, which have been covered, respectively, in title-wide provisions found in §§ 3.2-100, Definitions, and 3.2-112, Regulations governing the conduct of referenda.**

#### Article 1.

#### Horse Industry Board.

§ ~~3.1-22.53~~ 3.2-1700. Definitions.

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

"Board" means the Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Department" means the Department of Agriculture and Consumer Services.

**Drafting Note: Deleted section. The definitions of "Board," "Commissioner," and "Department" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions.**

§ ~~3.1-22.54~~ 3.2-1700. Horse Industry Board; composition and appointment of members; quorum.

The Horse Industry Board, established by the passage of a referendum held pursuant to Chapters 790 and 805 of the 1993 Acts of Assembly, is continued within the Department. The Horse Industry Board shall consist of 12 members representing the horse industry, industry support services, education, and equine health. Four members shall be the presidents of the following industry organizations: the Virginia Horse Council, Inc., the Virginia Thoroughbred Association, the Virginia Horse Shows Association, and the Virginia Quarter Horse Association. Four members shall serve at large, to be appointed by the Governor from nominations made by the remaining statewide horse breed or use organizations. The Governor shall also appoint two members from recommendations submitted by the Virginia horse industry: one shall be a

representative of the horse industry support services or professional community (feed manufacturing or sales, pharmaceutical sales, horseshoeing, marketing, veterinary services, etc.) and the other shall be an individual commercially involved in the horse industry (manager, trainer, etc.).

The extension horse specialist from Virginia Polytechnic Institute and State University shall serve as a voting member of the Horse Industry Board. The Commissioner shall serve as a nonvoting member.

Seven members shall constitute a quorum for the transaction of business.

The presidents of the Virginia Horse Council, Inc., the Virginia Thoroughbred Association, the Virginia Horse Shows Association, and the Virginia Quarter Horse Association may each designate in writing a member of his organization as an alternate who may attend meetings in his place and be counted as a member of the Horse Industry Board for the purposes of a quorum and for voting.

**Drafting Note: No changes.**

§ ~~3-1-22-55~~3.2-1701. Horse Industry Board membership terms.

The terms for appointments to the Horse Industry Board shall be for three years, with no at-large member serving more than two consecutive terms.

**Drafting Note: No changes.**

§ ~~3-1-22-56~~3.2-1702. Horse Industry Board officers and compensation.

A. The Horse Industry Board shall elect from its membership a chairman, ~~a vice-chairman~~, and such other officers as it deems appropriate.

B. Members of the Horse Industry Board not representing agencies of the Commonwealth shall be reimbursed from the Virginia Horse Industry Promotion and Development Fund for all reasonable and necessary expenses incurred by them in the performance of their duties on behalf of the Horse Industry Board.

**Drafting Note: No changes.**

§ ~~3-1-22-57~~3.2-1703. Powers and duties of Horse Industry Board.

A. The Horse Industry Board shall be responsible for the promotion and economic development of the equine industry in the Commonwealth. To accomplish this function the Horse Industry Board is authorized to:

1. Produce economic reports;
2. Develop a horse industry directory;
3. Provide funding for educational programs;
4. Provide funding for research;
5. Engage in media liaison;
6. Collect and analyze data on the horse industry;
7. Disseminate industry-related data; and
8. Enter into contracts and agreements to accomplish the purposes of this chapter.

B. The chairman of the Horse Industry Board shall make an annual report to the Horse Industry Board including a statement of the total receipts and disbursements for the year and shall file a copy of such report with the Commissioner.

**Drafting Note: No changes.**

§ ~~3-1-22-58~~3.2-1704. Virginia Horse Industry Promotion and Development Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Horse Industry Promotion and Development Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All assessments collected pursuant to this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert or

be transferred to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of carrying out the provisions of this chapter.

B. The Auditor of Public Accounts shall audit all the accounts of the Horse Industry Board as provided in § 30-133.

C. Expenditures and disbursements from the Fund shall be made by the Horse Industry Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Horse Industry Board.

**Drafting Note: No changes.**

~~§ 3.1-22.59. Rules governing conduct of referendum.~~

~~The Board shall adopt rules governing the ballots to be used in any referendum, the conduct of the referendum, the canvassing of the results thereof, and the declaration of the results of any referendum provided for in this chapter. The Board shall fix the date, hours, and voting places with respect to the holding of any referendum provided for in this chapter and may provide for voting by mail.~~

**Drafting Note: Deleted section. The regulations governing conduct of referendum are stated in a general provision in Chapter 1 in proposed § 3.2-112, Regulations governing the conduct of referenda. References to existing § 3.1-22.59 in proposed §§ 3.2-1705, Management of referenda; Commissioner's duties; notice; 3.2-1708, Referenda; and 3.2-1713, Petition for referendum on question of assessment; action of Board and Commissioner; amount of assessment, have been replaced and will now refer to proposed § 3.2-112, Regulations governing the conduct of referenda.**

~~§ 3.1-22.603.2-1705. Management of referendumreferenda; Commissioner's duties; notice.~~

A. The Commissioner shall arrange for and manage any referendum conducted under this chapter.

B. The Commissioner shall, at least 60 days before the date upon which a referendum is to be held, mail notice to the clerk of the circuit court in each ~~county~~-locality where those eligible to vote in the referendum reside. The clerk of the circuit court shall post the notice and ~~rules and~~ regulations on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall give general notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and shall send a notice of the referendum to a newspaper of general circulation for each area where members of the horse industry reside, at least 60 days prior to the holding of any referendum under this chapter.

The notice shall contain: (i) the date, hours, polling place, and method of voting in such referendum; (ii) the amount of assessment to be collected, means by which such assessment shall be collected, and general purposes for which the assessments will be used; and (iii) the ~~rules~~ regulations adopted by the Board pursuant to ~~§ 3.1-22.593.2-112~~.

C. The Commissioner shall prepare and distribute in advance of such referendum all necessary ballots, certificates, and supplies required for such referendum and shall, under regulations adopted ~~and promulgated~~ by the Board, arrange for the use of polling places, if necessary.

D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.

**Drafting Note: Technical changes.**

~~§ 3.1-22.613.2-1706. Commissioner to maintain referenda results.~~

The Commissioner shall maintain records of the number of eligible persons who voted in any referendum authorized under this chapter.

**Drafting Note: No changes.**

Article 2.

Equine Infectious Anemia Test Fee.

§ ~~3.1-22.62~~3.2-1707. Fees to be assessed; State Veterinarian to collect.

A fee of \$1.50 shall be assessed on each equine infectious anemia test performed on samples collected in the Commonwealth. Such fees shall be collected by the State Veterinarian for deposit into the Virginia Horse Industry Promotion and Development Fund established by § ~~3.1-22.58~~3.2-1704.

**Drafting Note: Technical changes.**

§ ~~3.1-22.63~~3.2-1708. ~~Subsequent referendum~~Referenda.

The Board, upon petition by members of the horse industry representing at least 10 percent of the number of members of the horse industry who voted in the preceding referendum, or as determined by the Commissioner, may provide for a referendum on the continuation of the equine infectious anemia test assessment in accordance with the provisions of §§ ~~3.1-22.59~~3.2-112 and ~~3.1-22.60~~3.2-1705. The Board shall not act on such a petition for conducting such a referendum until at least five years have passed since the last referendum. If the Governor determines that a simple majority is not in favor of the assessment, the Board shall hold no new referendum for at least one year after the Governor has declared his findings. The cost of conducting any such referendum under this section shall be from the Virginia Horse Industry Promotion and Development Fund.

**Drafting Note: Technical changes.**

§ ~~3.1-22.64~~3.2-1709. Question to be printed on ballots.

The question to be printed on the ballots used in any referendum held under this article shall be as follows:

"Do you favor additional market development, education, publicity, research, and promotion of the Virginia horse industry and continuation of the levy of an assessment of \$1.50 on each equine infectious anemia test performed on samples collected in Virginia in accordance with the provisions of the Horse Industry Board law?

\_\_\_\_\_ Yes

\_\_\_\_\_ No."

**Drafting Note: No changes.**

§ ~~3.1-22.65~~3.2-1710. Persons eligible to vote.

Each member of the horse industry who has paid for the administering of the equine infectious anemia test during the previous fiscal year shall be eligible to vote in a ~~subsequent referendum~~referenda, provided that he certifies on forms approved by the Board that he has paid for such a test. Any person meeting such requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in other respects. Any person who is not an individual shall vote by its authorized representative.

**Drafting Note: No changes.**

§ ~~3.1-22.66~~3.2-1711. ~~Subsequent referendum~~Referenda results; action of Governor.

If the Governor finds any ~~subsequent referendum~~referenda in order, and that at least a simple majority of those voting are in opposition to the continuation of the equine infectious anemia test assessment, he shall so proclaim and upon such proclamation the assessment shall be discontinued. If the Governor finds that at least a simple majority of those voting are in favor of the continuation of the assessment, the Governor shall not so proclaim.

**Drafting Note: No changes.**

Article 3.

Equine Feed Assessment.

§ ~~3.1-22.67~~3.2-1712. Definitions.

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

"Manufactured equine feed" means a commercial feed as defined by § ~~3-1-828.2-3.2-4800~~ that is intended for consumption by horses or other equine.

"Manufacturer" means any person who manufactures equine feed and is licensed to conduct business in the Commonwealth under § ~~3-1-828.63.2-4803~~.

**Drafting Note: No changes.**

§ ~~3-1-22.683.2-1713~~. Petition for referendum on question of assessment; action of Board and Commissioner; amount of assessment.

The Board, upon a joint petition requesting a referendum being filed with it by at least three of the following: the Virginia Horse Council, Inc., the Virginia Thoroughbred Association, the Virginia Horse Shows Association, the Virginia Quarter Horse Association, the Virginia Farm Bureau Federation, or the Virginia Agribusiness Council, and upon finding that sufficient interest exists among the members of the equine owners in the Commonwealth to justify a referendum, shall authorize the holding of a referendum as set forth in this article.

The Commissioner shall thereupon be fully empowered and directed to hold and conduct a referendum, in accordance with the provisions of §§ ~~3-1-22.593.2-112~~ and ~~3-1-22.603.2-1705~~, on the question of whether or not equine owners in the Commonwealth are of the opinion that additional market development, education, publicity, research, and promotion of the equine industry are required. If approved in the referendum authorized by this section, an assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed shall be established. The cost of conducting a referendum under this section shall be paid from the Virginia Horse Industry Promotion and Development Fund.

**Drafting Note: No changes.**

§ ~~3-1-22.693.2-1714~~. Persons eligible to vote.

Any person who owns an equine in the Commonwealth shall be eligible to vote in a referendum held under this article if he executes and submits to the Commissioner an affidavit on forms and methods approved by the Board verifying Virginia residency, legal voting age, and at least one of the following to confirm equine ownership:

1. Current breed or discipline registration for an equine owned in the Commonwealth.
2. Receipt of a valid Virginia equine infectious anemia test within the last 12 months indicating an ownership interest in an equine.
3. A lease purchase agreement, contract, bill of sale, or other legal document showing current ownership or lease interest in an equine stabled or pastured in the Commonwealth.

Completed forms shall include the full name of the person submitting the form along with an associated farm name, if applicable, mailing address, and phone number. Any person who is not an individual shall vote by its authorized representative.

**Drafting Note: No changes.**

§ ~~3-1-22.703.2-1715~~. Question to be printed on ballots.

The question to be printed on the ballots used in the initial referendum held pursuant to § ~~3-1-22.683.2-1713~~, shall be as follows:

"Do you favor additional market development, education, publicity, research, and promotion of the Virginia equine industry and the levy of an assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed sold in the Commonwealth of Virginia in accordance with the provisions of the Horse Industry Board law?

\_\_\_\_\_ Yes  
\_\_\_\_\_ No."

**Drafting Note: No changes.**

§ ~~3-1-22.713.2-1716~~. Action of Governor if a simple majority of voters favors assessment.

If the Governor finds the referendum in order and that at least a simple majority of those voting are in favor of the assessment for the purpose of conducting additional programs in



market development, education, publicity, research, and promotion of the equine industry, he shall so proclaim and an assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed shall be established within 180 days of such proclamation and collected as set forth in this chapter.

**Drafting Note: No changes.**

§ ~~3-1-22.723.2-1717~~. Action of Governor if referendum found out of order or less than a simple majority of voters favors assessment.

If the Governor finds the referendum out of order, or that at least a simple majority of those voting are not in favor of the assessment for the purpose of conducting additional programs of market development, education, publicity, research, and promotion of the equine industry, he shall so proclaim and an assessment on manufactured equine feed shall not be established.

**Drafting Note: No changes.**

§ ~~3-1-22.733.2-1718~~. ~~Subsequent referenda~~Referenda.

If the Governor issues a proclamation under § ~~3-1-22.743.2-1716~~, then no other referendum shall be held on the equine industry that was the subject of the proclamation except that after the expiration of five years from the date of the imposition of the assessment on manufactured equine feed, another referendum may be held in the manner herein prescribed to determine whether the assessment shall be continued or adjusted. The Board, upon petition by members of the equine industry representing at least 10 percent of the number of members of the equine industry who voted in the preceding referendum, or as determined by the Commissioner, may provide for a referendum on the continuation or adjustment of the assessment. The Board shall not act on such a petition for conducting such a referendum until at least five years have passed from the time the manufactured equine feed assessment was established or until at least five years have passed since the last referendum.

If the Governor determines that a simple majority is not in favor of the assessment, the Board shall hold no new referendum for at least one year after the Governor has declared his findings, but, at the expiration of one year and upon petition by 10 percent of the members of the Commonwealth's equine industry that voted in the most recent referendum, the Board may provide for a referendum. The cost of conducting any referendum under this section may be paid from the Virginia Horse Industry Promotion and Development Fund.

**Drafting Note: No changes.**

§ ~~3-1-22.743.2-1719~~. Collection and disposition of assessment by manufacturer; report.

A. Every manufacturer shall collect an assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed he sells in the Commonwealth and on any manufactured equine feed he imports for sale in the Commonwealth and shall remit such assessment to the Department annually. The Department shall promptly pay the assessments into the state treasury to the credit of the Virginia Horse Industry Promotion and Development Fund.

B. Every manufacturer shall complete, on forms furnished by the Department, an annual report of the total tonnage of manufactured equine feed he sold and imported into the Commonwealth. Such reports shall be submitted to the Department along with the assessments submitted pursuant to subsection A. The reporting year for manufactured equine feed shall be January 1 through December 31.

C. All assessments collected under this section shall be paid to the Department by February 1 for the preceding calendar year.

**Drafting Note: No changes.**

§ ~~3-1-22.753.2-1720~~. Records to be kept by manufacturer.

Any manufacturer who is required to collect the equine feed assessment under this article shall maintain such records as may be necessary or required by the Commissioner to accurately indicate the tonnage of manufactured equine feed that he has sold or imported for sale in the Commonwealth. The manufacturer shall maintain such records for a period of not less than three

years from the time the manufactured equine feed was sold. Such records shall be open to the inspection of the Commissioner or his duly authorized agent.

**Drafting Note: Technical changes.**

~~§ 3.1-22.763.2-1721.~~ Collection of delinquent assessments; civil action.

Any manufacturer who is required to collect the equine feed assessment under this article and who has not paid the assessment to the Commissioner within 15 working days following the due date of February 1 shall pay to the Commissioner a late fee of 10 percent of the amount due or \$50, whichever is greater, in addition to the amount of assessment owed. The appraisal of this late fee shall not prevent the Commissioner from taking other action, as provided for in this chapter. If any person is delinquent in any payment of the money due, then the amount shall be collected by civil action in the name of the Commonwealth at the direction of the Commissioner, and any person adjudged to be in default shall pay the cost of such action. The Attorney General, at the request of the Commissioner, shall institute action in *any appropriate court of competent jurisdiction* for the collection of any money due, including interest thereon.

**Drafting Note: Technical changes.**

~~§ 3.1-22.773.2-1722.~~ Falsification of records; misdemeanor.

It shall be a Class 1 misdemeanor:

1. For any manufacturer to fail to submit to the Department any report required pursuant to ~~§ 3.1-22.743.2-1719~~ within 60 days after the time such report is due.

2. For any manufacturer knowingly to report falsely to the Department any information required pursuant to this article.

**Drafting Note: No changes.**

CHAPTER ~~25.2-18.~~

IRISH POTATO BOARD.

**Chapter Drafting Note: The term "Irish" has been deleted from the name of the board and the special fund it administers, but the scope of the board's authority remains the same. Changes to the organization of the chapter bring consistency to the administration of all commodity boards. A number of sections have been deleted as obsolete. Existing §§ 3.1-684.20 and 3.1-684.21 (in part) have been deleted as policy statements. Sections related to the original referendum have been deleted since the Potato Board has already been established. A citation to the original Acts of Assembly is included as a reference. Special fund language has been added to proposed § 3.2-1810, Virginia Potato Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Existing § 3.1-684.25 has been deleted and replaced by a title-wide provision in proposed § 3.2-112, Regulations governing the conduct of referenda. The duration of time a handler must retain records has increased from two to three years for consistency among commodity boards.**

~~§ 3.1-684.20. Legislative findings; purpose of chapter.~~

~~Subject to the provisions of § 3.1-684 of this Code, the General Assembly finds and declares that Irish potatoes are important to the prosperity of this Commonwealth and are a major source of income to a large segment of the Commonwealth's population. Additional research, education, publicity, advertising and other means of promoting the sale and use of Irish potatoes are required to enhance the economical production and orderly marketing of Irish potatoes and will be beneficial to the Commonwealth as a whole.~~

**Drafting Note: Deleted section. This section is deleted as a policy statement. It is currently not set out in the Code.**

~~§ 3.1-684.21 3.2-1800. Declaration of public interest; definitions~~ *Definitions.*

~~Subject to the provisions of § 3.1-684.28, the General Assembly declares it to be in the public interest that farmers producing Irish potatoes be permitted to express in a referendum whether an excise tax should be levied upon Irish potatoes with revenues therefrom to be used in encouraging an expanded program of research, education, publicity, advertising and other means of promotion of Irish potatoes upon which the tax is levied. The word "farmer" as used herein shall include all producers of Irish potatoes as defined in § 3.1-684.24. The word "jurisdiction" As used in this chapter, unless the context requires a different meaning:~~

~~"Handler" means any person who is a processor, dealer, shipper, or exporter who purchases potatoes from a grower, or who acts as the grower's agent, or any person who holds a produce dealer or commission merchant license from the Department. The term also means any producer who packs, processes, or otherwise performs the functions of a handler pursuant to the provisions of this chapter.~~

~~"Jurisdiction" means a county, city or town in which Irishany locality where potatoes are produced according to the records of the Department of Agriculture and Consumer Services.~~

~~"Irish potatoes" means all varieties of potatoes except sweet potatoes.~~

~~"Potatoes" means all varieties of potatoes except sweet potatoes.~~

~~"Producer" means any person who, in a calendar year, grows a minimum of 40,000 pounds of potatoes in the Commonwealth.~~

**Drafting Note: The declaration of public interest is deleted as an unnecessary policy statement. The definition of "farmer" is deleted, and "farmer" is replaced throughout the chapter as "producer" for clarification. The definition of "handler" is moved from existing § 3.1-684.39. The definitions are alphabetized.**

~~§ 3.1-684.22. Petition for referendum on question of levying tax; action of Board and Commissioner thereon; amount of tax; expenses of referendum.~~

~~The Board of Agriculture and Consumer Services, hereinafter referred to as the Board, upon petition being filed with it by the Association of Virginia Potato and Vegetable Growers, Inc., requesting a referendum, and upon a finding that sufficient interest exists among the producers of Irish potatoes in this Commonwealth to justify a referendum, shall authorize the holding of a referendum as hereinafter set forth. The Commissioner of Agriculture and Consumer Services, hereinafter referred to as the Commissioner, or his designated agents, shall thereupon be fully empowered and directed to hold and conduct a referendum on the question of whether or not the farmers in this Commonwealth who are the producers of Irish potatoes are of the opinion that such additional research, education, publicity, advertising and other means of promotion are required and are willing to pay additional taxes upon Irish potatoes for the purposes stated in this chapter. The amount of tax to be voted upon in the separate referendum authorized by this chapter shall be two cents per 100 pounds. Upon filing the petition under the authority of this section, the petitioners shall thereby agree to pay all expenses of the holding of the referendum, if the same is determined to be held, and the petitioners shall become indebted for and shall pay all expenses. Upon the passage of a referendum and the creation of the Virginia Irish Potato Board pursuant to the provisions of this chapter, the cost of holding the referendum shall be reimbursed to the petitioners by the Board. The expenses mentioned herein shall not include payment for services of any employee of the Department of Agriculture and Consumer Services or the Virginia Agricultural Extension Service.~~

**Drafting Note: Deleted section. The initial referendum creating the Potato Board was held in 1994.**

~~§ 3.1-684.323.2-1801. Virginia Irish Potato Commission continued as Virginia Irish Potato Board; composition; and appointment and terms of members; vacancies; officers; compensation; powers and duties.~~

~~The Virginia Irish Potato Commission within the Virginia Department of Agriculture and Consumer Services is continued and shall hereafter be known as the Virginia Irish Potato Board,~~

*established by the passage of a 1994 referendum held pursuant to Chapter 126 of the 1982 Acts of Assembly, is continued within the Department. The ~~Irish~~ Potato Board shall be composed of seven members appointed by the Governor from nominations by grower organizations, the appointments to be subject to confirmation by the General Assembly. ~~Members~~ All members of this ~~Irish~~ the Potato Board must qualify as "producers" shall be producers of this commodity as set forth in § 3.1-684.24 potatoes. For terms commencing July 1, 1982, four members shall be appointed to serve four year terms, and three members shall be appointed to serve three year terms. Thereafter, all appointments shall be made for four year terms. Vacancies occurring before the expiration of the term shall be filled by the Governor for the unexpired term. The Irish Potato Board shall elect a chairman, vice chairman and other officers as may be required. The Irish Potato Board shall have charge of the management and expenditures of the Virginia Irish Potato Fund established in the state treasury. The Irish Potato Board may establish an executive committee and charge it with those powers, duties and functions as the Irish Potato Board deems proper.*

~~The members of the Irish Potato Board shall be entitled to be reimbursed for expenses incurred in connection with their attendance at regular or special meetings of the Irish Potato Board.~~

~~The Irish Potato Board shall have power to expend funds to provide for programs of research, education, publicity, advertising, and other promotion; to manage the fund so as to accumulate a reserve for contingencies; to establish an office and employ such technical and professional assistants as may be required; to contract for research, publicity, advertising and other promotional services; and to take all actions as will assist in strengthening and promoting the best interest of farmers producing Irish potatoes.~~

~~The chairman of the Irish Potato Board shall make a report at each annual meeting of the Irish Potato Board and furnish the members of the Irish Potato Board with a statement of the total receipts and disbursements for the year. He shall file a copy of the report and the audit required by § 3.1-684.36 with the Commissioner and shall make copies of the report available for publication.~~

**Drafting Note: Deleted obsolete language. The first sentence is amended to continue the Potato Board and to reference its creation. A reference to the Acts of Assembly is added because the original referendum language is being deleted as obsolete throughout this chapter. This reference will provide a means to locate the original language for the referendum that created the Board. The language establishing the initial referendum creating the Potato Board is deleted because it is no longer effective. Language concerning membership terms and vacancies is moved to proposed § 3.2-1802, Potato Board membership terms. Language concerning electing officers and compensation is moved to proposed § 3.2-1803, Potato Board officers and compensation. Language regarding the powers of the Board is moved to proposed § 3.2-1804, Powers and duties of the Potato Board.**

*§ 3.2-1802. Potato Board membership terms.*

*The terms for appointments to the Potato Board shall be four years. The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term.*

**Drafting Note: New section. Language is moved from existing § 3.1-684.32.**

*§ 3.2-1803. Potato Board officers and compensation.*

*A. The Potato Board shall elect a chairman and such other officers as deemed appropriate.*

*B. Members of the Potato Board may be reimbursed for expenses incurred in connection with their attendance at regular or special meetings of the Potato Board.*

**Drafting Note: Language is moved from existing § 3.1-684.32.**

*§ 3.2-1804. Powers and duties of the Potato Board.*

A. *The Potato Board shall have charge of the management and expenditures of the Virginia Potato Fund established in the state treasury.*

B. *The Potato Board may expend funds to provide for programs of research, education, publicity, advertising, and other promotion; manage the fund so as to accumulate a reserve for contingencies; establish an office and employ such technical and professional assistants as may be required; contract for research, publicity, advertising and other promotional services; and take all actions as will assist in strengthening and promoting the best interest of producers of potatoes.*

C. *In carrying out the purposes of this chapter, the Potato Board may cooperate with other state, regional, and national agricultural organizations in research, education, publicity, advertising, and other promotional activities.*

D. *The Potato Board may establish an executive committee and charge it with those powers, duties, and functions as the Potato Board deems proper.*

E. *The chairman of the Potato Board shall make an annual report to the Potato Board including a statement of the total receipts and disbursements for the year and shall file a copy of the report and the audit required by § 3.2-1810 with the Commissioner.*

**Drafting Note: New section. Language in subsections A, B, D, and E is moved from existing § 3.1-684.32. Subsection C is moved from existing § 3.1-684.36.**

~~§ 3.1-684.30~~ 3.2-1805. ~~Subsequent referenda~~ Referenda.

~~If the Governor issues a proclamation pursuant to § 3.1-684.29, the Board may call for, in the manner prescribed in this chapter, another referendum in the next succeeding year for the purposes specified in § 3.1-684.21, or in any subsequent year in which a petition is filed with the Board under § 3.1-684.22. If the Governor issues a proclamation under § 3.1-684.28, then no other referendum shall be held until after the expiration of five years from the effective date of the imposition of the tax. Then, upon~~ Upon a petition, or its own motion, or that of an interested person properly made, the Board may hold a referendum on the continuance of the tax. If a petition is not presented to the Board or the Board is not otherwise advised, the tax to support additional research and promotion of Irish potatoes shall continue to be levied and collected as provided for in this chapter. The cost of conducting any referendum as prescribed in this chapter ~~will~~ shall be paid from funds paid into the Virginia Irish Potato Fund. *The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.*

**Drafting Note: Deleted obsolete language regarding the initial referendum. The proposed last sentence provides a cross-reference to proposed § 3.2-112, Regulations governing the conduct of referenda, since existing § 3.1-684.25 is deleted.**

~~§ 3.1-684.25. Rules and regulations governing ballots, conduct of referendum and canvassing and declaring results.~~

~~The Board shall adopt rules or regulations governing the ballots to be used in the referendum, the conduct of the referendum, canvassing the results thereof, and declaring the results of the referendum. The rules shall be adopted after consultation with the petitioners and in accordance with law.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-112, Regulations governing the conduct of referenda, in Article 2 of proposed Chapter 1, Board of Agriculture and Consumer Services. The new section is cross-referenced above in proposed § 3.2-1805, Referenda.**

~~§ 3.1-684.26. Date of referendum; areas, hours, voting places, etc.; publication of notice.~~

~~The Board shall fix the date, areas, hours, voting places, rules and regulations with respect to the holding of any referendum provided for in this chapter, and the Board may provide for voting by mail if it deems it advisable. The Commissioner shall give general notice of the referendum in a newspaper of general circulation in Richmond, Virginia. The Board shall send a notice of the referendum to a newspaper of general circulation in each jurisdiction in which Irish~~

~~potatoes are produced at least sixty days prior to the holding of any referendum pursuant to the provisions of this chapter. The notice shall contain the date, hours, and method of voting in the referendum, the amount of tax to be collected, the means by which taxes shall be collected, the general purposes for which the taxes will be used, and the rules and regulations adopted by the Board pursuant to § 3.1-684.25.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-112, Regulations governing the conduct of referenda, and subsection B of proposed § 3.2-1806, Management of referenda; Commissioner's duties; notice.**

~~§ 3.1-684.27. Distribution of ballots and supplies; arranging for polling places; canvass and declaration of results.~~

~~The Commissioner, with the assistance of the petitioners, shall prepare and distribute in advance of the referendum all necessary ballots and supplies required for the referendum and shall under rules and regulations adopted and promulgated by the Board and with the assistance of the petitioners and the Extension Service arrange for the necessary polling places. The Commissioner shall, within ten days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.~~

**Drafting Note: Deleted section and moved to subsections C and D of proposed § 3.2-1806, Management of referenda; Commissioner's duties; notice.**

~~§ 3.1-684.23.3.2-1806. Commissioner to arrange for and manage referendum Management of referenda; Commissioner's duties; notice to be posted.~~

~~A. The Commissioner shall arrange for and manage any referendum conducted pursuant to this chapter.~~

~~B. The Commissioner is directed shall, sixty-at least 60 days prior to the date upon which a before the referendum is to be held, to mail notice to the clerk of the circuit court in each jurisdiction in which Irish potatoes are produced locality where producers are located.~~

~~The notice shall contain the date, hours and method of voting in the referendum, the amount of tax to be collected, the means by which the tax shall be collected, the general purposes for which the taxes will be used, and the rules and regulations adopted by the Board pursuant to § 3.1-684.25. The clerk of the circuit court shall post the notice and the rules and regulations on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall give notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and shall send a notice of the referendum to a newspaper of general circulation in each locality where producers are located at least 60 days prior to the holding of any referendum pursuant to the provisions of this chapter. The notice shall contain the date, hours, voting places, and method of voting in the referendum, the amount of tax to be collected, the means by which the tax shall be collected, the general purposes for how the taxes will be used, and the regulations adopted by the Board hereunder.~~

~~C. The Commissioner, with the assistance of the petitioners, shall prepare and distribute in advance of the referendum all necessary ballots and supplies required for the referendum and shall under regulations adopted by the Board and with the assistance of the petitioners and the Extension Service arrange for the necessary polling places.~~

~~D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.~~

**Drafting Note: The new language in proposed subsection B regarding the Commissioner's duties is moved from existing § 3.1-684.26. Proposed subsections C and D are moved from existing § 3.1-684.27.**

~~§ 3.1-684.31 3.2-1807. Question to be printed on ballots.~~

~~The question to be printed on the ballots used in a referendum held under pursuant to this chapter shall be as follows:~~

"Do you favor additional research, education, publicity, advertising, and other promotion of ~~Irish~~ potatoes and the *continuation of the* levy of two cents per 100 pounds in accordance with the provisions of ~~this article~~ *the Potato Board law* to support the same?"

- Yes
- No."

**Drafting Note: Amended to be consistent with proposed § 3.2-1805, Referenda, which allows for a subsequent referendum on the continuation of the assessment.**

~~§ 3.1-684.24~~ 3.2-1808. Persons eligible to vote.

Each ~~farmer~~ *producer* in ~~Virginia~~ *the Commonwealth* who produced 40,000 pounds of ~~Irish~~ potatoes during the year next preceding the date of the referendum held pursuant to this chapter shall be eligible to vote in the referendum if he certifies to the required production. The certification shall be on forms approved by the Board. Any person meeting these requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in any other respect. ~~The farmer may be a natural person, partnership, or corporation. The vote of a partnership shall be cast by one of the general partners. A corporation shall vote by its president, general manager, or other person as may be authorized by the corporate bylaws to cast its vote. Any person who is not an individual shall vote by its authorized representative.~~

**Drafting Note: The last three sentences are deleted as unnecessary—the definition of producer includes a person. The definition of "person" in § 1-230 includes any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity. The proposed new language captures all business entities, including partnerships and corporations.**

~~§ 3.1-684.28~~ 3.2-1809. ~~Action~~ *Referenda results; action* of Governor if voters favor levy of tax.

The Governor shall examine all matters relating to the referendum and whether a majority of the ~~farmers~~ *producers* voting in a referendum provided for under this chapter expressed a desire for additional research, education, publicity, advertising, and other means of promotion and *continuing* the levying of the tax to support them. If the Governor finds *the referendum in order* and that a majority ~~have so expressed themselves of those voting are in opposition to the continuation of the levying of the tax on potatoes~~, he shall so proclaim and ~~shall establish within the Department of Agriculture and Consumer Services a Virginia Irish Potato Board as defined in § 3.1-684.32 upon such proclamation the tax on potatoes shall be discontinued. If the Governor finds that a majority of those voting are in favor of the continuation of the tax on potatoes, the Governor shall not so proclaim.~~

**Drafting Note: Language is updated to reflect that this section applies to subsequent referenda on the continuation of the tax, and not the original 1994 referendum establishing the Potato Board. No provisions exist for subsequent referenda results in this Chapter. The new language is modeled after language in proposed § 3.2-1509, Referenda results; action of Governor, in proposed Chapter 15, Cotton Board.**

~~§ 3.1-684.29. Action of Governor if voters oppose levy of tax.~~

~~If the Governor finds that the referendum results do not meet the conditions set forth in § 3.1-684.28, he shall so proclaim.~~

**Drafting Note: Deleted section. This section is applied to the original 1994 referendum to establish the Potato Board and is now obsolete.**

~~§ 3.1-684.36~~ 3.2-1810. Virginia Irish Potato Fund; audit; Board may cooperate with other agencies *established*.

~~All moneys levied and collected under the provisions of this chapter shall be credited on the Comptroller's books to a~~ *There is hereby created in the state treasury a special nonreverting fund to be known as the "Virginia Irish Potato Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller.*

~~All moneys credited to the Virginia Irish Potato Fund are hereby appropriated for the purposes set forth in levied and collected pursuant to this chapter and shall be used exclusively for the purposes set out in this chapter. In carrying out the purposes of this chapter, the Board shall have the authority to cooperate with other state, regional and national agricultural organizations in research, education, publicity, advertising and other promotional activities paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this chapter.~~

~~Expenditures and disbursements from the Fund shall be made by the Potato Board on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the Potato Board.~~

The Auditor of Public Accounts shall audit all the accounts of the Potato Board as is provided for in § 30-133.

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Incorporates language from existing § 3.1-684.37. The deleted language in the second paragraph is moved to subsection C of proposed § 3.2-1804, Powers and duties of the Potato Board.**

~~§ 3.1-684.37. Expenditures.~~

~~All moneys collected under the provisions of this chapter shall be expended by the Virginia Irish Potato Board on warrants of the Comptroller drawn against the state treasury pursuant to vouchers signed by the duly authorized officer of the Board.~~

~~The unexpended balance of the Virginia Irish Potato Fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

**Drafting Note: Deleted section. Language from this section is incorporated into proposed § 3.2-1810, Virginia Potato Fund established.**

~~§ 3.1-684.33 3.2-1811. Handler to deduct tax from payment to farmer; report and payment-Collection and disposition of tax by handler; reports.~~

~~For the purpose of carrying out the provisions of this chapter, the A. Every handler of Irish potatoes who purchases from the farmer a producer shall deduct, from payments made to the farmer-producer for any farm product, subject to the provisions of this chapter, the amount potatoes, a tax of the tax levied thereon two cents per 100 pounds of potatoes and shall remit the tax to the Commissioner of the Virginia Department of Agriculture and Consumer Services in the manner and form and at the time hereinafter provided on or before the 20th day of each month. The tax shall be paid to the Commissioner and shall be promptly paid into the state treasury to the credit of the Virginia Potato Fund.~~

~~B. Every handler shall complete a report consisting The report to the Commissioner shall consist of a statement of the gross volume of Irish potatoes on which the tax is-was levied which have been that were packed, processed, or handled by the handler and shall be filed file such report with the Commissioner on the twentieth day of each month together with the tax submitted pursuant to subsection A. The tax levied on Irish potatoes shall be due and payable by the handler on the same day that the report is due. The tax shall be paid to the Commissioner and shall be promptly paid into the state treasury to the credit of the Virginia Irish Potato Fund.~~

**Drafting Note: The Potato Board is unique in that the Commissioner of Agriculture and Consumer Services collects the tax, not the Tax Commissioner.**

~~§ 3.1-684.35 3.2-1812. Interest on tax; collection-Collection of delinquent tax; civil action.~~



The tax imposed under the provisions of this chapter and unpaid on the date ~~on which the tax was~~ ~~when due and payable~~ shall bear interest at a rate determined in accordance with § 58.1-1812, from and after the due date until paid. If any person defaults in any payment of the tax or interest thereon, the amount shall be collected by a civil action in the name of the Commonwealth at the relation of the Board and the person adjudged in default shall pay the costs of the proceeding. The Attorney General, at the request of the Commissioner, shall institute an appropriate action for the collection of the amount of any tax past due under this chapter, including interest thereon.

**Drafting Note: Technical changes.**

~~§ 3.1-684.34 3.2-1813.~~ Records to be kept by handlers.

~~The~~ ~~Every~~ handler shall keep a complete record of the ~~Irish~~ potatoes subject to the provisions of this chapter ~~which~~ ~~that~~ have been packed, processed, or handled by him ~~and shall preserve the records~~ for a period of time not less than ~~two~~ *three* years from the time the ~~Irish~~ potatoes were packed, processed, or handled. The records shall be open to the inspection of the Commissioner ~~and his duly authorized agents~~ and shall be established and maintained as required by the Commissioner.

**Drafting Note: Changed the amount of time a handler must keep records from two years to three years for consistency among the commodity boards.**

~~§ 3.1-684.38 3.2-1814.~~ ~~Penalties~~ *Falsification of records; misdemeanor.*

~~It shall be~~ a Class 1 misdemeanor ~~for~~:

1. ~~For~~ any handler knowingly to report falsely to the ~~Virginia Department of Agriculture and Consumer Services~~ ~~Commissioner~~ the quantity of ~~Irish~~ potatoes processed or handled by him, ~~or~~.

2. ~~For~~ any handler to fail to keep a complete record of the ~~Irish~~ potatoes processed or handled by him ~~or~~.

3. ~~For~~ any handler to preserve the records for a period of time less than ~~two~~ *three* years from the time such ~~Irish~~ potatoes are processed or handled.

**Drafting Note: Changed the amount of time a handler must keep records from two years to three years, for consistency among the commodity boards.**

~~§ 3.1-684.39.~~ Who deemed handler.

~~A "handler" shall be deemed to be any person who is a processor, dealer, shipper or exporter who purchases Irish potatoes from a grower or who acts as the grower's agent or any person who holds a produce dealer or commission merchant license from the Virginia Department of Agriculture and Consumer Services. The term "handler" shall include a farmer who packs, processes or otherwise performs the functions of a handler pursuant to the provisions of this chapter.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-1800, Definitions.**

~~§ 3.1-684.40 3.2-1815.~~ Licenses.

The Commissioner shall revoke the produce dealer or commission merchant license of any handler who fails to report, pay the tax, or perform any other duty required of him pursuant to the provisions of this chapter.

**Drafting Note: No changes.**

CHAPTER 2419.

~~PEANUTS~~ ~~PEANUT BOARD.~~

**Special fund language has been added to proposed § 3.2-1906, Peanut Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Proposed § 3.2-1907, Collection and disposition**

of tax; reports, refers to the title-wide provision in proposed § 3.2-1102, Collection of delinquent assessments; civil action. The duration of time a handler must retain records has increased from two to three years for consistency among commodity boards.

~~§ 3.1-647 3.2-1900. Definitions.~~

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

~~"Board" means the Virginia Peanut Board.~~

~~"Commission" means the Virginia Peanut Board.~~

~~"Processor" means persons, individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units, devices and arrangements who clean, shell person that cleans, shells, or ~~erush-crushes~~ peanuts.~~

**Drafting Note: The definition of "Board" is deleted because of the title-wide definition referring in proposed § 3.2-100 in Chapter 1, General Provisions. The term "person" is defined in § 1-230 and includes corporations, partnerships and the other listed entities.**

~~§ 3.1-648 3.2-1901. Virginia Peanut Commission continued as Virginia Peanut Board; composition; and appointment of members.~~

~~The Virginia Peanut Commission—Board is continued within the Department of Agriculture and Consumer Services is continued and shall hereafter be known as the Virginia Peanut Board. The Peanut Board shall consist of nine members representing as nearly as possible each important-peanut-producing section of Virginia the Commonwealth. Such members shall be appointed by the Governor, subject to confirmation by the General Assembly, and each of whom shall be a resident of the Commonwealth and engaged in producing peanuts in the Commonwealth. The Governor shall be guided in his appointments by the recommendations of the Virginia Peanut Growers Association or such other peanut growers' organizations existing in peanut-producing counties.~~

**Drafting Note: Member qualification language is moved from existing § 3.1-649.**

~~§ 3.1-649 3.2-1902. Qualifications and Peanut Board membership terms of members.~~

~~Each member must be a citizen of Virginia and engaged in producing peanuts in Virginia. The members of terms for appointments to the Peanut Board shall serve be for a term of three years, provided that beginning with the first appointments three members shall be appointed for terms of one year, three members for terms of two years, and three members for terms of three years. The first terms hereunder shall commence July 1, 1978. The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term.~~

**Drafting Note: Deleted obsolete language regarding the staggering of initial appointments to the Peanut Board. The first sentence is incorporated into proposed § 3.2-1901, Peanut Board; composition and appointment of members. The last sentence is added to provide for filling any vacancy in the Peanut Board that may occur before the end of a term.**

~~§ 3.1-650 3.2-1903. Chairman of Peanut Board; reports officers and compensation.~~

~~A. The Peanut Board shall elect one of its members as chairman and such other officers as deemed appropriate.~~

~~The Chairman shall make a report at the annual meeting of the Board and furnish the members of the Board with a statement of the total receipts and disbursements for the year. He shall file a copy of such report and audit as is required by § 3.1-662 with the Commissioner annually.~~

~~B. Members of the Peanut Board shall serve without compensation but they shall be reimbursed for actual expenses incurred in attending meetings of the Peanut Board.~~

**Drafting Note: The deleted language in subsection A is moved to proposed § 3.2-1904, Powers and duties of Peanut Board. Subsection B is from existing § 3.1-651.**

~~§ 3.1-651. Expenses of members.~~

~~The members of the Board shall serve without compensation but they shall be reimbursed for actual expenses incurred in attending meetings of the Board.~~

**Drafting Note: Deleted section and moved to subsection B of proposed § 3.2-1903, Peanut Board officers and compensation.**

~~§ 3.1-652 3.2-1904. Administration of funds Powers and duties of Peanut Board.~~

A. All funds levied and collected under this chapter shall be administered by the *Peanut Board*.

B. *The Peanut Board shall plan and conduct campaigns for education, advertising, publicity, sales promotion, and research as to Virginia peanuts.*

C. *The Peanut Board may make contracts, expend moneys of the Peanut Fund, and do whatever else may be necessary to effectuate the purposes of this chapter.*

D. *The Peanut Board may cooperate with other state, regional, and national agricultural and peanut organizations in research, advertising, publicity, education, and other means of promoting the sale and use of peanuts, and may expend moneys of the Peanut Fund for such purposes.*

E. *The Peanut Board may appoint a secretary and other employees as may be necessary at salaries to be fixed by the Peanut Board, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. All employees handling money under this chapter shall be required to furnish surety bonds.*

F. *The chairman shall make a report at the annual meeting of the Peanut Board and furnish the members of the Peanut Board with a statement of the total receipts and disbursements for the year. He shall file a copy of the report and the audit required by § 3.2-1906 with the Commissioner.*

**Drafting Note: Proposed subsection B is moved from existing § 3.1-653. Proposed subsection C is moved from existing § 3.1-654 to effectuate purposes of this chapter. Proposed subsection D is moved from existing § 3.1-655. Proposed subsection E is moved from existing § 3.1-656. Subsection F is moved from existing § 3.1-650.**

~~§ 3.1-653. Publicity, research, etc.~~

~~The Board shall plan and conduct campaigns for education, advertising, publicity, sales promotion and research as to Virginia peanuts.~~

**Drafting Note: Deleted section and moved to subsection B of proposed § 3.2-1904, Powers and duties of Peanut Board.**

~~§ 3.1-654. Contracts, expenditures, etc., to effectuate purposes of chapter.~~

~~The Board may make contracts, expend moneys of the Peanut Fund, and do whatever else may be necessary to effectuate the purposes of this chapter.~~

**Drafting Note: Deleted section and moved to subsection C of proposed § 3.2-1904, Powers and duties of Peanut Board.**

~~§ 3.1-655. Cooperation with other organizations.~~

~~The Board may cooperate with other state, regional and national agricultural and peanut organizations in research, advertising, publicity, education, and other means of promoting sale and use of peanuts, and may expend moneys of the Peanut Fund for such purpose.~~

**Drafting Note: Deleted section and moved to subsection D of proposed § 3.2-1904, Powers and duties of Peanut Board.**

~~§ 3.1-656. Secretary and other employees; bonds.~~

~~The Board may appoint a secretary and such other employees as may be necessary at salaries to be fixed by the Board, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. All employees handling money under this chapter shall be required to furnish surety bonds.~~

**Drafting Note: Deleted section and moved to subsection E of proposed § 3.2-1904, Powers and duties of Peanut Board.**

~~§ 3.1-657 3.2-1905. Levy of excise tax.~~

~~There is hereby~~ An excise tax of 15 cents per 100 pounds is levied on all peanuts grown in and sold in ~~this~~ the Commonwealth for processing ~~an excise tax of 15 cents per 100 pounds~~. Peanuts sold for seed shall not be subject to the tax, nor shall any peanuts be subject to ~~the~~ tax after the tax ~~thereon~~ has been ~~once~~ paid ~~once~~.

**Drafting Note: Technical changes.**

~~§ 3.1-662~~ 3.2-1906. Creation and administration of Peanut Fund established.

~~There is hereby created in the state treasury a special nonreverting fund to be known as the Peanut Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under the provisions of this chapter, after deducting the expense to the Commonwealth of collecting the same, shall be credited on the Comptroller's books to a fund to be known as the "Peanut Fund" which is hereby created paid into the state treasury and credited to the Fund.~~

~~The~~ Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of paying the costs of collecting the tax levied ~~hereby shall be paid out of the Peanut Fund and the net proceeds of such fund are hereby appropriated for the purposes herein set forth, and shall be used exclusively for~~ on peanuts pursuant to this chapter, the administration of this chapter, including payment for personal services and expenses of employees and agents of the Peanut Board, rent, services, materials, and supplies necessary to effectuate the purposes ~~and object~~ of this chapter. Expenditures and disbursements from the Fund shall be made by the Peanut Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Peanut Board.

The Auditor of Public Accounts shall audit all the accounts of the Peanut Board as is provided for in § 30-133. ~~The unexpended balance of the Peanut Fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Expenditure language is moved from existing § 3.1-663.**

~~§ 3.1-658~~ 3.2-1907. Processor liable for collection and payment ~~Collection and disposition of tax; reports.~~

~~The~~ A. Every processor shall ~~be liable for collecting~~ collect the tax on all peanuts bought by him and ~~paying~~ pay it into the State Department of Taxation to the credit of the Peanut Fund. The tax collected between July 1 and December 31 of each year shall be paid not later than February 15 of the succeeding year, and the tax collected between January 1 and June 30 shall be paid not later than July 10 of each year.

B. Every processor shall complete reports on forms furnished by the Tax Commissioner, submit such reports to the Tax Commissioner together with the tax submitted pursuant to subsection A, and keep copies of the reports for a period of not less than three years from the time the report was produced.

C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.

**Drafting Note: Proposed subsection B is added to reflect the current practice of submitting reports to the Tax Commissioner and to provide consistency with other commodity boards. Proposed subsection C provides a cross-reference to proposed § 3.2-1102, Collection of delinquent assessments; civil action, in Chapter 11, General Provisions.**

~~§ 3.1-659~~ 3.2-1908. Record to be kept by processor.

~~The~~ Every processor shall keep a complete record of the amount of peanuts, subject to tax, bought by him for a period of not less than ~~two~~ three years. Such record shall be open to the inspection of the State Tax Commissioner and his duly authorized agents.

**Drafting Note: Changed the amount of time a handler must keep records from two years to three years for consistency among the commodity boards.**

~~§ 3.1-660. Penalty and interest on delinquent tax.~~

~~If the tax imposed hereby is not paid when due the State Department of Taxation shall immediately notify the taxpayer of such deficiency and shall add thereto a penalty of five percent of the amount due and if such deficiency be not paid within thirty days from the date of such notice the same shall bear interest at a rate determined in accordance with § 58.1-1812, from the date the same was due, which shall be collected as a part of the tax; provided that the Department may waive or remit the penalty of five percent, or a portion thereof, in its discretion for good cause shown.~~

**Drafting Note: Deleted section. A cross-reference to the proposed general provision proposed § 3.2-1102, Collection of delinquent assessments; civil action, is added to proposed § 3.2-1907, Collection and disposition of tax; reports.**

~~§ 3.1-661. Action to recover delinquent tax and interest.~~

~~If any person be delinquent in any payment of the tax or interest thereon, the amount shall be collected by civil action in the name of the Commonwealth at the relation of the State Tax Commissioner, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Commissioner, shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this chapter, including interest thereon.~~

**Drafting Note: Deleted section. A cross-reference to the proposed general provision proposed § 3.2-1102, Collection of delinquent assessments; civil action, is added to proposed § 3.2-1907, Collection and disposition of tax; reports.**

~~§ 3.1-663. How moneys expended.~~

~~All moneys collected under this chapter shall be expended by the Virginia Peanut Board on warrants of the Comptroller on the State Treasurer issued on vouchers signed by the duly authorized officer of the Board.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-1906, Peanut Fund established.**

~~§ 3.1-664 3.2-1909. Making false report or falsifying *Falsification of records*; a misdemeanor.~~

~~It shall be a *Class 1* misdemeanor: for any person~~

~~1. For any processor knowingly to report falsely to the Board-Tax Commissioner the quantity of peanuts subject to tax bought by him during any period, or~~

~~2. For any processor to falsify the records of the peanuts subject to tax bought by him.~~

**Drafting Note: Language is added to reflect § 18.2-12, which provides that a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

~~§ 3.1-665 3.2-1910. Failure to make returns-a *file reports*; misdemeanor.~~

~~Any person subject to the provisions of this chapter-processor who shall fail-fails to make *file* the returns, or any of them, as herein required *reports*, or who shall fail-fails to keep the *required* records-as herein required, shall be guilty of a *Class 1* misdemeanor. Each month of such failure shall constitute-is a separate offense.~~

**Drafting Note: Language is added to reflect § 18.2-12, which provides that a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor. This section was not combined with proposed § 3.2-1909, Falsification of records; misdemeanor, because the first part concerning failure to file reports is unique to this chapter, as is the provision in the last sentence.**

CHAPTER 27-20.

Article 4.2

VIRGINIA PORK INDUSTRY BOARD.

**Chapter Drafting Note: Language has been added in § 3.2-2003, Pork Industry Board officers and compensation, to codify the Board's current practice of reimbursing Board members for expenses incurred in Board related activities that are authorized by the Board. Special fund language has been added to proposed § 3.2-2005, Virginia Pork Industry Fund; established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Proposed § 3.2-2007, Collection and disposition of tax; reports, refers to the title-wide provision in proposed § 3.2-1102, Collection of delinquent assessments; civil action. The duration of time records must be retained has increased from two to three years for consistency among commodity boards.**

~~§ 3.1-763.6~~ 3.2-2000. Definitions.

As used in this ~~article~~ *chapter*, unless the context requires a different meaning:

~~"Board" means the Virginia Pork Industry Board.~~

~~"Commission" means the Virginia Pork Industry Board.~~

"Feeder pig" means a hog not weighing ~~in excess of~~ 140 pounds *or less*.

~~"Processor" means any person, firm, corporation, association or cooperative who or which~~ *that* slaughters hogs commercially, or agent thereof.

~~"Producer" means a~~ *any* person, firm, corporation, association or cooperative who or which is engaged in the business of raising hogs for sale for slaughter or raising hogs for sale as feeder pigs.

"Slaughter hog" means a hog weighing in excess of 140 pounds.

**Drafting Note: Deleted the definition of "Board" because it appears as a title-wide definition in proposed § 3.2-100 in Chapter 1, General Provisions. Deleted "firm, corporation, and association or cooperative" from the definition of "producer" because such entities fall within the Code-wide definition of "person" provided in § 1-230.**

~~§ 3.1-763.7~~ 3.2-2001. ~~Commission continued as~~ *Pork Industry Board; composition and appointment, terms and expenses of members; appointment and compensation of secretary and other employees; reports; administration of funds; surety bonds.*

~~(a) The Virginia Pork Industry Commission~~ *Board is continued* within the Department of Agriculture and Consumer Services ~~is continued and shall hereafter be known as the Virginia Pork Industry Board.~~ The *Pork Industry Board* shall consist of ~~twelve~~ *12* members appointed by the Governor, subject to confirmation by the General Assembly. Members of the Pork Industry Board shall be selected, as far as possible, so as to give representation to the principal pork-producing areas of Virginia. At least seven of the members shall be pork producers.

~~(b) Of the members initially appointed, three shall be appointed for terms of one year, three for terms of two years, three for terms of three years, and three for terms of four years. Subsequent appointments shall be for terms of four years each except appointments to fill vacancies which shall be for the unexpired terms. No member shall be eligible to be appointed for more than two successive terms.~~

~~(c) The members of the Pork Industry Board shall be reimbursed only for actual expenses incurred in connection therewith. The Pork Industry Board shall elect one of its members as chairman. The Pork Industry Board may appoint a secretary and such other employees as may be necessary at salaries to be fixed by the Pork Industry Board subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.). All funds levied and collected under this article shall be administered by the Pork Industry Board. All employees of the Pork Industry Board handling money shall be required to furnish surety bonds in an amount to be fixed by the Pork Industry Board.~~

~~(d) The chairman shall make a report at the annual meeting of the Pork Industry Board and furnish the members of the Pork Industry Board with a statement of the total receipts and disbursements for the year. The chairman shall also file a copy of such report and the audit required by § 3.1-763.11 with the Commissioner annually.~~

**Drafting Note: Subsection (b) is moved to proposed § 3.2-2002, Pork Industry Board membership terms. Subsections (c) and (d) are moved to proposed § 3.2-2003, Pork Industry Board officers and compensation, and proposed § 3.2-2004, Powers and duties of Pork Industry Board.**

§ 3.2-2002. *Pork Industry Board membership terms.*

*Terms for appointments to the Pork Industry Board shall be for four years. The Governor shall fill any vacancy occurring before the expiration of any term through appointment of a qualified person for the unexpired term. No member shall be eligible to be appointed for more than two successive terms.*

**Drafting Note: New section. Language is moved from subsection (b) of existing § 3.1-763.7.**

§ 3.2-2003. *Pork Industry Board officers and compensation.*

*A. The Pork Industry Board shall elect one of its members as chairman and such other officers as deemed appropriate.*

*B. Members of the Pork Industry Board shall be reimbursed for all actual expenses incurred attending meetings of the Pork Industry Board and any related activities as authorized by the Pork Industry Board.*

**Drafting Note: New section. Language is moved from subsection (c) of existing § 3.1-763.7. Language in proposed subsection B is updated and reflects current practice of the Pork Industry Board.**

~~§ 3.1-763.8 3.2-2004. Educational and research programs; contracts; expenditure of moneys; cooperation with State, etc., organizations~~ *Powers and duties of Pork Industry Board.*

*A. The Pork Industry Board shall administer all funds collected under this chapter.*

*B. The Pork Industry Board shall plan and conduct programs for education and research relating to the Virginia pork industry, with primary emphasis on programs designed to increase the efficient production of slaughter hogs and feeder pigs in Virginia the Commonwealth. †*

*C. The Pork Industry Board may make contracts, expend moneys from the Virginia Pork Industry Fund, and do whatever else may be necessary to effectuate the purposes of this article chapter.*

*D. The Pork Industry Board may cooperate with other State state, regional, and national organizations in research, education, and other means for promoting the Virginia pork industry and may expend moneys of the Virginia Pork Industry Fund for such purpose.*

*E. The Pork Industry Board may appoint a secretary and such other employees as may be necessary at salaries to be fixed by the Pork Industry Board subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.). All employees of the Pork Industry Board handling money shall be required to furnish surety bonds in an amount to be fixed by the Pork Industry Board.*

*F. The chairman shall make a report at the annual meeting of the Pork Industry Board and furnish the members of the Pork Industry Board with a statement of the total receipts and disbursements for the year. The chairman shall also file a copy of such report and the audit required by § 3.2-2005 with the Commissioner annually.*

**Drafting Note: Proposed subsections A, E, and F are moved from subsections (c) and (d) of existing § 3.1-763.7.**

~~§ 3.1-763.11 3.2-2005. Virginia Pork Industry Fund; expenditures; accounts and audits established.~~

~~(a) There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Pork Industry Fund, hereafter referred to as "the Fund." The Fund shall be~~

*established on the books of the Comptroller. All moneys levied and collected under the provisions of this article chapter shall be credited on the Comptroller's books to a fund to be known as the "Virginia Pork Industry Fund" which is hereby created paid into the state treasury and credited to the Fund.*

*Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this chapter, including ~~The~~ paying the costs of collecting the tax levied hereby shall be paid out of the fund and the net proceeds of such fund are hereby appropriated for the purposes set forth in this article and shall be used exclusively for on hogs pursuant to this chapter, and the administration of this ~~article~~ chapter, including payment for personal services, materials, and supplies necessary to effect the purposes and objects of this article chapter. The unexpended balance of the fund at the end of each biennium shall not revert to the general fund of the state treasury. Expenditures and disbursements from the Fund shall be made by the Pork Industry Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Pork Industry Board.*

~~(b) All moneys collected under this article shall be expended by the Board on warrants of the Comptroller on the State Treasurer issued on vouchers signed by the duly authorized representatives of the Board.~~

~~(e) The Auditor of Public Accounts shall audit all the accounts of the Pork Industry Board as is provided for in § 30-133.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1 763.9 3.2-2006. Excise-Levy of excise tax generally.~~

~~There is hereby An excise tax of 10 cents per head shall be levied on all hogs sold in Virginia the Commonwealth for slaughter an excise tax of ten cents per head, and there is hereby an excise tax of five cents per head shall be levied on all hogs sold in Virginia the Commonwealth as feeder pigs an excise tax of five cents per head. For purposes of this tax, a slaughter hog or feeder pig is sold at the time and place the hog or pig is weighed for purchase and its purchase weight is recorded. The processor shall be liable for collecting the tax on all slaughter hogs purchased by him, other than at a livestock auction market, and paying it into the state treasury to the credit of the Virginia Pork Industry Fund. On slaughter hogs and feeder pigs bought at a livestock auction market, the livestock auction market shall be liable for collecting the tax and paying it into the state treasury to the credit of the Virginia Pork Industry Fund. On other feeder pig sales the first buyer shall be liable for collecting the tax and paying it into the state treasury to the credit of the Virginia Pork Industry Fund. Taxes collected between July 1 and December 31 of each year shall be paid into the state treasury not later than January 15 of the succeeding year, and taxes collected between January 1 and June 30 shall be paid in not later than July 10 of the year in which collected. The processor, livestock auction market and other first buyers of feeder pigs shall keep a complete record of the number of slaughter hogs and feeder pigs subject to tax purchased by him for a period of not less than two years. Such record shall be open to the inspection of the State Tax Commissioner and his duly authorized agents. The Tax Commissioner, after consultation with the Virginia Pork Industry Board, may make rules and regulations for the interpretation and enforcement of this tax.~~

**Drafting Note: For consistency with other commodity boards, the deleted language is moved to proposed § 3.2-2007, Collection and disposition of tax; reports, and proposed § 3.2-2008, Records to be kept by processors, livestock auction markets, and other first buyers.**



§ 3.2-2007. *Collection and disposition of tax; reports.*

A. *Every processor shall collect the tax on all slaughter hogs purchased by him, other than at a livestock auction market, and remit such tax to the Tax Commissioner to the credit of the Virginia Pork Industry Fund.*

B. *Every livestock auction market shall collect the tax on all slaughter hogs and feeder pigs bought at a livestock auction market and remit it to the Tax Commissioner to the credit of the Virginia Pork Industry Fund.*

C. *Every first buyer shall collect the tax on other feeder pig sales and remit it to the Tax Commissioner to the credit of the Virginia Pork Industry Fund.*

D. *Taxes collected between July 1 and December 31 of each year shall be paid to the Tax Commissioner not later than January 15 of the succeeding year, and taxes collected between January 1 and June 30 shall be paid not later than July 10 of the year in which collected.*

E. *Every processor, livestock auction market, and other first buyers of feeder pigs shall complete reports on forms furnished by the Tax Commissioner, submit such reports to the Tax Commissioner together with the taxes submitted pursuant to this section, and keep copies of the reports for a period of not less than three years from the time the report was produced.*

F. *The Tax Commissioner, after consultation with the Virginia Pork Industry Board, may adopt regulations for the interpretation and enforcement of this tax.*

G. *Any tax that is not paid when due shall be collected pursuant to § 3.2-1102.*

**Drafting Note: New section. Language is moved from existing § 3.1-763.9. Changed the recordkeeping time from two to three years to be consistent with other commodity boards. Proposed subsection E is added to reflect the current practice of submitting reports/returns to the Tax Commissioner along with the taxes, and to provide consistency with other commodity boards. Proposed subsection G provides a cross-reference to proposed § 3.2-1102, Collection of delinquent assessments; civil action, in Chapter 11, General Provisions.**

~~§ 3.1-763.10. Nonpayment of excise tax.~~

~~(a) If the tax imposed hereby is not paid when due, the State Department of Taxation shall immediately notify the taxpayer of such deficiency and shall add thereto a penalty of five per centum of the amount due and if such deficiency be not paid within thirty days from the date of such notice, the same shall bear interest at a rate determined in accordance with § 58.1-1812, from the date the same was due, which shall be collected as a part of the tax; provided that the Department may waive or remit the penalty, or a portion thereof, in its discretion for good cause shown.~~

~~(b) If any person be delinquent in any payment of the tax or interest thereon, the amount shall be collected by civil action in the name of the Commonwealth at the relation of the State Tax Commissioner and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Commissioner shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this article, including interest thereon.~~

**Drafting Note: Deleted section. A cross-reference to the general provision in proposed § 3.2-1102, Collection of delinquent assessments; civil action, is added to proposed § 3.2-2007, Collection and disposition of assessment by handler; reports.**

§ 3.2-2008. *Records to be kept by processors, livestock auction markets, and other first buyers.*

*Every processor, livestock auction market, and other first buyers of feeder pigs shall keep a complete record of the number of slaughter hogs and feeder pigs subject to tax purchased by him for at least three years. Such record shall be open to the inspection of the Tax Commissioner.*

**Drafting Note: New section. Language is moved from existing § 3.1-763.9 for clarification and consistency with other commodity boards. Changed the amount of time records are to be kept from two to three years for consistency among the commodity boards.**

~~§ 3.1-763.12 3.2-2009. Violations Falsification of records; misdemeanor.~~

~~Any It is a Class 1 misdemeanor:~~

~~1. For any person knowingly reporting to report falsely the number of slaughter hogs and feeder pigs subject to tax bought by or handled by him during any period or falsifying.~~

~~2. For any person to falsify the records relating thereto or who fails of the slaughter hogs and feeder pigs subject to tax bought or handled by him.~~

~~3. For any person to fail to make the returns file the report, or any of them, herein required, or fails to fail to keep the records herein as required by this chapter, shall be guilty of a misdemeanor and punished accordingly.~~

**Drafting Note: Language is added to reflect § 18.2-12, Same; where no punishment or maximum punishment prescribed, which provides that a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

## CHAPTER 43-21.

### ~~VIRGINIA SHEEP INDUSTRY BOARD ACT.~~

**Chapter Drafting Note: Changes to the organization of the chapter bring consistency to the administration of all commodity boards. Sections related to the original referendum have been deleted since the Sheep Industry Board has already been established. A citation to the original Acts of Assembly is included as a reference. As with other commodity boards, the chairman of the Sheep Industry Board will be required to make a report at the annual meeting regarding total receipts and disbursements. Vests authority with the Commissioner to determine the number of members in the sheep industry. Special fund language has been added to proposed § 3.2-2111, Virginia Sheep Industry Promotion and Development Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Proposed § 3.2-2112, Collection and disposition of assessment by handler; reports, refers to the title-wide provision in proposed § 3.2-1102, Collection of delinquent assessments; civil action.**

~~§ 3.1-1065 3.2-2100. Definitions.~~

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

~~"Board" means the Virginia Sheep Industry Board.~~

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

~~"Fund" means the Virginia Sheep Industry Promotion and Development Fund.~~

~~"Handler" means the operator of a stockyard, livestock dealership, slaughterhouse, packing plant, or livestock auction market, or any other person or business entity making a purchase from a sheep producer, at the point at which where the sheep or lamb is sold or traded.~~

~~"State Board" means the State Board of Agriculture and Consumer Services.~~

~~"Sheep" means sheep or lambs of all ages.~~

**Drafting Note: Deleted the definitions of "Board" and "Commissioner" because those terms appear in the title-wide definitions in proposed § 3.2-100, Definitions. "Fund" is defined within proposed § 3.2-2111, Virginia Sheep Industry Promotion and Development Fund established. Added the definition of the term "sheep" to include sheep or lambs of all ages and deleted superfluous references to "sheep or lamb" throughout the chapter.**

~~§ 3.1-1066. Petition for referendum on question of assessment for market development, predator control, education, research, promotion; action of State Board and Commissioner; amount of assessment.~~

~~The State Board, upon a petition being filed with it by the Virginia Sheep Federation requesting a referendum, and upon finding that sufficient interest exists among the members of the sheep industry in the Commonwealth to justify a referendum, shall authorize the holding of a referendum as provided in this chapter. The Commissioner or his designee shall then be empowered and directed to conduct a referendum on the question of whether or not the members of Virginia's sheep industry are of the opinion that additional market development, predator control, education, research and promotion of the sheep industry are required. If approved in a referendum authorized by this chapter, an assessment of fifty cents for each sheep or lamb sold within the Commonwealth shall be imposed, and the Board shall have the authority to increase the assessment no more than ten cents per year, up to a maximum assessment of one dollar per head.~~

**Drafting Note: Deleted section. The last sentence is moved to proposed § 3.2-2104, Powers and duties of Sheep Industry Board.**

~~§ 3.1-1074 3.2-2101. Virginia Sheep Industry Board established; purposes; duties and responsibilities composition and appointment of members; quorum.~~

~~There is hereby established within the Virginia Department of Agriculture and Consumer Services the Virginia The Sheep Industry Board, established by the passage of a referendum held pursuant to Chapter 691 of the 1995 Acts of Assembly, is continued within the Department. The Board shall be responsible for the promotion and economic development of the sheep industry in Virginia. To accomplish this function the Board is authorized to:~~

- ~~1. Provide funding for predator control;~~
- ~~2. Produce economic reports;~~
- ~~3. Develop a sheep industry directory;~~
- ~~4. Provide funding for educational programs;~~
- ~~5. Provide funding for research;~~
- ~~6. Engage in media liaison;~~
- ~~7. Collect and analyze data on the sheep industry;~~
- ~~8. Disseminate industry related data;~~
- ~~9. Enter into contracts and agreements to accomplish the purposes of this chapter; and~~
- ~~10. Establish, administer, manage and make expenditures from the Virginia Sheep Industry Promotion and Development Fund as provided in § 3.1-1076.~~

~~The Sheep Industry Board shall consist of 12 members representing the sheep industry and industry support services. The Governor shall appoint 12 individuals from nominations submitted by the Virginia Sheep Producers Association, Virginia sheep and wool marketing organizations, or other Virginia farm organizations representing sheep producers. One member shall represent the packing/processing/retailing segment of the industry, one shall represent the Virginia Livestock Markets Association, and one shall represent the purebred segment of the industry. The remaining nine members shall be appointed by the Governor as follows in accordance with § 3.2-2110, with no more than one member appointed per locality: three members who reside in the Southwest District; three members who reside in the Valley District; two members who reside in the Northern District; and one member who resides in the South Central District. In addition, the extension sheep specialist from Virginia Polytechnic Institute and State University and the Commissioner shall serve as nonvoting members. Seven members of the Sheep Industry Board shall constitute a quorum for the transaction of business.~~

**Drafting Note: A reference to the Acts of Assembly is added to provide an opportunity to locate the original language for the initial referendum that was held to create the Sheep Industry Board. The language establishing the initial referendum creating the Sheep**

**Industry Board is deleted as obsolete since the initial referendum has been held. The language delineating the responsibilities of the Sheep Industry Board is moved to proposed § 3.2-2104, Powers and duties of Sheep Industry Board. The composition and appointment of members language and the last sentence defining a quorum are moved from subsections A and C of existing § 3.1-1075.**

*§ 3.2-2102. Sheep Industry Board membership terms.*

*The terms for appointments to the Sheep Industry Board shall be for three years. Vacancies in memberships shall be filled pursuant to § 3.2-2101. No member shall serve more than two consecutive terms.*

**Drafting Note: New section. To provide consistency with other commodity boards, language is moved from subsection A of existing § 3.1-1075.**

*§ 3.2-2103. Sheep Industry Board officers and compensation.*

*A. The Sheep Industry Board shall elect from its membership a chairman and such other officers, as it deems appropriate.*

*B. Sheep Industry Board members not representing agencies of the Commonwealth shall be reimbursed from the Fund for all reasonable and necessary expenses incurred in the performance of their duties as members of the Sheep Industry Board.*

**Drafting Note: New section. To provide consistency with other commodity boards, language is moved from subsections B and D of existing § 3.1-1075.**

*§ 3.2-2104. Powers and duties of Sheep Industry Board.*

*A. The Sheep Industry Board shall be responsible for the promotion and economic development of the sheep industry in the Commonwealth. To accomplish this function the Sheep Industry Board is authorized to:*

- 1. Provide funding for predator control;*
- 2. Produce economic reports;*
- 3. Develop a sheep industry directory;*
- 4. Provide funding for educational programs;*
- 5. Provide funding for research;*
- 6. Engage in media liaison;*
- 7. Collect and analyze data on the sheep industry;*
- 8. Disseminate industry-related data;*
- 9. Enter into contracts and agreements to accomplish the purposes of this chapter; and*
- 10. Establish, administer, manage, and make expenditures from the Virginia Sheep*

*Industry Promotion and Development Fund as provided in § 3.2-2111.*

*B. The Sheep Industry Board may increase the original assessment of 50 cents for each sheep sold within the Commonwealth no more than 10 cents per year, up to a maximum assessment of \$1 per head.*

*C. The chairman of the Sheep Industry Board shall make a report at the annual meeting of the Sheep Industry Board including a statement of the total receipts and disbursements for the year, and shall file a copy of the report with the Commissioner.*

**Drafting Note: New section. Proposed subsection A is moved from existing § 3.1-1074. Proposed subsection B is moved from existing § 3.1-1066. The language in proposed subsection C is added to be consistent with other commodity boards and to reflect current practice.**

~~§ 3.1-1072~~ *3.2-2105. Subsequent referendumReferenda.*

~~If the Governor issues a proclamation under § 3.1-1071 and the Board is established, then no other referendum shall be held on the creation of the Virginia Sheep Industry Board and assessment except that the State~~*The Board, upon petition by at least ten10 percent of the members of the sheep industry who voted in the preceding referendum or as determined by the Commissioner, may provide for a referendum on the continuation of the Sheep Industry Board*

and the assessment. ~~The State Board shall not act on such a petition to conduct such a referendum until at least five years have passed since the Virginia Sheep Industry Board was established. The cost of conducting such referendum shall be from funds paid into the Virginia Sheep Industry Promotion and Development Fund as established in § 3.1-1076 3.2-2111. Such referendum shall be conducted in the manner provided in §§ 3.1-1067 through 3.1-1070 this chapter. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.~~

**Drafting Note: Deleted obsolete language relating to the original referendum. Added new language that vests authority in the Commissioner to determine the number of members of the sheep industry. The last sentence provides a cross-reference to proposed § 3.2-112, Regulations governing the conduct of referenda, since existing § 3.1-1068 is deleted.**

~~§ 3.1-1068. Rules governing ballots, conduct of referendum, canvassing, etc.~~

~~The State Board shall adopt rules governing the ballots to be used in the referendum, the conduct of the referendum, the canvassing of the results thereof, and the declaration of the results of the referendum. The State Board shall fix the date, areas, hours, and voting places with respect to the holding of the referendum and may provide for voting by mail if it deems advisable.~~

**Drafting Note: Deleted section and moved to Article 2 of proposed Chapter 1, Board of Agriculture and Consumer Services, providing a general provision for the Board to adopt regulations governing the conduct of subsequent referenda for all commodity boards. The new general provision section is cross-referenced above in proposed § 3.2-2105, Referenda.**

~~§ 3.1-1069 3.2-2106. Management of referendum; Commissioner's duties; notice.~~

A. The Commissioner shall manage any referendum conducted under this chapter, *and shall, under regulations adopted by the Board, arrange for the use of polling places, if necessary.*

B. The Commissioner shall, *sixty at least 60 days* before the date upon which a referendum is to be held, mail notice to the clerk of the circuit court in each ~~county~~ *locality* where those eligible to vote in the referendum reside. The clerk of the circuit court shall post the notice and ~~rules-regulations~~ on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall also give general notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and shall send a notice of the referendum to a newspaper of general circulation in each area ~~in which~~ *where* members of the sheep industry reside, at least ~~sixty~~ *60* days prior to the holding of any referendum under this chapter.

~~Such posted and published notices~~ *The notice shall contain the date, hours, voting places, and methods of voting in the referendum; the amount of assessment to be collected, means by which such assessment will be collected, and general purposes for which-how the assessments will be used; and the rules-regulations adopted by the State Board pursuant to § 3.1-1068 3.2-112.*

C. *The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots, certificates, and supplies required for the referendum.*

D. *The Commissioner shall within 10 days after the referendum, canvass and publicly declare the results of the referendum, and certify the same to the Governor and the Board.*

**Drafting Note: The new language in proposed subsections A, C, and D is moved from existing § 3.1-1070.**

~~§ 3.1-1070. Distribution of ballots; canvass; declaration and certification of results.~~

~~The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots, certificates and supplies required for the referendum and shall, under rules adopted and promulgated by the State Board, arrange for the use of polling places, if necessary.~~

~~He shall, within ten days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the State Board.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-2106, Management of referenda; Commissioner's duties; notice.**

~~§ 3.1-1073~~ 3.2-2107. Question to be printed on ballots.

~~A. The question to be printed on the ballots used in any referendum held under this chapter, except the referendum authorized in § 3.1-1072, shall be as follows:~~

~~"Do you favor additional market development, predator control, education, research, and promotion of the Virginia sheep industry, the creation of a Virginia Sheep Industry Board, and the levy of an assessment of fifty cents per head, with the Board retaining the authority to increase the assessment no more than ten cents per year, up to a maximum assessment of one dollar per head, for all sheep and lambs sold within the Commonwealth of Virginia to be used by such Board in accordance with the provisions of the Virginia Sheep Industry Board Act?~~

~~— Yes~~

~~— No."~~

~~B. The question to be printed on the ballots used in the any referendum authorized in § 3.1-1072-3.2-2105 on the continuation of the Sheep Industry Board and assessment shall be as follows:~~

~~"Do you favor the continuation of the Virginia Sheep Industry Board and the continuation of the levy of an assessment of up to one dollar \$1 per head for all sheep and lambs sold within the Commonwealth of Virginia?~~

~~— Yes~~

~~— No."~~

**Drafting Note: Deleted obsolete language. The original referendum creating the Sheep Industry Board was held in 1995.**

~~§ 3.1-1067~~ 3.2-2108. Persons eligible to vote.

~~Each member of the Virginia sheep industry who has sold one or more sheep or fifty 50 or more pounds of wool within the Commonwealth during fiscal in the year 1993-1994 preceding any referendum shall be eligible to vote in the referendum, provided that he certifies that he has conducted such sale. A Any person who meets the requirements of this section shall be eligible to vote may be a natural person, partnership, or corporation, provided that such person is provided that they are a resident of the Commonwealth or qualified to do business in the Commonwealth. The vote of a partnership shall be cast by one of the general partners. A corporation shall vote by its president, general manager or such other person as may be authorized by the corporation to cast its vote. Any person who is not an individual shall vote by its authorized representative.~~

**Drafting Note: Updated language to apply to any subsequent referenda, not the original referendum held in 1995. The last two original sentences are deleted and replaced with new language to capture all business entities, including partnerships and corporations.**

~~§ 3.1-1071~~ 3.2-2109. ~~Action of Governor; referendum~~Referenda results; *action of Governor.*

If the Governor finds the referendum in order and that at least a simple majority of those voting are in favor of opposition to the continuation of Sheep Industry Board and the assessment for the purpose of conducting programs in market development, predator control, education, research, and promotion of the sheep industry, he shall so proclaim and upon such proclamation the Virginia Sheep Industry Board within the Virginia Department of Agriculture and Consumer Services and the assessment shall be established discontinued. If he does not so find, the Governor finds that at least a simple majority of those voting are in favor of the continuation of the Sheep Industry Board and the assessment, he shall not be established so proclaim.

**Drafting Note: Language is updated to reflect that this section applies to subsequent referenda, and not the 1995 referendum originally establishing the Sheep Industry Board. No provisions exist specifically for subsequent referenda results in this chapter. The new language is modeled after the Cotton Board.**

~~§ 3.1-1075 3.2-2110. Sheep Board membership; quorum~~ *Production districts designated.*

~~A. The Board shall consist of 12 members representing the sheep industry and industry support services. The Governor shall appoint 12 individuals from nominations submitted by the Virginia Sheep Producers Association, Virginia sheep and wool marketing organizations, or other Virginia farm organizations representing sheep producers. One member shall represent the packing/processing/retailing segment of the industry, one shall represent the Virginia Livestock Markets Association, and one shall represent the purebred segment of the industry. The remaining nine members shall be appointed by the Governor as follows, with no more than one member appointed per county: three members who reside in the Southwest District; three members who reside in the Valley District; two members who reside in the Northern District; and one member who resides in the South Central District.~~

The following districts are designated for the purposes of this chapter:

Southwest District: Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Lee, Montgomery, Patrick, Pulaski, Roanoke, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties.

Valley District: Alleghany, Augusta, Bath, Botetourt, Highland, Page, Rockbridge, Rockingham, and Shenandoah Counties.

Northern District: Albemarle, Caroline, Clark, Culpeper, Fairfax, Fauquier, Fluvanna, Fredrick, Goochland, Greene, Hanover, King George, Loudoun, Louisa, Madison, Nelson, Orange, Prince William, Rappahannock, Spotsylvania, Stafford, and Warren Counties.

South Central District: Accomack, Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham, Campbell, Charles City, Charlotte, ~~Chesapeake~~, Chesterfield, Cumberland, Dinwiddie, Essex, Gloucester, Greensville, Isle of Wight, James City, King and Queen, King William, Lancaster, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northampton, Northumberland, Nottoway, Pittsylvania, Powhatan, Prince Edward, Prince George, Richmond, Southampton, ~~Suffolk~~, Surry, Sussex, ~~Virginia Beach~~, Westmoreland, and York Counties; *and the Cities of Chesapeake, Suffolk, and Virginia Beach.*

~~Terms of membership shall be for three years. Vacancies in memberships shall be filled pursuant to this section. No member shall serve more than two consecutive terms.~~

~~In addition, the extension sheep specialist from Virginia Polytechnic Institute and State University and the Commissioner of Agriculture and Consumer Services or his designee shall serve as nonvoting members.~~

~~B. Board members not representing agencies of the Commonwealth shall be reimbursed from the Fund for all reasonable and necessary expenses incurred in the performance of their duties as members of the Board.~~

~~C. Seven members shall constitute a quorum for the transaction of business.~~

~~D. The Board shall elect from its membership a chairman, a vice chairman and such other officers as it deems appropriate.~~

**Drafting Note: The first and last paragraphs of subsection A and all of subsection C are moved to proposed § 3.2-2101, Sheep Industry Board; composition and appointment of members; quorum. The terms of membership language in subsection A is moved to proposed § 3.2-2102, Sheep Industry Board membership terms. Subsections B and D are moved to proposed § 3.2-2103, Sheep Industry Board officers and compensation.**

~~§ 3.1-1076 3.2-2111. Virginia Sheep Industry Promotion and Development Fund created; purpose established.~~

~~A. The Board shall establish, administer, manage and make expenditures from a special, nonreverting fund. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Sheep Industry Promotion and Development Fund, hereafter referred to as "the Fund." The Board shall establish and administer the Fund. The Fund shall be established on the books of the Comptroller. All assessments paid pursuant to § 3.2-2112 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of carrying out the provisions of this chapter. No provision of this chapter shall be construed to give the Board the authority to expend funds for legislative or political activity. The Fund shall consist of assessments paid pursuant to § 3.1-1077. The unexpended balance of the Fund at the end of the biennium shall not be transferred to the general fund of the state treasury. Expenditures and disbursements from the Fund shall be made by the Sheep Industry Board on warrants issued by the Comptroller upon written request by a duly authorized officer of the Sheep Industry Board.~~

~~B. The Auditor for Public Accounts shall audit all the accounts of the Sheep Industry Board as provided in § 30-133.~~

~~C. All money collected under this chapter shall be expended by the Board by warrants of the State Comptroller on vouchers signed by a duly authorized officer of the Board.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Language is deleted in existing subsection A prohibiting the Sheep Industry Board from expending funds for legislative or political activity. This language is moved to subsection B in proposed § 3.2-1100, Diversion of dedicated revenues, in Chapter 11, General Provisions, to apply to all of the commodity boards.**

~~§ 3.1-1077. Tax Commissioner authorized to collect assessment on sheep sold.~~

~~In order for the Board to carry out the provisions of this chapter, the Tax Commissioner shall collect from the handler the assessment authorized by this chapter for all sheep and lambs sold in Virginia. Any handler purchasing sheep or lambs in Virginia for resale within ten days shall be exempt from the assessment on the subsequent sale.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-2112, Collection and disposition of assessment by handler; reports.**

~~§ 3.1-1078 3.2-2112. Reports to Tax Commissioner; collection. Collection and disposition of assessment by handler; records to be kept by handlers reports.~~

~~A. Handlers—Every handler shall deduct the assessment authorized under this chapter from the proceeds of sale owed by him to the respective owners for all sheep sold in the Commonwealth. Any handler purchasing sheep in the Commonwealth for resale within 10 days shall be exempt from the assessment on the subsequent sale. The handler shall remit the assessment to the Tax Commissioner on or before the last day of the month following the end of each calendar quarter.~~

~~B. Every handler shall make complete reports to the Tax Commissioner on forms furnished and prescribed by the Tax Commissioner, submit such reports to the Tax Commissioner along with the assessments submitted pursuant to subsection A, and keep copies of the reports for a period of not less than three years from the time the report was produced. Each form report shall include a statement of the number of sheep and lambs which that have been handled; the amount of money which that has been collected; and any other information deemed necessary by the Tax Commissioner to carry out his duties under this chapter. Notwithstanding the provisions of § 58.1-3, upon request, the Tax Commissioner is authorized to provide the Sheep Industry Board with a list of assessment payers and amounts paid.~~



~~B. Handlers shall deduct from the proceeds of sale owed by them to the respective owners of sheep the assessment as authorized by this chapter.~~

~~C. The funds collected by the handler from proceeds of sales are due to the Tax Commissioner on or before the last day of the month following the end of each calendar quarter.~~

~~D. The handler shall keep a complete record of the number of sheep subject to payment bought by him for a period of not less than three years. Such records shall be open for inspection by the Tax Commissioner or his agents, and shall be established and maintained as required by the Tax Commissioner.~~

*C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.*

**Drafting Note: Proposed subsection A is moved from existing § 3.1-1077. Existing subsections B and C are incorporated into proposed subsection A. Subsection D is moved, for consistency with other commodity boards, to proposed § 3.2-2113, Records to be kept by handler. Proposed subsection C provides a cross-reference to proposed § 3.2-1102, Collection of delinquent assessments; civil action, in Chapter 11, General Provisions.**

*§ 3.2-2113. Records to be kept by handler.*

*Every handler shall keep a complete record of the number of sheep subject to payment bought by him for a period of not less than three years. Such records shall be open for inspection by the Tax Commissioner, and shall be established and maintained as required by the Tax Commissioner.*

**Drafting Note: New section. For consistency with other commodity boards, this language is moved from existing § 3.1-1078.**

~~§ 3.1-1079 3.2-2114. Collection of delinquent assessments; misdemeanors; prosecutions~~  
*Falsification of records; misdemeanor.*

~~A. If assessment money due pursuant to this chapter is not paid when due, the Tax Commissioner shall immediately notify the violator of such deficiency and shall add thereto a penalty of five percent of the amount due. If such deficiency is not paid within thirty days from the date of such notice, it shall bear interest, in accordance with § 58.1-15, from the date it was due, which shall be collected as part of the delinquent amount. The Tax Commissioner may waive or remit the penalty of five percent, or portion thereof, in his discretion for good cause shown. If any person is delinquent in any payment of the money owed or interest thereon, the amount shall be collected by civil action in the name of the Commonwealth at the direction of the Tax Commissioner, and the person adjudged to be in default shall pay the cost of such action. The Attorney General, at the request of the Tax Commissioner, shall without delay institute action in the proper court for the collection of the amount of any money past due under this chapter, including interest thereon.~~

~~B. It shall be a Class 1 misdemeanor for:~~

~~1. For any handler to fail to submit to the Tax Commissioner any statement or report required in this chapter within sixty 60 days from the time such statement or report is required to be submitted under this chapter.~~

~~C. It shall be a Class 1 misdemeanor for 2. For any handler knowingly to report falsely to the Tax Commissioner the number of taxable sheep handled by him during any period or to falsify the records.~~

~~D. Prosecution shall be initiated by the attorney for the Commonwealth in any city or county within the Commonwealth.~~

**Drafting Note: Subsection A is deleted and a cross-reference to the proposed general provision section § 3.2-1102, Collection of delinquent assessments; civil action, is added to proposed § 3.2-2112, Collection and disposition of assessment by handler; reports. Similar collection of delinquent assessment provisions appeared in most commodity boards, so a general provision was created, and a cross-reference added. Subsection D is deleted as unnecessary.**

~~§ 3.1-1080.~~

~~Expired.~~

**Drafting Note: Deleted section. This section expired on November 25, 1995, the date the Governor proclaimed approval of the original referendum creating the Sheep Industry Board.**

CHAPTER ~~25.3-22.~~

SMALL GRAINS BOARD.

**Chapter Drafting Note: Changes to the organization of the chapter bring consistency to the administration of all commodity boards. Certain definitions have been clarified: "county buyer" is updated to "country buyer" to reflect the original meaning and "farmer" is replaced with "producer." Sections related to the original referendum have been deleted since the Small Grains Board has already been established. A citation to the original Acts of Assembly is included as a reference. Special fund language has been added to proposed § 3.2-2211, Virginia Small Grains Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. Existing § 3.1-684.45 has been deleted and replaced by a title-wide provision in proposed § 3.2-112, Regulations governing the conduct of referendum. Similarly, existing § 3.1-684.55 has been deleted and replaced by a title-wide provision in proposed § 3.2-1102, Collections of delinquent assessments; civil action. The duration of time a handler must retain records has increased from two to three years for consistency among commodity boards.**

~~§ 3.1-684.41~~ 3.2-2200. Definitions.

As used in this chapter, unless the context otherwise requires:

~~"Association" means the Virginia Small Grains Association, Inc.~~

~~"Board" means the Virginia Small Grains Board.~~

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

*"Country buyer" means any person who buys small grains from a producer.*

~~"County" means counties, cities or towns in which small grains are a source of income.~~

~~"County buyer" means any person who buys small grains from a producer.~~

~~"Exporter" means any person offering small grains for export sale.~~

~~"Farmer" means any person engaged in the business of producing small grains.~~

*"Handler" means any person who purchases small grains from a farmerproducer and includes a any farmerproducer who transports and sells his own small grains out of state. Handler also means any processor, dealer, shipper, country buyer, exporter, or any other business entity that purchases small grains from a producer. Handler shall also mean any person buying, accepting for shipment, or otherwise acquiring property in small grains from a producer, and shall include a mortgagee, pledgee, lienor, or other person having a claim against the producer when the actual or constructive possession of such small grains is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.*

~~"Processor" means any person who changes the physical form or characteristic of small grains in preparation for sale.~~

~~"Producer" means any farmerperson who has grown and sold small grains in the Commonwealthhas sold small grains in the preceding three years.~~

~~"Seedsman" means any person who offers small grains seeds for sale.~~

~~"Small grains" means barley, oats, rye, or wheat.~~

~~"State Board" means the Board of Agriculture and Consumer Services.~~

**Drafting Note: The definition of "association" is deleted because it is now written out when it appears in the chapter. The definitions of "Board" and "Commissioner" are deleted because those terms appear in the title-wide definitions section in proposed § 3.2-100, Definitions, in Chapter 1, General Provisions. "County buyer" is updated to "country buyer" to reflect the original meaning. "County" is deleted as unnecessary. The definition of "farmer" is deleted, and "farmer" is replaced throughout the chapter with "producer" for clarification. The definitions of "handler" are moved from existing § 3.1-684.53. In the definition of "producer," "farmer" is changed to "person" to capture all of the legal entities included within the definition of "person."**

~~§ 3.1-684.52 3.2-2201. Virginia Small Grains Board—established; composition; and appointment and terms; vacancies; officers; expenses; powers and duties of members.~~

~~The Virginia Small Grains Board, is hereby established within the Virginia Department of Agriculture and Consumer Services by the passage of a referendum held pursuant to Chapter 587 of the 1991 Acts of Assembly, is continued within the Department. The Virginia Small Grains Board shall be composed of eleven—11 members appointed by the Governor from nominations by the Virginia Small Grains Grain Producers Association or other organizations representing small grain producers, the appointments to be subject to confirmation by the General Assembly. The Virginia Small Grains Grain Producers Association shall nominate at least two producers from each producer-production area of small grains. as defined herein: Area I: the Counties of Accomack and Northampton; City of Virginia Beach; Area II: the Counties of Stafford, King George, Westmoreland, Northumberland, Richmond, and Lancaster; Area III: the Counties of Spotsylvania, Caroline, Essex, Middlesex, Mathews, Gloucester, King and Queen, King William, and Orange; Area IV: the Counties of Louisa, Fluvanna, Goochland, Hanover, Henrico, New Kent, Charles City, James City, York, Powhatan, Cumberland, Buckingham, Appomattox, Amelia, Chesterfield, Prince George, Dinwiddie, and Nottoway; Area V: the Cities of Chesapeake and Suffolk; the Counties of Isle of Wight, Southampton, Surry, and Sussex; Area VI: the Counties of Greensville, Brunswick, Mecklenburg, Halifax, Charlotte, Lunenburg, Prince Edward, Campbell, and Pittsylvania; Area VII: the Counties of Albemarle, Alleghany, Amherst, Arlington, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Carroll, Clarke, Craig, Culpeper, Dickenson, Fairfax, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson, Page, Patrick, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe. The Governor shall appoint at least one producer from each producer-production area as herein described and the membership of the Virginia Small Grains Board shall be composed of a majority of producers. The Governor shall appoint one member, if available, from each of the following classifications: seedsman, processor, county country buyer, and exporter.~~

~~The initial appointments shall be as follows: four members for a term of three years; four members for a term of two years; and three members for a term of one year; appointments thereafter shall be for three year terms. Vacancies occurring before the expiration of such terms shall be filled by the Governor for the unexpired term. If possible, such vacancies shall be filled from the producer area or classification from which the vacancy occurred from nominations as described in the provisions of this section.~~

~~The Virginia Small Grains Board shall elect a chairman, vice chairman and such other officers as may be required.~~

~~The Virginia Small Grains Board shall have charge of the management and expenditure of the Virginia Small Grains Fund established in the state treasury. The Virginia Small Grains Board may establish an executive committee and charge it with such powers, duties and functions as deemed proper.~~

~~The members of the Virginia Small Grains Board shall not receive compensation for attendance at meetings of the Virginia Small Grains Board, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.~~

~~The Virginia Small Grains Board shall have power to expend funds to provide for programs of market development, education, publicity, research and the promotion of the sale and use of small grains; to manage the funds so as to accumulate a reserve for contingencies; to establish an office and employ such technical, professional and other assistants as may be required; and to contract for market development, publicity, research, advertising and other promotional services.~~

~~The Virginia Small Grains Board shall not enter into an agreement with the Federal Commodity Credit Corporation to collect the specified assessment on all small grains pledged as collateral for a commodity credit corporation price support loan or purchase by the Federal Commodity Credit Corporation under its loan or purchase programs.~~

~~The chairman of the Virginia Small Grains Board shall make a report at each annual meeting of the Virginia Small Grains Association and furnish the members and all other organizations representing small grain producers with a statement of the total receipts and disbursements for the year. He shall file a copy of such report with the Commissioner, and shall make copies of such report available for publication.~~

**Drafting Note: The first sentence is amended to continue the Small Grains Board and to reference its creation. A reference to the Acts of Assembly is added because the original referendum language is being deleted as obsolete throughout this chapter. This reference will provide a means to locate the original language for the referendum that created the Board. The production area language is moved to proposed § 3.2-2210, Production areas designated. Language regarding membership terms is moved to proposed § 3.2-2202, Small Grains Board membership terms. Language regarding officers and compensation is moved to § 3.2-2203, Small Grains Board officers and compensation. Language concerning powers and duties is moved to § 3.2-2204, Powers and duties of Small Grains Board.**

*§ 3.2-2202. Small Grains Board membership terms.*

*The terms for appointments to the Small Grains Board shall be for three years. The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term. If possible, such vacancies shall be filled from the production area or classification from which the vacancy occurred as described in § 3.2-2210.*

**Drafting Note: New section. Language is moved from existing § 3.1-684.52.**

*§ 3.2-2203. Small Grains Board officers and compensation.*

*A. The Small Grains Board shall elect a chairman and such other officers as deemed appropriate.*

*B. Members of the Small Grains Board shall not receive compensation for attendance at meetings of the Small Grains Board, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties.*

**Drafting Note: New section. Language is moved from existing § 3.1-684.52.**

*§ 3.2-2204. Powers and duties of Small Grains Board.*

*A. The Small Grains Board shall have charge of the management and expenditure of the Virginia Small Grains Fund established in the state treasury.*

*B. The Small Grains Board may expend funds to provide for programs of market development, education, publicity, research, and the promotion of the sale and use of small grains; to manage the funds so as to accumulate a reserve for contingencies; to establish an office and employ such technical, professional, and other assistants as may be required; and to contract for market development, publicity, research, advertising, and other promotional services.*

C. The Small Grains Board may establish an executive committee and charge it with such powers, duties, and functions as deemed proper.

D. The Small Grains Board shall not enter into an agreement with the Federal Commodity Credit Corporation to collect the specified assessment on all small grains pledged as collateral for a commodity credit corporation price support loan or purchase by the Federal Commodity Credit Corporation under its loan or purchase programs.

E. The chairman of the Small Grains Board shall make a report at the annual meeting of the Virginia Grain Producers Association including a statement of the total receipts and disbursements for the year. He shall file a copy of the report with the Commissioner and the members of the Small Grains Board.

**Drafting Note: New section. Language is moved from existing § 3.1-684.52. The provision in proposed subsection E is amended to reflect current practice. Copies of the annual report are not given to all organizations representing small grain producers, but are available at the meetings and upon request.**

~~§ 3.1-684.50~~ 3.2-2205. ~~Subsequent referenda~~ Referenda.

If the Governor issues a proclamation under § 3.1-684.48, then no other referendum shall be held on small grains which was the subject of the proclamation except that after the expiration of five years from the date of the imposition of the tax assessment provided for in this chapter, another referendum may be held in the manner herein prescribed to determine whether the assessment for the market development, education, publicity, research and promotion of the use and sale of small grains shall be continued. The State Board, upon petition by a group of small grains producers representing at least ~~ten~~10 percent of the number of producers who voted in the preceding referendum, as determined by the Commissioner, may provide for a referendum on the continuation of the assessment. The State Board shall not act on such a petition for conducting such a referendum until ~~as~~at least five years have passed from the time the Virginia Small Grains Board was established or until at least five years have passed since the last referendum. If the Governor determines that a simple majority is not in favor of the assessment, the State Board shall hold no new referendum for at least one year after the Governor has declared his findings, but at the expiration of one year and upon petition by ~~ten~~10 percent of the Commonwealth's small grains producers ~~which~~that voted in the most recent referendum, the State Board may provide for a referendum. The cost of conducting any such referendum under this section shall be paid from funds paid into the Virginia Small Grains Fund as defined in § 3.1-684.56 3.2-2211. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

**Drafting Note: The first sentence is deleted as obsolete. Added new language that vests authority in the Commissioner to determine the number of small grains producers in Virginia. The last sentence provides a cross-reference to the proposed general provision, § 3.2-112, Regulations governing the conduct of referenda, since existing § 3.1-684.45 is deleted.**

~~§ 3.1-684.45. Rules governing ballots, conduct of referendum, canvassing, etc.~~

~~The State Board shall further adopt rules governing the ballots to be used in the referendum, the conduct of the referendum, canvassing the results thereof, and declaring the results of the referendum.~~

**Drafting Note: Deleted section and moved to Article 2 of proposed Chapter 1, Board of Agriculture and Consumer Services. Proposed § 3.2-112, Regulations governing the conduct of referenda, is referenced above in § 3.2-2205, Referenda.**

~~§ 3.1-684.42. Petition for referendum on question of assessment for market development, education, promotion; action of State Board and Commissioner thereon; amount of assessment; expenses of referendum.~~

~~The State Board of Agriculture and Consumer Services, hereinafter referred to as the "State Board," upon a petition being filed with it by the Virginia Small Grains Association, Inc.,~~

~~hereinafter referred to as the "Association," requesting a referendum and upon finding that sufficient interest exists among the producers of small grains in the Commonwealth to justify a referendum, shall authorize the holding of a referendum as hereinafter set forth. The Commissioner of Agriculture and Consumer Services, hereinafter referred to as the "Commissioner," or his designated agents, shall thereupon be fully empowered and directed to hold and conduct a referendum on the question of whether or not the farmers in this Commonwealth who are the producers of small grains are of the opinion that additional market development, education, publicity, research and promotion of the use and sale of small grains is required. If approved in the referendum authorized by this chapter, the assessment shall be one-half of one percent of the selling price per bushel. Upon filing the petition under the authority of this section, the Association shall thereby agree to pay all expenses and costs of holding such referendum, if the State Board authorizes and directs the referendum to be held. The expenses mentioned herein shall not include payment for services of any employee of the Virginia Department of Agriculture and Consumer Services, or Virginia Polytechnic Institute and State University. Upon the passage of such referendum and the creation of the Virginia Small Grains Board, the cost of holding the referendum shall be reimbursed to the Association by the Small Grains Board.~~

**Drafting Note: Deleted section. The initial referendum creating the Small Grains Board was held in 1991.**

~~§ 3.1-684.43 3.2-2206. Commissioner to arrange for and manage referendum Management of referenda; Commissioner's duties; notice to be posted.~~

~~A. The Commissioner shall arrange for and manage any referendum conducted under pursuant to this chapter, and shall, under regulations adopted by the Board, arrange for the use of polling places if necessary.~~

~~B. The Commissioner shall, sixty-60 days before the date upon which a referendum is to be held, mail notice to the clerk of the circuit court in each county in which locality where small grains are produced. The clerk of the circuit court shall post the notice and regulations on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall, at least 60 days prior to the holding of any referendum under this chapter, give general notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and send a notice of the referendum to a newspaper of general circulation for each area where small grains are produced.~~

~~The notice shall contain the date, hours, the polling place, and method of voting in such referendum, the amount of assessment to be collected, the means by which such assessment shall be collected, the general purposes for which the assessments will be used, and the rules and regulations adopted by the State Board pursuant to § 3.1-684.45 3.2-112. The clerk of the circuit court shall post the notice and rules and regulations on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner.~~

~~C. The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots, certificates, and supplies required for the referendum.~~

~~D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.~~

**Drafting Note: The new language concerning newspaper notice in subsection B is from existing § 3.1-684.46. The new language in subsections A, C, and D is from existing § 3.1-684.47.**

~~§ 3.1-684.51 3.2-2207. Question to be printed on ballots.~~

~~The question to be printed on the ballots used in a-any referendum held under pursuant to this chapter shall be as follows:~~

~~"Do you favor additional market development, education, publicity, research, and the promotion of the sale and use of small grains and continuation of the levy of an assessment on of~~

one-half of one percent of the selling price per bushel in accordance with the provisions of the ~~Virginia Small Grains Act Board law?~~

- Yes
- No."

**Drafting Note: Amended to be consistent with proposed § 3.2-2205, Referenda, which allows for a referendum on the continuation of the assessment.**

~~§ 3.1-684.44~~ 3.2-2208. Persons eligible to vote.

Each ~~farmer~~ *producer* who sold small grains in two of the past three years next preceding the date of the referendum held pursuant to this chapter shall be eligible to vote in such ~~the~~ referendum, provided that he shall ~~so~~ certify sale and point of sale on forms which shall be approved by the ~~State Board~~. Any person meeting such requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in other respects. ~~A farmer may be a natural person, partnership, or corporation. The vote of a partnership shall be cast by one of the general partners. The corporation shall vote by its president, general manager or such other person as may be authorized by the corporation to cast its vote. Any person who is not an individual shall vote by its authorized representative.~~

**Drafting Note: The definition of "farmer" has been changed to "producer" throughout the chapter. The definition of producer now includes a person. The definition of "person" in § 1-230 includes any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity. The proposed last sentence is added to capture all business entities, including partnerships and corporations.**

~~§ 3.1-684.46. Date of referendum; areas, hours, voting places, etc.; publication of notice.~~

~~The State Board shall fix the date, areas, hours, voting places, rules and regulations with respect to the holding of any referendum provided for in this chapter and the State Board may provide for voting by mail if it deems advisable. The Commissioner shall give general notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and is directed to send a notice of the referendum to a newspaper of general circulation for each area in which small grains are produced, at least sixty days prior to the holding of any referendum under this chapter. Such notice shall contain the date, hours, and method of voting in such referendum, the amount of assessment to be collected, the means by which such assessment shall be collected, the general purposes for which the assessments will be used, and the rules and regulations adopted by the State Board pursuant to § 3.1-684.45.~~

**Drafting Note: Deleted section and moved the first sentence concerning the time and place of the referendum to proposed § 3.2-112, Regulations governing the conduct of referenda, in Article 2 of proposed Chapter 1, Board of Agriculture and Consumer Services. The remainder of the section is moved to proposed § 3.2-2206, Management of referenda; Commissioner's duties; notice.**

~~§ 3.1-684.47. Distribution of ballots; canvass; declaration and certification of results.~~

~~The Commissioner shall prepare and distribute in advance of such referendum all necessary ballots, certificates and supplies required for such referendum and shall, under rules and regulations adopted and promulgated by the Board, arrange for the use of polling places, if necessary. He shall, within ten days after such referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the State Board.~~

**Drafting Note: Deleted section and moved to subsections A, C, and D of proposed § 3.2-2206, Management of referenda; Commissioner's duties; notice.**

~~§ 3.1-684.48~~ 3.2-2209. *Referenda results; Action* action of Governor if a simple majority of voters favor assessment.

If the Governor finds ~~the~~ any referendum in order and that at least a simple majority of those voting are in favor ~~opposition to the continuation~~ of the assessment for the purpose of conducting programs in market development, education, publicity, research and the promotion of

~~the sale and use of~~ on small grains, he shall so proclaim and ~~establish within the Virginia Department of Agriculture and Consumer Services a Virginia Small Grains Board as defined in § 3.1-684.4 upon such proclamation the assessment on small grains will be discontinued. If the Governor finds that at least a simple majority of those voting are in favor of the continuation of the assessment on small grains, the Governor shall not so proclaim.~~

**Drafting Note: Language is updated to reflect that the section applies to subsequent referenda, and not the original 1991 referendum establishing the Small Grains Board. No provisions exist specifically for subsequent referenda results in this chapter. The new language is modeled after language from the Cotton Board's subsequent referenda.**

~~§ 3.1-684.49. Action of Governor if referendum out of order or less than a simple majority of voters favor assessment.~~

~~If the Governor finds the referendum out of order, or that at least a simple majority of those voting are not in favor of the assessment for the purpose of conducting programs of market development, education, publicity, research and the promotion of the sale and use of small grains, he shall not establish within the Virginia Department of Agriculture and Consumer Services a Small Grains Board under this chapter.~~

**Drafting Note: Deleted section. The initial referendum creating the Small Grains Board was held in 1991.**

*§ 3.2-2210. Production areas designated.*

*The following production areas are designated for the purposes of this chapter:*

*Area I: the Counties of Accomack and Northampton; City of Virginia Beach;*

*Area II: the Counties of Stafford, King George, Westmoreland, Northumberland, Richmond, and Lancaster;*

*Area III: the Counties of Spotsylvania, Caroline, Essex, Middlesex, Mathews, Gloucester, King and Queen, King William, and Orange;*

*Area IV: the Counties of Louisa, Fluvanna, Goochland, Hanover, Henrico, New Kent, Charles City, James City, York, Powhatan, Cumberland, Buckingham, Appomattox, Amelia, Chesterfield, Prince George, Dinwiddie, and Nottoway;*

*Area V: the Cities of Chesapeake and Suffolk; the Counties of Isle of Wight, Southampton, Surry, and Sussex;*

*Area VI: the Counties of Greensville, Brunswick, Mecklenburg, Halifax, Charlotte, Lunenburg, Prince Edward, Campbell, and Pittsylvania;*

*Area VII: the Counties of Albemarle, Alleghany, Amherst, Arlington, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Carroll, Clarke, Craig, Culpeper, Dickenson, Fairfax, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson, Page, Patrick, Prince William, Pulaski, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe.*

**Drafting Note: New section. Language is moved from existing § 3.1-684.52.**

~~§ 3.1-684.56 3.2-2211. Virginia Small Grains Fund; audit; Virginia Small Grains Board may cooperate with other agencies engaged in promotional activities established.~~

*There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Small Grains Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under the provisions of this chapter shall be credited on the Comptroller's books to a fund to be known as the "Virginia Small Grains Fund." paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All moneys credited to the Virginia Small Grains*



~~Fund are hereby appropriated~~ Moneys in the Fund shall be used solely for the purposes set forth in this chapter.

*Expenditures and disbursements from the Fund shall be made by the Small Grains Board on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the Small Grains Board.*

In carrying out the purposes of this chapter, the ~~Virginia~~ Small Grains Board ~~shall have the authority to~~ may cooperate with other state, regional, national, and international agricultural organizations in market development, education, publicity, research, and the promotion of the sale and use of small grains. The proceeds from such activities shall be promptly paid into the Virginia Small Grains Fund.

The Auditor of Public Accounts shall audit all the accounts of the ~~Virginia~~ Small Grains Board as provided for in § 30-133.

~~The unexpended balance of the Virginia Small Grains Fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

Money from the Fund shall not be diverted or expended for any purpose other than those set forth in this chapter unless authorized by a specific Act of Assembly.

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language and incorporates language from existing § 3.1-684.57. This fund is already established; but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-684.57. Expenditures.~~

~~All moneys collected under this chapter shall be expended by the Virginia Small Grains Board by warrants of the Comptroller of the state treasury issued on vouchers signed by the duly authorized officer of the Virginia Small Grains Board.~~

**Drafting Note: Deleted section. Language is incorporated into proposed § 3.2-2211, Virginia Small Grains Fund.**

~~§ 3.1-684.53 3.2-2212. Handler to deduct Collection and disposition of assessment from payment to farmer; report and payment by handler; reports.~~

~~For the purpose of carrying out the provisions of this chapter, the processor, dealer, shipper, county buyer, exporter or any other business entity, hereinafter referred to as "the handler," of small grains who purchases from the farmer, A. Every handler shall deduct from payments made to the farmer producer for small grains; the amount of the assessment levied thereon and shall remit such assessment to the Virginia Tax Commissioner in the manner and at the time hereinafter provided pursuant to this chapter. "Handler" also means any person, public or private corporation, the Federal Commodity Credit Corporation, or any association or partnership buying, accepting for shipment, or otherwise acquiring property in small grains from a producer, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the producer, when the actual or constructive possession of such small grains is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim. A farmer who transports and sells his small grains out of the Commonwealth is considered the handler.~~

~~B. A report to the Tax Commissioner shall be on forms prescribed and furnished by the Tax Commissioner; shall be a statement of the gross volume of small grains which has been handled by the handler; and shall be filed with the Tax Commissioner covering small grains handled during the preceding period, as set forth by the Virginia Tax Commissioner. The Tax Commissioner shall set forth the filing date or dates for reports and assessments and the period or periods to be covered after consultation with the Association Virginia Small Grains Association and the Small Grains Board. The assessment levied on small grains shall be due and payable by the handler on the same day as the report is due. Such The assessment shall be paid to the Tax Commissioner and be promptly paid into the state treasury to the credit of the Virginia Small~~

Grains Fund. The Tax Commissioner shall not assess a fee in the collection of the fee assessment. The Tax Commissioner shall provide annually during the first calendar quarter of each year a listing of all handlers who paid an assessment during the previous calendar year.

*C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.*

**Drafting Note: Definition of "handler" is moved to § 3.2-2200, Definitions. Proposed subsection C provides a cross-reference to proposed § 3.2-1102, Collection of delinquent assessments; civil action, in Chapter 11, General Provisions.**

~~§ 3.1-684.55. Interest on assessment; collection of delinquent assessment.~~

~~The assessment imposed under the provisions of this chapter and unpaid on the date on which such assessment was due and payable shall bear interest at a rate determined in accordance with § 58.1-15 from and after the due date until paid. If any person defaults in any payment of the assessment or interest thereon, the amount shall be collected by a civil action in the name of the Commonwealth and the person adjudged in default shall pay the costs of such action. The Attorney General at the request of the Tax Commissioner shall institute such action in the proper court for the collection of the amount of any assessment past due under this chapter including interest thereon.~~

**Drafting Note: Deleted section. A cross-reference to the proposed general provision section § 3.2-1102, Collection of delinquent assessments; civil action, is added to § 3.2-2212, Collection and disposition of assessment by handler; reports.**

~~§ 3.1-684.54 3.2-2213. Records to be kept by handlers.~~

~~The Every handler shall keep a complete record of the small grains which have been handled by him, and shall preserve such records for a period of not less than two-three years from the time such-the small grains were handled. Such records shall be open to the inspection of the Tax Commissioner and his duly authorized agents, and shall be established and maintained as required by the Tax Commissioner.~~

**Drafting Note: Changed the amount of time a handler must keep records from two years to three years for consistency among the commodity boards. The Tax Commissioner, like the Commissioner of Agriculture and Consumer Services, has the authority to employ agents under § 2.2-602, Duties of agencies and their appointing authorities.**

~~§ 3.1-684.58 3.2-2214. Violation a Falsification of records; misdemeanor.~~

~~It shall be a Class 1 misdemeanor for:~~

~~1. For any handler knowingly to report falsely to the Tax Commissioner the quantity of small grains handled by him during any period or.~~

~~2. For any handler to falsify the records of the small grains handled by him, or.~~

~~3. For any handler to fail to preserve such record-the records of the small grains handled for a period of two-three years from the time such small grains were handled.~~

**Drafting Note: Changed the amount of time a handler must keep records from two years to three years for consistency among the commodity boards.**

## CHAPTER 25.123.

### SOYBEANS SOYBEAN BOARD.

**Chapter Drafting Note: Changes to the organization of the chapter bring consistency to the administration of all commodity boards. Certain definitions have been clarified: "county buyer" is updated to "country buyer" to reflect the original meaning and "farmer" is replaced with "producer." Sections related to the original referendum have been deleted since the Soybean Board has already been established. A citation to the original Acts of Assembly is included as a reference. Special fund language has been added to proposed § 3.2-2311, Virginia Soybean Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the**

Fund and be credited to it. The interest will not go to the general fund as it did in the past. Existing § 3.1-684.6 has been deleted and replaced by a title-wide provision in proposed § 3.2-112, Regulations governing the conduct of referenda. Similarly, existing § 3.1-684.16 has been deleted and replaced by a title-wide provision in proposed § 3.2-1102, Collections of delinquent assessments; civil action. The duration of time a handler must retain records has increased from two to three years for consistency among commodity boards.

~~§ 3.1-684.1. Legislative findings; purpose of chapter.~~

~~Subject to § 3.1-684.9, the General Assembly finds and declares that soybeans are important to the prosperity of this State and are a major source of income to a large segment of the State's population. Additional research, education, publicity, and promotion of the sale and use of soybeans are required to enhance the economical production and orderly marketing of soybeans and will be beneficial to the State as a whole. This legislation is adopted in furtherance of these purposes.~~

**Drafting Note: Deleted section. This section is currently not set out in the Code. It is deleted because it is a policy statement. Policy statements are no longer set out in the Code.**

~~§ 3.1-684.2. Declaration of public interest; definitions.~~

~~Subject to § 3.1-684.9, the General Assembly hereby declares it to be in the public interest that farmers producing soybeans be permitted to express in a separate advisory referendum whether assessments should be levied upon soybeans, with revenues therefrom to be used in encouraging an expanded program of research, education, publicity, and the promotion of the sale and use of soybeans. The word "farmer," as used herein, shall include all producers of soybeans in this Commonwealth as defined in § 3.1-684.5. The word "county" shall include also cities and towns in which soybeans are a source of income.~~

**Drafting Note: Deleted section. It is deleted because it is a policy statement. Policy statements are no longer set out in the Code. The definitions are moved to the new definition section, § 3.2-2300, Definitions.**

~~§ 3.2-2300. Definitions.~~

~~"Country buyer" means any person who buys soybeans from a producer.~~

~~"Exporter" means any person offering soybeans for export sale.~~

~~"Handler" means any processor, dealer, shipper, exporter, or any other business entity that purchases soybeans from a producer. The term shall also mean any person buying, accepting for shipment, or otherwise acquiring property in soybeans from a producer, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the producer, when the actual or constructive possession of such soybeans is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim. The term shall also mean any producer that transports and sells his soybeans out of state.~~

~~"Processor" means any person who changes the physical form or characteristic of soybeans for the purpose of preparing them for sale.~~

~~"Producer" means any person who grew soybeans in the Commonwealth and sold soybeans during the preceding three years.~~

~~"Seedsman" means any person or firm who offers soybean seeds for sale.~~

**Drafting Note: New section. The definitions are moved from existing §§ 3.1-684.2, 3.1-684.13, and 3.1-684.14. The definition of "Virginia Soybean Association" is deleted, as it now only appears once in this chapter and is written out. "County buyer" is updated to "country buyer" to reflect the original meaning. "County" is deleted as unnecessary. The definition of "farmer" is deleted, and "farmer" is replaced throughout the chapter with "producer" for clarification. The definition of "producer" is modified by replacing the word "farmer" with the word "person" to capture all of the legal entities included within the definition of "person" provided in § 1-230. Similarly, language listing entities included**

**in the definition of person has been deleted. Also, in the definition of "producer," "past" is replaced with "preceding" for clarification and consistency.**

~~§ 3.1-684.13 3.2-2301. Virginia Soybean Commission continued as Virginia Soybean Board; composition; and appointment and terms; vacancies; officers; expenses; powers and duties of members.~~

~~The Virginia Soybean Commission within the Virginia Department of Agriculture and Consumer Services is continued and shall hereafter be known as the Virginia Soybean Board, established by the passage of a referendum held pursuant to Chapter 431 of the 1970 Acts of Assembly, is continued within the Department. The Soybean Board shall be composed of eleven 11 members appointed by the Governor from nominations by the several producer organizations representing soybean producers, the appointments to be subject to confirmation by the General Assembly. The several producer organizations representing soybean producers shall nominate at least two producers from each production area of soybeans, as defined herein: Area I: Accomack and Northampton Counties; Area II: Stafford, King George, Westmoreland, Northumberland, Richmond and Lancaster Counties; Area III: Spotsylvania, Caroline, Essex, Middlesex, Mathews, Gloucester, King and Queen, and King William Counties; Area IV: Louisa, Fluvanna, Goochland, Hanover, Henrico, New Kent, Charles City, James City and York Counties; Area V: the Cities of Virginia Beach, Chesapeake, and Suffolk; Area VI: Chesterfield, Dinwiddie, Prince George, Surry, Sussex, Isle of Wight, Southampton, Greensville and Brunswick Counties; Area VII: Buckingham, Cumberland, Powhatan, Amelia, Prince Edward, Appomattox, Campbell, Charlotte, Lunenburg, Nottoway, Mecklenburg, Halifax, Pittsylvania and Henry Counties. The Governor shall appoint at least one producer from each production area as herein described in § 3.2-2310, and the membership of the Soybean Board shall always be composed of a majority of producers. The Governor shall appoint one member, if available, from each of the following classifications: seedsman, producer, processor, countycountry buyer, and exporter. Such appointments shall be made from nominations from the several producer organizations representing soybean producers. For the purposes of this chapter the term:~~

~~"Producer" means any farmer who produced and sold soybeans during the past three years;~~

~~"Seedsman" means any person or firm who offers soybean seeds for sale;~~

~~"Processor" means any person or firm who changes the physical form or characteristic of soybeans for the purpose of preparing them for sale;~~

~~"County buyer" means any person or firm who buys soybeans from the producer;~~

~~"Exporter" means any person or firm offering soybeans for export sale.~~

~~The initial appointments shall be four for three year terms; four for two year terms; and three for one year terms; appointments thereafter shall be for three year terms. Vacancies occurring before the expiration of such terms shall be filled by the Governor for the unexpired term. If possible such vacancies shall be filled from the production area or classification from which the vacancy occurred from nominations as described in this section.~~

~~The Soybean Board shall elect a chairman, vice chairman and such other officers as may be required.~~

~~The Soybean Board shall have charge of the management and expenditure of the Virginia Soybean Fund established in the state treasury. The Soybean Board may establish an executive committee and charge it with such powers, duties and functions as the Soybean Board deems proper.~~

~~The members of the Soybean Board shall not receive compensation for attendance at meetings of the Soybean Board, but shall be reimbursed for actual expenses incurred in such attendance.~~

~~The Soybean Board shall have power to expend funds to provide for programs of research, education, publicity and the promotion of the sale and use of soybeans; to manage the~~

~~funds so as to accumulate a reserve for contingencies; to establish an office and employ such technical, professional and other assistants as may be required; to contract for research, publicity, advertising and other promotional services.~~

~~The Board may enter into an agreement with the Federal Commodity Credit Corporation to collect the specified assessment on all soybeans pledged as collateral for a commodity credit corporation price support loan or purchase by the Federal Commodity Credit Corporation under its loan or purchase program.~~

~~The chairman of the Soybean Board shall make a report at each annual meeting of the Soybean Board and furnish the members of the Soybean Board with a statement of the total receipts and disbursements for the year. He shall file a copy of such report and audit as is required by § 3.1-684.17 with the Commissioner and the several producer organizations representing soybean producers, and shall make copies of such report available for publication.~~

**Drafting Note: The first sentence is amended to continue the Soybean Board and to reference its creation. A reference to the Acts of Assembly is added because the original referendum language is being deleted as obsolete throughout this chapter. This reference will provide a means to locate the original language for the referendum that created the Board. Production area information is moved to proposed § 3.2-2310, Production areas designated. The definitions are moved to proposed § 3.2-2300, Definitions. Language regarding membership terms is moved to proposed § 3.2-2302, Soybean Board membership terms, and officers and compensation language is moved to proposed § 3.2-2303, Soybean Board officers and compensation. The powers and duties of the Soybean Board are moved to proposed § 3.2-2304, Powers and duties of Soybean Board.**

*§ 3.2-2302. Soybean Board membership terms.*

*The terms for appointments to the Soybean Board shall be for three years. The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term. If possible, vacancies shall be filled from the production area or classification from which the vacancy occurred from nominations as described § 3.2-2301.*

**Drafting Note: New section. Language is moved from existing § 3.1-684.13.**

*§ 3.2-2303. Soybean Board officers and compensation.*

*A. The Soybean Board shall elect a chairman and such other officers as deemed appropriate.*

*B. Members of the Soybean Board shall not receive compensation for attendance at meetings of the Soybean Board, but shall be reimbursed for actual expenses incurred in such attendance.*

**Drafting Note: New section. Language is moved from existing § 3.1-684.13.**

*§ 3.2-2304. Powers and duties of Soybean Board.*

*A. The Soybean Board shall have charge of the management and expenditure of the Virginia Soybean Fund established in the state treasury.*

*B. The Soybean Board may expend funds to provide for programs of research, education, publicity, and the promotion of the sale and use of soybeans; to manage the funds so as to accumulate a reserve for contingencies; to establish an office and employ such technical, professional, and other assistants as may be required; and to contract for research, publicity, advertising, and other promotional services.*

*C. The Soybean Board may establish an executive committee and charge it with powers, duties, and functions as is deemed proper.*

*D. The Soybean Board may enter into an agreement with the Federal Commodity Credit Corporation to collect the specified assessment on all soybeans pledged as collateral for a commodity credit corporation price support loan or purchase by the Federal Commodity Credit Corporation under its loan or purchase program.*

*E. The chairman of the Soybean Board shall make an annual report to the Soybean Board including a statement of the total receipts and disbursements for the year, and shall file a copy of such report with the Commissioner.*

**Drafting Note: New section. Language is moved from existing § 3.1-684.13. Language is deleted from subsection E to reflect current Soybean Board practices. The chairman does not file a copy of the report with the "producer organizations representing soybean producers," and "making copies of the report available for publication" is obsolete since the report is a public document under the Freedom of Information Act.**

~~§ 3.1-684.3. Petition for referendum on question of assessment for research, promotion, etc.; action of Board thereon; amount of assessment; expenses of referendum.~~

~~The State Board of Agriculture and Consumer Services, hereinafter referred to as the "State Board," upon a petition being filed with it by the Virginia Soybean Association, Inc., hereinafter referred to as the "Association," requesting an advisory referendum and upon finding that sufficient interest exists among the producers of soybeans in this Commonwealth to justify a referendum, shall authorize the holding of a referendum as hereinafter set forth. The Commissioner of Agriculture and Consumer Services hereinafter referred to as the "Commissioner," or his designated agents, shall thereupon be fully empowered and directed to hold and conduct a referendum on the question of whether or not the farmers in this Commonwealth who are the producers of soybeans are of the opinion that additional research, education, publicity and promotion of the use and sale of soybeans are required. If approved in the referendum authorized by this chapter, the assessment shall be one half cent per bushel. Upon filing the petition under the authority of this section, the Association shall thereby agree to pay all expenses and costs of holding such referendum, if the State Board authorizes and directs the referendum to be held. The expenses mentioned herein shall not include payment for services of any employee of the Virginia Department of Agriculture and Consumer Services, or the Virginia Polytechnic Institute and State University Extension Division. Upon the passage of said referendum and the creation of the Virginia Soybean Board, the cost of holding the said referendum shall be reimbursed to the Association by the Board at the convenience of the Board.~~

**Drafting Note: Deleted section. This section is obsolete since the Soybean Board was established by a referendum held in 1970.**

~~§ 3.1-684.11 3.2-2305. Subsequent referenda~~*Referenda.*

~~If the Governor issues a proclamation under § 3.1-684.9, then no other referendum shall be held on soybeans which was the subject of the proclamation except that after the expiration of Every five years from the date of the imposition of the tax assessment provided for in this chapter on soybeans, another referendum shall be held in the manner herein prescribed to determine whether the assessment for research, education, publicity, and promotion of the sale and use of soybeans shall be continued. An additional referendum shall be held for this purpose each five years thereafter, except that the State Board, on a upon petition presented by a group of soybean producers representing at least thirty three 33 percent of the Commonwealth's production, as determined by the Commissioner, may provide for an advisory referendum on the continuation of the assessment. Upon finding that sufficient interest exists among the producers of soybeans in the Commonwealth to justify a referendum, the Board shall authorize the holding of a referendum. The State Board shall not act on such a petition for conducting an advisory referendum until at least five years have passed from the time the Virginia Soybean Board was established. The cost of conducting any such referendum as above prescribed will shall come from funds paid into the Virginia Soybean Fund as defined in § 3.1-684.17. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.~~

**Drafting Note: Added new language that vests authority in the Commissioner to determine the number of soybean producers in Virginia. The proposed last sentence provides a cross-**

reference to proposed § 3.2-112, Regulations governing the conduct of referenda, since existing § 3.1-684.6 is deleted.

~~§ 3.1-684.6. Rules governing ballots, conduct of referendum, canvassing, etc.~~

~~The State Board shall further adopt rules governing the ballots to be used in the referendum, the conduct of the referendum, canvassing the results thereof, and declaring the results of the referendum.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-112, Regulations governing the conduct of referenda. The proposed section is cross-referenced above in proposed § 3.2-2305, Referenda.**

~~§ 3.1-684.4 3.2-2306. Commissioner to arrange for and manage referendum *Management of referenda; Commissioner's duties; notice to be posted.*~~

A. The Commissioner shall arrange for and manage any referendum conducted under this chapter.

B. The Commissioner shall, ~~sixty~~ 60 days before the date upon which a referendum is to be held, ~~mail notice to the clerk of the circuit court in each locality where soybeans are produced. The clerk of the court shall post the notice~~ fix, determine and publicly announce by posting on the front door or public bulletin board of the courthouse in each county in which soybeans are produced the date, hours, and polling places or other ways for voting in such referendum, the amount to be collected, the sources thereof, the means by which such sum shall be collected and the general purposes for which the funds so collected shall be applied and certify the posting to the Commissioner. The Board shall publish notice of the referendum in each newspaper of general circulation in the counties where the referendum is to be held at least 60 days before the holding of any referendum under this chapter. The notice shall contain the date, hours, and polling places or other ways for voting in such referendum, the amount of the assessment to be collected, the sources thereof, the means by which the sum shall be collected, and the general purposes for how the funds will be used.

C. The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots, certificates, and supplies required for the referendum and shall, under regulations adopted by the Board, arrange for the use of polling places, if necessary.

D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the Board.

**Drafting Note: New language is from existing §§ 3.1-684.7 and 3.1-684.8.**

~~§ 3.1-684.12 3.2-2307. Question to be printed on ballots.~~

The question to be printed on the ballots used in a referendum held ~~under~~ pursuant to this chapter, ~~unless otherwise specified herein,~~ shall be as follows:

"Do you favor additional research, education, publicity and the promotion of the sale and use of soybeans and the *continuation of the* levy of an assessment of two cents per bushel in accordance with the provisions of the ~~Virginia Soybean Act~~ Board?"

Yes

No."

**Drafting Note: Amended to be consistent with proposed § 3.2-2305, Referenda, which allows for a referendum on the continuation of the assessment.**

~~§ 3.1-684.5 3.2-2308. Persons eligible to vote.~~

Each ~~farmer~~producer who sold soybeans during the past three years next preceding the date of the referendum held pursuant to this chapter shall be eligible to vote in such referendum, provided that he shall so certify on forms ~~which~~ that shall be prepared by the ~~State Board~~. Any person meeting such requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in other respects.

**Drafting Note: Technical changes.**

~~§ 3.1-684.7. Date of referendum; areas, hours, voting places, etc.; publication of notice.~~

~~The State Board shall fix the date, areas, hours, voting places, rules and regulations with respect to the holding of such referendum and may provide for voting by mail if it deems it advisable, and the State Board shall mail copies of the same to be published in each newspaper of general circulation in the counties in which the referendum is to be held at least sixty days before the holding of any referendum under this chapter. Such public notice shall contain in addition to the other information required herein, the amount of the assessment proposed to be levied and the purposes for which the proceeds shall be expended.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-2306, Management of referenda; Commissioner's duties; notice. Language regarding the Board adopting regulations governing the conduct of referenda is now referenced in proposed § 3.2-112, Regulations governing the conduct of referenda, in Article 2 of proposed Chapter 1.**

~~§ 3.1-684.8. Distribution of ballots, etc.; canvass and declaration of results.~~

~~The Commissioner shall prepare and distribute in advance of such referendum all necessary ballots, certificates and supplies required for such referendum and shall, under rules and regulations adopted and promulgated by the State Board arrange for the use of polling places, if necessary. He shall, within ten days after such referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the State Board.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-2306, Management of referenda; Commissioner's duties; notice.**

~~§ 3.1-684.9 3.2-2309. Action-Referenda results; action of Governor if sixty percent of voters favor assessment.~~

~~If the Governor finds the any referendum in order and that at least sixty-60 percent of those voting are in favor-opposition to the continuation of the assessment for the purpose of conducting programs in research, education, publicity and the promotion of the sale and use of on soybeans, he shall so proclaim and establish within the Virginia Department of Agriculture and Consumer Services a Virginia Soybean Board as defined in § 3.1-684.13 upon such proclamation the assessment on soybeans will be discontinued. If the Governor finds that at least 60 percent of those voting are in favor of the continuation of the assessment on soybeans, the Governor shall not so proclaim.~~

**Drafting Note: Updated language to reflect that the section applies to subsequent referenda, and not the original 1970 referendum establishing the Soybean Board. No provisions exist specifically for subsequent referenda results in this chapter. The new language is modeled after language from the Cotton Board's subsequent referenda and existing § 3.1-684.10.**

~~§ 3.1-684.10. Action of Governor if referendum out of order or if less than sixty percent of voters favor assessment.~~

~~If the Governor finds the referendum out of order, or that at least sixty percent of those voting are not in favor of the assessment for the purpose of conducting programs of research, education, publicity and the promotion of the sale and use of soybeans, he shall not establish within the Virginia Department of Agriculture and Consumer Services a Soybean Board under this chapter.~~

**Drafting Note: Deleted section. Language that applies to subsequent referenda is moved to proposed § 3.2-2309, Referenda results; action of Governor. The remaining language is deleted as obsolete.**

~~§ 3.2-2310. Production Areas designated.~~

~~The following production areas are designated for the purposes of this chapter:~~

~~Area I: Accomack and Northampton Counties;~~

~~Area II: Stafford, King George, Westmoreland, Northumberland, Richmond, and Lancaster Counties;~~



*Area III: Spotsylvania, Caroline, Essex, Middlesex, Mathews, Gloucester, King and Queen, and King William Counties;*

*Area IV: Louisa, Fluvanna, Goochland, Hanover, Henrico, New Kent, Charles City, James City, and York Counties;*

*Area V: the Cities of Virginia Beach, Chesapeake, and Suffolk;*

*Area VI: Chesterfield, Dinwiddie, Prince George, Surry, Sussex, Isle of Wight, Southampton, Greensville, and Brunswick Counties;*

*Area VII: Buckingham, Cumberland, Powhatan, Amelia, Prince Edward, Appomattox, Campbell, Charlotte, Lunenburg, Nottoway, Mecklenburg, Halifax, Pittsylvania, and Henry Counties.*

**Drafting Note: New section. Language is moved from existing § 3.1-684.13.**

~~§ 3.1-684.17 3.2-2311. Virginia Soybean Fund; audit; Board may cooperate with other agencies and engage in revenue producing activities established.~~

~~There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Soybean Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under the provisions of this chapter shall be credited on the Comptroller's books to a fund to be known as the "Virginia Soybean Fund," paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All moneys credited to the Virginia Soybean Fund are hereby appropriated. Moneys in the Fund shall be used solely for the purposes set forth in this chapter.~~

~~In carrying out the purposes of this chapter, the Soybean Board shall have the authority to may cooperate with other state, regional, national, and international agricultural organizations in research, education, publicity, and the promotion of the sale and use of soybeans. The Soybean Board shall have the authority to may sell printed materials, rent exhibit space at meetings, and to engage in any type of ethical revenue-producing activity which will help to defray the costs of Soybean Board programs. The proceeds from such activities shall be promptly paid into the Virginia Soybean Fund.~~

~~Expenditures and disbursements from the Fund shall be made by the Soybean Board on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the Soybean Board.~~

~~The Auditor of Public Accounts shall audit all the accounts of the Soybean Board as is provided for in § 30-133.~~

~~The unexpended balance of the Virginia Soybean Fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language and incorporates language from existing § 3.1-684.18. This fund is already established; but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-684.18. Expenditures.~~

~~All moneys collected under this chapter shall be expended by the Virginia Soybean Board by warrants of the Comptroller on the state treasury issued on vouchers signed by the duly authorized officer of the Board.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-2311, Virginia Soybean Fund established.**

~~§ 3.1-684.14 3.2-2312. Handler to deduct Collection and disposition of assessment from payment to farmer; report and payment by handler; reports.~~

~~For the purpose of carrying out the provisions of this chapter, the processor, dealer, shipper, exporter, or any other business entity hereinafter referred to as "the handler," of~~

~~soybeans who purchases from the farmer~~ A. Every handler shall deduct from payments made to the farmer producer for soybeans an assessment of two cents per bushel and shall remit such assessment to the Tax Commissioner ~~in the manner and at the time hereinafter provided pursuant to this chapter~~. The handler shall also deduct from payments made to the farmer producer for soybeans any national assessment that shall be approved under federal law to supersede the state law and shall remit such assessment to the Tax Commissioner ~~in the manner and at the time hereinafter provided pursuant to this chapter~~. The Tax Commissioner shall provide to the Soybean Board copies of excise tax returns and other information as may be necessary for the Soybean Board to comply with Virginia and federal soybean assessment programs. "Handler," as used in this section, ~~includes any person, public or private corporation, the Federal Commodity Credit Corporation, or any association or partnership buying, accepting for shipment, or otherwise acquiring property in soybeans from a producer, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the producer, when the actual or constructive possession of such soybeans is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim. A farmer that transports and sells his soybeans out of state is considered the handler.~~

B. A report to the Tax Commissioner shall be on forms prescribed and furnished by the Tax Commissioner, and shall be a statement of the gross volume of soybeans ~~which has been~~ handled by the handler and shall be filed with the Tax Commissioner by the date or dates as set forth by the Tax Commissioner covering soybeans handled during the preceding period, as set forth by the Tax Commissioner. The Tax Commissioner shall set forth the filing date or dates for reports and assessments and the period or periods to be covered after consultation with the Virginia Soybean Association and Soybean Board. The assessment levied on soybeans shall be due ~~and payable~~ by the handler on the same day as the report is due. ~~Such~~The assessment shall be paid to the Tax Commissioner and be promptly paid into the state treasury to the credit of the Virginia Soybean Fund.

C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.

**Drafting Note: Definition of "handler" is moved to proposed § 3.2-2300, Definitions. Proposed subsection C provides a cross-reference to proposed § 3.2-1102, Collection of delinquent assessments; civil action, in Chapter 11, General Provisions.**

~~§ 3.1-684.16. Interest on assessment; collection of delinquent assessment.~~

~~The assessment imposed under the provisions of this chapter and unpaid on the date on which such assessment was due and payable shall bear interest at a rate determined in accordance with § 58.1-1812, from and after such due date until paid. If any person defaults in any payment of the assessment or interest thereon, the amount shall be collected by a civil action in the name of the Commonwealth at the relation of the Board and the person adjudged in default shall pay the costs of such action. The Attorney General at the request of the Virginia Tax Commissioner shall institute such action in the proper court for the collection of the amount of any assessment past due under this chapter including interest thereon.~~

**Drafting Note: Deleted section. A cross-reference to the proposed general provision § 3.2-1102, Collection of delinquent assessments; civil action, is added to proposed § 3.2-2312, Collection and disposition of assessment by handler; reports.**

~~§ 3.1-684.15~~ 3.2-2313. Records to be kept by handlers.

The handler shall keep a complete record of the soybeans ~~which have been~~ handled by him, and shall preserve such records for a period of not less than ~~two~~three years from the time ~~such~~the soybeans were handled. Such records shall be open to the inspection of the Virginia Tax Commissioner and his duly authorized agents, and shall be established and maintained as required by the Virginia Tax Commissioner.

**Drafting Note: Changed the amount of time a handler must keep records from two years to three years for consistency among the commodity boards. The Tax Commissioner, like the**

**Commissioner of Agriculture and Consumer Services, has the authority to employ agents under § 2.2-602, Duties of agencies and their appointing authorities.**

~~§ 3.1-684.19 3.2-2314. Misdemeanors Falsification of records; misdemeanor.~~

~~It shall be a Class 1 misdemeanor for:~~

~~1. For any handler knowingly to report falsely to the Virginia State Tax Commissioner the quantity of soybeans handled by him during any period or.~~

~~2. For any handler to falsify the records of the soybeans handled by him, or.~~

~~3. For any handler to fail to preserve such record the records of the soybeans handled by him for a period of not less than two at least three years from the time such soybeans are handled.~~

**Drafting Note: Language is added to reflect § 18.2-12, which provides that a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor. Changed the amount of time a handler must keep records from two years to three years for consistency among the commodity boards.**

## CHAPTER ~~18~~24.

### Article ~~3~~.

#### BRIGHT FLUE-CURED TOBACCO BOARD.

**Chapter Drafting Note: Sections regarding Bright Flue-Cured Tobacco Board membership, powers, and terms are reorganized for clarity. Special fund language has been added to proposed § 3.2-2407, Bright Flue-Cured Tobacco Promotion Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The duration of time a warehouse or handler must retain records has increased from two to three years for consistency among commodity boards.**

~~§ 3.1-319 3.2-2400. Definitions.~~

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

~~"Board" means the Virginia Bright Flue-Cured Tobacco Board.~~

~~"Commission" means the Virginia Bright Flue-Cured Tobacco Board.~~

~~"Grower" means any person actually engaged in the growing and producing of bright flue-cured tobacco.~~

~~"Handler" means a any manufacturer, dealer, processor, or any other business entity that purchases tobacco directly from the grower.~~

~~"Person" means and includes individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units, devices and arrangements.~~

~~"Warehouse" means any person authorized by law to conduct auction sales of loose-leaf tobacco.~~

**Drafting Note: The definition of "Board" is deleted to avoid confusion with the title-wide definition of the Board of Agriculture and Consumer Services. The definition of "person" is deleted because it is previously defined in § 1-230.**

~~§ 3.1-320 3.2-2401. Virginia Bright Flue-Cured Tobacco Commission continued as Virginia Bright Flue-Cured Tobacco Board; composition and appointment of members.~~

~~The Virginia Bright Flue-Cured Tobacco Commission within the Department of Agriculture and Consumer Services is continued and shall hereafter be known as the Virginia Bright Flue-Cured Tobacco Board is continued within the Department. The Bright Flue-Cured Tobacco Board shall consist of seven members with one member coming from each production area of flue-cured tobacco as follows: Area I — Pittsylvania County; Area II — Counties of Pittsylvania, Henry, Patrick and Carroll; Area III — Halifax County; Area IV — Counties of Franklin, Bedford, Campbell, Appomattox and Charlotte; Area V — Mecklenburg County; Area~~

~~VI—Counties of Lunenburg, Prince Edward, Nottoway, Cumberland, Amelia, Powhatan and Chesterfield; and Area VII—Counties of Brunswick, Dinwiddie, Greensville, Prince George, Sussex, Southampton and Suffolk. Appointments shall be made to fill area vacancies as follows: Areas I and VII, July 1, 1994; Areas IV and V, July 1, 1995; Areas II and III, July 1, 1996; and Area VI, July 1, 1997. The Governor shall appoint members from nominations made by the Flue-Cured Tobacco Committee of the Virginia Farm Bureau Federation and other tobacco grower organizations existing in tobacco-producing counties. Each member shall be a citizen of the Commonwealth and engaged in producing tobacco in the Commonwealth.~~

**Drafting Note: Moved production area language to proposed § 3.2-2402, Production areas designated.**

*§ 3.2-2402. Production areas designated.*

*The following production areas are designated for the purposes of this chapter:*

*Area I - Pittsylvania County;*

*Area II - Counties of Pittsylvania, Henry, Patrick, and Carroll;*

*Area III - Halifax County;*

*Area IV - Counties of Franklin, Bedford, Campbell, Appomattox, and Charlotte;*

*Area V - Mecklenburg County;*

*Area VI - Counties of Lunenburg, Prince Edward, Nottoway, Cumberland, Amelia, Powhatan and Chesterfield; and*

*Area VII - Counties of Brunswick, Dinwiddie, Greensville, Prince George, Sussex, and Southampton and the City of Suffolk.*

**Drafting Note: New section. Language is moved, to provide consistency with other commodity boards, from existing § 3.1-320.**

~~§ 3.1-321. Appointment and qualifications of members.~~

~~The Governor shall appoint members from nominations made by the Flue-Cured Tobacco Committee of the Virginia Farm Bureau Federation and such other tobacco grower organizations existing in tobacco-producing counties. Each member shall be a citizen of Virginia and engaged in producing tobacco in Virginia.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-2401, Bright Flue-Cured Tobacco Board; composition and appointment of members.**

~~§ 3.1-322 3.2-2403. Terms of members; chairman Bright Flue-Cured Tobacco Board membership terms.~~

~~The members of terms for appointments to the Bright Flue-Cured Tobacco Board shall serve *be* for a term of four years, except that beginning with the first appointments one member shall be appointed for one year, two members for two years, two members for three years and two members for four years. The Board shall elect one of its members as chairman. The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term.~~

**Drafting Note: The sentence regarding election of a chairman is moved to proposed § 3.2-2404, Bright Flue-Cured Tobacco Board officers and compensation. The last sentence is added to provide for filling any vacancy in the Bright Flue-Cured Tobacco Board that may occur before the end of a term.**

~~§ 3.1-323 3.2-2404. Compensation and expenses of members Bright Flue-Cured Tobacco Board officers and compensation.~~

*A. The Bright Flue-Cured Tobacco Board shall elect one of its members as chairman and such other officers as deemed appropriate.*

*B. The members of the Bright Flue-Cured Tobacco Board shall receive a per diem of ~~ten~~ \$10 dollars for each day spent in attendance on meetings of the Bright Flue-Cured Tobacco Board and shall be reimbursed for actual expenses incurred in such attendance.*

**Drafting Note: Proposed subsection A is moved from existing § 3.1-322.**

~~§ 3.1-324~~ 3.2-2405. ~~Administration of funds~~ Powers and duties of Bright Flue-Cured Tobacco Board.

A. All funds levied and collected under this ~~article~~ chapter shall be administered by the Bright Flue-Cured Tobacco Board.

B. *The Bright Flue-Cured Tobacco Board shall plan and conduct campaigns of education, advertising, publicity, sales promotion, and research to increase the demand for, and the consumption of, Virginia bright flue-cured tobacco.*

C. *The Bright Flue-Cured Tobacco Board may make contracts, expend moneys of the Bright Flue-Cured Tobacco Promotion Fund, and do whatever else may be necessary to effectuate the purposes of this chapter.*

D. *The Bright Flue-Cured Tobacco Board may cooperate with other state, regional, and national agricultural organizations in research, advertising, publicity, education, and other means of promoting the sale, use, and exportation of bright flue-cured tobacco, and expend moneys of the Bright Flue-Cured Tobacco Promotion Fund for such purposes.*

E. *The Bright Flue-Cured Tobacco Board may appoint a secretary and such other employees as may be necessary, at salaries to be fixed by the Bright Flue-Cured Tobacco Board, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. All employees handling money under this chapter shall be required to furnish surety bonds.*

F. *The Chairman shall make a report at the annual meeting of the Bright Flue-Cured Tobacco Board and furnish members with a statement of the total receipts and disbursements for the year. He shall file a copy of such report and the audit required by § 3.2-2407 with the Commissioner.*

**Drafting Note: Proposed subsections B, C, and F are moved from existing § 3.1-325 sales promotion and research; annual report. Proposed subsection D is moved from existing § 3.1-326. Proposed subsection E is moved from existing § 3.1-327.**

~~§ 3.1-325. Publicity, sales promotion and research; annual report.~~

~~It shall be the duty of the Board to plan and conduct campaigns of education, advertising, publicity, sales promotion, and research for the purpose of increasing the demand for, and the consumption of, Virginia bright flue cured tobacco, and the Board may make contracts, expend moneys of the Bright Flue Cured Tobacco Promotion Fund and do whatever else may be necessary to effectuate the purposes of this article. The Chairman shall make a report at the annual meeting of the Board and furnish the members of the Board with a statement of the total receipts and disbursements for the year. He shall file a copy of such report and audit as is requested by § 3.1-332 with the Commissioner annually.~~

**Drafting Note: Deleted section and moved to subsections B, C, and F of proposed § 3.2-2405, Powers and duties of Bright Flue-Cured Tobacco Board.**

~~§ 3.1-326. Cooperation with other agricultural organizations.~~

~~The Board shall have authority to cooperate with other state, regional and national agricultural organizations in research, advertising, publicity, education, and other means of promoting the sale, use and exportation of bright flue cured tobacco, and to expend moneys of the Bright Flue-Cured Tobacco Promotion Fund for such purposes.~~

**Drafting Note: Deleted section and moved to subsection D of proposed § 3.2-2405, Powers and duties of Bright Flue-Cured Tobacco Board.**

~~§ 3.1-327. Secretary and other employees.~~

~~The Board shall have authority to appoint a secretary and such other employees as may be necessary, at salaries to be fixed by the Board, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. All employees handling money under this article shall be required to furnish surety bonds.~~

**Drafting Note: Deleted section and moved to subsection E of proposed § 3.2-2405, Powers and duties of Bright Flue-Cured Tobacco Board.**

~~§ 3.1-328~~ 3.2-2406. Levy of excise tax.

~~There is hereby levied on all bright flue-cured tobacco severed from the soil in Virginia, beginning with the crop of 1990, an An excise tax, payable by the grower, of twenty-20 cents per 100 pounds of all poundage-is levied on all bright flue-cured tobacco that is harvested in the Commonwealth and sold by the grower, and shall be payable by the grower.~~

**Drafting Note: Technical changes.**

~~§ 3.1-332~~ 3.2-2407. Bright Flue-Cured Tobacco Promotion Fund; ~~audit established.~~

~~All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a~~ *There is hereby created in the state treasury a special nonreverting fund to be known as the "Bright Flue-Cured Tobacco Promotion Fund," which is hereby created hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys credited to the fund levied and collected under this chapter shall be paid into the state treasury and credited to the Fund.*

*Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely are hereby appropriated for the purposes herein set forth, and shall be used exclusively for of carrying out the administration and enforcement of this article chapter, including the collection of taxes, the payment of personal services and expenses of employees and agents of the Bright Flue-Cured Tobacco Board, and the payment of rent, services, materials, and supplies necessary to effectuate the purposes and objects of this article chapter. Expenditures and disbursements from the Fund shall be made by the Bright Flue-Cured Tobacco Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Bright Flue-Cured Tobacco Board.*

The Auditor of Public Accounts shall audit all the accounts of the *Bright Flue-Cured Tobacco Board* as is provided for in § 30-133. ~~The unexpended balance of the fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language and includes language from existing § 3.1-333. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-333. How moneys to be expended.~~

~~All moneys collected under this article shall be expended by the Virginia Bright Flue-Cured Tobacco Board by warrants of the Comptroller on the State Treasurer issued on vouchers signed by the duly authorized officer of the Board.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-2407, Bright Flue-Cured Tobacco Promotion Fund; established.**

~~§ 3.1-329~~ 3.2-2408. ~~Time and manner of payment~~ *Collection and disposition of excise tax; reports.*

~~The excise tax levied by this article shall be paid by each~~ *Every grower shall pay the excise tax on bright flue-cured tobacco to the warehouse or handler at which where and when the tobacco is first sold at the time of such sale. Each warehouse or handler is hereby designated an agent of the BoardDepartment for the purpose of collecting such excise tax. Such-The tax shall be paid to the BoardDepartment, to the credit of the Bright Flue-Cured Tobacco Board, on or before the tenth10th day of the month following its collection, and by it promptly paid into the state treasury to the credit of the Bright Flue-Cured Tobacco Promotion Fund.*

**Drafting Note: The Department collects the tax on behalf of the Bright Flue-Cured Tobacco Board.**

~~§ 3.1-330~~ 3.2-2409. ~~Records of tax collected to be kept by warehouse and handler.~~

Each warehouse or handler shall keep a complete record of the excise tax collected by it ~~him~~ and shall preserve such record for a period of not less than ~~two~~-three years from the time of collection. Such record shall be open to the inspection of the *Bright Flue-Cured Tobacco Board* and its duly authorized agents.

**Drafting Note: Changed the amount of time a warehouse or handler must keep records from two years to three years for consistency among the commodity boards.**

~~§ 3.1-334~~ 3.2-2410. Collection of unpaid excise tax and interest thereon.

~~The~~ *If the tax imposed by this article and unpaid chapter is not paid when due and payable and/or any funds collected by a warehouse or handler and are not remitted to the Bright Flue-Cured Tobacco Board as hereinabove provided required in this chapter, the amount due shall bear interest at the rate of one per centum per month from and after the due date until payment. If any person defaults in any payment of the tax or interest thereon, or fails to remit any funds collected to the Bright Flue-Cured Tobacco Board, the amount shall be collected by civil action in the name of the Commonwealth at the relation of the Bright Flue-Cured Tobacco Board, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Bright Flue-Cured Tobacco Board, shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this article chapter, including interest thereon.*

**Drafting Note: Technical changes.**

~~§ 3.1-334~~ 3.2-2411. Violation a misdemeanor.

~~It shall be~~ a *Class 1* misdemeanor for any person knowingly to violate any provision of this ~~article~~ chapter.

**Drafting Note: Language is added to reflect § 18.2-12, which provides that a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

~~§ 3.1-335. State and county officers to assist in enforcement.~~

~~It shall be the duty of all state and county law enforcement officers to assist in the enforcement of this article.~~

**Drafting Note: Deleted section. A new subtitle-wide provision may be found in § 3.2-1103, Duty of law-enforcement officers.**

## CHAPTER ~~18-25.~~

### ~~Article 2.~~

#### ~~VIRGINIA-DARK-FIRED TOBACCO BOARD.~~

**Chapter Drafting Note: Sections regarding Dark-Fired Tobacco Board membership, powers, and terms are reorganized for clarity. Special fund language has been added to proposed § 3.2-2506, Virginia Dark-Fired Tobacco Promotion Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it. The duration of time a warehouse or handler must retain records has increased from two to three years for consistency among commodity boards.**

~~§ 3.1-308~~ 3.2-2500. Definitions.

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

"Board" means the Virginia Dark-Fired Tobacco Board.

"Commission" means the Virginia Dark-Fired Tobacco Board.

"Grower" means any person actually engaged in the growing and producing of ~~Type 21~~ *Dark-Fired Tobacco type 21 dark-fired tobacco.*

"Handler" means any manufacturer, dealer, processor, or any other business entity that purchases tobacco directly from the grower.

~~"Person" means and includes individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units, devices and arrangements.~~

~~"Warehouse" means any person authorized by law to conduct auction sales of loose-leaf tobacco.~~

**Drafting Note: The definition of "Board" is deleted to avoid confusion with the title-wide definition of the Board of Agriculture and Consumer Services. The definition of "person" is deleted because it is previously defined in § 1-230. A definition of "handler" is added to reflect the intent of the Dark-Fired Tobacco Board to collect tax on all tobacco sold. When the law was originally drafted tobacco was only sold at warehouses. Today, handlers may purchase directly from the grower.**

~~§ 3.1-309 3.2-2501. Commission continued as Dark-Fired Tobacco Board; composition and appointment and terms of members; chairman; reports; per diem and expenses.~~

~~The Virginia Dark-Fired Tobacco Commission Board is continued within the Department of Agriculture and Consumer Services is continued and shall hereafter be known as the Virginia Dark-Fired Tobacco Board. The Dark-Fired Tobacco Board shall consist of five members representing as nearly as possible each important Type 21 Dark-Fired Tobacco type 21 dark-fired tobacco-producing section in Virginia the Commonwealth. The Governor shall be guided in his appointments to the Dark-Fired Tobacco Board by the recommendations of the Virginia Dark-Fired and Sun-Cured Export Association or such other tobacco growers growers' organizations existing in tobacco-producing counties. Each member shall be a citizen of Virginia the Commonwealth and engaged in producing tobacco in Virginia the Commonwealth. The members of the Board shall serve for a term of four years. The Board shall elect one of its members as chairman. The Chairman shall make a report at each annual Board meeting and furnish all Board members with a statement of the total receipts and disbursements for the year. He shall file a copy of such report and the audit required by § 3.1-315 with the Commissioner annually. The members of the Board shall receive a per diem of ten dollars, for each day spent in attendance at meetings of the Board and shall be reimbursed for actual expenses incurred in such attendance.~~

**Drafting Note: Moved language regarding board membership to proposed § 3.2-2502, Dark-Fired Tobacco Board membership terms. Moved language regarding election of a chairman and reimbursement to proposed § 3.2-2503, Dark-Fired Tobacco Board officers and compensation. Moved language requiring the chairman to make a report to proposed § 3.2-2504, Powers and duties of Dark-Fired Tobacco Board.**

~~§ 3.2-2502. Dark-Fired Tobacco Board membership terms.~~

~~The terms for appointments to the Dark-Fired Tobacco Board shall be for four years. The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term.~~

**Drafting Note: New section. Language is moved from existing § 3.1-309. The last sentence is added to provide for filling any vacancy in the Dark-Fired Tobacco Board that may occur before the end of a term.**

~~§ 3.2-2503. Dark-Fired Tobacco Board officers and compensation.~~

~~A. The Dark-Fired Tobacco Board shall elect one of its members as chairman and such other officers as deemed appropriate.~~

~~B. Members of the Dark-Fired Tobacco Board shall receive a per diem of \$10, for each day spent in attendance at meetings of the Dark-Fired Tobacco Board, and shall be reimbursed for actual expenses incurred in attending such meetings.~~

**Drafting Note: New section. Language is moved from existing § 3.1-309.**

~~§ 3.1-310 3.2-2504. Powers and duties of Dark-Fired Tobacco Board; secretary; employees.~~

~~(a) A. All funds levied and collected under this article chapter shall be administered by the Dark-Fired Tobacco Board.~~



~~(b) B. It shall be the duty of the~~ *The Dark-Fired Tobacco Board* ~~to shall~~ plan and conduct campaigns of education, advertising, publicity, sales promotion, and research for the purpose of increasing the demand for, and the consumption of ~~Type 21 Virginia Dark-Fired Tobacco, and the, type 21 dark-fired tobacco.~~

*C. The Dark-Fired Tobacco Board* may make contracts, expend moneys of the Virginia Dark-Fired Tobacco Promotion Fund, ~~as hereinafter created~~ and do whatever else may be necessary to effectuate the purposes of this ~~article~~ *chapter*.

~~(e) D. The Dark-Fired Tobacco Board shall have the authority to~~ *may* cooperate with other state, regional, and national agricultural organizations in research, advertising, publicity, education, and other means of promoting the sale, use, and exportation of ~~Type 21 Virginia Dark-Fired Tobacco~~ *type 21 dark-fired tobacco*, and ~~to may~~ expend moneys of the Virginia Dark-Fired Tobacco Promotion Fund ~~as hereinafter created~~ for such purposes.

~~(d) E. The Dark-Fired Tobacco Board shall have authority to~~ *may* appoint a secretary and ~~such~~ other employees as may be necessary, at salaries to be fixed by the *Dark-Fired Tobacco Board*, subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.). All employees handling money under this ~~article~~ *chapter* shall be required to furnish surety bonds.

*F. The chairman shall make a report at the annual meeting of the Dark-Fired Tobacco Board and furnish all members with a statement of the total receipts and disbursements for the year. He shall file a copy of the report and the audit required by § 3.2-2506 with the Commissioner.*

**Drafting Note: Proposed subsection F is moved from existing § 3.1-309.**

~~§ 3.1-314~~ 3.2-2505. Levy of excise tax.

~~There is hereby~~ *An excise tax of 20 cents per 100 pounds is levied on all Type 21 Dark-Fired Tobacco severed from the soil-type 21 dark-fired tobacco that is harvested in Virginia the Commonwealth, beginning with the crop of 1992, an excise tax, payable by the grower, of twenty cents per 100 pounds of all poundage and sold by the grower, and shall be payable by the grower.*

**Drafting Note: Technical changes.**

~~§ 3.1-315~~ 3.2-2506. Virginia Dark-Fired Tobacco Promotion Fund; ~~audit~~ *established*.

~~All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a~~ *There is hereby created in the state treasury a special nonreverting fund to be known as the "Virginia Dark-Fired Tobacco Promotion Fund," which is hereby created hereafter referred to as "the Fund." All moneys credited to the Virginia Dark-Fired Tobacco Promotion Fund are hereby appropriated* *The Fund shall be established on the books of the Comptroller. All moneys levied and collected under this chapter shall be paid into the state treasury and credited to the Fund.*

*Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes herein set forth, and shall be used exclusively for the of carrying out the administration and enforcement of this ~~article~~ *chapter*, including the collection of taxes, the payment of personal services and expenses of employees and agents of the *Dark-Fired Tobacco Board*, and the payment of rent, services, materials, and supplies necessary to effectuate the purposes and objects of this ~~article~~ *chapter*. Expenditures and disbursements from the Fund shall be made by the *Dark-Fired Tobacco Board* on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the *Dark-Fired Tobacco Board*.*

The Auditor of Public Accounts shall audit all the accounts of the *Dark-Fired Tobacco Board* as is provided for in § 30-133. ~~The unexpended balance of the Virginia Dark-Fired Tobacco Promotion Fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language and includes language from existing § 3.1-316. This fund is already established; but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-316. Expenditures from fund.~~

~~All moneys collected under this article shall be expended by the Virginia Dark-Fired Tobacco Board by warrants of the Comptroller on the state treasury issued on vouchers signed by the duly authorized officer of the Board.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-2506, Virginia Dark-Fired Tobacco Promotion Fund established.**

~~§ 3.1-312 3.2-2507. Payment~~ *Collection and disposition of tax; reports.*

~~The excise tax levied by this article shall be paid by each~~ *Every grower shall pay the excise tax on type 21 dark-fired tobacco to the warehouse at which or handler where and when the tobacco is first sold at the time of such sale. Each warehouse or handler is hereby designated an agent of the Board* *Department for the purpose of collecting such excise tax. Such* ~~The tax shall be paid to the Board~~ *Department, to the credit of the Dark-Fired Tobacco Board, on or before the tenth day of the month following its collection, and by it promptly paid into the state treasury to the credit of the Virginia Dark-Fired Tobacco Promotion Fund, hereinafter created.*

**Drafting Note: Added handler to cover purchases made directly from the grower. The Department collects the tax on behalf of the Dark-Fired Tobacco Board.**

~~§ 3.1-313 3.2-2508. Records to be kept by warehousemen~~ *warehouse and handler.*

~~Each warehouse or handler shall keep a complete record of the excise tax collected by it~~ *him and shall preserve such record for a period of not less than two-three years from the time of collection. Such record shall be open to the inspection of the Dark-Fired Tobacco Board and its duly authorized agents.*

**Drafting Note: Changed the amount of time a warehouse must keep records from two years to three years for consistency among the commodity boards. Added handler to cover purchases made directly from the grower.**

~~§ 3.1-314 3.2-2509. Interest on tax; collection~~ *Collection of unpaid excise tax and interest thereon.*

~~The~~ *If the tax imposed by this article and unpaid chapter is not paid when due and payable and or any funds collected by a warehouse and are not remitted to the Dark-Fired Tobacco Board as hereinabove provided required by this chapter, the amount due shall bear interest at the rate of one per centum-cent per month from and after the due date until payment. If any person defaults in any payment of the tax or interest thereon, or fails to remit any funds collected to the Dark-Fired Tobacco Board, the amount shall be collected by civil action in the name of the Commonwealth of Virginia at the relation of the Dark-Fired Tobacco Board, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Dark-Fired Tobacco Board, shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this article-chapter including interest thereon.*

**Drafting Note: Technical changes.**

~~§ 3.1-317 3.2-2510. Violation of article a misdemeanor.~~

~~It shall beis a Class 1 misdemeanor for any person knowingly to violate any provision of this article chapter.~~

**Drafting Note: Language is added to reflect § 18.2-12, Same; where not punishment or maximum punishment is prescribed, which provides that a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

~~§ 3.1-318. Duty of law enforcement officers.~~

~~It shall be the duty of all state and county law enforcement officers to assist in the enforcement of this article.~~

**Drafting Note: Deleted section. A new subtitle-wide provision may be found in § 3.2-1103, Duty of law enforcement officers.**

*Part C. Other Commodity-Related Boards, Councils, and Foundations.*

CHAPTER ~~9-126.~~

AQUACULTURE DEVELOPMENT ACT ~~ADVISORY BOARD.~~

**Chapter Drafting Note: The chapter formally establishes the Aquaculture Advisory Board in the executive branch of government and reorganizes the chapter for clarity and in a sequence consistent with other chapters.**

~~§ 3.1-73.6~~ 3.2-2600. Definitions.

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

"Aquaculture" means the propagation, rearing, enhancement, and harvest of aquatic organisms in controlled or selected environments, conducted in marine, estuarine, brackish, or fresh water.

"Aquaculture facility" means any land, structure, or other appurtenance that is used for aquaculture, including, ~~but not limited to,~~ any laboratory, hatchery, pond, raceway, pen, cage, incubator, or other equipment used in aquaculture.

"Aquatic organism" means any species or hybrid of aquatic animal or plant, including, ~~but not limited to,~~ "fish," "fishes," "shellfish," "marine fish," and "*marine organisms*" as those terms are defined by § 28.2-100.

~~"Board" means the Board of Agriculture and Consumer Services.~~

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

~~"Department" means the Virginia Department of Agriculture and Consumer Services.~~

**Drafting Note: The definitions of "Board," "Commissioner," and "Department" are deleted as unnecessary due to the title-wide definitions provided in proposed § 3.2-100, Definitions.**

~~§ 3.1-73.7~~ 3.2-2601. Powers and duties of Commissioner.

The Commissioner shall have the following powers and duties ~~to:~~

- ~~1. Provide~~ *To provide* information and assistance in obtaining permits relating to aquacultural activities;
- ~~2. Promote~~ *To promote* aquaculture, including, ~~but not limited to,~~ encouraging investment in aquaculture facilities ~~in order to~~ expand production, processing capacity, and marketing;
- ~~3. Work~~ *To work* with appropriate state and federal agencies to review, develop, and implement policies and procedures to facilitate aquacultural development;
- ~~4. Consult~~ *To consult* with and assist aquaculture industry groups, aquaculture associations, and academic institutions to develop, maintain, and expand the aquaculture industry; and
- ~~5. Develop~~ *To develop,* support, and implement policies beneficial to Virginia aquaculture.

**Drafting Note: Technical changes.**

~~§ 3.1-73.8~~ 3.2-2602. Aquaculture Advisory Board ~~established;~~ *composition and appointment of members.*

*A. The Aquaculture Advisory Board is established as an advisory board in the executive branch of state government. The Aquaculture Advisory Board shall advise the Commissioner on policy matters related to aquaculture.*

*B. The Governor shall appoint the Aquaculture Advisory Board, which shall be composed of seven members who are representative of the interests of the aquaculture industry.*

~~The Aquaculture Advisory Board shall advise the Commissioner on policy matters related to aquaculture.~~

~~B. The term of office of each member shall be for three years; however, initial appointments shall be three members for three years, two members for two years, and two members for one year. Appointments to fill vacancies shall be made to fill unexpired terms.~~

~~C. Members shall receive no compensation for their services but shall receive reimbursement for actual expenses. The Board shall meet at the call of the Commissioner.~~

**Drafting Note: Updated board language to better fit with the current practice of using model language to create new boards. Existing subsections B and C are moved to proposed § 3.2-2603, Aquaculture Advisory Board membership terms; compensation.**

*§ 3.2-2603. Aquaculture Advisory Board membership terms; compensation.*

*A. The terms for appointments to the Aquaculture Advisory Board shall be for three years. Appointments to fill vacancies shall be made to fill unexpired terms.*

*B. Members of the Aquaculture Advisory Board shall receive no compensation for their services but shall receive reimbursement for actual expenses.*

**Drafting Note: New section. Language is moved from subsections C and D of existing § 3.1-73.8. Aquaculture Advisory Board established, to be consistent with model board language.**

#### CHAPTER ~~25.427.~~

#### VIRGINIA-MARINE PRODUCTS BOARD.

**Chapter Drafting Note: Sections regarding Marine Products Board membership, powers, and terms are reorganized for clarity and model board language has been adopted. Special fund language has been added to proposed § 3.2-2705, Virginia Marine Products Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it.**

~~§ 3.1-684.59 3.2-2700. Virginia Marine Products Board continued; composition; and appointment of members; terms; chairman; executive secretary.~~

~~A. The Virginia Marine Products Board is established within the Department of Agriculture and Consumer Services is continued.~~

~~B. The Marine Products Board shall consist of eleven-11 members appointed by the Governor from among those persons who earn their livelihood from the seafood industry. One member of the Marine Products Board shall be involved in the Virginia menhaden fishery. The members of the Marine Products Board shall serve three-year terms. No member shall be eligible for appointment to more than two consecutive terms.~~

~~B. The Marine Products Board shall elect one of its members as chairman, whose term shall be three years or until his successor is elected.~~

~~C. The Marine Products Board may appoint an executive secretary and such employees as may be necessary at salaries to be fixed by the Marine Products Board, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.~~

**Drafting Note: The deleted language from existing subsection A is moved to proposed § 3.2-2701, Marine Products Board membership terms. Existing subsections B and C are moved to proposed § 3.2-2702, Marine Products Board officers and compensation.**

*§ 3.2-2701. Marine Products Board membership terms.*

*The terms for appointments to the Marine Products Board shall be for three years. No member shall be eligible for appointment to more than two consecutive terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms and made in the same manner as the original appointments.*

**Drafting Note: New section. Language is moved from subsection A of existing § 3.1-684.59 to provide consistency with the model board language.**

§ 3.2-2702. *Marine Products Board officers and compensation.*

A. *The Marine Products Board shall elect one of its members as chairman, whose term shall be three years or until his successor is elected, and such other officers as deemed appropriate.*

B. *The Marine Products Board may appoint an executive secretary and employees as may be necessary at salaries to be fixed by the Marine Products Board, subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.*

**Drafting Note: New section. Language is moved from subsections B and C of existing § 3.1-684.59 to provide consistency with the model board language.**

~~§ 3.1-684.60 3.2-2703. Expenses of members Compensation; expenses; principal office; place of meetings.~~

A. The members of the Marine Products Board shall serve without compensation, but shall be eligible for reimbursement for actual expenses incurred in attending meetings of the Marine Products Board.

B. The Marine Products Board's office shall be located in Tidewater Virginia, and meetings shall be held in seafood-producing areas of the Commonwealth.

**Drafting Note: Technical changes.**

~~§ 3.1-684.61 3.2-2704. Purpose and authority Powers and duties of the Marine Products Board.~~

A. The Marine Products Board shall: (i) plan and conduct marketing, educational, and promotional campaigns and programs for Virginia marine products; (ii) carry on research and testing programs; and (iii) conduct activities relating to the catching, processing, conservation, and marketing of Virginia marine products.

B. The Marine Products Board may investigate, study, and formulate recommendations regarding regulation, conservation, and management of marine resources of the Commonwealth.

C. *The Marine Products Board may make contracts and expend money from the Virginia Marine Products Fund necessary to carry out the purposes of this chapter. The contracts, debts, and liabilities of the Marine Products Board shall not be an obligation of the Commonwealth, but shall be met utilizing the sums paid into the Virginia Marine Products Fund.*

D. *The Marine Products Board may cooperate with other state, regional, and national seafood organizations in research, advertising, publicity, education, and other means of promoting the sale and use of seafood, and may expend moneys of the Virginia Marine Products Fund for such purposes.*

**Drafting Note: Proposed subsection C is moved from existing § 3.1-684.62. Proposed subsection D is moved from existing § 3.1-684.64.**

~~§ 3.1-684.62. Contracts, expenditures, debts.~~

~~The Marine Products Board may make contracts and expend money from the Virginia Marine Products Fund necessary to carry out the purposes of this chapter. The contracts, debts and liabilities of the Marine Products Board shall not be an obligation of the Commonwealth, but shall be met utilizing the sums paid into the Virginia Marine Products Fund.~~

**Drafting Note: Deleted section and moved to subsection C of proposed § 3.2-2704, Powers and duties of the Marine Products Board.**

~~§ 3.1-684.63 3.2-2705. Creation and administration of Virginia Marine Products Fund; continued established.~~

~~A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Marine Products Fund, is continued and hereinafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected and allocated from marine fisheries license fees required under Subtitle II (§ 28.2-200 et seq.) of Title 28.2 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the~~

*Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.*

*Moneys in the Fund shall be administered by the ~~Virginia~~ Marine Products Board and used exclusively for the administration of this chapter, including payment for personal services and expenses of employees and agents of the Marine Products Board, rent, services, materials and supplies.*

*The Fund shall consist of moneys collected and allocated from marine fisheries license fees required under Subtitle II (§ 28.2-200 et seq.) of Title 28.2 which shall be deposited in the state treasury to the credit of the Fund. The unexpended balance of the Fund at the end of each biennium shall not be transferred or revert to the general fund of the state treasury.*

*The disbursement of moneys Expenditures and disbursements from the Fund shall be made by the Marine Products Board on warrants issued by the Comptroller or the State Treasurer issued on vouchers signed upon written request signed by the duly authorized officer of the ~~Virginia~~ Marine Products Board.*

*The Auditor of Public Accounts shall audit all the accounts of the Marine Products Board as provided in § 30-133.*

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on money in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-684.64. Cooperation with other organizations.~~

~~The Marine Products Board may cooperate with other state, regional and national seafood organizations in research, advertising, publicity, education, and other means of promoting the sale and use of seafood, and may expend moneys of the Virginia Marine Products Fund for such purposes.~~

**Drafting Note: Deleted section and moved to subsection D of proposed § 3.2-2704, Powers and duties of the Marine Products Board.**

## CHAPTER ~~22.228.~~

### PLANT POLLINATION ADVISORY BOARD.

**Chapter Drafting Note: Terminology has been updated to reflect current practice. For example, "farmer" has been changed to "producer," and "vegetable grower" and "fruit grower" have been changed to "vegetable producer" and "fruit producer." Existing § 3.1-610.22, which is currently not set out in the Code, is deleted because it is a policy statement. Sections regarding Plant Pollination Advisory Board membership, powers, and terms are reorganized for clarity. Special fund language has been added to proposed § 3.2-2806, Plant Pollination Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it.**

~~§ 3.1-610.22. Declaration of policy.~~

~~The General Assembly hereby declares that it is in the interest of the public welfare that producers of fiber, forage, fruits, nuts, pulses, seeds and vegetables be authorized and encouraged to act jointly and in cooperation with beekeepers and others to increase efficient pollination and to provide for insured and continuing pollination sources in Virginia by sponsoring or encouraging research, education, methods development, and promotion of beekeeping and pollination.~~

**Drafting Note: Deleted section. This section is currently not set out in the Code. Policy statements are no longer set out in the Code.**

~~§ 3.1-610.23 3.2-2800. Definitions.~~

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

1. "Beekeeper" means ~~a~~any person who keeps and manages bees for profit, and shall include those growers who keep bees for pollinating crops.
2. ~~"Board" means the Plant Pollination Advisory Board.~~
3. ~~"Commissioner" means the Commissioner of the Department of Agriculture and Consumer Services or his designated representative.~~
4. "Cross pollination" means the transfer of pollen from the anthers of blossoms to the stigmas of other blossoms of the same crops or a variety of the same crop.
5. ~~"Pollination contractor" means a~~any person who contracts to supply a means of cross pollinating the blossoms of any specified plant.
6. ~~"Producer" means a~~any person engaged in the business of raising crops ~~which~~that benefit from cross pollination by honeybees or other pollinating insects.
7. ~~"Regular meeting" means a meeting of not less than six members of the Plant Pollination Advisory Board held annually.~~
8. ~~"Special meeting" means a meeting of at least six members of the Plant Pollination Advisory Board called by the chairman between regular Board-meetings.~~

**Drafting Note: The definitions of "Board" and "Commissioner" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions, in Chapter 1, General Provisions.**

~~§ 3.1-610.24. Purposes of chapter.~~

~~The purposes of this chapter are:~~

1. ~~To identify and implement methods for improving Virginia's rank as a honey producing Commonwealth;~~
2. ~~To assure Virginia agriculture of a reliable supply of pollinators;~~
3. ~~To achieve public acknowledgment of apiculture's contribution to the public welfare;~~
4. ~~To establish a reservoir of expertise among young people through encouragement of educational and promotional activities; and~~
5. ~~To conduct methods improvement projects to improve management, production and pest control in apiculture.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-2801, Plant Pollination Advisory Board; purpose.**

~~§ 3.1-610.25 3.2-2801. Plant Pollination Advisory Board created; purpose.~~

~~A. The Plant Pollination Advisory Board is hereby created within established as an advisory board within the Department of Agriculture and Consumer Services to be composed of eleven members appointed by the Governor, including a chairman and vice chairman, who shall be elected by the appointed members of the Board. The Commissioner shall serve as an ex officio member of the Board with the power to vote. Three members shall be beekeepers: one shall be appointed for an initial term of one year; one for an initial term of two years; one for an initial term of three years, and each thereafter shall be appointed for a term of three years. One member shall be a farmer appointed for an initial term of one year and thereafter shall be appointed for a term of three years. One member shall be a vegetable grower appointed for an initial term of two years and thereafter shall be appointed for a term of three years. One member shall be a fruit grower appointed for an initial term of three years. One member from Virginia Polytechnic Institute and State University shall be appointed for a term of three years. One member from Virginia State University shall be appointed for a term of three years. One member from the Virginia Department of Agriculture and Consumer Services shall be appointed for a term of three years and shall serve as secretary treasurer. One member from the Virginia Department of Education shall be appointed for a term of three years. One member from the Virginia Community College System shall be appointed for a term of three years.~~

~~B. The Commissioner shall immediately declare the office of any member of the Board vacant when he finds that the member is unable to perform the duties of his office or for any reason does not meet the qualifications of this section. The Governor shall appoint a new member to serve for a full or unexpired term whenever the office of a member becomes or is declared vacant. In any case where a new appointment is made, the person receiving the appointment shall be a representative of the same segment of agriculture or government as his predecessor. No Board member except the secretary treasurer may serve for more than two consecutive terms. Original appointments of terms of one and two years shall be regarded as full terms and appointments to fill unexpired terms shall likewise be regarded as full terms.~~

~~C. The members of the Board shall serve without compensation but the nongovernmental members may be reimbursed for reasonable expenses incurred in attending meetings of the Board.~~

~~D. The first Board appointed shall meet as soon as practicable for the purpose of organizing and electing officers. It shall adopt a general statement of policy and procedures which shall be subject to approval by the State Board of Agriculture and Consumer Services. Thereafter, the Board shall meet at least once a year and at such special meetings as the chairman may call. The chairman may call a special meeting at any time and shall call a special meeting when requested by six or more members of the Board. No meeting shall be deemed a regular or special meeting unless a quorum is present.~~

~~E. The Commissioner shall report to the State Board of Agriculture and Consumer Services in the manner and at such times as the State Board of Agriculture and Consumer Services may prescribe, regarding the receipt and expenditure of funds as well as the Plant Pollination Advisory Board's policies, programs and activities. The State Board of Agriculture and Consumer Services shall ensure that funds made available to the Plant Pollination Fund are expended only for the purposes authorized by this chapter.~~

*The purposes of the Plant Pollination Advisory Board are to:*

- 1. Sponsor or encourage research, education, and promotion of beekeeping and pollination;*
- 2. Identify and implement methods for improving Virginia's rank as a honey-producing Commonwealth;*
- 3. Assure Virginia agriculture of a reliable supply of pollinators;*
- 4. Achieve public acknowledgment of apiculture's contribution to the public welfare;*
- 5. Establish a reservoir of expertise among young people through encouragement of educational and promotional activities; and*
- 6. Conduct methods improvement projects to improve management, production, and pest control in apiculture.*

**Drafting Note: The proposed new language added to this section is moved from existing §§ 3.1-610.22 and 3.1-610.24. Deleted language moved to proposed § 3.2-2802, Plant Pollination Advisory Board membership; terms; vacancies; chairman and vice chairman; meetings, and to proposed § 3.2-2803, Plant Pollination Advisory Board compensation. Existing subsection E is moved to subdivision 9 of proposed § 3.2-2805, Powers and duties of the Commissioner.**

*§ 3.2-2802. Plant Pollination Advisory Board membership; terms; vacancies; chairman and vice chairman; meetings.*

*The Plant Pollination Advisory Board shall consist of 11 members appointed by the Governor. Members shall be appointed as follows: three members shall be beekeepers; one member shall be a producer; one member shall be a vegetable producer; one member shall be a fruit producer; one member shall be from Virginia Polytechnic Institute and State University; one member shall be from Virginia State University; one member shall be from the Department and shall serve as secretary-treasurer; one member shall be from the Virginia Department of*



*Education; and one member shall be from the Virginia Community College System. Members shall be appointed for a term of three years. The Commissioner shall serve as an ex officio member of the Plant Pollination Advisory Board with the power to vote.*

*The Commissioner shall immediately declare the office of any member of the Plant Pollination Advisory Board vacant when he finds that the member is unable to perform the duties of his office or for any reason does not meet the qualifications of this section. The Governor shall appoint a new member to serve for a full or unexpired term whenever the office of a member becomes or is declared vacant. In any case where a new appointment is made, the person receiving the appointment shall be a representative of the same segment of agriculture or government as his predecessor. No Plant Pollination Advisory Board member except the secretary-treasurer may serve for more than two consecutive terms. Appointments to fill unexpired terms shall be regarded as full terms.*

*The Plant Pollination Advisory Board shall elect a chairman and vice chairman from among its membership. The Plant Pollination Advisory Board shall adopt a general statement of policy and procedures subject to approval by the Board. The Plant Pollination Advisory Board shall meet at least once a year and at such special meetings as the chairman may call. The chairman may call a special meeting at any time and shall call a special meeting when requested by six or more members of the Plant Pollination Advisory Board. No meeting shall be deemed a regular or special meeting unless a quorum is present.*

**Drafting Note: New section. Proposed language is moved from existing § 3.1-610.25. In the second sentence, "farmer" has been changed to "producer," and "vegetable grower" and "fruit grower" have been changed to "vegetable producer" and "fruit producer." This change reflects current practice and clarifies membership by using the word "producer," which is defined in the chapter.**

*§ 3.2-2803. Plant Pollination Advisory Board compensation.*

*Members of the Plant Pollination Advisory Board shall serve without compensation for the performance of their duties, but nongovernmental members may be reimbursed for reasonable expenses incurred in attending meetings of the Plant Pollination Advisory Board.*

**Drafting Note: New section. Proposed language is moved from existing § 3.1-610.25 to be consistent with the model language.**

*§ ~~3.1-610.26~~ 3.2-2804. Duties of the Plant Pollination Advisory Board.*

*The Plant Pollination Advisory Board shall encourage and advise the Commissioner on research, education, methods of improvement in apicultural practices, and promotion projects and shall advise him on any award of funds for such projects deemed necessary or advisable to accomplish the objectives set forth in this chapter.*

**Drafting Note: Technical changes.**

*§ ~~3.1-610.26~~ 3.2-2805. Powers and duties of Commissioner.*

*The Commissioner shall have the power and duty following powers and duties:*

- 1. To receive and dispense funds;*
- 2. To develop and administer, in consultation with the Plant Pollination Advisory Board, a beekeeper assistance program that is designed to assist Virginia beekeepers in maintaining healthy, productive colonies;*
- 3. To enter into contracts for the purpose of developing new or improved markets or marketing methods for bees and bee products and pollination services;*
- 4. To contract for scientific research services and to contract to develop improved pollinating behavior in honeybees and other pollinating insects;*
- 5. To contract for rearing numbers of improved queen bees sufficient for distribution or sale to beekeepers;*

6. To enter into agreements with any local, state or national organization or agency engaged in education for the purpose of disseminating information on pollinators and pollination of crops;

7. To rent or purchase office and laboratory space and land as necessary to carry out its duties; ~~and~~

8. To appoint employees, full- or part-time, and to fix their compensation, if any, in accord with the provisions of the Virginia Personnel Act, (§ 2.2-2900 et seq.); *and*

9. *To report to the Board in the manner and at such times as the Board may prescribe, regarding the receipt and expenditure of funds and the Plant Pollination Advisory Board's policies, programs, and activities. The Plant Pollination Advisory Board shall ensure that funds made available to the Plant Pollination Fund are expended only for the purposes authorized by this chapter.*

**Drafting Note: Proposed subsection 9 is moved from subsection E of existing § 3.1-610.25.**

~~§ 3.1-610.27~~ 3.2-2806. Plant Pollination Fund *established.*

~~The Plant Pollination Fund~~ *There is hereby established as created in the state treasury a special nonreverting fund within the state treasury, and to be known as the Plant Pollination Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. (all moneys credited to such fund are hereby appropriated for the purposes set forth in this chapter and shall be used exclusively for the administration and promulgation of this chapter.) Moneys for such fund may be* *All moneys derived from appropriations from the general fund of the state treasury, grants of private or government money designated for specified activities authorized pursuant to this chapter; fees for services rendered pursuant to this chapter; payment for products, equipment, or material or any other thing supplied by the Commissioner; payment for educational publications, materials or supplies provided by the Commissioner; and grants, bequests and donations shall be paid into the state treasury and credited to the Fund. All funds collected for or received by the Commissioner shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The* ~~Commissioner~~ *Commissioner is further authorized to accept materials, supplies, property, land and personal services contributed from any source.*

*Moneys in the Fund shall be used solely for the administration of this chapter. Expenditures and disbursements from the Fund shall be made by the Commissioner on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Plant Pollination Advisory Board.*

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on money in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-610.28~~ 3.2-2807. Administration of fund.

~~A. The Plant Pollination Advisory Board shall meet at least once each calendar year for the expressed purpose of to:~~

1. ~~Considering and appraising~~ *Consider* proposals from applicants for funds, and to advise the Commissioner on disbursements, unless the chairman determines from a quorum that there is insufficient justification for such meeting. Recommendations of the *Plant Pollination Advisory Board* on applications for funds shall be by recorded vote.

2. ~~Receiving~~ *Receive* reports required by the *Plant Pollination Advisory Board* on activities funded by the Commissioner. The secretary-treasurer of the *Plant Pollination Advisory Board* shall ~~prepare~~ *present* an annual report to the members and to the ~~State~~ *Board*, of

~~Agriculture and Consumer Services giving including an accurate account of all receipts and disbursements from the fund.~~

~~B. All moneys collected under this chapter may be expended by the Commissioner by warrants of the Comptroller on the state treasury issued on vouchers signed by the duly authorized officer of the Commissioner.~~

~~C. All funds collected for or received by the Commissioner shall be paid into the state treasury to the credit of the Plant Pollination Fund. No part of such fund shall revert to the general fund of the state treasury.~~

**Drafting Note: Existing subsections B and C are moved to proposed § 3.2-2806, Plant Pollination Fund established.**

## CHAPTER ~~4-1-29.~~

### ~~VIRGINIA AGRICULTURAL COUNCIL.~~

**Chapter Drafting Note: Model language has been adopted to establish the Council. Existing § 3.1-22.2, which is currently not set out in the Code, is deleted because it is a policy statement. Sections regarding Council membership, powers, and terms are reorganized for clarity. Special fund language has been added to proposed § 3.2-2905, Virginia Agricultural Foundation Fund established. While the fund is already established, the new model language requires that interest earned on moneys in the Fund will remain in the Fund and be credited to it.**

~~§ 3.1-22.1. Short title.~~

~~This act may be cited as the "Pennies for Progress Act."~~

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 3.1-22.2. Legislative findings.~~

~~The General Assembly finds and declares that agriculture is important to the prosperity of this State and is a major source of income to a large segment of the State's population. Additional research is required to find new uses for agricultural products, to develop new markets for such products, and to promote more efficient and economical methods of agricultural production. An expanded program of agricultural research is essential to these objectives and will be beneficial to the State as a whole. This act is adopted in furtherance of these purposes.~~

**Drafting Note: Deleted section. This section is deleted as a policy statement. It is currently not set out in the Code.**

~~§ 3.1-22.3. 3.2-2900. Assessments on certain agricultural supplies declared to be in public interest; "farmers" defined; revenues from assessments supplemental *Definitions.*~~

~~The General Assembly further declares it to be in the public interest that assessments be levied upon certain agricultural supplies used by farmers with revenues therefrom to be used in encouraging an expanded program of agricultural research, education and agricultural services. The word "farmers" includes *As used in this chapter, unless the context requires a different meaning;*~~

~~"Farmers" shall include all producers of agricultural products such as cotton, tobacco, peanuts, soybeans, potatoes, vegetables, fruits, livestock, livestock products, poultry and turkeys, any other agricultural products having domestic and foreign markets, and all nursery, horticultural, or floricultural products.~~

~~The revenues from such assessments are intended to supplement other appropriations by the General Assembly and not as a substitute therefor.~~

**Drafting Note: Deleted the policy statements, which are no longer set out in the Code.**

~~§ 3.1-22.4 3.2-2901. Foundation continued as Agricultural Council; composition and appointment, qualifications and terms of members; vacancies; organization; expenses; officers; powers and duties.~~

~~A. The Virginia Agricultural Foundation Council within the Executive Branch of the state government is continued and shall hereafter be known as the Virginia Agricultural Council within the executive branch of state government. The Agricultural Council shall be composed consist of 18 members to be appointed by the Governor. Insofar as practical, 15 members shall be actively engaged in farming and shall be primarily engaged in the production of a different agricultural commodity. The Commissioner of Agriculture and Consumer Services, the dean of the College of Agriculture and Life Sciences of Virginia Polytechnic Institute and State University, and the Associate Vice President for Agriculture and Extension of Virginia State University shall serve as members ex officio. The terms of the members shall run concurrently with the term of the Governor making the appointment, but vacancies occurring before the expiration of term shall be filled for the unexpired term. The Governor shall designate one of the original appointees to serve as chairman pro tem until officers are elected as hereinafter provided. The initial meeting of the Council shall be held on call of the chairman pro tem.~~

~~B. Members of the Council shall be paid their necessary traveling expenses incurred in connection therewith. Such compensation and expenses shall be paid from the Virginia Agricultural Foundation Fund.~~

~~C. The Council shall elect from its membership a chairman, vice chairman, and such other officers as it deems appropriate.~~

~~D. The Council shall have charge of the management and expenditure of the Virginia Agricultural Foundation Fund. The Council shall have power to expend funds to provide for programs of agricultural research and education and agricultural services; to manage the fund so as to accumulate a reserve for contingencies; to establish an office and employ such technical, professional and other assistance as may be required, subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.); to contract for research and other services; and to take all such measures as will assist in strengthening and promoting the best interests of agriculture in this Commonwealth.~~

~~E. The Chairman of the Council shall submit an annual report to the Council members, the Governor and the General Assembly on or before November 1 of each year. The report shall contain the annual financial statements of the Council for the year ending the preceding June 30.~~

**Drafting Note: Language deleted from existing subsection A concerning membership terms is moved to proposed § 3.2-2902, Agricultural Council membership terms. Existing subsections B and C are moved to proposed § 3.2-2903, Agricultural Council officers and compensation. Existing subsections D and E are moved to subsections A and B of proposed § 3.2-2904, Powers and duties of the Agricultural Council.**

*§ 3.2-2902. Agricultural Council membership terms.*

*The terms for appointments to the Agricultural Council shall run concurrently with the term of the Governor making the appointment, but vacancies occurring before the expiration of term shall be filled for the unexpired term.*

**Drafting Note: New section. Language is moved from subsection A of existing § 3.1-22.4.**

*§ 3.2-2903. Agricultural Council officers and compensation.*

*A. The Agricultural Council shall elect from its membership a chairman, vice-chairman, and such other officers as it deems appropriate.*

*B. Members of the Agricultural Council shall be paid their necessary traveling expenses incurred in connection with the performance of their duties. Such compensation and expenses shall be paid from the Virginia Agricultural Foundation Fund.*

**Drafting Note: New section. Language moved from subsections B and C of existing § 3.1-22.4.**

§ 3.2-2904. Powers and duties of the Agricultural Council.

A. The Agricultural Council shall have charge of the management and expenditure of the Virginia Agricultural Foundation Fund. The Agricultural Council may expend funds to provide for programs of agricultural research and education and agricultural services; manage the fund so as to accumulate a reserve for contingencies; establish an office and employ such technical, professional, and other assistants as may be required, subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.); contract for research and other services; and take all such measures as will assist in strengthening and promoting the best interests of agriculture in the Commonwealth.

B. The chairman shall submit an annual report to the members, the Governor, and the General Assembly on or before November 1 of each year. The report shall contain the annual financial statements of the Agricultural Council for the year ending the preceding June 30.

**Drafting Note: New section. Language moved from subsections D and E of existing § 3.1-22.4.**

~~§ 3.1-22.5~~ § 3.2-2905. Virginia Agricultural Foundation Fund established.

There is hereby established in the state treasury a special *nonreverting* fund to be designated as the "Virginia Agricultural Foundation Fund"—hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. ~~which shall consist of~~ All transfers made to ~~it~~ the Fund under §§ ~~3.1-106.2~~ 3.2-3617, ~~3.1-126.12~~ 3.2-3710, ~~3.1-275.7~~ 3.2-4004, ~~3.1-828.17~~ 3.2-4814, 58.1-2111, and 58.1-2146, ~~of~~ other moneys appropriated thereto, gifts and grants, and interest accruing thereon; ~~shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.~~ The ~~fund~~ Fund shall be expended in accordance with the directions of the Virginia Agricultural Council and drawn from the state treasury in the manner provided by law. ~~No part of such fund shall revert to the general fund of the state treasury.~~

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on money in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past. The fund receives moneys under several other chapters of this title: proposed Chapter 36, Fertilizer; proposed Chapter 37, Agriculture Liming Materials; proposed Chapter 40, Seeds; and proposed Chapter 48, Commercial Feed.**

CHAPTER ~~42.1~~30.

~~VIRGINIA~~ WINE BOARD.

**Chapter Drafting Note: Consistent with other chapters, model board language has been adopted. Aside from this reorganization, only technical and grammatical changes are made to this chapter.**

~~§ 3.1-1064.1~~ 3.2-3000. Definitions.

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

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

"Enology" means those practices and that body of knowledge involved in the production, aging, storing, and packaging of wine.

"Farm winery" or "winery" means an "establishment" as defined in § 4.1-100.

"Grape grower" means a commercial grower who: (i) sells at least \$10,000 worth of grapes annually; or (ii) has planted and maintains at least three acres of vines of a type used for the production of wine.

"Viticulture" means the cultivation and study of grapes and grapevines.

"Wine" means an alcoholic beverage as defined in § 4.1-100.

"Winegrower" means any person or entity producing wine from approved products grown by that individual.

**Drafting Note: The definition of "Commissioner" is deleted since it appears as title-wide definitions in proposed § 3.2-100, Definitions, in Chapter 1, General Provisions.**

~~§ 3.1-1064.2~~ 3.2-3001. ~~Virginia Wine Board; purpose; composition and appointment of members; quorum; meetings.~~

~~A. The Virginia Wine Board is established within the Department of Agriculture and Consumer Services. The purpose of the Virginia Wine Board is to allocate funds to projects that expand foster the development of the Virginia wine industry by expanding viticultural and enological research, increasing education, and promotion of promoting the growing production of grapes and the production of wine in the Commonwealth.~~

~~B. The Wine Board shall consist of 10 members, nine of whom shall be voting nonlegislative citizen members, to be appointed by the Governor, and the 10th shall be the Commissioner, who shall serve as a nonvoting ex officio member. Nonlegislative citizen members shall be citizens of the Commonwealth and shall be either grape growers or owners or operators of a winery or farm winery in the Commonwealth. The Governor shall make his appointments upon consideration of the recommendations made by any grape grower, an owner or operator of a winery or farm winery, or the following agricultural organizations or their successor organizations: the Virginia Wineries Association, Inc.; the Virginia Vineyards Association, Inc.; the Virginia Farm Bureau; and the Virginia Agribusiness Council.~~

~~C. A majority of the members of the Wine Board shall constitute a quorum, but a two-thirds vote of the members present shall be required for passage of items taken up by the Wine Board. The Wine Board shall meet at least four times each year. The meetings of the Wine Board shall be held at the call of the chairman or whenever the majority of the members so request.~~

**Drafting Note: Proposed subsection B is moved from the first paragraph of existing § 3.1-1064.3. Proposed subsection C is moved from the last paragraph of existing § 3.1-1064.3.**

~~§ 3.1-1064.3~~ 3.2-3002. ~~Membership; Wine Board membership terms; vacancies; chairman and vice chairman; quorum; meetings.~~

~~The Virginia Wine Board shall consist of 10 members, nine of whom shall be voting nonlegislative citizen members, to be appointed by the Governor, and the Commissioner of Agriculture and Consumer Services, who shall serve as a nonvoting ex officio member. Nonlegislative citizen members shall be citizens of the Commonwealth of Virginia and shall be either grape growers or owners or operators of a winery or farm winery in the Commonwealth. The Governor shall make his appointments upon consideration of the recommendations made by any grape grower, or an owner or operator of a winery or farm winery, or the following agricultural organizations or their successor organizations: the Virginia Wineries Association, Inc.; the Virginia Vineyards Association, Inc.; the Virginia Farm Bureau; and the Virginia Agribusiness Council.~~

~~The Commissioner of Agriculture and Consumer Services shall serve a term coincident with his term of office. Initial appointments of nonlegislative citizen members to the Wine Board shall be staggered as follows: six nonlegislative citizen members shall be owners or operators of wineries or farm wineries in Virginia, two of whom shall serve for terms of three years, two shall serve for terms of two years, and two shall serve a term of one year; and three nonlegislative citizen members shall be grape growers with no controlling financial interest in a winery or farm winery, one of whom shall serve a term of three years, one shall serve a term of two years, and one shall serve a term of one year. Thereafter, nonlegislative citizen members shall be appointed for a term of four years. The Commissioner shall serve a term coincident with his term of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member shall~~

serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

~~The Virginia Wine Board shall elect a chairman and vice chairman from among its membership. A majority of the members shall constitute a quorum, but a two thirds vote of the members present shall be required for passage of items taken up by the Virginia Wine Board. The Virginia Wine Board shall meet at least four times each year. The meetings of the Virginia Wine Board shall be held at the call of the chairman or whenever the majority of the members so request.~~

**Drafting Note: The language in the first and last paragraphs of this section is moved to subsections B and C of proposed § 3.2-3001, Wine Board; purpose; composition and appointment of members; quorum; meetings. The first sentence of the last paragraph is moved to proposed § 3.2-3003, Wine Board officers and compensation.**

~~§ 3.1-1064.4 3.2-3003. Compensation; expenses Wine Board officers and compensation.~~

A. ~~The Wine Board shall elect a chairman and other officers as deemed necessary from among its membership.~~

B. Members of the ~~Virginia~~ Wine Board shall receive no compensation for the discharge of their duties but the nonlegislative citizen members shall be reimbursed for reasonable and necessary expenses incurred in the discharge of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for expenses of the nonlegislative citizen members shall be provided from the Virginia Wine Promotion Fund established under ~~§ 3.1-1064.6 3.2-3005.~~

**Drafting Note: Language in proposed subsection A is moved from the first sentence of the last paragraph of existing § 3.1-1064.3.**

~~§ 3.1-1064.5 3.2-3004. Powers and duties of the Virginia Wine Board.~~

The ~~Virginia~~ Wine Board shall have the following powers and duties to:

1. ~~Receive~~*To receive* and dispense funds or donations from the Virginia Wine Promotion Fund;

2. ~~Enter~~*To enter* into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;

3. ~~Contract~~*To contract* for research services to improve viticultural and enological practices in Virginia;

4. ~~Enter~~*To enter* into agreements with any local, state, or national organization or agency engaged in education for the purpose of disseminating information on wine or other viticultural projects;

5. ~~Enter~~*To enter* into contracts with private or public entities for the purpose of developing marketing, advertising and other promotional programs designed to promote the orderly growth of Virginia's wine industry;

6. ~~Rent~~*To rent* or purchase office and laboratory space, land, equipment, and supplies as necessary to carry out its duties;

7. ~~Employ~~*To employ* such personnel as may be required to carry out those duties conferred by law;

8. ~~Acquire~~*To acquire* any licenses or permits necessary for the performance of the powers and duties of the ~~Virginia~~ Wine Board;

9. ~~Cooperate~~*To cooperate* with other state, regional, national, and international organizations in research, education, and promotion of the growing of grapes and the production of wine in ~~Virginia~~*the Commonwealth* and to expend moneys from the Fund for such purposes;

10. ~~Adopt~~*To adopt* a general statement of policy and procedures; and

11. ~~Receive~~*To receive* from the Chairman of the ~~Virginia~~ Wine Board an annual report, including a statement of total receipts and disbursements for the year, and file a copy of such report with the Commissioner.

**Drafting Note: Technical changes.**

~~§ 3.1-1064.6~~ 3.2-3005. Virginia Wine Promotion Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Wine Promotion Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of all moneys appropriated to it by the General Assembly, grants of private or government funds designated for specified activities authorized pursuant to this chapter, fees for services rendered pursuant to this chapter, payments for products, equipment, or material or other goods supplied. All moneys shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the provisions of this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the ~~Virginia~~ Wine Board.

B. The ~~Virginia~~ Wine Board shall meet and evaluate proposals from applicants for funding from the Fund. The ~~Virginia~~ Wine Board's final recommendations shall be made by recorded vote. Not less than one-third of the funding allocated by the ~~Virginia~~ Wine Board annually, excluding revenue-producing activities engaged in pursuant to ~~§ 3.1-1064.7~~ 3.2-3006, shall be expended for projects that advance viticultural and enological research concerning the growing of grapes and the production of wine in Virginia.

C. The Auditor of Public Accounts shall audit all accounts as provided in § 30-133.

**Drafting Note: Technical changes.**

~~§ 3.1-1064.7~~ 3.2-3006. Revenue-producing activities of the ~~Virginia~~ Wine Board.

To help defray the costs of its program, the ~~Virginia~~ Wine Board may: (i) publish materials with printed advertisements;; (ii) sell printed materials;; (iii) rent exhibit space at meetings or other events;; (iv) charge entrance or participation fees;; and (v) engage in other revenue-producing activities related to research, education, and promotion of the growing of grapes and the production of wine in Virginia. The ~~Virginia~~ Wine Board shall promptly deposit the proceeds of any revenue-producing activities into the Fund.

The provisions of Article 3 (§ 2.2-1109 et seq.) of Chapter 11 of Title 2.2 and of Articles 1 (§ 2.2-4300 et seq.), 2 (§ 2.2-4303 et seq.), 3 (§ 2.2-4343 et seq.), and 5 (§ 2.2-4357 et seq.) of Chapter 43 of Title 2.2 shall not apply to contracts for advertising, marketing, or publishing entered into by the ~~Virginia~~ Wine Board. The provisions of Articles 4 (§ 2.2-4347 et seq.) and 6 (§ 2.2-4367 et seq.) of Chapter 43 of Title 2.2, ~~however~~, shall apply to such contracts.

**Drafting Note: Technical changes.**

*Part D. Tobacco Indemnification and Community Revitalization Commission.*

CHAPTER 46-31.

*TOBACCO INDEMNIFICATION AND COMMUNITY REVITALIZATION  
COMMISSION.*

**Chapter Drafting Note: Only technical and grammatical changes are made to this chapter.**

~~§ 3.1-1106~~ 3.2-3100. Definitions.

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

"Active tobacco producer" means a person: (i) actively engaged in planting, growing, harvesting, and marketing of flue-cured or burley tobacco, or who shares in the variable expenses of producing the crop, and is therefore entitled to share in the revenue derived from marketing the crop; and (ii) who produces such crop on a farm where tobacco was produced for the 1998 crop year, or any subsequent crop year upon which the Commission may determine to base



indemnification payments, pursuant to a tobacco farm marketing quota or farm acreage allotment as established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Agreement" means the agreement or agreements between the Commonwealth, as seller of the Tobacco Assets, and the Corporation, as purchaser of the Tobacco Assets. The sale by the Commonwealth of the Tobacco Assets pursuant to any such agreement shall be a true sale and not a borrowing.

"Commission" means the Tobacco Indemnification and Community Revitalization Commission created pursuant to § ~~3.1-1107~~ 3.2-3101.

"Commission Allocation" means ~~forty~~ 50 percent of the annual amount received under the Master Settlement Agreement by the Commonwealth, or that would have been received but for a sale of such allocation pursuant to an agreement, between the commencing and ending dates specified in the agreement.

"Corporation" means the Tobacco Settlement Financing Corporation as created under state law.

"Endowment" means the Tobacco Indemnification and Community Revitalization Endowment established pursuant to § ~~3.1-1109.1~~ 3.2-3104.

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to § ~~3.1-1111~~ 3.2-3106.

"Master Settlement Agreement" means the settlement agreement and related documents between the Commonwealth and leading United States tobacco product manufacturers dated November 23, 1998, and including the Consent Decree and Final Judgment entered in the Circuit Court of the City of Richmond on February 23, 1999, Chancery Number HJ-2241-4.

"Period of sale" means the time during which a purchaser under an agreement is entitled to receive the Commission Allocation.

"Quota holder" means an owner of a farm on July 1, 1998, or July 1 of any subsequent crop year upon which the Commission may determine to base indemnification payments, for which a tobacco farm marketing quota or farm acreage allotment was established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Tobacco Assets" means all right, title, and interest in and to the portion of the Commission Allocation that may be sold to the Corporation ~~from time to time~~.

"Tobacco farmer" means ~~a~~ any person who is an active tobacco producer, a quota holder, or both.

**Drafting Note: Technical changes.**

§ ~~3.1-1107~~ 3.2-3101. *Tobacco Indemnification and Community Revitalization Commission* created; purposes.

A. The Tobacco Indemnification and Community Revitalization Commission is created as a body corporate and a political subdivision of the Commonwealth and as such shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter. The Commission is established for the purposes of determining the appropriate recipients of moneys in the Tobacco Indemnification and Community Revitalization Fund and causing distribution of such moneys for the purposes provided in this chapter, including using moneys in the Fund to: (i) provide payments to tobacco farmers as compensation for the adverse economic effects resulting from loss of investment in specialized tobacco equipment and barns and lost tobacco production opportunities associated with a decline in quota; and (ii) revitalize tobacco dependent communities. The Commission shall have only those powers enumerated in § ~~3.1-1109~~ 3.2-3103.

**Drafting Note: No changes.**

§ ~~3.1-1108~~ 3.2-3102. Membership; terms; vacancies; compensation and expenses; chairman; chairman's executive summary.

A. The Commission shall be composed of 31 members as follows:

1. Six members of the House of Delegates appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates;

2. Four members of the Senate appointed by the Senate Committee on Privileges and Elections;

3. The Secretary of Commerce and Trade or his designee;

4. The Secretary of Finance or his designee;

5. ~~The Commissioner of Agriculture and Consumer Services or his designee;~~

6. Three nonlegislative citizen members who shall be active flue-cured tobacco producers appointed by the Governor. Of the active flue-cured tobacco producers, two shall be appointed by the Governor from a list of six persons provided by the members of the General Assembly appointed to the Commission;

7. Three nonlegislative citizen members who shall be active burley tobacco producers appointed by the Governor. Of the active burley tobacco producers, one member shall be appointed by the Governor from a list of three persons provided by the members of the General Assembly appointed to the Commission;

8. One nonlegislative citizen member who shall be a representative of the Virginia Farm Bureau Federation appointed by the Governor from a list of at least three persons provided by Virginia Farm Bureau Federation; and

9. Eleven members shall be nonlegislative citizens appointed by the Governor. Of the 11 nonlegislative citizen members, three shall be appointed by the Governor from a list of nine provided by the members of the General Assembly appointed to the Commission.

With the exception of the Secretary of Commerce and Trade or his designee, the Secretary of Finance or his designee and the ~~Commissioner of Agriculture and Consumer Services or his designee~~, all members of the Commission shall reside in the Southside and Southwest regions of the Commonwealth and shall be subject to confirmation by the General Assembly. To the extent feasible, appointments representing the Southside and Southwest regions shall be proportional to the tobacco quota production of each region.

Except as otherwise provided herein, all appointments shall be for terms of four years each. Legislative members, the Secretary of Commerce and Trade, the Secretary of Finance, and the ~~Commissioner of Agriculture and Consumer Services~~ shall serve terms coincident with their terms of office. No nonlegislative citizen member shall be eligible to serve more than two successive four-year terms; ~~however, after~~. *After* expiration of a term of three years or less, two additional four-year terms may be served by such member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

The initial appointments of the active flue-cured tobacco producers, the active burley tobacco producers, and other nonlegislative citizen members shall be as follows: one active flue-cured tobacco producer, one active burley tobacco producer and four nonlegislative citizen members shall be appointed for terms of two years; one active flue-cured tobacco producer, one active burley tobacco producer and four nonlegislative citizen members shall be appointed for terms of three years; and one active flue-cured tobacco producer, one active burley tobacco producer and three nonlegislative citizen members shall be appointed for terms of four years. Thereafter all appointments shall be for terms of four years.

B. The Commission shall appoint from its membership a chairman and a vice-chairman, both of whom shall serve in such capacities at the pleasure of the Commission. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Commission. The meetings of the Commission shall be held on the call of the chairman or whenever the majority of the

members so request. A majority of members of the Commission serving at any one time shall constitute a quorum for the transaction of business.

C. Legislative members of the Commission shall receive such compensation as is set forth in § 30-19.12, and nonlegislative members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such compensation and expenses shall be paid from the Fund.

D. Members and employees of the Commission shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

E. Except as otherwise provided in this chapter, members and employees of the Commission shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

F. The chairman of the ~~Board~~ *Commission* shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the ~~Board~~ *Commission* no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

**Drafting Note: Technical changes.**

§ ~~3.1-1109.3~~ 2-3103. Powers and duties of the *Tobacco Indemnification and Community Revitalization* Commission.

A. The Commission shall have the power and duty to:

1. Adopt, use, and alter at will an official seal;
2. Make bylaws for the management and regulation of its affairs;
3. Maintain an office at such place or places within ~~this~~ *the* Commonwealth as it may designate;
4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Commission, absolutely or in trust, for the purposes for which the Commission is created;
5. Determine how moneys in the Fund are to be distributed and to authorize grants, loans, or other distributions of moneys in the Fund for the purposes set forth in this chapter;
6. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
7. Invest its funds as provided in this chapter or permitted by applicable law; and
8. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied, including use of whatever lawful means may be necessary and appropriate to recover any payments wrongfully made from the Fund.

B. The Commission shall undertake studies and gather information and data in order to determine: (i) the economic consequences of the reduction in or elimination of quota for tobacco growers;—; (ii) the potential for alternative cash crops;—; and (iii) any other matters the Commission believes will affect tobacco growers in the Commonwealth.

C. The Commission shall submit a report annually to the Governor and the General Assembly.

**Drafting Note: Technical changes.**

§ ~~3.1-1109.4~~ 3.2-3104. Tobacco Indemnification and Community Revitalization Endowment.

A. There is hereby established in the state treasury a special fund to be designated the "Tobacco Indemnification and Community Revitalization Endowment" ~~(the "Endowment")~~. The

Endowment shall receive any proceeds from any sale of all or any portion of the Commission Allocation, and any gifts, grants, and contributions that are specifically designated for inclusion in such Endowment. No part of the Endowment, neither corpus nor income, or interest thereon, shall revert to the general fund of the state treasury. The Endowment shall be under the management and control of the Treasury Board, and the Treasury Board shall have such powers and authority as may be necessary to exercise such management and control consistent with the provisions of this section. The income of the Endowment shall be paid out, not less than annually, to the Fund. In addition, up to ten percent of the corpus of the Endowment shall be paid to the Fund annually upon request of the Commission to the Treasury Board; ~~provided, however, that upon~~ *Upon* two-thirds vote of the Commission, up to ~~fifteen~~ 15 percent of the corpus of the Endowment shall be so paid. No use of proceeds shall be made that would cause bonds issued on a tax-exempt basis to be deemed taxable. For purposes of this section, "income" of the Endowment means at the time of determination the lesser of the available cash in, or the realized investment income for the applicable period of, the Endowment, and "corpus" of the Endowment means at the time of determination the sum of the proceeds from the sale of all or any portion of the Commission Allocation, any gifts, grants, and contributions that have been credited to such Endowment, and any income not appropriated and withdrawn from the Endowment prior to June 30 of each year, less withdrawals from the corpus. Determinations by the Treasury Board, or the State Treasurer on behalf of the Treasury Board, as to the amount of income or the amount of the corpus shall be conclusive.

B. The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board as provided in subsection A. The State Treasurer shall be custodian of the funds credited to the Endowment. The Treasury Board shall have full power to invest and reinvest funds credited to the Endowment in accordance with the provisions of the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) and, in addition, as otherwise provided by law. The Treasury Board may borrow money in such amounts as may be necessary whenever in its judgment it would be more advantageous to borrow money than to sell securities held for the Fund. Any debt so incurred may be evidenced by notes duly authorized by resolution of the Treasury Board, such notes to be retired no later than the end of the biennium in which such debt is incurred. The Treasury Board may commingle, for purposes of investment, the corpus of the Endowment provided that it shall appropriately account for the investments credited to the Endowment. The Treasury Board may hire independent investment advisors and managers as it deems appropriate to assist with investing the Endowment. The expenses of making and disposing of investments, such as brokerage commissions, legal expenses related to a particular transaction, investment advisory and management fees and expenses, transfer taxes, and other customary transactional expenses shall be payable out of the income of the Endowment.

Not less than annually and more frequently if so desired by the Commission or requested by the Treasury Board, the Commission shall provide to the Treasury Board schedules of anticipated disbursements from the Fund for the current and succeeding fiscal year, and the Treasury Board shall, to the extent practicable, take into account such schedules and changes thereto in scheduling maturities and redemptions of its investments of the Endowment.

**Drafting Note: Technical changes.**

§ ~~3.1-1110~~ 3.2-3105. Appointment of director; Commission employees; counsel to the Commission.

A. The Governor shall appoint an executive director subject to confirmation by the General Assembly. The compensation shall be determined by the Commission, subject to approval by the Governor. The executive director shall serve as the secretary to the Commission and shall administer the affairs and business of the Commission in accordance with the provisions of this chapter and subject to the policies, control, and direction of the Commission.

The Commission may employ technical experts and other officers, agents, and employees, permanent and temporary, as it requires, and shall determine their qualifications, duties, and compensation. The Commission may delegate to one or more of its agents or employees the administrative duties it deems proper. The actual expenses incurred in the performance of such duties shall be paid from the Fund.

B. Employees of the Commission shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees. Employees of the Commission shall not be subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.

C. The Office of the Attorney General shall provide counsel to the Commission.

**Drafting Note: Technical changes.**

~~§ 3.1-1114~~ 3.2-3106. Tobacco Indemnification and Community Revitalization Fund; tax credits for technology industries in tobacco-dependent localities.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B and by §§ ~~3.1-1109.1~~ 3.2-3104 and 32.1-360.

B. There is created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Subject to the sale of all or any portion of the Commission Allocation, ~~fifty~~ 50 percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. In the event of such sale: (i) the Commission Allocation shall be paid in accordance with the agreement for the period of sale; and (ii) the Fund shall receive the amounts withdrawn from the Endowment in accordance with § ~~3.1-1109.1~~ 3.2-3104. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter; ~~however, starting~~. Starting with the fiscal year beginning July 1, 2000, through December 31, 2009, the Commission may deposit moneys from the Fund into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § 58.1-439.15, for purposes of funding the tax credits provided in §§ 58.1-439.13 and 58.1-439.14 and the grants provided in § 58.1-439.17. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of this chapter.

C. The obligations of the Commission shall not be a debt or grant or loan of credit of the Commonwealth of Virginia, and the Commonwealth shall not be liable thereon, nor shall such obligations be payable out of any funds other than those credited to the Fund.

**Drafting Note: Technical changes.**

~~§ 3.1-1114.1~~ 3.2-3107. Payments from the Fund; transfer and recovery of payments; limitation on claims.

A. No payments made, or otherwise payable, to tobacco farmers under this chapter shall be transferable or assignable, at law or in equity, except by testate or intestate succession, or by a property settlement agreement, separation agreement, or judicial decree in a separation or divorce proceeding. Except in actions initiated by or on behalf of the Commission, no payments made, or otherwise payable, to tobacco farmers under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process until such money has been paid or distributed. The Commonwealth, and any department, agency, or institution thereof, the Commission, and their agents and employees, shall not be a party or otherwise subject to such execution, levy, attachment, garnishment, or other legal process.

B. Grants, loans, or other distributions paid or payable from the Fund to promote economic growth and development shall not be subject to execution, levy, attachment, garnishment, or other legal process, except in actions initiated by or on behalf of the Commission. Such grants, loans, or other distributions shall only be transferable or assignable in accordance with terms established by the Commission.

C. Any payment from the Fund that is later determined to have been made wrongly or erroneously may be recovered by the Commission either by way of a credit or offset against any future payments otherwise distributable to the recipient or by judicial action. Prior to making any such determination, the Commission shall give the recipient reasonable prior written notice and an opportunity to be heard in accordance with rules established by the Commission.

D. In addition to any other penalties provided by law, any person requesting or applying for a payment from the Fund who knowingly makes any false, fictitious, or fraudulent statements or representations or otherwise knowingly provides any false, fictitious, or fraudulent information to the Commission shall forfeit his opportunity or eligibility to receive any payments from the Fund.

E. Any eligible person who fails, for any reason whatsoever, to apply for any indemnification payment determined to be distributable by the Commission by the deadline established by the Commission or its Executive Director for the receipt of applications or verification forms shall be forever barred from receiving such payment unless the person makes appropriate written application to the Commission that is received within one year of the established deadline. At the end of such one-year period, no action shall lie against the Fund or the Commission for such payments to the person from the Fund.

F. All payments made or eligible to be made under this chapter shall be deemed to be granted and to be held subject to the provisions of this chapter and any amending or repealing act that may hereafter be passed, and no person shall have any claim for compensation, or otherwise, by reason of his payments or payment eligibility being affected in any way by any amending or repealing act.

**Drafting Note: Technical changes.**

§ ~~3.1-1112~~ 3.2-3108. Distribution of Fund.

The Fund shall be distributed by the Commission for the following purposes:

1. The compensation of Virginia tobacco farmers for the decline or elimination of the tobacco quota based on averaging the basic burley and flue-cured quota as allocated by the USDA for the crop years 1995 through 1998.

To the extent quota holders in Virginia are not otherwise compensated by a national tobacco community trust fund or a federal tobacco loss assistance program that is based on substantially the same distribution criteria established by the Commission for indemnification payments and to the extent moneys are available in the Fund, the Fund shall be used to compensate quota holders in an amount equal to the total lost asset value in quota incurred annually by such quota holders.

To the extent active tobacco producers in Virginia are not otherwise compensated by a national tobacco community trust fund or a federal tobacco loss assistance program that is based on substantially the same distribution criteria established by the Commission for indemnification payments and to the extent moneys are available in the Fund, the Fund shall be used to compensate active tobacco producers for the economic loss resulting from any annual quota reduction.

For the purposes of this section, the total asset loss value in quota and economic losses for tobacco farmers in Virginia shall be estimated to be \$1.2 billion.

The Commission may establish criteria for determining economic loss resulting from any annual quota reduction, including any similar criteria established pursuant to the creation of a national tobacco community trust fund; and

2. The stimulation of economic growth and development in tobacco-dependent communities in an equitable manner throughout the southside and southwest regions of the Commonwealth, to assist such communities in reducing their dependency on, or finding alternative uses for, tobacco and tobacco-related business.

**Drafting Note: No changes.**

§ ~~3.1-1113~~ 3.2-3109. Form of accounts; annual audit.

A. The accounts and records of the Commission showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.

B. The accounts of the Commission shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

**Drafting Note: No changes.**

§ ~~3.1-1114~~ 3.2-3110. Declaration of public purpose; exemption from taxation.

A. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.

B. The Commission shall be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the property of the Commission and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Commission under the provisions of this chapter.

**Drafting Note: Technical changes.**

§ ~~3.1-1114.1~~ 3.2-3111. Confidentiality of information.

A. The Commission shall hold in confidence the personal and financial information supplied to it, or maintained by it, concerning tobacco farmers, including, ~~but not limited to,~~ names, addresses, and payment information. The Commission may require any tobacco farmer or other applicant for payments from the Fund to provide his social security or taxpayer identification number.

B. Notwithstanding the foregoing, personal and financial information supplied to or maintained by the Commission relating to tobacco farmers may be used, exchanged, and disclosed at the Commission's discretion as may be necessary or appropriate to make payments under, administer, or enforce this chapter and related state and federal laws, any other state or federal tobacco indemnification or loss assistance program, or a national tobacco community trust fund.

C. Nothing in this section shall prohibit the Commission, in its discretion, from releasing any information that has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information or the sum of money received by a particular recipient.

D. Personal and financial information supplied by or maintained on persons or entities applying for or receiving distributions from the Fund for economic growth and development, as well as specific information relating to the amount and identity of recipients of such distributions, shall be subject to disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The provisions of that Act applicable to records or meetings of the Virginia Economic Development Partnership or other state or local economic development entities shall apply mutatis mutandis to the Commission.

E. The provisions of this section shall also apply to any department, agency, institution, political subdivision, or employee of the Commonwealth or a political subdivision that receives personal or financial information from the Commission in order to process checks for payments

from the Fund or to assist the Commission with the administration and enforcement of this chapter.

**Drafting Note: Technical changes.**

*Subtitle III.*

*Production and Sale of Agricultural Products.*

CHAPTER 2432.

Article 2

MILK COMMISSION.

**Chapter Drafting Note: This chapter is created from Article 2 in existing Chapter 21, Milk, Milk Products, and Dairies. The definitions have been alphabetized and unnecessary definitions have been deleted. Since the Milk Commission relies predominately on the "class" of milk when establishing prices, any reference to "grade" has been expanded with the addition of "class" where appropriate. Provisions regarding the Milk Board have been deleted as obsolete since no such Board exists. Classified the chapter-wide penalty as a Class 2 misdemeanor. Adopted special fund model language. Although the fund is already established, interest earned will remain in the fund and will no longer revert to the general fund.**

~~§ 3.1-425~~ 3.2-3200. Definitions.

As used in this ~~article~~ *chapter*, unless otherwise stated and unless the context or subject matter clearly indicates otherwise *requires a different meaning*:

~~"Person" means any person, firm, corporation or association.~~

*"Affiliate" means any person or subsidiary thereof, who has, either directly or indirectly, actual or legal control over a distributor, whether by stock ownership or in any other manner.*

*"Books and records" mean books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.*

~~"Commission" means the Milk Commission continued by this article.~~

*"Consumer" means any person, other than a milk distributor, who purchases milk for human consumption.*

*"Distributor" means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in ~~this~~ the Commonwealth:*

~~H1. Persons, irrespective regardless of whether any such person is a producer:~~

~~(a) a. Who pasteurize or bottle milk or process milk into fluid milk;~~

~~(b) b. Who sell or market fluid milk at wholesale or retail, to: (1i) ~~to~~ hotels, restaurants, stores, or other establishments for consumption on the premises; (2ii) ~~to~~ stores or other establishments for resale; or (3iii) ~~to~~ consumers; or~~

~~(c) c. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.~~

~~H2. Persons, wherever located or operating, whether within or without the Commonwealth, who purchase, market, or handle milk for resale as fluid milk in the Commonwealth.~~

*"Health authorities" include the Board of Health, the Office of Dairy and Foods in the Department, and the local health authorities.*

~~"Producer" means any person, irrespective of whether any such person is also a distributor, who produces milk for sale as fluid milk in the Commonwealth.~~

~~"Producer distributor" means a distributor who handles only milk produced by himself.~~



~~"Consumer" means any person, other than a milk distributor who purchases milk for human consumption.~~

~~"Licensee" means a licensed milk distributor.~~

~~"Market" means any city, town or village of the Commonwealth locality, or two or more cities or towns or villages-localities, and surrounding territory designated by the Commission as a natural marketing area.~~

~~"Licensee" means a licensed milk distributor.~~

~~"Milk" means the clean lacteal secretion obtained by the complete milking of one or more healthy cows properly fed, housed, and kept; including milk that is cooled, pasteurized, standardized, or otherwise processed with a view of to selling it as fluid milk, cream, buttermilk (either cultured or natural buttermilk, and including cultured whole milk in its several trade forms) and skimmed milk; the term excludes the lacteal secretion of one or more dairy animals where lacteal secretion is sold or intended to be sold for any other purpose.~~

~~"Producer" means any person, regardless of whether they are also a distributor, who produces milk for sale as fluid milk in the Commonwealth.~~

~~"Producer-distributor" means a distributor who handles only milk produced by himself.~~

~~"Subsidiary" means any person of, or over whom or which a distributor or an affiliate of a distributor has, or several distributors collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.~~

~~"Affiliate" means any person or subsidiary thereof, who has, either directly or indirectly, actual or legal control, over a distributor, whether by stock ownership or in any other manner.~~

~~"Board" means the local agency authorized by this article to administer the operation of the article in each market area operating under the provisions of this article, to be known as the "milk board" of the particular market area in which it functions.~~

~~"Books and records" mean books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.~~

~~"Health authorities" include the State Board of Health, the Virginia Dairy and Food Division of the State Department of Agriculture and Consumer Services, and the local health authorities.~~

~~"Sanitary regulations" include all laws and ordinances relating to the production, handling, transportation, distribution, and sale of milk and, so far as applicable, thereto, the State sanitary code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality Board or the health authorities.~~

~~"Subsidiary" means any person that a distributor or an affiliate of a distributor has, or several distributors collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.~~

**Drafting Note: Alphabetized the definitions. Deleted definition of "person" because of the Code-wide definition provided in § 1-230. Deleted the definition of "Board" in reference to the Milk Board as obsolete, both here and in existing § 3.1-442. Updated the name of the current Office of Dairy and Foods within the definition of "health authorities."**

~~§ 3.1-426 3.2-3201. Composition Milk Commission; composition and appointment of members.~~

The Milk Commission is hereby continued within the Department of Agriculture and Consumer Services. The Milk Commission and shall report directly to the Commissioner of Agriculture and Consumer Services and. The Commission shall consist of an Administrator and seven members, all of whom shall be residents of the Commonwealth, appointed by the Governor, two of whom shall be producers of milk, and five including the Administrator shall be consumers but none of such five latter members shall have any connection financially or otherwise with the production or distribution of milk or products derived therefrom. The remaining member of the Commission shall be a milk processor-distributor. The Administrator

shall serve in an ex officio capacity without a vote. Any vacancies occurring shall be filled by appointment by the Governor. One member of the Commission shall act as chairman, who shall be elected annually by the membership of the Commission. No member shall serve as chairman and as Administrator and no chairman shall serve successive terms as chairman.

The Administrator shall devote full time to the duties of his office, which shall be located in the principal office of the Commission. The technical and other services for such Commission shall be performed, so far as practicable, by ~~forces and officers in the Department of Agriculture and Consumer Services, the Virginia Agricultural Cooperative~~ Extension Service, and the Virginia Agricultural *Research and Experiment Station*, without additional compensation. The Administrator may appoint a secretary and any such additional technical and other assistants and employees as may be necessary to carry out the provisions of this ~~article~~ *chapter*, and prescribe their powers and duties. The Administrator shall supervise such personnel and shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations.

**Drafting Note: Updated the names of the Virginia Cooperative Extension Service and the Virginia Agricultural Research and Experiment Station.**

~~§ 3.1-426.1 3.2-3202. Terms Milk Commission membership terms.~~

The ~~administrator~~ *Administrator* of the Commission shall hold office at the pleasure of the Governor for a term concurrent with the term of the Governor making the appointment or until a successor to that ~~administrator~~ *Administrator* is appointed by the next succeeding Governor. The remaining seven members shall be appointed by the Governor for a term of four years. No member except the ~~administrator~~ *Administrator* may serve for more than two consecutive terms of four years each; ~~however, any.~~ *Any* member appointed to fill an interim vacancy may be appointed for two additional consecutive terms of four years each after the expiration of the term of the interim vacancy ~~which~~ *that* the member filled. After an absence of two years from the Commission, any former member may be reappointed for a maximum of one additional term of four years.

**Drafting Note: Technical changes.**

~~§ 3.1-426.2 3.2-3203. Meetings; quorum.~~

The Commission shall meet on the call of the chairman or three of its members ~~at such times as~~ *whenever* he or they may deem necessary, and at such place as he or they may designate. *Three members of the Commission shall constitute a quorum.*

**Drafting Note: The last sentence concerning a quorum is moved from § 3.1-429.**

~~§ 3.1-427. Compensation.~~

~~The compensation of the administrator, the secretary and other employees of the Milk Commission shall be such as may be provided in accordance with law.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1-428. Offices.~~

~~The principal offices of the Commission shall be in the City of Richmond.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1-429. Quorum.~~

~~Three members of the Commission shall constitute a quorum.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-3203. Meetings; quorum.**

~~§ 3.1-430 3.2-3204. Powers in general~~ *General powers of the Milk Commission.*

~~The Commission is declared to be an instrumentality of the Commonwealth, shall be vested with the power~~ *following powers:*

~~(a) Cooperation with other authorities.—~~ *1. To confer and cooperate with the legally constituted authorities of other states and of the United States, with a view of securing a uniformity of milk control, with respect to milk coming into the Commonwealth and going out of*

the Commonwealth in interstate commerce, with a view of accomplishing the purposes of this ~~article~~ *chapter* and to enter into a compact or compacts for such uniform system of milk control.

~~(b) Investigations.~~—2. To investigate all matters pertaining to the production, processing, storage, transportation, distribution, and sale of milk in the Commonwealth.

~~(c) Supervision and control.~~—3. To supervise, regulate, and control the production, transportation, processing, storage, distribution, delivery, and sale of milk for consumption within the Commonwealth.

~~(d) Acting as mediator.~~—4. To act as mediator or arbiter in any controversial issue that may arise among or between milk producers and distributors, as between themselves, or that may arise between them as groups.

~~(e) Examination of accounts; subpoenas.~~—5. To examine into the business, books, and accounts of any milk producer, association of producers, or milk distributors, their affiliates or subsidiaries; to issue subpoenas to milk producers, associations of producers, and milk distributors, and to require them to produce their records, books, and accounts; to subpoena any other person from whom information is desired.

~~(f) Depositions and administration of oaths.~~—6. To take depositions of witnesses within, or without, the Commonwealth. Any member of the Commission, or any employee designated by the Commission, may administer oaths to witnesses and sign and issue subpoenas.

~~(g) Rules, regulations and orders.~~—7. To make, adopt, and enforce all ~~rules, regulations or orders~~ necessary to carry out the purposes of this ~~article~~ *chapter*. Every ~~rule or order~~ of the Commission shall be posted for inspection in the main office of the Commission, and a certified copy filed in the office of the Commissioner of Agriculture. An order, applying only to a person ~~or persons~~ named therein, shall be served on the person ~~or persons~~ affected. An order, ~~herein that~~ *is* required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, with postage prepaid, to each person affected ~~thereby~~; or, in the case of a corporation, to any officer or agent of the corporation upon whom legal process may be served. ~~The posting—If an order is not required to be served, then it shall be posted in the main office of the Commission of any rule and of any order, not herein required to be served, and such filing—~~ *filed* in the office of the Commissioner of Agriculture, *which* shall constitute due and sufficient notice to all ~~persons—any person~~ affected by ~~such rule or the order~~.

**Drafting Note: Deleted language in the first sentence declaring the Commission as “an instrumentality of the Commonwealth” as unnecessary because, as existing language states in proposed § 3.2-3201, Milk Commission; composition and appointment of members, the Milk Commission has been moved to be within the Department of Agriculture and Consumer Services.**

~~§ 3.1-431~~ 3.2-3205. Grant of specific power not to impair general power.

~~The operation and effect of any~~ Any provision of this ~~article~~ *chapter* conferring a general power upon the Commission shall not be impaired or qualified by the granting to the Commission by this ~~article~~ *chapter* of a specific power ~~or powers~~.

**Drafting Note: Technical changes.**

~~§ 3.1-432~~ 3.2-3206. Public hearing ~~before exercise of powers in market~~ *required*.

A. The Commission shall ~~not~~ *neither* exercise its powers in any market, *nor withdraw the exercise of its powers from any market*, until *after* a public hearing ~~has been—~~ *is* held for such market, and the Commission determines ~~that~~ *whether* it will be ~~to—in~~ the public interest ~~that it shall so—to~~ exercise its powers in ~~such—that~~ market.

B. *The Commission may on its own motion, call a public hearing as required under subsection A and shall call a public hearing upon the written application of a producers' association organized under Chapter 3 of Title 13.1 (§ 13.1-301 et seq.), supplying in the judgment of the Commission, a substantial proportion of the milk consumed in such market. If no such producers' association exists on such market, the Commission shall call a public hearing*

upon the written application of producers supplying a substantial proportion of the milk consumed in such market; and shall call a public hearing upon the written application of distributors distributing a substantial proportion of the milk consumed in that market.

C. The Commission may determine notice requirements and the time and location of any public hearing held under this section.

**Drafting Note: Combined existing § 3.1-433 into proposed subsection A. Proposed subsection B is moved from existing § 3.1-434, and proposed subsection C is moved from existing § 3.1-435, with technical changes. The Cooperative Marketing Act of Virginia is now named “Cooperative Associations” and found in Chapter 3 of Title 13.1 (§§ 13.1-301 through 13.1-346).**

~~§ 3.1-433. Public hearing before withdrawal of exercise of powers from market.~~

~~The Commission may withdraw the exercise of its powers from any market after a public hearing has been held for such market, and the Commission determines that it will be to the public interest to withdraw the exercise of its powers from such market.~~

**Drafting Note: Deleted section and moved language to subsection A of proposed § 3.2-3206, Public hearing required.**

~~§ 3.1-434. How hearings called.~~

~~The Commission may on its own motion, call the hearings required by the two preceding sections, and shall call such hearings upon the written application of a producers' association organized under the Cooperative Marketing Act of Virginia, supplying in the judgment of the Commission, a substantial proportion of the milk consumed in such market, but if no such producers' association exists on such market, the Commission shall call such hearings upon the written application of producers supplying a substantial proportion of the milk consumed in such market; and shall call such hearings upon the written application of distributors distributing a substantial proportion of the milk consumed in such market.~~

**Drafting Note: Deleted section and moved to subsection B of proposed § 3.2-3206, Public hearing required.**

~~§ 3.1-435. Time, place and notice of hearing.~~

~~Such hearings may be held at such time and place and after such notice as the Commission may determine.~~

**Drafting Note: Deleted section and moved to subsection C of proposed § 3.2-3206, Public hearing required.**

~~§ 3.1-441 3.2-3207. Defining market areas.~~

~~The Commission may define what shall constitute a natural market area and define and fix the limits of the territorial area within which where milk shall be produced to supply any such a market area; provided, that-. Any producers, producer-distributors, or their successors now currently shipping milk to any market may continue so to do so until they voluntarily discontinue shipping to the designated milk market.~~

**Drafting Note: Technical changes.**

~~§ 3.1-437 3.2-3208. Fixing Establishing prices generally.~~

The Commission, after a public hearing and investigation, may ~~fix~~ establish the prices to be paid producers or associations of producers by distributors in any market ~~or markets~~, may fix the minimum and maximum wholesale and maximum retail prices to be charged for milk in any market, and may also ~~fix~~ establish different prices for different grades or classes of milk. The Commission may set different maximum retail prices for the same grade or class of milk on the basis of different methods of distribution. In determining the reasonableness of prices to be paid or charged in any market ~~or markets~~ for any grade, quantity, or class of milk, the Commission shall be guided by all pertinent economic factors relevant to production, processing, and distribution of milk as they affect the public interest in maintaining an adequate supply of milk within ~~Virginia~~ the Commonwealth, including compliance with all sanitary regulations in force

in such market ~~or markets~~, necessary operation, processing, storage, and delivery charges, the prices of other foods, and the welfare of the general public. The Commission may adopt a formula incorporating these economic factors ~~which~~ *that* will adjust automatically the prices to be paid producers or associations of producers by distributors in any market ~~or markets~~, and then provide for the automatic adjustment of resale prices according to the result obtained by the use of this formula. Public hearings shall not be required for price adjustments obtained by use of a formula, but shall be held for adoption or amendment of the formula itself.

**Drafting Note: The Milk Commission relies predominately on the "class" of milk when establishing prices. Any reference to "grade" is expanded with the addition of "class" where appropriate.**

~~§ 3.1-437.1~~ 3.2-3209. ~~Fixing~~ *Establishing* minimum retail price; exemption.

The Commission shall have no authority to establish a minimum retail price for milk, except upon a determination after *a* public hearing that the absence of a minimum retail price has caused or is about to cause a disruption in the Virginia milk market or some segment ~~thereof~~ *which of the market that* is likely to depress the producer price or has caused or is likely to cause a substantial reduction in competition between processor-distributors in an area, so as to adversely affect the public health and welfare ~~which~~ *that* requires an adequate supply of milk at reasonable and fair prices. In accordance with the Administrative Process Act, § 2.2-4000 et seq. and in particular § 2.2-4002 ~~thereof~~, the Commission may establish minimum retail prices on an emergency basis, prior to public hearing.

The Commission, in establishing any minimum retail price when it deems it necessary to do so, shall impose a minimum retail price only for an area or political subdivision wherein the public interest as herein set forth justifies a minimum retail price being set and shall be guided by the same factors used in determining the reasonableness of prices under ~~§ 3.1-437~~ 3.2-3208. The Commission shall periodically review all outstanding minimum retail price orders to insure that they do not remain ~~effective in effect~~ any longer than the public interest requires.

**Drafting Note: Technical changes.**

~~§ 3.1-438~~ 3.2-3210. Accounting system for distributors; inspection and audit of books and records; offenses; penalty.

The ~~State~~-Milk Commission is ~~authorized and directed to~~ *shall* prepare and ~~promulgate~~ *adopt* a system of accounting designed to show, for each distributor of milk and milk products, under the supervision of the Commission, the total purchases by any ~~such~~ distributor of each grade *or class* of milk; the total sales by each ~~such~~ distributor and the revenue therefrom, for each grade or class of milk and the quantity thereof. Such accounting system shall be ~~so~~ designed ~~as to show not only total purchases but including~~ the respective grades *or classes* of milk bought, as well as *the* total sales and the respective classes or grades of milk sold.

~~Upon the promulgation of any such system of accounting by the State Milk Commission~~ *Each* distributor of milk and milk products under the supervision of the Commission shall adopt and use ~~such~~ *the* system of accounting *adopted by the Milk Commission*. The books and records of each ~~such~~ distributor shall be open to inspection by the Commission or its agents during regular business hours, and shall be audited by it at such regular intervals as shall be prescribed by the ~~State~~-Milk Commission.

It shall be unlawful for any distributor to pay for milk upon any such basis of grade or class lower than that upon which such milk is sold or used by him. Nothing herein shall prevent the sale of a grade or class of milk by a distributor as milk of a lower grade or class. ~~Any such distributor violating~~ *It shall be unlawful for any distributor any provision of this section or failing or refusing to fail* to use the system of accounting herein prescribed or ~~refusing~~ *refuse* to allow the same to be inspected or audited ~~shall be guilty of a misdemeanor and upon conviction be punished as provided by law. Each day of violation shall constitute a separate offense and be punishable as such.~~

**Drafting Note: The Milk Commission relies predominately on the "class" of milk when establishing prices. Any reference to "grade" is expanded with the addition of "class" where appropriate.**

~~§ 3.1-440 3.2-3211.~~ Right of entry and inspection; publication of information.

Any ~~member of the Commission, or~~ employee designated for the purpose, shall have access to, and may enter at all reasonable hours, all places where milk is stored, bottled, or manufactured into food products. ~~Any member of this board, or and any~~ designated employee shall have the power to inspect books and records in any place within the Commonwealth for the purpose of ascertaining facts to enable the ~~board~~ *Commission* to administer this ~~article, and all such~~ *chapter*. All information *ascertained* shall be confidential, unless the parties concerned agree to its being given out. The Commission may combine such information for any market ~~or markets~~ and make it public.

**Drafting Note: Clarified that an employee of the Commission may enter and inspect all places where milk is kept. "Milk board" is replaced with the "Commission" since the Milk Board is proposed to be deleted.**

~~§ 3.1-442.~~ Delegation of powers to milk board.

The ~~Commission may delegate such of the powers given it by this article as it sees fit to the milk board in any particular market area, for the purpose of carrying out the provisions of this article within such market area.~~

**Drafting Note: Deleted section. The Milk Board is obsolete and has not been used for at least 30 years.**

~~§ 3.1-439 3.2-3212.~~ Licenses generally.

The Commission may require all distributors in any market designated by the Commission to be licensed by the Commission for the purpose of carrying out the provisions of this ~~article~~ *chapter*. The Commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing. The Commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city ~~or village~~ or to a particular market ~~or markets~~ within the Commonwealth.

**Drafting Note: Technical changes.**

~~§ 3.1-443 3.2-3213.~~ Report of licensees.

Each licensee shall, ~~from time to time, as required by the Commission,~~ furnish to the Commission verified reports containing ~~such~~ information as *required by* the Commission ~~may~~ require.

**Drafting Note: Technical changes.**

~~§ 3.1-444 3.2-3214.~~ Unlawful buying and selling.

No distributor in a market ~~in which~~ *covered* by the provisions of this ~~article~~ *are in effect* *chapter* shall buy milk from producers, or others, for sale within the Commonwealth, or sell or distribute milk within the ~~State~~ *Commonwealth*, unless ~~such~~ *the* distributor is duly licensed under the provisions of this ~~article~~ *chapter*. It shall be unlawful for a distributor to buy milk from or sell milk to a distributor who is not licensed as required by this ~~article~~ *chapter*. It shall be unlawful for any distributor to deal in, or handle milk if such distributor has reason to believe it has previously been dealt in, or handled, in violation of the terms and provisions of this ~~article~~ *chapter*.

**Drafting Note: Technical changes.**

~~§ 3.1-445 3.2-3215.~~ Application for license.

~~An~~ *Each distributor shall submit an* application to the Commission for a license to operate as a distributor ~~shall be made by mail, or otherwise, within five days after the provisions of this article chapter become effective in a market, and as to.~~ *Thereafter,* any distributor ~~thereafter shall obtain a license to operate as a distributor before~~ beginning business, ~~before~~

~~such distributor shall begin such business therein in that market. The application shall be made on blanks forms furnished by the Commission for the purpose.~~

**Drafting Note: Technical changes.**

~~§ 3.1-446 3.2-3216. Licenses to be in addition to those required by existing laws.~~

The licenses required by this ~~article~~ *chapter* shall be in addition to any other licenses required by existing laws of the Commonwealth or by any municipal ordinance.

**Drafting Note: Technical changes.**

~~§ 3.1-447. Sanitary laws not repealed.~~

~~Nothing in this article shall be construed to conflict with or repeal any laws now in force in the Commonwealth relating to any board of health or sanitary code now in force in this Commonwealth in any municipality thereof, nor any municipal ordinances relating to the inspection, grading, production, sale or distribution of milk.~~

**Drafting Note: Deleted section. This provision is unnecessary.**

~~§ 3.1-448 3.2-3217. Appeals generally.~~

~~A. Any person aggrieved by an order of the Commission refusing to issue or reissue a license, or revoking or suspending a license, to a distributor or producer distributor, or refusing to transfer a license from one person to another, or any other order of the Commission applying only to a person or persons and not otherwise specifically provided for, may appeal therefrom to the Court of Appeals. Any person affected by and claiming the unlawfulness of any regulation of the Commission, or person aggrieved by and claiming the unlawfulness of a case decision or an order of the Commission fixing, revising or amending the price at or the terms upon which milk may be bought or sold, or by any other general action, rule, regulation or order of the Commission, may, within thirty days after the effective date of such action, rule, regulation or order, appeal therefrom to the Circuit Court of the City of Richmond where the principal office of the Commission is located. Except as otherwise provided in this section, Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act shall govern such appeal.~~

~~B. Upon filing of its pleadings by the Commission the cause shall be matured for hearing, and upon application of either party, the cause shall be placed at the head of the docket and heard forthwith.~~

~~C. Mere technical irregularities in the procedure of the Commission shall not be the basis of the decision of the court. In an appeal from an order or decision of the Commission, the case shall be heard upon the record certified to the court by the Commission. Additional testimony shall not be taken before the court, except to clarify the record or to introduce evidence as to the effect of the order upon the business of parties to the record below, or of producers standing in the same position as producer parties of record, but the court may, in proper cases, remand the record of the Commission for the taking of such further testimony as was not available upon the hearing appealed from, or such other testimony as the court shall provide may be taken. No part of the record, containing verbal or documentary evidence, shall be disregarded by courts because of technical rules of evidence.~~

**Drafting Note: Proposed subsections B and C are moved from existing § 3.1-450.**

~~§ 3.1-449. Special order of court allowing supersedeas.~~

~~No such appeal shall, in either case stated in the preceding section (§ 3.1-448), act as a supersedeas except on a special order of the court allowing a supersedeas. An application for such supersedeas shall only be heard after reasonable notice to the Commission, and the order allowing the same shall require of the appellant a bond with sufficient surety in such sum as shall be fixed by the court for the protection of all parties interested in the action or order appealed from.~~

~~A special order of court permitting an appeal to act as a supersedeas may be made only after reasonable notice to the Commission, and shall provide that the appellant file a bond, with~~

sufficient surety, in such sum as shall be determined by the court to be necessary for the protection of producers and others during the pendency of the appeal.

**Drafting Note: Deleted section. Section 2.2-4028 of the Administrative Process Act, Intermediate relief, addresses the same issue and renders this section obsolete.**

~~§ 3.1-450. Procedure on appeal to Circuit Court of Richmond.~~

~~(1) The appeals to the Circuit Court of the City of Richmond from actions of the Commission shall be by petition against the Commission as defendant, alleging therein in detail the action or order complained of, the objections thereto and specifying the relief asked and upon the filing of the petition for appeal the clerk of the court shall issue a summons returnable within thirty days.~~

~~On or before the return date of such summons, the Commission may file its plea, demurrer or answer to the allegations contained therein. Upon filing of its pleadings by the Commission the cause shall be matured for hearing in court without further pleadings, and, upon application of either party, the cause shall be placed at the head of the docket and heard forthwith.~~

~~(2) The Commission shall, on or before the return day of such summons, certify to and file in such court the record of the proceedings to which the petition refers. Such record shall include the testimony taken therein, the findings of fact of the Commission, a copy of all orders made by the Commission pertaining to the proceedings, and a copy of the order, action or decision of the Commission which the petition calls upon the court to review.~~

~~(3) Mere technical irregularities in the procedure of the Commission shall not be the basis of the decision of the court. In an appeal from an order or decision of the Commission, the case shall be heard upon the record certified to the court by the Commission. Additional testimony shall not be taken before the court, except to clarify the record or to introduce evidence as to the effect of the order upon the business of parties to the record below, or of producers standing in the same position as producer parties of record, but the court may, in proper cases, remand the record of the Commission for the taking of such further testimony as was not available upon the hearing appealed from, or such other testimony as the court shall provide may be taken. No part of the record, containing verbal or documentary evidence, shall be disregarded by courts because of technical rules of evidence.~~

~~(4) Issues on appeal shall be governed by Article 4 (§ 2.2-4025 et seq.) of the Administrative Process Act.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-3217, Appeals generally. Some language is deleted as unnecessary because it is contained in the Administrative Process Act.**

~~§ 3.1-451 3.2-3218. Penalties for failure to comply with subpoenas, etc.; compelling obedience.~~

~~Any person failing or refusing to comply with any subpoena issued by the Commission or pursuant to its authority, shall be deemed *is* guilty of a *Class 2* misdemeanor, and upon conviction, may be punished by a fine not exceeding \$100 or by imprisonment not exceeding ninety days, or both, and each day during which such violation shall continue shall be deemed a separate offense. In the event any person shall fail to comply with any rule, regulation or order of the Commission, or obey any subpoena issued thereby, or in the event of the refusal of any witness to testify to any matter concerning which he lawfully may be interrogated by the Commission or its representative, it shall be the duty of the ~~Hustings-Circuit Court where the principal offices of the Commission are located, of the City of Richmond, or judge thereof,~~ upon application of the Commission, to compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from ~~such~~ *the* court, refusal to testify therein, or disobedience of an order or decree of ~~such~~ *the* court. The proceedings herein authorized in the ~~Hustings-Circuit Court~~ to compel obedience shall be in addition to the~~



provisions of this section defining what shall constitute a misdemeanor and providing and prescribing the punishment therefor.

**Drafting Note: Classified penalty in accordance with § 18.2-11, Punishment for conviction of misdemeanor.**

~~§ 3.1-452~~ 3.2-3219. Annual budget; assessment of distributors and producers; bond required of Commission officers and employees who handle money requirements.

The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the licensed distributors in markets where the provisions of this ~~article~~ *chapter* are in operation. The expenses of the Commission, including salaries and the per diem of such personnel as the Commission finds it necessary to employ to properly carry out its functions under this ~~article~~ *chapter* shall be met by an assessment of not over five cents per 100 pounds of milk, and cream (converted to terms of milk) handled by distributors and not over five cents per 100 pounds of milk, and cream (converted to terms of milk) sold by producers; these assessments to be the same per 100 pounds on producers and distributors. The exact amount of each monthly or semimonthly assessment shall be determined by the Commission as necessary to cover its expenses. All assessments shall be paid at the time the distributors pay the producers for the milk. All officers and employees of the Commission, who handle funds of the Commission, or who sign or countersign checks upon such funds, shall severally give bond in such amount and with such sureties as shall be determined by the Commission. The cost of ~~such~~ *the* bonds shall be paid by the Commission and the Commission shall determine the amount and sufficiency of ~~such~~ *the* bonds.

**Drafting Note: Technical changes.**

~~§ 3.1-453~~ 3.2-3220. ~~Disposition of receipts from assessments~~ *Virginia Milk Commission Assessments Fund established.*

*There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Milk Commission Assessments Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All receipts from assessments paid under this ~~article~~ *chapter* shall be paid by the Commission to the State into the state treasury to the credit of the "Milk Commission account," and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of administering this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Administrator or his duly authorized agent.*

**Drafting Note: No substantive changes have been made. Adopted special fund model language because current practice avoids the use of unnamed special funds. This special fund is already established, but interest earned will remain in the fund and will no longer revert to the general fund.**

~~§ 3.1-458~~ 3.2-3221. Injunction.

~~In the event of violation of any provision of this article in addition to any other remedy, the Commission may apply to any court of record in the City of Richmond for relief by injunction, if necessary, to protect the public interest.~~ *If any person violates any provision of this chapter or the regulations adopted under this chapter, then either the Commissioner or the State Health Commissioner may petition any appropriate circuit for relief by injunction, without being compelled to allege or prove that an adequate remedy at law does not exist.*

**Drafting Note: Technical changes.**

~~§ 3.1-459~~ 3.2-3222. Penalties.

Any person violating any provision of this ~~article~~ *chapter* or of any license issued by the Commission shall be guilty of a *Class 2* misdemeanor and may be prosecuted and punished

~~therefor, and, upon conviction, shall be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both fine and imprisonment. Each day during which such violation shall continue shall be deemed a separate violation. Prosecutions shall be instituted by the attorney for the Commonwealth, or otherwise, in any county or city of the Commonwealth in which the provisions of this article are in effect.~~

**Drafting Note: Classified penalty in accordance with § 18.2-11, Punishment for conviction of misdemeanor.**

~~§ 3.1-461 3.2-3223.~~ Marketing agreements not deemed monopolistic or in restraint of trade.

The making of marketing agreements between producers' cooperative marketing associations and distributors and producer-distributors under the provisions of this ~~article~~ *chapter* shall not be deemed a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this ~~article~~ *chapter*, be considered illegal or in restraint of trade.

**Drafting Note: Technical changes.**

~~§ 3.1-460 3.2-3224.~~ ~~Article~~ *Chapter* inapplicable to interstate commerce.

No provision of this ~~article~~ *chapter* shall apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto.

**Drafting Note: Technical changes.**

## CHAPTER ~~24~~33.

### ~~Article 2.1~~

#### SOUTHERN DAIRY COMPACT.

**Chapter Drafting Note: This chapter is created from Article 2.1 in existing Chapter 9, Milk, Milk Products, and Dairies. No changes have been made to the Compact and only minor technical changes have been made to the subsequent sections in this chapter. The Southern Dairy Compact is not currently in effect and is not recognized by the federal government. In accordance with the policy of the Code Commission, this Chapter will not be set out in the volume containing the remainder of proposed Title 3.2. The Southern Dairy Compact will be retained in the volume with the other compacts and a cross-reference will be included in proposed Title 3.2 directing the reader that the complete text may be found in the compacts volume.**

~~§ 3.1-461.1 3.2-3300.~~ Southern Dairy Compact; form of compact.

The Southern Dairy Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Statement of Purpose, Findings, and Declaration of Policy.

§ 1. Statement of purpose, findings, and declaration of policy.

The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the Commission is to take such steps as are necessary to assure the continued viability of dairy farming in the South, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers, processors, and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential, and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

By entering into this compact, the participating states affirm that their ability to regulate the price that southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The system of federal orders, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative, rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the system of federal orders nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the system of federal orders be discontinued. In that event, the interstate commission may regulate the marketplace in lieu of the system of federal orders. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the system of federal orders.

## ARTICLE II. Definitions and Rules of Construction.

### § 2. Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) "Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subsection (b) of § 3.

(2) "Commission" means the Southern Dairy Compact Commission established by this compact.

(3) "Commission marketing order" means regulations adopted by the Commission pursuant to §§ 9 and 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission. Such order may establish minimum prices for any or all classes of milk.

(4) "Compact" means this interstate compact.

(5) "Compact over-order price" means a minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to §§ 9 and 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission.

(6) "Milk" means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the Commission for regulatory purposes.

(7) "Partially regulated plant" means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(8) "Participating state" means a state which has become a party to this compact by the enactment of concurring legislation.

(9) "Pool plant" means any milk plant located in a regulated area.

(10) "Region" means the territorial limits of the states which are parties to this compact.

(11) "Regulated area" means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(12) "State dairy regulation" means any state regulation of dairy prices and associated assessments, whether by statute, marketing order, or otherwise.

### § 3. Rules of construction.

(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the Commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) This compact shall be construed liberally in order to achieve the purposes and intent enunciated in § 1. It is the intent of this compact to establish a basic structure by which the Commission may achieve those purposes through the application, adaptation, and development of the regulatory techniques historically associated with milk marketing and to afford the Commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the Commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

## ARTICLE III. Commission Established.

### § 4. Commission established.

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The Commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the Commission.

### § 5. Voting requirements.

All actions taken by the Commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment, or rescission of the Commission's bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one vote in the conduct of the Commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area that covers all or part

of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the Commission's business.

§ 6. Administration and management.

(a) The Commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The Commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the Commission, and, together with the treasurer, shall be bonded in an amount determined by the Commission. The Commission may establish through its bylaws an executive committee composed of one member elected by each delegation.

(b) The Commission shall adopt bylaws for the conduct of its business by a two-thirds vote and shall have the power by the same vote to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all Commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The Commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the Commission may engage in all of the following:

(1) Sue and be sued in any state or federal court.

(2) Have a seal and alter the same at pleasure.

(3) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes.

(4) Borrow money and to issue notes, to provide for the rights of the holders thereof, and to pledge the revenue of the Commission as security therefor, subject to the provisions of § 18 of this compact.

(5) Appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications.

(6) Create and abolish such offices, employments, and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees.

(7) Retain personal services on a contract basis.

§ 7. Rule-making power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the Commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. Powers of the Commission.

§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The Commission may:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the participating states, to consider their administration and costs, and to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the Commission's efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling, and for all other services, performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

§ 9. Equitable farm prices.

(a) The powers granted in this section and § 10 shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this article authorizes the Commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed one dollar and fifty cents (\$1.50) per gallon at Atlanta, Georgia, however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and using that year as a base, the foregoing one dollar and fifty cents (\$1.50) per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the Commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The Commission may establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The Commission also may establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession, or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The Commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the Commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to, the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense and interest

expense, the prevailing price for milk outside the regulated area, the purchasing power of the public, and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the Commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The Commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The Commission may reimburse other agencies for the reasonable cost of providing these services.

#### § 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the Commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials, and competitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

a. With respect to regulations establishing a compact over-order price, the Commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

b. With respect to any commission marketing order, as defined in § 2, subdivision (3), which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect

to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to subsection (a) of § 18 of Article VII.

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the Commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

#### ARTICLE V. Rule-Making Procedure.

##### § 11. Rule-making procedure.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection (f) of § 9, or amendment thereof, as provided in Article IV, the Commission shall conduct an informal rule-making proceeding to provide interested persons with an opportunity to present data and views. Such rule-making proceeding shall be governed by § 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553). In addition, the Commission shall, to the extent practicable, publish notice of rule-making proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the Commission shall hold a public hearing. The Commission may commence a rule-making proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

##### § 12. Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by § 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553 (c)), the Commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in § 13.

##### § 13. Producer referendum.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection (f) of § 9, is approved by producers, the Commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the Commission. The terms and conditions of the proposed order or amendment shall be described by the Commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the Commission determines that it is approved by at least two-thirds of the voting producers who, during a



representative period determined by the Commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the Commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) of this subsection and subject to the provisions of subdivisions (2) through (5) of this subsection.

(1) No cooperative that has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative that is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the Commission.

(3) Any producer may obtain a ballot from the Commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his or her approval or disapproval of the proposed order, shall notify the Commission as to the name of the cooperative of which he or she is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to ensure that all milk producers are informed regarding a proposed order, the Commission shall notify all milk producers that an order is being considered and that each producer may register his or her approval or disapproval with the Commission either directly or through his or her cooperative.

#### § 14. Termination of over-order price or marketing order.

(a) The Commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this Article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The Commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this Article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the Commission, have been engaged in the production of milk, the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this Article and shall require no hearing, but shall comply with the requirements for informal rule making prescribed by § 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

#### ARTICLE VI. Enforcement.

#### § 15. Records, reports, access to premises.

(a) The Commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the Commission may examine the books and records of any regulated person relating to his or her milk business and for that purpose, the Commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the Commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the Commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the Commission. The Commission may adopt rules further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the Commission of the name of any person violating any regulation of the Commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the Commission shall intentionally disclose information, by inference or otherwise, that is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than one thousand dollars (\$1,000) or to imprisonment for not more than one year, or both, and shall be removed from office. The Commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

#### § 16. Subpoena, hearings, and judicial review.

(a) The Commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the Commission stating that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The handler shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Commission. After such hearing, the Commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within 30 days from the date of the entry of the ruling. Service of process in these proceedings may be had upon the Commission by delivering to it a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand such proceedings to the Commission with directions either (i) to make such ruling as the court shall determine to be in accordance with law, or (ii) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the Commission from obtaining relief pursuant to § 17. Any proceedings brought pursuant to § 17, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

#### § 17. Enforcement with respect to handlers.

(a) Any violation by a handler of the provisions of regulation establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the Commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the Commission in any state or federal court of competent jurisdiction; or

(2) Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

(c) With respect to handlers, the Commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

#### ARTICLE VII. Finance.

##### § 18. Finance of start-up and regular costs.

(a) To provide for its start-up costs, the Commission may borrow money pursuant to its general power under § 6, subsection (d), subdivision 4. In order to finance the cost of administration and enforcement of this compact, including payback of start-up costs, the Commission may collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall be collected on a monthly basis for up to one year from the date the Commission convenes, in an amount not to exceed \$.015 per hundred weight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the Commission convenes. In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the Commission's ongoing operating expenses.

(b) The Commission shall not pledge the credit of any participating state or of the United States. Notes issued by the Commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

##### § 19. Audit and accounts.

(a) The Commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(b) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the Commission.

(c) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

#### ARTICLE VIII. Entry into Force; Additional Members and Withdrawal.

##### § 20. Entry into force; additional members.

The compact shall enter into force effective when enacted into law by any three states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia and when the consent of Congress has been obtained.

##### § 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the

withdrawal is given to the Commission and the governors of all the participating states. No withdrawal shall affect any liability already incurred by or chargeable to a participating state prior to the time of such withdrawal.

§ 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three or more compacting states. A compact state may accept the conditions of Congress by implementation of this compact.

**Drafting Note: No changes.**

~~§ 3.1 461.2~~ 3.2-3301. Southern Dairy Compact Commission members.

The Governor shall appoint five delegates from Virginia to represent the Commonwealth on the Southern Dairy Compact Commission, including two dairy farmers who are engaged in the production of milk, two consumer representatives, and one dairy processor. The Governor's appointments shall be subject to confirmation by the General Assembly. Initial appointments shall be one dairy farmer, one consumer representative, and one dairy processor each for a term of four years and one dairy farmer and one consumer representative each for a term of two years. Thereafter, delegates shall be appointed for four-year terms. No delegate shall serve more than three consecutive terms. Vacancies in the membership of the delegation shall be filled by the Governor for the unexpired term.

**Drafting Note: Technical change.**

~~§ 3.1 461.3~~ 3.2-3302. Cooperation of departments, agencies, and officers of the Commonwealth.

All departments, agencies, and officers of ~~this~~ *the* Commonwealth and its political subdivisions are hereby authorized to cooperate with the Southern Dairy Compact Commission in furtherance of any of its activities pursuant to the Compact.

**Drafting Note: Technical changes.**

~~§ 3.1 461.4~~ 3.2-3303. Milk Commission powers preserved.

Nothing in this ~~article~~ *chapter* shall be construed to diminish or limit the powers and responsibilities of the Milk Commission established by ~~Article 2~~ *Chapter 32* of this ~~chapter~~ *title* or to invalidate any action of the Milk Commission previously taken, including ~~without limitation~~ any regulation ~~promulgated thereby~~ *adopted by the Milk Commission*.

**Drafting Note: Technical changes.**

## CHAPTER 634.

### CERTIFICATION OF AGRICULTURAL PRODUCTS ~~IN GENERAL~~.

**Chapter Drafting Note: There are no significant changes made in this chapter. The Fund described in subsection B currently exists and is designated by the Department of Accounts as the Certification of Agricultural Products Trust Fund.**

~~§ 3.1 28~~ 3.2-3400. Request of parties financially interested; *fees to be deposited in Fund*.

A. In order to promote, protect, further, and develop the agricultural interests of ~~this~~ *the* Commonwealth, the Commissioner ~~of Agriculture and Consumer Services, or his authorized agents, is authorized~~ *may*, when requested by parties financially interested in a lot of any agricultural products, ~~to~~ investigate and certify the quality, condition, grade, or other classification of such agricultural product, ~~under such rules and pursuant to~~ regulations as ~~adopted by~~ the Board of ~~Agriculture and Consumer Services may prescribe~~, including *prescribing* payment of ~~such~~ *fees* as ~~he~~ *the Commissioner* deems reasonable for the services

~~rendered or performed provided~~ by employees or licensed agents of the Department of Agriculture and Consumer Services.

*B. There is hereby created in the state treasury a special nonreverting fund to be known as the Certification of Agricultural Products Trust Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected pursuant to subsection A and § 3.2-4606 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to carry out the provisions of this chapter.*

**Drafting Note: The language in subsection A is consistent with language in the federal Agricultural Marketing Act of 1946 and Chapter 113 of the 1924 Virginia Acts of Assembly. Language in proposed subsection B is moved from existing § 3.1-29 and provides standard language for creating a special fund.**

~~§ 3.1-29. Disposition of fees and moneys received.~~

~~All fees and moneys collected or received under the preceding section (§ 3.1-28) by employees or licensed agents of the Department of Agriculture and Consumer Services in their official capacities shall be paid into the state treasury to the credit of a special fund.~~

**Drafting Note: Deleted section and moved language to proposed subsection B of § 3.2-3400, Request of parties financially interested.**

~~§ 3.1-30~~ 3.2-3401. ~~Appointment of employees; licensing~~ *Licensing* of agents.

~~The Commissioner may appoint employees or license agents to assist in carrying out the provisions of this chapter. He may also license as inspectors persons not in the employ of the Department of Agriculture and Consumer Services; provided, however, that no~~ *No* person who is not an employee of the Department shall have the authority *may* to act as a licensed inspector under this chapter unless samples from commodities graded or inspected by him are regularly graded or inspected by an employee of the Department, or of the ~~United States-U.S.~~ Department of Agriculture.

**Drafting Note: Technical changes.**

~~§ 3.1-34~~ 3.2-3402. Certificates as evidence.

Certificates of inspection and reinspection issued under this chapter by authorized agents of the Department of Agriculture and Consumer Services and those relating to the grade, classification, quality, or condition of agricultural products issued under authority of the Congress of the United States shall be accepted in any court of ~~this~~ *the* Commonwealth as prima facie evidence of the true grade, classification, condition, or quality of such agricultural product at the time of its inspection.

**Drafting Note: Technical changes.**

## CHAPTER 935.

### PRODUCE MARKETS FARMERS MARKET SYSTEM.

**Chapter Drafting Note: Existing Chapter 9 contains three articles. Article 1, Produce Market Authorities, and Article 2, Produce Market Loan Fund, are proposed to be deleted. Only Article 3, Farmers' Market System, remains to become proposed Chapter 35. Article 1 (§ 3.1-47 et seq.), Produce Market Authorities, was enacted in 1940 but no authorities have been created. Article 2 (§ 3.1-65 et seq.), Produce Market Loan Fund, was enacted in 1954 but was never funded.**

~~Article 1.~~

~~Produce Market Authorities.~~

~~§ 3.1 47. Definitions.~~

~~As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:~~

~~(a) The word "authority" shall mean the "(here insert name of city, county or market) Produce Market Authority" created pursuant to the provisions of §§ 3.1 48 and 3.1 49 of this article, or, if such authority shall be abolished, the city, county, board, body, commission or agency succeeding to the principal functions thereof or on whom the powers given by this article to the authority shall be conferred by law.~~

~~(b) The word "market" shall mean the market constructed, maintained and operated under the provisions of this article by the authority, including all buildings, structures, parking facilities and other facilities and appurtenances thereto which the authority may deem necessary for the maintenance and operation of the market, together with all property, rights, easements and interest which may be acquired by the authority for the construction, maintenance and operation of the market.~~

~~(c) The word "cost" as applied to the market shall include the cost of construction, the cost of any subsequent additions thereto or expansion thereof, the cost of the acquisition of all land, rights of way, property, rights, easements and interests acquired by the authority for such construction, additions or expansion, the cost of demolishing or removing any building or structure on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all equipment, financing charges, insurance, interest prior to and during such construction, and during the construction of any addition or expansion, and, if deemed advisable by the authority, for a period not exceeding one year after completion of such construction, addition or expansion, the cost of surveys, engineering and architectural expenses, borings, plans and specifications and other engineering and architectural services, legal expenses, administrative expenses, and such other expenses as may be necessary or incident to the construction of the market, and of such subsequent additions thereto or expansion thereof, the cost of financing such construction, additions or expansion and placing the market and such additions or expansion in operation.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 48. Market authorities authorized to be established.~~

~~In order to provide facilities for the buying, selling, handling and distribution of perishable farm produce so as to promote the agricultural and industrial development of the Commonwealth and the health, safety, welfare, convenience and prosperity of the inhabitants thereof, there is hereby authorized to be established a wholesale or retail produce market authority in or for each city, county or any combination of cities and counties of the Commonwealth which is hereby established as and declared to be a political subdivision of the Commonwealth and is authorized and empowered to construct, enlarge, extend, maintain, repair and operate the market, and to issue bonds of the authority as hereinafter provided in this article.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 49. Activation and organization of authorities.~~

~~(a) Whenever the governing body or bodies of any such city, county or combination thereof shall adopt, by the affirmative vote of a majority of all of the members thereof, a resolution petitioning the Governor to activate an authority for such city, county or combination thereof, the Governor may by proclamation activate the authority or, if in the opinion of the Governor no substantial need exists therefor, he may decline to do so. The resolution shall state whether it is desired that the authority shall consist of five or seven directors, and the proclamation, if issued, shall designate the number. However, the governing body of Hanover County may, at its sole discretion, establish such authority, which authority shall be limited in its operations to Hanover County, and appoint the board of directors thereof without proclamation by the Governor. All persons appointed to the board of directors by the governing body of~~

~~Hanover County shall be residents of the County and shall be appointed and serve in accordance with subsection (c) below.~~

~~The Department of Agriculture and Consumer Services, after the completion of a feasibility study requested by the governing body of the city, county, or combination thereof, showing the necessity for a market authority in any area, by resolution, may petition the Governor to activate an authority in that area. The Governor may activate such an authority by proclamation if there is a substantial need for such an authority. The resolution shall state whether the authority should consist of five or seven directors and the proclamation shall designate the number of directors for the authority.~~

~~(b) Every authority shall be governed by a board of directors to be appointed by the Governor. One member of the board shall be appointed from a list of three persons nominated by the Director of the Division of Marketing with the approval of the Commissioner of Agriculture and Consumer Services. One member shall be appointed from a list of three persons nominated by the Director of the Virginia Cooperative Extension Service of the Virginia Polytechnic Institute and State University. One member shall be appointed from a list of three persons nominated by the governing body or bodies of such city, county or combination thereof. One member shall be appointed from a list of three wholesale or retail dealers in perishable farm produce nominated by a majority vote of all of the wholesale or retail dealers in such produce doing business in such city, county or combination thereof or on the market after it is in operation, each store unit having one vote. One member shall be appointed from a list of three farmers nominated by the agricultural agents of the several counties contiguous to such city, county or combination thereof or contiguous to the county or counties in which such city is geographically located. In the event the number of directors is to be seven, one member shall be appointed from a list of three persons nominated by the directors or other governing body of the chamber of commerce of such city, county or combination thereof and one member shall be appointed from a list of three food retail merchants nominated by the governing body of such city, county or combination thereof. All nominees shall be residents of such city, county or combination thereof or of one of the several counties contiguous thereto or contiguous to the county or counties in which such city is geographically located.~~

~~(c) The members first appointed shall be appointed one each for terms of one, two, three and four years, and one or three, as the case may be, for a term of five years, according to the order in which they are listed in this section, respectively. Subsequent appointments shall be made for terms of five years each, except appointments to fill vacancies which shall be for unexpired terms. The terms of the members first appointed shall, for the purpose of determining the expiration dates of their respective terms, be taken to commence on January 1 of the year immediately succeeding the year in which the appointments are made, although the appointment is made and duties are assumed prior thereto. No person shall be eligible to serve for or during more than two successive terms; provided, however, any person heretofore or hereafter appointed to fill an unexpired term may be eligible for two additional successive terms after the term appointed has expired, and incumbency during the current term when this amendment takes effect constitutes the first of the two successive terms. Each member shall continue to hold office until his successor has been appointed. Members of the board shall be subject to removal from office in like manner as are state, county, town and district officers under the provisions of §§ 24.2-230 through 24.2-238. Immediately after such appointment, the directors shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice chairman, and shall also elect annually a secretary and a treasurer, who may or may not be members of the board. One person may be elected to both of the last named offices. The chairman, or in his absence, the vice chairman shall preside at all meetings of the board. In the absence of both the chairman and vice chairman the board shall appoint a chairman pro tempore, who shall preside at such meetings. A majority of the full number of directors shall~~

~~constitute a quorum for the transaction of the business of the authority, and no vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority. The members of the board shall be entitled to reimbursement for their necessary expenses incurred in attendance upon the meetings of the board or while otherwise engaged in the discharge of their duties. Each member of the board shall also be paid a sum to be determined by the board not exceeding twenty five dollars per day for each day or portion thereof during which he is engaged in the performance of his duties. Such expenses and compensation shall be paid out of the treasury of the authority upon vouchers signed or approved by the chairman of the board or by such other person or persons as may be designated by the board for the purpose.~~

~~(d) The members of the board of directors of a produce market authority heretofore appointed pursuant to the provisions of Title 3.1 shall constitute the board of directors of the authority created by this article. They shall serve as such until the expiration of the terms for which they were appointed and the powers and duties conferred and prescribed in this article shall be exercised and performed by such board and all of the other provisions of this article shall be applicable to such board and to such authority. Thereafter, the members of the board shall be appointed pursuant to the provisions of this section.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 50. Grant of powers.~~

~~The authority is hereby authorized and empowered:~~

~~(a) To lease, purchase, construct, maintain, repair and operate the market within or without the corporate limits of such city or county upon lands owned or leased by the authority;~~

~~(b) To issue bonds of the authority, and to refund its bonds, all as provided in this article;~~

~~(c) To borrow money in anticipation of the issuance of bonds, for any of its purposes, and to issue notes, certificates or other evidence of such borrowing in such form as may be authorized by resolution of the authority, such notes, certificates or other evidence of such borrowing to be payable in the first instance from the proceeds of any bonds issued under the provisions of this article and to contain on their face a statement to the effect that neither the Commonwealth, the authority nor such city or county shall be obligated to pay the same or the interest thereon except from the proceeds of bonds in anticipation of the issuance of which such notes, certificates, or other evidences of borrowing shall have been issued, or from revenues of the operation of the market, and that neither the faith and credit nor the taxing power of the Commonwealth or of such city or county is pledged to the payment of the principal of or the interest on such bonds, and such notes, certificates or other evidences of borrowing may be sold in such manner, either at public or negotiated sale and for such price as the authority may determine;~~

~~(d) To fix and revise from time to time and charge and collect tolls, fees, rents, and other charges for the use of the market and its facilities or any part thereof;~~

~~(e) To establish rules and regulations for the use of the market or any part thereof;~~

~~(f) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties;~~

~~(g) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;~~

~~(h) To employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, superintendents and managers, and to employ graders and classifiers under the federal State inspection service and such other employees and agents as may be necessary in its judgment for the construction, maintenance and operation of the market, and to fix their compensation;~~

~~(i) To receive and accept from the federal government, the Commonwealth, or such city or county, or from any agency or instrumentality thereof, or from any person, firm or~~



~~corporation, gifts and grants for any of the purposes of the authority, and to receive and accept aid or contributions from any other source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;~~

~~(j) To enter upon any lands or premises for the purpose of making such surveys, borings and examinations as the authority may deem necessary or convenient for its purposes, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings; provided, however, the authority shall pay any actual damage resulting to such lands or premises as a result of such entry and activities as a part of the cost of the market;~~

~~(k) To sue and to be sued; to have a seal and to alter the same at its pleasure, and to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with law to carry into effect the powers and purposes of the authority;~~

~~(l) To lease the market facilities or any of them, or to grant privileges for the use thereof to farmers, wholesale dealers and other persons engaged primarily in the wholesale marketing of perishable farm produce, whether in buying or selling in consideration of the payment of such tolls, fees, rents or other charges, and upon such terms and conditions as the authority may prescribe or as may be agreed upon by the authority and such farmers, dealers and other persons;~~

~~(m) To provide upon the market premises a building or facilities suitable and adequate for the operation of a restaurant and such other services as may be necessary to accommodate the requirements of persons buying and selling such produce and of persons employed at the market, and to lease such building or facilities to a responsible operator upon such terms and conditions as may be agreed upon by the authority and such operator;~~

~~(n) To provide upon the market premises such sanitary facilities and parking space as may be necessary to accommodate the requirements of persons transacting business at the market and of persons employed thereat;~~

~~(o) To prescribe and designate reasonable grades and classes for the various kinds of perishable farm produce sold at the market, which grades and classes shall conform to those established pursuant to the laws of the Commonwealth, the United States of America or ordinances of such city or county whenever they or any of them are applicable;~~

~~(p) To permit the selling and buying of food products other than perishable farm produce at the market only as a function incident to the operation of the market;~~

~~(q) To do all other acts and things necessary or convenient to carry out the powers expressly granted in this article.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 51. Acquisition of property.~~

~~The authority is hereby authorized and empowered to acquire by purchase solely with funds provided under the authority of this article, such lands, structures, property, rights of way, easements and other interests in lands, as it may deem necessary or convenient for the construction and operation of the market, and upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 52. Credit of Commonwealth or of cities, counties or combinations thereof not pledged.~~

~~Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the Commonwealth or of any such city, county or combination thereof or a pledge of the faith and credit of the Commonwealth or of any such city, county or combination thereof, but shall be payable solely from the funds of the authority herein provided for. All of such revenue bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth, the authority nor any such city, county or combination thereof shall be~~

~~obligated to pay the same or the interest thereon except from funds of the authority and that neither the faith and credit nor the taxing power of the Commonwealth nor that of any such city, county or combination thereof is pledged to the payment of the principal of or the interest on such bonds, notes, certificates or evidences of borrowing. All expenses incurred in carrying out the provisions of this article shall be payable solely from the funds provided under the provisions of this article and no liability or obligation shall be incurred by the authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this article. Neither the members of the board of directors nor any officer or agent of the authority executing any bond, note, certificate or other evidence of borrowing pursuant to this article shall be personally liable by reason of such execution.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 53. Market bonds, notes, certificates and other evidences of borrowing.~~

~~The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue or general obligation bonds of the authority for the purpose of effectuating any or all of its purposes and for the purpose of refunding any bonds previously issued under this article. The bonds of each issue shall be dated, shall bear interest at such rate or rates not exceeding six per centum per annum, shall mature at such time or times not exceeding thirty years from their date or dates, as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the chairman of the board of directors of the authority or shall bear his facsimile signature, and the official seal of the authority or a facsimile thereof shall be impressed thereon and attested by the secretary of the authority, and any coupons attached thereto shall bear the facsimile signature of the chairman of the board of directors of the authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this article shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth, notwithstanding any of the provisions of this article or any recitals in any such bonds. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provisions may be made for the registration of any coupon bonds as to principal alone or as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest and the interchange of registered and coupon bonds. The authority may sell such bonds in such manner either at public or negotiated sale and for such price as it may determine will best effect the purposes of this article. The proceeds of the bonds of each issue shall be used solely for effectuating the purposes of the authority and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in the trust indenture or agreement hereinafter securing the same. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without~~

~~any other proceeding or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 54. Trust indenture.~~

~~In the discretion of the authority any bonds issued under the provisions of this article may be secured by trust indenture by way of a conveyance, deed of trust or mortgage of the market or any part thereof or by a trust agreement by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth or by both such conveyance, deed of trust or mortgage and indenture or trust agreement. Such trust indenture or agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls, fees, rents or other charges to be received. Such trust indenture or agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the market, and the rates of tolls, fees, rents and other charges to be charged, and the custody, safeguarding and application of all moneys of the authority, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of such bonds or of other revenues of the authority to furnish indemnifying bonds or to pledge such securities as may be required by the authority. Such trust indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, such trust indenture or agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust indenture or agreement or resolution may be treated as a part of the cost of the market.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 55. Revenues.~~

~~The authority is hereby authorized to fix, revise, charge and collect tolls, fees, rents and other charges for the use of the market and the different parts thereof. Such tolls, fees, rents and other charges shall be so fixed and adjusted as to provide a fund sufficient with other revenues to pay: first, the cost of maintaining, repairing and operating the market, and second, the principal of and interest on such bonds as the same shall become due and payable, and third, to create reserves for such purposes and for other purposes of the authority. Such tolls, fees, rents and charges shall not be subject to supervision or regulation by any commission, board, bureau or agency of the Commonwealth or of any such city. The tolls, fees, rents and other charges derived from the market, except such part thereof as may be necessary to pay the cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust indenture or agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust indenture or agreement in a sinking fund which is hereby pledged to, and charged with, the payment of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of such bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The tolls, fees, rents and charges so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need be filed~~

~~or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture or agreement. Except as may otherwise be provided in such resolution or such trust indenture or agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. The authority shall not operate the market for profit. The authority shall pay to such city or county annually such sums in lieu of taxes as shall be agreed to by the authority and the city or county; and should the authority and the city or county fail to reach such an agreement, or upon termination of any agreement so made, the authority shall pay to the city or county annually a sum equal to all taxes that would be assessed by the city or county had the authority been assessable therefor. The authority shall adjust, if necessary, its tolls, fees, rents and other charges so that the market will not be operated for profit; provided, however, that reasonable reserves for any of the purposes of the authority, including such annual payments to the city or county or repayment of any loan may first be set aside.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 56. Trust funds.~~

~~All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 57. Remedies.~~

~~Any holder of bonds, notes, certificates or other evidences of borrowing issued under the provisions of this article or of any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement, except to the extent of the rights herein given may be restricted by such trust indenture, or agreement may, either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this article or under such trust indenture or agreement or the resolution authorizing the issuance of such bonds, notes or certificates, and may enforce and compel the performance of all duties required by this article or by such trust indenture or agreement or resolution to be performed by the authority or by any officer or agent thereof, including the fixing, charging and collection of tolls, fees, rents and other charges.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 58. Exemption from taxation.~~

~~The exercise of the powers granted by this article shall be in all respects for the promotion of the agricultural, commercial and industrial development of the Commonwealth and for the health, safety, welfare, convenience and prosperity of the inhabitants thereof, and as the operation and maintenance of the market by the authority will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon the property of or any property acquired or used by the authority under the provisions of this article or upon the income therefrom; and the bonds, notes, certificates or other evidences of borrowing issued under the provisions of this article, their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by such city or county and any other municipality, county or other political subdivision of the Commonwealth.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 59. Bonds eligible for investment.~~

~~Bonds issued by the authority under the provisions of this article are hereby made securities in which the Commonwealth, its agencies and public institutions and such city or county and the other municipalities, counties and other political subdivisions of the Commonwealth, all insurance companies, trust companies, banks, banking associations,~~

~~investment companies, executors, administrators, trustees and other fiduciaries, and all other persons whatsoever who are now or may be hereafter authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds including capital in their control or belonging to them. Such bonds are hereby made securities which may be properly and legally deposited with and received by any state or municipal officer or state agency or public institution or any municipality, county or other political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations is now or may be hereafter authorized by law.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 60. Market refunding bonds.~~

~~The authority is hereby authorized to provide for the issuance of market refunding bonds of the authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the authority, for the purpose of constructing additions to or expansion of the market. The authority is further authorized to provide by resolution for the issuance of its bonds for the combined purpose of (a) refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (b) paying all or any part of the cost of the market or any addition thereto or expansion thereof which shall not have theretofore been financed. The issuance of such bonds, the maturities and other details with respect thereto, the rights of the holders thereof, and the rights, duties and obligations of the authority with respect to the same, shall be governed by the provisions of this article insofar as the same may be applicable.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 61. Competing markets.~~

~~So long as any bonds issued under the provisions of this article are outstanding, no market competing with the market established, maintained and operated under the provisions of this article shall be constructed by the Commonwealth or a political subdivision thereof, nor shall the Commonwealth or such political subdivision consent to the construction of any such market within the area or areas from which the directors of the authority are nominated, which may adversely affect the revenues of the market, unless funds shall have been provided for the redemption of all such outstanding bonds, the interest payable thereon and the premium, if any, payable on the redemption of such bonds.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 62. Miscellaneous.~~

~~(a) The market when constructed and put in operation shall be maintained and kept in good condition and repair by the authority and shall be operated by such employees as the authority may employ. The market shall be policed by the police force of such city or of the county in which the market may be located, which shall be responsible for the preservation of the public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the Commonwealth and all ordinances of such city or county and rules and regulations made in accordance therewith within the market boundaries and such force shall have all the rights and duties of police officers as provided by the general laws of the Commonwealth within the market boundaries. For the purpose of enforcing such laws, ordinances, rules and regulations the court or courts having jurisdiction for the trial of criminal offenses in such city or county shall have jurisdiction to try any person charged with the commission of any such crime or ordinance violation or rule or regulation within the market boundaries. Violation of or failure, refusal or neglect to observe, obey and comply with the rules and regulations of the authority adopted pursuant to the provisions of this article shall constitute~~

~~a misdemeanor and shall be punishable accordingly, and such police force shall have the power and jurisdiction to enforce such rules and regulations.~~

~~(b) All ordinances and other acts of the governing body of such city or county and all rules and regulations made pursuant thereto or other law shall apply to and shall be enforced within the market boundaries to the same extent and with the same force and effect as such ordinances, acts, rules and regulations apply and are effective and enforced within the boundaries of such city or county.~~

~~(c) The court or courts having jurisdiction of actions at law and suits in equity and of other proceedings, actions and suits in such city or county shall have exclusive jurisdiction for the trial of all such actions, suits and proceedings growing out of the construction, maintenance, repair, extension, expansion and operation of the market, and growing out of any other circumstances, events, or causes originating within the market boundaries. Eminent domain proceedings instituted and conducted by the authority shall be brought and conducted in the court or courts having jurisdiction of such proceedings in such city or county, and jurisdiction is hereby conferred on such courts for such purpose.~~

~~(d) All private property damaged or destroyed in carrying out the powers granted by this article shall be restored or repaired and placed in its original condition as nearly as practicable or just compensation shall be paid therefor out of funds provided under the provisions of this article.~~

~~(e) Every such city or county shall have the power to acquire in the manner and by the procedure prescribed in its charter or by general law such real property as its governing body shall determine and to sell or lease such property to the authority upon such terms and conditions as such governing body may prescribe to effectuate the purposes of the authority. Such city or county may also sell or lease to the authority real property previously acquired by such city or county, which in the opinion of its governing body is not needed for other public use, upon such terms and conditions as such governing body may prescribe. The authority shall pay to such city or county the fair market value of such property sold to the authority and if the payment thereof is deferred or is to be made in installments, such deferred payments or installments, including interest on the purchase price, shall be disbursed from the revenues of the authority as a part of the cost of operating the market. Rent or other compensation paid for the lease of such property to the authority shall likewise be paid from the revenues of the authority as a part of the cost of operating the market. The sale or lease of any such property to the authority may be done without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of such city and the authority.~~

~~(f) On or before the thirtieth day of January in each year, the authority shall make an annual report of its activities for the preceding calendar year to the Commissioner of Agriculture and Consumer Services and such city or county. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof shall be treated as a part of the cost of the construction or operation of the market.~~

~~(g) Any director of the authority may contract with the authority for the use of the facilities of the market for buying and selling produce on the market, but no other contract between a director and the authority shall be valid unless and until such contract is approved by the governing body of such city or county. Any agent or employee of the authority who contracts with the authority or is interested, either directly or indirectly, in any contract with the authority or in the sale of any property, either real or personal, to the authority shall be guilty of a misdemeanor and such contract shall be void and unenforceable. Jurisdiction for the trial of such misdemeanors is hereby conferred upon the hustings or corporation court of such city or the circuit court of such county, as the case may be.~~

~~(h) The records, books and accounts of the authority shall be subject to examination and inspection by duly authorized representatives of the Governor, the Commissioner of Agriculture and Consumer Services and the governing body of such city and any bondholder or bondholders at any reasonable time, provided the business of the authority is not unduly interrupted or interfered with thereby.~~

~~(i) The authority shall not discriminate in the operation of the market against the sale at the market of any perishable farm product, nor against any producer of any perishable farm product, on account of the county or state in which any such product is produced, or on account of the legal nature of the producer or other person engaged in the marketing of any such product, whether individual, cooperative, partnership or corporate, or on account of the conditions of employment or the nature of the labor employed in the production or marketing of such product; but every such authority shall take all reasonable action and precaution to prevent any such discrimination.~~

~~(j) The authority may enter into contracts with such city or county for providing such water, gas, electric, sewage disposal, and refuse collection services, and fire and police protection and other services required for the construction, maintenance and operation of the market, which shall be upon such terms and conditions and at such rates, fees and charges as shall be prescribed by such city or county; the cost of obtaining such services from the city or county shall be paid as a part of the cost of operating the market.~~

~~(k) The lease of any of the facilities of the market or the grant of any privilege for the use thereof shall not be construed to relieve any such lessee or grantee from any tax levied by the Commonwealth or such city or county applicable to such lessee or grantee nor shall such lessee or grantee be exempt therefrom.~~

~~(l) Every person, firm and corporation which violates, or fails, refuses or neglects to observe and comply with any rule or regulation established by the authority for the use of the market, or any part thereof may be evicted therefrom, and shall be guilty of a misdemeanor. Each such violation, failure, refusal or neglect and each day's continuance thereof shall constitute a separate offense. Jurisdiction for the trial of such misdemeanors is hereby conferred upon the hustings or corporation court of such city or the circuit court of such county, as the case may be.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 63. Article to be liberally construed.~~

~~This article being necessary for the promotion of public safety, welfare, health, convenience and prosperity of the inhabitants of the Commonwealth, it shall be liberally construed to effect the purposes hereof.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 64. Inconsistent laws inapplicable.~~

~~All other general or special laws, including the provisions of charters of such cities inconsistent with any provision of this article are hereby declared to be inapplicable to the provisions of this article.~~

**Drafting Note: Deleted section. This provision is obsolete.**

## Article 2.

### Produce Market Loan Fund.

~~§ 3.1 65. Definitions.~~

~~For purposes of this article:~~

~~(a) "Wholesale produce market" means a single, integrated, public market located in a substantially contiguous area which serves as a major source of supply of perishable agricultural commodities consumed in a large consuming area and which is operated primarily for the~~

~~purpose of selling or otherwise disposing of perishable agricultural commodities at wholesale for resale to others.~~

~~(b) "Perishable agricultural commodities" means agricultural commodities and products thereof, consisting principally of fresh fruits and vegetables, handled alone or in combination with poultry, eggs, meats, seafood and dairy products.~~

~~(c) "Eligible borrower" means any municipality, political subdivision or agency of the Commonwealth, including any city port authority or produce market authority established by or under the laws of this Commonwealth.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 66. Creation and purpose.~~

~~In order to promote the general welfare by promoting the efficient and economic handling of farm and food products at wholesale in the interests of the grower, the food trade and the consuming public; in order to reduce greatly increasing marketing costs of food, excessive waste and spoilage; and in order to combat reduced prices to producers and increased costs to consumers caused by inadequate and obsolete market facilities, there is hereby created a special loan fund to be known as the Produce Market Loan Fund.~~

~~The purpose of this fund is to provide equity capital for the construction of wholesale produce markets within the Commonwealth.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 67. Application to Commissioner for loan; form and contents.~~

~~Any eligible borrower desiring to build a wholesale produce market may apply to the Commissioner of Agriculture and Consumer Services for a loan from this fund to be used for the purpose set forth in § 3.1 66, provided such market is to be operated in such a manner as to comply with the objectives of this article and for the duration of any such loan, to earn revenues sufficient only to conduct its business and meet its obligations, with reasonable reserves.~~

~~Such application shall be made on forms prescribed by the Commissioner. In addition to other information called for, such application shall give information as to the financial needs of such facility, the use expected to be made of the requested loan, the anticipated sources of all funds required to build the facility, the anticipated revenue of such facility, wherein the public welfare will be promoted by making the loan, and the reasons why such facility is expected to be self liquidating.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 68. Application forwarded to Governor with recommendation of Commissioner.~~

~~When the Commissioner shall have satisfied himself as to the need for such wholesale produce market and as to the financial soundness of such market and all other matters which he may deem material to the financial success of such market, he shall forward the application to the Governor and shall at the same time give his opinion as to whether such loan should be granted.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 69. Authorization by Governor; limitations on amount; commitments for remaining funds needed.~~

~~If the Governor deems it advisable, he may authorize such loan, provided that no such loan shall be in excess of 33 1/3 percent of the cost of the site and the cost of constructing such market nor shall any such loan in any event exceed \$300,000, and provided further that in no case shall the borrower obtain from sources other than the Produce Market Loan Fund less than \$100,000 of the estimated costs of such market.~~

~~After the Governor has authorized any such loan, no transfer of funds shall actually take place until the borrower shall have firm commitments for all of the remaining funds needed to construct the wholesale produce market.~~

**Drafting Note: Deleted section. This provision is obsolete.**



~~§ 3.1 70. Repayment of loans; interest; security.~~

~~All loans made under this article shall be repayable within twenty three years, with interest at the rate of three per centum per annum on the unpaid balance, after the third year of such loan. At least five percent of the principal amount of such loan shall be repaid annually after the third year, with the privilege of anticipation. Each such equity loan shall be secured both as to principal and interest in such manner as the Governor shall prescribe.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 71. State Treasurer custodian of evidences of debt, etc.; audits of finances of market.~~

~~The State Treasurer shall be the custodian of all evidences of debt and other instruments incidental to loans made under this article, and shall have the authority to require such audits of the finances of such wholesale produce market as he may deem necessary or are prescribed by law.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 72. Fund established; loan payments from fund.~~

~~For the purposes hereinabove set forth there is hereby established the Produce Market Loan Fund. From this fund there shall be paid as loans by the State Treasurer on warrants of the Comptroller on vouchers issued by the Commissioner of Agriculture and Consumer Services, accompanied by such evidence of debt and security as may have been prescribed by the Governor, such sums, not exceeding the uncommitted balance of such Produce Market Loan Fund, as may have been approved by the Governor.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 73. Repayments credited to general fund.~~

~~All payments into the state treasury representing the repayment of principal or interest shall be credited to the general fund of the Commonwealth.~~

**Drafting Note: Deleted section. This provision is obsolete.**

Article 3.

Farmers' Market System.

~~§ 3.1 73.1. Declaration of policy. [Not set out.].~~

~~The General Assembly finds and declares that agriculture is important to the prosperity of the Commonwealth, and is a major source of income to a large segment of the Commonwealth's population. Additionally, it declares that the establishment of a Virginia wholesale, shipping point and retail farmers' market system throughout the Commonwealth, in cooperation with local cities, towns, counties, or combinations thereof, will enhance the overall economy of Virginia's agricultural industry and promote tourism. Such a system will provide consumers with fresh, properly prepared and marketable fruits, vegetables, horticultural plants, handicrafts, and other agricultural products produced and marketed in Virginia.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 73.3 3.2-3500. Development of farmers' *farmers* market system.~~

~~In overseeing the development of a farmers' *farmers* market system, the Board of Agriculture and Consumer Services shall:~~

- ~~1. Identify farmers' *farmers* market needs throughout the Commonwealth;~~
- ~~2. Promote the orderly growth and development of farmers' *farmers* markets;~~
- ~~3. Encourage where appropriate and feasible the use of present authorities and funding mechanisms as provided in Chapter 9 (§ 3.1 47 et seq.) of this title;~~
- ~~4. Promote public awareness of farmers' *farmers* markets;~~
- ~~5. Promote the coordination of Virginia's farmers' *farmers* market development with other segments of the Commonwealth's economy, such as tourism, horticultural production and~~

marketing, fruit and vegetable production and marketing, retail trade, wholesale trade, intrastate marketing, interstate marketing, and new marketing ventures such as electronic marketing; and

65. Advise the Governor on the development of the system of state-owned ~~farmers'~~ *farmers'* market facilities.

**Drafting Note: Reference is made in subdivision 3 to the funding mechanisms in Chapter 9; since Articles 1 and 2 of existing Chapter 9 containing the funding mechanisms have been deleted because no market authorities were established under existing Article 1, and the Produce Market Loan Fund established in Article 2 was never funded, subdivision 3 has been deleted.**

§ ~~3-1-73.5~~ 3.2-3501. Commissioner to manage ~~farmers'~~ *farmers'* market operations.

A. In order to establish, operate and maintain a system of state-owned ~~farmers'~~ *farmers'* market facilities within the Commonwealth, the Commissioner ~~or his designee shall have the authority to~~ may carry out the provisions of this ~~article~~ *chapter*, including the power to:

1. Cooperate with various state agencies and other organizations contributing to the development of the ~~farmers'~~ *farmers'* market system;

2. Develop and implement policy for the management of state-owned ~~farmers'~~ *farmers'* market facilities, including:

a. Guidelines for fees to be charged at the markets;

b. Standards for evaluating market operations;

c. Criteria for the expansion of existing state-owned ~~farmers'~~ *farmers'* market facilities and the establishment of new markets in the future;

d. Changes in management of markets; and

e. Guidelines for the award of contracts for market management;

3. Employ such personnel as necessary to operate the system of markets in accordance with the Virginia Personnel Act (§ 2.2-2900 et seq.);

4. Receive and dispense funds;

5. Develop and manage a program budget for the ~~farmers'~~ *farmers'* market system;

6. Provide marketing and promotional services for the ~~farmers'~~ *farmers'* market system;

7. Develop detailed technical plans for, acquire or build, and manage the ~~farmers'~~ *farmers'* market system;

8. Conduct such studies as are necessary to ensure the success of the ~~farmers'~~ *farmers'* market system;

9. Make contracts and agreements and execute other instruments necessary for the operation of the ~~farmers'~~ *farmers'* market system;

10. Enter into agreements with and accept grants from any governmental agency in furtherance of this ~~article~~ *chapter*;

11. Enter into joint ventures with cities, towns, counties or combinations thereof in developing wholesale, shipping point, and retail ~~farmers'~~ *farmers'* markets; and

12. Rent or purchase land and facilities as deemed necessary to establish markets or to enhance farmers market development.

B. If a market in the network is operated pursuant to a contract between the Commissioner and the market operator, such contract shall require that the operator annually submit to the Commissioner a plan for, and a report on, the operation of the market. The plan shall describe the operator's goals for the coming year as to the acreage to be served by the market, the types of crops to be sold at the market, and the number of brokers, buyers, and producers to utilize the market. The report shall describe the extent to which the goals for the previous year were met. The Commissioner shall submit an annual report on or before February 1 summarizing the market operators' reports and plans to the Chairmen of the House Committee on Agriculture, Chesapeake, and Natural Resources, the Senate Committee on Agriculture,

Conservation and Natural Resources, the House Committee on Appropriations, and the Senate Committee on Finance.

C. The Commissioner shall report annually to the Board of Agriculture and Consumer Services regarding the receipt and expenditure of funds as well as the policies, programs, and activities of the market operators in the state-owned farmers' *farmers* market facilities.

**Drafting Note: Technical changes.**

~~§ 3.1-73.5:1~~ 3.2-3502. Local retail farmers markets.

Any locality may establish, operate and maintain a local retail farmers market. The local retail farmers market may request to be part of the network of farmers markets within the Commonwealth or may be independent of such network. Nothing in this section shall invalidate the actions of any locality taken prior to enactment of this section.

**Drafting Note: No changes.**

CHAPTER ~~10.1~~ 36.

~~VIRGINIA-FERTILIZER ACT.~~

**Chapter Drafting Note: Rearranged the sections so that the definitions are followed by the administrative responsibilities of the Board and the Commissioner, product registration and licensing requirements, product labeling, misbranding, and adulteration provisions, and ending with enforcement provisions and penalties.**

~~§ 3.1-106.1.~~ Title.

This chapter shall be known as the "Virginia Fertilizer Act."

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 3.1-106.2~~ 3.2-3600. Definitions.

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

~~"Board of Agriculture" or "Board" means the Board of Agriculture and Consumer Services.~~

"Brand" means a term, design, trademark or product name under which a regulated product is distributed.

"Bulk" means in nonpackaged form.

"Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.

"Commercial fertilizer" means a fertilizer distributed for farm use, or for any other use, other than any specialty fertilizer use.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

"Compost" means a biologically stable material derived from the composting process.

"Composting" means the biological decomposition of organic matter. It may be accomplished by mixing and piling so as to promote aerobic decay, anaerobic decay, or both aerobic and anaerobic decay.

"Contractor-applicator" means any person required to hold a permit to distribute or apply any regulated product pursuant to ~~subsection M of § 3.1-106.6~~ § 3.2-3608.

"Custom medium" means a horticultural growing medium ~~which~~ *that* is prepared to the exact specifications of the person who will be planting in the medium and delivered to that person without intermediate or further distribution.

"Deficiency" means the amount of nutrient found by analysis to be less than that guaranteed, which may result from a lack of nutrient ingredients, or from lack of uniformity.

~~"Department" means the Department of Agriculture and Consumer Services.~~

"Distribute" means to import, consign, manufacture, produce, compound, mix, blend, or in any way alter, the chemical or physical characteristics of a regulated product, or to offer for sale, sell, barter, warehouse or otherwise supply regulated product in the Commonwealth.

"Distributor" means any person who distributes.

"Fertilizer" means any substance containing one or more recognized plant nutrients, which is used for its plant nutrient content, and which is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, and other products exempted by regulation.

"Fertilizer material" means a fertilizer ~~which: a. Contains that: (i) contains~~ important quantities of no more than one of the primary plant nutrients: nitrogen (N), available phosphate (P205) and potash (K20); ~~b. Has eighty five (ii) has~~ 85 percent or more of its plant nutrient content present in the form of a single chemical compound; or ~~e. Is (iii) is~~ derived from a plant or animal residue, ~~or a~~ by-product, or a natural material deposit, ~~which that~~ has been processed or conditioned in such a way that its content of plant nutrients has not been materially changed, except by purification and concentration.

"Grade" means the percentage of total nitrogen (N), available phosphate (P205) and soluble potash (K20), stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis, except that fertilizer materials, specialty fertilizers, bone meal, manures and similar raw materials may be guaranteed in fractional units.

"Guaranteed analysis" means that information required by this chapter to be displayed on the label of a regulated product.

"Guarantor" means the person whose name appears on the label of a regulated product.

"Horticultural growing medium" means any substance or mixture of substances ~~which~~ that is promoted as or is intended to function as an artificial soil for the managed growth of horticultural crops.

"Industrial co-product" means a product derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner or horticultural growing medium.

"Investigational allowance" means an allowance for variations, inherent in the taking, preparation, and analysis of an official sample.

"Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a regulated product, including an invoice.

"Labeling" means all written, printed, or graphic matter, upon or accompanying any regulated product, including invoices, advertisements, brochures, posters, and television and radio announcements, used in promoting the sale of ~~such~~ the regulated product.

"Licensee" means the person who receives a license to distribute any regulated product under the provisions of this chapter.

"Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, or in any way alters the chemical or physical characteristics of any regulated product.

"Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

"Official analysis" means the analysis of an official sample, made by the Commissioner ~~or his agent~~.

"Official sample" means the sample of regulated product taken by the Commissioner ~~or his agent~~, and designated as "official" by the Board.

"Percent" or "percentage" means the percentage by weight.

"Primary nutrient" includes *total* nitrogen (N), available phosphate (P205), and soluble potash (K20).

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of measurement of a commodity.

"Registrant" means the person who registers regulated products, under the provisions of this chapter.

"Regulated product" means any product governed by this chapter, including any fertilizer, specialty fertilizer, soil amendment, soil conditioner, and horticultural growing medium.

"Soil amendment" means any substance or mixture of substances, imported, manufactured, prepared or sold for manurial, soil enriching, or soil corrective purposes, or intended to be used for promoting or stimulating the growth of plants, increasing the productivity of plants, improving the quality of crops, or producing any chemical or physical change in the soil. The following are exempt from the definition of "soil amendment": fertilizer, unmanipulated or composted animal and vegetable manures, soil conditioners, horticultural growing media, agricultural liming materials, unmixed mulch and unmixed peat.

"Soil conditioner" means any substance or mixture of substances imported, manufactured, prepared or sold for soil corrective purposes, including ~~but not limited to~~ polyelectrolytes such as complex vinyl and acrylic compounds and certain cellulose and lignin derivatives.

"Specialty fertilizer" means a fertilizer distributed for nonfarm use, including ~~by way of example, but not by way of limitation,~~ use on home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries.

"Stop sale, use, removal, or seizure order" means an order ~~which~~*that* prohibits the distributor from selling, relocating, using, or disposing of a lot of regulated product, or portion thereof, in any manner, until the Commissioner ~~or his agent~~ or the court gives written permission to sell, relocate, use or dispose of the lot of regulated product or portion thereof.

"Ton" means a ~~net weight unit of two thousand~~ 2000 pounds avoirdupois *weight*.

"Unmanipulated manure" means substances composed of the excreta of domestic animals, or domestic fowls, ~~which~~*that* has not been processed or conditioned in any manner, including ~~but not limited to~~ processing or conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any material or materials (other than those ~~which~~*that* have been used for bedding, sanitary or feeding purposes for such animals or fowls), or by any other means.

**Drafting Note: The definitions of "Board," "Commissioner," and "Department" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions, in Chapter 1, General Provisions.**

~~§ 3.1-106.3. Authority of the Commissioner.~~

~~The Commissioner shall administer and enforce this chapter. The Commissioner may appoint agents to assist in carrying out the provisions of this chapter and the regulations adopted and established pursuant thereto.~~

**Drafting Note: Deleted section. This provision is unnecessary as the general powers of the Commissioner are cited in § 2.2-604 and proposed § 3.2-102, General powers and duties of the Commissioner, in proposed Chapter 1, General Provisions.**

~~§ 3.1-106.4~~ 3.2-3601. Authority of the Board and the Commissioner to adopt regulations.

A. ~~The Board is authorized to promulgate~~ *may adopt* such regulations as ~~may be~~ *are* necessary to ~~give effect to the full intent and meaning~~ *carry out the provisions* of this chapter. Such regulations may relate, ~~by way of example, but not by way of limitation,~~ *to include* investigational allowances, definitions, records, and manufacturing practices, and ~~to~~ the distribution and storage of regulated product prior to final sale.

B. The Commissioner may adopt as a regulation ~~the~~:

1. *The Official Fertilizer Terms and Definitions adopted by the Association of American Plant Food Control Officials.* ~~The Commissioner may adopt as a regulation the;~~

2. *The* methods of sampling and analysis for regulated products adopted by the Association of Official Analytical Chemists. ~~The Commissioner may adopt as a regulation any;~~  
*and*

3. Any method of sampling and analysis for a regulated product developed by the Department or adopted by agencies of the federal government, agencies of other states, the Division of Consolidated Laboratories or other commercial laboratories accredited by the Food and Drug Administration, ~~United States~~ *the U.S.* Department of Agriculture or *the* Association of Official Analytical Chemists.

C. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. ~~However, the~~ *The* regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation. The Commissioner shall provide notice by first-class mail of regulations adopted by him pursuant to this section ~~after June 30, 1995,~~ to all manufacturers of currently registered regulated product.

~~€~~D. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations.

E. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or revision of any regulation adopted pursuant to subsections ~~B-ø~~, C *and* D of this section.

**Drafting Note: Divided subsection B into subdivisions and created a new subsection C by moving the provisions regarding the specific procedure adopted by the Commissioner for approval of regulations that were in existing subsection B to a new subsection C.**

~~§ 3-1-106.4:1~~ 3.2-3602. Local government regulation of fertilizer.

No locality shall regulate the registration, packaging, labeling, sale, or distribution of fertilizers. The provisions of this section shall not preempt the adoption, amendment, or enforcement of the Statewide Fire Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant to § 36-98.

**Drafting Note: No changes.**

~~§ 3-1-106.19~~ 3.2-3603. Publications.

The Commissioner may publish in such forms and with such frequency as he may deem proper: (i) information concerning the distribution of fertilizers; and (ii) results of analysis based on official samples of fertilizer distributed within the Commonwealth, as compared with analysis guaranteed under §§ ~~3-1-106.2~~ 3.2-3600 and ~~3-1-106.5~~ 3.2-3611; and commercial value of nutrients as determined under § ~~3-1-106.12~~ 3.2-3614.

**Drafting Note: Technical changes.**

~~§ 3-1-106.20~~ 3.2-3604. Exchanges between manufacturers.

Nothing in this chapter shall be construed to restrict or avoid sales or exchanges of regulated product between importers, manufacturers, or manipulators who mix fertilizer materials for sale, or to prevent the free and unrestricted shipments of regulated product to manufacturers or manipulators who have registered their brands, and are licensed, as required by provisions of this chapter.

**Drafting Note: Technical changes.**

~~§ 3-1-106.6~~ 3.2-3605. ~~Licensing, permitting~~ *License, permit* and registration year.

~~A.~~ The license year for all distributors and manufacturers, permit year for all contractor-applicators, registration year for any regulated product, and tonnage reporting year ~~are~~ *is* July 1 through June 30 of the following year. Each license, permit or registration shall be issued to

expire on June 30 of the year for which it is issued, provided that any license, permit or registration shall be valid through July 31 of the next ensuing license, permit or registration year or until the issuance of the renewal license, permit or registration, whichever event ~~first~~ *first*, if the holder thereof ~~shall have~~ *has* filed a renewal application with the Commissioner on or before June 30 of the year for which the current license, permit, or registration was issued. ~~The manufacturer or guarantor shall file the tonnage report and pay the inspection fee to the Commissioner on August 1 of the year following the license year.~~

~~B. Any person whose name appears upon the label of any regulated product as manufacturer or distributor shall obtain a license to distribute in the Commonwealth from the Commissioner prior to distributing said regulated product. The person who distributes regulated product shall file an application with the Commissioner on a form furnished or approved by the Commissioner, and pay to the Commissioner a license fee of fifty dollars.~~

~~C. Any person who distributes regulated product shall obtain a license prior to distributing any regulated product for each manufacturing location that it operates and that distributes any regulated product within the Commonwealth. The person who distributes regulated product shall apply for a license on a form furnished or approved by the Commissioner, and pay to the Commissioner a license fee of fifty dollars for each manufacturing location that distributes in the Commonwealth.~~

~~D. Any person who distributes regulated product shall include on the application the following:~~

~~1. The name and address of the applicant; and~~

~~2. The name and address of each of the applicant's distribution points in the Commonwealth.~~

~~E. The licensee shall show the name and address shown on the license on:~~

~~1. The labels of any regulated product, and pertinent invoices thereof, distributed by the licensee in the Commonwealth; and~~

~~2. All storage facilities for any regulated product distributed by the licensee in the Commonwealth.~~

~~F. The licensee shall inform the Commissioner in writing of additional distribution points established during the period of the license.~~

~~G. In addition to licensing requirements, any person whose name is on the label of and who distributes in the Commonwealth any specialty fertilizer packaged in containers of fifty pounds or less dry net weight, or five gallons or less liquid net volume, shall apply for registration for such specialty fertilizer with the Commissioner on forms furnished or approved by the Commissioner; shall pay to the Commissioner by July 1 of each registration year a registration fee of fifty dollars for each grade under a given brand prior to distributing said fertilizer in the Commonwealth; and shall provide labels for each grade under a given brand with the application. The Commissioner or his agent shall furnish a copy of the registration to the applicant after approval of the registration.~~

~~H. In addition to the licensing requirements, any person who distributes in the Commonwealth a soil amendment, soil conditioner, or horticultural growing medium shall apply for registration for such soil amendment, soil conditioner, or horticultural growing medium with the Commissioner on forms furnished or approved by the Commissioner; pay to the Commissioner by July 1 of each registration year a registration fee of \$100 for each product name or brand of soil amendment, soil conditioner or horticultural growing medium prior to distributing said product in the Commonwealth; and provide labels for each product name or brand with the application. The Commissioner or his agent shall furnish a copy of the registration to the applicant after approval of the registration.~~

~~I. Custom media and horticultural growing media planted with live plant material are exempt from labeling and registration requirements and inspection fees.~~

~~J. Any person applying for registration of a specialty fertilizer, soil amendment, soil conditioner, or horticultural growing medium shall include with the application a label including the following information:~~

- ~~1. For specialty fertilizer, the grade under a given brand; for soil amendments, soil conditioners, or horticultural growing media, the product name or brand;~~
- ~~2. The guaranteed analysis;~~
- ~~3. The name and address of the registrant; and~~
- ~~4. The quantity statement.~~

~~K. The Commissioner or his agent may require verification of any labeling claims for any regulated product.~~

~~L. If the Commissioner or his agent identifies any unregistered regulated product in commerce in the Commonwealth during the registration year, the Commissioner or his agent shall give the guarantor a grace period of fifteen working days from issuance of notification within which to register the regulated product. Any person required to register any regulated product who fails to register the regulated product within the grace period shall pay to the Commissioner a fifty dollar late fee in addition to the registration fee. The Commissioner or his agent may issue a stop sale, use, removal or seizure order upon any regulated product until the registration is issued.~~

~~M. No person, other than a licensee or an agent of a licensee, may distribute or apply any regulated product for profit, unless (i) the person completes an application form furnished by the Commissioner, pays the fifty dollar annual fee required to be a contractor applicator, and holds a permit from the Commissioner to be a contractor applicator; or (ii) the person is an employee or agent of a contractor applicator who holds a valid permit, in which case no permit is required and no fee is due from such employee or agent. The contractor applicator shall guarantee compliance with all provisions of this chapter to include an assurance of delivery of the grade of fertilizer as described on the consumer's invoice.~~

~~N. Any person who engages in business as a manufacturer or contractor applicator for a period of at least thirty days or more, and who has failed to obtain a license or permit during that period, shall pay to the Commissioner a fifty dollar late fee, in addition to the license or permit fee.~~

**Drafting Note: The last sentence of existing subsection A is deleted because similar language already exists in § 3.1-106.8 (proposed § 3.2-3609, Distribution to nonlicensee; reporting year; inspection fees). Existing subsections B, C, D, E and F are moved to subsections A, B, C, D, and E, respectively, of proposed § 3.2-3606, Manufacturer and distributor required to obtain license; fee. Existing subsections G and H are moved to subsection A of proposed § 3.2-3607, Product registration and label requirements; exemptions, with the last sentence of G and H moved to subsection B of proposed § 3.2-3607, Product registration and label requirements; exemptions. Existing subsection I is moved to subsection E of proposed § 3.2-3607. Existing subsections J and K, are moved to subsections C and D, respectively, of proposed § 3.2-3607. Existing subsection L is moved to subsection F of proposed § 3.2-3607. Existing subsections M and N are moved to subsections A, B, and C of proposed § 3.2-3608, Contractor-applicator permit.**

*§ 3.2-3606. Manufacturer and distributor required to obtain license; fee.*

*A. It is unlawful for any person whose name appears upon the label of any regulated product as manufacturer or distributor to distribute a regulated product without first obtaining a license to distribute the regulated product in the Commonwealth. The person who distributes the regulated product shall file an application with the Commissioner on a form furnished or approved by the Commissioner, and pay to the Commissioner a license fee of \$50.*

*B. Any person who distributes a regulated product shall obtain a license prior to distributing any regulated product for each manufacturing location that he operates and that*



distributes any regulated product within the Commonwealth. The person who distributes a regulated product shall apply for a license on a form furnished or approved by the Commissioner, and pay to the Commissioner a license fee of \$50 for each manufacturing location that distributes in the Commonwealth.

C. The license application shall include the name and address of the applicant and the name and address of the applicant's distribution points in the Commonwealth.

D. The licensee shall place the name and address shown on the license on:

1. The labels of any regulated product, and pertinent invoices thereof, distributed by the licensee in the Commonwealth; and

2. All storage facilities for any regulated product distributed by the licensee in the Commonwealth.

E. The licensee shall inform the Commissioner in writing of additional distribution points established during the period of the license.

**Chapter note: New section. Proposed subsections A, B, C, D and E are moved from subsections B, C, D, E and F, respectively, of existing § 3.1-106.6.**

§ 3.2-3607. Product registration and label requirements; exemptions.

A. In addition to licensing requirements:

1. Any person whose name is on the label of and who distributes in the Commonwealth any specialty fertilizer packaged in containers of 50 pounds or less dry net weight, or five gallons or less liquid net volume, shall: (i) apply for registration for such specialty fertilizer with the Commissioner on forms furnished or approved by the Commissioner; (ii) pay to the Commissioner by July 1 of each registration year a registration fee of \$50 for each grade under a given brand prior to distributing the fertilizer in the Commonwealth; and (iii) provide labels for each grade under a given brand with the application.

2. Any person who distributes in the Commonwealth a soil amendment, soil conditioner, or horticultural growing medium shall: (i) apply for registration for such soil amendment, soil conditioner, or horticultural growing medium with the Commissioner on forms furnished or approved by the Commissioner; (ii) pay to the Commissioner by July 1 of each registration year a registration fee of \$100 for each product name or brand of soil amendment, soil conditioner or horticultural growing medium prior to distributing the product in the Commonwealth; and (iii) provide labels for each product name or brand with the application.

B. The Commissioner shall furnish a copy of the registration to the applicant after approval of the registration.

C. Any person applying for registration of a specialty fertilizer, soil amendment, soil conditioner, or horticultural growing medium shall include with the application a label that includes the following information:

1. For specialty fertilizer, the grade under a given brand; for soil amendments, soil conditioners, or horticultural growing media, the product name or brand;

2. The guaranteed analysis;

3. The name and address of the registrant; and

4. The quantity statement.

D. The Commissioner may require verification of any labeling claims for any regulated product.

E. Custom-media and horticultural growing media planted with live plant material are exempt from labeling and registration requirements and inspection fees.

F. The Commissioner shall give the guarantor or manufacturer of any unregistered regulated product in commerce in the Commonwealth, a grace period of 15 working days from issuance of notification within which to register the regulated product. Any person required to register any regulated product who fails to register the regulated product within the grace period shall pay to the Commissioner a \$50 late fee in addition to the registration fee. The

*Commissioner may issue a stop sale, use, removal or seizure order upon any regulated product until the registration is issued.*

**Drafting Note: New section. Proposed subdivisions A 1 and A 2 are moved from subsections G and H, respectively, of existing § 3.1-106.6. Proposed subsection B is the last sentence moved from subsections G and H of existing § 3.1-106.6. Proposed subsections C, D, E, and F are moved from subsections J, K, I, and L, respectively, of existing § 3.1-106.6.**

*§ 3.2-3608. Contractor-applicator permit.*

*A. It is unlawful for any person, other than a licensee or an agent of a licensee, to distribute or apply any regulated product for profit without obtaining a permit. In order to obtain a permit the person shall complete an application form furnished by the Commissioner and pay the \$50 annual permit fee required to be a contractor-applicator. An employee or agent of a contractor-applicator who holds a valid permit is not required to obtain a permit or pay a fee.*

*B. Any person who engages in business as a contractor-applicator for a period of at least 30 days, and who has failed to obtain a license or permit during that period, shall pay a \$50 late fee to the Commissioner, in addition to the license or permit fee.*

*C. The contractor-applicator shall guarantee the consumer that the contractor-applicator shall comply with all provisions of this chapter, which shall include an assurance of the delivery of the grade of fertilizer as described on the consumer's invoice.*

**Drafting Note: New section. Proposed subsections A, B and C are moved from subsections M and N, of existing § 3.1-106.6.**

*§ ~~3.1-106.8~~ 3.2-3609. Reporting year; inspection fees; distribution to nonlicensees.*

*A. The reporting year for regulated products shall be July 1 through June 30 of the following year. ~~Reporting shall be required as follows:~~*

~~1. Except as provided in subdivision 2 of this subsection, any~~ *B. Any person who distributes any regulated product to a non-licensed person shall:*

~~1. Shall file the tonnage statement with the Commissioner and pay to the Commissioner the inspection fee by August 1;~~ *or*

~~2. The person specified in subdivision 1 of this subsection who distributes any regulated product shall~~ *Shall not be required to file the tonnage statement or pay the inspection fee, if: (i) another person agrees in a written statement, filed with the Commissioner, to file the tonnage statement and to pay to the Commissioner the inspection fee by August 1; and (ii) he files with the Commissioner by August 1 on a form furnished or approved by the Commissioner a purchasing report stating the number of tons of regulated product purchased by the person during the reporting year and from whom the regulated product was purchased.*

~~3. Any person who, pursuant to the exception specified in subdivision 2 of this subsection, does not file the tonnage statement or pay the inspection fee, shall file with the Commissioner by August 1 on a form furnished or approved by the Commissioner a purchasing report stating the number of tons of regulated product purchased by the person during the reporting year and from whom the regulated product was purchased.~~

~~4. The person as provided in subdivision 1 of this subsection shall pay to the Commissioner a late fee, amounting to ten percent of the inspection fee due, or fifty dollars, whichever is greater, in addition to the amount of the inspection fee due, if the tonnage statement is not filed, or if said tonnage is misstated, or if the payment of inspection fees is not made within fifteen working days of the specified filing date.~~

~~BC. Any person who distributes fertilizer in Virginia to a nonlicensee except as exempted in subdivision 2 of subsection A of this section as provided for in subsection B shall pay to the Commissioner an inspection fee of ~~twenty-five~~ 25 cents per ton of fertilizer, including specialty fertilizer, or \$35, whichever is greater, per tonnage reporting year.~~

~~€D.~~ Any person who distributes in Virginia any soil amendments, soil conditioners, or horticultural growing media to a nonlicensee ~~except as exempted in subdivision 2 of subsection A of this section as provided for in subsection B~~ shall pay to the Commissioner an inspection fee of ~~twenty five~~ 25 cents per ton of soil amendment, soil conditioner or horticultural growing medium; *or \$35, whichever is greater*, per tonnage reporting year.

~~D.~~ Any person who distributes regulated product in the Commonwealth shall pay to the Commissioner an annual minimum inspection fee of thirty five dollars by August 1.

~~E.~~ The Commissioner may cancel the license, permit or registration of any person who willfully fails to comply with this chapter by:

- ~~1. Failing to file the tonnage report;~~
- ~~2. Falsifying information;~~
- ~~3. Making an inaccurate statement of tonnage distributed in the Commonwealth during any reporting year;~~
- ~~4. Making an inaccurate listing of regulated products for registration;~~
- ~~5. Failing to pay the license, permit, registration or inspection fee;~~
- ~~6. Failing to accurately report any of the information required to be submitted under this chapter;~~
- ~~7. Failing to keep records for a period of three years; or~~
- ~~8. Failing to allow inspection of records by the Commissioner or his agent.~~

*E. The person subject to subsection B shall pay to the Commissioner a late fee, amounting to 10 percent of the inspection fee due, or \$50, whichever is greater, in addition to the amount of the inspection fee due, if the tonnage statement is not filed, is misstated, or if the payment of inspection fees is not made within 15 working days of the specified filing date.*

**Drafting Note: Proposed subsection B is established by combining existing A 1 and A 2, similar to the changes made in tonnage reporting and license fee language in the Chapter 48, Commercial Feed. Existing subdivision A 3 is deleted with a portion moved to proposed subdivision B 2. Existing subdivision A 4 is deleted and moved to proposed subsection E. Existing subsection D is deleted, with language from this subsection regarding the minimum inspection fee moved to proposed subsections C and D. Existing subsection E is moved to subsection B of proposed § 3.2-3621, Cancellation of registration, permit, or license.**

~~§ 3-1-106.9~~ 3.2-3610. Statistical reports.

A. For commercial fertilizer:

1. Any person distributing or selling commercial fertilizer to a nonlicensee shall furnish the Commissioner a monthly report showing:

- a. The county or city of the nonlicensee consignee;
- b. The amounts (expressed in tons, or decimal portions thereof) of each grade of fertilizer; and
- c. The form in which the person distributed the fertilizer; (e.g., in bags, bulk, or in liquid form).

~~2. Any person required to submit this~~ *This* information shall ~~do so be~~ *submitted* in the following form and shall specify shipments made during the preceding month:

a. A summary report on a form prescribed by the Commissioner, on or before the ~~twentieth~~ *20th* day of each month; or

b. A summary report by electronic transfer, utilizing the Uniform Fertilizer Tonnage Reporting System (UFTRS). Prior to using the electronic transfer method, the person responsible for submitting the monthly tonnage report shall make ~~appropriate~~ arrangements with the Commissioner for the Commissioner's receipt of the report by such method.

3. ~~The Commissioner or his agent shall assess a~~ *If the monthly report is not filed by the due date, a late fee of thirty five dollars \$35 shall be assessed against the licensee who is responsible for reporting if the monthly report is not filed by the due date.*

B. For all other regulated products:

1. The person distributing or selling such products to a nonlicensee shall furnish the Commissioner an annual report showing:

a. The county or city of the nonlicensee consignee; and

b. The amounts (expressed in tons, or decimal portions thereof) of each grade under a given brand of product.

2. Any person listed in subdivision B 1 of this subsection who fails to file this report by August 1 shall pay a late fee of thirty five dollars \$35 to the Commissioner.

~~C. The Commissioner shall hold confidential trade secrets and commercial or financial information supplied by persons governed by this chapter.~~

**Drafting Note: Subsection C is deleted since trade secrets are covered title-wide in Chapter 1 under proposed § 3.2-103, Records to be held in confidence.**

~~§ 3-1406.5~~ 3.2-3611. Labeling.

A. The manufacturer or guarantor of any regulated product distributed in the Commonwealth shall affix a label to the container or provide an invoice at the time of delivery for a bulk regulated product which sets forth that states in clear, legible and conspicuous form, in the English language, the following information:

1. The quantity statement;

2. The grade under a given brand; ~~however, the~~. The grade shall not be required when no primary nutrients are claimed;

3. The guaranteed analysis, which shall:

(a) a. For fertilizers, conform to the following, with the percentage of each plant nutrient stated as follows:

(i)(1) Total Nitrogen (N) ..... %

Available Phosphate (P205) ..... %

Soluble Potash (K20) ..... %

(ii)(2) For unacidulated mineral phosphate materials and basic slag, bone, tankage, and other organic phosphate materials, the available phosphate (P205), or the degree of fineness, or both, may also be guaranteed.

(iii)(3) Guarantees for plant nutrients other than nitrogen (N), available phosphate (P205), and potash (K20) shall be expressed in the form of the element. A statement of the sources of nutrients, including, by way of example, but not by way of limitation, oxides, salt, and chelates, may be required on the application for registration of specialty fertilizers, and may be included as a parenthetical statement on the label. Degree of acidity or alkalinity (pH), beneficial substances, or compounds determinable by laboratory methods also may be guaranteed by permission of the Commissioner and with the advice of the Director of the Virginia Experiment Station. When any degree of acidity or alkalinity (pH), beneficial substances, or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the Board;

(b) b. For soil amendments, consist of a list of ingredients, and may include a statement of naturally occurring nutrient levels;

(c) c. For soil conditioners, including but not limited to polyelectrolytes, contain the following information in the following form:

(i)(1) Name of active ingredient ..... %

(name and list all)

(ii)(2) Total other ingredients ..... %;

~~(d)~~ *d.* For horticultural growing media, include a list of ingredients and other guarantees as required by regulation;

~~(e)~~ *e.* When compost derived from sewage sludge, hazardous materials, unrendered animals or poultry or their parts, or other source material specified in regulations established by the Board is used as an ingredient, identify the source material of the compost; and

~~(f)~~ *f.* Include a list of such other ingredients as may be required by the Board through regulation.

4. The name and address of the registrant or licensee, ~~as the case may be.~~

B. A commercial fertilizer ~~which~~ *that* is formulated according to specifications provided by a consumer prior to mixing, or any fertilizer formulated for a consumer, shall be labeled to show: (i) the quantity statement; (ii) the guaranteed analysis; and (iii) the name and address of the distributor or the licensee.

C. For horticultural growing media, a statement of added fertilizers, if any, shall be listed on the registration document and customer sales invoice.

**Drafting Note: Technical changes.**

~~§ 3.1-106.10~~ 3.2-3612. Misbranding.

A. ~~No person may~~ *It is unlawful to* distribute misbranded regulated product. ~~Regulated-A regulated~~ product shall be deemed to be misbranded if:

1. It has a label ~~which~~ *that* is false or misleading in any particular;

2. It is distributed under the name of another product;

3. It is not labeled as specified in ~~§ 3.1-106.5 of this chapter~~ 3.2-3611, and in accordance with regulations ~~prescribed under~~ *adopted pursuant to* this chapter; or

4. It purports to be, or is represented as, a fertilizer, or is represented as containing a plant nutrient or fertilizer, unless such plant nutrient or fertilizer conforms to the definition of identity, if any, as prescribed by regulation of the Board.

B. The person whose name is on the label of any regulated product found to be misbranded shall pay to the consumer an assessment equal to ~~ten~~ 10 percent of the retail value of the regulated product found to be in violation of subsection A of this section. The assessment for misbranding shall apply only to the retail sale of any regulated product made from a lot or a portion thereof after the Commissioner ~~or his agent~~ has sampled the lot or a portion thereof.

**Drafting Note: Technical changes.**

~~§ 3.1-106.11~~ 3.2-3613. Adulteration.

A. ~~No person may~~ *It is unlawful to* distribute an adulterated regulated product. ~~Regulated A regulated~~ product shall be deemed to be adulterated if:

1. It contains any deleterious or harmful ingredient, in sufficient amount to render it injurious to beneficial plant life, when applied in accordance with directions for use on the label;

2. It does not contain an adequate warning statement, or directions for use, on the label sufficient to protect plant life;

3. It has a composition ~~which~~ *that* falls below or differs from that which it is purported to possess by its labeling; or

4. It contains unwanted crop seed, or viable prohibited or restricted noxious weed seeds in amounts exceeding the limits specified in the regulations of the Board.

B. The person whose name is on the label of any regulated product found to be adulterated shall pay to the consumer an assessment equal to ~~ten~~ 10 percent of the retail value of the regulated product found to be in violation of subsection A ~~of this section~~ not to exceed ~~five thousand dollars~~ \$5,000 per occurrence. The assessment for adulteration shall apply only to the retail sale of any regulated product made from a lot or a portion thereof after the Commissioner ~~or his agent~~ has sampled the lot or a portion thereof.

**Drafting Note: Technical changes.**

~~§ 3.1-106.12~~ 3.2-3614. Commercial value.

For the purpose of determining the commercial value to be applied in making assessments for variance from guarantee, the Commissioner ~~or his agent~~ shall determine the values per unit of *total* nitrogen (N), available phosphate (P205), soluble potash (K20), and micronutrients in fertilizers in the Commonwealth.

**Drafting Note: Technical changes.**

~~§ 3-1-106.13~~ 3.2-3615. Plant food deficiency.

A. The Commissioner ~~or his agent~~ shall calculate assessments for a deficiency of: (i) *total* nitrogen (N);; (ii) available phosphate (P205);; or (iii) soluble potash (K20). If the analysis shows that the fertilizer is deficient: ~~(i)~~ in one or more of the guaranteed primary plant nutrients, beyond the investigational allowances and compensations, as established by regulation;; or ~~(ii)~~ ~~in~~ that the overall index value of the fertilizer is below the level established by regulation, then an assessment for variance from guarantee of two times the value of such deficiency ~~or deficiencies~~, not to exceed ~~five thousand dollars~~ \$5,000 per occurrence, shall be paid to the consumer by the guarantor. When the fertilizer is subject to an assessment under both clauses ~~(i)~~ and ~~(ii)~~ ~~of this subsection~~, the Commissioner ~~or his agent~~ shall calculate assessments under both such clauses and the guarantor shall pay to the consumer the larger of the two assessments.

B. If, upon evidence satisfactory to the Commissioner ~~or his agent~~, a person is found to have: (i) altered the content of any fertilizer shipped to him by a registrant or licensee, ~~as the case may be~~;; or (ii) mixed, or commingled, fertilizer from two or more suppliers, such that the result of either alteration changes the analysis of the fertilizer as originally guaranteed, then the person who has altered, mixed or commingled shall ~~become responsible for obtaining~~: (a) ~~obtain~~ a registration or a license, ~~as the case may be~~; shall (b) be held liable for all assessments; and shall (c) be subject to other provisions of this chapter, including, ~~by way of example, but not by way of limitation~~, seizure, condemnation, and stop sale.

C. A deficiency in an official sample of mixed fertilizer, resulting from nonuniformity, is not distinguishable from a deficiency due to actual plant nutrient shortage, and any deficiency due to nonuniformity shall be subject to the provisions of this chapter.

**Drafting Note: Technical changes.**

~~§ 3-1-106.14~~ 3.2-3616. Assessments for variance from label guarantees.

A. The guarantor shall pay to the consumer all assessments for misbranding, adulteration or plant food deficiency on the lot of regulated product represented by the sample analyzed. The guarantor shall make payment to the consumer within ~~sixty~~ 60 days after the date of notice from the Commissioner to the guarantor. The guarantor shall obtain a receipt documenting the payment of such assessment, which shall be forwarded to the Commissioner within the ~~sixty~~ 60-day period during which payment to the consumer ~~must be~~ *is* made.

B. If the guarantor cannot locate the consumer within ~~sixty~~ 60 days; the amount of the assessment shall be paid to the Commissioner, who shall deposit ~~the same~~ *it* in the state treasury, and report to the State Comptroller, who shall credit the ~~same~~ *amount* to a special fund for the sale of substandard fertilizer. The Commissioner shall pay to the consumer of a lot of regulated product on which the assessment was made an amount equal to the assessment from the Sale of Substandard Fertilizer Fund if the consumer can be located in ~~ninety~~ 90 days. The State Comptroller shall transfer any balance remaining in ~~said~~ *the* fund for a period of ~~ninety~~ 90 days to a ~~dedicated special fund~~ *the Feed, Lime, Fertilizer, and Animal Remedies Fund* ~~to the credit of the Department~~ *as* specified by § ~~3-1-106.22~~ 3.2-3617. Any person required to pay an assessment who fails to pay the assessment within the time specified shall pay to the Commissioner a late fee of ~~ten~~ 10 percent of the assessment, or ~~fifty dollars~~ \$50, whichever is greater, in addition to the assessment. The Commissioner may cancel the license of such person who fails to pay the assessment.

**Drafting Note: Technical changes.**

§ ~~3.1-106.22~~ 3.2-3617. *Fund established; Disposition* disposition of fees, assessments, and penalties.

A. *There is hereby created in the state treasury a special nonreverting fund to be known as the Feed, Lime, Fertilizer, and Animal Remedies Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Except as otherwise specified, moneys levied and collected pursuant to this chapter and pursuant to Chapters 37, 48, and 49 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this chapter.*

B. All fees, assessments and penalties, including funds transferred from the Fund for the Sale of Substandard Fertilizer pursuant to § ~~3.1-106.14~~ 3.2-3616, received by the Commissioner under this chapter shall be paid into a ~~dedicated special fund in the treasury of the Commonwealth~~ *the Feed, Lime, Fertilizer, and Animal Remedies Fund*, to the credit of the Department, to be used in carrying out the purpose and provisions of this chapter, to include inspection, sampling and other expenses; except that the Commissioner shall deposit, to the credit of the Virginia Agricultural Foundation Fund established pursuant to § ~~3.1-22.5~~ 3.2-2905, five cents of the inspection fee per ton of regulated product.

**Drafting Note: Inserted special fund model language into subsection A because current practice avoids the use of unnamed special funds. This special fund is already established, but interest earned will remain in the fund and will no longer revert to the general fund.**

§ ~~3.1-106.7~~ 3.2-3618. *Inspection, sampling and analysis; penalty.*

A. ~~It shall be the duty of the~~ *The Commissioner or his agent shall:* (i) sample, inspect, analyze, and test any regulated product distributed within the Commonwealth; (ii) inspect storage facilities where such regulated product is stored; (iii) monitor and, where the Commissioner deems it necessary, regulate the manufacturing procedures of such regulated products as affected by best management practices for manufacturing containment, and considerations of environmental factors; and (iv) allocate adequate personnel to the major farm fertilizer consuming areas of the state to carry out his duties under this ~~aet~~ *chapter* as such duties relate to insuring the quality, analysis, and quantity of fertilizer sold and distributed in the state.

~~The Commissioner or his agent shall sample, inspect, analyze, and monitor, during operating hours of subject person and to the extent the Commissioner or his agent deems necessary, to determine whether such regulated product is in compliance with the provisions of this chapter. The Commissioner or his agent is authorized to enter upon during operating hours the premises or carriers of any person subject to regulation under this aet chapter, during operating hours, in order to have access to: (i) the regulated product, storage facilities and manufacturing practices subject to this chapter and the regulations pertaining thereto,; and (ii) records relating to the distribution and storage of regulated product.~~

B. Any person who shall hinder or obstruct in any way the Commissioner ~~or his agent~~ in the performance of his official duties ~~shall be~~ *is* guilty of a Class 3 misdemeanor.

C. The Commissioner ~~or his agent~~ shall use the methods of sampling and analysis adopted by the Commissioner or the Board.

D. The Commissioner ~~or his agent~~, in determining for administrative purposes whether any fertilizer is deficient in plant food, shall be guided solely by the official sample. The Commissioner ~~or his agent~~ shall obtain and analyze samples as specified in subsection C of this section.

E. The Commissioner ~~or his agent~~ may distribute information regarding official analysis of fertilizers. The Commissioner ~~or his agent~~ shall retain official samples establishing an

assessment for variance from guarantee for a minimum of ninety days from issuance of a deficiency report.

**Drafting Note: Technical changes.**

~~§ 3.1-106.15~~ 3.2-3619. Stop sale, use, removal, or seizure orders.

The Commissioner ~~or his agent~~ may issue and enforce a written or printed stop sale, use, removal, or seizure order to the owner or custodian of any lot of regulated product distributed in violation of this chapter. The Commissioner ~~or his agent~~ shall release for distribution the regulated product held under a stop sale, use, removal, or seizure order when the requirements of this chapter have been met. If the Commissioner ~~or his agent~~ determines that the regulated product cannot be brought into compliance with the chapter, the Commissioner ~~or his agent~~ shall release the regulated product to be remanufactured, returned to the manufacturer, or destroyed.

**Drafting Note: Technical changes.**

~~§ 3.1-106.16~~ 3.2-3620. Seizure and condemnation.

In addition to the provisions of ~~§ 3.1-106.17~~ 3.2-3623, the Commissioner ~~or his agent~~ may seize any lot of regulated product not in compliance with this chapter. The Commissioner ~~or his agent~~ may make application for seizure to ~~a court of competent jurisdiction~~ *an appropriate court* in the city or county ~~in which~~ *where* such regulated product is located. In the event that the court finds such regulated product to be in violation of this chapter, and orders the condemnation of such regulated product, the owner of the regulated product shall dispose of the seized regulated product in any manner ~~which~~ *that*, in the opinion of the Commissioner, is consistent with the quality of the regulated product, and ~~which~~ *that* complies with the laws of the Commonwealth. In no instance shall the court order the disposition of such regulated product without first giving the claimant an opportunity to apply to the court for release of ~~such~~ *the* regulated product, or for permission to process or relabel ~~such~~ *the* regulated product, to bring it into compliance with this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-106.18~~ 3.2-3621. Cancellation of registration, *permit*, or license.

A. The Commissioner ~~is authorized and empowered to~~ *may*: (i) cancel the registration, license or contractor-applicator permit of any person; ~~to~~ (ii) cancel the registration of any brand of regulated product; or ~~to~~ (iii) refuse to register any brand of regulated product, or issue any license, ~~as herein provided~~. The Commissioner shall cancel or refuse a license or registration upon satisfactory evidence that the registrant or licensee, ~~as the case may be~~, has used fraudulent or deceptive practices in the evasion, or attempted evasion, of this chapter or any regulations ~~promulgated thereunder~~ *adopted hereunder*.

B. *In addition, the Commissioner may cancel the license, permit or registration of any person who willfully fails to comply with this chapter by:*

- 1. Failing to file the tonnage report;*
- 2. Falsifying information;*
- 3. Making an inaccurate statement of tonnage distributed in the Commonwealth during any reporting year;*
- 4. Making an inaccurate listing of regulated products for registration;*
- 5. Failing to pay the license, permit, registration or inspection fee;*
- 6. Failing to accurately report any of the information required to be submitted under this chapter;*
- 7. Failing to keep records for a period of three years; or*
- 8. Failing to allow inspection of records by the Commissioner.*

**Drafting Note: Proposed subsection B is moved from existing subsection E of § 3.1-106.8.**

~~§ 3.1-106.21~~. Cooperation with other entities.



~~The Commissioner may cooperate with, and enter into agreement with, other governmental agencies of the Commonwealth, other states, and any agency of the federal government, in order to carry out the purpose and provisions of this chapter.~~

**Drafting Note: Deleted section. Proposed § 3.2-102, General powers and duties of the Commissioner, contains broad language authorizing the Commissioner to enter into agreements with federal, state, and local governments, land grant universities and other organizations.**

~~§ 3.2-3622. Commissioner's actions; injunction.~~

~~A. Nothing in this chapter shall require the Commissioner to report for prosecution, or institute seizure proceedings, where the Commissioner considers the violations of the chapter to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing, when he believes that the public interest will be best served by so doing.~~

~~B. The Commissioner may apply for, and the court to grant, a temporary or permanent injunction restraining any person from violating, or continuing to violate, this chapter or any regulation adopted under this chapter, notwithstanding the existence of other remedies at law.~~

**Drafting Note: New section. Proposed subsections A and B are moved from existing subsections C and D, respectively, of 3.1-106.17.**

~~§ 3.1-106.17 3.2-3623. Violations.~~

~~A. The Commissioner or his agent shall determine from the examination of any regulated product if this chapter, or the regulations issued hereunder, have been violated. The Commissioner or his agent shall give notice of the violation to the registrant or the licensee responsible for the regulated product, as the case may be, and may give notice to the distributor from whom the Commissioner or his agent sampled the regulated product.~~

~~B. Any person convicted of violating any of the provisions of this chapter or the regulations issued adopted hereunder shall be is guilty of a Class 3 misdemeanor.~~

~~C. Nothing in this chapter shall be construed as requiring the Commissioner or his agent to report for prosecution, or for the institution of seizure proceedings, where the Commissioner considers the violations of the chapter to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing, when he believes that the public interest will be best served by so doing.~~

~~D. The Commissioner is hereby authorized to apply for, and the court to grant, a temporary or permanent injunction restraining any person from violating, or continuing to violate, this chapter or any regulation promulgated under this chapter, notwithstanding the existence of other remedies at law.~~

**Drafting Note: Existing subsections C and D are moved to proposed subsections A and B, respectively, of § 3.2-3622, Commissioner's actions; injunction.**

## CHAPTER ~~44.1~~ 37.

### THE VIRGINIA AGRICULTURE LIMING MATERIALS ACT.

**Chapter note: Rearranged the sections so that the definitions are followed by the administrative responsibilities of the Board and the Commissioner, registration, permitting and licensing requirements, product labeling provisions, and ending with enforcement provisions and penalties. The existing, extensive section on registration, permitting and registration is divided into several new sections.**

~~§ 3.1-126.1. Short title.~~

~~This chapter shall be known and may be cited as "The Virginia Agricultural Liming Materials Act."~~

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 3.1-126.2:1~~ 3.2-3700. Definitions.

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

"Agricultural liming material" means any limestone with calcium and magnesium compounds that has the capacity, and whose intended purpose is, to neutralize soil acidity.

"Applicant" means the person who applies for, or requests, a license, or applies for registration of any liming material; or applies to become a contractor.

~~"Board of Agriculture" or "Board" means the Board of Agriculture and Consumer Services.~~

"Brand" means the term, designation, trademark, product name or other specific designation under which any liming material is offered for sale.

"Bulk" means materials in nonpackaged form.

"Calcium carbonate equivalent" means the acid neutralizing capacity of any liming material, expressed as weight percentage of calcium carbonate.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

"Contractor" means any person required to hold a permit to sell any bulk liming material to the consumer pursuant to ~~subsection G of § 3.1-126.4~~ § 3.2-3704.

~~"Department" means the Department of Agriculture and Consumer Services.~~

"Distributor" means any person who imports or consigns, manufactures, produces, compounds, mixes, or blends any liming material, or who offers for sale, sells, barter or otherwise supplies any liming material.

"Effective Neutralizing Value" or "ENV" means a relative value using the calcium oxide content, magnesium oxide content and fineness to express the effectiveness of an agricultural liming material in neutralizing soil acidity. This term is synonymous with Effective Neutralizing Power (ENP).

"Fineness" means the percentage by weight of the material ~~which~~that will pass through United States Standards sieves of specified sizes.

"Industrial co-product used to neutralize soil acid" means a waste or by-product of an industrial process that contains any compound not normally found in limestone ~~as defined in this chapter~~ that has the capacity, and whose intended purpose is, to neutralize soil acidity.

~~"Kind" means one of the two classes of liming material as defined in this chapter.~~

"Label" means any written or printed matter on, or attached to, the package, or on the delivery ticket ~~which~~that accompanies bulk shipments, of any liming material.

"Licensed" or "licensee" means the person issued a license to distribute any liming material in the Commonwealth.

"Limestone" means a material consisting essentially of calcium carbonate, or a combination of calcium carbonate and magnesium carbonate, capable of neutralizing soil acidity.

~~"Liming material" means any agricultural liming material and any industrial co-product used to neutralize soil acid as defined in this chapter.~~

"Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, imports or consigns liming material, or who offers for sale, sells, barter or otherwise supplies liming material.

"Percent" or "percentage" means by weight.

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of measurement of a commodity.

"Registrant" means the person registering any liming material pursuant to the provisions of this chapter.

"Standard liming ton" means a ton of agricultural liming material with a calcium carbonate equivalent of ~~ninety~~ 90 percent.

"Stop sale, use, removal or seizure order" means an order ~~which~~*that* prohibits the distributor from selling, relocating, using, or disposing of a lot of liming material, or portion thereof, in any manner, until the Commissioner, ~~or his agent~~, or a court gives written permission to sell, relocate, use or dispose of the lot of liming material or portion thereof.

"Ton" means a ~~net weight~~ *unit* of 2,000 pounds avoirdupois *weight*.

"Type" means the identification of the agricultural liming material as follows:

1. "Burnt" means any agricultural liming material with calcium and magnesium compounds capable of neutralizing soil acidity, and that consists essentially of calcium oxide, or a combination of calcium oxide and magnesium oxide.

2. "Calclitic" means any agricultural liming material in which ~~eighty-five~~ 85 percent or more of the total neutralizing value, expressed as calcium carbonate equivalent, is derived from calcium.

3. "Dolomitic" means any agricultural liming material in which ~~fifteen~~ 15 percent or more of the total carbonate content is magnesium carbonate.

4. "Hydrated" means any agricultural liming material, made from burnt lime, ~~which~~ *that* consists essentially of: (i) calcium hydroxide; (ii) a combination of calcium hydroxide, magnesium oxide and magnesium hydroxide; or (iii) a combination of calcium hydroxide, and either magnesium oxide or magnesium hydroxide.

5. "Marl" means a granular or loosely consolidated earthy agricultural liming material composed largely of calcium carbonate.

**Drafting Note: The definitions of "Board," "Commissioner," and "Department" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions, in Chapter 1, General Provisions.**

~~§ 3.1-126.2:2. Appointment of agents.~~

~~The Commissioner may appoint agents to assist in carrying out the provisions of this chapter and the regulations adopted and established pursuant thereto.~~

**Drafting Note: Deleted section. Language regarding the Commissioner's direction of the Department, ability to appoint, delegate and assign tasks required to be performed appears in §§ 2.2-602 and 2.2-604.**

~~§ 3.1-126.12:1~~ 3.2-3701. Authority of Board and Commissioner to ~~promulgate~~*adopt* regulations.

A. The Board ~~is authorized to promulgate~~ *may adopt* such regulations as ~~may be~~ *are* necessary to ~~give effect to the full intent and meaning~~ *carry out the provisions* of this chapter. Such regulations may ~~relate, by way of example, but not by way of limitation,~~ *include* to investigational allowances, definitions, records, manufacturing practices and ~~to~~ the distribution and storage of liming material.

B. The Commissioner may adopt, as a regulation, ~~:-~~

~~(i) the 1. The~~ Official Fertilizer Terms and Definitions adopted by the Association of American Plant Food Control Officials;

~~(ii) the 2. The~~ methods of sampling and analysis for liming material adopted by the Association of Official Analytical Chemists; and

~~(iii) any 3. Any~~ method of sampling and analysis for liming material developed by the Department or adopted by agencies of the federal government, agencies of other states, the Division of Consolidated ~~Laboratories~~ *Laboratory Services*, or other commercial laboratories accredited by the Food and Drug Administration, U.S. Department of Agriculture or Association of Official Analytical Chemists.

C. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia

Register of Regulations. The regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation.

D. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations.

E. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration or revision of any regulation adopted pursuant to ~~this subsection~~ *subsections B, C, and D.*

**Drafting Note: Divided existing subsection B into proposed subsections B, C, D and E.**

~~§ 3-1-126.4~~ 3.2-3702. Registration, permitting, and licensing of distributors.

A. Any distributor of agricultural liming material in the Commonwealth shall register ~~by July 1 of each year for the registration year of July 1 to June 30 each brand of agricultural liming material before distributing any agricultural liming material in the Commonwealth~~ *each brand by July 1 for the registration year July 1 through June 30, before distributing any agricultural liming material in the Commonwealth.* Each distributor shall submit an application for registration to the Commissioner on forms furnished or approved by the Commissioner and shall pay to the Commissioner a registration fee of ~~fifty dollars~~ \$50 per brand of agricultural liming material per registration year. Upon approval by the Commissioner, the Commissioner ~~or his agent~~ shall furnish a copy of the registration to the applicant. Each registration shall expire on June 30 of the registration year for which the Commissioner ~~or his agent~~ issued the registration. ~~Every such.~~ Any registration shall be valid through July 31 of the next registration year or until issuance of the renewal registration, whichever ~~event first~~ *occurs first*, if the holder ~~thereof shall have of the registration~~ *has* filed a renewal application with the Commissioner on or before June 30 of the registration year for which the Commissioner ~~or his agent~~ issued the registration; ~~however, any registration the Commissioner or his agent issued on or after January 1, 1994, and on or before July 1, 1994, shall be issued to expire on June 30, 1995.~~

B. Any distributor of any brand of industrial co-product used to neutralize soil acid in the Commonwealth shall register *each brand* by July 1 of each year for the registration year of July 1 to June 30 ~~each brand of industrial co-product used to neutralize soil acid~~, before distributing any industrial co-product used to neutralize soil acid in the Commonwealth. Each distributor shall submit an application for registration to the Commissioner on forms furnished or approved by the Commissioner and shall pay to the Commissioner a registration fee of \$100 per brand of industrial co-product used to neutralize soil acid per registration year. ~~Upon approval by the Commissioner, the~~ *The* Commissioner ~~or his agent~~ shall furnish a copy of the registration to the applicant. Each registration shall expire on June 30 of the registration year for which the Commissioner ~~or his agent~~ issued the registration. Every such registration shall be valid through July 31 of the next registration year or until issuance of the renewal registration, whichever ~~event first~~ *occurs first*, if the holder ~~thereof shall have of the registration~~ *has* filed a renewal application with the Commissioner on or before June 30 of the registration year for which the Commissioner ~~or his agent~~ issued the registration; ~~however, any registration the Commissioner or his agent issued on or after January 1, 1994, and on or before June 30, 1994, shall expire on June 30, 1995.~~

Any distributor making application to register any brand of industrial co-product used to neutralize soil acid shall submit to the Commissioner test data indicating the product's neutralizing value, and its safety to plants and animals.

C. If the Commissioner ~~or his agent~~ identifies any unregistered liming material in commerce in the Commonwealth during the registration year, the Commissioner ~~or his agent~~

shall grant a grace period of ~~fifteen~~ 15 working days from issuance of notification to the distributor of the liming material ~~within which~~ to register the liming material without penalty. Any distributor who fails to register each brand of liming material being distributed by him in the Commonwealth by the ~~fifteenth~~ 15<sup>th</sup> day of the grace period, shall pay to the Commissioner a ~~fifty dollar~~ \$50 late fee per brand of liming material in addition to the registration fee, as well as cause a stop sale, use, removal or seizure order to be issued upon said liming material until its registration is complete.

D. A distributor shall not be required to register any brand of liming material or liming material with added potash, if it has been duly registered under this chapter by another person, provided the label on the liming material the other person registered does not differ in any respect from the label on the liming material the distributor seeks to register.

~~E. Each person who manufactures or whose name appears on the label of any liming material to be distributed in the Commonwealth shall by July 1 of each year, or prior to distribution of such liming material, obtain a license for the licensing year of July 1 to June 30. Each person shall make application on forms furnished or approved by the Commissioner and shall pay a license fee of fifty dollars per licensing year per distributor. Each license shall expire on June 30 of the license year for which the Commissioner or his agent issued the license. Every such license shall be valid through July 31 of the next licensing year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the licensing year for which the Commissioner or his agent issued the license.~~

~~F. The Commissioner or his agent shall grant a grace period of fifteen working days from issuance of notification, within which to obtain a license without penalty, to any person who fails to obtain a license during the licensing year as required by subsection E. Any person who fails to obtain a license by the fifteenth day of the grace period shall pay to the Commissioner a fifty dollar late fee in addition to the license fee, as well as cause a stop sale, use, removal or seizure order to be issued on any liming material the person distributes until the person obtains the required license.~~

~~G. No person, other than a registrant or licensee, may sell bulk liming material to the consumer unless (i) the person completes a contractor application form furnished or approved by the Commissioner, pays the fifty dollar annual fee required to be a contractor, and holds a permit from the Commissioner to be a contractor; (ii) the person is an employee or agent of a contractor who holds a valid permit, in which case no permit is required and no fee is due from such employee or agent; or (iii) the person holds a valid permit to be a contractor applicator pursuant to subsection M of § 3.1 106.6, or is an employee or agent of a person holding a valid permit to be a contractor applicator pursuant to subsection M of § 3.1 106.6, in which case no additional permit is required and no additional fee is due. The contractor shall guarantee compliance with all provisions of this chapter which apply to the sale and delivery of bulk liming material. Each permit to do business as a contractor shall expire on June 30 of the permitting year for which the Commissioner or his agent issued the permit. Every such permit shall be valid through July 31 of the next permitting year or until issuance of the renewal permit, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before June 30 of the permitting year for which the Commissioner or his agent issued the permit.~~

~~H. The Commissioner or his agent shall grant to a contractor who fails to obtain a contractor's permit to do business during the permitting year a grace period of fifteen working days, starting upon issuance of notification, within which to obtain the permit without a late fee. If the contractor fails to obtain a contractor's permit by the fifteenth day of the grace period, the contractor shall pay to the Commissioner a fifty dollar late fee in addition to the permit fee, and the Commissioner shall cause a stop sale, use, removal or seizure order to be issued on any liming material the contractor sells until the contractor obtains the required permit.~~

**Drafting Note: Existing subsections E and F are moved to proposed subsections A and B, respectively, of § 3.2-3703, Manufacturer required to obtain license; fee. Existing subsection G is moved to proposed subsections A and C and existing subsection H is moved to proposed subsection B of § 3.2-3704, Contractor permit.**

§ 3.2-3703. *Manufacturer required to obtain license; fee.*

A. Any person who manufactures or whose name appears on the label of any liming material to be distributed in the Commonwealth shall by July 1 of each year, or prior to distribution of such liming material, obtain a license for the licensing year of July 1 to June 30. Each person shall make application on forms furnished or approved by the Commissioner and shall pay a license fee of \$50 per licensing year per distributor. Each license shall expire on June 30 of the license year for which the Commissioner issued the license. Every such license shall be valid through July 31 of the next licensing year or until issuance of the renewal license, whichever occurs first, if the holder of the license filed a renewal application with the Commissioner on or before June 30 of the licensing year for which the Commissioner issued the license.

B. The Commissioner shall grant to any person who has failed to obtain a license required by subsection A, a grace period of 15 working days from issuance of notification to obtain a license without a penalty. Any person who fails to obtain a license by the 15th day of the grace period shall pay to the Commissioner a \$50 late fee in addition to the license fee, as well as cause a stop sale, use, removal or seizure order to be issued on any liming material the person distributes until the person obtains the required license.

**Drafting Note: New section. Proposed subsections A and B are moved from existing subsections E and F, respectively, of § 3.1-126.4.**

§ 3.2-3704. *Contractor permit.*

A. It is unlawful for any person, other than a registrant or licensee, to sell bulk liming material unless the person: (i) obtains a license by completing a contractor application form furnished or approved by the Commissioner and pays the \$50 annual fee required to be a contractor; (ii) is an employee or agent of a contractor who holds a valid permit, in which case no permit is required and no fee is due from the employee or agent; or (iii) holds a valid permit to be a contractor-applicator pursuant to subsection A of § 3.2-3608, or is an employee or agent of person holding a valid permit to be a contractor-applicator pursuant to subsection A of § 3.2-3608, in which case no additional permit is required and no additional fee is due. Each permit to do business as a contractor shall expire on June 30 of the permitting year for which the Commissioner issued the permit. Every such permit shall be valid through July 31 of the next permitting year or until issuance of the renewal permit, whichever occurs first, if the holder of the permit has filed a renewal application with the Commissioner on or before June 30 of the permitting year for which the Commissioner issued the permit.

B. The Commissioner shall grant to a contractor who has failed to obtain a contractor's permit to do business during the permitting year a grace period of 15 working days, starting upon issuance of notification, to obtain the permit without the payment of a late fee. If the contractor fails to obtain a permit by the 15th day of the grace period, the contractor shall pay to the Commissioner a \$50 late fee in addition to the permit fee, and the Commissioner shall cause a stop sale, use, removal or seizure order to be issued on any liming material the contractor sells until the contractor obtains the required permit.

C. The contractor shall guarantee the consumer that the contractor shall comply with all provisions of this chapter that apply to the sale and delivery of bulk liming material.

**Drafting Note: New section. Proposed subsections A, B, and C are moved from existing subsections G and H of § 3.1-126.4.**

~~§ 3.1-126.5~~ 3.2-3705. ~~Report~~ *Distribution to nonlicensed person; report of tonnage; inspection fee; fee for late payment.*

A. By August 1 of each year, each person who distributes liming material to a nonlicensed person shall submit on a form furnished or approved by the Commissioner a tonnage statement for the reporting year July 1 through June 30 of each year ~~setting forth~~ *documenting* the number of tons of each liming material sold by the distributor for use in each county or city in the Commonwealth; ~~however, each person distributing liming material to a nonlicensed person shall submit to the Commissioner by August 1, 1995, a tonnage statement setting forth the number of tons of liming material sold for use in each county or city in the Commonwealth by the distributor for the period January 1, 1995, through June 30, 1995.~~ Each person distributing liming material in the Commonwealth to a nonlicensed person shall file a statement with the Commissioner and shall pay to the Commissioner an inspection fee of five cents per ton of liming material sold per reporting year. The minimum inspection fee shall be ~~thirty five dollars~~ \$35 per distributor per reporting year; ~~provided that for the period January 1, 1995, through June 30, 1995, the minimum inspection fee shall be seventeen dollars and fifty cents per distributor.~~ If the distributor fails to submit the tonnage statement and pay the inspection fee by August 1 of each year, the Commissioner ~~or his agent~~ shall notify the distributor and grant a grace period of ~~fifteen~~ 15 working days from issuance of notification for the distributor to submit the tonnage statement and to pay the inspection fee without penalty. If the distributor fails to submit the tonnage statement and pay the inspection fee by the time the ~~fifteenth~~ 15th day of the grace period has expired, the distributor shall pay to the Commissioner a late fee of ~~ten~~ 10 percent of the inspection fee, or ~~fifty dollars~~ \$50, whichever is greater, per reporting year in addition to the inspection fee due.

B. Any distributor required to pay an inspection fee under subsection A shall use generally accepted accounting principles that indicate ~~accurately~~ in the distributor's records the tonnage of liming materials sold by the distributor in the Commonwealth. The Commissioner ~~or his agent~~ may inspect the distributor's records ~~which~~ that the distributor shall maintain for a period of three years.

C. ~~1. Except as provided in subdivision 2 of this subsection, any~~ Any person who distributes *liming materials* to a nonlicensed person ~~shall~~:

1. *Shall file the tonnage statement with the Commissioner and pay to the Commissioner the inspection fee;* *or*

2. ~~The Commissioner or his agent shall not require the person specified in subdivision 1 of this subsection who distributes liming materials~~ *Shall not be required to file the tonnage statement or pay the inspection fee, if: (i) another person agrees in a written statement, filed with the Commissioner, to pay the inspection fee and file the tonnage statement by August 1 of each year; and (ii) he files with the Commissioner by August 1 of each year a purchasing report stating the number of tons the person purchased during the reporting year and from whom the liming material was purchased. The report shall be made on a form furnished or approved by the Commissioner.*

3. ~~Any person not required to file the tonnage statement or pay the inspection fee pursuant to the exception specified in subdivision 2 of this subsection, shall file with the Commissioner by August 1 of each year a purchasing report stating the number of tons the person specified in this subdivision purchased during the reporting year and from whom the liming material was purchased. The report shall be made on a form furnished or approved by the Commissioner.~~

D. The Commissioner may publish and distribute, to each liming material registrant and other interested persons, a composite report showing the tons of liming material sold in each county of the Commonwealth. This report shall in no way divulge the operation of any registrant or licensee.

**Drafting Note: Deletes an obsolete provision in subsection A that has expired. Incorporated language in existing subdivision C 3 into proposed subdivision C 2.**

§ ~~3.1-126.3~~ 3.2-3706. Labeling.

A. Any liming material sold, offered or exposed for sale in the Commonwealth shall have affixed to *the outside of each package* in a conspicuous manner ~~on the outside thereof~~, a plainly printed, stamped or otherwise marked label, tag or statement, or in the case of bulk sales, a statement on the delivery slip, setting forth in the English language at least the following information:

1. The quantity statement of the liming material;
2. The brand or trade name of the liming material;
3. In the case of agricultural liming material, the identification of the type of the agricultural liming material as defined under § ~~3.1-126.2:1~~ 3.2-3700, including the chemical analysis corresponding to the type definition;
4. The minimum percentage of available potash, if potash has been added to the liming material;
5. Calcium carbonate equivalent of the liming material as determined by procedures of the Association of Official Analytical Chemists (~~AOAC~~) in its most recent publication. Minimum calcium carbonate equivalents as prescribed by regulation;
6. The Effective Neutralizing Value (~~ENV~~) of the liming material as calculated using the following formula:  
(percent by weight passing twenty mesh sieves - percent by weight passing sixty mesh sieves) x 0.4 = (a)  
(percent by weight passing sixty mesh sieves - percent by weight passing 100 mesh sieves) x 0.8 = (b)  
(percent by weight passing 100 mesh sieves) x 1.0 = (c)  
—(a+b+c) x Calcium Carbonate Equivalent (CCE)] divided by 100 = ENV;
7. The minimum ~~percentum~~ *percentage* by weight passing through United States Standard sieves as prescribed by regulations; and
8. The name and principal office address of the manufacturer or distributor of the liming material.

B. For any fluid liming material or any packaged liming material-fertilizer mixture, the label shall also include the following information:

- (~~i~~) 1. The kind of liming material used in the manufacture of the product;
- (~~ii~~) 2. The type of agricultural liming material used in the manufacture of the product, if applicable;
- (~~iii~~) 3. The guaranteed analysis of the final product; and
- (~~iv~~) 4. A statement setting forth the equivalency of the calcium carbonate equivalent of the fluid liming material or liming material-fertilizer mixture to the calcium carbonate equivalent of a standard liming ton.

C. For any bulk liming material-fertilizer mixture, except when the ingredients are billed separately, the label shall also include the following information:

- (~~i~~) 1. The kind of liming material used in the manufacture of the product;
- (~~ii~~) 2. The type of agricultural liming material used in the manufacture of the product, if applicable;
- (~~iii~~) 3. The guaranteed analysis of the final product; and
- (~~iv~~) 4. A statement setting forth the equivalency of the calcium carbonate equivalent of the fluid liming material or liming material-fertilizer mixture to the calcium carbonate equivalent of a standard liming ton.

D. If the ingredients of the bulk liming material-fertilizer mixture are billed separately, the label shall also include the following information:

1. The kind of liming material used in the manufacture of the product;



2. The type of agricultural liming material used in the manufacture of the product, if applicable;
3. The dry weight of the liming material used in the manufacture of the product before mixing;
4. The guaranteed analysis of the liming material used in the manufacture of the product before mixing; and
5. The guaranteed analysis of the fertilizer used in the manufacture of the product before mixing.

Ⓓ *E.* For any industrial co-product used to neutralize soil acid, the product label shall include the statement "Industrial co-product used to neutralize soil acid." If the product is below the Virginia minimum standard requirements for an agricultural liming material as defined in the regulations, the statement "Substandard liming material" shall also be on the label.

Ⓔ *F.* All liming material shall be labeled as registered with the Commissioner.

Ⓕ *G.* No information or statement shall appear on any package, label, delivery slip or advertising matter ~~which~~ *that* is false or misleading to the purchaser as to the quality, analysis, kind, type or composition of the liming material.

Ⓖ *H.* In the case of any liming material ~~which~~ *that* has been adulterated subsequent to packaging, labeling or loading ~~thereof~~, and before delivery to the consumer, a plainly marked notice to that effect shall be affixed by the vendor to the package or delivery slip to identify the kind and degree of such adulteration ~~therein~~.

Ⓗ *I.* The Board may require by regulation that the minimum percentage of calcium oxide, magnesium oxide, calcium carbonate, and magnesium carbonate shall be expressed in the following form: Total Calcium (Ca) . . . . . percent Total Magnesium (Mg) . . . . . percent

~~However, for a period of two years following the effective date of such regulation the equivalent of calcium and magnesium may also be shown in the form of calcium oxide, magnesium oxide, calcium carbonate, and magnesium carbonate.~~

~~I. Registrants shall be allowed not more than one year from July 1, 1994, to use existing inventories of labeling materials.~~

**Drafting Note: Deleted obsolete language in second paragraph of existing subsection H and existing subsection I.**

~~§ 3.1-126.6~~ 3.2-3707. Inspection, sampling, analysis.

~~A. It shall be the duty of the~~ *The* Commissioner ~~or his agent to~~ *shall* sample, inspect, ~~make analyses of~~ *analyze*, and test liming material distributed within the Commonwealth ~~as he may deem necessary~~ to determine whether such liming material is in compliance with the provisions of this chapter. The Commissioner ~~or his agent is authorized to~~ *may* enter upon any public or private premises *during operating hours*, or any carrier ~~during operating hours~~, in order to have access to liming material *that is* subject to the provisions of this chapter and regulations ~~pertaining thereto~~ *hereunder*, and to the records relating to its distribution.

~~B. The Commissioner or his agent shall~~ distribute the results of official analyses of liming material and portions of official samples of liming material as provided in regulations.

**Drafting Note: Technical changes.**

~~§ 3.1-126.7~~ 3.2-3708. Stop sale, use, removal or seizure order; review.

~~A. The Commissioner or his agent may~~ issue and enforce a written or printed stop sale, use, removal or seizure order to the owner or custodian of any lot of ~~liming material~~. ~~The Commissioner or his agent shall issue such order when the Commissioner or his agent finds~~ liming material being offered or exposed for sale in violation of any of the provisions of this chapter. Such order may provide that such liming material be held at a designated place until the owner or custodian of such lot of liming material has complied with this chapter and the Commissioner ~~or his agent~~ has released the liming material in writing, or such violation has been otherwise legally disposed of by written authority.

B. The owner or custodian of such liming material shall have the right to review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

~~C. The Commissioner or his agent shall release the liming material which has been subjected to a stop sale, use, removal or seizure order under subsection A of this section when the owner or custodian of such liming material has complied with the requirements of this chapter.~~

~~D. The provisions of this section shall not be construed: (i) as limiting the right of the Commissioner or his agent to proceed as authorized by other provisions of this chapter; or (ii) as limiting or prohibiting the operation of § 2.2-4208 of the Administrative Process Act.~~

**Drafting Note: Deleted language in existing subsection C since it is duplicative of language regarding the release of liming material in existing subsection A.**

~~§ 3.1-126.8 3.2-3709.~~ Assessments for violations of chapter.

~~A. Any person convicted of violating any provision of this chapter or the regulations promulgated adopted hereunder shall be subject to a penalty of not less than \$25 nor more than \$200 to be enforced by a summary proceeding in a an appropriate court of competent jurisdiction. Nothing in this chapter shall be construed as requiring the Commissioner or his agent to report for prosecution, or for the institution of seizure proceedings, where the Commissioner considers the violations of the act to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing, when he believes that the public interest will be best served by so doing.~~

~~B. The Commissioner or his agent shall make an assessment for variance from guarantee in accordance with the regulations as established by the Board, not to exceed \$5,000 per occurrence, when any shipment of liming material that the Commissioner or his agent samples and upon analysis, fails to meet the guarantee for chemicals, neutralizing value, or screen size.~~

~~1 C. The person whose name appears on the label of the violative lot of liming material shall pay the assessment for variance from guarantee levied assessed by the Commissioner. The person assessed shall obtain a receipt signed by the purchaser for each payment, and promptly forward the same receipt to the Commissioner. The person whose name appears on the label of the violative lot of liming material shall pay the assessment for variance from guaranty within sixty 60 days from date of notice to the person assessed. If the purchaser cannot be found, or if the amount due any one purchaser is less than one dollar, the person whose name appears on the label of the violative lot of liming material shall pay the assessment for variance from guaranty to the Commissioner, who shall deposit the same in the state treasury, and report to the State Comptroller, who shall credit the same to the Sale of Substandard Liming Material Fund, which fund is hereby created. The fund shall be a special nonreverting fund in the state treasury, to be disbursed as provided in subdivision 2 of this subsection D.~~

~~2 D. Such funds as shall thereafter be found to be payable to the purchasers of lots of liming material on which the assessments for variance from guaranty were made shall be paid from the Sale of Substandard Liming Material Fund on order of the Commissioner. The State Comptroller shall transfer any balance remaining in such Fund for a period of ninety days to the credit of the fund specified in § 3.1-126.12:3 3.2-3710.~~

**Drafting Note: Moved the last sentence of subsection A that has chapter-wide application to proposed § 3.2-3713, Commissioner's actions.**

~~§ 3.1-126.12:3 3.2-3710.~~ Disposition of funds.

~~All fees, penalties, funds, (including those transferred as specified in subdivision B-2 subsection D of § 3.1-126.8, 3.2-3709 and except as provided in subdivision B-1 subsection C of § 3.1-126.8, 3.2-3709), and assessments under this chapter that the Commissioner receives shall be paid into a dedicated special fund in the state treasury the Feed, Lime, Fertilizer, and Animal Remedies Fund, established in § 3.2-3617, to be used in carrying out the purpose and provisions of this chapter, to include inspection, sampling and other expenses; except that the~~

Commissioner shall deposit, to the credit of the Virginia Agricultural Foundation Fund, five cents per ton of liming material sold per reporting year of the inspection fee.

**Drafting Note: Included the name of the nonreverting special fund.**

~~§ 3.1-126.9~~ 3.2-3711. Seizure of liming material when assessments not paid.

The Commissioner ~~or his agent~~ may seize any liming material belonging to any person whose name appears on the label of the violative lot of liming material, if such person fails to pay the assessment for variance from guarantee within ~~sixty~~ 60 days after the Commissioner has given notice to such person.

**Drafting Note: Technical changes.**

~~§ 3.1-126.10~~ 3.2-3712. Appeal from ~~assessment, seizure and sale~~ *Commissioner's actions.*

Any person aggrieved by any action of the Commissioner under provisions of this chapter shall have the right to review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: Technical changes.**

§ 3.2-3713. *Commissioner's actions.*

*Nothing in this chapter shall require the Commissioner to report for prosecution, or institute seizure proceedings, where the Commissioner considers the violations of this chapter to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing, when he believes that the public interest will be best served by so doing.*

**Drafting Note: New section. The proposed section is moved from existing subsection A of § 3.1-126.8.**

~~§ 3.1-126.12:2~~ 3.2-3714. Duty of attorneys for the Commonwealth.

It shall be the duty of each attorney for the Commonwealth with responsibility for the enforcement of this chapter, and to whom any violation is reported, to ~~cause appropriate commence~~ proceedings to be instituted and ~~prosecuted~~ *prosecute* in a ~~court of competent jurisdiction~~ *an appropriate court* without delay.

**Drafting Note: Technical changes.**

~~§ 3.1-126.11~~ 3.2-3715. Prohibited acts; *penalty.*

~~A. No liming material shall be sold or offered for sale in the Commonwealth. It is unlawful to:~~

~~1. Sell or offer to sell any liming material unless it complies with provisions of this chapter-;~~

~~B. No liming material shall be sold or offered for sale in the Commonwealth which~~ 2. *Sell or offer for sale liming material that contains toxic materials in quantities injurious to plants or animals.*

~~C. Any person who shall hinder~~ 3. *Hinder* or obstruct in any way the Commissioner ~~or his agent~~ in the performance of his official duties ~~shall be guilty of a Class 3 misdemeanor.~~

~~B. Any person who violates any provision of this chapter is guilty of a Class 3 misdemeanor.~~

**Drafting Note: The only criminal penalty provision in this chapter appears in existing subsection C and is a Class 3 misdemeanor for hindering or obstructing the Commissioner. Proposed subsection B imposes a chapter-wide penalty of a Class 3 misdemeanor. This penalty is the same penalty imposed for violating the Virginia Fertilizer Act and the Virginia Commercial Feed Act.**

## CHAPTER ~~1338.~~

### Article ~~7~~

## PLANTS AND PLANT PRODUCTS INSPECTION ~~LAW.~~

**Chapter Drafting Note: Deleted terms previously defined in title-wide provisions. Added the term "inspection certificate" as a definition to mean any of the number of documents issued by the Commissioner or another authority declaring an item to be apparently free from plant pests. Broadened the definition of "nursery stock" to include "any container, soil, and other packing material" so that term could be used in place of the varying phrases "nursery stock, material, and article," "nursery stock, including soil," "all plants and trees, soil, articles, or substances," and "nursery stock, or other material, article, or host plants, including soil." Consolidated powers and duties of Commissioner into one section. Ordered the chapter in a sequence that follows drafting convention: definitions, administration, obligations, and enforcement.**

~~§ 3.1-188.323.2-3800.~~ Definitions.

~~The following definitions shall apply in the interpretation and the enforcement of this article.~~ *As used in this chapter, unless the context requires a different meaning:*

~~1. [Repealed.]~~

~~2. "Board" means the Board of Agriculture and Consumer Services of the Commonwealth of Virginia.~~

~~3. "Commissioner" means the Commissioner of Agriculture and Consumer Services of the Commonwealth of Virginia.~~

~~4. "Dealer" means any person, firm or corporation, that acquires nursery stock for the purpose of resale and distribution who is not a grower of nursery stock, who buys, collects wild plants, or otherwise acquires nursery stock for the purpose of reselling or distributing same. Each separate location shall constitute a dealership.~~

*"Inspection certificate" means a document in any form issued by the Commissioner, or the appropriate official from another state, declaring an item or location to be apparently free from plant pests. Inspection certificates include nursery stock certificates, phytosanitary stock certificates, state-of-origin certificates, or any other certification tags, seals, and stamps that verify compliance with this chapter or any regulations adopted hereunder.*

~~5. "Nursery" means any grounds or premises on or in which where nursery stock is being propagated or, grown, fumigated, treated, packed, stored, or otherwise prepared for sale or distribution, including any grounds or premises on or in which nursery stock is being fumigated, treated, packed or stored, or otherwise prepared or offered for sale or movement to other localities.~~

~~6. "Nursery stock" means all trees, shrubs, and woody vines (including ornamentals), bush fruits, grapevines, fruit trees, and nut trees, whether cultivated, native or wild, and offered for sale and distribution; all buds, grafts, scions, and cuttings from such plants; and any container, soil, and other packing material with such plants or plant products. It also shall also mean such herbaceous plants; (including strawberry plants, narcissus plants, and narcissus bulbs) as the Board declares by regulation to be so included whenever it considers control of if the Board determines that controlling the movement of such plants or bulbs is necessary to the control of any destructive plant pest. Florists' or green house Unless designated by the Board, nursery stock shall not include florist or greenhouse plants for inside culture or use, unless so declared by the Board as herein authorized, shall not be considered nursery stock except that all woody plants, whether greenhouse or field grown, if for outside planting are hereby defined as nursery stock.~~

~~7. "Nurseryman" means any person engaged in the production of that produces nursery stock for sale or distribution.~~

~~8. "Person" means any individual, partnership, corporation, company, society or association the term as defined in § 1-230. The term also means any society.~~

~~9. "Plant pest" means any living stage of: any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive~~

~~parts thereof, parasitic plant parts, viruses, or any organisms similar to or allied with any of the foregoing any other similar organism, or any infectious substances, which that can directly or indirectly injure, or cause disease infect, or damage in any plants or parts thereof, or any processed, manufactured or other plant products of plants.~~

~~10. "Plants and/or plant products" means any trees, shrubs, vines, forage, fiber, and cereal, and all other plants; cuttings, grafts, scions, buds, and all other plant parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all other parts of plants and plant products; or any container, soil, and packing material with plants or plant products.~~

**Drafting Note: Deleted terms previously defined in title-wide provisions. The definition of "person" remains because it is broader than previously defined. Although the term "dealer" qualifies a dealership as any location of a dealer, no provisions in this proposed chapter refer to a dealership. The licensing provision in proposed § 3.2-3803, Licenses required or nurserymen or dealers; inspection fees, requires that a dealer pay a license fee for each location. Added the term "inspection certificate" as a definition to mean any of a number of certifications provided by the Commissioner that a place or an article is apparently free from plant pests. Broadened the definition of "plants or plant products" and "nursery stock" to include immediately surrounding materials so that the term could be used throughout the chapter instead of the existing language that includes the varying phrases "nursery stock, material, and article," "nursery stock, including soil," "all plants and trees, soil, articles, or substances," and "nursery stock, or other material, article, or host plants, including soil."**

~~§ 3.1-188.33. Duty of Commissioner generally.~~

~~It shall be the duty of the Commissioner to exercise or perform the powers and duties imposed upon him by this article.~~

**Drafting Note: Deleted section. This section is unnecessary as the general powers of the Commissioner are cited in § 2.2-604 and proposed § 3.2-102, General powers and duties of the Commissioner, in Chapter 1, General Provisions.**

~~§ 3.1-188.34.3.2-3801. Protection of interests of Commonwealth against plant pests; administration of article Powers and duties of the Commissioner.~~

~~It shall be the duty of the~~

~~A. The Commissioner to protect shall:~~

~~1. Protect the agricultural, horticultural, and other interests of the Commonwealth from plant pests and, either in person or by his assistants, supervise and direct the execution of this article and rules and regulations adopted pursuant thereto; and~~

~~2. Promptly credit all moneys collected by him as repayment to the fund in the state treasury to which such moneys are owed.~~

~~B. The Commissioner may enter into reciprocal agreements with officers of other states so that nursery stock may be sold or delivered in the Commonwealth by out-of-state nurserymen or dealers without the payment of a Virginia registration fee, provided that like privileges are granted to Virginia nurserymen or dealers by such other states.~~

**Drafting Note: Consolidated powers and duties of Commissioner into one section. Proposed subdivision A 2 is moved from existing § 3.1-188.43. Proposed subsection B is moved from existing § 3.1-188.48.**

~~§ 3.1-188.43. Disposition of money collected.~~

~~The Commissioner shall promptly pay all moneys collected by him into the state treasury to be credited to the State fund from which expended regardless of the date collected.~~

**Drafting Note: Deleted section and moved to subdivision A 2 of proposed § 3.2-3801, Powers and duties of the Commissioner.**

~~§ 3.1-188.48. Reciprocal agreements with officers of other states.~~

~~The Commissioner may enter into reciprocal agreements with the responsible officers of other states under which nursery stock owned by nurserymen or dealers of such states may be sold or delivered in this Commonwealth without the payment of a Virginia registration fee, provided like privileges are accorded to Virginia nurserymen or dealers by such other states.~~

**Drafting Note: Deleted section and moved to subsection B of proposed § 3.2-3801, Powers and duties of the Commissioner.**

~~§ 3.1-188.45. Authority vested in Commissioner may be exercised by employees of Department.~~

~~All authority vested in the Commissioner by virtue of the provisions of this article may with like force and effect be executed by such employees of the Department of Agriculture and Consumer Services as the Commissioner may, from time to time, designate for such purpose.~~

**Drafting Note: Deleted section. The general powers of the Commissioner are provided in proposed § 2.2-604, Performance of duties assigned to agency, and include the authority to hire assistants.**

~~§ 3.1-188.35. Rules and regulations.~~

~~The Board shall promulgate such rules and regulations as are necessary for the efficient execution of the provisions of this article and any necessary quarantines shall be adopted pursuant to § 3.1-188.23.~~

**Drafting Note: Deleted section. The general powers of the Board to adopt regulations are set out in proposed § 3.2-109, Board of Agriculture and Consumer Services; appointments; qualifications; and terms of office, where the Board is defined as a policy board. The cross-reference to existing § 3.1-188.23 is also unnecessary. That section—proposed § 3.2-703, Authority to quarantine—controls the Board's authority and does not need to be cross-referenced here.**

~~§ 3.1-188.423.2-3802. Permit required to sell, or transport, etc., plant pests.~~

~~No person shall *It is unlawful to sell, barter, offer for sale, or move, transport, deliver, ship, or offer for shipment into or within this Commonwealth any plant pests in any living stage without first obtaining a permit from the Commissioner. Such permit shall be issued only after it has been determined stating that the such plant pests are: (i) not injurious, are; (ii) generally present already,; or are (iii) to be used for scientific purposes subject to specified safeguards.*~~

**Drafting Note: Technical changes.**

~~§ 3.1-188.363.2-3803. Licenses required of nurserymen or dealers to sell, etc., nursery stock; license and inspection fees.~~

~~A. It shall be *is* unlawful for any nurseryman or dealer; to offer for sale, sell, deliver, or give away, within the bounds of this Commonwealth, any plants or parts of plants commonly known as nursery stock unless such person shall have first procured from the Commissioner a license from the Commissioner. The Commissioner shall have full power, and is hereby authorized, to refuse, suspend or cancel any license upon satisfactory evidence that any of the provisions of this article or rules and regulations governing the sale of nursery stock within this State have been violated by the holder of the same.~~

~~B. The Commissioner shall not issue any license to a dealer except upon the payment of seventy five dollars for each nursery and twenty five dollars for each dealer. There shall be no abatement in the annual fee of seventy five dollars to be paid for the license for nursery or the twenty five dollars for dealers. All licenses shall expire on December 31 of the year for which issued \$25 for each separate sales location.~~

~~C. The Commissioner shall not issue any license to a nurseryman except upon the payment of \$75 and receipt of an inspection certificate. In addition to the nursery license fee, each At the issuance of the license, each nursery shall be assessed also pay an inspection fee of one dollar and fifty cents per acre \$1.50 for each acre above 50 acres of nursery stock inspected by the Commissioner or his assistants above fifty acres as part of the required annual inspection~~

~~of nurseries as outlined in § 3.1-188.37 of this article. The inspection fee is due at the time the nursery license is procured from the Commissioner.~~

*D. All licenses shall expire on December 31.*

**Drafting Note: Moved the second sentence granting the Commissioner the authority to suspend licenses in response to violations to subsection A of proposed § 3.2-3810, Penalty for violation. Created separate subsections for the license requirements for dealers and nurserymen. Moved the relevant portion of existing § 3.1-188.37 to proposed subsection C and deleted the reference made to that section.**

~~§ 3.1-188.383.2-3804. Nursery stock brought into Commonwealth to carry inspection~~*Inspection certificate; sale, etc., of such stock required to transport nursery stock.*

~~A. It shall be~~*is unlawful to knowingly deliver, knowingly transport or send, ship within this Commonwealth plants or parts of plants commonly known as-, or transport nursery stock which have not been duly inspected in accordance with the provisions of this article and which do not carry plainly attached to each carload, truckload, box, bale, or package, an inspection certificate, or to deliver, ship, send or knowingly bring any such nursery stock into this Commonwealth from any place outside thereof unless there is attached to each carload, truckload, box, bale or package, in a conspicuous place, a valid certificate of inspection issued by the proper official of the country, state, territory, district or county from which it was shipped, sent or brought showing that such nursery stock, including soil, was found to be free from plant pests**within or into the Commonwealth without an inspection certificate clearly attached to each carload, truckload, box, bale, or package.*

~~B. Nursery stock brought into the Commonwealth under an inspection certificate, as above required,~~ may be sold and moved by a properly-licensed Virginia nurseryman or dealer or agent, but this shall not preclude inspection at any time within the Commonwealth.

**Drafting Note: Consolidated language regulating interstate and intrastate shipment into subsection A. Deleted language unnecessary because of the newly broadened term, "nursery stock," and the newly defined term, "inspection certificate."**

~~§ 3.1-188.413.2-3805. Commissioner may inspect plants, etc., on~~*Inspections upon request.*

~~Any person growing or possessing any plants or plant products or other substance or thing may have such inspected by applying~~*may apply to the Commissioner for a special inspection with reference to the presence of plant pests liable to prevent the movement or use of same, agreeing in the application**an inspection certificate. The applicant shall agree to pay the expenses incurred in making the inspection, and upon receipt of such application and agreement, or as soon thereafter as may be conveniently practicable, the Commissioner may comply with such request, and upon receipt of the expenses of the inspection shall**by the Commissioner, who may respond to the applicant at his discretion. The Commissioner shall issue to the applicant a certificate showing the conditions found**an inspection certificate upon successful completion of the inspection and the payment of inspection expenses.*

**Drafting Note: Technical changes.**

~~§ 3.1-188.463.2-3806. Right~~*Authority for inspections; right of entry on premises; when notice required; penalty for obstruction.*

*A. All nursery stock or plant products for sale or distribution shall be subject to inspection at any time.*

*B. The Commissioner and his assistants are hereby authorized to may enter upon any nursery or dealer establishments**premises, other than a building occupied as a residence**private dwelling, at reasonable times and under reasonable circumstances to examine all plants and trees, soil, articles, or substances for the purpose of detecting**nursery stock or plant products for sale or distribution to detect plant pests and discharge**discharge the duties prescribed by this*

~~article herein. Any person who shall obstruct or hinder them in the discharge of their duty shall be guilty of a Class 1 misdemeanor.~~

*C. The Commissioner may require any person who possesses nursery stock or plant products for sale or distribution to present those items for inspection and to provide full information related to origin, number, and destination.*

**Drafting Note: Proposed subsection A is moved from the first paragraph of existing § 3.1-188.37. Proposed subsection C is moved from existing § 3.1-188.44, Information to be furnished and inspection allowed upon request of the Commissioner. Proposed § 3.2-3810, Penalty for violation, contains a chapter-wide penalty provision.**

~~§ 3.1-188.44. Information to be furnished and inspection allowed upon request of the Commissioner.~~

~~The Commissioner or his assistants may require of any person who has plants or plant products or articles or substances subject to this article in his possession to present same for inspection and to give full information as to the origin, number and destination of same, and it shall be a Class 1 misdemeanor for such person to refuse to give the information requested or allow inspection.~~

**Drafting Note: Deleted section and moved to subsection C of proposed § 3.2-3806, Authority for inspections; right of entry.**

~~§ 3.1-188.373.2-3807. Inspection of nurseries; orders of Commissioner as to eradication or control of infestation~~*Eradication and control measures.*

~~It shall be the duty of the Commissioner through his assistants to provide for the annual inspection, or more often if necessary, of all plant nurseries within the Commonwealth. The Commissioner shall certify the relative freedom of injurious plant pests before issuing a license to the owners of all such nurseries. All stock in custody of any dealer or person shall be subject to inspection at any time.~~

~~The Commissioner may order the owner or person in charge~~*custodian* of any infested nursery stock, or other material, article, or host plants, including soil,*nursery stock or plant products for sale or distribution* to take ~~such~~*eradication and control* measures to eradicate or control the said infestation or infection as he may deem necessary or proper. Such. *The owner or person in charge*~~custodian~~ shall promptly carry out the order of the Commissioner or his assistants within the period of time designated in the order. If such. *The Commissioner may take the eradication or control measures required by the order if the owner or person in charge* shall ~~refuse~~*custodian refuses* or ~~neglect~~*neglects* to carry out any ~~such~~*the* order, the Commissioner may apply such eradication or control measures as are required by the order.

**Drafting Note: Moved the prerequisite of inspection for licensing to proposed § 3.2-3803, Licenses required of nurserymen or dealers; inspection fees. Moved the requirement that all stock in custody be available for inspection to subsection A of proposed § 3.2-3806, Authority for inspections; right of entry.**

~~§ 3.1-188.393.2-3808. Nursery stock, articles or materials or plant products for sale or distribution~~ subject to stop delivery or stop sale, etc.

~~The Commissioner, in order to prevent the introduction or dissemination of plant pests, is hereby authorized, either by himself or by his duly appointed agents, to~~ *A. The Commissioner may stop delivery, stop sale, to treat, or to order returned to point of origin, at the owner's expense, any nursery stock or any article or material whatsoever transported or moved within this Commonwealth or brought into this Commonwealth from any place outside thereof, any nursery stock or plant products for sale or distribution if such nursery stock, article or material is found or reasonably suspected by him or his duly authorized agents to be infested or infected with any* *he finds: (i) a plant pest whether or not there is attached a valid certificate of inspection. Provided, however, when such action is taken as provided for in this section because a pest infestation is reasonably suspected, such action shall be taken only when said nursery stock,*



~~article, or material exhibits infection; or (ii) the exhibition of visual symptoms of a plant pest infestation or there is a lack of origin documentation or there are no certificates of inspection. The Commissioner is hereby authorized to stop.~~

~~B. The Commissioner may stop delivery or stop the sale of: (i) any nursery stock that is or plant products for sale or distribution in the possession of an unlicensed nurseryman or dealer, until such license is secured as provided for in § 3.1-188.36.; or (ii) The Commissioner may also stop delivery or stop the sale of any nursery stock or any article or material transported or moved within this Commonwealth or brought into this Commonwealth from any place outside thereof if such nursery stock, article or material nursery stock or plant products for sale or distribution that is are not accompanied by a valid and current an inspection certificate as outlined in the provisions of § 3.1-188.38.~~

~~C. Any order of the Commissioner under this section shall be carried out at the owner's expense.~~

**Drafting Note: Divided section into subsections to clarify the Commissioner's varying powers related to plant pest infections and infestations, unlicensed nurserymen and dealers, and plants or plant products without inspection certificates. Technical changes.**

~~§ 3.1-188.403.2-3809. Seizure and disposition of seized nursery stock or plant products for sale or distribution.~~

~~In order to prevent the introduction or dissemination of any dangerous plant pests, any Any nursery stock, article, or material nursery stock or plant products for sale or distribution shall be subject to seizure on complaint of the Commissioner to at the appropriate court of competent jurisdiction in the county or city in which the nursery stock, article, or material is located. In the event. If the court finds the nursery stock, article, or material or plant products for sale or distribution to be in violation of the provisions of this article chapter and orders the condemnation thereof, such nursery stock or plant products , article or material shall, at the owner's expense, be seized, destroyed, treated, or returned to the point of origin at the owner's expense.~~

**Drafting Note: Technical changes.**

~~§ 3.1-188.473.2-3810. Penalty for violation of article, rules and regulations.~~

~~A. The Commissioner may refuse, suspend, or cancel any license upon satisfactory evidence that the applicant or licensee has violated any of the provisions of this chapter or regulations adopted hereunder.~~

~~B. Any person violating any of the provisions of this article, chapter or the rules and regulations adopted thereunder, shall be deemed hereunder or interfering in any way with the Commissioner in the discharge of his duties herein is guilty of a Class 1 misdemeanor.~~

**Drafting Note: Moved the language in proposed subsection A from existing § 3.1-188.36. The added language in proposed subsection B is moved from existing § 3.1-188.46.**

~~§ 3.1-188.493.2-3811. Judicial review.~~

~~Judicial review of any action of the Board, or the Commissioner, or his assistant shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).~~

**Drafting Note: Technical changes.**

## CHAPTER 14.139.

### VIRGINIA-PESTICIDE CONTROL ACT.

**Chapter Drafting Note: Deleted definitions of terms not used or previously defined. Moved the substantive misbranding provision from definitions to enforcement, consistent with similar chapters. Adopted model board language for the Pesticide Control Board. Rearranged the trade secrets provisions into a more logical sequence. Adopted model**

**special fund language for the Pesticide Control Fund. Collected the varying violation provisions into separate sections for administrative and criminal offenses.**

Article 1.

General Provisions.

~~§ 3.1-249.273.2-3900.~~ Definitions.

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

"Active ingredient" means, (in the case of a pesticide other than a plant regulator, defoliant, desiccant, or anti-desiccant,) an ingredient ~~which~~*that* will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

"Agricultural commodity" means any plant or part thereof, ~~or~~ animal, or animal product, produced by a person, (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons,) primarily for sale, consumption, propagation, or other use by man or animals.

"Board" means the Pesticide Control Board.

~~"Bond" means a written instrument issued or executed by a bonding, surety, or insurance company licensed to do business in the Commonwealth, or otherwise approved by the Board, guaranteeing the fulfillment of the agreement between the licensee and the customer.~~

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 (~~§ 3.1-249.51 et seq.~~) of this chapter.

"Certification" or "certified" means the recognition granted by the ~~Pesticide Control Board~~ to an applicator ~~upon satisfactory completion of Board approved requirements~~ *who has completed all the requirements of Article 3.*

"Certified applicator" means a person who: (i) has satisfactorily completed the Board requirements for certification as a commercial applicator, registered technician, or private applicator; and (ii) has been issued a valid certificate.

"Commercial applicator" means any person who has completed the requirements for certification ~~as determined by the Board~~ to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

~~"Committee" or "advisory committee" means any advisory committee appointed pursuant to § 3.1-249.29.~~

"Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

~~"Department" means the Department of Agriculture and Consumer Services.~~

"Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"Device" means any instrument or contrivance intended for: (i) trapping, destroying, repelling, or mitigating insects or rodents; or (ii) destroying, repelling, or mitigating fungi, bacteria, ~~or~~ weeds, or ~~such~~ other pests as may be designated by the Commissioner, ~~but not including~~. *Device shall not include* treated wood products, ~~or~~ simple, mechanical devices such as rattraps, or equipment used for the application of pesticide when sold separately ~~therefrom~~.

"Fumigant" means any substance ~~which by itself or in combination with any other substance or mixture of substances that~~ emits or liberates a gas ~~or~~ gases, fumes, or vapors, ~~which gas or gases, fumes or vapors, when liberated and used, will destroy capable of destroying~~ vermin, rodents, insects, and other pests.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

"Ingredient statement" or "guaranteed analysis statement" means a statement ~~of containing:~~ (i) the name and percentage of each active ingredient, ~~together with;~~ (ii) the total percentage of the inert ingredients, ~~in the pesticide;~~ and, ~~in addition, in case~~ (iii) if the pesticide contains arsenic in any form, ~~a statement of the percentages of total and water soluble arsenic.~~

"Insect" means any ~~of the numerous small invertebrate animals~~ *animal* generally having a ~~body more or less obviously segmented, for the most part belonging form and belonging to~~ the class Insecta, ~~comprising six legged, usually winged forms, as, for example, including beetles, bugs, and bees. , flies, and to other allied~~ *For purposes of this act, the term insect shall also mean* classes of arthropods whose members are *usually* wingless and ~~usually~~ have more than six legs, ~~as, for example, including~~ spiders, mites, ticks, centipedes, and wood lice.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects ~~which~~ *that* may be present in any environment whatsoever.

"Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.

"Labeling" means all labels and other written, printed, or graphic matter: (i) upon the pesticide or device or any of its containers or wrappers; (ii) accompanying the pesticide or device at any time; or (iii) ~~to which reference is made~~ *referenced* on the label or in literature accompanying the pesticide or device, ~~except when accurate, nonmisleading reference is made to~~ . *Labeling shall not include* current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department ~~of Agriculture and Consumer Services,~~ the State Board of Health, or similar federal *or state* institutions ~~or other official agencies of the Commonwealth or other states when~~ *when accurate, nonmisleading reference is made to such official publications and* such agencies are authorized by law to conduct research in the field of pesticides.

"Licensed" or "licensee" means ~~those businesses which, upon meeting the requirements established by the Pesticide Control Board, are~~ *a person* issued a license *by the Board* to engage in the sale, storage, distribution, ~~recommend the use~~ *recommendation*, or application of pesticides ~~in Virginia in exchange~~ for compensation.

"Misbranded" shall apply to any pesticide or device:

1. If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
2. If it is an imitation of or is offered for sale under the name of another pesticide;
3. If its labeling bears any reference to registration under this chapter;
4. If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate for the protection of the public;
5. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;
6. If the label does not bear an ingredient statement or guaranteed analysis statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement or guaranteed analysis statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase; provided, that the commissioner may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

~~7. If any words, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter 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;~~

~~8. If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized safe practice, it shall be injurious to living man or other vertebrate animals or vegetation, to which it is applied, or to the person applying such pesticide, excepting pests and weeds; or~~

~~9. If in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.~~

"Pest" means any *deleterious* organism ~~that exists under circumstances that make it deleterious to man or the environment if it is: any that is: (i) any vertebrate animal other than man; or (ii) any invertebrate animal, such as any insect, other arthropod, nematode, or mollusk such as a slug or snail, but excluding any internal parasite of living man or other living animals; or (iii) any plant growing where not wanted, such as any moss, alga, liverwort, fungus, or other plant of any higher order, and any plant part such as a root; or (iv) any bacterium, virus, or other microorganisms, (except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs, as defined in provisions of by the Federal Food, Drug, and Cosmetic Act at 21 USC § 321(g)-(i)(1), and cosmetics, as defined in provisions of by the Federal Food, Drug, and Cosmetic Act at 21 USC § 321(i)). Any organism classified as endangered, threatened, or otherwise protected under federal or state laws shall not be deemed a pest for the purposes of this chapter.~~

"Pesticide" means: (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, ~~or other forms of plant or animal life or viruses or, bacterium, or viruses,~~ except viruses on or in living man or other animals, which the Commissioner shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance ~~which is intended to become an active ingredient in any substance defined in clause (i) and (ii).~~

"Pesticide business" means any person engaged in the business of: distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include: (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations ~~which~~*that* produce agricultural products, unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the Board.

"Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"Private applicator" means an ~~applicator~~*individual* who uses or supervises the use of any pesticide ~~which~~*that* is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without

compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

"Registered technician" means an individual who has satisfactorily completed Board requirements for certification to apply general use pesticides, and to apply restricted use pesticides while under the direct supervision of a certified commercial applicator. Registered technicians render services similar to those of a certified commercial applicator, but have not completed all the requirements to be eligible for certification as a commercial applicator.

"Registrant" means the person registering any pesticide pursuant to the provisions of this chapter.

~~"Repellent" means a substance, not a fumigant, under whatever name known, which may be toxic to insects and related pests, but is generally employed because of its capacity for preventing the entrance or attack of pests.~~

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the ~~United States~~ U.S. Environmental Protection Agency.

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating rodents or any other vertebrate animal ~~which~~ declared by the Commissioner ~~shall declare~~ to be a pest.

"Serious violation" means a violation of this chapter or regulation ~~promulgated by the Board where there is adopted hereunder that results in~~ a substantial probability ~~that~~ of death or serious physical harm to persons, serious harm to property, or serious harm to the environment ~~could have resulted from the violation unless the person or licensee did not or could not with the exercise of reasonable diligence know of the violation.~~

"State special use" or "pesticide classified for restricted use in the Commonwealth" means any pesticide that, ~~after special review,~~ is judged by the Board *after special review* to be so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment, (other than the pests it is intended to prevent, destroy, control, or mitigate,) that additional restrictions on its sale, purpose, use, or possession are required.

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person.

"Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

"Use" means the employment of a pesticide for the purposes of: (i) preventing, destroying, repelling, or mitigating any pest; or (ii) regulating plant growth, causing defoliation or desiccation of plants. The term "use" shall include ~~application or applying,~~ mixing, and shall include handling, or ~~transfer~~ transferring of a pesticide after the manufacturer's original seal is broken. ~~The term "use" shall also include, and any act with respect to a particular pesticide which is consistent with the label directions for that particular pesticide.~~

**Drafting Note: Deleted the definitions of "bond," "committee," "repellant," and "state special use" because these terms no longer used in the chapter. Deleted the definitions of "Commissioner" and "department" because those terms are defined in a title-wide provision. The definition of "Board" remains because that term will apply to the Pesticide Control Board in this chapter and not the Board of Agriculture and Consumer Services, as it does in the remainder of the title. Moved the definition of "misbranded" to proposed § 3.2-3938, Misbranded pesticides, to remain consistent with the misbranding provisions in similar chapters and to remove substantive legal provisions from the definitions section.**

§ 3.2-3901. *The Pesticide Control Board; purpose.*

*The Pesticide Control Board is established as a policy board in the executive branch of state government. The purpose of the Board is to carry out the provisions of this chapter.*

**Drafting Note: New section. Adopted model board language consistent with other chapters in proposed Title 3.2.**

~~§ 3.1-249.283.2-3902. Pesticide Control Board established; appointment of members; terms~~*Membership; terms; quorum; meetings.*

*A. The Board shall have a total of 12 members, nine of whom shall be nonlegislative citizen members, appointed by the Governor and approved by the General Assembly as follows: two members representing the agricultural or forestal production industries; two members representing the commercial sale or application of pesticides sector, at least one of whom shall be a structural commercial applicator; two representatives from the public health and environmental community; and three citizen members, one of whom the Governor shall appoint as chairman. The State Forester, the Dean of the College of Agriculture and Life Sciences of Virginia Polytechnic Institute and State University, and the Dean for the School of Agriculture at Virginia State University who shall serve as ex officio members of the Board with voting privileges. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.*

*B. Nonlegislative citizen members shall be appointed for a term of four years. Ex officio members of the Board shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.*

*C. A quorum shall consist of seven members.*

*D. The Board shall meet quarterly and at the call of the chairman.*

~~There is hereby established a Pesticide Control Board which shall consist of 12 members, to be appointed by the Governor, as follows: two members representing the agricultural or forestal production and related agricultural industries; two members representing the commercial sale or application of pesticides sector, at least one of whom shall be a structural commercial applicator; two representatives from the public health and environmental community; three citizen members, one of whom the Governor shall appoint as chairman; and the State Forester, the Dean of the College of Agriculture and Life Sciences of Virginia Polytechnic Institute and State University, and the Associate Vice President for Agriculture and Extension of Virginia State University who shall serve as ex officio members of the Board.~~

~~*B. Terms shall be for four years with initial appointments made on a staggered basis; one member from each of three categories shall receive an initial appointment for two years, one member in each category shall be initially appointed for three years, and the remaining member in each category shall be appointed for a four year term. Thereafter, all members shall be appointed for terms of four years each. Vacancies occurring, other than by expiration of a term, shall be filled by the Governor in the same manner as the original appointment for the remainder of the unexpired term.*~~

~~*C.-E. The Board shall adopt rules and procedures for the conduct of business.*~~

~~*D. The Board shall meet quarterly and other times upon the call of the chairman.*~~

~~*E. A quorum shall consist of seven members.*~~

~~*F. Members shall be reimbursed for reasonable expenses incurred and shall be compensated consistent with § 2.2-2813.*~~

**Drafting Note: Adopted model board language consistent with other chapters in proposed Title 3.2. Deleted obsolete language staggering the initial appointments to the Board.**

*§ 3.2-3903. Compensation; expenses.*

*Members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided from the Fund.*

**Drafting Note: New section. Adopted model board language consistent with other chapters in proposed Title 3.2.**

~~§ 3.1-249.293.2-3904.~~ Powers and duties of the Board.

The Board shall have the ~~power and duty to carry out the provisions of this chapter and is authorized to~~ following powers and duties:

1. Appoint ~~such~~ advisory committees as necessary to implement this chapter;
2. Contract for research projects and establish priorities;
3. Consult with the Department of Environmental Quality regarding compliance with the applicable waste management regulations for the safe and proper disposal of pesticide concentrates, used pesticide containers, and unused pesticides;
4. Consult with the Virginia Department of Labor and Industry regarding compliance with the applicable standards and regulations needed to ensure safe working conditions for pest control and agricultural workers;
5. Consult with the Department of Game and Inland Fisheries regarding standards for the protection of wildlife and fish and to further promote cooperation with respect to programs established by the Department of Game and Inland Fisheries for the protection of endangered or threatened species;
6. Inform the citizens of ~~Virginia as to~~ the desirability and availability of nonchemical and less toxic alternatives to chemical pesticides and the benefits of the safe and proper use of pest control products while promoting the use of integrated pest management techniques and encouraging the development of nonchemical and less toxic alternatives to chemical pesticides;
7. Require that pesticides ~~used in Virginia~~ are adequately tested and are safe for use under local conditions;
8. Require that individuals who sell, store, or apply pesticides commercially are adequately trained and observe appropriate safety practices;
9. Cooperate, receive grants-in-aid, and enter into agreements with any *federal, state, or local* agency ~~of the federal government, of this Commonwealth or political subdivision, or with an agency of another state, in order~~ to promote the purposes of this chapter; ~~and~~
10. Consult with the Department of Health regarding compliance with public health standards;
11. *Designate any pesticide as state special use or classified for restricted use; and*
12. *Restrict the distribution, possession, sale, or use of tributyltin compounds.*

**Drafting Note: Adopted model board language consistent with other chapters in proposed Title 3.2. Added the affirmative statement that the Board may designate any pesticide as state special use or classified for restricted use in proposed subdivision 11. Although not currently exercised, this power is referred to in the existing § 3.1-249.27. Added the affirmative statement that the Board may restrict the distribution, possession, sale, or use of tributyltin compounds in proposed subdivision 12 from existing § 3.1-249.62.**

~~§ 3.2-3905.~~ *Staffing.*

~~The Department shall provide staff support to the Board. All agencies of the Commonwealth shall provide assistance to the Board, upon request.~~

**Drafting Note: New section. Adopted model board language consistent with other chapters in proposed Title 3.2.**

~~§ 3.1-249.303.2-3906.~~ Board to adopt regulations.

~~In addition to the power to promulgate regulations provided for in other sections of this chapter, the~~The Board may ~~promulgate~~adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), including ~~but not limited to~~ the following:

1. Licensing of businesses that manufacture, sell, store, recommend for use, mix, or apply pesticides;

2. Registration of pesticides for manufacture, distribution, sale, storage, or use ~~in the Commonwealth;~~

3. Requiring reporting and record keeping related to licensing and registration;

4. Establishing training, testing and standards for certification of commercial applicators, registered technicians, and private applicators;

5. Revoking, suspending or denying licenses (business), registration (products), and certification or certificate (applicators or technicians);

6. Requiring licensees and certificate holders to inform the public when using pesticides in and around structures;

7. Establishing a fee structure for licensure, registration and certification to defray the costs of implementing this chapter;

8. Classifying or subclassifying certification or certificates to be issued under this chapter. Such classifications may include ~~but not be limited to~~ agricultural, forest, ornamental, aquatic, right-of-way or industrial, institutional, structural or health-related pest control;

9. *Restricting or prohibiting the sale or use and disposal of any pesticide or pesticide container or residuals that: (i) undesirably persists in the environment or increases due to biological amplification or unreasonable adverse effects on the environment; or (ii) because of toxicity or inordinate hazard to man, animal, bird or plant may be contrary to the public interest; and*

~~9. Such other~~10. *Other regulations as may be necessary or convenient to carry out the purposes of this chapter.*

**Drafting Note: In order to consolidate the Board's scope of regulatory power, proposed subdivision 9 is moved from existing § 3.1-249.31. The conjunction "or" has been included between the proposed clauses to clarify that regulations may restrict the use of a pesticide that meets either standard.**

~~§ 3.1-249.31. Restriction or prohibition of certain pesticides, pesticide containers and residuals.~~

~~After considering the available information on the benefits of a product and any associated risks, the Board is authorized to prescribe regulations to restrict or prohibit the sale or use and disposal of any pesticide or pesticide container or residuals which:~~

~~1. Undesirably persists in the environment or increases due to biological amplification or unreasonable adverse effects on the environment;~~

~~2. Because of toxicity or inordinate hazard to man, animal, bird or plant may be contrary to the public interest.~~

**Drafting Note: This section is moved to subdivision 9 of proposed § 3.2-3906, Board to adopt regulations.**

~~§ 3.1-249.33~~3.2-3907. *Delegation of authority; exclusive authority to regulate.*

~~The Board may delegate any authority vested in it under this chapter, except the promulgation of regulations, to the Commissioner or other employees of the Department, as the Commissioner may from time to time designate for such purpose. The Board shall have the exclusive authority to regulate pesticides in accordance with this chapter. The Board's authority to regulate pesticides under this chapter shall not be delegated to any county, city or town locality.~~

**Drafting Note: Technical changes.**

~~§ 3.1-249.68~~3.2-3908. *Protection of trade secrets and other information.*

A. In submitting data required by this chapter, the applicant may: (i) clearly mark any portions thereof ~~which in his opinion~~ *that he believes* are trade secrets or commercial or financial information; and (ii) submit such marked materials separately from other material ~~required to be submitted under this chapter.~~



~~B. Notwithstanding any other provision of this chapter, and subject to the limitations in subsections D and E of this section, the~~*The* Commissioner shall not make public information ~~which~~*that*, in his judgment, contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this chapter, *The Commissioner may reveal* information:

~~relating~~*1. Relating* to formulas of products acquired by authorization of this chapter may be revealed to any *consulting* federal, state, or local agency consulted and may be revealed at a public hearing or in findings of fact issued by the Commissioner or Board;

*2. To any person in connection with a public proceeding under law or regulation if the Commissioner finds the information relevant to a determination that a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment;*

*3. To contractors with the Commonwealth and employees of such contractors if the Commissioner finds disclosure necessary and requires, as a condition to the disclosure of information, that the person receiving it take any security precautions as provided for by regulation;*

*4. Concerning production, distribution, sale, or inventories in connection with a public proceeding to determine whether a pesticide or any ingredient of a pesticide causes unreasonable adverse effects on health or the environment if the Commissioner determines that disclosure is necessary and in the public interest; and*

*5. Concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products; any information concerning the effects of such pesticide on any organism or the behavior of such pesticide in the environment including data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil; and studies on persistence, translocation and fate in the environment, and metabolism. Information concerning: (i) manufacturing or quality control processes; (ii) the details of methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient; or (iii) the identity or percentage quantity of any deliberately added inert ingredient, shall not be revealed unless the Commissioner determines that disclosure is necessary to protect against an unreasonable risk of injury to health or the environment.*

~~C. If the Commissioner~~*1. The Commissioner shall notify the applicant or registrant in writing by certified mail if he proposes to release for inspection information which that* the applicant or registrant believes to be protected from disclosure under subsection B of this section, he shall notify the applicant or registrant, in writing, by certified mail *marked as confidential*. The Commissioner shall not ~~thereafter make available~~*release such information* for inspection ~~such data~~ until ~~thirty~~*30* days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an ~~appropriate~~ circuit court for a declaratory judgment as to whether such information is subject to protection ~~under subsection B~~.

~~D. 1. All information concerning the objectives, methodology, results, or significance of any test or experiment performed on or with a registered or previously registered pesticide or its separate ingredients, impurities, or degradation products, and any information concerning the effects of such pesticide on any organism or the behavior of such pesticide in the environment, including, but not limited to, data on safety to fish and wildlife, humans and other mammals, plants, animals, and soil, and studies on persistence, translocation and fate in the environment, and metabolism, shall be available for disclosure to the public. The use of such data for any registration purpose shall be governed by Article 2 (§ 3.1-249.35 et seq.) of this chapter. This subsection does not authorize the disclosure of any information that:~~

~~a. Discloses manufacturing or quality control process,~~

~~b. Discloses the details of any methods for testing, detecting, or measuring the quantity of any deliberately added inert ingredient of a pesticide, or~~

~~c. Discloses the identity or percentage quantity of any deliberately added inert ingredient of a pesticide, unless the Commissioner has first determined that disclosure is necessary to protect against an unreasonable risk of injury to health or the environment.~~

~~2. Information concerning production, distribution, sale, or inventories of a pesticide that is otherwise entitled to confidential treatment under subsection B of this section may be publicly disclosed in connection with a public proceeding to determine whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment, if the Commissioner determines that such disclosure is necessary in the public interest.~~

~~3. If the Commissioner proposes to disclose information described in subdivisions D 1 a, b, or c or subdivision D 2 of this section, the~~ *2. The Commissioner shall notify the submitter by certified mail the submitter of such information of the intent if he proposes to release such information under subdivision B 4 or B 5. The Commissioner shall not release such information, without the submitter's consent, until thirty30 days after receipt of the notice by the submitter has been furnished such notice. Where the* *The Commissioner may select alternative notice procedures and a shorter period of notice if he finds that disclosure of information described in subdivisions D 1 a, b, or c is necessary to avoid or lessenmitigate an imminent and substantial risk or injury to the public health, the Commissioner may set such shorter period of notice and such method of notice as the Commissioner finds appropriate. During such period the data submitter may institute an action in an appropriate circuit court to enjoin or limit the proposed disclosure. The court shall give expedited consideration to any such action. The court may enjoin disclosure, or limit the disclosure, or limit the parties to whom disclosure shall be made, to the extent that: (i) the proposed disclosure of information under subdivision B 4 is not required to protect against an unreasonable risk of injury to health or the environment; or (ii) the public interest in the disclosure of information in the public proceeding under subdivision B 5 does not outweigh the interests in preserving the confidentiality of the information.*

~~a. In the case of information described in subdivision D 1 a, b, or c, the proposed disclosure is not required to protect against an unreasonable risk of injury to health or the environment; or~~

~~b. In the case of information described in subdivision D 2 of this section, the public interest in availability of the information in the public proceeding does not outweigh the interests in preserving the confidentiality of the information.~~

~~E. Information otherwise protected from disclosure to the public under subsection B of this section may be disclosed to contractors with the Commonwealth and employees of such contractors if, in the opinion of the Commissioner, such disclosure is necessary for the satisfactory performance by the contractor of a contract with the Commonwealth for the performance of work in connection with this chapter and under such conditions as the Commissioner may specify. The Commissioner shall require as a condition to the disclosure of information under this section that the person receiving it take such security precautions respecting the information as the Board shall by regulation prescribe.~~

~~FD. The Commissioner shall not knowingly disclose information submitted by an applicant or registrant under this chapter to any employee or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in addition to the United States or to any other person who intends to deliver such data to any such foreign or multinational business or entity unless the applicant or registrant has consented to such disclosure. The Commissioner shall require an affirmation from any person who intends to inspect data that such person does not seek access to the data for purposes of delivering it or offering it for sale to any such business or entity or its agents or employees and~~

will not purposefully deliver or negligently cause the data to be delivered to such business or entity or its agents or employees.

~~Notwithstanding any other provision of this section the Commissioner may disclose information to any person in connection with a public proceeding under law or regulation, subject to restrictions on the availability of information contained elsewhere in this chapter, which information is relevant to the determination by the Commissioner with respect to whether a pesticide, or any ingredient of a pesticide, causes unreasonable adverse effects on health or the environment.~~

E. The Commissioner shall maintain records of the names of persons to whom data are disclosed under this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and affiliation of such persons.

~~GF.~~ Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired pursuant to this chapter shall be guilty of a Class 6 felony.

**Drafting Note: This section has been reorganized for clarity. Existing subsection D and its subdivisions have been moved to proposed subsection B 5; existing subsection E has been moved to proposed subsection B 3.**

*§ 3.2-3909. Reports of pesticide accidents and incidents.*

*The Board shall by regulation require the reporting of significant pesticide accidents or incidents posing a threat to humans or the environment to appropriate governmental agencies. To the extent feasible, accident reporting requirements shall be consistent with similar reports required under other laws.*

**Drafting Note: New section. This text is moved from existing § 3.1-249.56 because it deals with a report from a regulant to the Commissioner. The remainder of existing § 3.1-249.56 details a statement filed by third parties with the Commissioner. While that section is currently located in existing Article 3, "Pesticide Application and Certification," it is of general application and should be included in proposed Article 1, "General Provisions."**

~~§ 3.1-249.323.2-3910.~~ Complaints to Commissioner or the Board.

Any person may register a written complaint with the Commissioner or the Board relating to the sale, use, storage, handling, or disposal of any pesticide ~~and the~~. The Commissioner or the Board shall institute an investigation of the alleged damage caused by such pesticide. The Commissioner may seek the advice of other state or federal agencies or institutions. When it is determined that a violation has occurred, the Commissioner shall proceed as provided in ~~§ 3.1-249.71 or § 3.1-249.733.2-3946.~~

**Drafting Note: Technical changes**

~~§ 3.1-249.563.2-3911. Reports of Damages resulting from pesticide accidents, incidents or loss use or application.~~

~~A. The Board shall by regulation require the reporting of significant pesticide accidents or incidents which constitute a threat to humans or the environment to appropriate governmental agencies. To the extent feasible, the accident reporting requirements shall be consistent with similar reports required under other laws.~~

~~B. Any person claiming damages from the use or application of any pesticide classified for restricted use shall file with the Commissioner a written statement claiming that he has been damaged, within sixty60 days after the date that damages occurred. If and, if a growing crop is alleged to have been damaged, the statement must be filed prior to the time that twenty five25 percent of the crop has been harvested. Such statement shall contain, but shall not be limited to: (i) the name of the person allegedly responsible for the application of such pesticide; (ii) the name of the owner or lessee of the property on whichwhere the crop is grown and for whichthe damage is alleged to have occurred; and (iii) the date on whichof the alleged damage occurred. The Commissioner shall, uponUpon receipt of suchthe statement, the Commissioner shall notify the certificate holder and the owner or lessee of the property or other person who may be charged~~

with the responsibility of the damages claimed, and furnish copies of such statements ~~the statement as may be requested.~~

B. The Commissioner shall inspect damages where possible and *make* his findings ~~shall be made~~ available to the parties.

~~The filing of such statement or the failure to file such statement need not be alleged in any complaint which might be filed in a court of law, and the failure to file the statement shall not be considered any bar to the maintenance of any criminal or civil action.~~

~~Where damage is alleged to have occurred, the~~ The claimant shall permit the Commissioner, the certificate holder, and his representatives, ~~such as bondsman or insurer,~~ to observe within reasonable hours any plants, animals, or other property alleged to have been damaged ~~in order that such damage may be examined.~~ Failure of the claimant to permit such observation and examination of the damaged property shall relieve the Commissioner of responsibility to take further action with reference to that claim.

C. *The filing of a statement or the failure to file a statement need not be alleged in any complaint filed in a court of law. The failure to file the statement shall not be considered a bar to the maintenance of any criminal or civil action.*

**Drafting Note: Existing subsection A has been moved to proposed § 3.2-3909, Reports of pesticide accidents and incidents. This section is currently located in existing Article 3, "Pesticide Application and Certification," but it is of general application and would be properly included in proposed Article 1, "General Provisions."**

~~§ 3.1-249.343.2-3912. Disposition of fees and penalties collected~~ *Pesticide Control Fund established.*

~~All fees and penalties collected under this chapter shall be paid into a~~ *There is hereby created in the state treasury a special nonreverting fund in the state treasury to the credit of the Department to be used in carrying out the provisions of this chapter to be known as the Pesticide Control Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used by the Department solely for carrying out the purposes of this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.*

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now interest earned on moneys in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3.1-249.753.2-3913. Medicinal~~ *Exclusion of medicinal and toilet preparations, drugs or chemicals.*

This chapter shall not apply to any preparation, drug, or chemical intended ~~to be used or sold~~ solely for medicinal use or for toilet purposes.

**Drafting Note: Moved from existing Article 5, "Violations, Penalties and Proceedings in Case of Violations" to proposed Article 1, "General Provisions," to highlight exclusions.**

## Article 2.

### ~~Registration~~ *Licensing and Registration.*

~~§ 3.1-249.353.2-3914.~~ *Registration required.*

Every pesticide ~~which is~~ manufactured, distributed, sold, ~~or~~ offered for sale, used, or offered for use ~~within the Commonwealth~~ shall be registered in accordance with regulations adopted by the Board. ~~Such registration~~ *Registration* shall lapse unless the registrant pays an annual fee, ~~the amount of which shall be set forth in regulations adopted by the Board.~~

**Drafting Note: Technical changes.**

§ ~~3.1-249.36~~3.2-3915. Products registered under Federal Act.

The Commissioner may register and permit the sale and use of any pesticide ~~which has been registered under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended.~~ *Such products* shall be subject to the registration fees as established by the Board, ~~and to all other provisions of this chapter.~~

**Drafting Note: Technical changes.**

§ ~~3.1-249.37~~3.2-3916. Products registered as single pesticide.

Products ~~which~~ *that*: (i) have the same formula, ~~and~~; (ii) are manufactured by the same person, ~~the~~; (iii) *include* labelings ~~of which contain~~ with the same claims,; and ~~which~~ (iv) bear designations identifying the products as the same pesticide, may be registered as a single pesticide without an additional fee.

**Drafting Note: Technical changes.**

§ ~~3.1-249.38~~3.2-3917. Change in labeling or formulas without reregistration.

~~Within the discretion of the~~ *The* Commissioner, ~~or his authorized representative, a may allow a~~ change in the labeling or formulas of a pesticide ~~may be made within the current period of registration, within a registration period~~ without requiring a reregistration ~~of the product provided that such changes do not lower the efficacy of the product.~~

**Drafting Note: The prohibition on changes that would lower the efficacy of the product is moved from subdivision A1 of existing § 3.1-249.63.**

§ ~~3.1-249.39~~3.2-3918. Statement to be filed by registrant.

A. The registrant shall file *a statement* with the Commissioner, ~~a statement~~ including:

1. The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;
2. The name of the pesticide;
3. A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it including directions for use;
4. If requested, a full description of the tests made and the results thereof upon which the claims are based; and
5. ~~Such other~~ *Other* information ~~which may include, but is not limited to,~~ *requested by the Board such as* product efficacy, all known health and environmental impacts, and known incidents of human or wildlife illnesses, ~~as determined by the Board.~~

B. In the case of renewal of registration, a statement shall be required only with respect to information ~~which is~~ different from that furnished when the pesticide was *last* registered ~~or last reregistered or is~~ in response to additional requirements imposed by the Board.

**Drafting Note: Technical changes.**

§ ~~3.1-249.40~~3.2-3919. Each brand or grade to be registered; fees.

~~The registrant, before~~ *Before* manufacturing, distributing, selling, offering for sale, or offering for use any pesticide ~~in the Commonwealth,~~ *the registrant* shall register each brand or grade of ~~such a~~ pesticide with the Commissioner annually upon forms furnished by the Department, and shall pay to the Department an annual registration fee for each brand or grade to be offered for sale or use ~~in the Commonwealth.~~ The Commissioner shall issue a registration entitling the registrant to manufacture, distribute, or sell all registered brands ~~in the Commonwealth~~ until the expiration of the registration.

**Drafting Note: Technical changes.**

§ ~~3.1-249.41~~3.2-3920. Submission of complete formula.

The Commissioner, ~~whenever he deems it necessary in the administration of this chapter,~~ may require the submission of the complete formula of any pesticide *at any time*.

**Drafting Note: Technical changes.**

~~§ 3.1-249.423.2-3921. When Commissioner to register pesticide~~*Requirements for registration.*

~~If it appears to the Commissioner that~~*The Commissioner shall register a pesticide if: (i) he finds the composition of the pesticide is such as to warrant the warrants any proposed claims for it; and if(ii) the pesticide and, its labeling, and any other material required to be submitted material comply with the requirements of this chapter, the Commissioner shall register the pesticide. If either condition is not met, the Commissioner shall notify the registrant of the manner in which the pesticide, labeling, or other material fails to comply with the requirements for registration so as to afford the registrant an opportunity to make the necessary correction.*

**Drafting Note: The text in the last sentence has been added from existing § 3.1-249.43.**

~~§ 3.1-249.43. When Commissioner to notify registrant and afford opportunity to comply with chapter.~~

~~If it does not appear to the Commissioner that the pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with the provisions of this chapter, he shall notify the registrant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with this chapter so as to afford the registrant an opportunity to make the necessary corrections.~~

**Drafting Note: Deleted section and moved to the last sentence in proposed § 3.2-3921, Requirements for registration.**

~~§ 3.1-249.443.2-3922. When Commissioner may refuse or cancel registration.~~

~~The Commissioner may refuse to register, or may cancel the registration of, any brand of pesticide as provided in this chapter, upon satisfactory proof that the registrant has committed any of the acts prohibited by subsection A of § 3.1-249.633.2-3939 or any regulation promulgatedadopted by the Board for the enforcement of this chapter. No registration shall be revoked or refused until the registrant shall have been given a hearing by the Commissioner.~~

**Drafting Note: Technical changes.**

~~§ 3.1-249.453.2-3923. When Board may refuse or cancel registration.~~

~~The Board may deny or cancel the registration of a pesticide if it finds, after a public hearing, that:~~

- ~~1. Considering the available information on the benefits of a product and any associated risks, use of the pesticide has demonstrated unreasonable adverse effects on the environment; or~~
- ~~2. A false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature; or~~
- ~~3. The registrant has not complied or the pesticide does notfails to comply with a requirement of this chapter or a regulation adopted under this chapterhereunder.~~

**Drafting Note: Technical changes.**

~~§ 3.1-249.463.2-3924. Annual business license required.~~

~~A. No pesticide business may sell, distribute, or store any pesticide in Virginia without a valid pesticide business license issued pursuant to regulations promulgatedadopted by the Board. The Board shall promulgateadopt regulations which exempt-exempting retailers of limited quantities of nonrestricted use pesticides including grocery stores, convenience stores, drug stores, veterinarians, and other businesses who sell pesticides primarily for limited household use.~~

~~B. No person or business may apply or recommend for use eommercially in Virginia any pesticide commercially without a valid pesticide business license issued pursuant to regulations~~

~~promulgated by the Board. Such business shall employ and the employment of a certified commercial applicator who is responsible for: (i) the safe application of the pesticides; and (ii) providing recommendations for the use of pesticides.~~

~~C. An annual business license and fee shall be required for each location or outlet that sells, distributes, stores, applies, or recommends for use any pesticide in Virginia unless otherwise exempt pursuant to the provisions of this section.~~

~~D. An application for a pesticide business license shall be submitted in such manner and form as prescribed by the Board.~~

**Drafting Note: Existing subsection D is deleted as unnecessary since subsection A already states that the business license is "issued pursuant to regulations promulgated by the Board." Information regarding fees has been consolidated in proposed § 3.2-3925, Fees.**

~~§ 3.1-249.473.2-3925. Fees.~~

~~A. A nonrefundable annual licensing fee shall be required with each application for a pesticide business license.~~

~~An application for a pesticide business license shall be accompanied by a nonrefundable annual licensing fee established by the Board.~~

~~B. If a person or business fails to apply for renewal of a pesticide business license prior to expiration, the applicant, as a condition of renewal, shall pay the licensing fee and a late fee of twenty20 percent of the licensing fee as a condition of renewal.~~

**Drafting Note: Technical changes.**

~~§ 3.1-249.483.2-3926. Records.~~

~~A. As a condition of obtaining or renewing a license, each pesticide business required to be licensed shall maintain such records as required by the Board.~~

~~B. The Board may require the submission of records from a licensed pesticide business to submit records to the Board. Failure to submit a record requested by the Board is a ground for license revocation of a license.~~

**Drafting Note: Technical changes.**

~~§ 3.1-249.493.2-3927. Evidence of financial responsibility required of licensed pesticide business.~~

~~A. The Board shall not issue a pesticide business license until the business has furnished evidence of financial responsibility, consisting of a liability insurance policy from a person authorized to do business in Virginia or a certification thereof, protecting the Commonwealth that protects persons who may suffer legal damages as a result of the use of any pesticide by the applicant. Such financial Financial responsibility need not apply to damages or injury to agricultural crops, plants, or property being worked upon by the applicant. The Board, by regulation, may establish and prescribe the conditions under which other means of meeting the financial responsibility herein of the applicant may be met for financial responsibility.~~

~~B. The amount of such financial responsibility as provided for in this section shall be established by the Board, but shall be at a minimum, of \$100,000 for property damage, and; \$100,000 for personal injury to or death of one person; and \$300,000 per occurrence. The Board may accept a liability insurance policy containing a deductible clause in an amount which is considered usual and customary in the industry, with the provision that the insurer shall pay all claims in full, and that the amount of the deductible shall be recoverable only from the insured. The Board may promulgateadopt regulations governing the provision of additional evidence of financial responsibility based upon annual gross revenue of the applicant or his employer's business and an assessment of the risks of the applicant or his employer's business to persons, property, and the environment. Such financial responsibility shall be maintained at not less than such amount at all times during the licensed period. The applicant shall notify the Board shall be notified ten10 days prior to any reduction at the request of the applicant or cancellation of such financial responsibility by the insurer.~~

**Drafting Note: Technical changes.**

§ ~~3.1-249.503.2-3928~~. Licensing of pesticide bulk storage facilities.

The Board shall establish, by regulation, specific requirements for the licensing of a pesticide business that mixes, stores, or otherwise handles pesticides in bulk quantities. For *the* purposes of this section, bulk quantity shall not include containers approved for transportation in interstate commerce by the ~~United States~~ U.S. Department of Transportation.

**Drafting Note: Technical changes.**

Article 3.

Pesticide Application and Certification.

§ ~~3.1-249.513.2-3929~~. Restricted use pesticides prohibited; exceptions; training required.

A. No person shall use any pesticide classified for restricted use unless that person: (i) has first complied with the certification requirements of the Board; (ii) is ~~engaged in the under the direct supervision of a certified applicator on-site and~~ training necessary for certification as a commercial applicator or registered technician, ~~while under the direct on-site supervision of a certified applicator;~~ or (iii) is ~~engaged in the production of~~ producing an agricultural commodity while under the direct supervision of a private applicator on property owned or leased by that private applicator.

B. The Board may specify by regulation the amount of training, ~~which may include a period of service, and service~~ required to qualify a person for each classification or subclassification of certification as a commercial applicator or registered technician.

**Drafting Note: Technical changes.**

§ ~~3.1-249.523.2-3930~~. Application and certification of commercial applicators.

A. No person shall, ~~in exchange for compensation of any kind other than the trading of personal services between producers of agricultural commodities use;~~ (except under supervised conditions of training for certification,) or supervise the use of any pesticide *in exchange for compensation of any kind other than the trading of personal services between producers of agricultural commodities* without first obtaining certification as either a commercial applicator or registered technician in accordance with regulations ~~promulgated~~ adopted by the Board. Application for a commercial applicator's or registered technician's certificate shall be made in writing to the Commissioner. Each application for a certificate shall contain: (i) information regarding the applicant's qualifications and proposed operations; (ii) the classification or classifications the applicant is applying for; ~~and shall include the following: (i);~~ (iii) the full name of the applicant or, if the applicant is a member of a firm or partnership, the names of the principal officers of the association, corporation, or group; ~~(ii)~~ (iv) the principal business address of the applicant in the Commonwealth and elsewhere; and ~~(iii)~~ (v) any other information required by the Commissioner.

B. The Commissioner shall not issue a commercial applicator's or registered technician's certificate until the individual who uses or supervises the use of any pesticide is certified by: (i) presenting proof of completion of a training course approved by the Board and appropriate to the desired classification; and (ii) passing a written examination.

C. Each commercial applicator and registered technician shall be required to renew his certification biennially ~~under the classification or subclassification for which such applicator is certified or technician is registered,~~ subject to payment of the required fee and presentation of proof of completion of a Board-approved recertification course. ~~However, reexamination~~ Reexamination or special examination may be required by the Board of any person: (i) whose certification has been suspended, revoked, or modified pursuant to subsection ~~CB~~ of § ~~3.1-249.63,3.2-3940~~; (ii) if significant technological developments have occurred requiring additional knowledge ~~related to the classifications or subclassifications for which the~~



~~person has been certified or registered;~~ (iii) when required by additional standards established by the ~~United States~~ U.S. Environmental Protection Agency; (iv) when applying for a different classification of certification, ~~including upgrading from technician to applicator status;~~ or (v) when required by regulations of the Board. In the event that reexamination is required, the fee shall be no greater than that imposed for initial certification.

~~D. If the Commissioner~~ *The Commissioner shall issue a certificate for classifications for which the applicant is qualified if he finds the applicant meets the qualifications established by the Board requirements to apply pesticides in any of the classifications he has applied for;* and, if the applicant is applying for a certificate to engage in aerial application of such pesticides and, has met all of the requirements of the Federal Aviation Agency, the Department of Aviation of the Commonwealth, and any other applicable federal or state laws or regulations to operate the equipment described in the application, ~~the Commissioner shall issue a certificate for classifications for which the applicant is qualified.~~ The Commissioner may limit the certification of the applicant to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified. If a certificate is not issued as applied for, the Commissioner shall, ~~within thirty days,~~ inform the applicant in writing of the reasons ~~therefor~~ *within 30 days*. Copies of such action shall be reported to the Board.

**Drafting Note: Technical changes.**

§ ~~3.1 249.533.2-3931.~~ Agencies or persons exempt or partially exempt.

A. All state agencies, municipal corporations, or other governmental agencies shall be *exempt from any certification fees prescribed by this article, but remain* subject to the provisions of this article and regulations adopted ~~thereunder~~ *hereunder* concerning the application of pesticides. ~~These agencies shall be exempt from any certification fees prescribed by this article.~~

B. Individuals, employees, or representatives ~~certified pursuant to this section~~ *of such governmental agencies* shall be certified as commercial applicators or registered technicians for the use of pesticides covered by the applicant's certification. The certification ~~of such individual~~ shall be valid only when applying or supervising application of pesticides used by such governmental agencies.

C. ~~The following persons shall be exempt from the provisions of this article, except those contained in subsection A of § 3.1 249.56, shall not apply to:~~ (i) persons conducting laboratory research involving restricted use pesticides; (ii) doctors of medicine or doctors of veterinary medicine applying pesticides as drugs or medication, or to control pests in corpses during the normal course of their practice; (iii) providers of janitorial, cleaning, or sanitizing services if the providers use no pesticides other than nonrestricted use sanitizers, disinfectants, and germicides; (iv) persons who apply paints containing pesticides, provided that the pesticides in the paints are not restricted use pesticides; (v) classes of persons, specified by ~~regulations of the Board,~~ *who, regulation who can use or supervise the use of pesticides with minimal risk to the public health and safety* by virtue of their experience and knowledge regarding the safe use of pesticides, ~~can use or supervise the use of pesticides with minimal risk to the public health and safety;~~ and (vi) classes of persons, specified by ~~regulations of the Board,~~ *regulation* whose use or supervision of the use of pesticides, ~~by virtue of the nature of the pesticides used or method of application of the pesticides,~~ can be accomplished with minimal risk to the public health and safety *by virtue of the nature of the pesticides used or method of application of the pesticides.*

D. A painter who applies restricted-use marine ~~antifoulant~~ *antifoulant* paint only under the direct, on-site supervision of a commercial applicator, is not required to be a commercial applicator or a registered technician. ~~For the purposes of this subsection,~~ *provided that* one commercial applicator ~~shall~~ *may not* provide on-site supervision for ~~no~~ more than eight paint applicators.

E. Neither the provisions of ~~subsection A of § 3.1 249.52 of this chapter~~ nor regulations adopted ~~pursuant to this chapter~~ *hereunder* shall require the certification of any person as a

~~commercial applicator who, as part of his job duties only on property owned or leased by his employer, uses or supervises the use of any pesticide that is not a restricted use pesticide. However, this only on property owned or leased by his employer as part of his job duties. This exemption does~~shall not apply to any person who: (i) ~~any person who~~ uses or supervises the use of any pesticide on any area open to the general public at the following establishments: educational institutions, health care facilities, day-care facilities, ~~and~~or convalescent facilities; (ii) ~~any person who~~ uses or supervises the use of any pesticide within any area where open food is stored, processed, or sold at any establishment; (iii) ~~any person who~~ uses or supervises the use of any pesticide on any recreational land over five acres in size; and (iv) ~~any person~~ is otherwise specifically required by this article to be certified as a commercial applicator.

**Drafting Note: The citation to subsection A of § 3.1-249.56 is no longer necessary since that section has moved to proposed Article 1, General Provisions, and applies to all articles.**

§ ~~3.1-249.54~~3.2-3932. Application and certification of private applicators.

A. ~~No person, other than one identified in clause (iii) of § 3.1-249.51, shall~~*It is unlawful to use or supervise the use of any pesticide classified for restricted use on any property to which he has the right of possession or use, or on the property of another while acting as a producer of agricultural commodities, unless he the applicator:* (i) has first obtained certification from the Commissioner as a private applicator ~~in accordance with regulations promulgated by the Board~~ or; (ii) is exempt or excepted from the requirement to be certified; *or (iii) is producing an agricultural commodity while under the direct supervision of a private applicator on property owned or leased by that private applicator.*

B. An applicator shall be required to renew his certification biennially under the classification or subclassification for which such applicator is certified.

~~Reexamination~~*The Commissioner shall require reexamination or special examination is required by the Commissioner* of any applicator *if:* (i) ~~whose certification has been suspended, revoked, or modified pursuant to § 3.1-249.63 or 3.2-3940;~~ (ii) ~~if significant technological developments have occurred requiring additional knowledge related to the classifications or subclassifications for which the applicator has applied or;~~ (iii) ~~when required by additional standards established by the United States U.S. Environmental Protection Agency; or (iv) when required by regulations of the Board. To obtain recertification, the applicator shall furnish satisfactory evidence of completion of educational courses, programs, or seminars approved by the Board relating to the applicator's certification.~~

~~BC.~~ The Commissioner shall, *inform the applicant in writing of his decision within thirty 30 days, inform the applicant in writing of his decision.*

**Drafting Note: Technical changes.**

§ ~~3.1-249.55~~3.2-3933. Certificate renewals; late fee for delinquent renewals; reexamination.

A. If the application for renewal of any certificate provided for in this article is not filed prior to a date established by the Board, *then* a late fee of ~~twenty~~20 percent shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal shall be issued. If the certificate is not renewed within ~~sixty~~60 days following the expiration of the certificate, then ~~such certificate holder shall be required to~~*the applicant must* take another examination.

B. The Board may provide, by regulation, for the biennial payment of commercial applicator and registered technician certificate renewal fees.

**Drafting Note: Technical changes.**

§ ~~3.1-249.57~~3.2-3934. Reciprocal agreement.

The Commissioner may issue a certificate on a reciprocal basis ~~with other states or federal agencies without examination in accordance with the provisions of this chapter or regulations,~~ to a nonresident who is licensed or certified in another state or by a federal agency substantially in accordance with the provisions of this chapter. Such a certificate may be

suspended or revoked ~~in the same manner and on the same grounds~~ as other certifications pursuant to the provisions of this article *issued hereunder*, and may be suspended or revoked if the nonresident's base state or federal certification is suspended or revoked.

**Drafting Note: Technical changes.**

#### Article 4.

##### Marine Antifoulant Paints.

~~§ 3-1-249.5~~3.2-3935. Definitions.

As used in this article, unless the context requires otherwise:

"Acceptable release rate" means a measured release rate not to exceed 4.0 micrograms per square centimeter per day at steady state conditions as determined in accordance with a U.S. Environmental Protection Agency (EPA) testing procedure as outlined in the EPA data call-in notice of July 29, 1986, on tributyltin in antifoulant paints under the Federal Insecticide, Fungicide and Rodenticide Act, (7 U.S.C. § 136 et seq.) ~~if; or a lower release rate is determined by the Board to beif adopted by the Board as necessary to protect health or the environment; such rate, if duly adopted by regulatory action of the Board, shall be the acceptable release rate as herein defined.~~

~~"Board" means the Pesticide Control Board.~~

"Commercial boat yard" means any facility ~~which~~*that* engages for hire in the construction, storage, maintenance, repair or refurbishing of vessels (other than seaplanes) or any licensed independent marine maintenance contractor who engages in such activities.

"Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride or oxide.

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

**Drafting Note: The definition of "Board" appears in Article 1, General provisions, and applies to the entire chapter.**

~~§ 3-1-249.6~~3.2-3936. Sale and application of tributyltin compounds.

A. Except as otherwise provided in this section, ~~a person may not~~ *it is unlawful to* distribute, possess, sell or offer for sale, apply or offer for use or application any marine antifoulant paint containing tributyltin compounds. Authorized personnel of the Department of Game and Inland Fisheries, Virginia Marine Resources Commission, or the Department ~~of Agriculture and Consumer Services~~ may seize any antifoulant paint held in violation of this article and any seized substances shall be considered forfeited.

B. A person may distribute or sell a marine antifoulant paint containing tributyltin with an acceptable release rate to the owner or agent of a commercial boat yard. The owner or agent of a commercial boat yard may possess ~~and, apply, or purchase for application,~~ an antifoulant paint containing tributyltin with an acceptable release rate; ~~however, such.~~ *Such* paint may be applied only within a commercial boat yard and only to vessels ~~which~~*that* exceed ~~twenty-five~~25 meters (82.02 feet) in length or ~~which~~*that* have aluminum hulls.

C. A person may distribute, sell or apply a marine antifoulant paint containing tributyltin ~~having~~*with* an acceptable release rate if: (i) the paint is distributed or sold in a spray can in a quantity of ~~sixteen~~16 ounces avoirdupois *weight* or less; and (ii) is commonly referred to as outboard or lower unit paint.

**Drafting Note: Technical changes.**

~~§ 3-1-249.6~~3.2-3937. Educational programs.

~~Through cooperative programs the~~ The State Water Control Board, the Board of Game and Inland Fisheries, the Virginia Marine Resources Commission, the Virginia Institute of Marine Science, and the Department of Agriculture and Consumer Services shall begin ~~immediately to~~ *through cooperative programs* develop and implement a program ~~designed to~~ inform interstate and intrastate paint manufacturers and distributors, vessel owners, and commercial boat yards ~~in the Commonwealth~~ of the properties of tributyltin in marine antifoulant paints and the law to restrict its use.

**Drafting Note: Technical changes.**

~~§ 3.1-249.62. Emergency actions.~~

~~Nothing in this article is intended to prevent or discourage the Board from further restricting the distribution, possession, sale or use of tributyltin compounds.~~

**Drafting Note: Deleted and moved section to subdivision 12 of proposed § 3.2-3904, Powers and duties of the Board.**

Article 5.

Violations, Penalties, and Proceedings in Case of Violations.

§ 3.2-3938. *Misbranded pesticides.*

*Any pesticide or device is misbranded if:*

- 1. Its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients that is false or misleading in any particular;*
- 2. It is an imitation of or is offered for sale under the name of another pesticide;*
- 3. Its labeling bears any reference to registration under this chapter;*
- 4. The accompanying labeling does not contain directions for use that are adequate for the protection of the public;*
- 5. The label does not contain a warning or caution statement that may be necessary and, if complied with, adequate to prevent injury to man, other vertebrate animals, vegetation, and useful invertebrate animals;*
- 6. The label does not bear an ingredient statement or guaranteed analysis statement on the immediate container of the retail package (and on the outside container or wrapper if such statement on the immediate container cannot be clearly read) that is presented or displayed under customary conditions of purchase. The Commissioner may permit the ingredient statement to appear prominently on some other part of the container if the size or form of the container makes it impracticable to place it on the part of the retail package that is presented or displayed under customary conditions of purchase;*
- 7. Any words, statement, or other information required under this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter 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;*
- 8. In the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized safe practice, it shall be injurious to living man or other vertebrate animals or vegetation, to which it is applied, or to the person applying such pesticide, excepting pests and weeds; or*
- 9. In the case of a plant regulator, defoliant, or desiccant, when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.*

**Drafting Note: New section. Moved this text from existing § 3.1-249.27 because it contains substantive legal provisions.**

~~§ 3.1-249.633.2-3939.~~ Violations generally.

A. It ~~shall be~~ is unlawful for any person to manufacture, distribute, sell ~~or~~, offer for sale, use or offer for use:

1. Any pesticide ~~which is not~~ registered pursuant to the provisions of ~~Article 2 (§ 3.1-249.35 et seq.)~~ of this chapter, ~~or any~~; any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration; ~~or any pesticide~~ if the composition of a pesticide differs from its composition as represented in connection with its registration. ~~In the discretion of the Commissioner, a change in the labeling or formula of a pesticide may be made, within a registration period, without requiring reregistration of the product; however, changes at no time are permissible if they lower the efficacy of the product.~~

2. Any pesticide sold, offered for sale, or offered for use ~~which~~that is not in the registrant's or the manufacturer's unbroken container, and ~~to which there is not~~does not have an affixed ~~a~~ and visible label visible to the public bearing the following information:

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

b. The name, brand, or trademark under which said pesticide is sold; and

c. The net weight or measure of the content, subject to ~~such~~reasonable variations as ~~permitted~~ by the Commissioner ~~may permit~~.

3. Any pesticide ~~which contains~~containing any substance ~~or substances~~ in quantities highly toxic to man, unless the label ~~shall bear, in addition to any other matter required by this chapter~~bears:

a. A skull and crossbones;

b. The word "poison" *shown* prominently; in red; on a background of distinctly contrasting color; and

c. A statement of an antidote for the pesticide.

4. The pesticides commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate, unless they have been distinctly colored ~~or discolored~~ as provided by regulations issued ~~in accordance with this chapter, or any hereunder.~~ Any other white powder pesticide ~~which~~that the Commissioner; *requires to be distinctly colored* after an investigation of and after a public hearing on the necessity for such action ~~for the protection of the public health and the feasibility of such coloration or discoloration,~~ shall, by regulation, ~~require to be distinctly colored or discolored, unless it has been so colored or discolored.~~ The Commissioner may exempt any pesticide to the extent that it is intended for a particular use ~~or uses from the coloring or discoloring required or authorized by this subsection~~ if he determines that ~~such distinctive coloring or discoloring for such use or uses is not necessary~~is unnecessary for the protection of the public health.

5. Any pesticide ~~which~~that is adulterated or misbranded, or any device ~~which~~that is misbranded.

6. Any pesticide that is the subject of a stop sale, use, or removal order as provided for in § 3.1-249.773.2-3944 until such time as the provisions of that section have been met.

B. ~~In addition to imposing civil penalties or referring certain violations for criminal prosecution the Board may, after providing an opportunity for a hearing, deny, suspend, modify, or revoke a license issued under this chapter if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation:~~

1. ~~Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;~~

~~2. Made a pesticide recommendation inconsistent with the label registered pursuant to this chapter, provided that such deviation may include provisions set forth in Section 2 (ee) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.);~~

~~3. Was guilty of negligence, incompetence or misconduct in acting as a pesticide business;~~

~~4. Made false or fraudulent records, invoices or reports;~~

~~5. Failed or refused to submit records required by the Board;~~

~~6. Used fraud or misrepresentation, or presented false information in making application for a license or renewal of a license, or in selling or offering to sell pesticides;~~

~~7. Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulation;~~

~~8. Provided or made available any restricted use pesticide to any person not certified, under the provisions of Article 3 (§ 3.1 249.51 et seq.) of this chapter, to apply such product;~~

~~9. Failed to notify the Department of a reportable pesticide spill, accident or incident;~~

~~10. Acted in any way as a pesticide business in Virginia without first obtaining the pesticide business license required in § 3.1 249.46;~~

~~11. Failed to pay any civil penalty assessed by the Board.~~

~~C. The Board may, after opportunity for a hearing, deny, suspend, revoke or modify the provision of any certificate issued under Article 3 of this chapter, if it finds that the applicant or the holder of a certificate:~~

~~1. Has committed any of the following acts, each of which is declared to be a violation of the provisions of Article 3 of this chapter:~~

~~a. Made claims through any media intentionally misrepresenting the effects on the environment likely to result from the application of a pesticide;~~

~~b. Used or caused to be used any pesticide inconsistent with the label registered by the United States Environmental Protection Agency, a Virginia state registered use or other uses restricted by the Board;~~

~~c. Made application of any pesticide in a negligent manner;~~

~~d. Neglected or, after notice, refused to comply with the provisions of this article, the regulations adopted hereunder or of any lawful order of the Commissioner or the Board;~~

~~e. Refused or neglected (i) to keep and maintain records or reports required pursuant to the provisions of Article 3 of this chapter or regulations or (ii) to furnish or permit access for copying by the Commissioner any such records or reports;~~

~~f. Made false or fraudulent records, invoices or reports relative to the use or application of any pesticide;~~

~~g. Used or caused to be used any pesticide classified for restricted use on any property unless by or under the direct supervision of a certified applicator;~~

~~h. Used fraud or misrepresentation in making an application for a certificate or renewal of a certificate;~~

~~i. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification;~~

~~j. Aided, abetted, or conspired with any person to violate the provisions of Article 3 of this chapter, or permitted one's certification or registration to be used by another person;~~

~~k. Impersonated any federal, state, county or city inspector or official; or~~

~~l. Made any statement, declaration or representation through any media implying that any person certified or registered under the provisions of Article 3 of this chapter is recommended or endorsed by any agency of this Commonwealth.~~

~~2. Has been convicted or is subject to a final order assessing a penalty pursuant to § 14 (a) or (b) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.), as amended.~~

~~D. The Board shall suspend the license or certificate of a business or person if a civil penalty issued to the business or person is not paid within sixty days of issuance unless the business or person challenges such civil penalty pursuant to subsection F of § 3.1-249.70.~~

~~The Board, when deciding whether to deny, suspend, revoke, or modify any certificate or license, shall give due consideration to (i) the history of previous violations of the licensee or person, (ii) the seriousness of the violation including any irreparable harm to the environment and any hazards to the health and safety of the public, and (iii) the demonstrated good faith of the licensee or person charged in attempting to achieve compliance with the chapter after notification of the violation.~~

*B. It is unlawful for any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or regulations of the Board, provided that such deviation may include provisions set forth in Section 2 (ee) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.);*

*C. It is unlawful to dispose of containers or unused portions of pesticide in a manner inconsistent with label directions or the regulations of the Board in the absence of label directions, or if those regulations further restrict such disposal.*

*D. It is unlawful for any person to knowingly use any pesticide against any organism that is otherwise protected under fish, game, or migratory bird laws, without first obtaining authorization as necessary from the federal or state agency responsible for the protection of the organism.*

*E. It is unlawful for any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this chapter or the regulations adopted hereunder.*

*F. It is unlawful for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of pesticide or device to which such request relates, to furnish to or permit any person designated by the Commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this chapter.*

*G. It is unlawful for any person to give a guaranty or undertaking provided for in § 3.2-3941 that is false in any particular, except that a person who receives and relies upon a guaranty authorized under such section may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the U.S. from whom he received the guaranty or undertaking.*

*H. It is unlawful for any person to oppose or interfere in any way with the Commissioner in carrying out the duties imposed by this chapter.*

**Drafting Note: Placed all criminal violations into one section. Put administrative violations and civil penalties into separate sections. Moved the text in existing subsection A 1 granting the Commissioner discretion to permit changes in labeling without reregistration to proposed § 3.2-3917, Change in labeling or formulas without reregistration. Moved existing subsections B, C, and D to subsections A, B, and E of proposed § 3.2-3940, Administrative violations. Proposed subsections B, C, and D have been moved from existing § 3.1-249.64. Proposed subsection E has been moved from existing § 3.1-249.65. Proposed subsection F has been moved from existing § 3.1-249.66. Proposed subsection G has been moved from existing § 3.1-249.67. Proposed subsection H has been moved from existing § 3.1-249.69.**

~~§ 3.1-249.64. Use of pesticide or container inconsistent with label directions or regulations of Board; knowing use.~~

~~A. It shall be unlawful for any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or regulations of the Board, provided that such deviation may include provisions set forth in Section 2 (ee) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); and it also shall be unlawful to dispose of containers or~~

~~unused portions of pesticide inconsistent with label directions or the regulations of the Board in the absence of label directions, or if those regulations further restrict such disposal.~~

~~B. It shall be unlawful for any person to knowingly use any pesticide against any organism that is otherwise protected under fish, game, or migratory bird laws, without first obtaining authorization as necessary from the federal or state agency responsible for the protection of the organism.~~

**Drafting Note: Deleted section and moved to subsections B, C, and D of proposed § 3.2-3939, Violations generally.**

~~§ 3.1 249.65. Alteration, etc., of label.~~

~~It shall be unlawful for any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this chapter or the rules and regulations promulgated under this chapter.~~

**Drafting Note: Deleted section and moved to subsection E of proposed § 3.2-3939, Violations generally.**

~~§ 3.1 249.66. Refusal of access to records.~~

~~It shall be unlawful for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of pesticide or device to which such request relates, to furnish to or permit any person designated by the Commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this chapter.~~

**Drafting Note: Deleted section and moved to subsection F of proposed § 3.2-3939, Violations generally.**

~~§ 3.1 249.67. Giving false guaranty; names and addresses of persons giving and receiving guaranty.~~

~~It shall be unlawful for any person to give a guaranty or undertaking provided for in § 3.1 249.74 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under such section may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking.~~

**Drafting Note: Deleted section and moved to subsection G of proposed § 3.2-3939, Violations generally.**

~~§ 3.1 249.69. Interference with Commissioner or agents.~~

~~It shall be unlawful for any person to oppose or interfere in any way with the Commissioner or his duly authorized agents in carrying out the duties imposed by this chapter.~~

**Drafting Note: Deleted section and moved to subsection H of proposed § 3.2-3939, Violations generally.**

~~§ 3.2-3940. Administrative violations.~~

*A. In addition to imposing civil penalties and referring violations for criminal prosecution, the Board may deny, suspend, modify, or revoke a license after providing an opportunity for a hearing if it finds that the applicant, licensee, or his employee has committed any of the following violations:*

- 1. Made false or fraudulent claims through any media misrepresenting the effect of materials or methods;*
- 2. Made a pesticide recommendation inconsistent with the label registered pursuant to this chapter, provided that such deviation may include provisions set forth in Section 2 (ee) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.);*
- 3. Acted as a pesticide business with negligence, incompetence, or misconduct;*
- 4. Made false or fraudulent records, invoices, or reports;*
- 5. Failed to submit records required by the Board;*



6. Used fraud, misrepresentation, or false information in an application for a license or a renewal of a license; or in selling or offering to sell pesticides;

7. Stored or disposed of containers or pesticides by means other than those prescribed on the label or by regulation;

8. Provided or made available any restricted use pesticide to any person not certified to apply such product;

9. Failed to notify the Department of a reportable pesticide spill, accident, or incident;

10. Acted as a pesticide business without first obtaining the pesticide business license required in § 3.2-3924; or

11. Failed to pay any civil penalty assessed by the Board.

B. After opportunity for a hearing, the Board may deny, suspend, revoke, or modify the provision of any certificate if it finds that the applicant or the holder of a certificate has:

1. Made claims through any media that intentionally misrepresent the effects on the environment likely to result from the application of a pesticide;

2. Used or caused to be used any pesticide inconsistent with: (i) the label registered by the U.S. Environmental Protection Agency; (ii) a Virginia state registered use; or (iii) other permissible uses;

3. Applied any pesticide in a negligent manner;

4. Failed to comply with the provisions of Article 3, regulations adopted hereunder, or of any lawful order of the Commissioner or the Board;

5. Failed to: (i) keep and maintain required records or reports; or (ii) furnish or permit access to any such records or reports for copying by the Commissioner;

6. Made false or fraudulent records, invoices, or reports concerning the use or application of any pesticide;

7. Used or caused to be used any pesticide classified for restricted use unless under the direct supervision of a certified applicator;

8. Used fraud or misrepresentation in applying for a certificate or renewal of a certificate;

9. Failed to comply with any limitations or restrictions on a certification;

10. Aided, abetted, or conspired with any person to violate the provisions of Article 3;

11. Impersonated any federal, state, or local official;

12. Made any statement, declaration, or representation implying that any person certified or registered under the provisions of Article 3 is recommended or endorsed by any agency of the Commonwealth; or

13. Been convicted or is subject to a final order assessing a penalty pursuant to § 14 (a) or (b) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.).

C. The Commissioner may, without a hearing, suspend the license of any person licensed or certified simultaneously with the institution of proceedings for a hearing, if he finds there is a substantial danger to the public health, safety, or the environment. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.

D. Any licensee or certificate holder whose license or certificate has been suspended shall not engage in the activity for which he has been certified or licensed pending the hearing.

E. The Board shall suspend a license or certificate if a civil penalty is not paid within 60 days or a challenge is not made pursuant to subsection D of § 3.2-3943. When deciding whether to deny, suspend, revoke, or modify any certificate or license, the Board shall give due consideration to: (i) the history of previous violations; (ii) the seriousness of the violation including any irreparable harm to the environment and any hazards to the health and safety of the public; and (iii) the demonstrated good faith in attempting to achieve compliance with the chapter after notification of the violation.

**Drafting Note: New section. Text in proposed sections A, B, and E is moved from existing § 3.1-249.63. Text in proposed sections C and D is moved from existing § 3.1-249.76.**

~~§ 3.1-249.76. Summary suspension by Commissioner; procedure.~~

~~The Commissioner may suspend the license of any person licensed or certified without a hearing simultaneously with the institution of proceedings for a hearing, if he finds there is a substantial danger to the public health, safety, or the environment 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.~~

~~Any licensee or certificate holder whose license or certificate has been suspended shall not engage in the activity for which he has been certified or licensed pending the hearing.~~

**Drafting Note: Deleted section and moved to subsections C and D of proposed § 3.2-3940, Administrative Violations.**

~~§ 3.1-249.743.2-3941. Exemptions from penalties.~~

~~The penalties provided for violations of subsection A of § 3.1-249.63 3.2-3939 and § 3.2-3940 shall not apply to:~~

~~1. Any carrier while lawfully engaged in transporting pesticides within this Commonwealth, if such carrier shall, upon request, permitpermits the Commissioner or his designated agent to copy all records showing the transactions in and movements of the pesticides upon request;~~

~~2. Public officials of thisthe Commonwealth and the federal government engaged in the performance of their official duties in carrying out the provisions of this chapter and the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.) as amended;~~

~~3. Those individualsIndividuals or agencies authorized by law to conduct research in the field of pesticides when such research is conducted in accordance with regulations established by the Board;~~

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

**Drafting Note: Technical changes.**

~~§ 3.1-249.583.2-3942. EnforcementRight of entry; warrant requirements; procedure.~~

~~A. For the purpose of carrying out the provisions of this chapter theThe Commissioner may enter any public or private premises operating as a pesticide business at reasonable times, with the consent of the owner or tenant thereof, and upon presentation of appropriate credentials in order: (i) to have access for the purpose of inspecting any equipment subject to this chapter, (ii) to inspect storage or disposal areas, (iii) to inspect or investigate complaints of injury to humans, animals, birds or property, (iv) to sample any pesticide being applied or to be applied, or (v) to enforce any other provision of this chapterfor carrying out the purposes of this chapter.~~

~~B. ShouldIf the Commissioner beis denied access to any public or private premises operating as a pesticide business where such access was sought for the purposes set forth in this chapter, he may apply for an administrative search warrant, based upon a petition demonstrating probable cause and supported by an affidavit, issued by any from a judge havingwith authority to issue criminal warrants or a magistrate whose territorial jurisdiction encompasses the premises to be inspected or entered,if the judicial officer is satisfied that there is reasonable and probable cause for the issuance of an administrative search warrant.~~

1. No ~~such~~ warrant shall be issued ~~pursuant to this section~~ except upon probable cause, *and* supported by *an* affidavit, particularly describing: (i) the place, things, or persons to be inspected or tested; and (ii) the purpose for which the inspection, testing, or collection of samples ~~for testing~~ is to be made.

2. Probable cause shall ~~be deemed to exist~~ if either: (i) reasonable legislative or administrative standards for conducting ~~such~~ inspection, testing, or collection of samples ~~for testing~~ are satisfied with respect to the particular place, thing, or person; or (ii) there is cause to believe that ~~there is~~ a condition, object, activity, or circumstance ~~which~~ legally justifies ~~such~~ *the* inspection, testing, or collection of samples ~~for testing~~.

3. The supporting affidavit shall contain either: (i) a statement that consent to inspect, test, or collect samples ~~for testing~~ has been sought and refused; or (ii) facts or circumstances reasonably justifying the failure to seek ~~such~~ consent ~~in order to enforce effectively the pesticide control laws and regulations of the Commonwealth which authorize such inspection, testing, or collection of samples for testing. In the case of an administrative search warrant. If probable cause is based upon~~ legislative or administrative standards for selecting places of business for inspection, the affidavit shall contain factual allegations sufficient to justify an independent determination by the court ~~official~~ that the inspection program is based on reasonable standards and that the standards are being applied to a particular place of business in a neutral and fair manner. ~~The issuing judicial officer may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit.~~

C. Any administrative search warrant shall be effective for a period of not more than ~~fifteen~~ 15 days, unless extended or renewed by the judicial officer who ~~signed and~~ issued the original warrant. The warrant shall be executed and ~~shall be returned to the judicial~~ *issuing* officer ~~by whom it was issued~~ within the time specified ~~in the warrant~~ or within the extended or renewed time. The return shall list any records removed or samples taken pursuant to the warrant. ~~After the expiration of such time, the~~ *The* warrant, ~~unless executed,~~ shall be void ~~after the expiration of time unless executed or renewed.~~

D. No warrant shall be executed in the absence of the owner, tenant, operator, or ~~agent in~~ *charge* ~~custodian~~ of the premises, unless ~~specifically authorized by the issuing judicial officer upon a showing~~ *specifically authorizes* that such authority is reasonably necessary to ~~effect~~ *affect* the purposes of the law or regulation ~~being enforced. An entry~~ *Entry* pursuant to ~~this~~ *such a* warrant shall not be made forcibly, ~~except that the. The~~ issuing officer may ~~expressly~~ authorize a forcible entry *where the facts*: (i) ~~where facts are shown sufficient to create a reasonable suspicion of an immediate threat to the health and safety of persons or to the environment;~~ or (ii) ~~where facts are shown establishing~~ *establish* that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the Commissioner and to a law-enforcement officer who shall accompany the Commissioner's ~~duly authorized agent~~ during the execution of the warrant.

E. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the issuing judicial officer, except as a defense in a contempt proceeding, ~~unless or if~~ the owner or custodian of the place to be inspected ~~makes by affidavit~~ *submits* a substantial preliminary showing *by affidavit and* accompanied by an offer of proof that: (i) a ~~false statement, knowingly and intentionally, or included by the affiant in his affidavit for the administrative search warrant was false and made knowingly and intentionally or with reckless disregard for the truth, was included by the affiant in his affidavit for the administrative search warrant;~~ and (ii) the false statement was necessary to the finding of probable cause. The court ~~shall~~ *may* conduct ~~such expeditious~~ *in camera* review as ~~the court may deem~~ appropriate.

F. After the warrant has been executed and returned to the issuing judicial officer, the validity of the warrant may be reviewed either as a defense to any Notice of Violation ~~issued by~~

~~the Commissioner or otherwise by declaratory judgment action brought in a circuit court. In any such action, the~~ The review shall be confined to the face of the warrant ~~and, affidavits, and supporting materials presented to the issuing judicial officer unless. If the owner or person in charge~~ *custodian of the premises* ~~place inspected makes by affidavit submits~~ a substantial showing *by affidavit and accompanied by an offer of proof that:* (i) a ~~false statement included in the warrant was false and made knowingly and intentionally or , knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant;~~ and (ii) the false statement was necessary to the finding of probable cause. ~~The, the reviewing court shall not conduct a de novo determination of probable cause, but only determine~~ *limit its inquiry to whether there is substantial evidence in the record supporting the decision to issue issuance of the warrant and shall not conduct a de novo determination of probable cause.*

**Drafting Note: Deleted text in subsection A listing the various purposes under which the Commissioner may enter and search since he may practically enter to "enforce any . . . provision of this chapter." Created subdivisions in subsection B to clarify the warrant requirements.**

§ 3.2-3943. *Civil penalties; procedure.*

A. *Any person violating this chapter or regulations adopted hereunder may be assessed a civil penalty by the Board. In determining the amount of any civil penalty, the Board shall give due consideration to: (i) the history of previous violations; (ii) the seriousness of the violation including any irreparable harm to the environment and any hazards to the health and safety of the public; and (iii) the demonstrated good faith in attempting to achieve compliance with the chapter after notification of the violation.*

B. *The Board may assess a penalty of not more than \$1,000 for a violation that is less than serious; not more than \$5,000 for a serious violation; and not more than \$20,000 for a repeat or knowing violation. The Board may assess an additional penalty of up to \$100,000 for any violation that causes serious damage to the environment, serious injury to property, or serious injury to or death of any person.*

C. *Civil penalties assessed under this section shall be paid into Pesticide Control Fund established in § 3.2-3912. The Commissioner shall prescribe procedures for payment of penalties that are not contested by licensees or persons, including provisions for a person to consent to abatement of the alleged violation and payment of a penalty or negotiated sum in lieu of such penalty without admission of civil liability.*

D. *The person to whom a civil penalty is issued shall have 15 days to request an informal fact-finding conference, held pursuant to § 2.2-4019, to challenge the fact or amount of the civil penalty. If the civil penalty is upheld, such person shall have 15 days to: (i) pay the proposed penalty in full or contest either the amount of the penalty or the fact of the violation; and (ii) forward the proposed amount to the Commissioner's office for placement in an interest-bearing trust account in the State Treasurer's office. If administrative or judicial review shows no violation or that the amount of penalty should be reduced, the Commissioner shall have 30 days from that showing to remit the appropriate amount to the person, with interest accrued thereon. If the violation is upheld, the amount collected shall be paid into the Pesticide Control Fund.*

E. *Final orders of the Board may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification by the secretary of the Board. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).*

**Drafting Note: New section. Text is moved from subsections C, D, E, and F of existing § 3.1-249.70. References to a special fund have been replaced with a citation to the Pesticide Control Fund established in § 3.2-3912, Pesticide Control Fund established.**

§ ~~3.1-249.77~~ 3.2-3944. "Stop-sale or removal" orders; "Stop-use" *"stop-use"* orders; judicial review.

~~A. The Commissioner or his duly authorized agent~~ When the Commissioner has reason to believe that a pesticide is being offered for sale or use or is being used in violation of any of the provisions of this chapter, he shall issue and enforce a written or printed "stop sale or removal" order ~~directed to the owner or custodian of any lot of pesticide, requiring~~. The order shall be directed to the owner or custodian of the lot of pesticide and shall require him to hold ~~the~~ pesticide at a designated place, ~~when the Commissioner or his duly authorized agent has reason to believe that the pesticide is being offered for sale or use or is being used in violation of any of the provisions of this chapter, until the Virginia Pesticide Control Act (§ 3.1-249.27 et seq.) this chapter has been complied with and the pesticide is released in writing by the Commissioner or his duly authorized agent or the violation has been~~ otherwise legally disposed of by written authority. The owner or custodian of such pesticide shall have the right to administrative and judicial review of such order in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). The provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter. The Commissioner ~~or his duly authorized agent~~ shall release the pesticide ~~so withdrawn~~ when the requirements of the provisions of this chapter have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal.

~~B. The Commissioner or his duly authorized agent~~ When the Commissioner has reason to believe that any pesticide is being offered for sale or use or is being used in violation of any of the provisions of this chapter by a person, he shall issue and enforce a written or printed "stop-use" order ~~directed to a person or business when the Commissioner or his duly authorized agent has reason to believe that any pesticide is being offered for sale or use or is being used in violation of any of the provisions of this chapter, until the Virginia Pesticide Control Act has been complied with or the violation has been otherwise legally disposed of by written authority.~~ The person ~~or business~~ shall have the right to administrative and judicial review of such order in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). The provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-249.78~~ 3.2-3945. Seizure, condemnation, and sale.

Any lot of pesticide ~~not in compliance with the provisions~~ *in violation* of this chapter shall be subject to seizure on complaint of the Commissioner to ~~at the circuit court of competent jurisdiction in the area in which~~ *where* the pesticide is located. ~~In the event~~ If the court finds the pesticide to be in violation of this chapter and orders its condemnation, it shall be disposed of ~~in any manner consistent with its quality and the laws of the Commonwealth; however, in no instance shall the disposition of the pesticide be ordered by the court without first giving~~ *after* the claimant *is provided* an opportunity to apply ~~to the court~~ for the release of ~~such~~ *the* pesticide or for permission to process, relabel, or otherwise bring it into compliance with this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-249.71~~ 3.2-3946. Proceedings in case of violations.

A. If ~~it appears from~~ the examination of laboratory results or other evidence collected during an investigation ~~appears to show a violation that any of the provisions of this chapter or any of the regulations issued thereunder have been violated~~ *hereunder*, the Commissioner may ~~cause~~ *provide* notice of ~~such~~ *the* violation ~~to be given to~~ the registrant, distributor, possessor, licensee, applicator, or other person from whom such evidence was taken. Any party so notified shall be given an opportunity to be heard ~~under such~~ *in accordance with* regulations ~~as may be prescribed~~ *adopted* by the Board. If ~~it appears after such~~ *the* hearing ~~that there has been~~ *appears to show* a violation of this chapter or the regulations issued ~~thereunder~~ *hereunder*, the Commissioner may certify the facts to the Board or the proper prosecuting attorney and furnish the Board or that officer with a copy of the results of ~~such examination or~~ *the* investigation.

B. It shall be the duty of every attorney for the Commonwealth to whom the Commissioner shall report any violation of this chapter to cause proceedings to be prosecuted without delay.

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

**Drafting Note: Proposed subsection B has been moved from existing § 3.1-249.72. Proposed subsection C has been moved from existing § 3.1-249.73.**

~~§ 3.1-249.72. Duty of attorney for Commonwealth.~~

~~It shall be the duty of every attorney for the Commonwealth to whom the Commissioner shall report any violation of this chapter to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.~~

**Drafting Note: Deleted section and moved to subsection B of proposed § 3.2-3946, Proceedings in case of violations.**

~~§ 3.1-249.73. Warning instead of report of violation.~~

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

**Drafting Note: Deleted section and moved to subsection C of proposed § 3.2-3946, Proceedings in case of violations.**

~~§ 3.1-249.703.2-3947. Penalties; action to enjoin violation; compromisePenalties.~~

A. Except as otherwise provided, any person who knowingly violates any provisions of this chapter or regulations promulgated ~~adopted~~ hereunder shall be guilty of a Class 1 misdemeanor and shall be subject to an additional fine of up to \$500,000 if death or serious physical harm to any person is caused by the violation.

B. The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this chapter, or any regulation made pursuant thereto, ~~adopted hereunder~~ in the circuit court of the county or city in which ~~where~~ the violation occurs or is about to occur, or in the Circuit Court of the City of Richmond if the violation may affect more than one county or city. The Commissioner may request either the attorney for the Commonwealth or the Attorney General to bring action under this section, when appropriate.

C. Any person violating a provision of this chapter or regulations adopted thereunder may be assessed a civil penalty by the Board. In determining the amount of any civil penalty, the Board shall give due consideration to (i) the history of previous violations of the licensee or person, (ii) the seriousness of the violation including any irreparable harm to the environment and any hazards to the health and safety of the public, and (iii) the demonstrated good faith of the licensee or person charged in attempting to achieve compliance with the chapter after notification of the violation.

D. ~~The Board may assess a penalty of not more than \$1,000 for a violation that is less than serious, not more than \$5,000 for a serious violation, and not more than \$20,000 for a repeat or knowing violation. The Board may assess an additional penalty of up to \$100,000 for any violation which causes serious damage to the environment, serious injury to property, or serious injury to or death of any person.~~

E. Civil penalties assessed under this section shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the purposes of this chapter. The Commissioner shall prescribe procedures for payment of penalties which are not contested by licensees or persons. The procedures shall include provisions for a licensee or person to

~~consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.~~

~~F. The person or business to whom a civil penalty is issued shall have fifteen days to request an informal fact finding conference, held pursuant to § 2.2-4019, to challenge the fact or amount of the civil penalty. If the civil penalty is upheld, the person or business against whom the civil penalty has been upheld shall have fifteen days to pay the proposed penalty in full, or if the person or business wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Commission's office for placement in an interest-bearing trust account in the State Treasurer's office. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of penalty should be reduced, the Commissioner shall within thirty days of that determination remit the appropriate amount to the person or business with interest accrued thereon. If the violation is upheld, the amount collected shall be paid into a special fund in the state treasury to the credit of the Department as provided in § 3.1-249.34.~~

~~Final orders of the Board may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the secretary of the Board. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).~~

**Drafting Note: Moved existing subsections C, D, E, and F to § 3.2-3943, Civil penalties; procedure.**

## CHAPTER ~~16-40.~~

### SEEDS.

**Chapter Drafting Note: Deleted definitions of terms that are not used or previously defined. Consolidated the powers of the Board into one section. Separated the Commissioner's general powers from his enforcement powers, creating new sections for inspection and stop-sale orders, consistent with other sections under this title. Adopted model fund language for the Seed Fund. Adopted model Board language for the Certified Seed Board. Consolidated the powers of the Certified Seed Board into one section.**

#### Article 1.

#### ~~Virginia Seed Law~~*Seeds.*

##### ~~§ 3.1-262.~~ Title.

~~This article may be known and cited as the "Virginia Seed Law."~~

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

##### ~~§ 3.1-263.2-4000.~~ Definitions.

~~As used in this article~~*chapter*, unless the context clearly requires ~~otherwise~~*another meaning*:

~~"Advertisement" means all representations, other than those required on the label, disseminated in any manner, or by any means, any representation relating to seed within the scope of this article that is not also required labeling.~~

~~"Agricultural seeds~~*seed*" means ~~seed which includes, but is not limited to, the seeds of grass, forage, cereal, and fiber crops, and; any other kinds of seed commonly recognized within the Commonwealth as agricultural seed,; and any lawn seed, and turf seed, and mixtures of such seed, and includes~~*thereof (including any noxious-weed seeds, if that may be present).*

~~"Bag" or "packet" means a container in the form of a sack or pouch usually made from a flexible material.~~

"Blend" means a mechanical combination of varieties of the same kind; *that is* identified by a blend designation, ~~which combination~~ *and* is always present in the same percentages in each lot so designated.

~~"Board" means the Board of Agriculture and Consumer Services of Virginia.~~

"Brand" means the name, term, design, or trademark ~~under which any person offers of seed offered~~ for sale.

~~"Bulk lot" or "in bulk" means loose seed in bins, or other containers. The term does not refer to seed in, but not bags or packets.~~

"Certified seed," "registered seed," or "foundation seed" means seed ~~that has been produced and labeled in accordance with the procedures, and in compliance with the procedures and requirements, of an official certifying agency of a state, the United States, a province of Canada, or the government of a foreign country where the seed was produced.~~

~~"Code designation" means a code designation not generally known to the public, an identification assigned at the discretion of the Commissioner, to any person engaged in the seed business, which, under conditions prescribed by regulations promulgated pursuant to the provisions of this article, may be used to identify the person responsible for labeling seed in interstate commerce by the U.S. Department of Agriculture.~~

~~"Commissioner" means the Commissioner of the Department.~~

~~"Conditioning" means any process of cleaning, scarifying, treating, or blending, to obtain uniform quality, and other operations which would change seed that changes the purity or germination of the seed, and therefore require retesting to determine the quality of the seed. The term does not include processes after which retesting would not be required to determine the quality of the seed; including, by way of example but not by way of limitation, packaging, labeling, blending together of uniform lots of the same kind or variety without cleaning, and the preparation of a mixture without cleaning.~~

~~"Controlled conditions" means those minimum seed stock standards established by regulation for genetic purity of seed stocks, isolation, planting ratio, detasseling, roguing, harvesting, and other factors necessary for the production of hybrid seed; such standards to be established by regulations promulgated pursuant to the provisions of this article.~~

~~"Department" means the Department of Agriculture and Consumer Services.~~

~~"Distribute" means to import, consign, produce, mix, blend or, condition seeds, or to offer for sale, sell, offer for sale, barter, warehouse, or otherwise supply seeds in the Commonwealth.~~

~~"Distributor warehouse business" means a company owned, contracted, or operated business from which the company's seed is distributed to a wholesaler or retailer who usually makes payment directly to the company.~~

~~"Dormant seed" means viable seeds, seed other than hard seed which fail that fails to germinate when provided the specified germination conditions for the kind of seed in question.~~

~~"Flower seeds, seed" means by way of example, but not by way of limitation, any seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts commonly known and sold under the name of; any other seeds commonly recognized as flower seeds in the Commonwealth; and which from time to time shall be specified any seeds designated as flower seeds by regulations promulgated pursuant to the provisions of this article.~~

~~"Germination" means the percentage, by count, of seeds under consideration, which are capable of producing normal seedlings in a given period of time, and under conditions specified by regulations promulgated pursuant to the provisions of this article.~~

~~"Guarantor" means the person whose name appears on the label.~~

~~"Hard seeds, seed" means seeds which, because of hardness or impermeability, that do not absorb moisture, and germinate but remain, thus remaining hard during the period prescribed for germination by regulations promulgated pursuant to the provisions of this article.~~



"Hybrid" means the first generation seed of a cross, produced by controlling the pollination, or by use of using sterile lines, and combining ~~(a): (i) two, three, or four inbred lines; or (b); (ii) one inbred line, or a single cross, with an open-pollinated variety;~~ or ~~(c)(iii) two varieties or species, except open-pollinated varieties of corn.~~

"Inbred line" means a relatively stable and pure breeding strain, resulting from ~~not less than:~~ *(i) four or more successive generations of controlled self-pollination; or (ii) four successive generations of backcrossing, in the case of male sterile lines.*

"Inert matter" means all matter not seeds, and includes, ~~but is not limited to,~~ broken seeds, sterile florets, chaff, fungus bodies, and stones, as determined by methods prescribed by regulations promulgated pursuant to the provisions of this article.

"Kind" means ~~one or more~~ related species or subspecies ~~which singly or collectively are~~ known by ~~one~~ a common name, including, ~~but not limited to,~~ wheat, oats, hairy vetch, white sweet clover, cabbage, and cauliflower.

"Labeling" means all labels, tags, and any other written, printed, or graphic statements or representations *(including representations on invoices)*; in any form ~~whatsoever, accompanying~~ or pertaining to any seed ~~whether in bulk or in containers, and includes representations on invoices.~~

"Lawn and turf seeds~~seed~~" means ~~the~~ seeds of grasses commonly recognized and sold for lawns, ~~recreational and utilitarian~~ or other areas where turf is grown for beautification or erosion control.

"Lawn or turf seed mixture" means two or more kinds of agricultural seeds ~~when that are~~ combined and sold for lawns, ~~recreational areas, and~~ or other areas where turf is grown for beautification or erosion control.

"Lot" means a definite quantity of seed, *that is* identified by a ~~lot~~ number or other identification, ~~which and~~ is uniform throughout for the factors ~~which appear~~ appearing on the label.

"Mixture" means seeds consisting of more than one kind or variety, when claimed or present, in excess of five percent of the whole.

"Name of mixture" means the name or term used to ~~designate a particular specification of~~ designating a specific lawn or turf seed mixture.

~~"Noncoded pedigree" means the usual designated combination of two or more symbols of letters or numbers, or letters and numbers, identifying the inbred lines or varieties combined to make a hybrid.~~

"Noxious-weed seeds~~seed~~" means "prohibited noxious-weed seeds" and "restricted noxious weed seeds.", as such terms are defined below:

(a) "prohibited noxious-weed seeds" are the seeds of weeds which, when established, are highly destructive, and are not controlled in the Commonwealth by cultural practices commonly used.

(b) "restricted noxious-weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in the Commonwealth and are difficult to control by cultural practices commonly used.

"Official certifying agency" means an agency recognized and designated as a certifying agency, by the laws of a state, the United States, a province of Canada, or the government of a foreign country wherein said seed were produced.

"Origin" means the state, Puerto Rico, or possession of the United States, or the territory, foreign country, or designated portion thereof, where the seed was grown.

~~"Pack" means to condition and put into containers in order to preserve, transport or distribute.~~

*"Prohibited noxious-weed seed" means seeds of weeds that are highly destructive and not controllable by common practices.*

"Pure seed" means agricultural or vegetable ~~seeds~~, *seed* exclusive of inert matter, ~~weed seeds~~, and all other seeds distinguishable from the kind, or kind and variety, being considered. Pure seed ~~is to~~ *shall* be determined by methods prescribed by regulations ~~promulgated pursuant to the provisions of this article.~~

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count, or other form of measurement of a commodity.

"Recognized variety name" and "recognized hybrid designation" mean the name or designation, ~~(which may be symbols, letters or numbers), which was first assigned to the variety or hybrid by the person who developed it, and first introduced it for production or sale.~~

"Registrant" means the person registering a lawn or turf seed mixture pursuant to ~~the provisions of this article.~~

*"Restricted noxious-weed seed" means weed seeds that are very objectionable in fields, lawns, and gardens and are difficult to control by common practices.*

~~"Retailer" means a person who sells any seed or mixture defined in this article to a consumer.~~

"Sale" means the transfer of ownership of seed, *as* evidenced by *the* exchange of payment, or seed, ~~or payment and seed~~, in whole, or in part.

"Screenings" means, ~~by way of example but not by way of limitation~~, seed, inert matter, and other materials removed from agricultural *seed* or vegetable seed by cleaning or conditioning.

"Stop sale, use, removal, or seizure order" means an order ~~which~~ *that* prohibits the distributor from selling, relocating, using, or disposing of a lot of seed, ~~or portion thereof, in any manner~~, until the Commissioner ~~or his agent~~, or the court gives written permission ~~to sell, relocate, use or dispose of the lot of seed or portion thereof.~~

"Tolerance" means the allowable deviation from any figure, used on a label to designate the percentage of any fraction, or rate of occurrence, in the lot ~~in question~~, and is based on the law of normal variation from a mean.

"Transgenic" means any plant material, or seed ~~produced from such plants~~, that has undergone the transfer of a gene from one genera to another.

"Treated" means ~~that the~~ seed *that* has received an effective application of: (i) a generally approved substance; ~~or (ii) a process, such substance or process having been~~ designed to control, or repel, certain disease organisms, insects, or other pests, ~~which attack such seeds or seedlings grown therefrom~~; or (iii) ~~has received some~~ *any* other treatment to improve its planting value.

"Tree and shrub seeds~~seed~~" means ~~by way of example, but not by way of limitation~~, seeds of woody plants commonly known and sold ~~recognized as tree and shrub seeds in the Commonwealth, and which from time to time shall be specified~~ *trees and shrubs and designated* by regulations ~~promulgated pursuant to the provisions of this article.~~

"Variety" means a subdivision of a kind characterized by growth, plant, fruit, seed, or other ~~characters by which it can be differentiated~~ *characteristics that distinguish it* from other plants of the same kind.

"Vegetable seeds~~seed~~" means ~~by way of example, but not by way of limitation~~, seeds of those crops ~~which are grown in gardens and on truck farms, and are generally known and sold under the name of~~ *commonly recognized as* vegetable seed ~~in the Commonwealth, and which from time to time shall be specified~~ *designated* by regulations ~~promulgated pursuant to the provisions of this article.~~

"Weed seeds~~seed~~" means ~~by way of example, but not by way of limitation~~, the seeds, bulblets, or tubers of all ~~plants generally~~ *commonly* recognized as weeds ~~within the Commonwealth, and includes, including~~ noxious-weed seeds.

~~"Wholesaler" means any person engaged in the business of selling seed to a retailer or jobber.~~

**Drafting Note:** Deleted the definitions of "distributor warehouse business," "noncoded pedigree," "pack," "retailer," and "wholesaler" because these terms are not used in the chapter. Deleted the definitions of "Board" and "Commissioner" because these terms have been previously defined. Separated and alphabetized the definitions of "prohibited noxious-weed seeds" and "restricted noxious-weed seeds" from the "noxious-weed seeds" for easy reference. Deleted the definition of "official certifying agency" and added the content to the definition of the term "certified seed," which was the only place it had appeared.

~~§ 3.1-271.3.2-4001. Authority of Board to adopt regulations.~~

~~The Board may adopt regulations for the administration and enforcement of this article including, but not limited to:~~

~~(1) prescribing and adopting regulations governing (a)1. Governing: (i) methods of sampling, (b); (ii) methods of inspection, (c); (iii) methods of testing (in the laboratory and in the field), (d); (iv) the establishment of standards, (e); (v) the establishment of code designations; and (f)(vi) the establishment of tolerances to be followed in the administration of this article, in respect to for agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such seeds, and screening. Such regulations shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the enforcement of this article screenings;~~

~~(2) prescribing and establishing, add to or subtract therefrom by rules and regulations 2. Providing a list of prohibited and restricted noxious-weed seed lists seeds;~~

~~(3) prescribing and adopting rules and regulations for the labeling 3. Providing for the labeling of flower seeds in respect to by kind and, variety or, type, and/or performance characteristics as required by § 3.1-264 of this article 3.2-4008;~~

~~(4) preparing and publishing 4. Providing a list of the kinds of tree and shrub seeds which are subject to the tree and shrub seed purity and germination labeling requirements of subsection I of § 3.1-264 (H) of this article 3.2-4008;~~

~~(5) For the purpose of protecting the rights of hybrid breeders, the Board may provide by regulations 5. Providing for the registration of the pedigree of any hybrid produced or sold in Virginia;~~

~~(6) prescribing and establishing, adding to or subtracting from by regulation 6. Providing a list of those kinds of seed that a person shall sell, offer for sale, expose for sale within the Commonwealth, may be sold only by variety name;~~

~~(7) prescribing and establishing 7. Establishing special labeling requirements, in addition to the requirements of § 3.1-264, 3.2-4008, for selling, offering to sell or distributing in the Commonwealth, the sale or distribution of seeds produced from transgenic plant material;~~

~~(8) prescribing and establishing, adding to or subtracting from by regulations 8. Providing a list of those kinds having second generation hybrids recognized as having agronomic value that may be sold in the Commonwealth as a hybrid; and~~

~~(9) prescribing and establishing, adding to or subtracting from by regulation 9. Providing a list of those kinds of seeds specified as lawn and turf seeds; and~~

~~10. Establishing tolerances that recognize variations between analyses, tests, label statements, and subsequent analyses to be used in enforcement.~~

**Drafting Note:** Consolidated language relating to the Board's authority to adopt regulations. The language in the first sentence is taken from existing § 3.1-275.5. Proposed subdivision 10 is moved from existing § 3.1-269.

~~§ 3.1-275.5. Sale of second generation as a hybrid.~~

~~The Board shall name in the regulations each kind of seed that is a second generation hybrid recognized as having agronomic value which may be sold as a hybrid.~~

**Drafting Note: Deleted section. This obligation of the Board is set out in subdivision 8 of proposed § 3.2-4001, Authority of Board to adopt regulations.**

~~§ 3.1-269. Tolerances to be established and used in enforcement.~~

~~Due to recognized variations which occur between two analyses or tests and likewise between label statements and the results of subsequent analyses and tests, tolerances which are to be established by appropriate regulations shall be employed in the enforcement of the provisions of this article.~~

**Drafting Note: Deleted section and moved to subdivision 10 of proposed § 3.2-4001, Authority of Board to adopt regulations.**

~~§ 3.1-271.13.2-4002. Rules for testing; noxious weed seed regulations; Commissioner to promulgate; Board to revise Authority of Commissioner to adopt regulations.~~

~~A. In order to accomplish the objective stated in § 3.1-271 (1) (e), the Commissioner may, by regulation: (i) adopt as a regulation the Rules for Testing Seeds adopted by the Association of Official Seed Analysts; and in order to accomplish the objective stated in § 3.1-271 (1) (d), the Commissioner may (ii) amend the standards for seed; and in order to accomplish the objectives stated in § 3.1-271 (2), the Commissioner may (iii) amend the prohibited noxious-weed seed list; and (iv) amend the restricted noxious-weed seed list.~~

~~B. Such regulation adopted by the Commissioner regulations shall be effective upon filing with the Registrar of Regulations, who shall publish the regulations as a final regulation in the Virginia Register of Regulations.~~

~~The regulation shall contain with a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation.~~

~~BC. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such The revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or revision of any regulation adopted pursuant to this section.~~

**Drafting Note: Technical changes**

~~§ 3.1-2703.2-4003. Duties and authority Powers and duties of the Commissioner; review of "stop sale" order.~~

~~(A) The duty of enforcing this article and carrying out its provisions and requirements is vested in the Commissioner. The Commissioner may appoint agents to assist in carrying out the provisions of this article and the regulations adopted and established pursuant thereto.~~

~~To sample, inspect, analyze, and test agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, and mixtures of such seeds transported, sold, offered or exposed for sale within this Commonwealth for sowing purposes and screenings for any purpose whatsoever, at such time and place and to such extent as he may deem necessary to determine whether such seeds, mixtures of such seeds and screenings, are in compliance with the provisions of this article, and if such seeds, mixtures of such seeds, or screenings are found not to be in compliance with the provisions of this article, to notify promptly the person who transported, sold, offered or exposed the seed for sale, or who otherwise violated this article.~~

~~(B) Further, for the purpose of carrying out the provisions of this article the Commissioner through his agents, is authorized:~~

~~(1) To enter upon public premises or private premises during business hours in order to have access to seeds, mixtures of such seeds, "screenings," and the records connected therewith subject to this article and the rules and regulations thereunder; and to enter upon any truck or~~

~~other conveyor by land, by water, or by air at any time when such conveyor is accessible, for the same purpose;~~

~~(2) To issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural, vegetable, flower, tree and shrub, lawn and turf seed, mixtures of such seeds, or "screenings," the Commissioner or his agent finds is in violation of any of the provisions of this article which order shall prohibit further sale of such seeds, mixtures of seeds, or "screenings" until the Commissioner or his agent has evidence that the law has been complied with. In respect to seeds, mixtures, or "screenings," which have been denied sale as provided in this subdivision, the owner or custodian of such seeds, mixtures, or "screenings," shall have the right to judicial review of such order in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). The provisions of this subdivision may not be construed as limiting the right of the Commissioner or his agent to proceed as otherwise authorized by the provisions of this article; *The Commissioner may:*~~

~~(3) To establish 1. Establish and maintain or make provisions for seed-testing facilities, to employ qualified persons, and to incur such expenses, including those incurred in the purchase of seed, as may be necessary;~~

~~(4) To fix 2. Fix and collect fees for testing seeds for farmers and dealers that have requested the tests;~~

~~(5) To establish 3. Establish and maintain facilities for checking trueness to the verification of kind and variety, and to employ experts in order that seeds collected under the provisions of this article may be tested for trueness to kind and variety, and to cooperate with federal and state agencies with respect to variety testing in the laboratory, greenhouse and field;~~

~~(6) To publish 4. Publish the results of analyses, tests, examinations, studies, and investigations made as authorized by this article, together with any other information he may deem advisable;~~

~~(7) To cooperate 5. Cooperate with the United States-U.S. Department of Agriculture in seed law enforcement;~~

~~(8) To require at his discretion the registration 6. Require the registrant of any variety or hybrid which is to be offered for sale under the provisions of this article and rules and regulations promulgated thereunder, furnishing to furnish: (a)(i) the recognized variety name or recognized hybrid designation of such variety or hybrid, (b); (ii) a one thousand-1,000 viable seed sample of such seed; and (c)(iii) the history of its development and the name of the person who developed such variety or hybrid and first introduced it for production and sale; and~~

~~(9) To require 7. Require the registration annually of all fields planted for the production of hybrid seed on or before June 20 and to provide for inspection of such fields at his discretion; and~~

~~(C) The Commissioner may appoint 8. Appoint a seed advisory committee to advise with him on provisions of this article.~~

**Drafting Note: Deleted the first paragraph as unnecessary. The general powers of the Commissioner are provided in proposed § 2.2-604, Performance of duties assigned to agency, and include the authority to hire assistants. The language in existing subsection A and subdivision 1 of existing subsection B has been moved to proposed § 3.2-4011, Inspection. Subdivision 2 of existing subsection B has been moved to proposed § 3.2-4012, Stop sale order.**

~~§ 3.1-275.73.2-4004. Disposition of fees and assessments~~*Seed Fund; established.*

~~All fees and assessments under this article, received by the Commissioner shall be paid into a dedicated special fund, which is hereby created and shall be known as the "seed fund" in the State Treasury to the credit of the Department, to~~*There is hereby created in the state treasury a special nonreverting fund to be known as the Seed Fund, hereafter referred to as the "Fund." The Fund shall be established on the books of the Comptroller. All fees and assessments paid*

*pursuant to this article shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used in-solely for carrying out the purpose and provisions of this article, to include inspecting, sampling, laboratory testing and other expenses; except that the Commissioner shall deposit fifty-50 percent of the inspection fee, to the credit of the Virginia Agricultural Foundation Fund. The Virginia Agricultural Council shall administer all funds received by them from this section for the exclusive funding of lawn and turf research.*

**Drafting Note: This section is modified to fit the current practice of using model "special fund" language. This fund is already established, but now, interest earned on money in the Fund will remain in the Fund and be credited to it. The interest will not go to the general fund as it did in the past.**

~~§ 3-1-275.23.2-4005.~~ License required to market seed.

~~A. Any person whose name appears on the label of seed shall, obtain a license from the Commissioner before distributing, selling, or offering or exposing for sale, to sell such seed in the Commonwealth, obtain a license from the Commissioner or his agent.~~

~~B. Any person who is required to obtain a license under subsection A of this section shall apply for the license. The applicant shall submit the application on a form furnished or approved by the Commissioner and shall pay a license fee of fifty dollars, which license fee shall accompany the license \$50 at the time of application.~~

~~C. Any person governed by subsection A of this section who has not obtained fails to obtain a license from the Commissioner or his agent prior to distributing, selling, or offering or exposing for sale, to sell seed in the Commonwealth shall be given a grace period of fifteen-15 working days from issuance of notification within which to obtain a license without penalty. Any person who fails to obtain a license by the fifteenth day end of the grace period shall pay to the Commissioner a late fee of fifty dollars which shall be \$50 in addition to the license fee amount. The assessment of this late fee may shall not prohibit the Commissioner or his agent from taking other further action as provided for in this article.~~

~~DB. Every license shall expire on December 31 of the calendar year for which it is issued. Every such license is. If the holder files a renewal application on or before December 31, his license shall remain valid through January 31 of the next ensuing calendar year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner or his agent on or before December 31 of the year for which the Commissioner or his agent issued the current license.~~

~~EC. The Commissioner shall refuse to issue the license to any person not in compliance with the provisions of this article, and shall revoke any license subsequently found not to be in compliance with any provision of this article.~~

**Drafting Note: Technical changes.**

~~§ 3-1-2663.2-4006. Records~~*Duty to maintain records.*

~~Any person who sells, exposes-offers for sale, transports, or delivers agricultural or vegetable seed for transportation intrastate agricultural or vegetable seed shall keep for a period of three years a complete record of sale, origin, germination, purity, variety, noxious weed seeds, and treatment of each lot of agricultural or vegetable seed offered, and the for three years. The Commissioner or his agent shall have the right to inspect such records to determine if the person has paid the appropriate inspection or license fee, and for the purpose of the effective administration of this article.~~

**Drafting Note: Technical changes.**

~~§ 3-1-2753.2-4007. Guaranty of farm or garden seed; seller bound by written or printed statements- by seller.~~

~~A. Any person who sells farm or garden seeds to be used in for producing crops for sale or where such crops are used other than for sale shall be bound as guarantor that such seeds are true to kind and variety as represented at the time of sale, whether such seeds were raised by the seller or by another; and if. If such seeds are sold by an agent, the principal shall be bound by the representations of the agent with regard to the kind and variety of the seed so sold.~~

~~If any paper or package containing seed sold in this Commonwealth for planting or seeding has B. Any person that sells seed for planting in a container that bears printed or written thereon statements regarding the kind, variety, or quality of the seeds therein the seller shall be bound in the courts of this Commonwealth by the same written or printed as guarantor that such statement is accurate unless it be the seller affirmatively proved by the seller that there was some other proves the existence of a contrary agreement between the parties in respect thereto.~~

**Drafting Note: Added subsections since the scope of seed covered under the two provisions is different. Proposed subsection A refers to seeds used for producing crops; proposed subsection B refers to seed sold in containers with written labeling. Deleted the qualification of "farm or garden" in the first sentence because the terms are not defined and could be confused with existing defined terms such as agricultural seed. Clarified that the role of the seller in each instance is that of a guarantor.**

~~§ 3.1-2643.2-4008. Labeling and advertising requirements.~~

~~A. All seed defined under § 3.1-263 of this article which are sold, exposed offered for sale, transported, or advertised within this Commonwealth for sowing planting purposes, or and all screenings for any purpose whatsoever, shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving that provides the following information as herein specified, which statement may not be modified or denied without further modification or denial in the labeling or advertisement pertaining to such seed or screenings.~~

~~(A)B. For all treated seed named and treated as defined in this article (for which a separate label may be used) for seed within this subsection the information shall include:~~

~~(1) a1. A word or statement indicating that the seed has been treated;~~

~~(2) the2. The commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance or treatment; and~~

~~(3) a3. A caution statement such as "Do not use for food or feed or oil purposes" if any substance in the amount present is harmful to human or other vertebrate animals. The caution for mercurials and similar toxic substances shall be a poison statement or symbol.~~

~~(B)C. For agricultural seeds the information shall include:~~

~~(1) the1. The recognized name of each kind, (or kind and variety if that kind has been adopted by the Board through regulation as a kind that shall be labeled as to variety in accordance with § 3.1-271(6), pursuant to subdivision 6 of § 3.2-4001) of each agricultural seed component in excess of five percent of the whole, and the percentage by weight of each in order of its predominance as specified by regulation; except mixtures. Mixtures and agricultural seed may be sold by kind name, and agricultural seed may be sold by kind name provided such sale if the seed is not for the production of an agricultural crop and the label clearly indicates "NOT FOR AGRICULTURAL PRODUCTION";~~

~~(2) Whenever any provision of this article or regulation adopted thereto requires 2. The word "mixture" or "mixed" shall appear conspicuously on the label if the guarantor to is required to name more than one agricultural seed component, the guarantor shall cause the word "mixture" or "mixed" to appear conspicuously on the label;~~

~~(3) the3. The lot number or other lot identification;~~

~~(4) the4. The origin, if known; if not known, that fact shall be stated;~~

~~(5) the5. The percentage by weight of all weed seeds;~~

~~(6) the~~6. The name and number per ounce ~~or~~, pound, or metric equivalent of each kind of restricted noxious-weed seed present, subject to subdivision I-(A) ~~(5) of § 3.1 2651e of § 3.2-4015;~~

~~(7) the~~7. The percentage by weight of agricultural *and vegetable* seeds ~~and of vegetable seeds~~ other than the kind or kind and variety named on the label. Such information may be designated as "other crop seed," as "other variety," or as both ~~as the case may be;~~

~~(8) the~~8. The percentage by weight of inert matter;

~~(9) for~~9. For each named agricultural seed:

~~(a) the~~a. The percentage of germination, exclusive of hard or dormant seed;

~~(b) the~~b. The percentage of *any* hard or dormant seed, ~~if present;~~

~~(c) the calendar~~c. The month and year the test was completed to determine such percentages; ~~and~~

~~(d) the~~d. The "total germination" and "hard seed" may be stated ~~as such, if desired,~~ following the information required by ~~items (a) subdivisions a and (b) of this subdivision.b; and~~ e. The guarantor shall state separately on the label the percent of dormant seed.

~~(10) the~~10. The recognized hybrid designation, for all hybrids;

~~(11) the~~11. The quantity statement; and

~~(12) the~~12. The code designation of the person who transports or delivers for transportation said seed in interstate commerce and the name and address of: (ai) the person who sells ~~or who, labels, or offers or exposes said the~~ seed for sale ~~within this Commonwealth;~~ or (bii) the person to whom the seed is sold or shipped for resale ~~and in either case a code designation approved by the Board under regulations authorized by § 3.1 271, indicating the person who transports or delivers for transportation said seed in interstate commerce.~~

~~(C)D.~~ For vegetable seeds in containers of one half pound or less ~~the information shall include:~~

~~(1) the~~1. The name of kind and variety of seed;

~~(2) the~~2. The year ~~for which~~ packeted or put up, provided that the words "packed for" shall precede the year, or the percentage of germination and the month and year the test was completed to determine such percentage;

~~(3) the~~3. The quantity statement, except as provided by appropriate regulations;

~~(4) for~~4. The name and address of the person who labels, sells, or offers to sell the seed;

*and*

5. For the seeds ~~which~~that germinate less than the standard last established by regulations promulgated pursuant to the provisions of this article:

~~(a) the~~a. The percentage of germination, exclusive of hard or dormant seed;

~~(b) the~~b. The percentage of *any* hard or dormant seed, ~~if present;~~

~~(c) the calendar~~c. The month and year the test was completed to determine the percentages in ~~items (a) subdivisions a and (b) of this subdivisionb;~~

~~(d) Following (a) and (b) the~~d. The "total germination" and "hard seed" may be stated ~~as such, if desired,~~ following the information in ~~items (a) subdivisions a and (b) of this subdivision.b;~~

e. The guarantor shall state separately on the label the percentage of dormant seed; *and*

~~(e) the~~f. The words "below standard" in not less than eight-point type; ~~and~~

~~(5) the name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this Commonwealth.~~

~~(D)E.~~ For vegetable seeds in bulk or in containers of more than one half pound, ~~the information shall include:~~

~~(1) the~~1. The name of each kind and variety present in excess of five percent of the whole and the percentage by weight of each in order of its predominance;

~~(2) the~~2. The lot number or other lot identification;



~~(3) for~~ 3. For each named kind and variety:

~~(a) the~~ a. The percentage of germination exclusive of hard or dormant seed;

~~(b) the~~ b. The percentage of *any* hard or dormant seed, if present;

~~(c) the calendar~~ c. The month and year the test was completed to determine the percentages in ~~items (a) subdivisions a and (b) of this subdivision~~ *b*; and

~~(d) following (a) and (b) the~~ d. The "total germination" and "hard seed" may be stated as such, if desired.; and

e. The guarantor shall state separately on the label the percent of dormant seed.

~~(4) the~~ 4. The quantity statement, except when in bulk;

~~(5) the~~ 5. The name and address of the person who ~~sells, or who labels, sells, or offers, or exposes for sale, such to sell the seed within this Commonwealth;~~ and

~~(6) the~~ 6. The labeling requirements of ~~items (1) subdivisions 1 through (5) of this subsection~~ 5 for vegetable seeds sold from open containers shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

~~(E) F. For Seeds or screenings, the information shall include:~~

Seeds or screenings which contain ~~offered for sale or distribution must be plainly labeled to indicate that such seeds or screenings are not for planting purposes if containing more than:~~

~~(i) two percent by weight weed seeds;; or (ii) prohibited noxious-weed seeds or and restricted noxious-weed seeds in excess of the amounts prescribed by regulations promulgated under this article when offered for sale or distribution in this Commonwealth must be plainly labeled in such a way as to indicate to the purchaser that such seeds or screenings are not for seeding purposes.~~

~~(F) G. For seeds in preplanted containers, mats, tapes, or other planting devices the information shall include:~~

~~(1) for all kinds of~~ 1. For flower seeds:

~~(a) the~~ a. The name of the kind and variety or a statement of type and performance characteristics, as prescribed in the regulations ~~promulgated~~ *adopted* pursuant to the provisions of this article;

~~(b) the calendar~~ b. The month and year seed was tested or the year ~~for which~~ the seed was packaged;

~~(c) the~~ c. The quantity statement, except as ~~otherwise~~ provided by ~~appropriate~~ regulations;

~~(d) the~~ d. The name and address of the person who ~~labeled said seed, or who labels, sells, or offers, or exposes said to sell seed for sale within this Commonwealth;~~ and

~~(e) other~~ e. Other special labeling requirements as determined by the Board.

~~(2) for~~ 2. For seeds of those kinds ~~for which~~ *with* standard testing procedures ~~are prescribed and which that~~ germinate less than the germination standard ~~last established by regulations promulgated pursuant to the provisions of this article:~~

~~(a) the~~ a. The percentage of germination exclusive of hard seed; and

~~(b) the~~ b. The words "below standard" in not less than eight-point type.

~~(3) for~~ 3. For seeds placed in a germination medium, mat, tape, or other device ~~in such a way as to make making~~ it difficult to determine the quantity of seed without ~~removing the seeds from the medium, mat, tape, or device~~ *removal*, a statement to indicate the minimum number of seeds in the container.

~~(G) H. For flower seeds in containers other than packets prepared for use in home flower gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices the information shall include:~~

~~(1) the~~ 1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in ~~rules and regulations promulgated pursuant to the provisions of this article;~~

- ~~(2) the~~ 2. *The lot number or other lot identification;*
- ~~(3) the calendar~~ 3. *The month and year that the seed was tested, or the year for which the seed was packaged;*
- ~~(4) the~~ 4. *The quantity statement, except as provided by appropriate regulations;*
- ~~(5) the~~ 5. *The name and address of the person who labeled said seed or who labels, sells, or offers, or exposes said to sell the seed for sale within this Commonwealth; and*
- ~~(6) for~~ 6. *For those kinds of seed for which standard testing procedures are prescribed:*
- ~~(a) the~~ a. *The percentage of germination exclusive of hard seed; and*
- ~~(b) the~~ b. *The percentage of any hard or dormant seed, if present.*
- ~~(H)I.~~ *For tree and shrub seeds the information shall include:*
- ~~(1) the commonly~~ 1. *The accepted common and Latin name of species;*
- ~~(2) the~~ 2. *The variety (if applicable);*
- ~~(3) the~~ 3. *The quantity statement;*
- ~~(4) the~~ 4. *The number;*
- ~~(5) the calendar~~ 5. *The year in which seed was collected;*
- ~~(6) the~~ 6. *The origin: The indicating the specific locality (state and county, or Virginia zone, in the United States or nearest equivalent political unit in case of foreign countries) in which where the seed was collected;*
- ~~(7) the~~ 7. *The month and year of the date of test (month and year) the seed was tested;*
- ~~(8) the~~ 8. *The percentage by weight of pure seed;*
- ~~(9) the~~ 9. *The percentage by weight of inert matter;*
- ~~(10) the~~ 10. *The percentage by weight of other crop seeds;*
- ~~(11) the~~ 11. *The percentage of germination exclusive of hard or dormant seed;*
- ~~(12) the~~ 12. *The percentage of any hard seeds, if present;*
- ~~(13) the~~ 13. *The speed of germination, expressed in terms of the number of days the seeds will take to reach ninety 90 percent of total;*
- ~~(14) the~~ 14. *The pregermination treatment used in test;*
- ~~(15) the~~ 15. *The total number of seed per pound;*
- ~~(16) the~~ 16. *The moisture content; and*
- ~~(17) the~~ 17. *The name and address of the person who labeled said labels, sells, or offers to sell the seed or who sells, offers, or exposes said seed for sale within this Commonwealth.*
- ~~(I)J.~~ *For lawn or turf seed mixtures in prepacked containers of one hundred 100 pounds or less the information shall include:*
- ~~(1) the~~ 1. *The recognized name of each kind, or kind and variety, of each agricultural seed component in excess of five percent of the whole, and the percentage by weight of each in order of its predominance;*
- ~~(2) the~~ 2. *The registered name of the mixture;*
- ~~(3) the~~ 3. *The lot number or other lot identification;*
- ~~(4) the~~ 4. *The percentage by weight of all weed seeds;*
- ~~(5) the~~ 5. *The name and number per ounce or per pound of each kind of restricted noxious-weed seeds present, subject to subdivision I(A)(5) of § 3.1-2651e of § 3.2-4015;*
- ~~(6) the~~ 6. *The percentage by weight of other agricultural seeds not claimed in the formula;*
- ~~(7) the~~ 7. *The percentage by weight of inert matter;*
- ~~(8) for~~ 8. *For each named agricultural seed:*
- ~~(a) the~~ a. *The percentage of germination, exclusive of hard seed;*
- ~~(b) the~~ b. *The percentage of any hard seed, if present; and*
- ~~(c) the calendar~~ c. *The month and year the test was completed to determine the percentages in items (a) subdivisions a and (b) of this subdivision; provided, however, that the date of the first test of the components may be given for the entire mixture.*
- ~~(9) the~~ 9. *The quantity statement; and*

~~(10) the 10. The code designation of the person who transports or delivers for transportation the seed and the name and address of (a): (i) the person who sells or who, labels, or offers, or exposes said to sell the seed for sale within this Commonwealth or (b); or (ii) the person to whom the seed is sold or shipped for resale, together with the code designation approved by the Board under regulations authorized by § 3.1 271, indicating the person who transports or delivers for transportation said seed.~~

*K. For transgenic seed, in addition to any other requirements, the guarantor shall label all seed produced from transgenic plant material pursuant to regulation.*

**Drafting Note: Moved the language in proposed subsection K from existing § 3.1-275.4.**

~~§ 3.1 275.4. Sale of transgenic seed.~~

~~In addition to the requirements of § 3.1 264, the guarantor shall label all seed produced from transgenic plant material according to the regulations promulgated by the Board pursuant to the provisions of this article.~~

**Drafting Note: Deleted section and moved to subsection K of proposed § 3.2-4008, Labeling and advertising requirements.**

~~§ 3.1 275.13.2-4009. Registration of lawn and turf seed mixture; change in labeling or specificationsLawn and turf seed mixture; registration and labeling.~~

~~(A) Each and every A. Any person packing or distributing lawn and turf seed mixture bearing a distinguishing name or trademark in prepackaged containers of one hundred/100 pounds or less shall be registered annually by the person packing or distributing register the mixture annually with the Commissioner or his agent giving and provide the following information:~~

~~(1)1. The brand name of the lawn and turf seed mixture;~~

~~(2)2. A statement indicating of the specifications of the lawn and turf seed mixture indicating within five per centum/percent the percentage by weight of each kind of lawn and turf seed in the mixture;~~

~~(3)3. A complete copy of all labeling that is to appear on the container;~~

~~(4)4. An example of the analysis statement that is to appear on each container of a mixture; and~~

~~(5)5. The name and address of the registrant and the name and address of the person whose name will appear on the label.~~

~~(B)B. Every registration shall expire on December 31 of the calendar year for which it was issued: provided that every registration is. If the holder files a renewal application on or before December 31, his registration shall remain valid through January 31 of the next ensuing calendar year or until issuance of the renewal registration, whichever event first occurs; if the holder thereof shall have filed a renewal application with the Commissioner or his agent on or before December 31 of the year for which the Commissioner or his agent issued the current registration.~~

~~(C) Within the discretion of the C. The Commissioner or his agent, may permit a change in the labeling or specifications of a lawn or turf seed mixture subject to this section may be made within a current registration period without requiring new registration of the product provided that the name of the lawn and turf seed mixture and the specifications for the primary ingredients of the mixture are not changed.~~

~~(D)D. The registrant shall pay to the Commissioner an annual registration fee of fifty dollars/\$50 for each named lawn and turf seed mixture in prepacked containers of 100 pounds or less prior to its distribution in the Commonwealth.~~

~~(E) If it appears to the E. The Commissioner or his agent shall register the lawn and turf seed mixture if he finds that the components of the lawn and turf seed mixture are such as to warrant the proposed labeling and other claims for it and if the labeling and other submitted~~

material required to be submitted appear to comply with the requirements of this article, he shall register the lawn and turf seed mixture.

~~(F)~~F. If it appears to the Commissioner or his agent *finds* that the lawn and turf seed mixture does not warrant the proposed claims made in respect of for it or if the mixture and its labeling required to be submitted do not comply with the provisions of this article, he shall notify the registrant of the manner in which the labeling or other material required to be submitted fail to comply with this article so as of noncompliance to afford the registrant an opportunity to make the necessary corrections.

~~(G)~~G. If the Commissioner or his agent identifies any unregistered lawn and turf seed mixture in commerce in the Commonwealth during the registration year, the Commissioner or his agent he shall notify the guarantor and grant a grace period of ~~fifteen~~15 working days from issuance of notification for the guarantor to register the lawn and turf seed mixture and pay the registration fee without penalty. Any person required to register a lawn and turf seed mixture who fails to register within the ~~fifteen~~15 working day grace period shall pay to the Commissioner a ~~fifty dollar~~\$50 late fee in addition to the registration fee. The Commissioner or his agent may issue a stop sale, use, removal, or seizure order upon the lawn and turf seed mixture until its registration is complete.

**Drafting Note: Technical changes.**

~~§ 3.1-275.33.2-4010.~~ *Inspection Lawn and turf seed; inspection fee.*

A. Any person who first introduces lawn and turf seed for sale in the Commonwealth shall pay ~~annually~~ to the Commissioner *an annual inspection fee* by January 31 following the calendar year in which the sale occurred, ~~an~~. *The inspection fee shall be the greater of \$35 or three-tenths of one percent of the gross sales receipts for lawn and turf seed sold by that person in the Commonwealth during that calendar year. Generally accepted accounting principles shall be used to determine the gross sales receipts. The Commissioner may inspect the sales records of the person required to pay the inspection fee.*

~~The minimum inspection fee shall be thirty five dollars per person per calendar year; provided that for the period July 1, 1994, through December 31, 1994, the minimum inspection fee shall be seventeen dollars and fifty cents per person.~~

~~B. The Commissioner or his agent shall notify any~~Any person governed by subsection A of this section who *fails has not paid to pay the Commissioner the required inspection fee by the date specified in subsection A of this section and grant January 31 shall be given* a grace period of ~~fifteen~~15 working days from issuance of notification ~~for the person~~ to pay the inspection fee without penalty. ~~If the~~Any person who fails to pay the inspection fee by the fifteenth day of the grace period, ~~the person~~ shall also pay a late fee of ten percent of the inspection fee due or ~~fifty dollars~~\$50, whichever is greater. ~~The late fee amount shall be in addition to the inspection fee amount. The assessment of the late fee shall not prohibit the Commissioner or his agent may take other~~from taking further action as provided for in this article in addition to the assessment of the late fee.

~~C. Any person required to pay an inspection fee under subsection A of this section shall use generally accepted accounting principles that indicate accurately in his records the gross sales receipts for seed sold by him in the Commonwealth. The Commissioner or his agent may inspect the sales records of the person required to pay the inspection fee.~~

**Drafting Note: The language in existing subsection C has been incorporated into proposed subsection A.**

~~§ 3.2-4011.~~ *Inspection.*

A. *The Commissioner may sample, inspect, analyze, and test seeds transported, sold, or offered for sale for planting purposes and screenings for any purpose. For these purposes, the Commissioner may enter: (i) any premises during business hours; and (ii) any truck or other*

conveyor by land, by water, or by air at any time when such conveyor is accessible, to access seeds, mixtures of seeds, screenings, and the records required to be kept under § 3.2-4006.

*B. The Commissioner shall promptly notify the person who transported, sold, or offered the seed or screenings for sale, or who otherwise violated this article.*

**Drafting Note: New section. The language in proposed subsections A and B has been moved from subsection A and subdivision 1 of subsection B in existing § 3.1-270.**

§ 3.2-4012. *Stop sale order.*

*The Commissioner shall issue and enforce a written or printed stop sale order to the owner or custodian of any lot of agricultural, vegetable, flower, tree and shrub, lawn and turf seed, mixtures of such seeds, or screenings if he finds a violation of any provision of this article. The stop sale order shall prohibit further sale of such seeds, mixtures of seeds, or screenings until the Commissioner has evidence of compliance. The owner or custodian shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). The issuance of a stop sale order shall not limit the right of the Commissioner to pursue further remedy.*

**Drafting Note: New section. Moved from existing § 3.1-270.**

§ 3.1-2723.2-4013. *Seizure; disposition of seeds.*

~~Any lot of agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such seeds, or "screenings" being sold, exposed for sale, offered for sale, or held with intent to sell in this Commonwealth contrary to the provisions of this article shall be subject to seizure on complaint of the Commissioner to *the appropriate court of competent jurisdiction in the county or city in which the seeds, mixtures of such seeds, or "screenings" are located. In the event* If the court finds the seeds, mixtures of such seeds, or "screenings" to be in violation of the provisions of this article and orders the condemnation thereof, such seeds, mixtures of such seeds, or "screenings" shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this Commonwealth; provided, that in no instance shall such disposition of the seeds, mixtures of such seeds, or "screenings," be ordered by the court without first having given allows the claimant an opportunity to apply to the court for the release of the seeds, mixtures of such seeds, or "screenings," or permission to condition or relabel to bring them the material into compliance with the provisions of this article.~~

**Drafting Note: Technical changes.**

§ 3.1-2733.2-4014. ~~Penalty; assessment~~ *Assessment for variance from guarantee.*

~~A. Every violation of the provisions of this article shall be deemed a Class 3 misdemeanor.~~

~~B. Any~~ *The Commissioner may make an assessment for variance from guarantee upon the guarantor if any person who sells any seed subject to the provisions of this article is subject to an assessment for variance from guarantee whenever the Commissioner or his agent determines if he finds such seed: (i) is not within testing tolerance of the labeled analysis; (ii) contains restricted noxious--weed seeds in excess of the amount claimed on the label; (iii) is not labeled; or (iv) is not labeled in accordance with the provisions of this article.*

~~The Commissioner or his agent shall make an assessment for variance from guarantee upon the person whose name appears on the label. The Commissioner or his agent shall make an assessment for variance from guarantee equivalent to one percent of the amount of money the person from whom the sample was taken receives from the sale of the seed or \$100 (whichever is greater), upon each lot of seed or portion thereof the Commissioner or his agent sampled and found in violation, except as provided in subsection B of § 3.1-273 (e)3.2-4014. The Commissioner or his agent shall make the assessment for variance from guarantee only on the lot or portion thereof that the person sold after the Commissioner or his agent sampled the lot or portion thereof.~~

~~EB.~~ The Commissioner ~~or his agent~~ shall make an assessment for variance from guarantee upon the guarantor of three times the amount the Commissioner ~~or his agent~~ calculates pursuant to *subsection A of § 3.1-273 (b) whenever* ~~3.2-4014~~ if the Commissioner ~~or his agent~~ finds *that*: (i) ~~that~~ the seed contains prohibited noxious--weed seeds; (ii) ~~that~~ the seed contains restricted noxious--weed seeds in a prohibited amount; (iii) the guarantor has mislabeled such seed as to variety including a component of a mixture; (iv) the person who sold ~~such~~ *the* seed does not have the records required in § ~~3.1-266~~ ~~3.2-4006~~ available for inspection; or (v) the person who sold ~~such~~ *the* seed does not have a laboratory analysis available for inspection ~~to substantiate the labeling.~~

C. The guarantor on whom the assessment for variance from guarantee is made shall pay the assessment to the Commissioner within ~~sixty~~ 60 days from the date the Commissioner ~~or his agent~~ issues the assessment ~~to the guarantor~~. Any person who fails to pay the assessment within ~~sixty~~ 60 days shall pay a late fee of ten percent of the assessment to the Commissioner in addition to the assessment. The Commissioner shall revoke the license of any person who fails to pay an assessment.

**Drafting Note: Moved existing subsection A to proposed § 3.2-4020, Penalty.**

§ ~~3.1-265~~ ~~3.2-4015~~. Prohibitions.

It ~~shall be~~ *is* unlawful for any person to:

~~11. To transport~~ *Transport*, to offer for transportation, to sell, or offer for sale ~~or expose for sale, within this Commonwealth~~ *seed or seed mixtures*:

~~(A) Seed or seed mixtures subject to this article:~~

~~(1) unless~~ *a. Unless* the germination test to determine the percentage of germination required by § ~~3.1-264~~ shall have been ~~3.2-4008~~ is completed within a ~~nine month~~ period, exclusive of the calendar month in which the test was completed, ~~nine months~~ prior to *the month of transportation, sale, exposure for sale, or offering* offer for sale or transportation;

~~(2) notb. Not~~ labeled in accordance with or otherwise meeting the provisions of compliance with this article, not registered or falsely stated to be registered under § ~~3.1-275~~ ~~3.2-4009~~, or having a false or misleading labeling or claim;

~~(3) pertaining to which~~ *c. If* there has been a false or misleading advertisement *with regards to the seed*;

~~(4) consisting~~ *d. Consisting* of, or containing prohibited noxious-weed seeds in any amount whatsoever (tolerance not permitted);

~~(5) containing~~ *e. Containing* restricted noxious-weed seeds, except as prescribed by regulations promulgated under this article;

~~(6) containing~~ *f. Containing* weed seeds in excess of one percent by weight, except as prescribed by regulations promulgated under this article;

~~(7) that~~ *g. That* have been treated and not labeled as required;

~~(8) toh. To~~ which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality, or origin of the seed;

~~(9) represented~~ *i. Represented* to be certified, registered, or foundation seed; unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency;

~~(10) represented~~ *j. Represented* to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this article except those kinds named in regulations promulgated ~~adopted~~ by the Board as having agronomic value and flower seed generally defined as hybrids prior to the enactment of *subsections G and H of § 3.1-264 (F) and (G)* ~~3.2-4008~~ on July 1, 1966 as determined by regulations promulgated ~~adopted~~ by the Board;

~~(11) hybrid~~ *k. Hybrid* seed from a crop ~~which~~ *that* has been inspected in the field by a duly authorized inspector and rejected because of failure to conform to the controlled conditions as specified by regulations promulgated pursuant to the provisions of this article;

~~(12) unless~~. Unless it conforms to the definition of a "lot"; and  
~~(13) unless~~m. Unless the variety or hybrid name or designation is the first variety or hybrid name or designation assigned to it by the owner of the variety or hybrid.

~~(B)-2. Transport, offer for transportation, sell, or offer for sale screenings~~Screenings; unless labeled as provided in *subsection F of § 3.1-264 (E) of this article*3.2-4008.

~~III. To detach~~Detach, alter, deface, or destroy any label ~~provided for in required pursuant to this article or the regulations promulgated thereunder, or to alter or substitute seed, in any manner that may defeat the purpose of the provisions of this article.~~

~~III.4. To disseminate~~Disseminate false or misleading advertisement ~~in any manner concerning agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings.~~

~~IV.5. To hinder~~Hinder or obstruct ~~in any manner an authorized agent of the Commissioner in the performance of his duties.~~

~~V.6. To fail~~Fail to comply with, or ~~to supply inaccurate information in reply to, a stop sale order,; or to remove tags~~ remove labels attached to, or ~~to dispose of seed or screenings held under such order except as specified by the Commissioner or his agent.~~

~~VI.7. To use~~Use the name of the Department of Agriculture or the results of tests and inspections made by the Department for advertising purposes.

~~VII.8. To use~~Use the words "type" or "trace" in lieu of information required by this article.

~~VIII.9. To label~~Label and offer for sale seed ~~under the scope of this article without keeping complete records as specified in § 3.1-266~~3.2-4006.

~~IX.10. To fail or refuse~~Fail to obtain a license in accordance with § 3.1-275.23.2-4005.

~~X.11. To fail or refuse~~Fail to register a lawn and turf seed mixture in accordance with § 3.1-275.13.2-4009.

~~XI.12. To fail or refuse~~ Fail to pay inspection fees in accordance with § 3.1-275.33.2-4010.

~~XII.13. To sell~~Sell, or ~~expose~~offer for sale, or advertise as noncertified, a variety ~~for which~~ if a certificate of plant variety protection has been issued, under the Plant Variety Protection Act, specifying sale only as a class of certified seed; ~~provided, that the~~. The guarantor may label seed from a certified lot by variety name when the guarantor uses the seed in a mixture, if the guarantor is the owner of the variety or the owner of the variety gives the guarantor approval to use the variety name.

**Drafting Note: Technical changes.**

§ 3.1-2673.2-4016. Exemptions from certain provisions.

~~(A)A.~~ The provisions of §§ 3.1-264, 3.1-265 and 3.1-271 (6) ~~do §§ 3.2-4008, and 3.2-4015 and subdivision 6 of § 3.2-4001 shall not apply to:~~

~~(1) to seed~~1. Seed or grain sold or represented to be sold for purposes other than for ~~seed~~planting, except as required by *subdivision F of § 3.1-264 (E)*3.2-4008;

~~(2) to seed~~2. Seed for conditioning when: (i) consigned to, being transported to, or stored in a processing establishment; ~~provided, that~~ and (ii) the accompanying invoice or labeling ~~accompanying said seed bears the statement "Seed for conditioning,;" and provided further that any other labeling or representation which may be made with respect to the uncleaned or unconditioned seed shall be subject to this article;~~

~~(3) to any~~3. Any carrier ~~in respect to any of~~ seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; ~~provided, that such~~the carrier ~~is~~does not engaged in producing, conditioning or marketing~~also produce, condition, or market~~ agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings ~~subject to this article; and~~

~~(4) to untested~~4. Untested seed sold on his own premises by a grower who collected gross receipts for selling seeds ~~in the Commonwealth produced by him~~ of \$1,000 or less during the

~~calendar preceding year immediately preceding the current calendar year, which seed was produced by him, provided that such the seed, when sold or delivered, shall bear bears the label statement "These seeds have not been tested" on each package or bag as follows: "These seeds have not been tested." Provided, however, that any labeling or representation which may be made in respect to such seed shall be subject to this article.~~

~~(B) No person shall be subject to the penalties of this article for having sold, offered or exposed for sale in this Commonwealth~~

~~B. The provisions of § 3.2-4009 shall not apply to any person who sells or offers for sale:~~

~~1. Any lawn and turf seed mixture provided he: (i) acted in good faith; and (ii) possessed a statement showing that the lawn and turf seed mixture has been previously registered and approved for sale; and~~

~~2. Any agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings; which were that are incorrectly labeled or represented as to kind, variety, or origin, which seed and cannot be identified by official examination thereof by the Commissioner or his agent, unless he has failed fails to: (i) obtain an invoice or grower's declaration or other labeling information; or unless he has failed to (ii) take such other reasonable precautions as may be reasonable to insure the identity is that stated.~~

~~(C) No person shall be subject to the penalties of this article for having sold or offered or exposed for sale 3. Any tree or shrub seeds which were that are incorrectly labeled or represented as to subspecies, locality of collection, or year of collection; unless he has failed fails to: (i) obtain an invoice, grower's declaration, or other labeling information; or unless he has failed to (ii) take such other reasonable precautions as may be reasonable to insure the accuracy of these statements as presented on the label.~~

~~(D) No person shall be subject to the provisions of § 3.1 275.1 or the penalties of this article for having sold, offered or exposed for sale any lawn and turf seed mixture not registered as provided in said section provided he has acted in good faith and has in his possession a statement showing that such lawn and turf seed mixture has been previously registered and approved for sale in this Commonwealth.~~

**Drafting Note: Moved existing subsection D to subdivision 1 of proposed subsection B. Deleted references in existing subsection A that other labeling or representations will remain subject to the article because provisions need only state the exemption narrowly and not identify those items not addressed by the article.**

~~§ 3.1 2683.2-4017. Disclaimers, nonwarranties, and limited warranties.~~

~~A No disclaimer, nonwarranty, or limited warranty used in any invoice, advertising, labeling, or nor any other written, printed or graphic matter pertaining to any seed may not directly or indirectly deny or modify any information required by this article or the rules and regulations promulgated thereunder adopted hereunder.~~

**Drafting Note: Technical changes.**

~~§ 3.1 2743.2-4018. Notice of violations; review; warning.~~

~~It shall be the duty of the A. The Commissioner or his agent to give notice of every violation of the provisions shall notify the custodian of any seed or screenings in violation of this article with respect to agricultural, vegetable, flower, tree and shrub, lawn and turf seed, mixtures of such seeds or "screenings" to the person in whose possession such seed or "screenings" are found. The Commissioner or his agent shall forward a copy of such notice to the person whose "analysis tag or label" is attached to the container of such seed or "screenings" guarantor.~~

~~B. Nothing in this article shall be construed as requiring requires that the Commissioner to report for prosecution, or for the institution of institute seizure proceedings, where if the Commissioner considers the violation of the law to be minor. In such cases, the Commissioner or~~



~~his agent may serve a suitable~~*provide a notice of warning in writing, when he believes that the public interest will be best served by so doing.*

**Drafting Note: Technical changes.**

~~§ 3.1-275.6~~*3.2-4019. Duty of attorney for Commonwealth.*

~~It shall be the duty of every~~*each* attorney for the Commonwealth to whom the Commissioner shall report any violation of this article *is reported to cause proceedings to be prosecuted*~~commence proceedings in the appropriate court~~ without delay.

**Drafting Note: Technical changes.**

~~§ 3.2-4020. Penalty.~~

*Any violation of this article is a Class 3 misdemeanor.*

**Drafting Note: New section. Moved language in proposed subsection A from existing § 3.1-273.**

Article 2.

State-Certified Seed Board.

~~§ 3.2-4021. Certified Seed Board; purpose.~~

*The Certified Seed Board is hereby established as a policy board that is a unit of and is within the Cooperative Extension of the Virginia Polytechnic Institute and State University. The purpose of the Certified Seed Board is to establish certification standards for agricultural and vegetable seed.*

**Drafting Note: New section. Adopted model board language. Moved language from existing § 3.1-276.**

~~§ 3.1-276~~*3.2-4022. Commission continued as Board; composition; quorum; chairman**Membership; terms; quorum; meetings.*

~~The State Certified Seed Commission is continued and shall hereafter be known as the State Certified Seed Board. The State Certified Seed Board is a unit of and within the Cooperative Extension Service of the Virginia Polytechnic Institute and State University.~~

~~The Commissioner of Agriculture and Consumer Services, the Director of the Agricultural Experiment Station at Blacksburg, the Director of such Extension Service, the Head of the Agronomy Department of the Virginia Polytechnic Institute and State University, and the Associate Vice President for Agriculture and Extension of Virginia State University or their designated representatives shall serve, ex officio, as members of the Certified Seed Board and in addition one member of the Virginia Seedsmen's Association and one member of the Virginia Crop Improvement Association shall be appointed by the Governor. Such appointments may be made from, but shall not be limited to, lists of three names nominated by each such Association. Members shall serve on the Certified Seed Board for terms of three years commencing with the date of appointment. The Governor's appointments shall be made within thirty days of the occurrence of any vacancy. A majority of the members of the Certified Seed Board shall constitute a quorum. One of the members shall be elected chairman~~*The Certified Seed Board shall have a total membership of seven consisting of two nonlegislative citizen members and five ex officio members. Nonlegislative citizen members shall be appointed as follows: one member of the Virginia Seedsmen's Association and one member of the Virginia Crop Improvement Association shall be appointed by the Governor subject to confirmation by the General Assembly. Such appointments may be made from lists of three names nominated by each such Association. The Commissioner, the Director of the Agricultural Experiment Station at Blacksburg, the Director of the Virginia Cooperative Extension, the Head of the Crop and Soil Environmental Sciences Department of the Virginia Polytechnic Institute and State University, and the Dean for the School of Agriculture at Virginia State University or their designees shall serve ex officio with voting privileges. Nonlegislative citizen members of the Certified Seed Board shall be citizens of the Commonwealth.*

*Nonlegislative citizen members of the Certified Seed Board shall serve for terms of three years. Ex officio members of the Certified Seed Board shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.*

*The Certified Seed Board shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The meetings of the Certified Seed Board shall be held at the call of the chairman or whenever the majority of the members so request*

*The Board shall maintain an office in Blacksburg from which place its duties shall be performed.*

**Drafting Note: Adopted model board language. Language that emphasizes the Board's role with the Virginia Cooperative Extension has moved to proposed § 3.2-4021, The Certified Seed Board; purpose. This proposed section also incorporates language from existing § 3.1-279.**

~~§ 3.1-279. Office; meetings.~~

~~The Board shall maintain an office in Blacksburg from which place its duties shall be performed and it is authorized to procure the necessary quarters and office equipment, payment for which shall be as in other cases of like character. Meetings of the Board shall be held, upon the call of the chairman, in Blacksburg or at such other place as designated in the call.~~

**Drafting Note: Deleted section and moved into proposed § 3.2-4022, Membership; terms; quorum; meetings.**

~~§ 3.1-278.2-4023. Compensation and expenses.~~

~~The members of the Board shall serve without compensation, but shall be reimbursed for their actual traveling and other necessary expenses incurred in the performance of their duties hereunder. The Board shall have power to fix the compensation of its employees within the appropriations made for such purposes and subject to the current provisions of law as to compensation of officers and employees of the Commonwealth. Salaries and expenses shall be paid by the Treasurer, on warrants of the Comptroller, issued on vouchers signed by the chairman of, or by such other person or persons designated by, the Board all reasonable and necessary expenses incurred in the performance of their duties as provided in § 2.2-2825. Funding for the costs of expenses of the members shall be provided by the Certified Seed Board. Expenses shall be paid by the Treasurer, on warrants of the Comptroller, and issued on vouchers signed by the chairman of the Certified Seed Board or his designee.~~

**Drafting Note: Adopted model board language.**

~~§ 3.1-277.2-4024. Powers enumerated and duties of the Certified Seed Board.~~

~~The Certified Seed Board shall have the following powers and duties:~~

~~(1) Set up and define the~~

~~1. To encourage the production and use of certified seed as an economic measure when consistent with a fair profit for the certified seed producer; to advise cooperation of marketing systems for certified seed producers through seed dealers or cooperative warehouses; to control standards and grades and distribution of certified seed stocks other than through private sales by producers; to make all certified seed stocks available for market demands through pooling or other means; to insure to producers uniform percentage sales; and to distribute among producers on a fair basis the carry-over of unsold certified seed stocks for sale and distribution commercially.~~

~~2. Adopt regulations that establish standards of health, vigor, purity, and type for the certification of agricultural seed, and of vegetable seed as defined in 3.1-263, and of tubers used for seeding planting purposes;~~

~~(2)3. Provide for their~~ *the certification and procurement of agricultural and vegetable seed, and of tubers used for planting purposes;*

~~(3)4. Adopt brands;~~

~~(4)5. Select, producers of certified seed by general regulation and systematic examination, producers of certified seed; and~~

~~(5) Appoint a chief of field forces, who, under~~ *6. Under the supervision and direction of the Director of the Cooperative Extension Service of the Virginia Polytechnic Institute and State University shall have supervision and authority over the field staff, and by and with the advice and recommendation of the chief of field forces, such additional field personnel as are necessary; a full time administrative secretary who, under the direction of the chief of field forces, and at the discretion of the Certified Seed Board, appoint a chief of field forces; additional field personnel as necessary; and a full-time administrative secretary who shall have charge of all clerical assistants and all records and official files of the Board.*

~~All appointees shall be subject to removal at the pleasure of the Board.~~

**Drafting Note: Adopted model board language and combined the powers and duties of the Certified Seed Board into one section. Subdivision 1 is moved from existing § 3.1-282.**

~~§ 3.1-282. Board to encourage production and use of certified seed; cooperation of marketing systems; control of standards, grades and distribution, etc.~~

~~The Board shall encourage the production and use of certified seed as an economic measure when consistent with a fair profit for the certified seed producer. It shall also consider and advise cooperation of marketing systems for certified seed producers, through seed dealers or cooperative warehouses, control standards and grades and distribution of certified seed stocks other than through private sales by producers, make as far as possible all certified seed stocks available for market demands through pooling or other means, insure to all producers, as far as possible, uniform percentage sales, and distribute among producers on a fair basis the carry over of unsold certified seed stocks for sale and distribution commercially as far as feasible. The uniform observance of the rules and regulations, and all matters of policy and control in the production of certified seed shall be carried out by the Board through the chief of the field staff and his assistants, and it shall cooperate with State and other agencies engaged in similar work.~~

**Drafting Note: Deleted section and moved to subdivision 1 of proposed § 3.2-4024, Powers and duties of Certified Seed Board.**

~~§ 3.1-280~~ *3.2-4025. Rules and regulations* *Regulations.*

~~The Certified Seed Board shall have authority to promulgate reasonable rules and may adopt regulations, after a public hearing and investigation, and upon due publication of. At least 15 days prior to the public hearing, the Certified Seed Board shall publish a notice of the general object, time, and place, at least fifteen days before the date fixed for the hearing, in a newspaper of general circulation published in the City of Richmond, together with such any other dissemination of notice as is deemed advisable, governing the certifying, branding and labeling of seed, and the tagging of certified seeds, other than those now provided by law. Such rules and regulations shall be reasonably adapted to the promotion of the objects of this and other laws on the subject, and of the agricultural interests of the Commonwealth.~~

**Drafting Note: Technical changes.**

~~§ 3.1-283~~ *3.2-4026. Illegal use of word "certified"; who may make certification; standards; penalty.*

~~(a)A. It shall be is unlawful for any person, firm or corporation to use, orally or in writing, the term "certified" or imply certification relative to any agricultural or seeds, vegetable seeds, or any tubers for seeding planting purposes, or plants, sold or advertised or offered for sale in this Commonwealth, the term "certified," alone or with other words, or to so use any other term or form of words which suggests that there has been inspection and certification, or either, unless such seeds or, tubers, or plants have been certified as herein provided.~~ *follows:*

~~(b)1. If such~~*the seeds or, tubers, or plants were produced in another state or in a foreign country, certification by the legally constituted authorized inspection officials of such state or country or of the United States*~~the place of origin shall be sufficient, if accepted by the Board; but if.~~

2. ~~If such~~*the seeds or, tubers, or plants were produced in Virginia, certification shall be by the producers under authorization of the Board, or its duly authorized inspectors or agents, or by such other agency as the Board shall designate; except in case of certificates issued by the State Department of Agriculture and Consumer Services in its regulatory work as authorized by law.*

~~The Board shall adopt and promulgate appropriate standards of health, vigor, purity and type for certifying such seeds, tubers and plants as are suited to the needs of agriculture in this Commonwealth.~~

~~(e)B. Any person who violates any of the provisions of this section, shall be is guilty of a Class 3 misdemeanor, and upon conviction shall be punished by a fine not to exceed \$500. Each violation shall constitute is a separate offense.~~

**Drafting Note: The duty of the Certified Seed Board to adopt appropriate standards has been incorporated into subdivision 2 of proposed § 3.2-4024, Powers and duties of the Certified Seed Board. Classified the penalty as a Class 3 misdemeanor, which carries a fine of not more than \$500.**

~~§ 3.1-2843.2-4027. Certification by Department, Commissioner, or Board not affected.~~

~~Nothing contained in this chapter shall be construed to regulate, restrict, or affect in any way whatsoever the certification of seeds, plants, and/or other materials, or the use of the term "certified" or other similar words, by the Department of Agriculture and Consumer Services, the Commissioner, or the Board, in its or their regulatory work, as authorized by law.~~

**Drafting Note: Technical changes.**

## CHAPTER ~~47~~ 41.

### SEED POTATOES.

**Chapter Drafting Note: Deleted policy statements and definitions of terms provided elsewhere. Added a new definition of "seed potatoes" to contrast with "approved seed potatoes" and to provide clarity throughout the chapter. Reorganized the provisions relating to enforcement, seizure, and penalty procedures into separate sections. Classified the general penalty as a Class 1 misdemeanor.**

~~§ 3.1-285. Short title.~~

~~This chapter shall be known as the "Virginia Seed Potato Inspection Law."~~

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 3.1-286. Necessity for chapter.~~

~~This chapter and regulations adopted hereunder are declared to be necessary in order to improve agricultural production in Virginia, to enable potato growers to secure higher quality Irish potatoes and parts thereof for the purpose of propagation, to prevent the spread of diseases affecting agriculture and to promote the general welfare of the public.~~

**Drafting Note: Deleted section. Policy statements are no longer set out in the Code.**

~~§ 3.1-2873.2-4100. Definitions.~~

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

~~"Approved seed" Irish potatoes" and parts thereof means disease-free Irish potatoes and parts thereof which that conform to the standards hereinafter provided for established by the Seed Potato Board.~~

*"Seed potatoes" means potatoes and parts thereof intended for propagation or for the production of commercial potatoes.*

*"Board" means the State Seed Potato Board.*

~~*"Person" means and includes individuals, partnerships, corporations, companies, associations, cooperatives, and any and all other business units, devices and arrangements.*~~

~~*"State Seed Potato Commission" or "Commission" means the State Seed Potato Board.*~~

**Drafting Note: Deleted the definition of "person," which is defined previously in Title 2.2. Deleted the definition of "Board" and referred to the Board specifically as the Seed Potato Board to avoid confusion with the Board of Agriculture and Consumer Services. Deleted the definition of "State Seed Potato Commission" because the Commission was replaced by the State Seed Potato Board in 1985.**

*§ 3.2-4101. Seed Potato Board; purpose.*

*The Seed Potato Board is established as a policy board in the executive branch of state government. The purpose of the Seed Potato Board is to establish standards for seed potatoes and to carry out the provisions of this chapter.*

**Drafting Note: New section. Adopted model board language consistent with other chapters in proposed Title 3.2.**

~~*§ 3.1-2903.2-4102. State Seed Potato Commission continued as State Seed Potato Board. Membership; terms; quorum; meetings.*~~

~~*The State Seed Potato Commission within the Department of Agriculture and Consumer Services is continued and shall hereafter be known as the State Seed Potato Board. The State Seed Potato Board shall consist of seven members from the principal potato growing areas who shall be actively engaged in potato production. The members of the Board shall be appointed by the Governor, subject to confirmation by the General Assembly, and serve for four year terms each and until their successors are appointed and take office. Such appointments may be made from recommendations submitted by the producer and dealer organizations in the principal potato growing areas. Four members of the Board shall constitute a quorum.*~~

~~*The Board shall elect its own chairman and meet at least once each year prior to the beginning of the seed potato buying season, and at such other times during the year as it may deem necessary. At such meetings it shall be the duty of the Board to make such amendments as are necessary in the seed potato standards adopted by the Board pursuant to this chapter, and to the rules and regulations promulgated pursuant hereto for enforcing such standards. The chairman of the Board shall have the authority to request the Commissioner of Agriculture and Consumer Services, the Dean of the College of Agriculture, Virginia Polytechnic Institute and State University, the chairman of the State Certified Seed Board, and the Director of the Virginia Truck and Ornamentals Research Station to appoint appropriate representatives as advisers to the State Seed Potato Board.*~~

*The Seed Potato Board shall have a total membership of seven nonlegislative citizen members appointed by the Governor and subject to confirmation by the General Assembly. The members shall be from the principal potato-growing areas of the Commonwealth and actively engaged in potato production. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. Members shall be appointed for terms of four years. The Seed Potato Board shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The Seed Potato Board shall meet at least once each year prior to the beginning of the seed-potato-buying season, at the call of the chairman, and whenever the majority of the members so request.*

**Drafting Note: Adopted model board language consistent with other chapters in proposed Title 3.2. Deleted text related to the continuance of the State Seed Potato Commission to the State Seed Potato Board. Consolidated language referring to the responsibilities of the Seed**

**Potato Board and moved authority to request certain advisors to subdivision 2 of proposed § 3.2-4104, Powers and Duties of the Seed Potato Board.**

*§ 3.2-4103. Compensation; expenses.*

*Members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. Members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department.*

**Drafting Note: New section. Adopted model board language consistent with other chapters in proposed Title 3.2.**

*§ 3.2-4104. Powers and duties of the Seed Potato Board.*

*The Seed Potato Board shall have the following powers and duties:*

*1. Adopt regulations to establish standards for seed potatoes and to carry out the provisions of this chapter;*

*2. At the recommendation of the chairman, request that the Commissioner, the Dean of the College of Agriculture and Life Sciences, Virginia Polytechnic Institute and State University, the chairman of the Certified Seed Board, and the Director of the Eastern Shore Agricultural Research and Extension Center at Painter appoint representatives to advise the Seed Potato Board; and*

*3. Submit an annual report to the Governor and the General Assembly for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Seed Potato Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.*

**Drafting Note: New section. Adopted model board language consistent with other chapters in proposed Title 3.2. Proposed subdivision 1 has been moved from existing § 3.1-289. Proposed subdivision 2 has been moved from existing § 3.1-290. The Virginia Truck and Ornamentals Research Station was replaced by the Virginia Agricultural Experiment Station in 1985, and subsequently by the Eastern Shore Agricultural Research and Extension Center at Painter. (While there are two Agricultural Research and Extension Centers, it is the center at Painter that would conduct research on seed potatoes.)**

~~*§ 3.1-289. Rules and regulations.*~~

~~*In order to provide disease free "approved seed" Irish potatoes the State Seed Potato Board is hereby authorized to make such reasonable rules and regulations to provide for standards as may be needed.*~~

**Drafting Note: Deleted section and moved regulatory authority of the Seed Potato Board to subdivision 1 of proposed § 3.2-4104, Powers and duties of the Seed Potato Board.**

~~*§ 3.1-291. Inspectors; assistance of personnel in Department of Agriculture and Consumer Services.*~~

~~*It shall be the duty of the Commissioner of Agriculture and Consumer Services to employ qualified inspectors to assist in the enforcement of this chapter and regulations adopted hereunder affecting the distribution and sale of Irish potatoes and parts thereof intended for propagation purposes or planted for the production of commercial white potatoes. The Commissioner of Agriculture and Consumer Services is hereby authorized to require of personnel in his department the performance of duties which involve technical and scientific questions in connection with the enforcement of this chapter.*~~

**Drafting Note: Deleted section. This provision is unnecessary because the general powers of the Commissioner are provided in proposed § 2.2-604, Performance of duties assigned to agency, and include the authority to hire assistants.**

~~§ 3.1-2883.2-4105. Sale, advertising, shipping, or planting of any but approved *Standards* required of seed Irish potatoes.~~

~~It shall be unlawful for any person to offer or expose for sale, advertise, or ship into this Commonwealth, any Irish *Any seed* potatoes or parts thereof intended for propagation purposes, and/or to plant any Irish potatoes or parts thereof intended for the production of commercial white potatoes, which do not sold, offered for sale, advertised, or shipped in the Commonwealth shall conform to the standards of "approved seed" potatoes as herein defined.~~

**Drafting Note: Moved section to clarify the purpose of the chapter is to provide disease-free seed potatoes. Restated prohibition as an affirmative requirement. Deleted language now incorporated into the definition of "seed potatoes."**

~~§ 3.1-2943.2-4106. Sale to planter having knowledge of conditions under which potatoes were grown *Exempted sales*.~~

~~Nothing in this chapter shall prohibit the sale for propagation purposes of Irish *seed* potatoes or parts thereof grown within this Commonwealth when sold by the grower thereof to a planter *having who has* personal knowledge of the conditions under which ~~such~~ *the seed* potatoes were grown.~~

**Drafting Note: Deleted language now incorporated into the definition of "seed potatoes."**

~~§ 3.1-2923.2-4107. Inspection of potatoes; right of entry; "stop sale" order; seizure of potatoes *fees; records required*.~~

~~To effectively enforce the provisions of this chapter, *the* A. The Commissioner of Agriculture and Consumer Services shall require employees of his department to inspect Irish *any seed* potatoes and parts thereof shipped into, advertised, possessed, sold or offered for sale within this Commonwealth for the purpose of propagation or being planted for the production of commercial Irish potatoes, and *the*. The Commissioner and such employees may enter any place of business, warehouse, common carrier, or other place where ~~such~~ *seed* potatoes are being stored, being held or being planted, *may be found* for the purpose of making ~~such an~~ inspection. It shall be *is* unlawful for any person *having* custody of such potatoes or of the place in which the same are held to interfere with such inspections.~~

~~B. The fee for ~~such~~ inspection shall not exceed the *lesser of the* current rate for federal-state inspection of table stock potatoes or the reasonable cost of inspection, *whichever is less*. Any fee imposed by ~~the~~ *The* Commissioner shall be ~~abated~~ *abate any fee* to the extent funds are appropriated from the general fund for seed potato inspection.~~

~~C. *Records such as bills* *Bills* of lading or, invoices, or other records accompanying ~~each~~ *any* shipment of "approved seed" Irish potatoes shall give the name of the consignee, consignor, and/or *and* custodian, *if any*. The Commissioner or his duly authorized agents shall have the right to inspect such records for the purpose of the effective administration of this chapter.~~

~~When the Commissioner or his employees find potatoes or parts thereof held, offered or exposed for sale in violation of any of the provisions of this chapter or any rule or regulation adopted pursuant thereto, he may issue a written or printed "stop sale" order to the owner or custodian of any such potatoes and it shall be unlawful for anyone, after receipt of such "stop sale" order, to sell for propagation purposes within this Commonwealth, any potatoes with respect to which such order has been issued until the Commissioner has evidence that such potatoes will be used for other than propagation purposes or for propagation purposes outside of this Commonwealth. When the Commissioner has evidence that such potatoes will be used for other than propagation purposes or for propagation purposes outside of this Commonwealth, he shall issue a notice releasing such potatoes from the "stop sale" order. Further, any shipment of~~

~~Irish potato seed being offered or exposed for sale, advertised, planted, or held with intent to sell or being planted for propagation purposes or for production of commercial white potatoes, contrary to the provisions of this chapter shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the county or city in which the Irish potatoes are located. In the event the court finds the Irish potatoes to be in violation of the provisions of this chapter and orders the condemnation thereof, the person having possession of the Irish potatoes shall be permitted to post a bond double the amount of the value of the Irish potatoes, and such person shall have ten days from the date of the order of condemnation to denature, destroy or process for other than propagation purposes the Irish potatoes in such person's possession. If the person in possession of the Irish potatoes fails to post the bond required or act within the time limit set forth in the preceding sentence, then the court shall order that the Irish potatoes shall be denatured, destroyed or processed for other than propagation purposes.~~

**Drafting Note: Created subsections for inspections and right of entry; fees; and required records. Replaced the potatoes eligible for inspection from "Irish potatoes and parts thereof shipped into, advertised, possessed, sold or offered for sale within the Commonwealth" with "any seed potatoes," because the qualification of "possessed" includes all other restrictions. The deleted text concerning "stop sale" orders and seizure of potatoes has been moved to proposed § 3.2-4108, "Stop sale" order; seizure of potatoes.**

*§ 3.2-4108. "Stop sale" order; seizure; condemnation.*

*A. When the Commissioner finds seed potatoes sold or offered for sale in violation of this chapter or any regulation hereunder, he may issue a "stop sale" order to the owner or custodian. It is unlawful for anyone to sell any seed potatoes under a "stop sale" order until the Commissioner has evidence that such potatoes will: (i) not be used for propagation purposes; or (ii) be used outside the Commonwealth. When the Commissioner has such evidence, he shall issue a notice releasing potatoes from the "stop sale" order.*

*B. Any shipment of seed potatoes in violation of this chapter shall be subject to seizure on complaint of the Commissioner to the appropriate court in the city or county where the seed potatoes are located. If the court finds the seed potatoes to be in violation and orders condemnation, the owner shall be permitted to post a bond double the amount of the value of the seed potatoes. Then the owner shall have 10 days from the date of the order of condemnation to denature, destroy, or process the potatoes for other than propagation purposes. If the owner fails to post the bond required or act within the time limit set forth in the preceding sentence, then the court shall order that the seed potatoes be denatured, destroyed, or processed for other than propagation purposes.*

**Drafting Note: New section. The text for proposed subsections A and B has been moved from existing § 3.1-292.**

~~§ 3.1-293.2-4109. Commissioner may authorize permit sale of substandard potatoes and experimental varieties under certain circumstances.~~

~~Notwithstanding any other provisions of this chapter, the Commissioner is authorized and directed may permit the sale of seed potatoes that do not meet the standards of approved seed potatoes when disease free stock is not available to permit for such periods of time as, in his discretion, he may deem necessary the sale for propagation purposes of potatoes which do not meet the standards established under this chapter, as such standards may from time to time be amended, but which do meet such lesser standards as the Board may prescribe. The Commissioner is authorized to may permit the sale for propagation purposes of experimental varieties of potatoes for propagation purposes. He may delegate the authority granted him in this section hereunder to the State Seed Potato Board.~~

**Drafting Note: Technical changes.**

~~§ 3.1-295.2-4110. Violations and prosecutions Notice; hearings.~~



~~Any person violating any of the provisions of this chapter or any rule or regulation promulgated pursuant hereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$500 or confinement in jail not to exceed twelve months or both. Whenever~~*A. If the Commissioner has reason to believe there has been any finds a violation of the provisions of this chapter or of any rule or regulation promulgated pursuant thereto adopted hereunder, he shall immediately notify in writing the person in whose hand such potatoes are found the custodian of the seed potatoes in writing, designating a time and place for a hearing, and send a copy of such the notice to the owner or shipper of the Irish potatoes designating a time and place for a hearing. Any party so notified shall be given an opportunity to be heard under such rules and the regulations as may be promulgated as herein provided adopted hereunder. If it appears after proper hearing, that any of the provisions of this chapter have been violated, the Commissioner of Agriculture and Consumer Services may certify the facts to the attorney for the Commonwealth in the county or city in which where the violation occurred, and furnish him with a copy of the results of the inspection of such Irish potatoes, or parts thereof duly authenticated by the inspector making such inspection, and under the oath of such the inspector.*

~~B. It shall be the duty of such each attorney of such county or city to prosecute any case involving the violation of any provisions of this chapter or of any rule or regulation when promulgated as herein provided when requested to do so by the Commissioner of Agriculture and Consumer Services for the Commonwealth with responsibility for the enforcement of this chapter, and to whom any violation is reported, to commence proceedings in the appropriate court.~~

**Drafting Note: The penalty provision has been clarified as a Class 1 misdemeanor and moved to proposed § 3.2-4111, Penalties.**

*§ 3.2-4111. Penalties.*

*Any person violating any provisions of this chapter or any regulation adopted hereunder is guilty of a Class 1 misdemeanor.*

**Drafting Note: New section. This provision has been moved from existing § 3.1-295, Violations and prosecutions.**

~~§ 3.1-296. Sections 3.1-276 through 3.1-284 not affected; other laws in conflict repealed.~~

~~Nothing in this chapter shall be construed as repealing Article 2 (§ 3.1-276 et seq.) of Chapter 16 of this title, but all other laws or parts of laws in conflict with the provisions of this chapter are repealed to the extent of such conflict.~~

**Drafting Note: Deleted section. This provision is unnecessary—any "laws or parts of laws . . . repealed" would be expressly repealed, and not repealed through reference to this section.**

## CHAPTER 18-42.

### IMPLEMENTATION OF TOBACCO MASTER SETTLEMENT AGREEMENT.

**Chapter Drafting Note: Existing Article 1, Dark Fire-Cured Tobacco, has been deleted as obsolete. The U.S. Department of Agriculture is responsible for and adopts regulations pertaining to tobacco inspections. There are no longer tobacco auction warehouses in Virginia. Existing Article 2, Virginia Dark-Fired Tobacco Board, has become proposed Chapter 25. Existing Article 3, Bright Flue-Cured Tobacco, has become proposed Chapter 24. Existing Article 4, Commission for Regulation of Sale, etc., has been deleted as obsolete. Only technical changes updating section references have been made to the remaining three articles addressing the Tobacco Master Settlement Agreement.**

~~Article 1.~~

~~Dark Fire-Cured Tobacco.~~

~~§ 3.1 297. Definitions.~~

~~For the purpose of §§ 3.1 297 to 3.1 307 the terms:—~~

~~(a) "Tobacco in green order" means dark fire cured tobacco in green order.—~~

~~(b) "Seller" means association, warehouseman, or his or its representative offering for sale or selling dark fire cured tobacco in green order.—~~

~~(c) "Director" means the Director of the Division of Marketing of the Department of Agriculture and Consumer Services.—~~

~~(d) "Commissioner" means the Commissioner of Agriculture and Consumer Services.—~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1 298. Director to establish grades of dark fire cured tobacco in green order.~~

~~The Director, with the approval of the Commissioner, is empowered and directed to establish and promulgate from time to time official standard grades for dark fire cured tobacco in green order which will show the classification, quality, condition or other characteristics of such tobacco.—~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1 299. Power of Director as to inspectors, graders and other employees.~~

~~The Director, with the approval of the Commissioner, is empowered and directed to appoint, superintend and control such inspectors or graders and other employees as in his discretion may be deemed necessary for the purpose of inspecting or grading all dark fire cured tobacco in green order produced or offered or exposed for sale or sold in this Commonwealth.—~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1 300. Duty of Director as to inspection.~~

~~The Director, with the approval of the Commissioner, is empowered and directed to enter and inspect personally or through any authorized agent each place within the Commonwealth where dark fire cured tobacco in green order, is produced, packed, stored, sold, shipped, transported, offered or exposed for sale, or delivered for shipment, and inspect such places and grade all tobacco found in any such places.—~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1 301. Fees for inspection.~~

~~The Director, with the approval of the Commissioner, is empowered and directed to fix, assess and collect fees for inspecting or grading dark fire cured tobacco in green order sufficient to meet the cost of such inspection or grading, which fee shall be paid by the seller.—~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1 302. Labeling piles or baskets.~~

~~The Director, with the approval of the Commissioner, is empowered and directed to label each pile or basket of dark fire cured tobacco in green order according to the grade, classification, condition or characteristic found, and to require each pile of dark fire cured tobacco in green order, sold, offered or exposed for sale to be labelled according to the grade found by the official representative authorized under § 3.1 299 or § 3.1 300.—~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1 303. Sellers to pay fees and furnish basket tickets.~~

~~The seller is required to pay the fees fixed under authority of § 3.1 301 and furnish necessary basket tickets, but he must not charge the grower or owner in excess of the fee fixed under authority of that section.—~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1 304. Sellers must inform buyers of grade.~~

~~The seller is required to make known to the buyer the grade of each pile or lot of dark fire cured tobacco in green order as found by the official inspector or grader.—~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1 305. Who to label.~~

~~Dark fire-cured tobacco in green order offered or exposed for sale shall not be labelled by any other person than a duly authorized inspector or grader, except under the supervision of a duly authorized inspector or grader.~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1-306. Penalty.~~

~~Any person, firm, association, or corporation who shall violate any of the foregoing provisions of this chapter shall be punished by a fine of not less than \$5 nor more than \$500 for each offense.~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

~~§ 3.1-307. Prosecutions.~~

~~The Director, with the approval of the Commissioner, is hereby empowered and directed to cause prosecutions for violations of the foregoing provisions of this chapter to be instituted through the attorneys for the Commonwealth, or otherwise, in any county or city of the Commonwealth where in his opinion violations are found.~~

**Drafting Note: Deleted section. This article has been deleted as obsolete.**

#### ~~Article 4.~~

#### ~~Commission for Regulation of Sale, etc.~~

~~§ 3.1-336. Act conditionally providing for Virginia Tobacco Commission, etc., continued in force.~~

~~Chapter 184 of the Acts of 1936, approved March 13, 1936, codified as 1399(2)-1399(26) of Michie Code 1942, conditionally providing for a Virginia Tobacco Commission and the regulation of the sale, marketing and distribution of tobacco, including the establishment of marketing quotas, to become effective only after the enactment of certain legislation by the Congress of the United States and the legislatures of certain other states, is continued in force, according to its original conditional terms.~~

**Drafting Note: Deleted section. There is no longer a Virginia Tobacco Commission.**

#### ~~Article 51.~~

#### ~~Requirements for Tobacco Product Manufacturers.~~

~~§ 3.1-336.13.2-4200. Definitions.~~

~~As used in this article:~~

~~"Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.~~

~~"Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned," and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.~~

~~"Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.~~

~~"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition.~~

The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

"Master Settlement Agreement" means the settlement agreement and related documents entered into on November 23, 1998, by the Commonwealth and leading United States tobacco product manufacturers.

"Qualified escrow fund" means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1 billion where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with subsection B of § ~~3.1-336.23.2-4201~~.

"Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

"Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

"Tobacco product manufacturer" means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate):

1. Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II (mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II (z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

2. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

3. Becomes a successor of an entity described in subdivision 1 or 2 of this definition.

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of subdivisions 1, 2, and 3 of this definition.

"Units sold" means the number of individual cigarettes sold in the Commonwealth by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the Commonwealth on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the Commonwealth.

**Drafting Note: No changes.**

§ ~~3.1-336.23.2-4201~~. Requirements on tobacco product manufacturers; escrow of funds; civil penalties for violations.

A. Any tobacco product manufacturer selling cigarettes to consumers within the Commonwealth, whether directly or through a distributor, retailer or similar intermediary or intermediaries, after July 1, 1999, shall do one of the following:

1. Become a participating manufacturer (as that term is defined in section II (jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

2. Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

Year	Amount per unit sold in such year
------	-----------------------------------

(except for 1999, the amount per unit sold after July 1, 1999)

1999	\$.0094241
2000	\$.0104712
each of 2001 and 2002	\$.0136125
each of 2003 through 2006	\$.0167539
each of 2007 and each year thereafter	\$.0188482

B. A tobacco product manufacturer that places funds into escrow pursuant to subdivision A 2 shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

1. To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the Commonwealth or any releasing party located or residing in the Commonwealth. Funds shall be released from escrow under this subdivision (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

2. To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in this Commonwealth in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement, including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

3. To the extent not released from escrow under subdivisions 1 or 2, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

C. Each tobacco product manufacturer that elects to place funds into escrow pursuant to subdivision A 2 shall annually certify to the Attorney General that it is in compliance with that subdivision. The Attorney General may bring a civil action on behalf of the Commonwealth against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

1. Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

2. In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

3. In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the Commonwealth (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

**Drafting Note: Technical changes.**

Article 5.12.

Escrow Funds Contributed to Commonwealth.

§ ~~3.1-336.2:13.2-4202~~. Assignment to the Commonwealth of rights to tobacco manufacturer escrow funds; contribution to the Commonwealth.

Notwithstanding the provisions of subsection B of § ~~3.1-336.23.2-4201~~, a tobacco product manufacturer who elects to place funds into escrow pursuant to subdivision A 2 of § ~~3.1-336.23.2-4201~~ may make an irrevocable assignment of its interest in the funds to the benefit of the Commonwealth. Such assignment shall be permanent and shall apply to all funds in the subject escrow account at the time of assignment or that may subsequently come into such account, including those deposited into the escrow account prior to the assignment being executed, those deposited into the escrow account after the assignment is executed, and interest or other appreciation on such funds. ~~However, any~~Any interest or other appreciation withdrawn from the subject escrow account prior to the time of assignment shall not be a part of the assignment. The tobacco product manufacturer, the Attorney General, and the financial institution where the escrow account is maintained shall make such amendments to the qualified escrow account agreement, title to the account, and the account itself as may be necessary to effectuate an irrevocable assignment of rights executed pursuant to this section or a withdrawal or payment of funds from the escrow account pursuant to § ~~3.1-336.2:23.2-4203~~. An assignment of rights executed pursuant to this section shall be in writing, signed by a duly authorized representative of the tobacco product manufacturer making the assignment, and shall become effective upon delivery of the assignment to the Attorney General and the financial institution where the escrow account is maintained.

**Drafting Note: Technical changes.**

§ ~~3.1-336.2:23.2-4203~~. Withdrawal of escrow funds assigned and contributed to the Commonwealth.

Notwithstanding the provisions of subsection B of § ~~3.1-336.23.2-4201~~, any escrow funds assigned and contributed to the Commonwealth pursuant to § ~~3.1-336.2:13.2-4202~~, less the aggregate limitation for incentive payments to all small tobacco product manufacturers for the relevant year due from the escrow funds pursuant to § 58.1-439.15:01, shall be withdrawn by the Commonwealth by request of the State Treasurer to the Attorney General and upon approval of the Attorney General. The State Treasurer shall make such request as soon as practicable and such escrow funds withdrawn shall be deposited into the Virginia Health Care Fund established under § 32.1-366.

After such withdrawal, and after the actual incentive payments pursuant to § 58.1-439.15:01 have been made from the escrow funds in the escrow account, any remaining escrow funds shall be withdrawn under the withdrawal procedures provided in this section, and the withdrawn escrow funds shall be deposited into the Virginia Health Care Fund. Nothing in this article shall be construed to relieve a tobacco product manufacturer from any past, current, or future obligations it may have pursuant to Article 51 (§ ~~3.1-336.1-3.2-4200~~ et seq.) or Article 63 (§ ~~3.1-336.33.2-4204~~ et seq.) of this chapter.

**Drafting Note: Technical changes.**

Article 63.

Enforcement of Requirements for Tobacco Product Manufacturers.

§ ~~3.1-336.33.2-4204~~. Definitions.

As used in this article:

"Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s" and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable

pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

"Commissioner" means the Tax Commissioner of the Department of Taxation.

"Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

"Participating manufacturer" shall have the meaning provided in section II (jj) of the Master Settlement Agreement.

"Stamping agent" means (i) a person who is authorized by the Tax Commissioner pursuant to 58.1-1011 to affix Virginia tax stamps to packages, packs, cartons, or other containers of cigarettes; or (ii) any person who is required to pay the excise tax imposed on cigarettes pursuant to 58.1-1001.

Terms defined in § ~~3-1-336.13.2-4200~~ shall have the same meaning when used in this article.

**Drafting Note: Technical changes.**

§ ~~3-1-336.43.2-4205~~. Certifications.

A. Every tobacco product manufacturer whose cigarettes are sold in the Commonwealth whether directly or through a distributor, retailer or similar intermediary or intermediaries shall execute and deliver on a form prescribed by the Attorney General a certification to the Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either: is a participating manufacturer or is in full compliance with Article ~~5-1~~ (§ ~~3-1-336.13.2-4200~~ et seq.) of this chapter.

B. A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

C. A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families (i) separately listing brand families of cigarettes and the number of units sold for each brand family that were sold in the Commonwealth during the preceding calendar year, (ii) that have been sold in the Commonwealth at any time during the current calendar year, (iii) indicating by an asterisk, any brand family sold in the Commonwealth during the preceding calendar year that is no longer being sold in the Commonwealth as of the date of such certification, and (iv) identifying by name and address, any other manufacturer of such brand families in the preceding calendar year. The nonparticipating manufacturer shall update such list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

D. In the case of a nonparticipating manufacturer, such certification shall further certify:

1. That such nonparticipating manufacturer is registered to do business in the Commonwealth or has appointed a resident agent for service of process and provided notice thereof as required by § ~~3-1-336.73.2-4208~~;

2. That such nonparticipating manufacturer has (i) established and continues to maintain a qualified escrow fund as that term is defined in Article ~~51~~ (§ ~~3-1-336.13.2-4200~~ et seq.) of this chapter and (ii) executed a qualified escrow agreement that conforms to the requirements in Article ~~51~~ of this chapter;

3. That such nonparticipating manufacturer is in full compliance with Article ~~51~~ (§ ~~3-1-336.13.2-4200~~ et seq.) of this chapter and this article, and any regulations promulgated pursuant thereto; and

4. The (i) name, address and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to

Article 51 (~~§ 3-1-336.13.2-4200~~ et seq.) of this chapter; (ii) account number of such qualified escrow fund and subaccount number for the Commonwealth; (iii) amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the Commonwealth during the preceding calendar year, the date or dates and amount of each such deposit, and verification of those dates and amounts of deposits as may be deemed necessary by the Attorney General; and (iv) amounts of and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it has at any time made escrow payments pursuant to Article 51 of this chapter.

E. A tobacco product manufacturer may not include a brand family in its certification unless (i) in the case of a participating manufacturer, such participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and (ii) in the case of a nonparticipating manufacturer, said nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Article 51 (~~§ 3-1-336.13.2-4200~~ et seq.) of this chapter. Nothing in this section shall be construed as limiting or otherwise affecting the Commonwealth's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of Article 51 of this chapter.

F. The tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

**Drafting Note: Technical changes.**

~~§ 3-1-336.53.2-4206~~. Directory of cigarettes approved for stamping and sale.

A. Not later than October 1, 2003, the Attorney General shall develop and publish on its website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of ~~§ 3-1-336.43.2-4205~~ and all brand families that are listed in such certifications (the Directory), except as noted below.

1. The Attorney General shall not include or retain in such Directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subsections C and D of ~~§ 3-1-336.43.2-4205~~, unless the Attorney General has determined that such violation has been cured to his satisfaction.

2. Neither a tobacco product manufacturer nor brand family shall be included or retained in the Directory if the Attorney General concludes that (i) in the case of a nonparticipating manufacturer all escrow payments required pursuant to Article 51 (~~§ 3-1-336.13.2-4200~~ et seq.) of this chapter for any period for any brand family, whether or not listed by such nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General, or (ii) all outstanding final judgments, including interest thereon, for violations of Article 51 of this chapter have not been fully satisfied for such brand family and such manufacturer.

B. The Attorney General shall update the Directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the Directory in conformity with the requirements of this article.

C. Notwithstanding the provisions of subsection A, in the case of any nonparticipating manufacturer who has established a qualified escrow account pursuant to Article 51 (~~§ 3-1-336.13.2-4200~~ et seq.) of this chapter that has been approved by the Attorney General, the Attorney General may not remove such manufacturer or its brand families from the Directory unless the manufacturer has been given at least 30 days' notice of such intended action. For purposes of this section, notice shall be deemed sufficient if it is sent either electronically or by



first-class mail to an electronic mail address or postal mailing address, as the case may be, provided by the manufacturer in its most recent certification filed pursuant to § ~~3.1-336.43.2-4205~~. The notified nonparticipating manufacturer shall have 30 days from receipt of the notice to either come into compliance with the applicable requirements or, in the alternative, secure a temporary injunction against removal from the Directory. For purposes of a temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the Directory may be deemed to constitute irreparable harm.

D. Every stamping agent shall provide and update as necessary an electronic mail address to the Attorney General for the purpose of receiving any notifications as may be required by this article.

**Drafting Note: Technical changes.**

§ ~~3.1-336.63.2-4207~~. Prohibition against stamping or sale or import of cigarettes not in the Directory.

It shall be unlawful for any person (i) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the Directory, or (ii) to sell, offer or possess for sale in the Commonwealth, ship or otherwise distribute into or within the Commonwealth, or import for personal consumption into the Commonwealth, cigarettes of a tobacco product manufacturer or brand family not included in the Directory. For purposes of this article a person shall be deemed to have received notice that cigarettes of a tobacco product manufacturer or brand family are not included in the Directory at the time the Attorney General's website fails to list any such cigarettes in the Directory or at the time any such cigarettes are removed from the Directory. A person purchasing cigarettes for resale shall not be in violation of this section (i) if at the time of such purchase the manufacturer and brand families of the cigarettes are included in the Directory and the cigarettes are otherwise lawfully stamped and sold within 14 days of the date such manufacturer and brand families were removed from the Directory or (ii) if, in the case of a retailer, the cigarettes are sold or delivered to consumers within 14 days after receipt of delivery of such cigarettes from a wholesaler, which cigarettes otherwise have been lawfully purchased from the same wholesaler. Any manufacturer, wholesaler or retail dealer selling cigarettes for resale of a manufacturer or brand family that has been removed from the Directory shall notify the purchaser of such cigarettes of that fact at the time of delivery of such cigarettes. Unless otherwise provided by contract or purchase agreement, a purchaser shall be entitled to a refund from the manufacturer, wholesaler or retail dealer from whom the cigarettes were purchased of the purchase price of any cigarettes that are the product of a manufacturer or brand family removed from the Directory. The Commissioner shall, by regulation or guidelines, provide for the refund of the purchase price of tax stamps that have been lawfully affixed to cigarettes that may not be sold pursuant to the provisions of this section.

**Drafting Note: Technical changes.**

§ ~~3.1-336.73.2-4208~~. Agent for service of process.

A. Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the Commonwealth as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the Directory, appoint and continually engage without interruption the services of an agent in the Commonwealth to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this article or Article 51 (§ ~~3.1-336.13.2-4200~~ et seq.) of this chapter may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of such agent to the satisfaction of the Commissioner and Attorney General.

B. The nonparticipating manufacturer shall provide notice to the Commissioner and Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agency appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Commissioner and Attorney General of said termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

C. Any nonparticipating manufacturer whose products are sold in this state, without appointing or designating an agent as herein required, shall be deemed to have appointed the Secretary of the Commonwealth as such agent and may be proceeded against in courts of the Commonwealth by service of process upon the Secretary of the Commonwealth; ~~however, the~~. *The* appointment of the Secretary of the Commonwealth as such agent shall not satisfy the condition precedent to having its brand families listed or retained in the Directory.

**Drafting Note: Technical changes.**

§ ~~3.1-336.83.2-4209~~. Reporting of information.

A. Not later than 20 days after the end of each calendar quarter, and more frequently if so directed by the Commissioner, each stamping agent shall submit to the Attorney General such information as the Attorney General requires to facilitate compliance with this article, including, but not limited to, a list by brand family of the total number of cigarettes for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. For roll-your-own tobacco, in lieu of the number of cigarettes sold, the Attorney General shall require that the stamping agent submit the total quantity in ounces, by brand family, of all such roll-your-own tobacco in accordance with the invoice accompanying each shipment he initiates, as provided in subsection D of § 58.1-1003.2, or for which the stamping agent otherwise paid the tax due for such roll-your-own tobacco. The stamping agent shall maintain, and make available to the Commissioner and Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of five years.

B. In addition to the information required to be submitted pursuant to subsection A or any other provision of law, the Attorney General may require a stamping agent, distributor or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this article.

C. On a quarterly basis, and upon request made in writing by a tobacco product manufacturer, a stamping agent shall provide to the requesting tobacco product manufacturer the total number of cigarettes, by brand family, which the stamping agent reported to the Attorney General pursuant to subsection A, provided that such information provided by the stamping agent to a tobacco manufacturer shall be limited to the brand families of that manufacturer as listed in the Directory established pursuant to § ~~3.1-336.53.2-4206~~. A stamping agent receiving a request pursuant to this subsection shall provide the requested information within 30 days from receipt of the request.

**Drafting Note: Technical changes.**

§ ~~3.1-336.93.2-4210~~. Escrow fund information.

The Attorney General at any time may require a nonparticipating manufacturer to provide proof from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with Article 51 (§ ~~3.1-336.13.2-4200~~ et seq.) of this chapter of the amount of money in and the dates of deposits to such fund being held on behalf of the Commonwealth and listing the amounts and dates of all withdrawals from such fund.

**Drafting Note: Technical changes.**

§ ~~3.1-336.9~~:13.2-4211. Quarterly escrow payments by certain nonparticipating manufacturers.

A. Notwithstanding the provisions of § ~~3.1-336.23.2-4201~~, on and after January 1, 2007, the Attorney General may require a nonparticipating manufacturer that is a new market entrant to make the escrow payments required by § ~~3.1-336.23.2-4201~~ on a quarterly, rather than annual basis. For the purposes of this section, a "new market entrant" shall mean a tobacco product manufacturer that first seeks certification pursuant to § ~~3.1-336.43.2-4205~~ on or after January 1, 2007.

B. A nonparticipating manufacturer required to make quarterly payments pursuant to this section shall place into a qualified escrow account the amounts required pursuant to subdivision A 2 of § ~~3.1-336.23.2-4201~~ by the fifteenth of the second month following the end of each calendar quarter, except the payment for the last quarter of a calendar year shall be made by April 15 of the year following the year in question. Any adjustments for inflation to the amounts placed into a qualified escrow pursuant to this section shall be reflected in the payments for the last quarter of a calendar year.

C. A nonparticipating manufacturer required to make payments pursuant to this section shall also provide the certification required by subsection C of § ~~3.1-336.23.2-4201~~ on a quarterly basis. Any such nonparticipating manufacturer that fails in any quarter to place into escrow the funds required under this section shall be subject to the penalty provisions of § ~~3.1-336.23.2-4201~~.

D. The Attorney General is authorized to create any forms and require any nonparticipating manufacturer required to make quarterly payments pursuant to this section to submit any additional information as is necessary to enable the Attorney General to determine whether the nonparticipating manufacturer is in compliance with the provisions of this section. At the time the nonparticipating manufacturer is first certified by the Attorney General pursuant to § ~~3.1-336.43.2-4205~~, the Attorney General will notify the nonparticipating manufacturer as to whether it will be required to make quarterly payments pursuant to this section. The Attorney General may seek an injunction to compel compliance with the reporting requirements. In any action brought pursuant to this subsection in which the Commonwealth prevails, the Commonwealth shall be entitled to recover the reasonable costs of investigation, costs of the action, and reasonable attorney fees.

E. A nonparticipating manufacturer required to make quarterly payments pursuant to this section who fails to properly do so shall be deemed to have failed to make required payments pursuant to § ~~3.1-336.23.2-4201~~ and shall be subject to all enforcement actions available for a violation of § ~~3.1-336.23.2-4201~~.

F. A nonparticipating manufacturer required to make quarterly payments pursuant to this section who, to the satisfaction of the Attorney General, has complied with the provisions of Article 51 (§ ~~3.1-336.13.2-4200~~ et seq.) of this chapter and the provisions of this article for a period of at least three calendar years may, upon request and upon the concurrence of the Attorney General, be permitted to make annual payments pursuant to Article 51 (§ ~~3.1-336.13.2-4200~~ et seq.) of this chapter and be relieved of further obligation to make quarterly payments.

**Drafting Note: Technical changes.**

§ ~~3.1-336.103.2-4212~~. Penalties and other remedies.

A. In addition to any other civil or criminal penalty or remedy provided by law, upon a determination that any person has violated § ~~3.1-336.63.2-4207~~ or any regulation adopted pursuant thereto, the Commissioner may revoke or suspend such person's privilege to purchase tax stamps at a discounted rate. Each stamp affixed and each offer to sell cigarettes in violation of § ~~3.1-336.63.2-4207~~ shall constitute a separate violation. Upon a determination of a violation of § ~~3.1-336.63.2-4207~~ or any regulations adopted pursuant thereto, the Commissioner may also

impose a civil penalty in an amount not to exceed the greater of (i) 500 percent of the retail value of the cigarettes sold or (ii) \$5,000.

B. Any cigarettes that have been sold, offered for sale or possessed for sale in the Commonwealth, or imported for personal consumption in the Commonwealth, in violation of § ~~3.1-336.63.2-4207~~, shall be deemed contraband and may not be sold or offered for sale unless such cigarettes are listed in the Directory. Any such cigarettes that are sold or offered for sale when not included in the Directory shall be subject to confiscation and forfeiture. Any such confiscation and forfeiture shall be governed by the procedures contained in § 4.1-338, which shall apply mutatis mutandis; except that all such cigarettes so confiscated and forfeited shall be destroyed and not resold.

C. The Attorney General, on behalf of the Commissioner, may seek an injunction to restrain a threatened or actual violation of § ~~3.1-336.63.2-4207~~, subsection A of § ~~3.1-336.83.2-4209~~, subsection B of § ~~3.1-336.83.2-4209~~, or subsection C of § ~~3.1-336.83.2-4209~~ by a stamping agent and to compel the stamping agent to comply with such provisions. In any action brought pursuant to this subsection in which the Commonwealth prevails, the Commonwealth shall be entitled to recover the reasonable costs of investigation, costs of the action and reasonable attorneys' fees.

D. It shall be unlawful for a person to (i) sell or distribute cigarettes or (ii) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the Commonwealth in violation of § ~~3.1-336.63.2-4207~~. A violation of this section is a Class 2 misdemeanor.

**Drafting Note: Technical changes.**

§ ~~3.1-336.113.2-4213~~. Notice and review of determination.

A determination of the Attorney General to not list or to remove from the Directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by the Administrative Process Act ( 2.2-4000 et seq.).

**Drafting Note: No changes.**

§ ~~3.1-336.123.2-4214~~. Promulgation of regulations.

The Commissioner may promulgate regulations necessary to assist him in performing his duties prescribed by this article.

**Drafting Note: No changes**

§ ~~3.1-336.133.2-4215~~. Submission to jurisdiction of the Commonwealth; pleadings in English sufficient.

A. Any tobacco product manufacturer that produces cigarettes sold or offered for sale into or within the Commonwealth shall be deemed to have submitted to and agreed to the jurisdiction of the courts of the Commonwealth for the purpose of trying any action brought by the Commonwealth to enforce provisions of this article or Article 51 (§ ~~3.1-336.13.2-4200~~ et seq.) of this chapter.

B. In any action brought by the Commonwealth to enforce the provisions of this article or Article 51 (§ ~~3.1-336.13.2-4200~~ et seq.) of this chapter, sufficient notice of the action to the alleged violator shall be given by a complaint written in the English language. The Commonwealth shall not be required to bear any expense of translating such complaint into another language.

**Drafting Note: Technical changes**

§ ~~3.1-336.143.2-4216~~. Recovery of costs and fees by Attorney General.

In any action brought by the Commonwealth to enforce this article or Article 51 (§ ~~3.1-336.13.2-4200~~ et seq.) of this chapter in which the Commonwealth prevails, or as part of the settlement of any matter arising from an investigation prior to the filing of such action, and in addition to any civil or criminal penalty or other amount which the court may determine, the

Attorney General shall be entitled to recover the reasonable costs of investigation, expert witness fees, costs of the action and reasonable attorneys' fees.

**Drafting Note: Technical changes**

§ ~~3.1-336.15~~3.2-4217. Disgorgement of profits for violations.

If a court determines that a person has violated this article, the court shall order any profits, gain, gross receipts or other benefit from the violation to be disgorged and paid to the Treasurer of the Commonwealth. Unless otherwise expressly provided, the remedies or penalties provided by this article are cumulative to each other and to the remedies or penalties available under all other laws of the Commonwealth.

**Drafting Note: No changes**

§ ~~3.1-336.16~~3.2-4218. Conflicts.

If ~~a~~*an appropriate court of competent jurisdiction* finds that the provisions of this article and of Article ~~5-1~~ (§ ~~3.1-336.13.2~~3.2-4200 et seq.) of this chapter conflict and cannot be harmonized, then the provisions of Article ~~5-1~~ shall control. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article causes Article ~~51~~ to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this article shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this article or any part thereof.

**Drafting Note: Technical changes**

CHAPTER ~~49~~ 43.

GRADES, MARKS, AND BRANDS-~~GENERALLY~~.

**Chapter Drafting Note: Reordered the articles so that existing Article 1.1 becomes proposed Article 3. Existing Articles 1 and 2 were originally enacted in 1937 and Article 1.1 was enacted in 1966 when Title 3 was initially revised and subsequently incorporated into the 1966 Title revision. The term "rules" is deleted from the phrase "rules and regulations."**

Article 1.

General Provisions.

§ ~~3.1-337~~ 3.2-4300. Definitions.

~~For the purpose of~~ *As used in this article, unless the context requires a different meaning:*

(1) "Agricultural product" means any horticultural, viticultural, dairy, livestock, poultry, bee or other farm or garden product~~;~~.

~~(2) "Commissioner" means the Commissioner of Agriculture and Consumer Services;~~

~~(3) "Director" means the Director of the Division of Marketing of the Department of Agriculture and Consumer Services;~~

~~(4) "Person" means an individual, partnership, corporation or association.~~

**Drafting Note: The definition of "Commissioner" is deleted since the definition appears in the Code-wide definition in Chapter 1 and the definition of "person" is deleted because it is defined in Title 1.**

§ ~~3.1-345~~ 3.2-4301. Unmarked products.

This article shall not apply to any agricultural product or products not marked or designated by or with any trademark, brand or other markings indicating grade, classification, quality, condition or size.

**Drafting Note: No changes.**

§ ~~3.1-338~~ 3.2-4302. Establishment of grades, marks, *and* brands, ~~etc.~~

~~In order to promote, protect, further and develop the agricultural interests of this Commonwealth, the~~ The Director, with the approval of the Commissioner, is authorized and empowered, after investigation, to establish and promulgate grades, trademarks, brands and other markings which when used on or in connection with agricultural products will indicate ~~may adopt regulations governing the voluntary use of grades, trademarks, brands, and other markings for agricultural products produced, packed, or marked in the Commonwealth. The regulations shall prescribe the:~~ (i) grade, classification, quality, condition, size, variety, quantity, and/or other characteristics of such products and/or; (ii) marks identifying the party responsible for the grading and marking of such products, and/or any or all of them; to prescribe and promulgate rules and regulations governing the voluntary use of such grades, trademarks, brands and other markings for such agricultural products produced and/or packed and/or marked in this Commonwealth.

**Drafting Note: Technical changes.**

§ ~~3.1-339~~ 3.2-4303. Grades recommended by ~~United States~~ U.S. Department of Agriculture.

The Director, in carrying out the provisions of the preceding section (~~§ 3.1-338~~) § 3.2-4302, shall establish and promulgate ~~adopt~~ grades recommended or adopted by the United States U.S. Department of Agriculture insofar as they are available and if they are suitable for use in Virginia, unless. If there is a decided demand for additional or different grades or standards among by those persons in ~~Virginia~~ the Commonwealth producing and handling such products, the Director may establish and adopt grades or standards that are additional to or different from those recommended or adopted by the U.S. Department of Agriculture.

**Drafting Note: Clarified the authority of the Director of Marketing to establish grades or standards in addition to those recommended by U.S. Department of Agriculture, if there is adequate demand for such grades.**

§ ~~3.1-340~~ 3.2-4304. When special grades, marks, and brands, ~~etc.~~, allowed; filing a certificate.

Any person desiring to pack, mark, and/or sell, or offer for sale any agricultural product under any grade, trademark, brand, or other markings relating to grade, quality or size, not established and promulgated ~~adopted~~ by the Director, may file with the Director a certificate setting forth the description of such ~~describing the~~ special grade, trademark, brand, or other markings. For this purpose a brand, trademark or other markings may represent a grade. If, upon the filing of such certificate the Director, with the approval of the Commissioner, (i) approves of the completeness of definitions of such special grade, trademark, brand, or other markings set forth described in the certificate, such special grade, trademark, brand or other markings may thereafter be used by the person filing the certificate; provided,; (ii) finds that such grade terminology, trademark, brand or other markings, and/or definitions are in no way deceptive; and provided, further,; and (iii) determines that definitions used to describe grade, classifications, quality, condition, size, variety and/, or other characteristics of agricultural products shall show clearly document wherein where they differ from the official grades, the special grade, trademark, brand, or other markings may thereafter be used by the person filing the certificate. For the purpose of this section a brand, trademark, or other markings may represent a grade.

**Drafting Note: Clarified the three conditions that must be met for the approval of use of a special grade, trademark, brand, or other markings.**

§ ~~3.1-344~~ 3.2-4305. Unclassified products.

This article shall not prevent the use of any trademark or brand not established and promulgated ~~adopted~~, or approved by the Director, on or in connection with any agricultural product, if, as a part of such trademark or brand, or immediately adjacent thereto, there be is printed in well proportioned letters not less than one-half inch in height the word "unclassified."

**Drafting Note: Technical changes.**

~~§ 3.1-341 3.2-4306.~~ Powers-Enforcement powers of Director.

The Director, with the approval of the Commissioner, shall ~~be charged with the enforcement of~~ *enforce* the provisions of this article, ~~and for that purpose shall have the power and is empowered to:~~

~~(1) To enter~~ 1. Enter and inspect, ~~personally or through any authorized agent,~~ every place ~~within the Commonwealth~~ where agricultural products are produced, packed, stored for sale, shipped, delivered for shipment, in transit or offered for sale; and to inspect such places and any or all agricultural products, containing markings of any kind ~~which~~ *that* indicate grade, classification, quality, condition, size, variety and quantity, ~~or any of them,~~ and containers or equipment found at or in such places; ~~and it shall be illegal. It is unlawful for anyone to prevent, hinder or interfere with the Director or his agent, in the exercise of any power herein set forth under this subdivision;~~

~~(2)~~ 2. To approve, superintend, control and discharge such inspectors, subordinate inspectors and agents as in his discretion may be deemed necessary for the purpose of enforcing the ~~terms~~ *provisions* of this article; and to prescribe their duties and fix their compensation;

~~(3) Personally, or through any such inspector, subordinate inspector or agent, to forbid~~ 3. *Prohibit* the movement of any agricultural product found to be marked in violation of any of the provisions of this article, ~~which product or products have not been actually prior to the product being~~ accepted by a common carrier for shipment in interstate transit, ~~and to require the same to be.~~ *Such product shall be* repacked ~~and/or~~ remarked. A ~~earload~~ *lot* of any agricultural product shall not be considered ~~as actually~~ accepted by a common carrier until the ~~ear~~ *common carrier* is loaded, ~~the ear~~ sealed, and the bill of lading issued; ~~and~~

~~(4) To cause~~ 4. *Cause* to be instituted through the ~~proper~~ attorney for the Commonwealth or attorneys for the Commonwealth, or otherwise, in any county or city in Virginia in which any agricultural product or products are packed, shipped, delivered for shipment, offered for sale, sold or may be found in violation of any provision of this article, prosecutions for such violations *of this article*.

**Drafting Note: Clarified the authority of the Director of Marketing.**

~~§ 3.1-342 3.2-4307.~~ When products considered as offered for sale.

When any agricultural product is in transit, delivered to a ~~railroad station~~ or common carrier for shipment, or delivered to a ~~storage house~~ for storage, such ~~fact or facts~~ *transit or delivery* shall be considered as prima facie evidence that the product is offered for sale.

**Drafting Note: Deleted "railroad station" since products are no longer delivered to railroad stations but are placed on common carriers for transit and delivery.**

~~§ 3.1-343 3.2-4308.~~ Grades, ~~and~~ brands, ~~etc., must~~ *shall* be used in accordance with established ~~rules~~ *regulations*.

~~No person shall~~ *It is unlawful to use:*

~~any~~ 1. Any grade, trademark, brand, or other markings established and ~~promulgated~~ *adopted* by the Director on or in connection with marking any agricultural product ~~except that is~~ *not* in accordance with the ~~rules and~~ regulations established and ~~promulgated~~ *adopted* by the Director;

~~nor shall any person use~~ 2. Any grade, trademark, brand, or other markings indicating grade, classification, quality, condition or size, for any agricultural product for which official grades, trademarks, brands, or other markings have *not* been established and ~~promulgated~~ *adopted* by the Director, ~~unless such be established and promulgated by the Director, or unless are not~~ in accordance with the provisions of ~~§ 3.1-340 3.2-4304.~~

**Drafting Note: Clarifies the action required to constitute illegal acts.**

~~§ 3.1-346 3.2-4309.~~ Unlawful removal of markings.

It ~~shall be~~ is unlawful, except with the consent of the original packer, or in compliance with the ~~rules and regulations of the Director~~, for any person to remove from any agricultural product any markings ~~which~~ *that* meet the requirements of this article relating to grade, classification, quality, condition, size, variety, quantity and other characteristics, or identify the party responsible for the packing or marking.

**Drafting Note: Technical changes.**

~~§ 3.1-347~~ 3.2-4310. Penalty for violation.

Any person who ~~shall violate~~ *violates* any of the provisions of this article ~~shall be punishable by a fine of not less than \$5 nor more than \$500 for each offense is guilty of a Class 3 misdemeanor.~~

**Drafting Note: Provides the comparable misdemeanor penalty for a \$500 fine.**

~~§ 3.1-348~~ 3.2-4311. Defenses to prosecution.

No person shall be convicted under the provisions of this article *if*:

~~(a) When such~~ 1. The person is not a party to the packing, grading, or marking of such product; *or*

~~(b) When the~~ 2. The agricultural product ~~involved~~ has passed inspection by an authorized inspector in the voluntary inspection service of the ~~Virginia Department of Agriculture and Consumer Services~~, or the ~~United States~~ U.S. Department of Agriculture, and found to be marked in accordance with the requirements of this article.

**Drafting Note: Technical changes.**

Article 2.

Virginia Quality Label.

~~§ 3.1-349~~ 3.2-4312. Definitions.

~~For the purpose of~~ *As used in this article, unless the context requires a different meaning:*

~~(1) "Agricultural and food product" shall include~~ *means* any horticultural, viticultural, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product and other foods;

~~(2) "Commissioner" shall mean the Commissioner of Agriculture and Consumer Services;~~

~~(3) "Continuous official inspection" shall mean~~ *means* that an employee or a licensed representative of the Division of Marketing or of the ~~United States~~ U.S. Department of Agriculture, ~~or of both~~, or employees of either ~~or both~~, shall regularly and continuously examine the commodity as it is being packed ~~so as to have knowledge of the quality that goes into each package;~~

~~(4) "Director" shall mean~~ *means* the Director of the Division of Marketing of the Department of Agriculture and Consumer Services; *and*.

~~(5) "Person" shall include any individual, partnership, association, union or corporation.~~

*"Division" means the Division of Marketing of the Department of Agriculture and Consumer Services.*

**Drafting Note: The definition of "Commissioner" is deleted since it appears as a title-wide definition in proposed § 3.2-100, Definitions, in Chapter 1, General Provisions and the definition of "person" is deleted because it is defined Code-wide in § 1-230. The definition of "Division" to mean the Division of Marketing within the Department of Agriculture and Consumer Services has been added.**

~~§ 3.1-350~~ 3.2-4313. Use of Virginia Quality Label to designate inspected products.

The Director, with the approval of the Commissioner, may ~~make use of an outline map of the Commonwealth of Virginia, printed, lithographed, inscribed, engraved or otherwise impressed~~ *impressed* upon the labels, tags, seals, or containers of any agricultural or food



product, ~~by any person who has availed himself of that has been subject to~~ the continuous official inspection service offered by the Division of Marketing, as an indication *indicating* that ~~such the~~ product has been under continuous official inspection by the officers, agents or licensed inspectors of the Division and that the product is of such quality and description as is indicated *shown* on ~~such the~~ label, tag, seal, or container, ~~in the manner hereinafter prescribed~~. Such outline map when made use of pursuant to the provisions of this article shall be known as the "Virginia Quality Label."

**Drafting Note: Technical changes that clarify the appropriate use of the Virginia Quality Label.**

~~§ 3.1-354~~ 3.2-4314. Collaboration with United States authorities.

In any instance when an authorized department, agent or officer of the United States collaborates with the Division of Marketing of this Commonwealth in the inspection of any agricultural or food product, the Virginia Quality Label may, with the consent of the appropriate department, agency or officer of the United States, be used together with the shield of the United States on any ~~such~~ label, tag, seal, or container, thus indicating continuous inspectional collaboration between the Division and ~~such~~ a department, agency, or officer of the United States.

**Drafting Note: Technical changes.**

~~§ 3.1-353~~ 3.2-4315. ~~Director~~ Division may prepare and distribute labels, tags, and seals with Virginia Quality Label.

~~The Director may cause to be made, printed or otherwise prepared, from time to time, Division may prepare such quantity of~~ labels, tags and seals *impressed* with the Virginia Quality Label ~~or with such label and the shield of the United States printed, lithographed, inscribed, engraved or impressed thereon as will be sufficient to supply the demand therefor; and he. The Division may furnish such the~~ labels, tags, and seals at reasonable prices to any producer, processor, packer, or dresser ~~who has availed himself of whose agricultural and food product has been subject to~~ such continuous official state or federal-state inspection service.

**Drafting Note: Changed the authority to prepare and distribute Virginia Quality Labels from the Director to the Division.**

~~§ 3.1-354~~ 3.2-4316. Preparation and use of Label by producer, ~~ete;~~ *design to be determined by Director.*

~~Nothing in this article shall be construed to preclude the The Director from permitting, under the rules and regulations by him prescribed, may adopt regulations that permit any such producer, processor, packer, or dresser to make or prepare, or to cause to be made or prepared, the labels, tags, or seals to be used upon placed on his own product, or to print, stamp, or otherwise place or cause to be placed the Virginia Quality Label or such label and the shield of the United States, as the case may be, upon such products or containers thereof which that have been subject to continuous state or federal-state inspection; provided that in any case such labels, tags, seals, stamps or other devices shall be of such design as the Director, with the approval of the Commissioner, may from time to time determine, so long as the Director, with the approval of the Commissioner, determines the design of the label, tag, seal, stamp, or other device.~~

**Drafting Note: Technical changes.**

~~§ 3.1-355~~. Dissemination of information.

~~The Director is further authorized, in cooperation with the Virginia Extension Division, the Department of Education, the United States Department of Agriculture or otherwise, to make use of any available and appropriate means to disseminate information concerning the Virginia Quality Label and such label with the shield of the United States and the products which may lawfully bear them, and to popularize the use thereof.~~

**Drafting Note: Deleted section. This provision is unnecessary since this type of service can be provided without explicit statutory authority.**

~~§ 3.1-356 3.2-4317. Appropriation of moneys derived from labels, tags, etc Virginia Quality Label Fund established.~~

~~A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Quality Label Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Moneys in the Fund shall be used solely for the purposes set forth in this chapter. All moneys derived from the furnishing of such labels, tags, and seals, or from permitting the use in any other manner of the Virginia Quality Label or such the label with the shield of the United States shall be paid into the Statestate treasury, and are hereby appropriated to the Department of Agriculture and Consumer Services to be expended through the and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used by the Division of Marketing to defray the cost of preparing, and furnishing, and publicizing such-the labels, tags, and seals and the cost of such dissemination and popularization.~~

**Drafting Note: Establishes the Virginia Quality Label Fund as a special nonreverting fund.**

~~§ 3.1-358 3.2-4318. Jurisdiction to enjoin unlawful use of Label.~~

~~A. Any court of record circuit court in the Commonwealth shall have jurisdiction to enjoin the use of the Virginia Quality Label or of such, a label with the shield of the United States, or any imitation or counterfeit likeness thereof used in violation of this article.~~

~~B. The Director, with the approval of the Commissioner, may apply for and an appropriate court may grant a temporary or permanent injunction restraining any person from using the labels described in subsection A.~~

**Drafting Note: Proposed subsection B is moved from existing § 3.1-359.**

~~§ 3.1-359. Institution of prosecutions and injunction proceedings.~~

~~The Director, with the approval of the Commissioner, may cause prosecutions for violations of this article, as well as the injunction proceedings provided for in the preceding section (§ 3.1-358), to be instituted through the respective attorneys for the Commonwealth of the several counties and cities, or otherwise in his discretion.~~

**Drafting Note: Deleted section and moved to proposed subsection B of § 3.2-4318, Jurisdiction to enjoin unlawful use of Label.**

~~§ 3.1-360 3.2-4319. Certificate as evidence.~~

~~Every certificate duly certificate relating to the analysis, grade, classification, quality, or condition of agricultural products, either raw or processed, that is issued: (i) under this article, duly issued; (ii) in cooperation between federal and state authorities, agencies, or organizations under the authority of pursuant to a federal statute and this article; (iii) under a similar act of the legislature of any other state, and every duly certified copy thereof; and (iv) every certificate duly issued under the authority of pursuant to a federal statute, and every duly certified copy thereof, relating to the analysis, grade, classification, quality, or condition of agricultural products, either raw or processed, shall be received in any court of thisthe Commonwealth as prima facie evidence of the truth of the statements contained therein in the certificate.~~

**Drafting Note: Technical changes.**

~~§ 3.1-352 3.2-4320. Restrictions as to use of Label.~~

~~The It is unlawful to use the Virginia Quality Label or such- a label with the shield of the United States, as the case may be, shall not be used except in accordance with the rules and regulations prescribed therefor by the Director with the approval of the Commissioner, and in no case shall it or either or both of them be used upon the label, tag, seal, or container; of the product of any farm, factory, mill or of any other producing, processing, packing, preparing, or dressing establishment unless such product is processed, packed, prepared, or dressed under continuous official state or federal-state inspection.~~

**Drafting Notes: Technical changes.**

~~§ 3.1-357~~ 3.2-4321. Penalties for misuse or unauthorized use of Virginia Quality Label.

~~Any A. It is unlawful for any person who shall use:~~

~~1. To use the Virginia Quality Label or such a label with the shield of the United States in violation of any provisions of this article, or who shall, with the intent to;~~

~~2. mislead or deceive, To use, with the intent to mislead or deceive, any imitation or counterfeit likeness thereof of the Virginia Quality Label, or a label or shield of the United States: (i) on the label, tag, seal, container, or sign or otherwise of any product of any kind or description which that is sold or offered for sale; or (ii) in connection with any offer to sell or advertise for sale any product, or who shall use the Virginia Quality Label or such label with the shield of the United States, or, with like intent to mislead or deceive, use any imitation or counterfeit likeness thereof upon or in connection with any offer to sell or advertisement for sale, or use of any product of any kind or description which does not in fact lawfully bear the Virginia Quality Label or such label with the shield of the United States, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$10 nor more than \$500; provided,~~

~~B. Any person who violates any provision of this article is guilty of a Class 3 misdemeanor.~~

~~C. however, that nothing herein shall affect the right of any Any corporation incorporated under the laws of this the Commonwealth, which that has for eighteen-18 years or more prior to June 29, 1948, been using an outline map of Virginia, of its own design, for branding packages or containers for agricultural or horticultural products bought and sold by it, from hereafter continuing shall have the right to continue to use such outline map for such purpose.~~

**Drafting Note: Clarified the unlawful acts and that there has to be an intent to mislead or deceive. Deleted the last unlawful activity that makes it illegal for any person to use a product that doesn't have the Virginia Quality Label or shield of the United States. Changed the penalty from a fine of between \$10 and \$500 to the comparable Class 3 misdemeanor.**

Article 1-13.

Grain Handlers.

~~§ 3.1-348.1~~ 3.2-4322. Definitions.

~~For the purposes of As used in this article, unless the context requires a different meaning:~~

~~(a) "Board" means the Board of Agriculture and Consumer Services of this State.~~

~~(b) "Commissioner" means the Commissioner of Agriculture and Consumer Services of this State.~~

~~(c) "Person" means an individual, partnership, corporation or association.~~

~~(d) "Handler" means a person who buys grain for resale as grain or grain products.~~

~~(e) "Grain" means corn (maize), wheat, rye, oats, barley, flaxseed, soybeans, and such other grains as the usages of the trade may warrant and permit.~~

~~"Handler" means a person who buys grain for resale as grain or grain products.~~

**Drafting Note: The definitions of "Board" and "Commissioner" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions. The definition of "person" is deleted since it is defined Code-wide in § 1-230. The definitions are alphabetically arranged.**

~~§ 3.1-348.2~~ 3.2-4323. Commissioner authorized to require registration; forms.

~~The Commissioner is hereby authorized to may require all handlers to register with him on forms prepared for that purpose. Such forms shall require the handler to state his name, address, and the county or city where he shall weigh and grade grain.~~

**Drafting Note: Technical changes.**

~~§ 3.1-348.33.2-4324. Rules and regulations~~ *Regulations.*

The Board is hereby authorized to establish rules and *may adopt* regulations relating to the handling of grain in ~~this~~*the* Commonwealth, ~~extending to~~ *including*:

(~~1~~) 1. The weighing devices, approved under the Virginia Weights and Measures Law (§ 5600 *et seq.*) and the procedures employed to give accurate weights.

(~~2~~) 2. The grading equipment that is acceptable in administering the United States Grain Standards Act and the use of grading equipment to be used in determining the value of grain. Such use of such equipment shall be pursuant to procedures employed by inspectors licensed under the United States Grain Standards Act.

(~~3~~) 3. Samples of lots graded by other than a Virginia licensed inspector and the lot discounted shall be identity preserved for ~~twenty-four~~ 24 hours.

(~~4~~) 4. The keeping of records in accordance with good business practices.

**Drafting Note: Technical changes.**

~~§ 3.1-348.4 3.2-4325.~~ Grain handlers to register if required by Commissioner.

All persons before operating as a handler in ~~this~~*the* Commonwealth shall register with the Commissioner, ~~if required to do so by him.~~

**Drafting Note: Technical changes.**

~~§ 3.1-348.5 3.2-4326.~~ Grain to be purchased from registered handlers.

~~No~~ *It is unlawful to buy* grain shall be bought for resale as grain or grain products unless bought by a handler registered by the Commissioner.

**Drafting Note: Technical changes.**

~~§ 3.1-348.6 3.2-4327.~~ Violation of article.

Any person who ~~shall violate~~ *violates* any of the provisions of this article or ~~the rules and~~ regulations established by the Board ~~shall be hereunder is~~ guilty of a *Class 1* misdemeanor.

**Drafting Note: Pursuant to § 18.1-13, a misdemeanor for which no punishment is prescribed is classified as Class 1 misdemeanor.**

CHAPTER ~~22.144.~~

BEEKEEPING.

**Chapter Drafting Note: Deleted definitions of terms provided elsewhere or not used in chapter. Moved the information from the definitions of "abandoned apiary" and "candy" into the substantive sections addressing those issues. Sequenced the chapter to follow drafting convention: definitions, administration, obligations, and enforcement. Combined the powers of the Commissioner into one section. Consolidated the sections dealing with rearing package bees and queens; as well as sections detailing the procedures for instituting eradication and control measures.**

~~§ 3.1-610.1 3.2-4400.~~ Definitions.

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

(a) "~~Abandoned apiary~~" means an apiary wherein the bees and hives show evidence of a period of neglect which, in the opinion of the State Apiarist, exceeds one year, and for which the owner has not been identified through a reasonable search of available records.

(~~b~~) "~~Apiary~~" means any place where one or more colonies of bees are kept.

(~~c~~) "~~AppliancesAppliance~~" means any apparatus, ~~toolstool~~, ~~machinesmachine~~, or other ~~devicesdevice~~ used in the handling and manipulating of bees, honey, wax ~~and~~, hives ~~or~~, *and* hive parts, and shall include containers used in transporting, processing, storing, or merchandising bees and bee products.

~~(d) "Bee" means any living stage of the honeybee, *Apis mellifera* and genetic variations thereof, at any living stage; and may also include those other hymenopterous insects which depend on that depend on pollen and nectar for food.~~

~~(e) "Bee diseases" means a departure—departures from a sound state of health of bees characterized by visible symptoms and shall include—including American foulbrood—caused by *Bacillus larvae*, and any other diseases, insects, mites, or other bee pests.~~

~~(f) "Bee equipment" means hives and hive parts, including, but not limited to, frames, supers, covers, and bottom boards, and beekeeping apparel including gloves and veils.~~

~~(g) "Board" means the Board of Agriculture and Consumer Services.~~

~~(h) "Box hive" means box, skep, barrel, log gum or other container, natural or artificial, employed as a domicile for bees wherein the brood combs are secured by the bees and cannot be readily removed for inspection.~~

~~(i) "Brood comb" means the assemblage of cells containing any living stage of bees at any time prior to their emergence as adults.~~

~~(j) "Candy" means a carbohydrate food for bees of which honey is not an ingredient.~~

~~(k) "Certificate of health" means a state-of-origin document prepared and signed by the State Apiarist or other duly authorized person bearing statements of fact regarding bees, bee equipment or appliances and declaring the articles described therein—bees, bee equipment, appliances, apiaries, and honey houses to be free of American foulbrood or other bee diseases.~~

~~(l) "Colony" means a queenright assemblage of social bees capable of reproducing.~~

~~(m) "Combless package" means a shipping container for transporting bees or queens or both, with or without a supply of feed.~~

~~(n) "Commissioner" means the Commissioner of Agriculture and Consumer Services or his duly authorized assistants.~~

~~(o) "Entry permit" means a state-of-destination document prepared by the State Apiarist or other duly authorized person, bearing such statements of fact authorizing the entry of bee equipment, appliances, and bees on combs into this the Commonwealth of bees on combs and appurtenances.~~

~~(p) "Hive" means a movable frame hive with foundation used for box, skep, barrel, log gum, or other container used as a domicile for bees.~~

~~(q) "Honey house" means any building wherein where honey for commercial use is extracted, graded, processed, packed, or stored.~~

~~(r) "Interdiction" means the prohibition of movement of bees into the Commonwealth and under certain conditions within the Commonwealth.~~

~~(s) "Person" means individual, partnership, association, company, corporation or the term as defined in § 1-230. The term also means any society.~~

~~(t) "Queen apiary" means any apiary or premises in which queen bees are reared.~~

**Drafting Note: Deleted the terms "box hive," "interdiction," and "queen apiary" as these terms are not used elsewhere in the chapter. Deleted the terms "abandoned apiary" and "candy" and included the same information in the substantive provisions, proposed § 3.2-4411, Abandoned apiaries, and proposed § 3.2-4408, Rearing bees for sale. Deleted the terms "Board" and "Commissioner" as previously defined.**

~~§ 3.1-610.93.2-4401. Rules and regulations Powers and duties of the Board.~~

~~The Board shall have the power to prescribe and may adopt rules and regulations for the suppression of to:~~

~~1. Suppress bee diseases by regulating the movement of bees and causing control controlling or destruction of destroying disease reservoirs; to require~~

~~2. Require apiary identification; to adopt~~

~~3. Adopt colony strength standards for pollination services; to promote~~

4. *Promote* the sale and distribution of bees and their products; and ~~for the effective administration and enforcement of~~

5. *Effectively administer and enforce* this chapter.

**Drafting Note: Moved this section from later in the chapter for a more logical sequence consistent with general drafting practice.**

~~§ 3.1-610.2 3.2-4402. Appointment of State Apiarist.~~

~~The Commissioner of Agriculture and Consumer Services is hereby authorized to may appoint a competent State Apiarist, who shall have with adequate experience and training in practical beekeeping. The State Apiarist shall promote the science of beekeeping by education and other means; inspect apiaries, beehives, and beekeeping equipment within the Commonwealth for bee disease; and perform other duties that may be required by regulation or law, including the inspection of honey houses for sanitation.~~

**Drafting Note: The second sentence is moved from existing § 3.1-610.3.**

~~§ 3.1-610.3. Duties of State Apiarist.~~

~~The duties of the State Apiarist shall be to promote the science of beekeeping by education and other means, to inspect or cause to be inspected apiaries, beehives, and beekeeping equipment within the Commonwealth for bee disease and to perform such other duties as may be required by regulation or law, including the inspection of honey houses for sanitation.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-4402, State Apiarist and bee inspectors.**

~~§ 3.1-610.4. Appointment of inspectors.~~

~~The Commissioner is authorized to appoint one or more competent assistants, if needed, who shall be known as State bee inspectors whose duties it shall be to carry out provisions of this chapter under the direction and supervision of the State Apiarist.~~

**Drafting Note: Deleted section. The general powers of the Commissioner are provided in proposed § 2.2-604, Performance of duties assigned to agency, and include the authority to hire assistants.**

~~§ 3.1-610.10 3.2-4403. DutyDuties of keepers as to hivesbeekeepers.~~

~~It shall be the duty of all persons engaged in beekeeping to provideBeekeepers shall:~~

1. *Provide* movable frames with combs or foundation in all hives used by them to contain bees, except for short periods, not to exceed the first spring honey flow, and to cause the bees in such hives to construct brood combs in such frames so that any of the frames may be removed from the hive without injuring other combs in such hive. ~~It shall be the duty of any person keeping bees within the Commonwealth to securely; and~~

2. *Securely* and tightly close the entrance of any hive in apiaries not free from disease ~~in which the bees shall have died either during the winter or at any other time, and to make the hive tight in such manner so that robber bees cannot enter or, leave such hive, or obtain honey therefrom. The sealing of such hives must be maintained so from the hives as long as the hives remain in the yard or in any place wherea location accessible by honeybees can gain access to them.~~

**Drafting Note: Technical changes.**

~~§ 3.1-610.83.2-4404. Notice ofDuty to notify the State Apiarist of diseased bees.~~

~~Any person in thisthe Commonwealth receiving knowledgewho is aware of diseased bees in his or other apiaries shall immediately notify the State Apiarist or his assistant, giving the exact location where such of the diseased bees are kept, together with such and other known information as may be requested.~~

**Drafting Note: Technical changes.**

~~§ 3.1-610.15 3.2-4405. PermitEntry permit required to bring bees and used bee equipment into Commonwealth; inspection after bees enter Commonwealth.~~

A. No person shall bring ~~into this Commonwealth~~ any bees on combs, empty used combs, used hives, or other used apiary appliances ~~from any other state, territory or country into the Commonwealth~~ without first ~~having received~~ *receiving an entry permit* to do so from the State Apiarist. ~~This permit~~ *Entry permits* shall be issued only upon receipt of satisfactory proof that ~~said~~ *the* bees and used ~~beekeeping appliances~~ *other items* are free from ~~disease~~ *bee diseases*. The ~~permit shall have been issued on specifically~~ *Specifically* identifiable colonies *must be brought into the Commonwealth* within ~~sixty~~ *60* days ~~of shipment~~ *from the issuance of the entry permit*.

B. Bees brought into ~~this~~ *the* Commonwealth shall be subject to inspection at any time ~~after entering this Commonwealth,~~ at the discretion of the State Apiarist.

**Drafting Note: Technical changes.**

~~§ 3.1-610.14~~ 3.2-4406. Certificate of health to accompany bees in combless packages brought into Commonwealth.

All bees in combless packages ~~which may be brought~~ *transported* into ~~this~~ *the* Commonwealth ~~from other states, territories or other countries~~ shall be accompanied by a certificate of health issued by the proper official of the place of origin. ~~The transportation of bees in combless packages into this Commonwealth without such certificate of health by any person or persons is expressly prohibited.~~

**Drafting Note: Deleted the second sentence as redundant—the first sentence already states that bees transported in combless packages must be accompanied by a certificate of health. Proposed § 3.2-4414, Violation of chapter, states that "any person violating any of the provisions of this chapter . . . shall be guilty of a Class 1 misdemeanor."**

~~§ 3.1-610.17~~ 3.2-4407. Certificate of health to accompany bill of sale.

No bees on combs, hives, used beekeeping equipment with combs, or appliances may be ~~sold or offered for sale unless each bill of sale is accompanied by~~ *without a valid certificate of health* prepared by the ~~Commissioner~~ *State Apiarist* for each specifically identifiable ~~hives, beekeeping equipment and appliances free of the causal agent of American foulbrood disease or other diseases named in the rules and regulations~~ *item*. *The certificate of health must accompany each bill of sale.*

**Drafting Note: Technical changes.**

~~§ 3.1-610.13~~ 3.2-4408. Rearing ~~queenright or queenless~~ *package bees and queens* for sale.

A. No person shall ~~engage in the rearing of queenright or queenless~~ *rear package bees or queens* for sale without first applying to the State Apiarist for inspection at least once during each summer season.

B. Upon the discovery of the ~~existence of any bee diseases which are infectious or contagious and injurious to bees in any living stage,~~ the rearer or seller shall at once cease to ship bees from affected apiaries until the State Apiarist shall ~~declare the apiary or apiaries free from disease and issue a certificate to that effect~~ *issues a certificate of health for such apiaries*.

C. *No person engaged in rearing queen bees for sale shall use honey in the making of bee food for use in mailing cages.*

**Drafting Note: Consolidated section to include provisions with existing § 3.1-610.12, Rearing queen bees.**

~~§ 3.1-610.12.~~ Rearing queen bees.

No person in the Commonwealth engaged in rearing queen bees for sale, shall use honey in the making of candy for use in mailing cages. Every person engaged in rearing queen bees shall have his queen rearing and queen mating apiary or apiaries inspected at least once during each summer season by the State Apiarist or inspector and on the discovery of the existence of any disease which is infectious or contagious in its nature and injurious to bees in their egg, larval, pupal or adult states, such person shall at once cease to ship queen bees from such

~~diseased apiary until the State Apiarist shall declare the apiary free from disease and issue a certificate to that effect.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-4408, Rearing package bees and queens for sale. Consolidated with existing § 3.1-610.13, Rearing queenright or queenless package bees.**

~~§ 3.1-610.73.2-4409. Right of entry for purpose of inspection and enforcement of chapter.~~

~~The Commissioner, or his duly authorized assistants, shall have the authority, for the purpose of carrying out the provisions of this chapter, to may enter upon, during reasonable business hours, any private or public premises during business hours, except private dwellings, and. The Commissioner shall have access, ingress and egress to and from to all apiaries or and other places where bees, combs, and beekeeping equipment, orand appliances aremay be kept, or where honey is being processed, stored or packed for market.~~

**Drafting Note: The definition of appliance includes any apparatus, tool, or container for the processing, storage, or packing of honey.**

~~§ 3.1-610.5 3.2-4410. Inspections; measures to be taken for eradication or Measures to eradicate and control of disease bee diseases; appeal.~~

~~A. The Commissioner or his assistants State Apiarist shall examine or inspect the bees in this the Commonwealth whenever they are suspected of being infected with American foulbrood disease or other contagious disease of bees, bee diseases and, on request, shall inspect bees to be sold or to be transported interstate when requested.~~

~~B. If bees are found to be infected with American foulbrood or other contagious disease of bees bee diseases, the State Apiarist shall cause take suitable measures to be taken for the eradication eradicate or control of such disease diseases.~~

~~C. Whenever If the owner of such diseased bees fails or refuses to take such steps as may be prescribed by the State Apiarist to eradicate or control the disease, the State Apiarist shall destroy or treat or cause such the bees, together with the hives, and honey, to be destroyed or treated in such manner as he may deem best.~~

~~D. The State Apiarist may prohibit the removal of bees, honey, wax, combs, hives, or other used beekeeping equipment from any place where bees are known to be infected with bee diseases, until he issues a certificate of health for such place.~~

~~E. Within 10 days from the receipt of an order from the State Apiarist to destroy or treat his diseased bees, hives, honey, or appliances, any owner of diseased bees may file a written appeal with the Commissioner. Upon timely receipt of a written appeal under this section, the Commissioner shall act upon the appeal in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).~~

**Drafting Note: Proposed subsection D is moved from existing § 3.1-610.11. Proposed subsection E is moved from existing § 3.1-610.6.**

~~§ 3.1-610.11. Removal of bees, etc., from infected apiary may be forbidden.~~

~~The Commissioner or his duly authorized assistants shall have authority to forbid the removal of bees, honey, wax, combs, hives or other used beekeeping equipment from any apiary or place where bees are known to be infected with American foulbrood or any other contagious or infectious disease, until he shall find the apiary free from disease and issue a certificate to that effect.~~

**Drafting Note: Deleted and moved to subsection D of proposed § 3.2-4410, Measures to eradicate and control bee diseases.**

~~§ 3.1-610.6. Appeal from order of State Apiarist.~~

~~Any owner of diseased bees may, within ten days from the receipt of an order from the State Apiarist to destroy or treat his diseased bees, hives, honey or appliances, file a written appeal from the order with the Commissioner. The Commissioner, upon timely receipt of a~~



~~written appeal under this section, shall act upon the appeal in accordance with the provisions of Chapter 40 (§ 2.2 4000 et seq.) of Title 2.2.~~

**Drafting Note: Deleted and moved to subsection E of proposed § 3.2-4410, Measures to eradicate and control bee diseases.**

~~§ 3.1 610.18 3.2-4411. Abandoned apiaries.~~

~~When an apiary is deemed by The State Apiarist may deem an apiary to be abandoned if: (i) the bees and hives show evidence of a period of neglect exceeding one year; and (ii) the owner of the apiary has not been identified through a reasonable search of available records. If the State Apiarist deems an apiary to be abandoned, he shall certify his findings in a declaration of abandonment to the treasurer of the political subdivision in which locality where the apiary is located, who. The treasurer shall give notice of such certification to the last known owner of the apiary and the owner of the land upon which the apiary is located, by personal service, by posting at last known residence, or by publication. If, after sixty 60 days, the owner or landowner has not laid claim to said the apiary, the treasurer may hold a sheriff's sale and, issue a treasurer's deed to the successful bidder. The, and deposit any proceeds from such sale shall be added to into the general fund of the political subdivision wherein the apiary is located locality. If such disposition of said apiary is not made within ninety 90 days of the date of the State Apiarist's declaration of abandonment he, the State Apiarist may take possession of the apiary and destroy the related bees, hives, and equipment therein.~~

**Drafting Note: Moved the definition of "abandoned apiary" from the existing definitions section to this substantive section.**

~~§ 3.1 610.19 3.2-4412. Unsanitary conditions in operation of honey houses or buildings.~~

~~Whenever it is determined by the State Apiarist or inspector, determines that unsanitary conditions exist in the operation of any honey houses or buildings or portion of a building in which honey is stored, graded or processed, any honey house, he shall notify the operator or owner of such honey houses or buildings shall be first notified and warned by the State Apiarist or inspector to place such honey house or building in a sanitary to remedy the condition within a reasonable length of time. Failure to correct the unsanitary condition after notification by the State Apiarist shall constitute is a violation of this chapter and shall be dealt with as provided herein.~~

**Drafting Note: Proposed § 3.2-4414, Violation of chapter, states that "any person violating any of the provisions of this chapter . . . shall be guilty of a Class 1 misdemeanor."**

~~§ 3.1 610.20 3.2-4413. Costs of administering chapter.~~

~~Normal costs of administering this law shall be borne by the Commonwealth; however, costs. Costs for services, products, or articles beyond the scope of the law are reimbursable and payable to the Treasurer of Virginia by the persons affected. The Commissioner shall cause all reimbursements to be promptly credited credit reimbursements to the State fund from which originally expended regardless of the date the costs were incurred or the date collected.~~

**Drafting Note: Clarified that the affected persons have the duty to compensate for services beyond the scope of law.**

~~§ 3.1 610.16. Resisting or hindering officials.~~

~~It shall be unlawful for any person to resist, impede or hinder the Commissioner or his assistants in the discharge of their duties.~~

**Drafting Note: Deleted section. This provision is redundant since the actions of a person "to resist, impede or hinder" are already designated to be unlawful as "interfering in any way with the Commissioner" in proposed § 3.2-4414, Violation of chapter.**

~~§ 3.1 610.21 3.2-4414. Violation of chapter.~~

~~Any person violating any of the provisions of this chapter or any order or regulation issued by authority of this chapter hereunder, or interfering in any way with the duly appointed representatives of the Commissioner of Agriculture and Consumer Services of this~~

~~Commonwealth~~ in the discharge of ~~the~~*his* duties herein specified shall be deemed ~~is~~ guilty of a *Class 1* misdemeanor and upon conviction shall be punished as provided in § 18.2-12.

**Drafting Note: Section 18.2-12 provides that unspecified misdemeanors shall be punishable as a Class 1 misdemeanor.**

CHAPTER ~~23~~ 45.

*GRADING, PACKING, AND MARKING OF APPLES.*

**Chapter Drafting Note: Existing Chapter 23 contains two articles: Article 1, Grading, Packing, and Marking; and Article 2, Virginia State Apple Board; Excise Tax on Apples. Article 2 is moved to become proposed Chapter 12, Apple Board, and existing Article 1 becomes the entire proposed Chapter 45, Grading, Packing and Marking of Apples.**

~~Article 1.~~

~~Grading, Packing, and Marking.~~

~~§ 3.1-611~~ 3.2-4500. Definitions.

As used in this article, unless the context otherwise requires *a different meaning*:

~~"Board" means the Board of Agriculture and Consumer Services.~~

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

"Container" means any closed package of any description that is used to contain apples and includes boxes, baskets and bags of any size or material.

"Packer" means any person who first packs apples in a container for shipment or sale.

**Drafting Note: The definitions of "Board," and "Commissioner" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions, in Chapter 1, General Provisions.**

~~§ 3.1-615~~ 3.2-4501. ~~Rules and regulations; grades~~*Grades* and standards.

~~In order to provide for the orderly marketing of apples and the protection of the purchasing public, the Board shall have the power to adopt reasonable rules and regulations for the implementation and enforcement of this article.~~

The Board shall establish and ~~promulgate from time to time~~ *adopt* official grades and standards for apples by which the quality, quantity and size of the apples may be determined. Before establishing such official grades and standards, the Board shall consult with the Board of Directors of the Virginia Horticultural Society and the Board of Directors of the Virginia Apple Growers Association.

**Drafting Note: Deleted language that provides the Board with the general authority to adopt regulations since they have such powers as a policy board under proposed Chapter 1, General Provisions and § 2.2-2100.**

~~§ 3.1-612~~ 3.2-4502. Marking containers; contents to conform to markings.

~~No apples~~ *It is unlawful for apples*, except apples delivered for processing or packing or delivered to storage for packing, shall ~~to~~ be sold, packed for sale, offered for sale or transported for sale, in containers, unless:

1. Each such container bears conspicuously in plain words and figures on the outside, or on a durable stuffer within and readily readable from the outside, showing the correct size, minimum quantity and correct variety of the apples in the container, one of the official grades and one of the official standards for apples established by the Board under this ~~article~~ *chapter*, and the name and address of the producer's or packer's business; and

2. The apples in each ~~such~~ container conform to the markings appearing on ~~such~~ *the* container.

**Drafting Note: Technical changes.**

~~§ 3.1-613~~ 3.2-4503. Packing in used containers.

When apples are packed in used containers, any markings pertaining to previous contents of such containers shall be obliterated by the producer or packer and the markings required under this ~~article~~ *chapter* shall be substituted.

**Drafting Note: Technical changes.**

§ ~~3.1-614~~ 3.2-4504. Prima facie evidence of being offered or transported for sale.

When containers of apples are placed in transit for sale or delivery or delivered for storage, such transit or delivery shall be prima facie evidence that the apples are offered or transported for sale.

**Drafting Note: No changes.**

§ ~~3.1-616~~ 3.2-4505. Enforcement of ~~article~~ *chapter*.

The ~~Board is charged with the enforcement of this article and for that purpose the Board and its authorized agents shall have the power to~~ *Commissioner may:*

1. Enter and inspect all places within the Commonwealth where apples are produced, packed or stored for sale, shipped, delivered for shipment, offered or exposed for sale, or sold, and to inspect ~~such places and~~ all apples, containers and equipment found in any such places.

2. Institute injunction proceedings for violations of any provision of this ~~article~~ *chapter* or regulation adopted hereunder in any *circuit* court of ~~competent jurisdiction~~ in any county or city of the Commonwealth where apples may be found improperly marked in violation of any provision of this ~~article~~ *chapter*, either through the attorney for the Commonwealth or otherwise.

3. Prohibit in writing the movement in intrastate, interstate or foreign commerce of any apples found improperly marked in violation of any provision of this ~~article~~ *chapter* or regulation adopted hereunder until such apples are properly marked ~~under this article or regulation adopted hereunder~~ and released in writing by the ~~Board or its authorized agent~~ *Commissioner*.

**Drafting Note: Changed the authority to enter and inspect, institute injunction proceedings and prohibit movement in commerce of improperly marked apples from the Board to the Commissioner.**

§ ~~3.1-617~~ 3.2-4506. Penalty for violation.

A. Any person, ~~firm, corporation, organization or association~~, except a contract or common carrier, who ~~or which~~ moves or causes to be moved any apples, the movement of which has been prohibited in writing as provided in § ~~3.1-616~~ 3.2-4505, ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

B. *Any person who violates any provision of this chapter is guilty of a Class 1 misdemeanor.*

**Drafting Note: Since there is no penalty provided for violation of any provisions other than subsection A of this section, proposed subsection B imposes a chapter-wide Class 1 misdemeanor. This penalty is the same penalty imposed for the misbranding of food in Chapter 51, Food and Drink.**

CHAPTER 3746.

CONTROLLED ATMOSPHERE STORAGE OF APPLES AND PEACHES.

**Chapter note: Rearranged the order in which the sections appear, with definitions as the first section followed by the regulatory authorities of the Commissioner and Board, the provisions governing registration of controlled atmosphere storage warehouses, fees, enforcement powers, and criminal violations.**

§ ~~3.1-991~~ 3.2-4600. Definitions.

The following definitions shall apply in the interpretation and the enforcement of ~~As used in~~ this chapter, *unless the context requires a different meaning:*

~~"Board" means the Board of Agriculture and Consumer Services of the Commonwealth of Virginia.~~

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services of the Commonwealth of Virginia.~~

~~"CA" has the same meaning as "controlled atmosphere storage."~~

~~"Controlled atmosphere storage" or "CA" means any storage warehouse consisting of one or more rooms in any one facility in which atmosphere gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of fruit, in order that, upon removal, they may be designated as having been exposed to controlled atmosphere.~~

~~"Fruit" means any apples and peaches.~~

~~"Person" means any individual, corporation, partnership, association or other organized group of persons, or any business entity, by whatever name designated and whether or not incorporated.~~

**Drafting Note: The definitions of "Board" and "Commissioner" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions, in Chapter 1, General Provisions. The definition of "CA" is incorporated into the definition of "controlled atmosphere storage" since they have the same meaning. The definition of "person" is deleted since there is a Code-wide definition in § 1-230.**

~~§ 3.1-996. Enforcement of chapter.~~

~~The Commissioner shall enforce and carry out the provisions of this chapter, and the Board, in order to protect purchasers of fruit and to ensure the quality of fruit stored under CA, shall adopt the necessary rules and regulations to carry out its purposes.~~

**Drafting Note: Deleted section. This provision is unnecessary as the general powers of the Commissioner are cited in proposed § 3.2-102, General powers and duties of the Commissioner, in Chapter 1, General Provisions.**

~~§ 3.1-997 3.2-4601. Rules and regulations *Regulations*.~~

~~The Board, in order to protect purchasers of fruit and to ensure the quality of fruit stored under CA, may adopt rules and regulations for fruit, after consultation with the Board of Directors of the Virginia State Horticultural Society or the Virginia Apple Growers Association, to include that:~~

~~1. *Prescribing* Prescribe components of the atmosphere required including the maximum amount of oxygen that may be retained in a sealed controlled atmosphere storage warehouse;~~

~~2. *Determining* Determine the length of time, not exceeding ten to be less than 60 days and not to exceed 10 months, and the degrees of temperature at which fruit shall be retained in controlled atmosphere storage before they may shall be classified as having been stored in controlled atmosphere storage.~~

~~3. *Prescribing* Prescribe grade and condition standards applicable to CA apples.~~

~~Notwithstanding any other provision of law or regulation, to qualify for CA designation, the required storage period of an apple in a sealed room with reduced amounts of oxygen shall be 60 days.~~

**Drafting Note: Combined the language in proposed subdivision 2 with the limits that apples can be stored in a controlled atmosphere (stricken language).**

~~§ 3.1-994 3.2-4602. Operators of warehouses may register with Commissioner; expiration of registration.~~

~~Any person engaging in the operation of a controlled atmosphere storage warehouse or warehouses may register with the Commissioner. Such registration shall expire on August 31 of each year.~~

**Drafting Note: Technical changes.**

§ ~~3.1-995~~ 3.2-4603. Application for registration; when Commissioner to register applicant.

A. Application for registration to operate a controlled atmosphere storage warehouse shall be on a form prescribed by the Commissioner and shall include the following:

~~(1)~~1. The full name of the person applying for registration-;

~~(2)~~2. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the name of the officers of the association or corporation shall be given on the application-;

~~(3)~~3. The principal business address of the applicant ~~in the Commonwealth and elsewhere-;~~

~~(4)~~4. The name of a person domiciled in ~~this~~ *the* Commonwealth authorized to receive and accept service or legal notices of all kinds-;

~~(5)~~5. The storage capacity, *by cubic capacity or volume*, of each controlled atmosphere storage warehouse the applicant intends to operate ~~by cubic capacity or volume-;~~

~~(6)~~6. The kind of fruits ~~for which the applicant intends to provide~~ *be placed in* controlled atmosphere storage-; *and*

~~(7)~~7. Any other information prescribed by the Commissioner necessary to carry out the ~~purposes and~~ provisions of this chapter.

B. The Commissioner shall register an applicant ~~upon his satisfaction~~ *if he determines* that the applicant has satisfied the requirements of this chapter ~~and rules~~ and *the* regulations adopted hereunder.

C. *The Commissioner, when issuing a registration to an applicant, shall include a warehouse number that shall be preceded by the letters "VA-CA."*

**Drafting Note: Proposed subsection C is moved from existing § 3.1-999.**

§ ~~3.1-1000~~ 3.2-4604. Owner or buyer may apply for inspection and certification of fruits.

Any owner or, with the consent of the owner, a proposed buyer of any fruits, subject to the provisions of this chapter may apply to the Commissioner for inspection and certification ~~as to whether~~ *that* such fruits meet the requirements provided for in this chapter or ~~rules~~ *regulations* adopted hereunder.

**Drafting Note: Technical changes.**

§ ~~3.1-1001~~ 3.2-4605. Fees.

The Board, ~~acting under § 3.1-997~~, shall prescribe the ~~necessary~~ fees to be charged to the registrant or owner for the inspection and certification of any fruits subject to the provisions of this chapter or ~~rules~~ *regulations* adopted hereunder; ~~provided, however, that in~~ *In* no case shall the fees ~~so set~~ exceed the fees charged for inspection of ~~such~~ fruit not under CA storage. If the inspection fees payable under this chapter are not paid within ~~ten~~ *30* days ~~from the date of billing~~, the Commissioner may withdraw inspection or refuse to perform any inspection or certification services for the person in arrears.; ~~provided, that the~~ *The* Commissioner ~~in such instances~~ may demand and collect inspection and certification fees prior to inspecting and certifying any fruits for such person.

**Drafting Note: Changes the requirement for pay inspection fees from 10 to 30 days. This timeframe coincides with the Department's billing cycle.**

§ ~~3.1-1003~~ 3.2-4606. Disposition of funds.

All moneys collected under the provisions of this chapter for the inspection and certification of any fruits subject to the provisions of this chapter shall be handled and deposited in the manner provided for in ~~§ 3.1-29~~ *subsection B of § 3.2-3400*, for the handling of inspection and certification fees derived from the inspection of any agricultural products.

**Drafting Note: Technical changes.**

§ ~~3.1-992~~ 3.2-4607. Fruit represented as exposed to controlled atmosphere storage to meet requirements of chapter.

It ~~shall be~~ is unlawful for any person to sell, offer for sale, hold for sale, or transport for sale any fruits represented as having been exposed to "controlled atmosphere storage" or to use any such terms or form of words or symbols of similar import unless such fruits have been stored in controlled atmosphere storage ~~which meet~~ that complies with the requirements of this chapter or ~~rules- regulations~~ adopted hereunder.

**Drafting Note: Technical changes.**

~~§ 3.1-993~~ 3.2-4608. Inspection and certification of fruit by Commissioner.

~~No~~ It is unlawful for any person in this Commonwealth ~~shall~~ to place or stamp the letters "CA" or a similar designation in conjunction with a number ~~or numbers~~ upon any container or subcontainer of any fruits, unless ~~the Commissioner~~:

1. The Commissioner has inspected such fruits and validated a certificate stating their condition, that they were stored in a warehouse registered under the provisions of this chapter and that they meet all other requirements of this chapter or ~~rules- regulations~~ adopted hereunder; and ~~that a~~

2. A certificate number and certificate date ~~be~~ is affixed to all shipping documents.

**Drafting Note: Clarified the conditions under which a CA designation can be legally placed on a container of fruit.**

~~§ 3.1-998~~ 3.2-4609. Denial, suspension or revocation of registration; ~~application of Title 2.2, Chapter 40.~~

The Commissioner ~~is authorized to~~ may deny, suspend or revoke registration provided for in ~~§ 3.1-994 subsequent to~~ 3.2-4602 after a hearing, in any case in which he finds that there has been a failure or refusal to comply with the provisions of this chapter or ~~rules and~~ regulations adopted hereunder. All ~~rules and~~ regulations, actions, and hearings for a denial, suspension or revocation of the registration shall be subject to the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 ~~relating to contested cases.~~

**Drafting Note: Technical changes.**

~~§ 3.1-999. Warehouse numbers.~~

~~The Commissioner when issuing a registration to an applicant, shall include a warehouse number which shall be preceded by the letters "VA-CA."~~

**Drafting Note: Deleted section and moved to proposed subsection C of § 3.2-4603, Application for registration.**

~~§ 3.1-1002~~ 3.2-4610. Inspection certificate prima facie evidence of facts stated.

Every inspection certificate issued by the Commissioner under the provisions of this chapter shall be received in all courts of the Commonwealth as prima facie evidence of the facts stated therein.

**Drafting Note: No changes**

~~§ 3.1-1004~~ 3.2-4611. Evidence that fruits are offered or transported for sale.

When packages of fruits are placed in transit for sale or delivery or delivered for storage, such transit or delivery shall be prima facie evidence that the fruits are offered or transported for sale.

**Drafting Note: No changes.**

~~§ 3.1-1005~~ 3.2-4612. Actions to enjoin violations.

The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any ~~rule- regulation~~ adopted pursuant ~~thereto~~ hereunder in the circuit court having jurisdiction in the county or city ~~in which~~ where such violation occurs or is about to occur, notwithstanding the existence of any other remedies of law.

**Drafting Note: Technical changes.**

~~§ 3.1-1006. Chapter cumulative.~~

~~The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy.~~

**Drafting Note: Deleted section. This provision is unnecessary.**

~~§ 3.1-1007 3.2-4613. Violation a misdemeanor Violations of chapter and regulations.~~

~~Any person violating the provisions of this chapter or rules— regulations adopted hereunder is guilty of a Class 1 misdemeanor and shall be punished as provided by law.~~

**Drafting Note: Existing language provides an unclassified misdemeanor penalty. Under § 18.2-13 an unclassified misdemeanor is a Class 1 misdemeanor.**

~~§ 3.1-1008. Commissioner may contract and cooperate with governmental agencies.~~

~~The Commissioner, with the prior approval of the Board, may cooperate with and enter into agreements with governmental agencies of this Commonwealth, other states and agencies of the federal government in order to carry out the purpose and provisions of this chapter, but not to extend, alter or change its application.~~

**Drafting Note: Deleted section. Proposed § 3.2-102, General powers and duties of the Commissioner, contains broad language authorizing the Commissioner to enter into agreements with federal, state, and local governments, land grant universities and other organizations.**

~~§ 3.1-1010. Commissioner may act through others.~~

~~All authority vested in the Commissioner by virtue of the provisions of this chapter may, with like force and effect, be executed by such persons as the Commissioner may from time to time designate for such purpose.~~

**Drafting Note: Deleted section. Language regarding the Commissioner's direction of the Department, ability to appoint, delegate and assign tasks required to be performed appears in §§ 2.2-602 and 2.2-604.**

## CHAPTER 26 47.

### SALE OF FARM PRODUCE.

**Chapter Drafting Note: Drafted the language regarding the licensing and bonding provisions affecting Commission Merchant (Article 2), Dealers in Agricultural Produce (Article 3), Dealers in Grain Products (Article 4), and Cotton Handlers (Article 5), as similarly as possible. Deleted repetitive language and complex sentence structure. References to the U.S. Secretary of Agriculture have been changed to U.S. Department of Agriculture.**

#### Article 1.

##### ~~In~~ General Provisions.

*§ 3.2-4700. Definitions.*

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

*"Director" means the Director of the Division of Marketing.*

*"Division" means the Division of Marketing of the Department of Agriculture and Consumer Services.*

**Drafting Note: New section. Moved the terms Division of Marketing and Director of the Division of Marketing from existing § 3.1-685.**

~~§ 3.1-685 3.2-4701. Division of Marketing; administration; appointment of Director and assistants; responsibilities.~~

~~For the purpose of promoting the economical handling, packing, storage, distribution and sale of agricultural products in the Commonwealth, and for the further purpose of assisting producers and consumers in selling and purchasing agricultural products at a fair and reasonable price, the Division of Markets for agricultural products, heretofore A. The Division is hereby established within the Department of Agriculture and Consumer Services, shall be continued, shall hereafter be known as the Division of Marketing, and shall be administered under the~~

supervision of the ~~Commissioner of Agriculture and Consumer Services~~ by the Director of the ~~Division of Marketing~~, hereinafter called the Director, who shall be qualified for the performance of his duties by training and experience.

~~The Commissioner of Agriculture and Consumer Services shall appoint the Director and such assistants as may be needed.~~

*B. The Division shall:*

*1. Promote the economical handling, packing, storage, distribution, and sale of agricultural products in the Commonwealth; and*

*2. Assist producers and consumers in selling and purchasing agricultural products at a fair and reasonable price.*

**Drafting Note: Moved the terms "Division of Marketing" and "Director of Marketing" to proposed § 3.2-4700, Definitions. Moved the purposes of the Division (now referred to as responsibilities) to subsection B. Deleted appointment power of Commissioner since that is established in § 2.2-604.**

~~§ 3.1-686~~ 3.2-4702. Powers and duties of Director.

In the administration of the ~~Division of Marketing~~, the Director, *under the supervision of the Commissioner* shall exercise and discharge the following powers and duties, ~~under the supervision of the Commissioner:~~

~~(a) He shall investigate~~ *1. Shall investigate: (i) the cost of food production and marketing in all its phases and, in particular, shall investigate; (ii) the market demand for the products of Virginia farms; (iii) the relative location proximity of producers with reference to the most profitable markets for their products; (iv) the transportation facilities; and (v) the most advantageous methods of packing, storing, and standardizing agricultural products. He shall further make investigations with a view of ascertaining; and*

*2. Shall conduct analyses to determine whether the agricultural products of this the Commonwealth are being subjected to unfair competition in the markets of Virginia and of the country at large, by the from agricultural products or manufactured substitutes therefor produced in other states or imported from foreign countries.;*

~~(b) The Director may~~ *3. May assist in the organization of cooperative societies cooperatives among producers and consumers, for the purpose of promoting and conserving the interest of producers of agricultural products in the sale and distribution of same such products, and in the purchase of their necessary supplies, and for the purpose of reducing the cost of living to consumers.;*

*4. May cooperate with federal officials, national, district, and state committees and supervisory bodies in enforcing codes and marketing agreements adopted under the federal Agricultural Adjustment Act ( 7 U.S.C. § 1281 et seq.) or other similar acts of Congress;*

*5. May enter into agreements with federal officials, national, district, or state committees or supervisory bodies for carrying out the provisions of this section or the Federal Agricultural Adjustment Act or other similar acts of Congress;*

*6. May appoint, supervise, and dismiss as inspectors or representatives of the Division those employees of his office as he may deem necessary for the enforcement and carrying out the purposes of subdivisions 4 through 7; and*

*7. May receive from the federal department or its subdivisions, national, district or state committees or supervisory bodies, or from other sources, fees or moneys for carrying out the purposes of subdivisions 4 through 7, deposit them in the state treasury, and expend such moneys for carrying out the purposes of these subdivisions.*

**Drafting Note: Proposed subdivisions 4 through 7 are moved from existing § 3.1-690.**

~~§ 3.1-689~~ 3.2-4703. Cooperation of ~~United States~~ U.S. Department of Agriculture.

In carrying out the provisions of this chapter, the Division shall endeavor to secure the cooperation and assistance of ~~the office of markets of the United States~~ U.S. Department of



Agriculture. It shall ~~thoroughly investigate~~ *analyze*: (i) the methods ~~that may be suggested by such office~~ *the U.S. Department of Agriculture* for the promotion of economical and efficient marketing of agricultural products ~~together with;~~ *and* (ii) statistical information applicable to the marketing of Virginia agricultural products, ~~and, when.~~ *When it may seem* is advisable and not inconsistent with the requirements of this chapter or of any other law of ~~this~~ *the* Commonwealth, ~~it~~ *the Division* shall endeavor to ~~secure the adoption in this Commonwealth of~~ *adopt* any methods of marketing ~~which~~ *that* may be suggested by such office ~~of markets of the United States~~ *U.S. Department of Agriculture*.

**Drafting Note: Technical Changes.**

~~§ 3.1-690.~~ Cooperation of Director with other federal officials.

~~The Director with the approval of the Commissioner is empowered and directed, in his discretion:~~

~~(a) To cooperate with federal officials, national, district and state committees and supervisory bodies in enforcing codes and marketing agreements adopted under the Federal Agricultural Adjustment Act or amendments thereto or other similar acts of Congress.~~

~~(b) To make agreements with federal officials, national, district or state committees or supervisory bodies for carrying out the provisions of this section or the Federal Agricultural Adjustment Act or amendments thereto or other similar acts of Congress.~~

~~(c) To appoint, supervise and dismiss as inspectors or representatives of the Division of Marketing for carrying out the purposes of this section such of the employees of his office as he may deem necessary for the enforcement and carrying out the purposes of this section.~~

~~(d) To receive from the federal department or subdivisions thereof, national, district or state committees or supervisory bodies, or from other sources fees or moneys for carrying out the purposes of this section, deposit them in the state treasury and spend such moneys for carrying out the purposes of this section under the existing laws and rules and regulations of the Commonwealth.~~

**Drafting Note: Deleted section and moved to proposed subdivisions 4 through 7 of § 3.2-4702, Powers and duties of Director.**

~~§ 3.1-690.1~~ 3.2-4704. Regulations.

~~The Board of Agriculture and Consumer Services may (i) adopt any marketing agreement approved by federal officials under the federal Agricultural Adjustment Act or acts amendatory thereto (7 U.S.C. § 1281 et seq.) and similar acts of Congress and (ii) promulgate any regulation necessary for the implementation or enforcement of this article.~~

**Drafting Note: Deleted language that authorizes the Board to promulgate regulations since they have such powers as a policy board under proposed Chapter 1, General Provisions and § 2.2-2100.**

~~§ 3.1-687~~ 3.2-4705. Division to disseminate information.

~~The Division of Marketing shall gather and disseminate information on all subjects relating to the marketing and distribution of Virginia agricultural products, and by correspondence and publication, or by any other practicable means, shall endeavor to keep producers and consumers informed of the demand and supply and at what markets the various agricultural products can be best handled or procured. The Division shall: (i) publish periodical bulletins setting forth that provide the current market prices for Virginia agricultural products in the principal markets of the Commonwealth, and in other markets accessible for the disposition of such products; and, (ii) when deemed advisable, giving provide information as to the available supplies of agricultural products and as to the demand in several markets for such products. The Division may also prepare from time to time and distribute bulletins as to describing the most efficient and economical methods of standardization, storage, packing, transportation, and marketing of agricultural products, and cause the same to be distributed in such manner as the Commissioner may determine. The Division shall investigate determine the~~

sources of supply of agricultural products and prepare and publish lists of the names and addresses of producers and consignors and supply the same to persons applying therefor *this information to interested persons.*

**Drafting Note: Technical changes.**

~~§ 3.1-691. Payment of expenses.~~

~~The expenses incident to carrying out the provisions of §§ 3.1-685 and 3.1-689 shall be paid by the State Treasurer upon warrants drawn by the Comptroller upon vouchers signed by the Commissioner or such other person as may be designated by the Board for the purpose.~~

**Drafting Note: Deleted section. This provision is unnecessary as it reiterates the general administrative procedures used to finance programs.**

~~§ 3.1-688 3.2-4706. Investigation and correction of improper practices; finding *Finding* markets for producers.~~

~~The Division of Marketing shall investigate delays, improper conditions, overcharges and unfair rates in the transportation of agricultural products, and may cause proceedings to be instituted in the proper courts for the abatement or redress of such injuries; and, when deemed advisable, may cause to be instituted proper proceedings to prevent restraint of trade or unlawful combinations to fix prices. When notified by producers that agricultural products produced in the Commonwealth cannot be sold or will have to be sacrificed for lack of a ready market, *it the Division* shall investigate such case, and make such suggestions to the producers as may seem advisable, and in addition may assist the producers in any practicable manner in finding a satisfactory market for the products in question.~~

**Drafting Note: Deleted the first sentence and moved to proposed § 3.2-4707, Investigation and correction of improper practices.**

~~§ 3.2-4707. Investigation and correction of improper practices.~~

~~The Division shall investigate delays, improper conditions, overcharges, and unfair rates in the transportation of agricultural products, and may institute proceedings in the appropriate courts for the abatement or redress of such injuries; and may institute proper proceedings to prevent restraint of trade or unlawful combinations to fix prices.~~

**Drafting Note: Moved from existing § 3.1-688.**

~~§ 3.1-690.2 3.2-4708. Enforcement; penalties *Penalty*.~~

~~A. With the approval of the Commissioner, the Director may cause prosecution of any person who violates this article, a regulation or marketing agreement adopted pursuant thereto to be instituted through the attorneys for the Commonwealth, or otherwise, where, in his opinion, such a violation is found.~~

~~B. Any person violating any provision of this article, a regulation or marketing agreement adopted pursuant thereto, shall be is guilty of a Class 3 misdemeanor.~~

**Drafting Note: Deleted subsection A as unnecessary.**

Article 2.

Commission Merchants.

~~§ 3.1-692 3.2-4709. Definitions.~~

~~Whenever~~ As used in this article, *unless the context requires a different meaning:*

~~The term "person" shall mean and include an individual person, firm, partnership, corporation, association, or syndicate, their lessees, trustees, or receivers.~~

~~"Auction market," "livestock auction market," "livestock sales ring," "livestock auction," or "livestock auction ring" means a place or establishment operated for compensation or profit as a private or public market, consisting of pens, or other enclosures, and their appurtenances, in which livestock are received, held for sale or where livestock is sold or offered for sale either privately or at public auction.~~

~~The term "commission merchant" shall mean "Commission merchant" means any person, who conducts or: (i) operates an auction market, or who shall receive; (ii) receives farm products for sale on commission, or contract contracts with the producer thereof for farm products to be sold on commission or for a fee, or accept; (iii) accepts in trust from the producer thereof for the purpose of sale, or who shall sell; (iv) sells or offer offers for sale on commission, or shall solicit; (v) solicits consignments of any kind of farm products; or who shall in any way handle for (vi) handles the account of or as an agent of the producer thereof any kind of farm products; provided, that any. No person shall be deemed to be an agent of the producer, unless a specific price has been agreed upon by both parties before shipment or delivery by the producer for resale.~~

~~The term "commission "Commission merchant" shall not include: (i) any cooperative corporation or association organized under or that has adopted the provisions of or domesticated in Virginia pursuant that is subject to the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, otherwise known as the "cooperative marketing" act, so long as such corporation or association meets the requirements of and operates in accordance with the provisions of such sections and acts amendatory thereof; nor shall it include; (ii) any association or organization of farmers, including produce exchanges, not incorporated under or subject to the provisions of the "cooperative marketing" act Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, organized and maintained by farmers for mutual help in the marketing of their produce and not for profit; nor; (iii) any person, buying vegetables, viticultural, or horticultural farm products for the purpose of reselling the same these products in dried, canned, or other preserved form; nor shall it include; (iv) the sale of farm produce at public auction by a duly-licensed auctioneer, acting as the agent of another to whom such farm produce shall have been is consigned; nor to; (v) the sale by sheriffs and other officers and fiduciaries and court officials; nor to; (vi) seed sold at retail; nor shall it apply to; or (viii) persons appropriately-licensed pursuant to the provisions of Article 3 (§ 3.1-722.1 3.2-4738 et seq.) of Chapter 26 of this title chapter.~~

~~The term "auction market" shall be construed to be the same as "livestock auction market," "livestock sales ring," "livestock auction," or "livestock auction ring," and means a place or establishment conducted or operated for compensation or profit as a private or public market, consisting of pens, or other enclosures, whether covered or uncovered, and their appurtenances, in which livestock are received, held or kept for sale or where livestock is sold or offered for sale either privately or at public auction, except, the provisions of this article shall not apply to, (a) the premises of any butcher, packer or processor who receives livestock exclusively for immediate slaughter, (b) farm sales, (c) sales by Four H clubs or (d) sales by livestock breeders' associations or by exposition societies.~~

~~The term "Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

~~The term "licensee" means any person, as herein defined, who has applied for or been granted license to operate, conduct, or carry on the business of a commission merchant.~~

~~The term "farm "Farm produce" or "farm products" shall mean and include means horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and other products ordinarily produced on farms.~~

~~"Licensee" means any person who has been granted a license to operate, conduct, or carry on the business of a commission merchant.~~

**Drafting Note: Definitions are placed in alphabetical order. The definition of "person" is deleted since it is defined Code-wide in § 1-230. Exemptions under "auction market" are moved to proposed § 3.2-4710, Certain activities exempt from article.**

*§ 3.2-4710. Certain activities exempt from article.*

*The provisions of this article shall not apply to: (i) the premises of any butcher, packer, or processor who receives livestock exclusively for immediate slaughter; (ii) farm sales; (iii) sales by 4-H clubs; or (iv) sales by livestock breeders' associations or by exposition societies.*

**Drafting Note: New section. exemptions from this article are moved from the definition of "auction market" in existing § 3.1-692.**

~~§ 3.1-694~~ 3.2-4711. ~~Application~~ License required; application for license to be in writing; contents.

A. *Every person who operates, conducts, or carries on the business of a commission merchant shall obtain a license.*

B. *Application for license hereunder shall be made to the Commissioner in writing, signed and sworn to by the applicant.*

C. *The application shall include:*

1. *The name of the locality where the business of commission merchant is to be conducted, the street and number of the building if practicable, and the nature of the products that will be handled by the applicant;*

2. *If made by a partnership, the full names of each of the partners comprising the partnership, and their respective addresses, and the firm or trade name under which the business is to be conducted;*

3. *If made by a corporation, whether it is domestic or foreign, the amount of its capital stock as provided in its articles of incorporation, the amount of its capital stock fully paid in, and the names of its officers and those persons authorized to receive and accept service of process and legal notices of all kinds for the applicant.*

D. *If requested by the Commissioner, an applicant shall demonstrate his character, responsibility, and good faith in seeking to carry on a commission merchant's business within the Commonwealth.*

**Drafting Note: Proposed subsection A clarifies that a license is required to carry on a business as a commission merchant. The penalty for not obtaining a license is in proposed § 3.2-4736, License required. Proposed subsections C and D are moved from existing § 3.1-695. The term "service of summons" is replaced by "service of process" in subdivision C 3.**

~~§ 3.1-695. Contents of application.~~

~~The application shall state the name of the city or town where the business of commission merchant is to be conducted, the street and number of the building if practicable, the character of the products which will be handled by the applicant; and if made by a copartnership, the full names of each of the partners comprising the copartnership, and their respective addresses, together with the firm or trade name under which the business is to be conducted; and if made by a corporation the application shall state whether domestic or foreign, the amount of its capital stock as provided in its articles of incorporation, the amount of its capital stock fully paid in, and the names of its officers, together with the name or names of such person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant. Such applicant shall further satisfy, upon demand, the Commissioner of his or its character, responsibility and good faith in seeking to carry on a commission merchant's business within this Commonwealth.~~

**Drafting Note: Deleted section and moved to proposed subsection C of § 3.2-4711, License required.**

~~§ 3.1-696~~ 3.2-4712. Fee and bond to accompany license.

Applications shall be accompanied by a license fee of \$10, and a good and sufficient bond, *approved by the Commissioner*, in the ~~sum~~ amount of \$3,000 for all applications other than for livestock auction markets, in which case the application, together with the fee ~~above~~ required, shall be accompanied by a ~~good and sufficient~~ bond in the sum of \$5,000, when the average daily gross commission business is \$5,000 or less, with \$1,000 added to the bond for

each additional \$5,000 average daily gross commission business done for the previous year with a maximum bond of \$10,000, ~~which~~ *that* entitles the applicant to a license to expire on December 31, ~~next following.~~

**Drafting Note: Technical changes.**

~~§ 3.1-697~~ 3.2-4713. Applications for renewal licenses.

~~Upon the application accompanied by evidence of payment of renewal premium continuing the bond herein required in full force and effect, and the payment of a fee of ten dollars on or before the first day of January following the date of expiration of any license hereunder issued, the applicant~~ *Each licensee shall be entitled to renew his license to expire. The renewal license shall expire one year from the date of expiration of the old license. The renewal application shall be accompanied by evidence of payment of the renewal premium continuing the bond in full force and effect, and the payment of a fee of \$10 on or before the first day of January following the date of expiration of the previous license.* All applications for renewal licenses shall be made in the same manner as application for original license.

**Drafting language: Sentences restructured and stricken language reinserted later in the section.**

~~§ 3.1-698~~ 3.2-4714. Disposition of sums received for licenses.

All sums received by the Commissioner for such license fees shall be paid into the state treasury to the credit of the general fund.

**Drafting Note: No changes.**

~~§ 3.1-711~~ 3.2-4715. Certified copy of license; fee ~~therefor~~; posting of license during sale periods.

A certified copy of an issued license may be ~~procured~~ *obtained* by the holder of the original upon payment of a fee of ~~one dollar therefor~~ *\$1*, and the original or a certified copy of the license shall be posted during sale periods in a conspicuous place on the premises where the business is conducted.

**Drafting Note: Technical changes.**

~~§ 3.1-699~~ 3.2-4716. Bond not required for certain auction sales of ~~tobacco or~~ livestock.

~~Notwithstanding the foregoing provisions of this article, no~~ *No* bond shall be required of any person operating a livestock auction market or stockyard ~~which~~ *that* has been posted by the ~~Secretary U.S. Department of Agriculture of the United States~~ and is being operated under and pursuant to the terms and provisions of the Packers and Stockyards Act, of 1921 (42 Stat. 159) ~~and the laws amendatory thereof, as amended.~~

**Drafting Note: Deleted language exempting tobacco auction warehouses from having to maintain a bond, since no such warehouses are operating in Virginia.**

~~§ 3.1-699.1~~ 3.2-4717. Agreements with ~~United States Secretary U. S. Department of Agriculture~~; powers and duties of Commissioner as to bonds filed with ~~Secretary U.S. Department of Agriculture.~~

The Commissioner may ~~make such~~ *enter into* agreements with the ~~Secretary U.S. Department of Agriculture of the United States, hereinafter referred to as the Secretary, or his representative~~ as are necessary to effectuate the purposes of the Packers and Stockyards Act of 1921, (42 Stat. 159), as amended. The Commissioner may act as trustee of the bonds or other security filed with the ~~Secretary U.S. Department of Agriculture~~, and in such capacity the Commissioner is ~~fully empowered to~~ *may*: (i) settle, allow or reject claims arising against the bonds or other security, ~~to~~; (ii) rely on the investigative reports and recommendations of the ~~Secretary or his representative, U.S. Department of Agriculture~~; and, ~~for the purposes of settlement of claims, to~~ (iii) use the administrative powers and processes of this article *to settle claims*. The Commissioner may institute and prosecute suits or actions in the name of the Commonwealth on behalf of claimants known and approved by the Commissioner in any appropriate court. ~~Notwithstanding any other provision of law, the~~ *The* Commissioner shall have

~~the right to~~ *may* appeal a decision of any court ~~which—that~~ is contrary to any distribution recommended or authorized by him.

**Drafting Note: Changed the entity with whom the bonds are filed from the U.S. Secretary of Agriculture to the U.S. Department of Agriculture.**

§ ~~3.1-700~~ 3.2-4718. Execution and terms of bond; action thereon.

The bond ~~herein referred to~~ shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in ~~this~~*the* Commonwealth as surety or by such personal surety as may be approved by the circuit court ~~of the county or corporation or hustings court, or the judge thereof in vacation,~~ of the county or city in which *locality where* the applicant resides or has his principal office. The bond shall be conditioned upon compliance with the provisions of this ~~law~~ *article* and upon the faithful and honest handling of farm products in accordance with the terms of this ~~law~~ *article*. The bond shall be to the Commonwealth of ~~Virginia~~ in favor of every consignor of farm products. Any consignor of farm products claiming to be injured by the fraud, deceit or negligence of any commission merchant may bring action ~~therefor~~ upon the bond against either the principal, or the surety, or both in ~~any court of competent jurisdiction~~ *an appropriate court* to recover the damages caused by such fraud, deceit or negligence, or the failure to comply with the provisions of this article, or to make prompt and accurate settlement with ~~such~~ *the* consignor.

**Drafting Note: Technical changes.**

§ ~~3.1-700.1~~ 3.2-4719. ~~Additional duties~~ *Duties* and powers of Commissioner *with respect to bonds*.

The Commissioner may accept the proceeds from any bond and deposit the proceeds in the state treasury at interest in favor of the bond claimants. The Commissioner may institute and prosecute suits or actions in the name of the Commonwealth on behalf of claimants ~~known and~~ approved by him in any appropriate court for any purpose in connection with the collection or distribution of the bond or its proceeds. It shall be the duty of any person having a claim against a commission merchant to notify the Commissioner of his claim. The Commissioner shall have no duty to prosecute any claim unless he has ~~actual~~ *received such* notice ~~thereof~~ and believes the claim ~~to be~~ *is* valid. If the Commissioner believes the claim to be invalid, ~~in whole or in part,~~ he shall notify the claimant. The claimant shall then have his remedy pursuant to § ~~3.1-700~~ 3.2-4718. ~~Notwithstanding any other provision of law, the~~ *The* Commissioner shall have the right to ~~may~~ appeal a decision of any court ~~which—that~~ is contrary to any distribution recommended or authorized by him.

**Drafting Note: Technical changes.**

§ ~~3.1-701~~ 3.2-4720. Schedule of commissions and charges to be filed.

The applicant shall file with the Commissioner at the time of furnishing the bond a schedule of his maximum commissions and charges for service in connection with the produce handled on account of or as agent for the parties. Such ~~designated~~ commissions and charges shall not be changed or ~~varied~~ for one year thereafter, except by ~~and through~~ a written contract and ~~agreement~~ between the commission merchant and the consignors of farm products; ~~provided, however, a.~~ A person operating a livestock auction market or stockyard ~~which—that~~ has been posted by the ~~Secretary U.S. Department of Agriculture of the United States~~ and is being operated ~~under and~~ pursuant to the terms and provisions of the Packers and Stockyards Act, ~~of~~ 1921, (42 Stat. 159), and ~~the laws amendatory thereof as amended,~~ may change his schedule of maximum commissions and charges if such changes are filed with the ~~Secretary U.S. Department of Agriculture of the United States~~ and ~~is-are~~ approved. These changes ~~also are to~~ shall be posted with the Commissioner of Agriculture and Consumer Services of Virginia.

**Drafting Note: Changed references to Secretary of Agriculture of the United States to the U.S. Department of Agriculture.**

§ ~~3.1-702~~ 3.2-4721. Investigation of transactions by Commissioner.

~~For the purpose of enforcing the provisions of this article, the~~ The Commissioner, upon the verified complaint of any interested party shall, or upon his own motion may, ~~either personally or through his duly authorized agent or agents investigate:~~

1. ~~any~~ Any transaction involving solicitation, receipt, sale, or attempted sale of farm products by any person ~~or persons acting or assuming to act,~~ or attempting to act, as a commission merchant;

2. ~~The~~ failure of any commission merchant to make proper and true account of sales and settlement ~~thereof as required in this article required;~~

~~any~~ 3. Any transaction ~~wherein in which~~ produce consigned to a commission merchant is disposed of to a person, ~~firm or corporation~~ composed substantially of the same persons, as stockholders, members, or ~~otherwise others,~~ who compose the commission merchant;

4. ~~the~~ The intentional ~~making by any commission merchant of~~ making of false statements by a commission merchant as to condition, grade, or quality of any farm products received or in storage;

5. ~~the~~ The intentional ~~making by any commission merchant of~~ making of false statements by a commission merchant as to market condition;

6. ~~the~~ The failure of any commission merchant to make payment for farm products within the time required by this ~~law~~ article; or

7. ~~to any~~ Any other injurious transaction arising out of the sale of farm produce on commission.

**Drafting Note: Clarifies the authority of the Commissioner to investigate commission merchants' activities.**

~~§ 3.1-703~~ 3.2-4722. Complaint to Commissioner by consignor; *Commissioner's action.*

A. When a consignor of farm products to a commission merchant ~~shall have filed~~ files a complaint with the commission merchant within ~~ninety~~ 90 days after date of sale, and ~~shall have~~ has failed to obtain a satisfactory settlement ~~thereof of the complaint~~ within ~~ten~~ 10 days after the filing of the complaint, a ~~verified~~ complaint setting forth the ~~above~~ facts may be filed with the Commissioner, who shall ~~personally or through his duly authorized agent, thereupon~~ undertake ~~to effect~~ a settlement of the matter ~~involved.~~

B. *If the Commissioner is unable to settle the matter to the satisfaction of the parties involved, within a reasonable time, he shall, after giving the parties at least five days' notice as to time and place, proceed to hear evidence concerning the matter. The hearing shall occur in the city or town where the business of the commission merchant is located or where the transaction complained of occurred, or at the option of the parties, in such other place as they may mutually agree. The Commissioner shall either dismiss the complaint or enter an order against the commission merchant to afford the consignor relief. Any such order shall be complied with within the time specified by the Commissioner but shall not be less than five days.*

**Drafting Note: Proposed subsection B is moved from existing § 3.1-704, with some changes in language.**

~~§ 3.1-704.~~ Hearing and order of Commissioner on such complaint.

~~If the Commissioner or his agent, within a reasonable time, is unable to effect settlement to the satisfaction of the parties involved, he or his agent shall, after giving the parties at least five days' notice as to time and place, which shall be in the city or town in which is situated the place of business of the commission merchant or in which the transaction complained of occurred, or at the option of the parties, in such other place as they may mutually agree, proceed to hear evidence concerning the matter involved, and thereafter either dismiss the complaint or enter such order against the commission merchant as the Commissioner shall deem proper to afford the consignor relief. Any such order shall be complied with within the time specified therein; provided, however, such period of time shall not be less than five days.~~

**Drafting Note: Deleted section and moved to proposed subsection B of § 3.2-4722, Commissioner to have right of entry in making investigations.**

~~§ 3.1-705 3.2-4723. Commissioner to have right of entry in making investigations; administration of oaths; testimony.~~

~~In furtherance of any such investigation, inspection or hearing the Commissioner, or his duly authorized agent, shall have full authority to make any and all necessary~~

~~1. Conduct investigations relative to the complaint or matter being investigated, and they he shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities in which any farm products are kept, stored, handled, or transported;~~

~~2. Administer oaths and take testimony, and issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles or instruments; and~~

~~3. Compel the disclosure by witnesses of all facts known to them relative to the matters under investigation.~~

**Drafting Note: Proposed subdivisions 2 and 3 are moved from existing § 3.1-706.**

~~§ 3.1-706. Commissioner may administer oaths, take testimony and compel attendance.~~

~~The Commissioner or his duly authorized agent shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him or his agents, together with all books, memoranda, papers, and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.~~

**Drafting Note: Deleted section and moved to proposed subdivisions 2 and 3 of § 3.2-4723, Commissioner to have right to entry in making investigations.**

~~§ 3.1-709 3.2-4724. Grounds for refusal or revocation of license.~~

~~The Commissioner may, in the public interest, refuse to grant a license, delay the issuance of a license, or revoke any license already granted when he shall be satisfied of the existence of any of the following causes finds that:~~

~~(a) Where a~~

~~1. A money judgment that has been entered against such a commission merchant and upon which execution has been returned unsatisfied. has not been satisfied;~~

~~(b) Where false 2. False, fraudulent, or improper charges or returns have been made by the licensee, for the handling, sale, or storage of farm products, or for the rendering of any related service in connection therewith;~~

~~(c) Where the 3. The licensee has failed or refused to render a true account of sales, or to make settlement thereon settle promptly and within the time and in the manner required by this law. article;~~

~~(d) Where the 4. The licensee has made false or misleading statements as to the grade, condition, quality or quantity of farm products received, handled, stored or held by him for sale on commission;~~

~~(e) Where the 5. The licensee has made false or misleading statements as to market conditions;~~

~~(f) Where there 6. There has been a combination or combinations to fix prices;~~

~~(f1) Where the 7. The licensee has, directly or indirectly, purchased for his, or its own account farm products received by him or it, upon consignment, without prior authority from consignor in writing and at a fixed price agreed to, fixed by the consignor. This subsection subdivision shall not apply to tobacco warehousemen purchasing tobacco through competitive bidding during the time tobacco is being sold at auction nor the operators of livestock auction markets who are prohibited from purchasing consigned livestock under the federal Packers and Stockyards Act of 1921 (42 Stat. 159), as amended;~~



~~(g) Where the 8. The licensee has made fictitious sales or has been guilty of collusion to defraud the consignor-;~~

~~(h) Where the 9. The licensee, to whom any farm products have been consigned, has reconsigned such the farm products to another person, either in the city or town in which is located the licensee, or to some other point within or without the Commonwealth, unless consent of the consignor has been first obtained and in writing, or notice given in writing to the consignor by the consignee without first obtaining the written consent of the consignor or written notice has not been given by the licensee to consignor that all or a part of such the shipment was reconsigned-;~~

~~(i) Where the 10. The licensee sells farm products consigned to him or it, to another person, owned or controlled by him or it the licensee, or in which such the licensee may be interested financially or otherwise have a financial or other interest, either directly or indirectly, unless and no notice is has been given, in writing, to the consignor by the licensee that all or a part of such shipment was sold to a person in which he or it is financially interested the licensee has a financial or other interest-;~~

~~(j) Where the 11. The licensee was intentionally guilty of fraud or deception in the procurement of such the license-;~~

~~(k) Where the 12. The licensee has failed or refused to file with the Commissioner a schedule of his maximum commissions and other charges for services in connection with for the produce handled on account of or as agent of another as prescribed in this article, prior to the first day of February of each year-;~~

~~(l) When the 13. The licensee has failed or refused to obey and comply with any order of the Commissioner entered pursuant to the provisions of § 3.1-704 subsection B of § 3.2-4722 within the time specified in such order, or in the case of an appeal is taken from such action within 10 days of the Commissioner, then within ten days from the time such order time the Commissioner's order became final-;~~

~~(m) When the 14. The licensee has failed or refused to comply with any assurance the Commissioner has required pursuant to § 3.1-695-subsections C and D of § 3.2-4711; or~~

~~(n) When the 15. The licensee or, his agents, contractors, or employees, or persons acting in the capacity of his agents, contractors or employees, shall have violated are guilty of violating any provision of this section.~~

**Drafting Note: Simplified language and removed language in existing subdivision (f1).**

§ 3.1-710 3.2-4725. Publication of revocation.

~~Where When a license shall have been is revoked, the Commissioner shall cause to be a notice of the revocation and the reason for the revocation shall be published once a week for two successive weeks in one or more daily papers to be selected by him, once a week for two successive weeks, the fact of such revocation and the cause therefor, and also in the next issue of the Agricultural Bulletin issued by the Commissioner the Commissioner and the Department shall post notice of the revocation on its website for a period of two weeks from the date of the revocation.~~

**Drafted note: Deleted requirement that the revocation notice has to be published in the Agricultural Bulletin since the Bulletin is no longer published and in its place the Department will place notification of the revocation on the agency's website.**

§ 3.1-707 3.2-4726. Disobedience of Failure to comply with orders of Commissioner constitutes contempt.

All parties disobeying the orders or subpoenas of the Commissioner or his duly authorized agent, shall be are guilty of contempt and shall be certified to any court of competent jurisdiction an appropriate court for punishment for such contempt.

**Drafting Note: Technical changes.**

§ 3.1-708 3.2-4727. Copies of papers in Commissioner's office as prima facie evidence.

Copies of all records, inspection certificates, certified reports and all papers on file in the office of the Commissioner shall be prima facie evidence of the matter contained.

**Drafting Note: No changes.**

§ ~~3.1-712~~ 3.2-4728. Appeal from orders and actions of Commissioner.

Any action of the Commissioner ~~or his agent in:~~ (i) entering any order pursuant to § ~~3.1-704 subsection B of § 3.2-4722,~~ or in; (ii) refusing to grant a license, ~~or in;~~ (iii) revoking a license already granted to ~~such a~~ commission merchant ~~or merchants;~~; or (iv) refusing to renew a license, shall be subject to the right of appeal in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: Technical changes.**

§ ~~3.1-713~~ 3.2-4729. Records to be kept by commission merchant.

~~It shall be the duty of every~~ Every commission merchant, having received any farm products for sale on commission, ~~shall promptly to make and keep maintain a correct complete and true~~ record, showing in detail the following with reference to the handling, sale, or storage of such farm products:

- (~~a~~) 1. The name and address of the consignor;
- (~~b~~) 2. The date received;
- (~~c~~) 3. The condition, grade, and quantity on arrival;
- (~~d~~) 4. The date of such sale for the account of the consignor;
- (~~e~~) 5. The ~~sale price for which sold;~~
- (~~f~~) 6. An itemized statement of the charges to be paid by the consignor in connection with the sale;

(~~g~~) ~~Each consignment of farm products shall be given a~~ 7. A lot number or other identifying mark, ~~which number or mark that shall appear on all sales tags or tickets or on any other essential records needed to show what the sale price of the products actually sold for;~~ and

(~~h~~) 8. Records ~~relating to~~ of auction sales of "farm produce" or "farm products" at ~~auction,~~ including sales tags, tickets, or bills, ~~which shall be sequentially numbered and each such sequentially numbered record shall be properly accounted for in the operations of the commission merchant. Any record which that is altered in any fashion must shall~~ bear the full signature of the person authorized to make, and who is responsible for, the alteration.

**Drafting Note: Technical changes.**

§ ~~3.1-714~~ 3.2-4730. Detailed statements ~~must shall~~ be kept of claims for overcharges or damages filed by ~~commission merchant for~~ consignor.

A detailed statement shall be kept ~~on file~~ of the filing of any claim ~~or claims which have that has~~ or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of ~~such farm products by the act or acts, or neglect, or failure of such person, and such.~~ Such records shall be open ~~to the for~~ inspection of ~~by~~ the Commissioner and the consignor ~~or consignors~~ of farm products for whom such claim ~~or claims are is~~ made.; ~~provided that the~~ The money returns, if any, collections, or damages received by the commission merchant ~~for such person for and on behalf of consignor or consignors~~ of farm products by reason of the overcharges, damages or deterioration shall ~~forthwith immediately~~ be paid to the consignor ~~or consignors~~ of farm products less charges for collection ~~thereof,~~ in accordance with the schedule of charges filed under § ~~3.1-704~~ 3.2-4720.

**Drafting Note: Technical changes.**

§ ~~3.1-715~~ 3.2-4731. Record and account, together with remittance for each sale, to be delivered to consignor.

A copy of the record and account of sales of farm products, together with remittances in full of the amount realized by such sales, less the agreed *upon* commissions and other charges, shall be delivered to the consignor upon the ~~consummation~~ completion of the sale. ~~together with all~~ All moneys received by ~~him~~ the commission merchant in payment for any consignment of

farm products, less the agreed *upon* commission and other charges, *shall be paid to the consignor* within ~~ten~~ 10 days after receipt of the moneys by the commission merchant, unless otherwise agreed in writing; ~~provided, however, that the~~. The names and addresses of purchasers need not be given unless demanded in cases of complaint.

**Drafting Note: Technical changes.**

§ ~~3.1-716~~ 3.2-4732. Copies of records to be kept by commission merchant.

~~It shall also be the duty of every~~ Every commission merchant ~~to~~ shall retain a copy of all records, including sales tags or tickets, account of sales, or other records covering each transaction for a period of three years from the date ~~thereof, which~~ of the transaction. The copy shall at all times be available for, and open to, ~~the~~ confidential inspection ~~of~~ by the Commissioner, or his duly authorized agents, and the interested consignor, or ~~any~~his authorized representative of either.

**Drafting Note: Technical changes.**

§ ~~3.1-717~~ 3.2-4733. Certificate establishing condition, quality, and grade, ~~etc.~~, to be furnished by Commissioner in event of dispute.

~~In the event of any~~ If there is a dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity or weight of any lot, shipment or consignment of farm products, ~~it shall be the duty of the Commissioner to~~ shall furnish, upon the payment by the requesting party of the actual necessary expenses ~~therefor, to be paid by requesting party,~~ a certificate establishing the condition, quality, grade, pack, quantity or weight of such lot, shipment or consignment; ~~such~~. The certificate shall be prima facie evidence in all courts of ~~this~~the Commonwealth as to the ~~recitals thereof~~ findings at the time such inspection was made. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction ~~which~~ that may be questioned.

**Drafting Note: Technical changes.**

§ ~~3.1-719~~ 3.2-4734. Duty of ~~attorneys~~ attorney for the Commonwealth.

~~It is hereby made~~ shall be the duty of the ~~several attorneys~~ attorney for the Commonwealth of ~~this Commonwealth~~ to prosecute all violations of this article ~~subject to prosecution in their respective cities or counties~~.

**Drafting Note: Technical changes.**

§ ~~3.1-720~~ 3.2-4735. Venue.

Civil suits and criminal prosecutions arising by virtue of *any provision of* this article ~~or any of its provisions~~ may be commenced and tried in ~~either~~: (i) the city or county where the products were received by the commission merchant, ~~or within~~; (ii) the city or county ~~in which~~where the principal place of business of ~~such~~ the commission merchant is located within the Commonwealth; or ~~within~~(iii) the city or county ~~in which~~where the violation occurred.

**Drafting Note: Technical changes.**

§ ~~3.1-693~~ 3.2-4736. License required.

A. ~~It shall be~~ is unlawful for any person to act as, operate, or carry on the business of, a commission merchant without first obtaining a license ~~as herein provided~~.

B. Any person who violates this section is guilty of a Class 1 misdemeanor.

**Drafting Note: Adds a Class 1 misdemeanor penalty, which is consistent with the article-wide penalty in proposed § 3.2-4737, Offenses and punishment.**

§ ~~3.1-718~~ 3.2-4737. Offenses and punishment ~~therefor~~.

Any person who shall ~~assume or attempt to act as a commission merchant, as defined by this article, without license, or any person who being a commission merchant and duly licensed, or any person who shall violate any of the provisions of the subsections which follow in this section~~ shall ~~be~~ commits any of the following acts is guilty of a Class 1 misdemeanor:

~~(a) Impose-1. Imposes~~ false charges for handling or for services in connection with farm products;

~~(b) Fail-2. Fails~~ to account promptly, correctly, fully and properly and to make settlement therefor as *provided* in this article ~~provided~~;

~~(c) Make-3. Makes~~ false and misleading statements as to market conditions with *the* intent to deceive;

~~(d) Make-4. Makes~~ fictitious sales or ~~shall be guilty of~~ collusion to defraud the consignor, or enters into any combination or combinations to fix prices;

~~(e)5. Directly or indirectly purchase- purchases~~ for his or its own account, farm products, received by him or it on consignment without prior authority from the consignor in writing. This subsection shall not apply to ~~tobacco warehousemen purchasing tobacco through competitive bidding during the time tobacco is being sold at auction nor~~ the operators of livestock auction markets who are prohibited from purchasing consigned livestock under the federal Packers and Stockyards Act of 1921 (42 Stat. 159), *as amended*;

~~(f)6. Intentionally make- makes~~ false statements as to grade, condition, markings, quality, or quantity of farm products shipped or packed ~~in any manner~~;

~~(g) Reconsign- such 7. Reconsigns~~ farm products as have been consigned to him to another person, ~~either in the city or town in which the licensee is located, or to some other point within or without the Commonwealth,~~ unless consent of the consignor has been first obtained ~~and~~ in writing, or notice given in writing to the consignor by the ~~consignee- licensee~~ that all or a part of such shipment was reconsigned;

~~(h) Sell- such 8. Sells~~ farm products consigned to him to another person owned or controlled by him, or in which ~~such- the~~ licensee may be interested financially or otherwise *have a financial or other interest*, either directly or indirectly, unless notice is given, in writing, to the consignor by the commission merchant that all or a part of such shipment was sold to a person in which ~~he or it is financially interested the licensee has a financial or other interest~~;

~~(i) Be guilty of fraud or deception in the procurement of- such 9. Fraudulently or deceptively obtains a~~ license;

~~(j)10 Fail- Fails~~ or ~~neglect- neglects~~ to give written notice immediately to the Commissioner and the surety on the bond of ~~such- the~~ commission merchant, of any changes or alterations in the style, name or personnel of the person to whom such license has been issued; or

~~(k)11. Fail- Fails~~ to comply in every respect with the provisions of this article.

**Drafting Note: Deleted obsolete language in existing subdivision (e) regarding tobacco warehouse auctions.**

~~§ 3.1 721. Employment of assistants and adoption of rules.~~

~~The Commissioner is hereby empowered to employ such persons as may be necessary for the enforcement of the provisions of this article and for the collection of all fees herein prescribed. The State Board of Agriculture and Consumer Services may adopt all needful rules and regulations for the enforcement of this article.~~

**Drafting Note: Deleted section. The authority as an agency head to employee personnel is in § 2.2-601, and the Board is a policy board its authority to promulgate regulations is found in § 2.2-2100 and proposed Chapter 1, General Provisions.**

~~§ 3.1 722. Expenses.~~

~~All expenses incident to the enforcement of the provisions of this article shall be paid from such funds as may be appropriated for this purpose and in such manner as may be prescribed by law.~~

**Drafting Note: Deleted section. This provision is unnecessary.**

Article 3.

Dealers in Agricultural Products *Produce*.

§ ~~3.1-722.1~~ 3.2-4738. Definitions.

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

"Agricultural ~~products~~ *produce*" means *fruits and vegetables*, and the term "vegetables" for the purposes of this article shall be construed to include, but not by way of limitation, potatoes, tomatoes, melons, berries, and cucumbers.

~~"Board of Agriculture" or "Board" means the Board of Agriculture and Consumer Services.~~

"Bond" means a bond executed by a surety company licensed to do business in the Commonwealth.

"Buying brokerage transaction" means a transaction in which the dealer acts as agent for the grower in the purchase of agricultural ~~products~~ *produce* at the "day's price" for the agricultural ~~product~~ *produce* purchased in the transaction.

"Cash buyer" means any person who obtains from the producer, or his representative, title, possession or control of any agricultural ~~product~~ *produce* or contracts for the title, possession or control of any agricultural ~~product~~ *produce*, and who buys any agricultural ~~product~~ *produce* by paying to the producer at the time of obtaining possession or control, or at the time of contracting for the title, possession or control of any agricultural ~~product~~ *produce*, the full agreed price of such agricultural ~~product~~ *produce* in coin or currency, ~~lawful money of the United States~~, certified checks, cashier's checks or drafts issued by a bank.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

"Consignment" means any transfer of agricultural ~~products~~ *produce* by the seller to the custody of another person who acts as the agent for the seller for the purpose of selling such agricultural ~~products~~ *produce*.

"Day's price" means the market price of any agricultural ~~product~~ *produce* on a given day as determined by the ~~United States~~ U.S. Department of Agriculture and published by the ~~Virginia~~ Department of Agriculture and Consumer Services, Division of Marketing.

"Dealer" means any person who buys, sells, solicits for sale, processes for sale or resale, resells, exchanges, negotiates, purchases or contracts for processing or transfers any agricultural ~~product~~ *produce* of a producer. The term "dealer" shall exclude: (i) any person operating solely on a commission basis in Virginia as a licensed commission merchant under the provisions of Article 2 (§ ~~3.1-692 et seq.~~) of Chapter 26 of Title 3.1 of this chapter; (ii) farmers or groups of farmers selling agricultural ~~products~~ *produce* grown by them; (iii) any person who operates strictly as a cash buyer; (iv) any processor who processes agricultural ~~products~~ *produce* within Virginia; and (v) any person who buys agricultural ~~products~~ *produce* for wholesale or retail in Virginia.

~~"Department" means the Department of Agriculture and Consumer Services.~~

"Grower's agent transaction" means a transaction or series of transactions in which the dealer agrees to sell the entire crop produced by one grower during one season, at a price to be agreed upon between the dealer and the grower.

"Joint account transactions" means a transaction between a dealer and grower in which the dealer pays the grower based on the price for which the agricultural ~~product~~ *produce* sells in relation to the price agreed upon between the dealer and grower.

"Processor" means any person operating any plant ~~within Virginia which either in the Commonwealth that~~ freezes, dehydrates, cans, or otherwise changes the physical form or characteristics of agricultural ~~products~~ *produce*.

"Producer" means any person who produces agricultural ~~products~~ *produce* in Virginia.

**Drafting Note: Changes the term "agricultural product" to "agricultural produce" and redefines "agricultural produce" to mean fruits and vegetables. The definitions of "Board of Agriculture," "Commissioner," and "Department" are deleted because they appear as title-wide definitions in Chapter 1, General Provisions.**

~~§ 3.1-722.1:1. Appointment of agents.~~

~~The Commissioner may appoint agents to assist in carrying out the provisions of this article and the regulations promulgated pursuant thereto.~~

**Drafting Note: Deleted section. The Commissioner has authority as the executive head of the agency to appoint agents under § 2.2-604.**

~~§ 3.1-722.3 3.2-4739. Application License required; application for license and license fee; license renewals; list of dealers.~~

~~A. Every dealer shall obtain a license to operate and conduct business.~~

~~B. Every dealer in agricultural products proposing to transact business within the Commonwealth~~ Such persons shall on or before May 1 of each year file a written application for a license with the Commissioner for the licensing year of May 1 to April 30. Each dealer shall pay a license fee of ~~fifty dollars~~ \$50 per licensing year. Each license shall expire on April 30 of the licensing year for which ~~the Commissioner or his agent issued the license~~ was issued. ~~Every such~~ The license shall be valid through May 31 of the next licensing year or until issuance of the renewal license, whichever ~~event first occurs~~ occurs first, if the holder thereof shall have filed a renewal application and a new bond or a continuation certificate continuing ~~their~~ his current bond with the Commissioner on or before April 30 of the licensing year for which the Commissioner ~~or his agent~~ issued the license; ~~however, any license issued on or after January 1, 1994, and on or before May 1, 1994, shall expire on April 30, 1995.~~ Any dealer in agricultural products proposing to transact business within the Commonwealth who fails to file such written application for a license and pay the licensing fee on or before May 1 shall ~~be subject to~~ pay a ~~fifty dollar~~ \$50 late fee in addition to the license fee. Any person who engages in business as a dealer before obtaining a license shall be subject to a \$250 penalty, in addition to the license fee and the late fee.

C. The application for a license shall be on a form furnished or approved by the Commissioner and shall contain the following information along with such other information as the Commissioner shall require on the form:

- ~~1. The name and address of the applicant and that of its local agent or agents, if any, and the location of its principal place of business within this~~ the Commonwealth;
2. The kinds of agricultural ~~products~~ produce the applicant proposes to handle; and
3. The type of produce business proposed to be conducted.

~~D. Each licensee shall renew his licenses on or before May 1 of each year for the licensing year May 1 to April 30. The licensee shall make application to the Commissioner on a form furnished or approved by the Commissioner and the licensee is subject to the provisions of subsection B.~~

~~E. The Commissioner may publish a list of dealers licensed under this article.~~

**Drafting Note: Divided the section into four subsections. Proposed subsection A is the requirement to obtain a license. Proposed subsection B describes the licensing year and the fees and proposed subsection C prescribes the information to be included on the application. Proposed subsection D includes language that makes the dealer seeking to renew his license subject to the same requirements as a new applicant (proposed subsection B). Existing § 3.1-722.6:1 is deleted and consolidated here because similar language appears in proposed subsections B and D. Proposed subsection E is moved from existing § 3.1-722.2.**

~~§ 3.1-722.4 3.2-4740. Bond required.~~

Each application shall be accompanied by a good and sufficient bond in the minimum sum of \$1,000 or in such greater amount as is equal to the maximum amount of gross business the applicant does in any month in the Commonwealth during the preceding licensing year, but in no event shall the amount of bond required exceed \$40,000.

**Drafting Note: No changes.**

§ ~~3.1-722.5~~ 3.2-4741. Execution, terms and form of bond; action on bond.

A. The bond referred to in § 3.1-722.4 shall be executed by the applicant as principal and by a surety company authorized and qualified to do business in the Commonwealth as surety. The applicant shall file on or before May 1 of each licensing year a copy of ~~this~~ *the* bond with the Commissioner and the Commissioner shall be designated as the trustee of this bond. If the bond is not filed by the due date, and if the applicant notifies the Commissioner that the bond application is in process and furnishes the Commissioner a copy of the dated bond application, the Commissioner may grant a grace period of ~~fifteen~~ *15* working days for the applicant to file the bond without penalty. Any applicant who fails to file a bond by the ~~fifteenth~~ *15th* day of the grace period, shall be subject to all applicable late fees and penalties as stated in §§ ~~3.1-722.3~~ 3.2-4739 and ~~3.1-722.11~~ 3.2-4751 before a license will be issued.

B. ~~Such~~ *The* bond shall be upon a form prescribed or approved by the Commissioner and shall be conditioned to secure the faithful accounting for payment to producers, agents or representatives, of all agricultural ~~products~~ *produce* purchased, handled or sold by the dealer. Any producer claiming to be injured by the nonpayment, fraud, deceit or negligence of any dealer may bring action ~~therefor~~ upon the bond against the principal, or the surety, or both in ~~any~~ *an appropriate* court of ~~competent~~ *jurisdiction*.

**Drafting Note: Technical changes.**

§ ~~3.1-722.5:1~~ 3.2-4742. ~~Additional duties~~ *Duties* and powers of Commissioner *with respect to bonds*.

The Commissioner may accept the proceeds from any bond on which he is trustee and deposit the proceeds in the state treasury with interest in favor of the bond claimants. The Commissioner may institute and prosecute suits for actions in the name of the Commonwealth on behalf of the claimants known and approved by him in any appropriate court for any purpose in connection with the collection or distribution of the bond or its proceeds. It shall be the duty of any person having a claim against a produce dealer to notify the Commissioner of his claim. The Commissioner shall have no duty to prosecute any claim unless he has ~~actual~~ *received* notice ~~thereof~~ and believes the claim ~~to be~~ *is* valid. If the Commissioner believes the claim ~~to be~~ *is* invalid, ~~in whole or in part~~, he shall so notify the claimant. The claimant shall then have his remedy pursuant to § ~~3.1-722.5~~ 3.2-4741. ~~Notwithstanding any other provision of law, the~~ *The* Commissioner ~~shall have the right to~~ *may* appeal a decision of any court ~~which~~ *that* is contrary to any distribution recommended or authorized by him.

**Drafting Note: Technical changes.**

§ ~~3.1-722.6:1~~. License renewals.

~~Each licensee shall renew his licenses on or before May 1 of each year for the licensing year May 1 to April 30. The licensee shall make application to the Commissioner on a form furnished or approved by the Commissioner. Each licensee shall pay a license fee of fifty dollars per licensing year and shall submit on or before May 1 of each licensing year a new bond or a continuation certificate continuing the licensee's current bond. Each license renewal shall expire on April 30 of the licensing year for which the Commissioner or his agent issued the license. Every such license shall be valid through May 31 of the next licensing year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application and a new bond or a continuation certificate continuing his current bond with the Commissioner on or before April 30 of the licensing year for which the Commissioner or his agent issued the license; however, any license issued on or after January 1, 1994, and on or before May 1, 1994, shall expire on April 30, 1995. Any person who fails to renew his license or bond by the due date is subject to the applicable late fees and penalties as stated in §§ ~~3.1-722.3~~ and ~~3.1-722.11~~.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-4739, License required; application for license and license fee; license renewals; list of dealers.**

§ ~~3.1-722.7~~ 3.2-4743. ~~Disposition~~ Agricultural Dealers Fund established; disposition of funds.

*There is hereby created in the state treasury a special nonreverting fund to be known as the Agricultural Dealers Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All ~~sums-moneys~~ received by the Commissioner for license fees, ~~the license renewals of the same~~, late fees, and penalties shall be paid into a ~~dedicated special fund in the state treasury to be known as the Agricultural Dealers Fund~~ the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the ~~fund~~ Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The ~~fund~~ Fund shall be used for the enforcement and administration of this article. Disbursements from the Fund shall be made by the State Comptroller at the written request of the Commissioner.*

**Drafting Note: The Agricultural Dealers Fund is established using standard language for creating a specific fund.**

§ ~~3.1-722.8~~ 3.2-4744. Records to be kept by dealers.

~~It shall be the duty of every~~ Every dealer ~~having received that has received~~ any agricultural ~~product~~ produce from a producer ~~to make and~~ shall keep a ~~correct~~ complete and true record and retain ~~the same~~ it for three years, showing in detail the following with reference to the handling ~~and/or~~ sale of such agricultural ~~products~~ produce, along with ~~such~~ any other information as the Commissioner may require as outlined in the record inspection form:

1. The name and address of the producer;
2. The date received;
3. The condition, grade (if officially graded), and quantity on receipt;
4. The date of resale or transfer of the ~~products~~ produce to another; and
5. The ~~sale price at which purchased and sold.~~

**Drafting Note: Technical changes.**

§ ~~3.1-722.14~~ 3.2-4745. Copies of contracts to be filed with Commissioner.

Copies of any contract between any producer and dealer or between any dealer and buyer made in advance of the harvesting season to supply agricultural ~~products~~ produce shall be filed with the Commissioner within ~~ten~~ 10 days of the signing of such contract.

**Drafting Note: Technical changes.**

§ ~~3.1-722.9~~ 3.2-4746. Commissioner's authority to inspect.

A. Upon the complaint of any person, the Commissioner ~~or his agent~~ shall ~~have the authority to~~ may inspect the books and records of any licensed dealer in agricultural products at any time during operating hours and shall have free access to the place ~~at which~~ where the business is operated.

B. Upon the complaint of any person or upon his own initiative, the Commissioner ~~or his agent~~ shall ~~have the authority to~~ may inspect the books and records of any person, other than a licensed dealer in agricultural products, who solicits, or attempts to solicit, receipt, sale, or transfer of agricultural ~~products~~ produce. The Commissioner ~~or his agent~~ shall conduct such inspections at any time during operating hours ~~for the purpose of effectively administering this article.~~ The Commissioner ~~or his agent~~ shall have the right of access to the place ~~at which~~ such where the person's business is operated, or the place where ~~such~~ his books and records are kept.

**Drafting Note: Technical changes.**

§ ~~3.1-722.10~~ 3.2-4747. Refusal or revocation of license.

A. The Commissioner may refuse to grant a license, delay the issuance of a license, or ~~may~~ revoke or suspend any license already granted when he is ~~satisfied as to the existence of any~~ of the following ~~causes~~ finds that the dealer:



1. ~~The dealer has suffered~~ *Has not satisfied* a money judgment to be entered against him upon which execution has been returned unsatisfied;
2. ~~The dealer has~~ *Has* failed to promptly and properly account or to promptly and properly pay for agricultural ~~products~~ *produce*;
3. ~~The dealer has~~ *Has* made a false or misleading statement as to market conditions or the service rendered;
4. ~~The dealer has~~ *Has* perpetrated a fraud or engaged in deceit in procuring the license;
5. ~~The dealer has~~ *Has* engaged in any fraudulent or deceitful practices in his dealings with producers; or
6. ~~The dealer has~~ *Has* failed to comply with any provisions of this ~~chapter~~ *article* or any ~~rules and~~ regulations adopted by the Board.

B. For the purposes of this section the following terms shall mean as follows:

1. "Promptly and properly account," except when otherwise specifically agreed upon in writing by the parties, means ~~rendering to the principal a true and correct accounting providing a complete and true accounting~~: (i) In connection with buying brokerage transactions, within ~~twenty-four~~ 24 hours after the date of delivery of the agricultural ~~products~~ *produce* to their first destination; (ii) In connection with consignment or joint account transactions, within ~~ten~~ 10 days after the date of final sale ~~with respect to~~ of each shipment. However, if a grower's agent, while conducting a grower's agent transaction, or a shipper distributes individual lots of produce for or on behalf of others, his accounting shall be made within five days after the date he is paid by the purchaser or receives the accounting on consigned or joint account transactions. If a grower's agent, while conducting a grower's agent transaction, or shipper harvests, packs, or distributes entire crops or multiple lots therefrom for or on behalf of others, he shall make accountings within seven days following shipment by the dealer. ~~Nothing in this section shall prohibit cooperative associations from accounting to their members on the basis of seasonal pools or other arrangements provided by their regulations or bylaws;~~ and (iii) In connection with a consignment or joint account transaction, within ~~ten~~ 10 days after the date of receipt of payment of a carrier claim filed. *Nothing in this section shall prohibit cooperative associations from accounting to their members on the basis of seasonal pools or other arrangements provided by their regulations or bylaws.*

2. "Promptly and properly pay" ~~shall mean~~ *means* payment within ~~thirty~~ 30 days of the receipt of the ~~products~~ *produce* by the dealer, unless a written agreement signed by both parties expressly provides or permits otherwise. In the case of joint transactions, if the ~~product~~ *produce* sells at or for less than the agreed price, the dealer pays the agreed price to the grower. If the ~~product~~ *produce* sells for more than the agreed price, the dealer shall pay to the grower one-half of the difference between the sale price and the agreed price.

**Drafting Note: Technical changes.**

§ ~~3.1-722.12~~ 3.2-4748. Hearing before the Commissioner.

Before the Commissioner ~~shall refuse a license~~ *refuses* or ~~revoke~~ *revokes* a license, the applicant or licensee shall have the right to review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: Technical changes.**

§ 3.2-4749. *Commissioner may enjoin; Attorney General may prosecute.*

*The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this article, or any regulation adopted hereunder, in the circuit court of the city or county where the violation occurs or is about to occur. If the violation affects more than one locality, the action may be brought in the Circuit Court of the City of Richmond. The Commissioner may request either the attorney for the Commonwealth or the Attorney General to bring action under this section. The Attorney General is authorized to prosecute any violation of this article.*

**Drafting Note: New section. This section is moved from subsection B of existing § 3.1-722.11.**

~~§ 3.1-722.2 3.2-4750. Licensed required~~ *Operating without a license.*

~~It shall be is unlawful for any dealer in agricultural products to operate and conduct a business without first having obtained a license as herein provided. The Commissioner may publish a list of licensed dealers under this article.~~

**Drafting Note: The authority of the Commissioner to publish a list of dealers is moved to subsection E of proposed § 3.2-4739, License required; application for license and license fee; license renewals; list of dealers.**

~~§ 3.1-722.11 3.2-4751. Penalties; injunctions~~ *Penalty for violation of article.*

~~A. Any person who intentionally violates the provisions any provision of this article or regulations promulgated thereunder shall be hereunder is guilty of a Class 1 misdemeanor.~~

~~B. The Commissioner may bring an action to enjoin the violation or threatened violation of any provision of this article, or any regulation promulgated pursuant thereto, in the circuit court of the county or city in which the violation occurs or is about to occur, or in the Circuit Court of the City of Richmond if the violation may affect more than one county or city. The Commissioner may request either the attorney for the Commonwealth or the Attorney General to bring action under this section, when appropriate. The Attorney General shall be authorized to prosecute any violation of this article which may affect more than one city or county.~~

**Drafting Note: The injunction authority of the Commissioner in subsection B is deleted and moved to proposed § 3.2-4749, Commissioner may enjoin; Attorney General may prosecute.**

~~§ 3.1-722.15 3.2-4752. Reciprocal agreements with other states and federal government.~~

~~The Commissioner is authorized to may enter into reciprocal agreements with appropriate officials of other states or of the federal government for the purpose of exchanging any information of violations of this article or laws of other states or the federal government which are that have similar in objectives with purposes as this article.~~

**Drafting Note: Technical changes.**

~~§ 3.1-722.13. Regulations of the Board; exemptions.~~

~~The Board is authorized to promulgate and enforce regulations for the administration of this article, and to grant exemptions from specific requirements of this article as, from time to time, may be deemed necessary.~~

**Drafting Note: Deleted section. This provision is unnecessary since the Board is established in Chapter 1 as a policy board with regulatory authority.**

#### Article 4.

#### Dealers in Grain Products.

~~§ 3.1-722.16 3.2-4753. Definitions.~~

~~The following definitions shall apply in the interpretation and enforcement of As used in this article, unless the context requires a different meaning:~~

~~(a) "Person" means an individual, partnership, corporation, association, or syndicate.~~

~~"Cash buyer" means any person who pays the producer, or his representative, at the time of obtaining title, possession or control of grain, the agreed price of such grain in coin or currency, certified checks, cashier's checks or drafts issued by a bank.~~

~~"Contract" means a binding agreement between the grain dealer and the producer that describes the terms and conditions of the delivery of grain and the purchase price.~~

~~"Deferred payment" means that the purchase price for grain delivered by the producer is fixed and specified in the contract, but payment is not received by the producer until a mutually agreed upon subsequent date.~~

*"Full market value" means the value recognized as the average weekly price per bushel for the Commonwealth as quoted by the Department.*

*"Grain" means grains including corn (maize), wheat, rye, oats, barley, flaxseed, soybeans and sunflower.*

*"Grain bank" means grain owned by a producer and held temporarily by the dealer for use in the formulation of feed and returned to the producer on demand as feed or whole grain.*

~~(b) "Grain dealer" means any person who buys, solicits for sale or resale, processes for sale or resale, contracts for storage or exchange, or transfers grain of a Virginia producer. The term "grain dealer" shall exclude farmers or groups of farmers buying grain for consumption on their farms.~~

*"Grain exchange" means grain owned by a producer and held temporarily by the dealer for use in the formulation of processed flour to be returned to the producer on demand as flour or whole grain.*

~~(c) "Producer" means any person in Virginia who produces grain.~~

~~(d) "Grain" for the purposes of this article shall be construed to include, but not by way of limitation, corn (maize), wheat, rye, oats, barley, flaxseed, soybeans and sunflower.~~

~~(e) "Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

~~(f) "Cash buyer" means any person who pays the producer, or his representative, at the time of obtaining title, possession or control of grain, the full agreed price of such grain in coin or currency, lawful money of the United States, certified checks, cashier's checks or drafts issued by a bank.~~

~~(g) "Storage," also known as "holding," means any method by which grain owned by another is held for such party by one not the direct owner thereof, except for transportation thereof.~~

~~(h) "Grain bank" means grain owned by a producer and held temporarily by the dealer for use in the formulation of feed to be returned to the producer on demand as feed or whole grain.~~

~~(i) "Grain exchange" means grain owned by a producer and held temporarily by the dealer for use in the formulation of processed flour to be returned to the producer on demand as flour or whole grain.~~

~~(j) "Full market value" means the value recognized as the average weekly price per bushel for the Commonwealth as quoted by the Virginia Department of Agriculture and Consumer Services.~~

~~(k) "Loss" means any monetary loss to a producer as a result of doing business with a dealer which that shall include, but not be limited to, bankruptcy, embezzlement, theft or fraud.~~

~~(l) "Price later" means that the actual purchase price is not fixed at the time of delivery, but allows the producer to choose a bid price on any business day during a stated time period as agreed between the parties.~~

*"Producer" means any person in Virginia who produces grain.*

*"Storage" or "holding" means any method by which grain owned by another is held for the owner by a person who is not the direct owner, except for transportation thereof.*

~~(m) "Deferred payment" means that the purchase price for grain delivered by the producer is fixed and specified in the contract, but payment is not received by the producer until a mutually agreed upon subsequent date.~~

~~(n) "Contract" means a binding agreement between the grain dealer and the producer to evidence the terms and conditions of delivery of grain and purchase price.~~

**Drafting Note: Places definitions in alphabetical order and deletes definitions of "Commissioner" and "person" since they are defined, respectively, in proposed § 3.2-100, Definitions, and § 1-230.**

§ 3.1-722.17. License required.

~~No person shall act as a grain dealer without first having obtained a license as herein provided.~~

**Drafting Note: Deleted section and moved to proposed subsection A of § 3.2-4754, License required; application for license or renewal.**

~~§ 3.1-722.18 3.2-4754. Application-License required; application for license or renewal thereof.~~

*A. No person shall act as a grain dealer without first having obtained a license.*

*B. Every grain dealer proposing to transact business within the Commonwealth of Virginia shall on or before January 1, 1973, and annually on or before January 1 of each year thereafter, file a written application for a license or for the renewal of a license with the Commissioner. The application shall be on a form furnished by the Commissioner and shall contain the following information and such other relevant information as the Commissioner shall require:*

*(a) 1. The name and address of the applicant and that of its local agent or agents, if any, and the location of its principal place of business within ~~this~~the Commonwealth-;*

*(b) 2. The kinds of grain the applicant proposes to handle-; and*

*(c) 3. The type of grain business proposed to be conducted.*

**Drafting Note: Technical changes.**

~~§ 3.1-722.19 3.2-4755. License and renewal fee; bond or irrevocable letter of credit required; exemption.~~

*A. All applications a for license or license renewal shall be accompanied by a license fee of \$40, \$10 for each branch location and agent, and a good and sufficient bond in ~~the minimum sum~~ an amount of \$2,000 or ~~in such greater an amount as is equal to the maximum amount of gross business done in any month in the Commonwealth of Virginia during the preceding year by the applicant, whichever is greater,~~ but in no event shall the amount of bond required exceed \$40,000. An irrevocable letter of credit for the full amount of required bond may be submitted in lieu of a surety bond ~~under this article.~~ "Cash buyers" *A person, who upon written request showing shows proof satisfactory to the Commissioner that ~~the person~~ he is a "cash buyer", under this article shall be exempted from the bonding or irrevocable letter of credit requirements hereunder.* The exemption shall be granted within ~~twenty-~~ 20 days of the receipt of the exemption request, unless the Commissioner requests the dealer to provide additional necessary information or unless the request is denied.*

*B. Any licensed grain dealer who fails to apply and qualify for the renewal of a license on or before the date of expiration, shall pay a penalty of \$25, which shall be added to the original license fee and shall be paid by the applicant before the renewal may be issued.*

**Drafting Note: Incorporates procedures for obtaining original and renewed licenses and payment of fees and bonding into this section. Proposed subsection B is moved from existing § 3.1-722.21 with the language "refuses or neglects" deleted.**

~~§ 3.1-722.20 3.2-4756. Execution, terms and form of bond or irrevocable letter of credit; action on bond or irrevocable letter of credit; investigation of complaints.~~

The bond ~~herein required~~ shall be executed by the applicant as principal and by a surety company authorized and qualified to do business in ~~this~~the Commonwealth as surety. An irrevocable letter of credit may be issued on such terms as the Commissioner ~~in his discretion~~ may require. The Commissioner shall be designated as the trustee of the bond or beneficiary of the irrevocable letter of credit, and a copy of the bond or irrevocable letter of credit shall be filed with him. ~~Such~~ The bond shall be ~~upon~~ in a form prescribed or approved by the Commissioner and shall be conditioned to secure the faithful accounting for payment to producers, agents or representatives, of all grain purchased, stored, handled or sold by the dealer. Any producer claiming to be injured by the nonpayment, fraud, deceit or negligence of any dealer may bring action ~~therefor~~ upon the bond against the principal, or the surety, or both in ~~any court of~~

~~competent jurisdiction~~ *an appropriate court.* In the event the Commissioner receives written complaint from an injured producer of nonpayment, fraud, deceit or negligence of a dealer, the Commissioner may investigate such complaint and make recommendations to the surety company ~~relative-as to the culpability or nonculpability-of the dealer and the extent thereof, if any.~~

**Drafting Note: Technical changes.**

~~§ 3.1-722.20:1 3.2-4757. Additional duties~~*Duties and powers of Commissioner with respect to bonds.*

The Commissioner may accept the proceeds from any bond on which he is trustee or any letter of credit on which he is beneficiary, and deposit the proceeds in the state treasury at interest in favor of the claimants. The Commissioner may institute and prosecute suits or action in the name of the Commonwealth on behalf of claimants known and approved by him in any appropriate court for any purpose in connection with the collection or distribution of the proceeds. It shall be the duty of any person having a claim against a grain dealer to notify the Commissioner of his claim. The Commissioner shall have no duty to prosecute any claim unless he has ~~actual- received such notice thereof~~ and believes the claim ~~to-be~~ *is* valid. If the Commissioner believes the claim to be invalid, ~~in whole or in part,~~ he shall so notify the claimant. The claimant shall then have his remedy pursuant to ~~§ 3.1-722.20 3.2-4756.~~ ~~Notwithstanding any other provision of law, the~~ *The* Commissioner shall ~~have the right to~~ *may* appeal a decision of any court ~~which- that~~ *is* contrary to any distribution recommended or authorized by him.

**Drafting Note: Technical changes.**

~~§ 3.1-722.21. Renewal of license; late penalty.~~

~~Except as provided in § 3.1-722.24, licenses shall be renewed upon the application and having the bond or irrevocable letter of credit herein required in full force and effect, and the payment of a fee of forty dollars for each applicant and ten dollars for each branch location and agent on or before January 1 following the date of expiration of any license hereunder issued.~~

~~Should any licensed grain dealer fail, refuse or neglect to apply and qualify for the renewal of a license on or before the date of expiration, a penalty of twenty five dollars shall apply and be added to the original license fee and shall be paid by the applicant before the renewal may be issued.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-4755, License and renewal fees; bond or irrevocable letter of credit required.**

~~§ 3.1-722.22 3.2-4758. Disposition~~ *Grain Dealers Licensing and Bonding Fund established; Disposition of fees and penalties.*

*There is hereby created in the state treasury a special nonreverting fund to be known as the Grain Dealers Licensing and Bonding Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All fees and penalties for renewals payable under this article shall be collected by the Commissioner and paid by him to a special fund of the into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used for the sole purpose of enforcement of this article.*

**Drafting Note: Inserts standard language for establishing a special dedicated fund, the Grain Dealers Licensing and Bonding Fund.**

~~§ 3.1-722.23 3.2-4759. Records to be kept by dealers.~~

~~It shall be the duty of every person doing business as a~~ *A. Every grain dealer in this-the* Commonwealth ~~to- shall~~ keep such records of grain transactions for such reasonable periods of time and in accordance with good business practices as may be required by the Board.

B. Written agreements, in addition to such other information as may be required, shall contain the following:

1. The seller's name and address;
2. The conditions of delivery;
3. The amount and kind of grain delivered;
4. The price per bushel or basis of value; and
5. The date payment is to be made.

**Drafting Note: Technical changes.**

~~§ 3.1-722.24~~ 3.2-4760. Grounds for refusal or revocation of license.

The Commissioner may refuse to grant or renew any license, or ~~may~~ revoke any license ~~upon a showing if he finds that the grain dealer:~~

~~(a) The dealer has suffered~~ 1. *Has not satisfied* a final money judgment ~~to be entered against him upon which execution has been returned unsatisfied; or,~~

~~(b) The dealer has~~ 2. *Has failed to promptly and properly account and pay for in full within 10 calendar days of the receipt of the grain from the producer, unless a written agreement signed by both parties expressly provides or permits otherwise; or, *The prompt and proper accounting of and payment for grain shall include the following:**

*a. Any grain dealer who purchases grain from a producer shall deliver to the producer or his duly authorized representative the full amount of the purchase price, within the time specified in this subdivision. Payment shall occur either by transferring a check in the full amount to the producer or his authorized agent at the point of transfer of possession, wiring transfer funds to the producer's account for the full purchase price, or by depositing a check in the United States mail for the full amount properly addressed to the producer and in an envelope postmarked within the time specified in this section.*

*b. Any grain dealer who sells grain deposited in his grain storage facility by a producer shall promptly notify the producer or his duly authorized representative of the sale, and shall deliver to the producer or his authorized representative the full amount of the purchase price within the time specified in this subdivision. The time limit may be extended for good cause and with the written consent of the depositor. Nonpayment by the purchaser shall not constitute "good cause" under this section.*

*c. Any grain dealer who enters into a deferred payment, price later, or contract transaction with a producer shall have the transaction in writing and signed by both parties and shall deliver a copy of the transaction to the producer or his duly authorized representative. Upon conclusion of the written agreement transaction, the dealer shall deliver to the producer or his authorized representative the full amount of the purchase price within the time specified in this subdivision;*

~~(e) The dealer has~~3. *Has failed to keep and maintain business records of his grain transactions as required herein; or,*

~~(d) Repealed.]~~

~~(e) The dealer has~~ 4. *Has failed to post current discounts where they can readily be reviewed by the producer or his representative; or,*

~~(f) The dealer, upon~~ 5. *Upon the request of the producer or his representative, has failed to notify the producer or his representative at the time of delivery of all discounts and deductions applied; or,*

~~(g) The dealer has~~ 6. *Has failed to file annually with the Commissioner the discount schedules for each grain purchased, including the effective date thereof of the purchase, or has failed to make available upon request of the Commissioner or his designated representative during normal business hours any changes in the discount schedules which that have been filed; or,*

~~(h) The dealer has 7. Has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer; or~~

~~(i) The dealer has 8. Has failed to state on producers receipts the type of grain transactions which that shall be construed to include, but not by way of limitation, storage, grain bank, grain exchange, price later, deferred payment and contract;:~~

~~For the purpose of this section "promptly and properly pay" shall mean full payment within ten calendar days of the receipt of the grain by the grain dealer, unless a written agreement signed by both parties expressly provides or permits otherwise.~~

~~Any grain dealer who purchases grain from a producer thereof shall deliver to the producer or his duly authorized representative the full amount of the purchase price, within the time specified in this section. Payment shall occur either by transferring a check in the full amount to the producer or his authorized agent at the point of transfer of possession, wiring transfer funds to the producer's account for the full purchase price, or by depositing a check in the United States mail for the full amount properly addressed to the producer and in an envelope postmarked within the time specified in this section.~~

~~Any grain dealer who sells grain deposited in his grain storage facility by a producer thereof shall promptly notify the producer or his duly authorized representative of the sale, and shall deliver to the producer or his authorized representative the full amount of the purchase price within the time specified in this section. The time limit may be extended for good cause and with the written consent of the depositor. Nonpayment by the purchaser shall not constitute "good cause" under this section.~~

~~Any grain dealer who enters into a deferred payment, price later or contract transaction with a producer shall have the transaction in writing and signed by both parties and shall deliver a copy of the transaction to the producer or his duly authorized representative. Upon conclusion of the written agreement transaction, the grain dealer shall deliver to the producer or his authorized representative the full amount of the purchase price within the time specified in this section.~~

~~(j) The dealer has 9. Has failed to maintain a bond or letter of credit as provided herein required; or~~

~~(k) The dealer has 10. Has violated any rule or regulation promulgated adopted by the Board.~~

**Drafting Note: Deleted the definition of "promptly and properly pay" and incorporated the definition into proposed subdivision 2. Deleted the three paragraphs following the placement of the existing definition of "promptly and properly pay" and moved the provisions to proposed subdivisions 2 a, 2 b, and 2 c.**

~~§ 3.1-722.25 3.2-4761. Procedure for refusal or revocation of license; notice of hearing.~~

~~Before the Commissioner shall refuse refuses or revoke revokes a license, he shall give ten-10 days' notice by registered mail to the applicant or licensee of the time and place of hearing. At such hearing, the The applicant or licensee shall be privileged to may appear at the hearing in person, or with counsel and to produce witnesses. If the Commissioner shall find finds the applicant or licensee guilty in violation of any act provided in § 3.1-722.24 3.2-4760, the Commissioner he may refuse, suspend, or revoke such the license and shall give immediate notice of his action to the applicant or licensee.~~

**Drafting Note: Technical changes.**

~~§ 3.1-722.26 3.2-4762. Commissioner's authority to investigate.~~

~~In furtherance of any such investigation, inspection or hearing the The Commissioner, or his duly authorized agent, shall have full authority to make any and all necessary may conduct investigations relative to the complaint or matter being investigated, and they he shall have free and unimpeded access during normal business hours to all buildings, yards, warehouses, storage~~

and transportation facilities in which grain is kept, stored, handled, or transported, or where records of grain transactions are kept.

**Drafting Note: Technical changes.**

~~§ 3.1 722.27. Rules and regulations.~~

~~The Board of Agriculture and Consumer Services may adopt such rules and regulations as may be necessary to carry out the administration and enforcement of this article.~~

**Drafting Note: Deleted section. This provision is unnecessary since the Board is established in Chapter 1 as a policy board with regulatory authority.**

~~§ 3.1 722.28 3.2-4763. Violation a misdemeanor; illegal acts relating to issuance of receipts or removal of grain under storage, exchange or grain bank a felony.~~

~~A. Any person who shall violate~~ *violates* any of the provisions of this article or the ~~rules and regulations established~~ *adopted* by the Board of Agriculture and Consumer Services ~~shall be~~ *is* guilty of a *Class 1* misdemeanor.

*B. Any grain dealer or employee or manager for a grain dealer who: (i) issues any storage, grain exchange or grain banking receipts for any grains that are not actually in a storage facility at the time of issuing such receipt;; (ii) issues any grain receipt, including a scale ticket, that is in any respect fraudulent in its character, either as to its date or to the quantity, quality or inspected grade of such grain;; or (iii) removes any grain from a storage facility, except to preserve the same grain from fire or other damage or to move from storage to another facility operated by the grain dealer and licensed by the grain dealer under this article, without the permission of the producer or his agent shall, when convicted thereof, be is* guilty of a Class 6 felony.

**Drafting Note: Divided the section into two subsections to clarify the two penalty provisions.**

Article 5.

Cotton Handlers.

~~§ 3.1 722.29 3.2-4764. Definitions.~~

As used in this article, ~~the following terms shall have the following meanings, unless the context requires a different meaning:~~

~~"Board" means the Board of Agriculture and Consumer Services.~~

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

"Cotton gin" means a facility where cotton seed and cotton lint are produced from raw cotton.

"Cotton handler" means any person ~~or facility, including any cotton marketing cooperative and any cotton marketing association,~~ doing business as a cotton gin, cotton merchant, or cotton warehouse.

"Cotton merchant" means any person who buys cotton from a producer for the purpose of resale, or acts as a broker or agent for a producer in arranging the sale of cotton. ~~"Cotton merchant"~~ *The term* does not include a person that buys cotton for his own use.

"Cotton warehouse" means any enclosure in which producer-owned cotton is stored or held for longer than ~~forty-eight~~ *48* hours.

**Drafting Note: Deleted the definitions of "Board" and "Commissioner" since they are defined title-wide in proposed Chapter 1, General Provisions. Deleted "or facility, including any cotton marketing cooperative and any cotton marketing association" because the definition of the term "person," provided Code-wide in § 1-230, includes such entities.**

~~§ 3.1 722.30. License required.~~

~~No person may do business as a cotton handler without first obtaining a license from the Commissioner as herein provided.~~



**Drafting Note: Deleted section and moved to proposed subsection A of § 3.2-4765, License required; application; license fee and bond.**

~~§ 3.1-722.31~~ 3.2-4765. ~~Application~~ License required; application; license fee and bond.

A. No person shall do business as a cotton handler without first obtaining a license from the Commissioner.

~~A B.~~ Every person intending to do business as a cotton handler, shall, ~~on or before September 1, 2000,~~ make application to the Commissioner for a license *on or before July 1 of each year* on a form provided by the Commissioner. ~~Thereafter, such application shall be submitted by every cotton handler on or before July 1 of each year. Any license granted by the Commissioner shall expire on June 30 following the date of issuance.~~ The application shall specify:

1. An address ~~at which~~ where the applicant will receive correspondence by first-class mail;

2. Every address ~~at which~~ where the records of the cotton handler will be kept;

3. Every address, including street address, building number, and city or town:

a. In the case of a cotton gin, where the cotton will be ginned; or

b. In the case of a cotton warehouse, where the cotton will be warehoused;

4. The full name and first-class mail address, including the street, city or town, and state, of a person who is authorized to receive service of process on behalf of the cotton handler; and

5. The form of business organization that the cotton handler will assume. If the applicant will be doing business as a sole proprietorship, he shall disclose the full name of the sole proprietor and the name under which the sole proprietor will be doing business. If the applicant will be doing business as a partnership, he shall disclose the full name of each of the partners, the name of the partnership, and the name under which the partnership will be doing business. If the applicant will be doing business as a corporation, he shall disclose the full name of each of the officers of the corporation, the name of the corporation, and the name under which the corporation will be doing business. If the applicant will be doing business as a limited liability company or foreign limited liability company, he shall disclose the full name of the manager of the company, the name of the company, and the name under which the company will be doing business as a cotton handler. If the company has no manager, the applicant shall disclose the full names of the members of the company.

~~B C.~~ The applicant shall submit with the application a nonrefundable application fee of ~~fifty dollars~~ \$50.

~~C D.~~ Every person ~~making~~ submitting an application for a license as a cotton handler who will be doing business as a cotton gin or cotton merchant shall furnish at the time of application for a license a bond in the amount of \$50,000 in accordance with ~~§ 3.1-722.35~~ 3.2-4767. Nothing in this subsection shall require a person doing business as a cotton gin to be separately licensed or bonded as a cotton merchant.

~~D E.~~ Except as otherwise provided in subsection ~~E F~~, every person making application for a license as a cotton handler doing business as a cotton warehouse shall furnish, at the time of application for the license, proof of insurance with a company licensed to do business in the Commonwealth in an amount equal to the fair market value of the maximum amount of cotton that can be stored in the warehouse, and a bond in the amount of \$500,000 in accordance with ~~§ 3.1-722.35~~ 3.2-4767.

~~E F.~~ In lieu of satisfying the requirements of subsection ~~D E~~, a cotton handler doing business solely as a cotton warehouse may furnish proof of a valid license issued pursuant to the United States Warehouse Act (USWA) (7 U.S.C. § 241 et seq.). A cotton handler governed by this subsection shall notify the Commissioner of any change in the status of its USWA license within ~~twenty-four~~ 24 hours after being notified by the ~~United States~~ U.S. Department of Agriculture.

**Drafting Note: Proposed subsection A is moved from existing § 3.1-722.30 and the subsequent subsections have been renumbered. Existing § 3.1-722.32 is incorporated into proposed subsection B.**

~~§ 3.1-722.32. Expiration of license.~~

~~Any license granted by the Commissioner pursuant to this article shall expire on June 30 following the date of issuance.~~

**Drafting Note: Deleted section and moved to proposed subsection B of § 3.2-4765, License required; application; license fee and bond.**

~~§ 3.1-722.33 3.2-4766. Additional information to be reported by cotton gin each license year.~~

Prior to beginning ginning for the current license year, the cotton gin will provide to the Commissioner the last bale tag number used in the previous year and first bale tag number to be used in the current year.

**Drafting Note. No changes.**

~~§ 3.1-722.34. Board may adopt regulations.~~

~~The Board may adopt regulations for the implementation of this article.~~

**Drafting Note: This section is deleted as unnecessary since the Board is a policy board and as such its authority to promulgate regulations is found in § 2.2-2100 and proposed Chapter 1, General Provisions.**

~~§ 3.1-722.35 3.2-4767. Execution and terms of bond; action thereon.~~

Bonds required by § ~~3.1-722.34~~ 3.2-4765 shall be executed by the applicant as principal and by a surety company authorized and qualified to do business in the Commonwealth as surety. The applicant shall file on or before July 1 of each licensing year a copy of ~~this~~ *the* bond with the Commissioner, and the Commissioner shall be designated as the trustee of this bond. The bond shall be conditioned upon compliance with the provisions of this article and upon prompt and accurate settlement with the consignor. Any consignor of cotton claiming that a cotton handler has failed to comply with the provisions of this article or any regulations adopted ~~pursuant thereto hereunder~~, or has failed to settle promptly and accurately with the consignor, may bring action ~~therefor~~ upon the cotton handler's bond against either the principal, or the surety, or both, in ~~any court of competent jurisdiction~~ *an appropriate court*.

**Drafting Note: Technical changes.**

~~§ 3.1-722.36 3.2-4768. Duties and powers of Commissioner with respect to bonds.~~

The Commissioner may accept the proceeds from any bond on which he is trustee and deposit the proceeds in the state treasury with interest in favor of the bond claimants. The Commissioner may institute and prosecute suits for actions in the name of the Commonwealth on behalf of the claimants known and approved by him in any appropriate court for any purpose in connection with the collection or distribution of the bond or its proceeds. It shall be the duty of any person having a claim against a cotton handler to notify the Commissioner of his claim. The Commissioner shall have no duty to prosecute any claim unless he has ~~actual~~ *received* notice ~~thereof~~ and believes the claim ~~to be~~ *is* valid. If the Commissioner believes the claim ~~to be~~ *is* invalid, ~~in whole or in part~~, he shall ~~so~~ notify the claimant. ~~Notwithstanding any other provision of law, the~~ *The* Commissioner shall have the right ~~to~~ *may* appeal a decision of any court which ~~that~~ is contrary to any distribution recommended or authorized by him.

**Drafting Note: Technical changes.**

~~§ 3.1-722.37 3.2-4769. Investigation by Commissioner; right of entry and inspection.~~

~~A. For the purpose of enforcing the provisions of this article or any regulation adopted pursuant thereto, the~~ *The* Commissioner, upon receiving a complaint or upon his own motion, may, ~~either personally or through his agent~~, investigate any violation of the provisions of this article. Such investigation may include:

1. The inspection of the books and records of any cotton handler;

2. The inspection of any cotton, including the weighing and reweighing of a representative sample of cotton bales stored at the cotton handler's premises; and

3. The inspection of any place where cotton or any *related* record ~~related thereto~~ is or has been kept, stored, transported, or otherwise handled. In ~~making such an~~ *conducting the* inspection, the Commissioner ~~or his agent~~ may enter any premises, including, ~~but not limited to,~~ any building, yard, warehouse, storage facility, or transportation facility, in which cotton or any *related* record ~~related thereto~~ is or has been kept, stored, transported, or otherwise handled. In exercising such right of entry, the Commissioner shall enter the premises during its hours of operation.

B. Any cotton handler who is the subject of an investigation by the Commissioner shall, upon request, assist the Commissioner ~~or his agent~~ in making any inspection ~~authorized by this section.~~

**Drafting Note: Technical changes.**

§ ~~3.1-722-38~~ 3.2-4770. Records to be kept by cotton handler.

A. Every cotton gin shall keep an accurate daily record of the cotton received from each consignor and ginned. The record shall contain:

1. The name and address of the consignor of the cotton;
2. The date that the cotton gin received the cotton;
3. The condition, quality, and quantity of the cotton on arrival at the cotton gin;
4. The gross weight of the vehicle containing the cotton, the tare weight for the vehicle used to transport the cotton, and the net weight of the cotton delivered to the cotton gin for final processing into bales of finished cotton;
5. A lot number or other identifying mark given to each consignment of cotton by the cotton gin, ~~which~~ *that* shall appear on all tags, tickets, or statements and on any other essential records needed to show what cotton was ginned by the cotton gin on behalf of the consignor;
6. The sequentially numbered tag or mark assigned to the cotton bale;
7. A report of the finished cotton including the weight, grade, quality and condition;
8. A report of credit given for seed obtained during ginning process. If the actual weight of the seed is not determined, the record shall indicate the factor used to calculate weight and the final calculation; and
9. An itemized statement of the charges to be paid to the cotton gin by the consignor in connection with ginning the cotton.

B. If, at any time, the cotton gin alters any record required by ~~this~~ subsection A, the cotton gin shall create an addendum to the record indicating the nature of the alteration and the date the alteration was made and sign the addendum to the record with the full name of the ~~natural~~ person making the addendum.

~~B~~ C. Every cotton warehouse, ~~having received~~ *receiving* any cotton for storage, shall promptly ~~make and keep~~ *maintain* an accurate record, showing in detail the following information with reference to the handling and storage of the cotton:

1. A daily inventory record consisting of all cotton stored in the warehouse recorded by bale tag number;
2. The receiving record with transactions recorded by bale tag number; and
3. The transfer record with transactions recorded by bale tag number.

€ D. Every cotton merchant, having received any cotton for transfer, shall promptly ~~make and keep~~ *maintain* an accurate record, showing in detail the following information with reference to the handling and sales of the cotton:

1. The sales record with transactions recorded by bale tag number; and
2. The payable record with transactions recorded by bale tag number.

⊘ E. Every cotton handler shall retain all records, including tags or tickers, covering each transaction with each consignor, for a period of three years after the date that the record is required to be made.

**Drafting Note: Renumbered subsections.**

§ ~~3.1-722.39~~ 3.2-4771. Record and accounts to be provided to consignor.

A. Every cotton gin shall:

1. Within 48 hours after ginning the cotton, make available to the consignor the record required under § ~~3.1-722.38~~ 3.2-4770; and

2. Unless the consignor agrees otherwise in writing, within ~~ten~~ 10 days after ginning cotton, deliver to the consignor a copy of such record and an account of all cotton ginned for the consignor.

B. Unless the consignor agrees otherwise in writing, every cotton handler shall, within ~~ten~~ 10 days after transferring or selling cotton on behalf of the consignor, deliver to the consignor a copy of the record required under § ~~3.1-722.38~~ 3.2-4770 and an account of the consignor's cotton transferred or sold.

**Drafting Note: Technical changes.**

§ ~~3.1-722.40~~ 3.2-4772. Certificate establishing condition, quality, grade, ~~etc.~~, to be furnished.

Every cotton gin shall, at the time of ginning, obtain a sample of each bale of ginned cotton for the purpose of determining condition, quality, and grade. Unless such sample is graded by the ~~United States~~ U.S. Department of Agriculture, the burden of proof shall be ~~upon~~ on the cotton gin to prove the accuracy of its accounting as to any transaction ~~which~~ that may be questioned by the consignor, ~~or the Commissioner or his agent~~, relating to condition, quality or grade of ginned cotton.

**Drafting Note: Technical changes.**

§ ~~3.1-722.41~~ 3.2-4773. Identification of finished bales of cotton.

Every cotton gin shall: (i) determine the weight of each bale of finished cotton immediately following the making of the bale, ~~shall~~; (ii) number sequentially all finished cotton bales; and ~~shall~~ (iii) affix to each bale a sequentially numbered tag for the purpose of identifying the individual bale of finished cotton. The tag shall also identify the origin module. The burden of proof shall be upon the cotton gin to prove the accuracy of its accounting.

**Drafting Note: Technical changes.**

§ ~~3.1-722.42~~ 3.2-4774. Denial, suspension, or revocation of a license.

The Commissioner may deny, suspend, or revoke the license of any cotton handler if the cotton handler violates any provision of § ~~3.1-722.40~~ 3.2-4772 or § ~~3.1-722.43~~ 3.2-4775. The Commissioner shall ~~afford~~ provide reasonable notice of an informal fact-finding conference pursuant to § 2.2-4019 to any cotton handler ~~prior to and~~ in connection with the denial, suspension, or revocation of the cotton handler's license.

**Drafting Note: Technical changes.**

§ ~~3.1-722.43~~ 3.2-4775. Offenses and punishment.

Any cotton handler ~~shall be~~ is guilty of a Class 1 misdemeanor if he:

1. Markets, obligates for sale, or otherwise disposes of producer-owned cotton without the written consent of the producer;

2. ~~Does business as a cotton handler~~ Conduct business without the license required by this article;

3. Imposes false charges for the handling of cotton;

4. Fails to account promptly, accurately, fully, and properly and to make settlement ~~therefor~~;

5. Intentionally makes any false statement with regard to grade, condition, markings, quality, or quantity of cotton received, ginned, packed, shipped, or otherwise handled, to the consignor of cotton with respect to the consignor's cotton, or to the Commissioner ~~or his agent~~;

6. Fails to ~~make or keep~~ *maintain* records as required by this article;

7. In any instance in which the cotton handler offers to buy the consignor's cotton, fails to disclose to the consignor that the person, ~~firm, or corporation~~ making the offer is composed substantially of the same persons, as stockholders, members, or otherwise, who compose the cotton handler business;

8. Refuses the Commissioner ~~or his agent~~ the right of entry ~~afforded~~ *authorized* by this article;

9. Knowingly provides false information on an application for license ~~pursuant to this article~~;

10. Fails to give reasonable written notice of any change in the style, name, or personnel of the cotton handler to the Commissioner ~~or his agent~~ or to the surety on the bond required by this article; or

11. Violates any provision of this article or regulation adopted ~~pursuant thereto hereunder~~.

**Drafting Note: Technical changes.**

#### CHAPTER ~~28.1~~ 48.

#### VIRGINIA-COMMERCIAL FEED-ACT.

**Chapter Drafting Note: Rearranged several of the sections so that the definitions are followed by the administrative responsibilities of the Board and the Commissioner, product registration and licensing requirements, product labeling, misbranding, and adulteration provisions, and the chapter ends with enforcement provisions and penalties. Because of the length and complexity of existing § 3.1-828.7, Product registration, inspection fees, and reports, it was divided into several sections and some language deleted. References to "or his agents" when referring to the Commissioner and his powers have been deleted throughout the chapter since the Commissioner, under § 2.2-604, Performance of duties assigned to an agency, may delegate his authority.**

~~§ 3.1-828.1. Title.~~

~~This chapter shall be known as the "Virginia Commercial Feed Act."~~

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 3.1-828.2 3.2-4800. Definitions.~~

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

"Animal" means any animate being, which is not human, endowed with the power of voluntary action.

~~"Board" means the Board of Agriculture and Consumer Services.~~

"Brand name" means any word, name, symbol, or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from the commercial feed of other distributors or registrants.

"Commercial feed" means any materials or combination of materials ~~which~~*that* are distributed or intended for distribution for use as feed for animals, or for mixing in feed. Commercial feed shall not include the following commodities, provided they are not adulterated as provided in § ~~3.1-828.10~~ *3/2-4808*: unmixed whole seeds, raw meat, raw goats' milk, at the farm only; hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances, when not mixed or intermixed with other materials.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

"Contract feeder" means a person who is an independent contractor and *who*: (i) feeds commercial feed to animals pursuant to a contract; (ii) ~~pursuant to such contract, is provided such commercial feed is supplied, furnished, or otherwise provided by a licensed distributor to such person;~~ and (iii) ~~whereby such person's receives remuneration is-~~ as determined all or in part by *the amount of* feed consumption, mortality, profits, or amount or quality of production.

"Customer-formula feed" means commercial feed ~~which~~*that* consists of a mixture of commercial feeds, or feed ingredients, or a combination of both commercial feeds and feed ingredients, each batch being manufactured according to the specific instructions of the final purchaser.

"Custom mix feed" means a feed for which the customer provides ingredients.

~~"Department" means the Department of Agriculture and Consumer Services.~~

"Distribute" means to: (i) offer or expose for sale, sell, warehouse, exchange, or barter commercial feed; or ~~to~~ (ii) supply, furnish, or otherwise provide commercial feed to a contract feeder.

"Distributor" means any person who distributes commercial feed.

"Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals ~~other than man~~ and articles other than commercial feed intended to affect the structure or any function of the animal body.

"Feed ingredient" means each of the constituent materials making up a commercial feed.

"Guarantor" means any person whose name appears on the label of a commercial feed.

"Label" means a display of written, printed, or graphic matter upon, or affixed to, the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a bulk commercial feed, or customer-formula feed, is distributed.

"Labeling" means all labels and other written, printed, or graphic matter: (i) upon a commercial feed or any of its containers or wrapper; or (ii) accompanying such commercial feed.

"Licensee" means the person who receives a license to distribute commercial feed under the provisions of this chapter.

"Manufacture" means to grind, mix or blend feed ingredients, or further process a commercial feed for distribution.

"Manufacturer" means any person who manufactures commercial feed.

"Medicated feed" means a commercial feed obtained by mixing a commercial feed and a drug.

"Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

~~"Official analysis" means the analysis of an official sample made by the Commissioner or his agent.~~

"Official sample" means a sample of feed taken by the Commissioner ~~or his agent~~ and designated as "official" by the Board.

"Percent" or "percentages" means percentage by weight.

"Pet food" means any commercial feed prepared and distributed for consumption by cats and dogs.

"Product name" means the name of the commercial feed ~~which~~*that* identifies it as to kind, class, or specific use.

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of measurement of a commodity.

"Small package commercial feed" means commercial feed distributed in individual packages of ~~ten~~ 10 pounds or less.

"Specialty pet" means any domesticated animal ~~normally~~ *usually* maintained in a cage or tank, including, ~~but not limited to~~, gerbils, hamsters, canaries, psittacine birds, mynahs, finches,

tropical fish, goldfish, snakes and turtles. Specialty pet does not include dogs, cats, horses, rabbits and wild birds.

"Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

"Stop sale, use, removal or seizure order" means an order ~~which~~*that* prohibits the distributor from selling, relocating, using, or disposing of a lot of commercial feed or portion thereof, in any manner, until the Commissioner, ~~or his agent,~~ or ~~a~~ *an appropriate* court, gives written permission to sell, relocate, use, or dispose of the lot of commercial feed or portion thereof.

"Ton" means a ~~net weight~~ *unit* of 2,000 pounds avoirdupois *weight*.

**Drafting Note: The definitions of "Board," "Commissioner," and "Department" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions.**

~~§ 3.1-828.3. Authority of the Commissioner.~~

~~This chapter shall be administered and enforced by the Commissioner. The Commissioner may appoint agents to assist in carrying out the provisions of this chapter and regulations adopted and established pursuant thereto.~~

**Drafting Note: Deleted section. This section is unnecessary as the general powers of the Commissioner are cited in proposed § 3.2-102 in Chapter 1, General Provisions.**

~~§ 3.1-828.4 3.2-4801. Authority of the Board and the Commissioner to promulgate~~ *adopt* regulations.

A. ~~The Board is authorized to promulgate such~~ *may adopt* regulations for commercial feeds as are ~~specifically authorized in this chapter and such other reasonable regulations as may be necessary for the efficient enforcement~~ *necessary to carry out the provisions* of this chapter.

B. The Commissioner may adopt as a regulation, ~~the~~:

1. ~~The~~ official Definitions of Feed Ingredients, Official Feed Terms, and analytical variations adopted by the Association of American Feed Control Officials and published in the Official Publication of that organization. ~~The Commissioner may adopt any;~~

2. ~~Any federal~~ *Any federal* regulation ~~under federal law~~ that pertains to this chapter, amending it as necessary for intrastate applicability. ~~The Commissioner may adopt as a regulation the;~~

3. ~~The~~ methods of sampling and analysis for commercial feed and the components of commercial feed adopted by the Association of Official Analytical Chemists in the publication of that organization. ~~The Commissioner may adopt as a regulation any; and~~

4. ~~Any~~ method of sampling and analysis for commercial feed and the components of commercial feed developed by the Department or adopted by agencies of the federal government, agencies of other states, the Division of Consolidated ~~Laboratories~~ *Laboratory Services* or other commercial laboratories accredited by the Food and Drug Administration, ~~United States~~ *U.S.* Department of Agriculture or Association of Official Analytical Chemists.

C. Such regulations adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. The regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation.

~~CD.~~ The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations.

~~DE.~~ Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or revision of any regulation adopted pursuant to subsections B ~~and~~, C, *and D*.

**Drafting Note: Divided existing subsection B into subdivisions and added subsection C to clarify the regulatory authority.**

§ ~~3.1-828.16~~ 3.2-4802. Publications.

The Commissioner may publish, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider appropriate.

**Drafting Note: No changes.**

§ ~~3.1-828.6~~ 3.2-4803. Licensing of manufacturers and guarantors of commercial feed.

A. Any person who manufactures a commercial feed or ~~whose name appears on the label as any~~ guarantor shall, before: (i) distributing, selling, offering or exposing for sale in the Commonwealth any commercial feed; or (ii) supplying commercial feed to a contract feeder, obtain a license from the Commissioner. The person who manufactures or is the guarantor of such commercial feed shall submit a license application to the Commissioner on a form furnished or approved by the Commissioner, and pay to the Commissioner a license fee of ~~forty dollars~~ \$50. Any person with multiple manufacturing facilities shall obtain a license and pay a license fee to the Commissioner for each manufacturing facility ~~which~~ *that* distributes commercial feed in Virginia. The license year shall be January 1 through December 31. Each license shall expire on December 31 of the year for which it is issued; ~~however, any.~~ Any license shall be valid through January 31 of the next ensuing year or until the issuance of the renewal license, whichever event ~~first~~ occurs *first*, if the holder ~~thereof shall have~~ *of the license has* filed a renewal application with the Commissioner on or before December 31 of the year for which the current license was issued. Any new applicant who fails to obtain a license within ~~fifteen~~ 15 working days of notification of the requirement to obtain a license, or any licensee who fails to comply with license renewal requirements, shall pay a ~~fifty dollar~~ \$50 late fee to the Commissioner in addition to the license fee. The Commissioner ~~or his agent~~ may issue a stop sale, use, removal, or seizure order on any commercial feed that the nonlicensee produces or distributes in the Commonwealth until such license is issued.

B. The Commissioner shall ~~refuse to~~ *not* issue ~~the~~ a license ~~of~~ *to* any person not in compliance with any provision of this chapter, and shall revoke the license of any person subsequently found not to be in compliance with any provision of this chapter.

**Drafting Note: Technical changes.**

§ ~~3.1-828.7~~ 3.2-4804. Product registration *required of commercial feed distributors, inspection fees, and reports.*

~~A.1.~~ Any person who distributes: (i) medicated feed ~~pursuant to subdivision 3 of this subsection;~~; (ii) small package commercial feed ~~pursuant to subdivision 4 of this subsection, and; or~~ (iii) specialty pet food ~~pursuant to subdivision 5 of this subsection~~ shall register those commercial feeds with the Commissioner and pay to the Commissioner the registration fees specified in ~~those subdivisions~~ *this section*. ~~No person may~~ *It is unlawful for any person to* distribute medicated feed, small package commercial feed, or specialty pet food in the Commonwealth without first obtaining a registration certificate from the Commissioner.

~~2B.~~ The registration year for medicated feed, small package commercial feed, and specialty pet food shall be January 1 through December 31. Each registration shall expire on December 31 of the year for which it is issued; ~~however, any.~~ Any registration shall be valid through January 31 of the next ensuing year or until the issuance of the renewal registration, whichever event ~~first~~ occurs *first*, if the holder ~~thereof shall have~~ *of the registration has* filed a renewal application with the Commissioner on or before December 31 of the year for which the current registration was issued. Any person who fails to comply with registration renewal requirements shall pay a ~~fifty dollar~~ \$50 late fee to the Commissioner in addition to the registration fee. The Commissioner ~~or his agent~~ may issue a stop sale, use, removal, or seizure order on any nonregistered commercial feed until such registration is issued.



~~3C. Any person whose name appears on the label~~ Every manufacturer or guarantor of a medicated feed, except for customer-formula medicated feed, distributed in the Commonwealth shall: (i) apply for registration for each medicated feed on forms furnished or approved by the Commissioner; ~~shall~~ (ii) pay a registration fee of \$50 per medicated feed to the Commissioner by January 1 ~~a registration fee of fifty dollars per medicated feed~~; and shall (iii) submit a copy of the proposed label for such medicated feed for approval with the registration form. ~~The manufacturer or guarantor shall pay to the Commissioner an inspection fee as specified in subsection B.~~ The manufacturer or guarantor is not required to register additional package sizes of the same medicated feed.

~~4. Any person whose name appears on the label of~~ D. Every manufacturer or guarantor of small package commercial feed, ~~except as specified in subdivision 5 of this subsection~~, shall: (i) apply for registration for each small package commercial feed on forms furnished or approved by the Commissioner; ~~and shall~~; (ii) pay a registration fee of ~~fifty dollars~~ \$50 to the Commissioner by January 1 per small package commercial feed, in lieu of an inspection fee for this size package. ~~The manufacturer or guarantor shall~~; and (iii) submit a copy of any label, used or proposed to be used with the small package commercial feed for approval with the registration form. ~~In addition, the manufacturer or guarantor shall report commercial feed tonnage and pay the inspection fee on all packages of the same product name or brand name of any commercial feed registered under this section, sold in packages of greater than ten pounds, as required by subsection B.~~

~~5. Any person whose name appears on the label~~ E. Every manufacturer or guarantor of a specialty pet food distributed in the Commonwealth in individual packages of one pound or less ~~only~~ shall: (i) apply for registration for each specialty pet food in individual packages of one pound or less only; on forms furnished or approved by the Commissioner; shall (ii) pay a registration fee of \$35 to the Commissioner by January 1 ~~a registration fee of thirty five dollars~~ per specialty pet food to a maximum of \$700 for this size package, in lieu of the inspection fee; and shall (iii) submit a copy of any label, used or proposed to be used with the specialty pet food, for approval with the registration form.

6 F. If the Commissioner ~~or his agent~~, after examination and investigation, finds that the application and labeling of commercial feed comply with this chapter, the Commissioner shall issue a certificate of registration to the applicant upon payment of the specified registration fee. ~~No certificate issued is a~~ The granting of registration does not constitute the Commissioner's recommendation or endorsement ~~by the Commissioner~~ of the product ~~so registered~~.

7 G. If the Commissioner ~~or his agent~~ identifies any unregistered commercial feed in commerce in the Commonwealth during the registration year, the Commissioner shall give the guarantor *or manufacturer* a grace period of ~~fifteen~~ 15 working days from issuance of notification of nonregistration to the guarantor *or manufacturer* within which to register the product. Any ~~person~~ guarantor *or maunufacturer* who fails to register the product within the grace period shall pay a ~~fifty dollar~~ \$50 late fee to the Commissioner in addition to the registration fee. The Commissioner ~~or his agent~~ may issue a stop sale, use, removal, or seizure order upon any commercial feed until the registration is issued.

B. 1. ~~The reporting year for commercial feed tonnage shall be January 1 through December 31. The manufacturer or guarantor shall file the tonnage statement with the Commissioner and shall pay to the Commissioner the inspection fee, which shall not be less than thirty five dollars per year, by February 1 of the next ensuing year. Except when distributing to a contract feeder, any person who manufactures or distributes commercial feed or a component of commercial feed under his label in the Commonwealth, including a person who mixes, mills or processes customer formula feed, shall file with the Commissioner a tonnage statement and pay to the Commissioner an inspection fee of seven cents per ton of commercial feed per reporting year by February 1. Any person who distributes commercial feed to contract feeders in the~~

~~Commonwealth shall file with the Commissioner a tonnage statement and pay to the Commissioner an inspection fee of seven cents per ton of commercial feed distributed to contract feeders per reporting year by February 1.~~

~~a. Except as provided in clause b of this subdivision, any person who distributes commercial feed to a nonlicensed person shall file the tonnage statement with the Commissioner and pay to the Commissioner the inspection fee as specified in this subsection.~~

~~b. The person specified in clause a of this subdivision who distributes commercial feed shall not be required to file the tonnage statement or pay the inspection fee if another person agrees in a written statement, filed with the Commissioner, to file the tonnage statement and pay the inspection fee by February 1.~~

~~c. Any person pursuant to the exception specified in clause b of this subdivision who does not file the tonnage statement or pay the inspection fee, shall file with the Commissioner by February 1 a purchasing report on a form furnished or approved by the Commissioner stating the number of tons of commercial feed purchased by such person during the reporting year and from whom the commercial feed was purchased.~~

~~2. The Commissioner or his agent may not require a person to pay an inspection fee on a portion of a custom mix feed that is produced by the purchaser or acquired by the purchaser from a source other than the person who is paying the inspection fee.~~

~~3. Any person who manufactures a commercial feed or who distributes a commercial feed in the Commonwealth under his label shall pay to the Commissioner for that period of July 1, 1994, through December 31, 1994, a minimum inspection fee of seventeen dollars and fifty cents per person.~~

~~4. Any person who is liable for an inspection fee which is due and owing, and has not been paid to the Commissioner, within fifteen working days following the due date of February 1, shall pay to the Commissioner a late fee of ten percent of the inspection fee due, or fifty dollars, whichever is greater, in addition to the amount of inspection fee owed. The assessment of this late fee shall not prevent the Commissioner from taking other action, as provided for in this chapter.~~

~~C. Any person required to pay an inspection fee, or to report commercial feed tonnage, under this chapter, shall keep such records as may be necessary, or required by the Commissioner, to indicate accurately the tonnage of commercial feed, and the product names of any medicated feeds, and the product names of any small package commercial feeds, and the product names of any specialty pet products distributed by the person in the Commonwealth. The person who reports commercial feed tonnage shall retain such records for a period of three years. The Commissioner, or his agent, may examine such records to verify reported statements of tonnage.~~

~~D. The Commissioner shall cancel the commercial feed license and product registrations of any person who fails to comply with the chapter by:~~

- ~~1. Failing to file the tonnage report;~~
- ~~2. Falsifying information;~~
- ~~3. Making an inaccurate statement of tonnage distributed in Virginia during any reporting license year;~~
- ~~4. Making an inaccurate listing of medicated feed, small packaged commercial feed, or specialty pet feed for registration;~~
- ~~5. Failing to pay the license, registration or inspection fee;~~
- ~~6. Failing to accurately report any of the information required to be submitted under this chapter;~~
- ~~7. Failing to keep records for a period of three years; or~~
- ~~8. Failing to allow inspection of records as required by subsection C by the Commissioner or his agent.~~

**Drafting Note:** The majority of this section is moved to proposed § 3.2-4805, Reports and inspection fees: the last sentence of existing subdivision A 4 is moved to proposed subsection D; existing subdivision B 1 is moved to proposed subsections A and B; existing subdivision B 2 is moved to proposed subsection C; existing subdivision B 4 is moved to proposed subsection F; and existing subsection C is moved to proposed subsection E. Existing subdivision B 3 is obsolete and has been deleted. Existing subsection D is moved to proposed § 3.2-4816, Commissioner to cancel license and product registrations.

§ 3.2-4805. *Report and inspection fees.*

A. *The reporting year for commercial feed tonnage shall be January 1 through December 31. The manufacturer or guarantor shall, by February 1 of the next ensuing year: (i) file the tonnage statement with the Commissioner; and (ii) pay to the Commissioner the inspection fee that shall not be less than \$35 per year.*

B. *The filing of a tonnage report and the inspection fee shall be as follows:*

1. *Except when distributing to a contract feeder, any person who manufactures or distributes commercial feed or a component of commercial feed under his label in the Commonwealth, including a person who mixes, mills, or processes customer-formula feed, shall file with the Commissioner a tonnage statement and pay to the Commissioner an inspection fee of seven cents per ton of commercial feed per reporting year.*

2. *Any person who distributes commercial feed to contract feeders in the Commonwealth shall file with the Commissioner a tonnage statement and pay to the Commissioner, an inspection fee of seven cents per ton of commercial feed distributed to contract feeders per reporting year.*

3. *Any person who distributes commercial feed to a nonlicensed person:*

a. *Shall file the tonnage statement with the Commissioner and pay to the Commissioner the inspection fee as specified in this subsection; or*

b. *Shall not be required to file the tonnage statement or pay the inspection fee if: (i) another person agrees in a written statement, filed with the Commissioner, to file the tonnage statement and pay the inspection fee by February 1; and (ii) he files with the Commissioner by February 1 a purchasing report on a form furnished or approved by the Commissioner stating the number of tons of commercial feed purchased during the reporting year and from whom the commercial feed was purchased.*

C. *The Commissioner shall not require a person to pay an inspection fee on a portion of a custom-mix feed that is produced by the purchaser or acquired by the purchaser from a source other than the person who is paying the inspection fee.*

D. *The manufacturer or guarantor shall report commercial feed tonnage and pay the inspection fee on all packages of the same product name or brand name of any commercial feed registered under this section, sold in packages of greater than 10 pounds, as required by this section.*

E. *Any person who is liable for an inspection fee that is due, and has not been paid to the Commissioner, within 15 working days following February 1, shall pay to the Commissioner a late fee of 10 percent of the inspection fee due, or \$50, whichever is greater, in addition to the amount of inspection fee owed. The assessment of this late fee shall not prevent the Commissioner from taking other action, as provided for in this chapter.*

F. *Any person required to pay an inspection fee, or to report commercial feed tonnage, under this chapter shall keep such records as may be necessary or required by the Commissioner to indicate accurately: (i) the tonnage of commercial feed; (ii) the product names of any medicated feeds; (iii) the product names of any small package commercial feeds; and (iv) the product names of any specialty pet products distributed by the person in the Commonwealth. The person who reports commercial feed tonnage shall retain such records for a period of three years. The Commissioner may examine such records to verify reported statements of tonnage.*

**Drafting Note: New section. The provisions of this proposed section have been moved from existing § 3.1-828.7: proposed subsection A is moved from existing subdivision B 1; proposed subsection B is moved from existing subdivisions B 1, B 1a, b, and c; proposed subsection C is moved from existing subdivision B 2; proposed subsection D is moved from existing subdivision A 4; proposed subsection E is moved from existing subdivision B 4; and proposed subsection F is moved from subsection C of existing § 3.1-828.7.**

~~§ 3.1-828.5~~ 3.2-4806. Labeling.

A. The manufacturer or guarantor of a commercial feed, except customer-formula or custom mix feed, shall affix a label to the commercial feed that states in the English language the following information:

1. The quantity statement;
2. The product name and, if any, the brand name, of the commercial feed;
3. The guaranteed analysis, the terms of which the Board shall determine by regulation so as to advise the user of the composition of the feed, or to support claims made in the labeling. In all cases, the substances or elements ~~must~~ shall be determinable by laboratory methods of sampling and analysis, as specified in ~~§ 3.1-828.4~~ 3.2-4801;
4. The common or usual name of each ingredient used in the manufacture of the commercial feed; ~~however, the~~ *The* Board may, by regulation, (i) permit the use of a collective term for a group of ingredients ~~which~~ that perform a similar function; or (ii) exempt such commercial feeds, or any group ~~thereof~~ of ingredients, from this requirement if the Board finds that such statement is not required in the interest of consumers;
5. The name and principal mailing address of the manufacturer, or the person responsible for distributing the commercial feed, if such person is not the manufacturer;
6. Directions for use in the case of all commercial feeds containing drugs, and for such other feeds as the Board may, by regulation, require as necessary for the safe and effective use of the commercial feed; and
7. ~~Such~~ Any precautionary statements as the Board, by regulation, determines are necessary for the safe and effective use of the commercial feed.

B. The manufacturer or guarantor of a customer-formula or custom mix feed shall affix to or include with the feed a label, invoice, delivery slip, or other shipping document that states in the English language the following information:

1. The name and address of the manufacturer;
2. The name and address of the purchaser;
3. The date of manufacture;
4. Either: (i) the product name and net weight of each commercial feed and each other ingredient used in the mixture; (ii) the guaranteed analysis, as provided in subdivision 3 ~~of subsection A of this section~~ A 3 with the ingredients as provided in subdivision 4 ~~of subsection A 4 of this section~~; (iii) identification by means of an identifying name, number or similar designation, where the manufacturer or guarantor furnishes all ingredients for a customer-formula feed. ~~The manufacturer or guarantor may use this section instead of listing ingredients as provided in clauses (i) and (ii) of this subdivision on the label or invoice,~~ provided that the manufacturer or guarantor makes available a copy of the list of ingredients to the Commissioner ~~or his agent~~ at the location where the Commissioner ~~or his agent~~ takes an official sample; or (iv) the manufacturer or guarantor notes a modification on the label of a commercial feed where the manufacturer or guarantor modifies a commercial feed in normal trade at the request of the consumer, and such request does not affect the guaranteed analysis of said feed;
5. Directions for use for all customer formula or custom mix feeds containing drugs and for such other feeds as the Board may require, by regulation, as necessary for the safe and effective use of the commercial feed;

6. The directions for use and precautionary statements as required by subdivisions A 6 and A 7 of ~~subsection A of this section~~; and

7. If drugs are used in formulating the commercial feed: (i) the purpose of the medication (claim statement); and (ii) the established name of each active drug ingredient, and the level of each drug used in the final mixture, expressed in accordance with applicable regulations.

**Drafting Note: Technical changes.**

~~§ 3-1-828.9~~ 3.2-4807. Misbranding.

A. ~~Any~~ *It is unlawful for any person who is a manufacturer or guarantor of commercial feed may not to distribute a commercial feed if:*

1. The labeling of the commercial feed is false or misleading in any particular;
2. The commercial feed is distributed under the name of another commercial feed;
3. The commercial feed is labeled in any manner other than as required in ~~§ 3-1-828.5~~ 3.2-4806;

4. The commercial feed purports to be, or is represented as, a commercial feed, or if it purports to contain, or is represented as containing, a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the Board; or

5. Any word, statement, or other information required by, or under authority of, this chapter to appear on the label or labeling of the commercial feed is not prominently placed thereon with such conspicuousness, (as compared with other words, statements, designs, or devices in the labeling) and in such terms, so that the purchaser or user is likely to read and understand the label under customary condition of purchase and use.

B. The violation of any provision of this section shall be deemed to be misbranding.

**Drafting Note: Technical changes.**

~~§ 3-1-828.10~~ 3.2-4808. Adulteration.

A. ~~Any~~ *It is unlawful for any person who is a manufacturer or guarantor of a commercial feed may not to distribute a commercial feed if the commercial feed:*

1—~~a~~. Contains any poisonous or deleterious substance ~~which~~ *that* may render the commercial feed or its packaging injurious to health, unless the poisonous or deleterious substance is not an added substance and is not of sufficient quantity to render the commercial feed injurious to health under ordinary circumstances;

~~b~~2. Contains any added poisonous, added deleterious, or added nonnutritive substance ~~which~~ *that* is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act. If the substance is a food additive or a pesticide chemical in or on a raw agricultural commodity, ~~clauses c and d of this subdivision, as the case may be, then subdivisions A 3 and A 4 shall govern;~~

~~c~~3. Is, bears, or contains any food additive ~~which~~ *that* is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;

~~d~~4. Is a raw agricultural commodity and it bears or contains a pesticide chemical ~~which~~ *that* is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act. ~~Wherein~~ *(i) If a pesticide chemical has been used in or on a raw agricultural commodity in conformity within an exemption granted, or a tolerance prescribed, under Section 408 of the Federal Food, Drug, and Cosmetic Act and (ii) such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, then the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe, if so long as: (i) such residue in or on the raw agricultural commodity has been removed to the extent possible within good manufacturing practice; (ii) the concentration of such residue in the processed feed is not greater than the tolerance prescribed by Section 408 of the Federal Food, Drug, and Cosmetic Act for the raw agricultural commodity; and (iii) the feeding of such processed feed will not result, or be likely to result, in a pesticide residue in the edible produce of*

the animal, ~~which~~ *and that* pesticide residue is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act;

e5. Is, bears or contains any color additive ~~which~~*that* is unsafe within the meaning of Section ~~706-721~~ of the Federal Food, Drug, and Cosmetic Act; ~~or~~

f6. Is, bears, or contains any new animal drug ~~which~~*that* is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act;

27. Has had any valuable constituent, in whole or in part, omitted or abstracted from the commercial feed, or any less valuable substance substituted into the commercial feed;

38. Has had the composition or quality of the commercial feed fall below or differ from that which the manufacturer or guarantor purports or represents the commercial feed to possess by its labeling;

49. Contains a drug, and the methods used in, or the facilities or controls used for, its manufacture, processing, or packaging do not conform to current good manufacturing practice; or if the drug does not conform to regulations ~~promulgated~~ *adopted* by the Board, to assure that the drug meets the requirements of this chapter as to safety, and to assure that the drug has the identity, strength, quality, and purity characteristics ~~which~~*that* it purports or is represented to possess. In ~~promulgating~~ *adopting* such regulations, the Board shall adopt the current good manufacturing practice regulations for Type A Medicated Articles, and Type B, and Type C Medicated Feeds, established under authority of the Federal Food, Drug, and Cosmetic Act, unless the Board determines that such regulations are not appropriate to the conditions ~~which~~*that* exist in ~~this~~*the* Commonwealth; or

510. Contains viable weed seeds in amounts exceeding the limits as specified in the regulations of the Board. Nothing in this subdivision shall apply to whole unprocessed seeds.

B. The violation of any provision of this section shall be deemed to be adulteration.

**Drafting Note: Technical changes.**

§ ~~3.1-828.8~~ 3.2-4809. Inspection, sampling, and analysis.

A. ~~For the purpose of enforcement of this chapter, the~~ *The* Commissioner ~~or his agent~~ may:

1. ~~Enter~~ *enter and inspect,* ~~during operating hours,~~ any factory, warehouse, or establishment within the Commonwealth *during operating hours* in which commercial feed is manufactured, processed, packed, warehoused, sold, or held for distribution, *or any vehicle used to transport or hold such feed, to determine whether the provisions of this chapter have been complied with, including whether or not any operations may be subject to such provisions. The inspection shall include the verification of only such records and production and control procedures, pertinent equipment, finished material, unfinished material, any container, and labeling therein as may be necessary to determine compliance with this chapter;*

2. ~~Enter any vehicle being used to transport or hold such feed; and~~

3. ~~Inspect during operating hours, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished material, unfinished material, any container, and labeling therein.~~

~~The Commissioner or his agent may enter and inspect to determine whether the provisions of this chapter have been complied with, including whether or not any operations may be subject to such provisions. The inspection shall include the verification of only such records and production and control procedures as may be necessary to determine compliance with this chapter.~~

B. ~~For the enforcement of this chapter, during operating hours, the~~ *The* Commissioner ~~or his agent~~ may obtain samples from any premises *during operating hours* or any vehicle enumerated in subsection A ~~of this section,~~ and examine records relating to distribution of commercial feeds.

C. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated, misbranded, or is otherwise deficient under the provisions of this chapter, the Commissioner shall, upon request, furnish to the licensee a portion of the sample concerned; within ~~thirty~~ 30 days following the receipt of such analysis by the licensee.

D. The Commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample. Such official sample shall be obtained and analyzed as provided in § ~~3-1-828.4~~ 3.2-4801.

E. The Commissioner shall allocate adequate personnel to the major farm feed consuming areas of the state to carry out his duties under this act as such duties relate to insuring the quality, analysis, and quantity of feed sold and distributed in the Commonwealth.

**Drafting Note: Incorporated language on the Commissioner's powers to enter and inspect that appears into existing subdivisions A 1, A 2, and in the last paragraph of subsection A into proposed subsection A and removes the existing subdivisions.**

§ ~~3-1-828.11~~ 3.2-4810. Assessments for variance from guaranteed analysis, misbranding, and adulteration.

A. If the Commissioner ~~or his agent~~ determines that a commercial feed fails to meet the label guarantee within the analytical variations specified in § ~~3-1-828.4~~ 3.2-4801, the Commissioner ~~or his agent~~ shall make an assessment against the guarantor on each pound of the lot of commercial feed represented by the sample and ~~which~~that any person sold as follows:

1. For deficient protein, two and one-half times the value of the deficiency;
2. For deficient fat, two times the value of the deficiency; and
3. For excessive fiber, ~~ten~~ 10 percent of the sales invoice price of the feed.

B. If the Commissioner ~~or his agent~~ determines that any commercial feed is misbranded as provided in § ~~3-1-828.9~~ 3.2-4807 or adulterated as provided in § ~~3-1-828.10~~ of this chapter 3.2-4808, the Commissioner ~~or his agent~~ shall assess ~~ten~~10 percent of the sales invoice price of the feed against the guarantor on each pound of the lot of commercial feed represented by the sample and ~~which~~that any person sold.

C. If the Commissioner ~~or his agent~~ finds a commercial feed in violation of § ~~3-1-828.9~~ or § ~~3-1-828.10~~ 3.2-4807, 3.2-4808, or subsection A ~~of this section~~, the Commissioner ~~or his agent~~ shall:

1. ~~Shall make an assessment on~~ Assess the manufacturer or guarantor based on the violations ~~which~~that occur in a ~~ninety~~ 90-day period, such period to begin on the date when the Commissioner ~~or his agent~~ sends notification of the violation to the manufacturer or guarantor. The ~~ninety~~ 90-day period restarts upon each notification of violation to the manufacturer;
2. ~~Shall make an assessment on~~ Assess the manufacturer or guarantor on violative commercial feeds that bear the same label and are from the same manufacturing location;
3. ~~Shall not~~ Not make more than one assessment against the manufacturer or guarantor for the same manufacturing lot of commercial feed when the lot identification information is listed on the label of the commercial feed;
4. ~~Shall not~~ Not make any assessment ~~against~~ assess the manufacturer or guarantor in excess of \$5,000 per occurrence;
5. ~~Shall make a minimum assessment~~ Assess a minimum of \$200 for the first violation;
6. ~~Shall make a minimum assessment~~ Assess a minimum of \$400 for the second violation;
7. ~~Shall make a minimum assessment~~ Assess a minimum of \$800 for the third violation;
8. ~~Shall make a minimum assessment~~ Assess a minimum of \$1,600 for the fourth violation;
9. ~~Shall make a minimum assessment~~ Assess a minimum of \$3,200 for the fifth violation;
10. ~~Shall make a minimum assessment~~ Assess a minimum of \$5,000 for the sixth violation, and for each ensuing violation, without limitation;

11. ~~Shall waive~~ Waive the initial \$200 minimum assessment if the Commissioner ~~or his agent does not find~~ finds that the ~~violative-violation of the~~ commercial feed in variance ~~again variance provision has not occurred~~ within the ~~ninety~~ 90-day period; and

12. ~~May~~ Have the discretion not to make an assessment if the value of the deficiency of the initial violation is ~~five dollars~~ \$5 or less, but shall notify the manufacturer or guarantor and shall apply all further assessments on additional violations.

D. The manufacturer or guarantor shall pay all assessments to the Commissioner within ~~sixty-60~~ days of notice of payment due. Any person who fails to pay the assessment within the specified time shall pay to the Commissioner a late fee as specified in subsection A of § ~~3-1-828.13~~ 3.2-4811. The Commissioner shall revoke the license of such person who fails to pay the assessment.

E. The Commissioner ~~or his agent~~ shall compute the approximate value per pound of protein and fat and this computation shall be used to establish the relative value of deficiencies on commercial feed sold or offered for sale in the Commonwealth. The Commissioner may furnish, and upon application shall furnish, such relative values to any person engaged in the manufacture or sale of feed in the Commonwealth.

F. As used in this section, the term "value of the deficiency" means the monetary value of the deficiency in protein or fat of the lot of commercial feed from which the Commissioner ~~or his agent~~ collected a sample. The Commissioner ~~or his agent~~ shall determine the value of the deficiency by calculating the number of pounds of commercial feed deficient in protein or fat, as compared to the label guarantee, in the sample lot and multiplying those pounds by the relative value per pound of protein or fat.

**Drafting Note: Technical changes.**

§ ~~3-1-828.13~~ 3.2-4811. Fee for late payment of assessments; ~~penalties; warnings; injunctions; trade secrets.~~

~~A.~~ Any manufacturer or guarantor who does not pay an assessment for variance from label guarantee within ~~sixty-60~~ days shall pay to the Commissioner a late payment fee of ~~ten-10~~ percent of the assessment or ~~fifty dollars~~ \$50, whichever is greater, in addition to the assessment for variance from label guarantee.

~~B.~~ Any person convicted of violating any of the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

~~C.~~ Nothing in this chapter shall be construed as requiring the Commissioner or his agent to: (i) report for prosecution; (ii) institute seizure proceedings; or (iii) issue a withdrawal from distribution order if a violation of this chapter is minor, or if the Commissioner or his agent believes the public interest will best be served by a suitable notice of warning in writing.

~~D.~~ The Commissioner is hereby authorized to apply for, and a court of competent jurisdiction to grant, a temporary or permanent injunction, restraining any person from violating, or continuing to violate, any of the provisions of this chapter, or regulation promulgated under the chapter, notwithstanding the existence of other remedies at law.

~~E.~~ The Commissioner shall hold confidential trade secrets and commercial or financial information supplied by persons subject to this chapter.

**Drafting Note: Moved the chapter-wide penalty in existing subsection B to proposed § 3.2-4817, Violation of chapter; penalty. Existing subsections C and D are moved to proposed § 3.2-4815, Commissioner's actions; injunction. Subsection E is deleted since the trade secrets confidentiality is covered title-wide in Chapter 1, General Provisions, under proposed § 3.2-103, Records to be held in confidence.**

§ ~~3-1-828.12~~ 3.2-4812. Prohibited acts.

A. ~~A~~ It is unlawful for a manufacturer or guarantor of commercial feed shall not to:

1. Manufacture or distribute any commercial feed that is adulterated or misbranded;
2. Adulterate or misbrand any commercial feed;



3. Remove or dispose of a commercial feed in violation of an order issued pursuant to § ~~3.1-828.14~~ 3.2-4813;

4. Fail ~~or refuse~~ to obtain a license in accordance with § ~~3.1-828.6~~ 3.2-4803;

5. Fail ~~or refuse~~ to register medicated feed, small package commercial feed, or specialty pet food in accordance with § ~~3.1-828.7~~ 3.2-4804;

6. Obstruct or hinder the Commissioner ~~or his agent~~ in the performance of his duties under this chapter or otherwise attempt to prevent the Commissioner ~~or his agent~~ from performing these duties; or

7. Use metal of any kind, including, ~~but not limited to~~, any hook, snap, staple, or other fastener or device, to secure a package or attach any card, label, or ticket to a package containing feed.

B. ~~A~~ *It shall be unlawful for any person shall not to distribute agricultural commodities within the Commonwealth; including, but not limited to whole seeds, hay, straw, stover, silage, cobs, husks, and hulls, which that, if such commodity was commodities were commercial feed, are adulterated within the meaning of § ~~3.1-828.10~~ 3.2-4808.*

**Drafting Note: Technical changes.**

§ ~~3.1-828.14~~ 3.2-4813. Detained commercial feeds.

A. The Commissioner ~~or his agent~~ may issue and enforce a written or printed stop sale, use, removal, or seizure order to the owner or custodian of any lot of commercial feed distributed in violation of this chapter. The Commissioner ~~or his agent~~ shall release for distribution the commercial feed held under a stop sale, use, removal, or seizure order when the requirements of this chapter have been satisfied. If the Commissioner ~~or his agent~~ determines that the commercial feed cannot be brought into compliance with this chapter, the Commissioner ~~or his agent~~ shall release the commercial feed *to be*: (i) ~~to be~~ remanufactured, if possible; (ii) ~~to be~~ returned to the manufacturer; or (iii) ~~to be~~ destroyed.

B. ~~In addition to the provisions of subsection A, the~~ *The* Commissioner ~~or his agent~~ may seize any lot of commercial feed not in compliance with this chapter. The Commissioner ~~or his agent~~ may make application for seizure to a court of competent jurisdiction *an appropriate court* in the city or county in which said ~~where the~~ commercial feed is located. In the event that the court finds the said commercial feed to be in violation of this chapter, and orders the condemnation of said commercial feed, the owner of the commercial feed shall dispose of the seized commercial feed in any manner ~~which that~~, in the opinion of the Commissioner, is consistent with the quality of the commercial feed, and ~~which that~~ complies with the laws of the Commonwealth. In no instance shall the court order the disposition of said commercial feed without first giving the claimant an opportunity to apply to the court for release of said commercial feed, or for permission to process or relabel said commercial feed, to bring it into compliance with this chapter.

**Drafting Note: Technical changes.**

§ ~~3.1-828.15~~. Cooperation with other entities.

~~The Commissioner may cooperate with, and enter into agreements with, governmental agencies of the Commonwealth, and with other states, and with agencies of the federal government, and with private associations in order to carry out the purpose and provisions of this chapter.~~

**Drafting Note: Deleted section. Proposed § 3.2-102, General powers and duties of the Commissioner, contains broad language authorizing the Commissioner to enter into agreements with federal, state, and local governments, land grant universities, and other organizations.**

§ ~~3.1-828.17~~ 3.2-4814. Disposition of fees, assessments, and penalties.

All licensing, registration and inspection fees, assessments and penalties under this chapter received by the Commissioner shall be paid into a ~~dedicated special fund in the state~~

~~treasury, which fund is hereby created~~ *the Feed, Lime, Fertilizer, and Animal Remedies Fund, established in § 3.2-3616.* The fund shall be used in carrying out the purpose and provisions of this chapter, to include inspection, sampling and other expenses; except that seven cents per ton of commercial feed per license year of inspection fees received by the Commissioner shall be transferred to the Virginia Agricultural Foundation Fund pursuant to § ~~3.1-22.5~~ 3.2-2905. ~~Money in the special dedicated fund created in this section shall not revert to the general fund.~~

**Drafting Note: Provides the name of the special dedicated fund, which is established in proposed § 3.2-3617, Fund established; disposition of fees, assessments, and penalties.**

§ 3.2-4815. *Commissioner's actions; injunction.*

A.. *Nothing in this chapter shall require the Commissioner to: (i) report for prosecution; (ii) institute seizure proceedings; or (iii) issue a withdrawal from distribution order if a violation of this chapter is minor, or if the Commissioner believes the public interest will best be served by a suitable notice of warning in writing.*

B. *The Commissioner may apply for, and an appropriate court may grant, a temporary or permanent injunction, restraining any person from violating, or continuing to violate, any of the provisions of this chapter, or regulation adopted under the chapter.*

**Drafting Note: New section. Proposed subsections A and B are moved from existing subsections C and D of § 3.1-828.13, Fee for late payment of assessments; penalties; warnings; injunctions; trade secrets.**

§ 3.2-4816. *The Commissioner to cancel license and product registrations.*

*The Commissioner shall cancel the commercial feed license and product registrations of any person who fails to comply with the chapter by:*

1. *Failing to file the tonnage report;*
2. *Falsifying information;*
3. *Making an inaccurate statement of tonnage distributed in Virginia during any reporting license year;*
4. *Making an inaccurate listing of medicated feed, small packaged commercial feed, or specialty pet feed for registration;*
5. *Failing to pay the license, registration, or inspection fee;*
6. *Failing to accurately report any of the information required to be submitted under this chapter;*
7. *Failing to keep records for a period of three years; or*
8. *Failing to allow inspection of records by the Commissioner, as required by subsection F of §3.2-4806 .*

**Drafting Note: New section. This proposed section is moved from existing subsection D of § 3.1-828.7.**

3.2-4817. *Violation of chapter; penalty.*

*Any person convicted of violating any provision of this chapter is guilty of a Class 3 misdemeanor.*

**Drafting Note: New section. This proposed section is moved from existing subsection B of § 3.1-828.13.**

## CHAPTER 2949.

### ANIMAL REMEDIES.

**Chapter Drafting Note:** The sections of this chapter have been rearranged and grouped in a logical progression, starting with the definition sections, followed by provisions describing the process for registration of animal remedies, registration fees and assessments, adulteration and misbranding of remedies, the Commissioner's responsibilities, exemptions from chapter, and prohibitions and criminal penalties. Two

sections that prescribe the authorities of the Board and Commissioner are deleted because they are covered under the general powers in Chapter 1, General Provisions. References to "or his agents" when referring to the Commissioner and his powers have been deleted throughout the chapter since the Commissioner, under § 2.2-604, may delegate his authority.

~~§ 3.1-829~~ 3.2-4900. Definitions.

As used in this chapter ~~the following terms shall have the meanings respectively ascribed to them, unless the context requires a different meaning:~~

"Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to animal remedies.

"Animal" means any animate being, which is not human, endowed with the power of voluntary action.

"Animal remedies" means all drugs, combinations of drugs, proprietary medicines, and combinations of drugs and other ingredients, other than for food purposes or cosmetic purposes, ~~which~~ *that* are prepared or compounded for animal use; except those exempted by the Commissioner.

~~"Board" means the Board of Agriculture and Consumer Services.~~

~~"Commissioner" means Commissioner of Agriculture and Consumer Services.~~

~~"Department" means the Virginia Department of Agriculture and Consumer Services.~~

"Dosage form" means any animal remedy prepared in tablets, pills, capsules, ampules, or other units suitable for administration as an animal remedy.

"Drug" means ~~(i)~~ articles: (i) recognized in the latest addition or any supplement thereto of the Official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the Official National Formulary; (ii) ~~articles~~ intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals; (iii) ~~articles~~, other than food or cosmetics, intended to affect the structure or any function of the body of animals; or (iv) ~~articles~~ intended for use as a component of any articles specified in clauses (i) or (ii) of this definition.

"Label" means a display of written, printed, or graphic matter upon the immediate container of any article; ~~and a requirement made under authority of this chapter that any word, statement, or other information appearing on the label is not complied with unless such word, statement or other information also appears on the outside container or wrapper of the retail package of such article, or is easily legible through the outside container or wrapper.~~

"Labeling" means all labels and other written, printed, or graphic matter ~~(i)~~ upon any article or any of its containers or wrappers or ~~(ii)~~ accompanying such article ~~at any time.~~

"Medicated feed" means a product obtained by mixing a commercial feed and a drug.

"Quantity statement" means the net weight (mass), net volume (liquid or dry), count or other form of measurement of a commodity.

"Sell" or "sale" includes exchange.

"Stop sale, use, removal, or seizure order" means an order ~~which~~ *that* prohibits the distributor from selling, relocating, using, or disposing of an animal remedy in any manner, until the Commissioner, ~~or his agent,~~ or ~~the~~ *an appropriate court* gives written permission to sell, relocate, use or dispose of the animal remedy.

**Drafting Note: Eliminates and changes certain definitions. The definitions of "Board," "Commissioner," and "Department" are deleted since they appear as title-wide definitions in proposed § 3.2-100, Definitions. Substantive language under the definition of "label" is moved to subdivision 5 of proposed § 3.2-4907, Misbranded remedy.**

~~§ 3.1-830. Authority and delegation vested in Commissioner.~~

~~The Commissioner shall administer and enforce this chapter. The Commissioner may appoint agents to assist in carrying out the provisions of this chapter and the regulations promulgated pursuant thereto.~~

**Drafting Note: Deleted section. Language regarding the Commissioner's direction of the Department and his authority to appoint and delegate to staff appears in § 2.2-604.**

~~§ 3.1-839. Authority of Board.~~

~~The Board may promulgate and adopt such reasonable regulations as are necessary to carry out the provisions of this chapter.~~

**Drafting Note: Deleted section. The general authority for the Board to adopt regulations as a policy board is set out in Chapter 1, General Provisions and § 2.2-2100.**

~~§ 3.1-841 3.2-4901. Exemptions from chapter.~~

~~Sections 3.1-829 to 3.1-844, inclusive, do~~ *The provisions of this chapter shall not apply to or interfere with the compounding or dispensing of veterinarians' prescriptions, nor the dispensing of drugs or preparations by registered pharmacists compounded at the request of the purchaser and not intended for resale, nor shall such sections provisions apply to any animal remedy sold exclusively to or used exclusively by licensed veterinarians.*

**Drafting Note: Technical changes.**

~~§ 3.1-834 3.2-4902. Registration required.~~

A. The manufacturer or person responsible for distributing an animal remedy in the Commonwealth shall obtain a registration from the Commissioner ~~or his agent~~ for the animal remedy before placing such remedy on the market, except for medicated feeds registered under ~~subdivision A 3 of § 3.1-828.7 subsection C of § 3.2-4804~~ of the Virginia Commercial Feed Law.

B. Any person may make application for registration of any animal remedy by filing with the Commissioner, on forms furnished or approved by him, a statement with respect to such animal remedy ~~setting forth that includes:~~

1. The name and principal address of the manufacturer or person responsible for placing such animal remedy on the market ~~with~~ *and* the name and address of the person to whom correspondence should be directed; *and*

2. The name, brand, or trademark under which the animal remedy will be sold.

C. A label for any animal remedy shall accompany each application for registration, and, when requested by the Commissioner, ~~or his agent~~, a representative and true sample or specimen of each animal remedy to be registered shall accompany such application.

D. A statement of claims made or to be made ~~which~~ *that* differ from the label submitted shall be filed with the Commissioner prior to use.

~~DE.~~ If the Commissioner, ~~or his agent~~, after examination and investigation, finds that the application and labeling comply with ~~§§ 3.1-829 through 3.1-844 the provisions of this chapter,~~ a certificate of registration shall be issued to the applicant on payment of ~~an inspection a registration fee as provided in § 3.1-842 3.2-4904.~~

EF. This section does not apply to an animal remedy intended solely for investigational, experimental, or laboratory use by qualified persons, provided such remedy is plainly labeled "for investigational use only."

FG. The Commissioner may determine whether a preparation intended for animal use and subject to registration shall be registered as a commercial feed and as an animal remedy.

GH. The manufacturer or person responsible for placing on the market an animal remedy ~~which~~ *that* is offered for sale, sold or otherwise distributed in ~~this~~ *the* Commonwealth before it has been properly registered shall be subject to a late ~~inspection registration~~ fee of ~~fifty dollars~~ \$50 payable to the Commissioner in addition to the ~~inspection registration~~ fee. The registrant shall pay the late ~~inspection registration~~ fee before the registration is issued.

**Drafting Note: The last sentence of existing subsection C has become proposed subsection D. This last sentence, which requires that any claims that differ from the label on the remedy be filed prior to use and not with the application, has been moved from the**

**subsection requiring the submission of the label and true sample with the application. Replaced the term "inspection" with "registration."**

§ ~~3.1-836~~ 3.2-4903. Refusal or revocation of registration.

The Commissioner may refuse to issue any certificate of registration to any applicant, if available facts indicate, that the product proposed for registration is of negligible or no value ~~for~~ *the* in correcting, alleviating, or mitigating animal injuries or diseases for which it is intended, ~~or. The Commissioner may suspend or revoke any registration for flagrant violation of §§ 3.1-829 to 3.1-844, inclusive any provision of this chapter.~~

**Drafting Note: Changes the reference to the sections in the chapter to a reference to "any provision of this chapter."**

§ ~~3.1-842~~ 3.2-4904. ~~Inspection~~ Registration fees; terms of registration; renewal of registration.

A. The Commissioner shall, before issuing a certificate of registration for any animal remedy, collect from the applicant for such certificate, ~~an inspection a registration~~ fee of ~~twenty-five dollars~~ \$25 for each separate animal remedy registered. When an animal remedy has been registered and the ~~inspection registration~~ fee paid by the manufacturer or distributor, no other person shall be required to pay such fee.

B. The registrant shall pay ~~an inspection a registration~~ fee for the registration year of January 1 through December 31. Each registration shall expire on December 31 of the year for which it is issued. A registration is valid through January 31 of the next ensuing year or *until* the issuance of the renewal registration, whichever event ~~first~~ occurs *first*, ~~if so long as the holder thereof of the registration has filed a renewal application with the Commissioner on or before December 31 of the year for which the current registration was issued and has paid the inspection registration fee to the Commissioner. The Commissioner makes no granting of registration does not constitute the Commissioner's recommendation or endorsement of the animal remedy by granting registration.~~

C. If the Commissioner, ~~or his agent~~, identifies any unregistered animal remedy in commerce in the Commonwealth during the registration year, the Commissioner, ~~or his agent~~, shall give the person who is required to register the animal remedy, a grace period of ~~fifteen~~ 15 working days from issuance of notification ~~within which~~ to register the animal remedy. Any person required to register an animal remedy who fails to register the animal remedy within the grace period shall pay to the Commissioner a ~~fifty dollar~~ \$50 late fee in addition to the ~~inspection registration~~ fee. The Commissioner, ~~or his agent~~, may issue a stop sale, use, removal, or seizure order upon any animal remedy until the registration is issued.

**Drafting Note: Technical changes.**

§ ~~3.1-843~~ 3.2-4905. Disposition of funds collected.

All fees and assessments *received by the Commissioner* under this chapter ~~received by the Commissioner~~ shall be paid into a ~~dedicated special fund in the Feed, Lime, Fertilizer and Animal Remedies Fund, established in § 3.2-3617 state treasury to the credit of the Department,~~ to be used in carrying out the ~~purpose and~~ provisions of this chapter.

**Drafting Note: Provides the name of the special dedicated fund that is established in proposed § 3.2-3617, Fund established; disposition of fees, assessments and penalties.**

§ ~~3.1-831~~ 3.2-4906. Adulterated remedy.

An animal remedy is adulterated if:

1. It was prepared, or held under unsanitary conditions ~~whereby~~ *and as a result* it: (i) may have become contaminated with filth; or ~~whereby~~ it (ii) may have been rendered injurious to animal health.

2. Its composition, purity, strength, or quality falls below or differs from ~~that which~~ *what* it is purported or is represented to possess by its labeling; ~~but the. The Commissioner shall allow~~

a reasonable tolerance from such representation—~~as is~~, in accordance with good manufacturing practices.

3. It consists in whole or in part of any filthy, putrid or decomposed substance.

4. It bears or contains any poisonous or deleterious substance ~~which~~*that* may render it injurious to health under such conditions of use as are customary or usual.

5. Its container is composed of any injurious or deleterious substance ~~which~~*that* may render it injurious to health.

**Drafting Note: Technical changes.**

§ ~~3.1-832~~ 3.2-4907. Misbranded remedy.

An animal remedy is misbranded:

1. Unless the label bears, in the English language:

a. The name and principal addresses of the manufacturer or person responsible for placing such animal remedy on the market.

b. The name, brand, or trademark under which the animal remedy is sold.

c. An accurate quantity statement of the net contents of the package, lot, or parcel, such contents stated by weight in the case of solids, by volume in the case of liquids, and by both count and weight or volume per dose in the case of dosage forms.

d. The common or usual name of each active ingredient; in the case of a drug or drugs intended to be mixed with or in a feed for animals, and in the case of mixtures of a drug or drugs with or in a feed for animals, the English name of each active ingredient shall be stated and also the percentage of each active ingredient, or, in the case of antibiotics, the number of grams of each such active ingredient present in one pound of the product.

e. Adequate directions for use.

f. Adequate warnings against use in those conditions, whether pathological or normal, where its use may be dangerous to the health of animals, or against unsafe dosage, methods or duration of methods, administration, or application, in such manner and form, as are necessary for the protection of animals.

2. If the labeling is false or misleading in any particular.

3. If its container is ~~so~~ made, formed, or filled *so* as to be deceptive or misleading as to the amount of contents.

4. If it is dangerous to the health of animals when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling of such remedy.

5. *If any word, statement, or other information appearing on the label does not also appear on the outside container or wrapper, if present, of the retail package of such article, or is not easily legible through the outside container or wrapper.*

56. If any word, statement, or other information required to appear on the label is not prominently placed on ~~such~~ *the* label with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms, ~~as to render it~~ *that it is* likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Any animal remedy that is manufactured and distributed under license from and under the supervision of the ~~United States~~ *U.S.* Department of Agriculture, and in compliance with the regulations of such department complies with this section.

**Drafting Note: Language in proposed subdivision 5 describing what constitutes misbranding is moved from the definition of "label" in existing § 3.1-829.**

§ ~~3.1-833~~ 3.2-4908. Withholding noncomplying remedies from sale; tagging, condemnation ~~and~~, destruction, *and correction* of adulterated or misbranded remedies; ~~correction of adulteration or misbranding~~.

A. The Commissioner, ~~or his agent~~, shall ~~cause~~ *require those* animal remedies, ~~which that~~ are found or believed not to comply with §§ ~~3.1-829 through 3.1-844, inclusive~~, *the provisions of*

*this chapter* to be withheld from sale ~~pending~~ until he determines that the remedies are in compliance with such ~~sections~~ provisions.

~~1B.~~ Whenever the Commissioner, ~~or his agent,~~ finds or has reasonable cause to believe an animal remedy is adulterated or misbranded 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 and has been detained and warning all persons not to dispose of such article in any manner until permission is given by the Commissioner, ~~or his agent,~~ or ~~the~~ *an appropriate court*. Any such article may be removed from display by the manufacturer or vendor, but ~~must be left shall remain~~ on the premises.

~~2C.~~ If such a detained article is found, after examination and analysis, to be adulterated or misbranded, the Commissioner may petition the judge of any *appropriate court* ~~of competent jurisdiction~~ in whose jurisdiction the article is detained for condemnation ~~of such article~~. If the Commissioner finds that such detained article is not adulterated or misbranded, he shall remove the tag or other marking.

~~3D.~~ If the court finds that a detained animal remedy is adulterated or misbranded, such article shall, after entry of the decree, be destroyed, *under the supervision of the Commissioner*, at the expense of the defendant, ~~under the supervision of the Commissioner, or his agent; all.~~ All court costs and fees, and storage and other proper expenses, shall be ~~levied against~~ *paid by* the defendant or his agent.

~~4E.~~ If the adulteration or misbranding can be corrected by proper processing or labeling of the article, ~~the~~ *an appropriate court*, after entry of the decree and after such costs, fees, and expenses have been paid and a sufficient bond, conditioned that such article shall be so processed or labeled, has been executed, may order such article to be delivered to the defendant for such processing or labeling under the supervision of the Commissioner, ~~or his agent~~. The expense of such supervision shall be paid by the defendant. The bond shall be returned to the defendant on the representation to the court by the Commissioner that the article no longer violates  ~~§§ 3.1-829 through 3.1-844, inclusive,~~ *any of the provisions of this chapter* and that expenses incident to such proceeding were paid.

**Drafting Note: Technical changes.**

~~§ 3.1-835 3.2-4909.~~ Investigations by Commissioner; right of access; securing and examining samples; obstructing Commissioner ~~or agent~~; penalty.

The Commissioner shall make all necessary investigations pertinent to the enforcement of  ~~§§ 3.1-829 to 3.1-844~~ *this chapter*.

The Commissioner, ~~or his agent,~~ shall have free access during operating hours to any establishment in which animal remedies are manufactured, processed, packed, sold or offered for sale, to inspect such premises and to determine whether ~~such sections~~ *the provisions of this chapter* are being violated.

The Commissioner, ~~or his agent,~~ may secure samples or specimens of any animal remedy after paying or offering to pay for them, and he shall have an examination or analysis made of such sample to determine whether ~~such sections~~ *the provisions of this chapter* are being violated. Any person who hinders or obstructs in any way the Commissioner ~~or his agent~~ in the performance of his official duties ~~shall be~~ *is* guilty of a Class 3 misdemeanor.

**Drafting Note: Technical changes.**

~~§ 3.1-838 3.2-4910.~~ Use of information acquired by Commissioner or employees of Department.

The Commissioner or any employee of the Department ~~of Agriculture and Consumer Services~~ shall not use or reveal information acquired under  ~~§§ 3.1-834 3.2-4902 and 3.1-835 3.2-4909~~ except in the enforcement of this chapter, or to the courts, when relevant in any judicial proceeding.

**Drafting Note: Technical changes.**

§ ~~3.1-840~~ 3.2-4911. Publication of information by Commissioner.

The Commissioner may publish at such times and in such forms as he may deem proper, information concerning the sales of animal remedies, together with ~~such~~ data on their production and use as ~~he may consider advisable~~, and a report of the results of the analyses of official samples of animal remedies sold within the Commonwealth as compared with the analyses guaranteed in the registration and on the label; ~~provided, however, that the~~. *The* information concerning production and use of animal remedies shall not disclose the operations of any person.

**Drafting Note: Technical changes.**

§ ~~3.1-837~~ 3.2-4912. Prohibitions.

A. ~~No person shall~~ *It is unlawful for any person to:*

1. Sell, deliver, hold, or offer for sale any animal remedy ~~which~~*that* has not been registered with the Commissioner as provided in § ~~3.1-834~~ 3.2-4902, except that any biological product for use on or testing of any livestock, poultry, or any animal, manufactured under a license issued by the ~~United States~~*U.S.* Department of Agriculture, shall not be considered as being subject to the registration requirements of such section.

2. Manufacture, sell, deliver, hold, or offer for sale any animal remedy that is adulterated or misbranded.

3. Compound, manufacture, make, produce, pack, package, or prepare within ~~this~~ *the* Commonwealth any animal remedy to be offered for sale or distribution unless such compounding, manufacture, making, producing, packaging, packing, or preparing is done with adequate equipment under the supervision of a licensed veterinarian, a graduate chemist, a licensed pharmacist, a licensed physician, or some other person as may be approved by the Commissioner after an investigation and a determination by the Commissioner that they are qualified by scientific or technical training or by experience to perform such duties of supervision as may be necessary to protect animal health and public safety.

4. Disseminate any advertisement ~~which~~ *that* is false or misleading ~~in any respect, but no~~. *No* person or medium for the dissemination of any advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is subject to the penalties for violations of §§ ~~3.1-829 to 3.1-844~~ by reason of the dissemination by him of ~~this chapter for disseminating~~ such false advertisement, unless he refused, on the request of the Commissioner, to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency ~~which~~*that* caused him to disseminate such advertisement.

5. Dispose of a detained article in violation of § ~~3.1-833~~ 3.2-4908.

6. Give a guaranty ~~which~~ *that* is false, except a person who relied on a ~~the~~ guaranty ~~to the same effect~~ signed by, and containing the name and address of, the person from whom he received the animal remedy in good faith.

7. Alter, mutilate, destroy, obliterate, or remove any part of the labeling of any animal remedy if such acts result in ~~such~~ *the* animal remedy being misbranded, or do any other act, while ~~such~~ *the* animal remedy is being held for sale, ~~which~~ *that* results in the misbranding of such article.

8. Forge, counterfeit, simulate, or falsely represent, or without proper authority use, any mark, stamp, tag, label, or other identification device required by § ~~3.1-832~~ 3.2-4907.

9. Sell or offer to sell any biological product for use on any livestock, poultry, or other animal, unless such product is manufactured under a license issued by the ~~United States~~*U.S.* Department of Agriculture or a registration issued by the Commissioner, or unless such product meets the requirements of the federal "Food, Drug and Cosmetic Act."

10. Sell or offer to sell any biological product that has not been kept in refrigeration under conditions prescribed by the ~~rules and~~ regulations of the Board.



B. The Commissioner, ~~or his agent,~~ shall ~~make an assessment upon~~ assess any person who commits a prohibited act under this chapter ~~ten-10~~ percent of the retail price of the animal remedy at the time of sampling on the product found in violation, or ~~fifty dollars \$50,~~ whichever is greater, not to exceed \$5,000 per occurrence. The person ~~on whom the assessment is made~~ assessed shall pay the assessment to the Commissioner within ~~sixty~~ 60 days from the date of notice to the person whose name appears on the label. Any person who fails to pay the assessment within the specified time shall pay a late fee of ~~fifty dollars \$50~~ to the Commissioner in addition to the assessment. The Commissioner shall revoke the registration of any person who fails to pay the assessment.

**Drafting Note: Technical changes.**

§ ~~3.1-844~~ 3.2-4913. Report of violations; duty of attorney for the Commonwealth.

The Commissioner shall report violations of this chapter, to the ~~proper prosecuting authorities~~ attorney for the Commonwealth.

It shall be the duty of every attorney for the Commonwealth, to whom the Commissioner shall report any violation of this chapter, to ~~cause commence~~ proceedings ~~to be prosecuted and prosecute~~ without delay.

This section shall not require the Commissioner, ~~or his agent,~~ to report, for the institution of prosecution under such sections, minor violations of this chapter if he believes the public interest will be adequately served in the circumstances by a suitable written notice of warning.

In all prosecutions under this chapter involving the composition of an animal remedy, a certified copy of the official analysis signed by the analyst shall be accepted as prima facie evidence of the composition, provided the defendant has been furnished a copy thereof in advance of the trial.

**Drafting Note. Technical changes.**

§ ~~3.1-845~~ 3.2-4914. Violation of chapter or ~~rules and~~ regulations a misdemeanor.

Any person convicted of violating any provisions of this chapter ~~or the rules and the regulations issued thereunder shall be~~ hereunder is guilty of a Class 1 misdemeanor, *except as otherwise provided.*

**Drafting Note: The phrase "except as otherwise provided" is used because, under proposed § 3.2-4910, Use of information acquired by Commissioner or employees of Department, a Class 3 misdemeanor is imposed for hindering or obstructing the Commissioner in the performance of his official duties.**

## CHAPTER 3450.

### FARM MACHINERY AND EQUIPMENT.

**Chapter Drafting Note: Updates the penalty in accordance with the current classification for misdemeanor penalties in Title 18.2.**

§ ~~3.1-948~~ 3.2-5000. Sale of farm machinery or equipment where serial number has been removed, defaced or obliterated; *penalty.*

*Any A. It is unlawful for any person who shall knowingly to sell or offer for sale in this the Commonwealth any new and unused agricultural implement, farm tractor, or other type of farm machinery or equipment, which is identified by a serial number placed thereon by the manufacturer, knowing that the manufacturer's original serial number of which has been removed, defaced, or in any way obliterated, shall be punished by a fine of not more than \$500, or by imprisonment in the county jail for a term of not less than 30 nor more than 180 days, either or both, and upon a second or subsequent conviction, shall be punished by imprisonment and fine. Any person who violates this subsection is guilty of a Class 2 misdemeanor. A person convicted of a second or subsequent offense under this subsection is guilty of a Class 1 misdemeanor.*

B. The dealer in farm equipment who possesses for sale any farm implement or machinery ~~which~~*that* has had its serial number removed, defaced, or in any way obliterated, shall have his supplier stamp, attach or scribe, as was originally done, the same serial number as was placed upon the machine or implement at the time of its manufacture. Nothing contained in this section shall be construed to prevent any manufacturer or importer, or his agents, other than dealers, from doing his own numbering on agricultural implements, farm tractors, or other types of farm machinery or equipment, or parts, removed or changed, and replacing the numbered parts. ~~The provisions of this section shall apply only to agricultural implements, farm tractors, or other types of farm machinery or equipment which are sold after June 28, 1952.~~

**Drafting Note: Changes the penalty provision so it is consistent with current misdemeanor classifications and removes an obsolete provision.**

*Subtitle IV.*

*Food and Drink; Weights and Measures.*

CHAPTER ~~2051.~~

FOOD AND DRINK ~~GENERALLY.~~

Article 1.

~~§~~ *General Provisions.*

**Chapter Drafting Note: Consolidated several sections that cover similar subject areas, such as sanitary requirements, and eliminated duplicative provisions. Several of the Commissioner's duties were moved from Articles 3 and 4 to proposed Article 1. Sections were rearranged to reflect a more logical sequence. References to "or his agents" when referring to the Commissioner and his powers have been deleted throughout the chapter since the Commissioner, under § 2.2-604, may delegate his authority.**

~~§ 3.1-361. Powers and duties of former Dairy and Food Commissioner.~~

~~All the powers conferred and all the duties imposed by law upon the former Dairy and Food Commissioner and the Deputy Dairy and Food Commissioner shall be vested in and shall be exercised or performed by the Commissioner of Agriculture and Consumer Services, without additional compensation, under the direction of the Board of Agriculture and Consumer Services.~~

**Drafting Note: Deleted section. The Commissioner is given broad powers in Chapter 1 to “develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities...”**

~~§ 3.1-402 3.2-5100. Duty-Duties of Commissioner in general.~~

A. It shall be the duty of the Commissioner to inquire ~~carefully~~ into the dairy and food and drink products, and the ~~several~~ articles ~~which~~*that* are food or drinks, or the necessary constituents of the food or drinks, ~~which~~*that* are manufactured ~~or~~, sold, ~~or~~ exposed, or offered for sale in ~~this~~*the* Commonwealth.

B. *The Commissioner may procure samples of the dairy and food products covered by this chapter and may have the samples analyzed.*

C. *The Commissioner shall make a complaint against the manufacturer or vendor of any food or drink or dairy products that are adulterated, impure, or unwholesome, in contravention of the laws of the Commonwealth, and furnish all evidence to obtain a conviction of the offense charged. The Commissioner may make complaint and cause proceedings to be commenced against any person for enforcement of the laws relative to adulteration, impure, or unwholesome food or drink, and in such cases he shall not be obliged to furnish security for costs.*

**Drafting Note: Proposed subsection B is moved from existing § 3.1-403, Duty of Commissioner as to procuring and having samples analyzed. Proposed subsection C is**

**moved from existing § 3.1-404, Duty of Commissioner to make complaints against manufacturers or venders. All three of these subsections are moved from existing Article 4, Seizures, prosecutions and penalties and enforcement generally.**

~~§ 3.1-394 3.2-5101. Commissioner-Board~~ authorized to ~~make~~ *adopt* regulations as to food labeling, definition and standard of identity, standard of quality, fill of container and tolerances; *exception*.

A. Whenever in the judgment of the Commissioner ~~such~~ action will promote honesty and fair dealing in the interest of consumers, the Board shall ~~promulgate~~ *adopt* regulations fixing and establishing for any food or class of food: labeling requirements; a reasonable definition and standard of identity; and a reasonable standard of quality and fill of container, or tolerances or limits of variability, ~~except that any regulations promulgated pertaining to this section shall not apply to not for profit organizations holding one day food sales. However, the Commissioner may require the Department to disseminate to not for profit organizations educational materials related to the safe preparation of food for human consumption.~~ In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Board shall, for the purpose of promoting honesty and fair dealing in the interest of the consumers, designate the optional ingredients ~~which~~ *that* shall be named on the label. The definitions and standards so ~~promulgated~~ *adopted* may conform so far as practicable to the definitions and standards promulgated by the Secretary of Health and Human Services under authority conferred by section 401 of the federal act.

B. *Any regulations adopted pertaining to this section shall not apply to nonprofit organizations holding one-day food sales. The Commissioner may disseminate to nonprofit organizations educational materials related to the safe preparation of food for human consumption.*

**Drafting Note: Proposed subsection B is language moved from existing subsection A.**

~~§ 3.1-399 3.2-5102.~~ Commissioner to have access to factories, warehouses, and other places; examination of samples.

The Commissioner, ~~acting through his duly authorized agents,~~ shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods in commerce, or any store, restaurant, or other place in which food is being offered for sale; for the purpose of:

(1) ~~Of inspecting~~ *1. Inspecting* such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this ~~article~~ *chapter* are being violated; and

(2) ~~Of securing~~ *2. Securing* samples or specimens of any food after paying or offering to pay for such sample. It shall be the duty of the Commissioner to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this ~~article~~ *chapter* is being violated.

This section shall not apply to nonprofit organizations holding one-day food sales.

**Drafting Note: Moved this section from existing Article 3.**

~~§ 3.1-364 3.2-5103.~~ Standards of variability permissible to any article of food.

The Commissioner with the approval of the Board shall ~~from time to time, fix~~ *establish* and publish standards or limits of variability permissible in any article of food, and these standards ~~when so published~~ shall be the standards before all courts. When standards have been or may be ~~fixed~~ *established* by the ~~Secretary of Agriculture of the United States~~ *U.S. Department of Health and Human Services*, they shall be accepted by the ~~Department of Agriculture and Consumer Services~~ and published as standards for ~~Virginia~~ *the Commonwealth*, but such standards shall not go into effect until a reasonable time after publication. The Commissioner, with the approval of the Board, shall have authority to ~~make~~ *adopt* uniform ~~rules and~~ regulations for carrying out the provisions of this section.

**Drafting Note: The Food and Drug Administration is now part of the Department of Health and Human Services.**

~~§ 3.1-363~~ 3.2-5104. Chemical work incident to execution of laws.

The chemical work incident to the execution of the provisions of this chapter shall be provided by the Division of Consolidated Laboratory Services.

**Drafting Note: No changes.**

Article 2.

Sanitary Requirements ~~in General.~~

~~§ 3.1-365~~ 3.2-5105. ~~Meaning-Definition~~ of term "food."

The term "food" as used ~~herein shall include in this article means~~ all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof, *intended for human consumption and introduction into commerce.*

**Drafting Note: Language "intended for human consumption and introduced into commerce" was added to clarify the definition and reflect current practice.**

~~§ 3.1-366~~ 3.2-5106. ~~Lights, drains, plumbing, ventilation and general purity and wholesomeness~~ *Sanitary conditions of food establishments.*

A. Every ~~building, room, basement, or cellar occupied or used as a bakery, confectionery, cannery, packinghouse, slaughterhouse, dairy, creamery, cheese factory, restaurant, hotel, grocery, meat market or other place or apartment~~ used for the preparation for sale, manufacture, packing, storage, sale, or distribution of any food ~~or food products~~ shall be properly lighted, drained, plumbed, and ventilated, and ~~conducted~~ *shall be operated* with ~~due~~ *strict* regard for the purity and wholesomeness of the food ~~therein~~ produced, and with strict regard to the influence of such conditions upon the health of ~~the operatives, employees, clerks~~ *any worker* or ~~other persons therein employed~~ *employee.*

B. *The floors, sidewalls, ceilings, furniture, receptacles, implements, and machinery of every place where food is manufactured, packed, stored, sold, or distributed, shall at all times be kept in a clean, healthful, and sanitary condition.*

C. *All refuse, dirt, and waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling, and distributing of food, shall be removed from the premises daily.*

**Drafting Note: Proposed subsection B is moved from existing § 3.1-367. Proposed subsection C is moved from existing § 3.1-369.**

~~§ 3.1-367.~~ Floors, walls, ceilings, furniture, implements, etc.

~~The floors, sidewalls, ceilings, furniture, receptacles, implements and machinery of every establishment where food is manufactured, packed, stored, sold or distributed, shall at all times be kept in a clean, healthful and sanitary condition.~~

**Drafting Note: Deleted section and moved to subsection B of proposed § 3.2-5106, Sanitary conditions of food establishments.**

~~§ 3.1-369.~~ Matter subject to decomposition and fermentation.

~~All refuse, dirt and the waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling and distributing of food, must be removed from the premises daily.~~

**Drafting Note: Deleted section and moved to subsection C of proposed § 3.2-5106, Sanitary conditions of food establishments.**

~~§ 3.1-372~~ 3.2-5107. Plastering and painting sidewalls and ceilings; *interior woodwork; floors.*

~~The sidewalls and ceilings of every bakery, confectionery, creamery, cheese factory, hotel and restaurant kitchen;~~ A. Any place where food is manufactured, produced, prepared, processed, packed, or exposed shall be: (i) keep its sidewalls and ceilings well plastered, wainscoted, or ceiled, preferably with metal or lumber, and shall be kept oil-painted or well limewashed; and (ii) keep all interior woodwork clean and washed with soap and water.

B. Every building, room, basement, or cellar occupied or used for the preparation, manufacture, packing, storage, sale, or distribution of food, shall have an impermeable floor made of cement or tile, laid in cement, brick, wood, or other suitable nonabsorbent material that can be flushed and washed clean with water.

**Drafting Note: Clause (ii) is moved from existing § 3.1-373; subsection B is moved from existing § 3.1-374.**

~~§ 3.1-373. Washing interior woodwork.~~

~~All interior woodwork in every bakery, confectionery, creamery, cheese factory, hotel and restaurant kitchen shall be kept washed and clean with soap and water.~~

**Drafting Note: Deleted section. Moved to clause A (ii) of proposed § 3.2-5107, Plastering and painting sidewalls and ceilings; interior woodwork; floors.**

~~§ 3.1-374. Floors.~~

~~Every building, room, basement or cellar occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food, shall have an impermeable floor made of cement or tile, laid in cement, brick, wood or other suitable nonabsorbent material which can be flushed and washed clean with water.~~

**Drafting Note: Deleted section. Moved to subsection B of proposed § 3.2-5107, Plastering and painting sidewalls and ceilings; interior woodwork; floors.**

~~§ 3.1-375~~ 3.2-5108. Sleeping arrangements.

The sleeping place or places for persons employed in such establishments *any food establishment* shall be separate and apart from the room in which food products are manufactured or stored, and no person shall sleep in any place where flour, meal, or the ~~any~~ manufactured products thereof are manufactured or stored.

**Drafting Note: Technical changes.**

~~§ 3.1-380~~ 3.2-5109. Washrooms and toilets.

~~Every~~ Any place in which human foods are ~~where~~ food is manufactured, prepared, exposed, or offered for sale shall be ~~provided with~~ have a convenient washroom and toilet of sanitary construction, but such toilet shall be entirely separate and apart from any room used for the manufacture or storage of food products.

**Drafting Note: Technical changes.**

~~§ 3.1-370~~ 3.2-5110. Daily cleaning of instruments and machinery.

All trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers, and other utensils and machinery used in moving, handling, cutting, chopping, mixing, canning, and ~~all~~ any other process, ~~must~~ shall be thoroughly cleaned daily.

**Drafting Note: Technical changes.**

~~§ 3.1-368~~ 3.2-5111. ~~Protection~~ Food protected from flies, dust, and dirt.

Food in the process of manufacture, preparation, packing, storing, sale, or distribution, ~~must~~ shall be securely protected from flies, dust, dirt, and as far as may be necessary, from all other foreign or injurious contamination. The provisions of this regulation shall also apply to the following fruits: grapes, raisins, currants, figs, prunes, dates, berries, cherries and plums.

**Drafting Note: Deleted the last sentence as unnecessary. The items listed fall within the definition of food and do not need to be identified separately.**

~~§ 3.1-371~~ 3.2-5112. Clothing of employees.

The clothing of ~~operatives, employees, clerks, any worker or other persons~~ must *employee shall* be clean.

**Drafting Note: Technical changes.**

~~§ 3.1-377~~ 3.2-5113. Employees with contagious or infectious disease.

No employer shall knowingly permit, *or require or suffer* any person to work in ~~a bakery, confectionery, cheese factory, dairy, creamery, hotel or restaurant kitchen~~ *any place where food is manufactured, produced, prepared, processed, packed, or exposed*, who is afflicted with any contagious or infectious disease, or with any skin disease.

**Drafting Note: Technical changes.**

~~§ 3.1-379~~ 3.2-5114. Smoking.

Smoking *is prohibited* in workrooms of food-producing establishments ~~is prohibited~~.

**Drafting Note: Technical changes.**

~~§ 3.1-376~~ 3.2-5115. ~~Domestic animals~~ *Animals*.

No ~~domestic animals~~ *animal* shall be permitted to ~~remain~~ in any ~~room~~ *area* used for the manufacture or storage of food products. *A guard or guide animal may be allowed in some areas if the presence of the animal is unlikely to result in contamination of food, food contact surfaces, or food packaging materials.*

**Drafting Note: To clarify and update this section, the language is modeled after federal regulation, 21 C.F.R. § 110.35 (2005).**

~~§ 3.1-382.1~~ 3.2-5116. Metal beverage containers with detachable metal pull tabs.

~~On and after January 1, 1979, no~~ *It is unlawful for any person shall* to sell or offer for sale at retail within the Commonwealth any metal beverage container or any composite beverage container designed and constructed with an all metal pull tab opening device that detaches from the container when the container is opened in a manner normally used to empty the contents of the container. *Provided, however, that producers of products, other than beer and carbonated soft drinks, who are not able to be in compliance on January 1, 1979, shall submit a request for an exemption to the Commissioner of Agriculture and Consumer Services justifying to the satisfaction of the Commissioner their inability to comply on January 1, 1979, or who were not subject to the law on that date shall comply as soon after January 1, 1979, as possible but no later than July 1, 1980. The Commissioner shall be authorized to grant such requests for exemption. For the purpose of this section, the term "beverage" shall mean beer as defined in § 4.1-100, or other malt beverages and mineral waters, soda water and formulated soft drinks, with or without carbonation.*

**Drafting Note: Obsolete language is deleted.**

~~§ 3.1-381~~ 3.2-5117. Penalty for violation of ~~preceding sections~~; *misdemeanor*.

Any person, ~~firm, corporation or association~~ violating any of the provisions of the ~~preceding sections of this article~~ shall be §§ 3.2-5106 through 3.2-5116 *is* guilty of a Class 3 misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$300.

**Drafting Note: Proposed §§ 3.2-5106, Sanitary conditions of food establishments, through 3.2-5116, Metal beverage containers with detachable metal pull tabs, include existing §§ 3.1-366 through 3.1-380 and 3.1-382.1. The penalty provision is classified as a Class 3 misdemeanor, which authorizes punishment of a fine of not more than \$500.**

~~§ 3.1-382~~ 3.2-5118. Sterilization of bottles and containers.

A. All bottles, jugs, cans, barrels, and containers used in the packing, bottling, storage, distribution, and sale of nonalcoholic beverage and drink products ~~must~~ *shall* be sterilized before ~~using~~ by one of the following methods *before using*:

(a) 1. By sterilization with boiling water or live steam; *or*

(b) 2. By soaking in a hot caustic solution that shall contain not less than three ~~per centum~~ *percent* alkali, of which not less than ~~sixty per centum~~ *60 percent* is caustic, or its equivalent in

cleansing or germicidal effectiveness as such solutions are commonly used in the soaker-type washing and sterilizing equipment.

~~If during any period when the General Assembly is not in session other equally efficient methods of sterilization shall be~~ *are* developed, the Commissioner ~~is authorized to~~ *may* approve ~~any such other efficient~~ *those* methods of sterilization.

~~B. Any violation of the provisions of this section or failure to comply with such provisions shall be~~ *is* a *Class 1* misdemeanor and punishable as such.

**Drafting Note: Classified misdemeanor in accordance with § 18.2-12 as a Class 1 misdemeanor.**

~~§ 3.1-383. Food forbidden to be sold; seizure; prosecution and punishment; inspection.~~

~~It shall be unlawful for any person to sell or to offer or expose for sale for human food any article which has been prepared, handled or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious, or otherwise unfit for human food, or which consists in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter.~~

~~The Commissioner, his agents or assistants, and all peace and health officers shall have the power and are required to seize any and all articles which are offered or exposed for sale for human food, which have been prepared, handled or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious or otherwise unfit for human food, or which consist in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter; and shall deliver the same forthwith to and before the nearest magistrate, or other officer authorized to issue such warrants, together with all information obtained, and the magistrate or other officer shall, upon sworn complaint being filed, issue a warrant, for the arrest of any person charged in any such complaint with a violation of the provisions of this section, returnable before the general district court, which shall proceed to try the case. Any person who shall violate any of the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$10 nor more than \$100, and the article or articles of food in question shall be destroyed.~~

~~The Commissioner, his agents or assistants, and all peace and health officers in the execution of the provisions of this section, shall have full right to enter and inspect all places in which any articles of human food are stored, offered or exposed for sale; and any person who shall hinder or obstruct any of the officers in the discharge of the authority or duty imposed by the provisions of this section shall be guilty of a violation of the same.~~

**Drafting Note: Deleted section. Existing §§ 3.1-388, 3.1-395, 3.1-399, 3.1-402, 3.1-408, 3.1-405, and 3.1-416 adequately address the contents of this section.**

~~§ 3.1-384. Selling unsound provisions, how punished.~~

~~If any person knowingly sell any diseased, corrupted, or unwholesome food, whether meat or drink, intended for human consumption, without making the same known to the buyer, he shall be fined not exceeding \$100 or confined in jail not exceeding six months, or both. The meat of any animal which has developed the disease of actinomyces or lumpy jaw shall be deemed diseased, corrupted, and unwholesome and within the provisions of this section.~~

**Drafting Note: Deleted section. “Unsound” or “unwholesome” food falls within adulterated food, which is covered under proposed Article 3 of this chapter.**

~~§ 3.1-385 3.2-5119. Transportation or storage under insanitary-unsanitary conditions; penalty.~~

~~A. It shall be unlawful for any person, firm or corporation, or for any transportation company, express company, railroad company or steamboat company or any common carrier to permit insanitary-unsanitary conditions to exist in the transportation or storage of an article of food intended for introduction into commerce, whereby such article of food if the unsanitary~~

~~conditions may become contaminated from being so transported or stored in insanitary surroundings contaminate the article of food.~~

~~B. Any person, firm or corporation who shall violate violates any of the provisions of this section shall be is guilty of a Class 2 misdemeanor, and upon conviction shall be punished by a fine of not less than \$5 nor more than \$100, and costs of prosecution, or by imprisonment in the county or city jail not to exceed ninety days, or until such fine and costs are paid, or by both fine and imprisonment at the discretion of the court.~~

~~C. The Commissioner is charged with the enforcement of this section, and he and his assistants or agents shall have full right is empowered to enter and inspect all stores, warehouses, freight or express cars, steamboats or steamships, trucks, dray wagons, and any and all means or places of transportation or storage of articles of food; and any. Any person, firm or corporation who shall hinder or obstruct hinders or obstructs the Commissioner, his assistants or agents in the discharge of the authority or duty imposed upon him or them by the provisions of this section, shall be is guilty of a violation of the same Class 2 misdemeanor.~~

~~D. Whenever any article of food is transported or stored under insanitary-unsanitary conditions, the proceedings for the enforcement of the penalties and punishments fixed for violations of this section may be instituted and maintained in any county or city through which or in which such article of food has been or is so transported or stored under insanitary-unsanitary conditions as aforesaid.~~

**Drafting Note: The penalty provision is changed and classified as a Class 2 misdemeanor, which authorizes punishment for conviction as confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.**

### Article 3.

#### Adulteration, Misbranding, and False Advertising in General.

##### ~~§ 3-1-386. Title.~~

~~This article may be known, designated and cited as the "Virginia Food Act."~~

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

##### ~~§ 3-1-387 3.2-5120. Definitions.~~

~~For the purpose of As used in this article, unless the context requires a different meaning:~~

~~(1) The term "Commissioner" means the Commissioner of Agriculture and Consumer Services. The term "Board" means the Board of Agriculture and Consumer Services.~~

~~(2) The term "person" includes an individual, partnership, corporation and association.~~

~~(3) The term~~

~~"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food.~~

~~"Butter" means the food product generally known as butter, which is made exclusively from milk or cream, or both, with or without common salt, and with or without coloring matter, and containing not less than 80 percent by weight of milk fat, having allowed for all tolerances.~~

~~"Contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.~~

~~"Federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. § 301 et seq.).~~

~~"food" "Food means (1) articles used for food or drink for man all articles used for food, drink, confectionery, or condiment, for humans or other animals, (2) chewing gum, and (3)~~



~~articles used for components of any such article whether simple, mixed, or compound, and all substances or ingredients used in the preparation thereof.~~

~~"Immediate container" does not mean package liners.~~

~~(4) The term "label" "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 article that any word, statement, or other information appearing 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.~~

~~(5) The term "immediate container" does not include package liners.~~

~~(6) The term "labeling" "Labeling" means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.~~

~~(7) If an article is alleged to be misbranded because the label is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.~~

~~(8) The term "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 food.~~

~~(9) The term "contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.~~

~~(10) The provisions of this article regarding the selling "Selling of food" shall be considered to include means the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; the sale of any such article; and the supplying of any such articles in the conduct of any food establishment.~~

~~(11) The term "federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. § 301 et seq.; 52 Stat. 1040 et seq.).~~

~~(12) For the purposes of this article, "butter" shall be understood to mean the food product generally known as "butter," which is made exclusively from milk or cream, or both, with or without common salt, and with or without coloring matter, and containing not less than eighty per centum by weight of milk fat, all tolerances having been allowed for.~~

**Drafting Note: Alphabetized the definitions. Deleted the definition of person because of the Code-wide definition provided in Title 1. Deleted the definitions of "Board" and "Commissioner" because of the title-wide definitions provided in proposed Chapter 1. Deleted language in subdivision (4) of what legally constitutes a label and moved it to proposed subdivision A 2 of § 3.2-5123, Misbranded food. Deleted subdivision (7) and moved the language to proposed subsection B of § 3.2-5123, Misbranded food.**

~~§ 3.1-398 3.2-5121. Authority to make adopt regulations; conformity with federal regulations; hearings; enforcement of article; review of regulations.~~

~~A. The authority Board is authorized to promulgate adopt regulations for the efficient enforcement of this article is hereby vested in the Board, unless specially conferred on that authority is specifically granted to the Commissioner. The Board is hereby authorized to may make the regulations promulgated adopted under this article conform, insofar as practicable with those promulgated adopted under the federal act. Notwithstanding any other requirement under~~

the Administrative Process Act (§ 2.2-4000 et seq.) to the contrary, the Commissioner may adopt any regulation under the federal act without public hearing. Such regulation shall be effective upon filing with the Registrar of Regulations. The Board, at its next regular meeting, shall adopt the regulation after notice but without public hearing unless a petition is filed in accordance with subsection F.

B. The Board may adopt any edition of the Food and Drug Administration's Food Code, or supplement thereto, or any portion thereof, as regulations, with any amendments as it deems appropriate. In addition, the Board may repeal or amend any regulation adopted pursuant to this subsection. No regulations adopted or amended by the Board pursuant to this subsection; ~~however,~~ shall establish requirements for any license, permit or inspection unless such license, permit or inspection is otherwise provided for in this title. The provisions of the Food and Drug Administration's Food Code shall not apply to farmers selling their own farm-produced products directly to consumers for their personal use, whether such sales occur on such farmer's farm or at a farmers' market, unless such provisions are adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

C. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the adoption of any regulation pursuant to subsection B if the Board of Health adopts the same edition of the *Food and Drug Administration's* Food Code, or the same portions thereof, pursuant to subsection C of § 35.1-14 and the regulations adopted by the Board and the Board of Health have the same effective date. In the event that the Board of Health adopts regulations pursuant to § 2.2-4012.1, the effective date of the Board's regulations may be any date on or after the effective date of the regulations adopted by the Board of Health.

Notwithstanding any exemption to the contrary, a regulation ~~promulgated~~ *adopted* pursuant to subsection B shall be subject to the requirements set out in §§ 2.2-4007.03, 2.2-4007.04, and 2.2-4007.05, and shall be published in the Virginia Register of Regulations. After the close of the 60-day comment period, the Board may adopt a final regulation, with or without changes. Such regulation shall become effective 15 days after publication in the Virginia Register, unless the Board has withdrawn or suspended the regulation, or a later date has been set by the Board. The Board shall also hold at least one public hearing on the proposed regulation during the 60-day comment period. The notice for such public hearing shall include the date, time and place of the hearing.

D. Hearings authorized or required by this article shall be conducted by the Board, the Commissioner or such officer, agent, or employee as the Board may designate for the purpose.

E. ~~It shall be the duty of the~~ *The* Commissioner ~~to shall~~ coordinate enforcement of this article with the applicable federal agencies charged with enforcement of the federal act, in order to avoid unnecessary or unjustified conflict between enforcement of this article and the federal act as to Virginia food manufacturers, processors, packers, and retailers.

F. ~~It shall be the duty of the~~ *The* Board or Commissioner *shall* from time to time for good cause shown to review the regulations and enforcement guidelines ~~promulgated~~ *adopted* pursuant to this article. If the Commissioner finds that any federal regulation or enforcement guideline ~~which shall include~~ *that includes* any tolerance or action level ~~is not in consonance with~~ *that does not protect* the health and welfare of the citizens of the Commonwealth, he shall petition the appropriate federal agency ~~or agencies~~ to change the federal regulation or enforcement guideline.

G. The Commissioner or any interested party for good cause shown may request the Board to hold a public hearing concerning any regulation or enforcement guideline. If the Board after hearing finds that the regulation or enforcement guideline ~~is not in consonance with~~ *does not protect* the health and welfare of the citizens of ~~this the~~ Commonwealth, it shall adopt a new regulation or enforcement guideline ~~that is in consonance with the health and welfare of the citizens of this Commonwealth.~~ Within the limits of personnel and funds available all state

agencies and institutions shall cooperate and assist in furnishing information and data as to whether the regulations or enforcement guidelines in question are in consonance with protect the health and welfare of the citizens of this the Commonwealth.

**Drafting Note: “Food and Drug Administration’s” is added to “Food Code” in subsection C to be consistent with subsection B. The authority to adopt regulations to conform to federal law has been changed from Article 3 to apply to chapter.**

~~§ 3-1-395 3.2-5122. When food deemed adulterated~~ *Adulterated food.*

A food shall be deemed to be adulterated if:

~~(a) (1) If it~~ 1. It bears or contains any poisonous or deleterious substance ~~which-that~~ may render it injurious to health; but ~~in case-if~~ the substance is not an added substance ~~such-the~~ food shall not be considered adulterated under this ~~clause-subdivision~~ if the quantity of ~~such-the~~ substance in ~~such-the~~ food does not ordinarily render it injurious to health; ~~or (2) if it~~

2. It bears or contains any added poisonous or added deleterious substance ~~which-that~~ is unsafe within the meaning of § ~~3-1-397 3.2-5125; (3) if it~~

3. It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; ~~(4) if it~~

4. It has been produced, prepared, packed, or held under ~~insanitary-unsanitary~~ conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; ~~(5) if it~~

5. It is the product of a diseased animal, ~~or an animal which-that~~ has died otherwise than by slaughter, or *an animal* that has been fed upon the uncooked offal from a slaughterhouse; or ~~(6) if its~~

6. Its container is composed, in whole or in part, of any poisonous or deleterious substance ~~which-that~~ may render the contents injurious to health;

~~(b) (1) If any~~ 7. Any valuable constituent has been, in whole or in part, omitted or abstracted ~~therefrom; (2) if any~~

8. Any substance has been substituted ~~wholly in whole or in a part therefor~~ for a valuable constituent; ~~(3) if damage~~

9. Damage or inferiority has been concealed in any manner; ~~or (4) if any~~

10. Any substance has been added ~~thereto~~ or mixed or packed ~~therewith~~ with the food so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

~~(c) If it~~ 11. It is confectionery and it bears or contains any alcohol or nonnutritive article or substance, except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, harmless natural gum, and pectin; ~~provided, that this paragraph shall not apply to~~ In addition, any confectionery by reason of its containing five percent that: (i) contains five percent or less by volume of alcohol or ~~to~~; (ii) any chewing gum by reason of its containing that contains harmless nonnutritive masticatory substances, shall not be deemed adulterated; or

~~(d) If it~~ 12. It bears or contains a coal-tar color other than one from a batch ~~which-that~~ has been certified by the ~~United States~~ U.S. Department of ~~Agriculture~~ Health and Human Services.

**Drafting Note: The U.S. Department of Agriculture changed to Health and Human Services as federal regulation 21 CFR 80 assigns responsibility for color certification to the Food and Drug Administration which is within the Department of Health and Human Services.**

~~§ 3-1-396 3.2-5123. When food deemed misbranded~~ *Misbranded food.*

A. A food shall be deemed to be misbranded:

~~(a)~~ 1. If its labeling is false or misleading in any particular.

2. *If any word, statement, or other information appearing on the label does not also appear on the outside container or wrapper, if present, of the retail package of such article, or is not easily legible through the outside container or wrapper.*

3. *If any word, statement, or other information required by this article is not prominently placed on the label 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.*

4. *Unless its label bears:*

a. *The common or usual name of the food, if there is any;*

b. *When the food is fabricated from two or more ingredients, the common or usual name of each ingredient. Spices, flavorings, and colors not required to be certified under section 721 (c) of the federal act, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; and*

c. *When the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of such fruit or vegetable juice contained in the food.*

*To the extent that the Commissioner believes that compliance with the requirements of subdivision 4 b is impractical or results in deception or unfair competition, exemptions shall be established by the Commissioner. The requirements of subdivision 4 b shall not apply to any carbonated beverages, ingredients of which have been fully and correctly disclosed to the extent prescribed by subdivision 4 b to the Commissioner in an affidavit.*

~~(b)~~ 5. *If it is offered for sale under the name of another food.*

~~(e)~~ 6. *If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and immediately thereafter, the name of the food imitated.*

~~(d)~~ 7. *If its container is so made, formed, or filled as to be misleading.*

~~(e)~~ 8. *If in package form, unless it bears a label containing: (1i) the name and place of business of the manufacturer, packer, or distributor; (2ii) the name of the article; (3iii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (3iii) of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board.*

~~(f) If any word, statement, or other information required by or under authority of this article 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.~~

~~(g)~~ 9. *If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 3.1-394 3.2-5101 unless: (1i) it conforms to such definition and standard; and (2ii) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.*

~~(h)~~ 10. *If it purports to be or is represented as:*

~~(1)~~ a. *A food for which a standard of quality has been prescribed by regulations as provided by § 3.1-394 3.2-5101 and its quality falls below such standard unless its label bears, in such manner and form as regulations specify, a statement that it falls below such standards; or*

~~(2)~~ b. *A food for which a standard or standards of fill of container have been prescribed by regulations as provided by § 3.1-394 3.2-5101, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.*

~~(i) Unless its label bears:~~

- ~~(1) The common or usual name of the food, if there is any; and~~  
~~(2) If the food is fabricated from two or more ingredients, the common or usual name of each ingredient; however, spices, flavorings, and colors not required to be certified under section 721 (c) of the federal act, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; and~~  
~~(3) If the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of such fruit or vegetable juice contained in the food.~~

~~To the extent that the Commissioner believes that compliance with the requirements of clause (2) of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by the Commissioner. The requirements of clause (2) of this subdivision shall not apply to any carbonated beverages, ingredients of which have been fully and correctly disclosed to the extent prescribed by clause (2) to the Commissioner in an affidavit.~~

~~(j) 11. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board determines to be, and by regulations prescribes, as necessary in order fully requires through regulation to fully inform purchasers as to its value for such uses.~~

~~(k) 12. If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that the Commissioner believes that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by the Commissioner; provided, that the provisions of this subdivision and of subdivisions (g) and (i) 4 and 9 with respect to artificial colorings shall not apply in the case of butter, cheese or ice cream.~~

~~(l) 13. If it is a food intended for human consumption, it is offered for sale, and its label and labeling do not comply with the requirements of section 403 (q) of the federal act pertaining to nutrition information.~~

~~(m) 14. If it is a food intended for human consumption, it is offered for sale, and its label and labeling do not comply with the requirements of section 403 (r) of the federal act pertaining to nutrient content claims and health claims.~~

*B. If an article is alleged to be misbranded because the label is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under such conditions of use as are customary or usual.*

**Drafting Note: Grouped all the label provisions together. Proposed subdivision A 2 is moved from the definition of "label" in existing § 3.1-387 and proposed subsection B is moved from existing definition of "labeling."**

~~§ 3.1-396.1 3.2-5124. Labeling as kosher and halal; penalty.~~

~~It shall be unlawful to label any repackaged food or food product or display or offer for sale any unwrapped food or food product that represents the food or food product as kosher or halal without indicating the person or entity authorizing such designation by providing the name or symbol of the authority or providing a phone number or website to access the information.~~

~~Any person who shall knowingly violate violates any provision of this section shall be is guilty of a Class 3 misdemeanor.~~

**Drafting Note: Technical changes.**

~~§ 3.1-397~~ 3.2-5125. Food to which ~~poisonous~~ *Poisonous* or deleterious substance added to food.

Any poisonous or deleterious substance added to any food, except where such substance is if it is required in the production thereof of the food or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of subdivision (a) subdivision 2 of ~~§ 3.1-395~~ 3.2-5122; but when such any poisonous or deleterious substance is so required or cannot be so avoided, the Board shall promulgate adopt regulations limiting the quantity therein or thereon to such extent as it finds necessary for the protection of public health, and any. Any quantity exceeding the limits so fixed established by the Board shall also be deemed to be unsafe for purposes of the application of clause (2) of subdivision (a) 2 of ~~§ 3.1-395~~ 3.2-5122. While such a regulation is in effect limiting the quantity of any poisonous or deleterious substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of subdivision (a) 1 of ~~§ 3.1-395~~ 3.2-5122 if such the added amount is not in excess of the limits fixed established by the Board as hereinabove provided. In determining the quantity of such any added substance to be tolerated in or on different articles of food, the Board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

**Drafting Note: Technical changes.**

~~§ 3.1-388~~ 3.2-5126. Prohibited acts; exceptions; Commissioner may seek injunction; penalties.

A. The following acts and the causing thereof the following acts within the Commonwealth are hereby prohibited unlawful:

(a) 1. The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded.

(b) 2. The adulteration or misbranding of any food.

(c) 3. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) 4. The dissemination of any false advertisement.

(e) 5. The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by ~~§ 3.1-399~~ 3.2-5102.

(f) 6. The giving of a guaranty or undertaking concerning a food, 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, or having a place of business, or an agent or representative on whom process may be served, in the Commonwealth, from or through whom he received the food in good faith.

(g) 7. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing performing of any other act with respect to, a food, if such act is done while such an article is held for sale and results in such the article being misbranded.

(h) 8. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other means of identification device authorized or required by regulations promulgated adopted under the provisions of this article.

(i) 9. The use of sulfiting agents as preservatives on raw fruits and vegetables being offered for sale to the public for human consumption.

B. Any person who violates any of the provisions of subsection A is guilty of a Class 1 misdemeanor.

C. A wholesale or retail merchant who purchases food or drink in a closed container from a reputable manufacturer shall not be in violation of subsection A unless such person knowingly violated the provisions of subsection A. It shall not be a violation of subdivision A 1, A

3 or A 6, if a person can establish that he relied upon a guaranty or undertaking signed by the individual from or through whom he received any food in good faith, to the effect that such food is not adulterated or misbranded. The guaranty or undertaking shall contain the name and address of the person who provided the guaranty or undertaking, or a place of business, or an agent or representative on whom process may be served, in the Commonwealth.

D. No publisher, broadcaster, 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 by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the Commissioner to furnish the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the Commonwealth who caused him to disseminate such advertisement.

E. The Commissioner may apply to an appropriate court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of subsection A, regardless of whether or not an adequate remedy at law exists. But whenever it appears to the satisfaction of the court in the case of a newspaper, periodical, or other publication that: (i) restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue; and (ii) such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction.

**Drafting Note: Proposed subsections B, C, and D are moved from existing § 3.1-390, Penalties; exceptions as to certain persons. Proposed subsection E is moved from existing § 3.1-389.**

~~§ 3.1-388.1~~ 3.2-5127. Removal of certain labels from meat packaging prohibited; penalty.

It is unlawful for any person holding or offering for retail sale any meat, poultry, or seafood in packaged form who affixes to such food a label containing a date by which such food is to be sold, ~~it shall be unlawful~~ to willfully remove, alter, mutilate, destroy, or obscure the dated portion of the label on the package, unless the dated portion of the label is removed in connection with the repackaging of such food, or to correct bona fide typographical errors. If the dated portion of the label is removed and a replacement label is attached when such food is repackaged, the replacement label shall bear the original date by which the food is to be sold or an earlier date. Any person who violates any provision of this section shall be guilty of a Class 3 misdemeanor.

This section shall not apply to meat, poultry, ~~and~~ or seafood that is canned or cured.

**Drafting Note: Technical changes.**

~~§ 3.1-389. Injunctions to prevent violations; exceptions as to certain publications.~~

~~In addition to the remedies hereinafter provided the Commissioner is authorized to apply to any court of record in the Commonwealth for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of § 3.1-388, irrespective of whether or not there exists an adequate remedy at law. But whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals, (1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to~~

~~any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction.~~

**Drafting Note: Deleted section and moved to proposed subsection E of § 3.2-5126, Prohibited acts; exceptions; Commissioner may seek injunction; penalties.**

~~§ 3.1 390. Penalties; exceptions as to certain persons.~~

~~(a) Any person who violates any of the provisions of § 3.1 388 shall be guilty of a misdemeanor and shall on conviction thereof be punished in the manner provided by law for the punishment of misdemeanors. Provided, however, that no wholesale or retail merchant who purchases food or drink in a closed container from a reputable manufacturer shall be found guilty under this section unless such person knowingly violated the provisions of § 3.1 388.~~

~~(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated subsections (a) or (c) of § 3.1 388 if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing, or having a place of business, or an agent or representative on whom process may be served, in the Commonwealth, from or through whom he received in good faith any food, to the effect that such food is not adulterated or misbranded within the meaning of this article, designating this article.~~

~~(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 by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the Commissioner to furnish the name and post office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the State who caused him to disseminate such advertisement.~~

**Drafting Note: Deleted section and moved to proposed subsections B, C, and D of § 3.2-5126, Prohibited acts.**

~~§ 3.1 392 3.2-5128. Duty of attorney for the Commonwealth when violation reported; notice before such report Commissioner to give notice.~~

~~A. If the Commissioner institutes criminal proceedings against any person for any violation pursuant to this article, then: (i) he shall give appropriate notice to the person and give an opportunity for the person to present his views before the Commissioner, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding, and (ii) he may report the violation to an attorney for the Commonwealth.~~

~~B. It shall be the duty of each attorney for the Commonwealth, to whom the Commissioner reports any violation of this article, to cause appropriate proceedings to be instituted in the proper appropriate courts without delay and to be prosecuted in the manner required by law. Before any violation of this article is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding.~~

~~C. Nothing in this article shall require the Commissioner to report minor violations of this article to the attorney for the Commonwealth, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.~~

**Drafting Note: Rearranged the text and created subsections A and B to read chronologically. Proposed subsection C is moved from existing § 3.1-393.**

~~§ 3.1 393. Notice or warning as to minor violation.~~

~~Nothing in this article shall be construed as requiring the Commissioner to report for the institution of proceedings under this article, minor violations of this article, whenever he believes~~



~~that the public interest will be adequately served in the circumstances by a suitable written notice or warning.~~

**Drafting Note: Deleted section and moved to proposed subsection C of § 3.2-5128, Duty of attorney for the Commonwealth when violation reported; Commissioner to give notice.**

#### Article 4.

#### Seizures, Prosecutions, and Penalties, and Enforcement ~~Generally.~~

~~§ 3.1 400. Publication of reports as to judgments, decrees and court orders and analyses of samples.~~

~~The Commissioner shall cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof, and shall also publish results of analyses of samples of foods, with the names of the manufacturers or sponsors, and also of the persons from whom the samples were obtained.~~

**Drafting Note: Deleted section. The publication of this type of information was discontinued years ago by the Department, with the approval of the Office of the Attorney General.**

~~§ 3.1 401. Judges to charge grand juries; attorney for the Commonwealth to forward samples for analysis; his fees.~~

~~For the purpose of a more rigid enforcement of the law prohibiting the sale of adulterated and misbranded foods in the Commonwealth, it shall be the duty of the judge of the circuit or the corporation court for each county and city of this Commonwealth to bring this article to the attention of the grand juries of his county or city, and upon the finding of an indictment against the manufacturer or vender of such adulterated or misbranded food, beverages, or condiments. At any time prior thereto, the attorney for the Commonwealth may, if he deems it proper, forward a sample of the same to the Commissioner, who shall have it analyzed or examined, and render a report thereon to the attorney for the Commonwealth, which report may be used in evidence before such grand jury or at the trial of the person so indicted. For each conviction hereunder, the attorney for the Commonwealth shall be entitled to a fee of ten dollars, which shall be paid by the city or county in which the conviction was had upon an order from the judge of the court, and the fee shall be paid, notwithstanding the provisions of any law to the contrary limiting the salary or fees of attorneys for the Commonwealth. The fee shall be taxed as a part of the costs against the defendant and when collected shall be paid into the treasury of the county or city.~~

**Drafting Note: Deleted section. The \$10 fee is included in proposed § 3.2-5141, General duties of attorneys for the Commonwealth.**

~~§ 3.1 403. Duty of Commissioner as to procuring and having samples analyzed.~~

~~The Commissioner may, in a lawful manner, procure and have analyzed samples of the dairy and food products covered by this chapter.~~

**Drafting Note: Deleted section and moved to Article 1, proposed subsection B of § 3.2-5100, Duties of Commissioner.**

~~§ 3.1 404. Duty of Commissioner to make complaints against manufacturers or venders.~~

~~It shall be the duty of the Commissioner to make a complaint against the manufacturer or vender of any such food or drink or dairy products as are adulterated, impure or unwholesome, in contravention of the laws of this Commonwealth, and furnish all evidence thereof to obtain a conviction of the offense charged. The Commissioner, or any person appointed by him for that purpose, may make complaint and cause proceedings to be commenced against any person for enforcement of the laws relative to adulteration, impure or unwholesome food or drink, and in such cases he shall not be obliged to furnish security for costs.~~

**Drafting Note: Deleted section and moved to Article 1, proposed subsection C of § 3.2-5100, Duties of Commissioner.**

§ 3.2-5129. *Definition of term "food."*

*The term "food" as used in this article means all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof, intended for human consumption and introduction into commerce.*

**Drafting Note: New section. Adopts language for the definition of food from existing § 3.1-365 now found in proposed § 3.2-5105, Definition of term "food."**

~~§ 3.1-398.1~~ 3.2-5130. Inspections required to operate food establishment.

~~No person shall~~ A. *It is unlawful to operate a food manufacturing plant, food storage warehouse, or retail food store until it has been inspected by the Commissioner. This section shall not apply to food manufacturing plants operating under a grant of inspection from the Bureau-Office of Meat and Poultry Inspection-Services or a permit from the Bureau-Office of Dairy Services-of and Foods in the Virginia Department; of Agriculture and Consumer Services; and Grade A fluid milk manufacturing plants and shellfish and crustacea processing plants operating under a permit from the Virginia Department of Health. This section shall also not apply to: (i) any nonprofit organizations holding one-day food sales; or (ii) any retail establishments that (a) do not prepare or serve food; (b) sell only food or beverages that are sealed in packaging by the manufacturer and have been officially inspected in the manufacturing process; (c) do not sell infant formulas; (d) do not sell salvaged foods; and (e) certify to the Department of Agriculture and Consumer Services that they meet the foregoing provisions of this section. Retail establishments that meet the provisions of clause (ii) shall be exempt from inspection and the inspection fees; however, nothing. Nothing in this section shall prevent the Department of Agriculture and Consumer Services from inspecting any retail establishment if a consumer complaint is received.*

*B. Any person who violates any provision of this section is guilty of a Class 1 misdemeanor.*

**Drafting Note: Moved this section from existing Article 3. Since no penalty was provided for a food establishment operating before it is inspected, a Class 1 misdemeanor has been added in subsection B. Updated the Bureau of Meat and Poultry Inspection and the Bureau of Dairy Services to their current designation of the Office of Meat and Poultry Services and the Office of Dairy and Foods.**

~~§ 3.1-405~~ 3.2-5131. Right to enter and take samples.

The Commissioner ~~shall have power~~ *is empowered*, in the performance of his duties, to enter into any ~~creamery, factory, store, salesroom, drugstore, or laboratory, or place where he has reason to believe food or drink is made, stored, sold, or offered for sale, and open any cask, tub, jar, bottle, or package containing or supposed to contain, any article of food or drink, and examine or cause to be examined the contents thereof, and take therefrom samples for analysis. The person making such inspection shall take such samples of such-the article or produce in the presence of at least one witness, and he shall, in the presence of the witness, mark or seal such the sample, and. The inspector shall tender at the time of taking to the manufacturer or vender vendor of such-the product, or to the person having the custody of the-same product, the value thereof, and the statement in writing for the taking of such the sample.~~

**Drafting Note: Technical changes.**

~~§ 3.1-406~~ 3.2-5132. Notice and warning to place premises in sanitary condition.

Whenever it is determined by the Commissioner, ~~or assistants~~, that filthy or unsanitary conditions exist or are permitted to exist in the operation of ~~any bakery, confectionery, or ice cream plant, or at any place where any food or drink products are manufactured, stored, or deposited, or sold for any purpose whatever~~, the proprietor or ~~proprietors~~, owner ~~or owners~~ of

~~such bakery, confectionery, or ice cream plant~~ *the place*, or any person ~~or persons~~ owning or operating any ~~plant~~ *place* where any food or drink products are manufactured, stored, deposited, or sold, shall ~~be first~~ *be* notified and warned by the Commissioner, ~~or his assistants~~, to ~~place such bakery, confectionery, or ice cream plant, or any~~ *establish in a sanitary condition within a reasonable length of time* such place where any food or drink products are manufactured, stored, deposited, or sold, in a sanitary condition within a reasonable length of time. After the first notice and warning of a violation has been issued no notice and warning of the same violation occurring within ~~ninety~~ *90* days after the first notice and warning has been given as provided under § ~~3.1-407~~ *3.2-5133* shall be required; provided that notice and warning shall be required as to any violation occurring more than ~~ninety~~ *90* days after notice and warning has been given as to a violation.

**Drafting Note: Technical changes.**

~~§ 3.1-407~~ *3.2-5133*. Failure to obey such notice and warning a misdemeanor.

Any person owning or operating ~~any bakery, confectionery, or ice cream plant, or any~~ place where any food or drink products are manufactured, stored, deposited, or sold, failing to obey such notice and warning, or permitting filthy or unsanitary conditions to exist after a notice of previous violation has been issued, provided the violation occurred within ~~ninety~~ *90* days after notice and warning has been issued, ~~shall be~~ *is* guilty of a *Class 1* misdemeanor.

**Drafting Note: Classified penalty as a Class 1 misdemeanor in accordance with § 18.2-12, for which no punishment is prescribed by statute is punishable as a Class 1 misdemeanor.**

~~§ 3.1-391~~ *3.2-5134*. Condemnation of unsafe food by Commissioner.

~~Whenever~~ *If* the Commissioner acting through any of his authorized agents shall ~~find~~ *finds* in any room, building, vehicle of transportation, or other structure, any meat, seafood, poultry, vegetable, fruit, or other perishable articles of food, which are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, ~~then the same being hereby~~ *articles of food shall be* declared to be a nuisance, ~~and the Commissioner acting through any of his authorized agents, shall forthwith condemn or destroy the same, unsafe articles of food or in any other manner render the same unsafe articles of food to be~~ *unsalable as human food.*

**Drafting Note: Technical changes.**

~~§ 3.1-408~~ *3.2-5135*. Authority to seize food and dairy products; *analysis; disposition of remainder.*

A. The Commissioner, ~~or any person by the Commissioner duly appointed for that purpose,~~ is authorized at all times to seize and take possession of any and all food and dairy products, substitutes ~~therefor, or imitation thereof~~ *imitations* kept for sale, exposed for sale, or held in possession or under the control of any person ~~which~~ *that* in the opinion of the Commissioner, ~~or his deputy, or such person by him duly appointed,~~ shall ~~are~~ *be* believed to be ~~contrary to the provisions in violation of laws which now exist or which may be hereafter enacted any provision of law.~~

B. *When the Commissioner seizes any goods pursuant to subsection A, he shall take a sample from the goods for the purpose of analysis, box and seal the remainder, and leave the remainder in the possession of the person from whom they were seized, subject to the determined disposition.*

C. *Any person making a seizure under this section shall forward the sample taken to the Division of Consolidated Laboratory Services. The Division of Consolidated Laboratory Services shall turn over the sample to a qualified analyst who shall certify the results of the analysis. Their certificate shall be prima facie evidence of the facts certified to, in an appropriate court where the sample may be offered in evidence.*

**Drafting Note: Proposed subsection B is moved from existing § 3.1-409. Proposed subsection C is moved from existing § 3.1-410.**

~~§ 3.1 409. Sample of goods seized to be taken for analysis; disposition of remainder.~~

~~The person so making such seizure, shall take from such goods as seized a sample for the purpose of analysis and shall cause the remainder to be boxed and sealed and shall leave the same in the possession of the person from whom they were seized, subject to such disposition as shall hereafter be made thereof.~~

**Drafting Note: Deleted section and moved to proposed subsection B of § 3.2-5135, Authority to seize food and dairy products.**

~~§ 3.1 410. Samples forwarded to Division of Consolidated Laboratory Services and qualified analysts; certification of analysis.~~

~~The person so making such seizure shall forward the sample so taken to the Division of Consolidated Laboratory Services who shall turn over the same to a qualified analyst and such analyst shall certify the results of such analysis, which certificate shall be prima facie evidence of the fact or facts therein certified to, in any court where the same may be offered in evidence.~~

**Drafting Note: Deleted section and moved to proposed subsection C of § 3.2-5135, Authority to seize food and dairy products.**

~~§ 3.1 417~~ 3.2-5136. Purchase of samples for analysis.

~~Every~~Any person who exposes or offers for sale or delivers to a purchaser any food, shall furnish within business hours and upon tender and full payment of the selling price, a sample of such food, to ~~any person duly authorized to secure the same~~ *the Commissioner*, and who shall apply to such manufacturer or vendor or person delivering such food to a purchaser for ~~such a~~ sample in sufficient quantity for the analysis of ~~such the~~ article ~~or articles~~ in his possession. Samples may be purchased on the open market and shall be representative samples; the collector shall also note the name of the vendor and agent through whom the sale was actually made, together with date of purchase, and all samples not taken in unbroken and sealed original packages shall be sealed by the collector in the presence of the vendor with a seal provided for the purpose.

When possible, samples shall be unbroken and sealed original packages, or taken out of unbroken and sealed original packages. Three like samples shall be obtained where the article is in the original package, or if not in the original package the sample obtained shall be divided into three equal parts and each part shall be labeled with the marks, brands, or tags upon the package, carton, container, wrapper, or accompanying printed or written matter. One sample shall be delivered to the party from whom purchased, or to the party guaranteeing such merchandise; two samples shall be sent to the Commissioner, one of which is to be analyzed, as provided in this ~~article~~ *chapter*, and the other shall be held under seal by the Commissioner.

**Drafting Note: Technical changes.**

~~§ 3.1 411~~ 3.2-5137. Proceeding for forfeiture.

If upon ~~such~~ *laboratory* analysis it ~~shall appear~~ *appears* that the food or dairy products are adulterated, substituted, misbranded, or imitated within the meaning of this chapter, the Commissioner, ~~or his deputy, or any person by him duly authorized~~ may make complaint before a magistrate, or other officer authorized to issue ~~such~~ summons, having jurisdiction where ~~such the~~ goods were seized, ~~and thereupon the~~. *The* magistrate or other officer shall issue his summons to the person from whom ~~such the~~ goods were seized, directing him to appear before ~~the general district~~ *an appropriate* court in such jurisdiction not less than six nor more than 12 days from the date of issuing the summons and show cause why the goods should not be condemned and disposed of. If the person from whom the goods were seized cannot be found, *then* the summons shall be served upon the person then in possession of the goods. The summons shall be served at least six days before the time of appearance mentioned therein. If the person from whom the goods were seized cannot be found, and no one can be found in possession of the goods, and the defendant shall not appear on the return day, then ~~the general district~~ *an appropriate* court shall proceed in the cause in the same manner as where a writ of attachment is

returned not personally served upon any of the defendants and none of the defendants shall appear upon the return day.

**Drafting Note: Technical changes.**

~~§ 3.1-412~~ 3.2-5138. Judgment as to goods seized; procedure before ~~general district an~~ *appropriate court*; appeal.

Unless ~~cause to the contrary thereof is~~ *otherwise* shown, or if the goods ~~shall be~~ *are* found upon trial to be in violation of any of the provisions of this chapter or other laws ~~which now exist or which may be hereafter enacted~~, it shall be the duty of the general district court to render judgment that the seized property be forfeited to the Commonwealth, and that the goods be destroyed or sold by the Commissioner for any purpose other than to be used for food. The mode of procedure before the general district court shall be the same, as near as may be in civil proceedings. Either party may appeal to the circuit court as appeals are taken from the general district court, but it shall not be necessary for the Commonwealth to give any appeal bond.

**Drafting Note: Technical changes.**

~~§ 3.1-413~~ 3.2-5139. Disposition of proceeds from sale of such goods.

The proceeds arising from any ~~such sale of seized property or goods~~ shall be paid into the state treasury and credited to the general fund; ~~provided, that if~~ *If* the owner or party claiming the property or goods ~~so declared forfeited~~ can produce and prove a written guaranty of purity, signed by the wholesaler, jobber, manufacturers, or other party residing within ~~this the~~ Commonwealth from whom the articles were purchased, then the proceeds of the sale ~~of such articles~~, over and above the costs of seizure, forfeiture and sale, shall be paid ~~over to such the~~ owner or claimant to reimburse him, to the extent of such surplus, for his actual loss resulting from ~~such the~~ seizure and forfeiture as shown by the invoice.

**Drafting Note: Technical changes.**

~~§ 3.1-414~~ 3.2-5140. ~~Prosecuting attorney~~ *Attorney for the Commonwealth* to render legal assistance.

It shall be the duty of the ~~prosecuting~~ *attorney for the Commonwealth* when called upon by the Commissioner, ~~or by any person by him authorized as aforesaid~~, to render any legal assistance in his power in proceeding under the ~~foregoing~~ provisions of this ~~article~~ *chapter*.

**Drafting Note: Technical changes.**

~~§ 3.1-415~~ 3.2-5141. General duty of attorneys for the Commonwealth; compensation.

Whenever a violation of any laws governing the manufacture and preparation for sale, storage, and sale of articles used as food or condiment by human beings or animals, commonly known as the "pure food" and "feeding stuffs laws," is reported by the Commissioner to any attorney for the Commonwealth it shall be the duty of the attorney for the Commonwealth ~~to whom any such violation is so reported by the Commissioner~~, to ~~cause the commence~~ proceedings ~~to be commenced and prosecuted~~ *prosecute* without delay for the fines and penalties in ~~such~~ cases prescribed and upon the termination of such proceedings to report in detail to the Commissioner, the results ~~of the same~~.

For every conviction in any case instituted by any attorney for the Commonwealth upon the complaint of the Commissioner, the attorney for the Commonwealth prosecuting any such case, after he has reported the results ~~of the same~~ to the Commissioner ~~as hereinabove provided~~, shall be entitled to a fee of ~~five dollars, which~~ *\$10* that shall be taxed as a part of the costs in the case, as costs are taxed in other criminal cases, and execution issued therefor against the defendant; and the fee shall be paid notwithstanding any law to the contrary limiting or prescribing the compensation and fees of attorneys for the Commonwealth.

In any case of a sale or delivery of goods in violation of the provisions of the pure food or feeding stuffs laws, the person, ~~firm or corporation~~ making such sale or delivery, may be prosecuted either in the county or city ~~in which such~~ *where the* sale or delivery originated, or in

the county or city ~~in which~~ *where* the illegal goods ~~may be~~ *were* found by the Commissioner, ~~or his agents or assistants.~~

**Drafting Note: The \$10 fee paid to attorneys for the Commonwealth is moved from existing § 3.1-401.**

~~§ 3.1-416~~ 3.2-5142. Punishment for hindering Commissioner.

Any person who shall willfully hinder or obstruct the Commissioner, ~~or other persons or assistants by him duly authorized,~~ in the exercise of the powers conferred upon him by this chapter, ~~shall be deemed~~ *is* guilty of a *Class 2* misdemeanor ~~and on conviction shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment in the county or city jail for not less than ten days nor more than ninety days, or both such fine and imprisonment in the discretion of the court.~~

**Drafting Note: The penalty provision is classified as a Class 2 misdemeanor, which authorizes confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.**

~~§ 3.1-419~~ 3.2-5143. Enforcement against companies.

When construing and enforcing the provisions of *this chapter and Chapters 20* (~~§ 3.1-361 et seq.~~), 21-52 (~~§ 3.1-420-3.2-5200 et seq.~~), and 30-54 (~~§ 3.1-867-3.2-5400 et seq.~~) ~~of this title,~~ the act, omission, or failure of any officer, agent, or other individual acting for or employed by any partnership, corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed the act, omission, or failure of such partnership, corporation, company, society, or association, as well as that of the individual.

**Drafting Note: Technical changes.**

~~§ 3.1-418.1~~ 3.2-5144. Exemption from civil liability in certain cases.

A. Any farmer, processor, distributor, wholesaler, food service establishment, restaurant, or retailer of food, including, ~~but not limited to,~~ a grocery, convenience, or other store selling food or food products, who donates food to any food bank or any second harvest certified food bank or food bank member charity ~~which~~ *that* is exempt from taxation under 26 U.S.C. § 501 (c) (3), which maintains a food storage facility certified by the Department of ~~Agriculture and Consumer Services~~ and, where required by ~~local~~ ordinance, by the State Department of Health, for use or distribution by the organization shall be exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the donated food. ~~However, the~~ *The* exemption of this section shall not apply if the injury or death directly results from the gross negligence or intentional act of the donor. If the donor is a food service establishment or a restaurant, such donor shall comply with the regulations of the ~~State~~ Board of Health with respect to the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods, pursuant to the provisions of § 35.1-14.

B. Any farmer who gratuitously allows persons to enter upon his own land for purposes of removing any crops remaining in his fields following the harvesting thereof, shall be exempt from civil liability arising out of any injury or death resulting from the nature or condition of such land or the nature, age, or condition of any such crop. ~~However, the~~ *The* exemption of this section shall not apply if the injury or death directly results from the gross negligence or intentional act of the farmer.

**Drafting Note: Technical changes.**

~~§ 3.1-418~~ 3.2-5145. Punishment for failure to comply with requirements of *certain chapters.*

Any ~~manufacturer, dealer or person~~ who refuses to comply upon demand with the requirements of *this chapter and Chapters 20* (~~§ 3.1-361 et seq.~~), 21-52 (~~§ 3.1-420-3.2-5200 et seq.~~), and 30-54 (~~§ 3.1-867-3.2-5400 et seq.~~) ~~of this title or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any chemist inspector or other person in the performance of his duty in connection with such chapters, shall be~~ *is* guilty of a *Class 2* misdemeanor, ~~and,~~

unless otherwise specified, ~~upon conviction be fined not less than \$10 nor more than \$100, or be imprisoned not more than 100 days, or both, in the discretion of the court; and such fines, less the legal costs, shall be paid into the state treasury.~~

**Drafting Note: The penalty provision is classified as a Class 2 misdemeanor, which authorizes confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.**

## CHAPTER ~~24~~52.

### MILK, MILK PRODUCTS, AND DAIRIES.

**Chapter Drafting Note: The existing chapter includes seven articles. Existing Article 2 is moved to become proposed Chapter 32, Milk Commission. Existing Article 2.1 is moved to become proposed Chapter 33, Southern Dairy Compact. Existing Article 6, Licensing Creameries, Plants and Stations has been deleted as obsolete. While licenses are still issued on request, it is no longer a requirement to obtain a license to operate a creamery plant. There are four remaining articles: proposed Article 1, General Provisions; proposed Article 2, Standards of Quality, Grading, and Sanitary Standards; proposed Article 3, Ice Cream and Similar Products; and proposed Article 4, Babcock and Other Machine Tests. Several sections establishing penalties in existing Article 1 have been deleted because the underlying offenses have already been addressed in proposed Chapter 51, Food and Drink. Several provisions of general application to the entire chapter have been moved from the subsequent articles to proposed Article 1, General Provisions, including proposed § 3.2-5201, Conformity with regulations of U.S. Department of Health and Human Services and Department of Agriculture; Compliance with the Administrative Process Act, proposed § 3.2-5202, Sale of products not subject to local supervision, proposed § 3.2-5203, Importing of products, and proposed § 3.2-5205, Injunctions.**

#### Article 1.

##### ~~In~~ General Provisions.

##### ~~§ 3.1-420~~ 3.2-5200. Duty of Commissioner to foster dairy industry.

It shall be the duty of the Commissioner ~~of Agriculture and Consumer Services~~ to foster and encourage the dairy industry of the Commonwealth, and for that purpose he shall investigate the general conditions of the creameries, cheese factories, condensed milk factories, skimming stations, milk stations, and farm dairies in ~~this~~ the Commonwealth, with full power to enter upon any premises for such investigation, with the object in view of improving the quality and creating and maintaining uniformity of the dairy products of the Commonwealth; ~~and should~~. *Should* it become necessary in the judgment of the Commissioner, he may cause instruction to be given in any ~~creamery, cheese factory, condensed milk factory, skimming station, milk station or farm dairy facility~~ or in any locality of ~~this~~ the Commonwealth, ~~and~~ in order to ~~secure~~ promote the proper feeding and care of cows, or the practical operation of any plant producing dairy products, and in order to procure such a uniform and standard quality of dairy products in ~~this~~ the Commonwealth, ~~he shall furnish a sufficient number of competent assistants, and they shall be duly qualified to act as such assistants.~~

##### **Drafting Note: Technical changes**

~~§ 3.1-562.2~~ 3.2-5201. Conformity with regulations, ~~etc.~~, of ~~United States~~ U.S. Department of Health and Human Services and Department of Agriculture; compliance with Administrative Process Act.

In adopting regulations for the purpose of sanitation and to prevent deception, the Board shall be guided by those regulations recommended ~~from time to time~~ by the ~~United States~~ U.S. Department of Health and Human Services and the ~~United States~~ U.S. Department of Agriculture.

The definitions and standards so ~~promulgated~~*adopted* may conform, so far as practical, to the definitions and standards ~~promulgated~~*adopted* or recommended by the Secretary of the United States U.S. Department of Health and Human Services or the ~~Secretary of the United States U.S.~~ Department of Agriculture. The regulations authorized by §§ ~~3.1-562.1~~ 3.2-5206, 3.2-5213, and by this section shall be adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: Technical changes.**

~~§ 3.1-530.5~~ 3.2-5202. Sale of ~~milk and milk~~ products; not subject to local supervision.

Products produced, processed, or manufactured under the regulations adopted ~~in accordance with the provisions of~~*under* this ~~article~~ *chapter* may be sold in all ~~counties, cities and towns~~*localities* in ~~this~~ *the* Commonwealth and shall not be subject to regulation, by ordinance or otherwise, supervision or inspection of any political subdivision wherein the products are produced, processed, manufactured, or sold.

**Drafting Note: Technical changes.**

~~§ 3.1-530.6~~ 3.2-5203. Importing of ~~milk and milk~~ products.

A. No regulation adopted under this ~~article~~ *chapter* shall be construed ~~so as to~~ prohibit the sale within the Commonwealth of any product ~~which~~*that* is produced outside of the Commonwealth under laws or regulations of the exporting state or political subdivision ~~thereof~~ *which**that* are substantially equivalent to regulations ~~promulgated~~*adopted* under this article and ~~which~~*that* are enforced with equal effectiveness.

B. No Grade A raw milk shall be imported into ~~this~~*the* Commonwealth by any person who does not possess a permit issued under conditions prescribed by the Board of ~~Agriculture and Consumer Services~~. The Board of ~~Agriculture and Consumer Services~~ shall ~~establish rules and adopt~~ regulations for the importation of raw bulk milk from points beyond routine inspection of ~~Virginia~~*the Commonwealth* to insure the quality of milk and milk products, to determine volume of product shipped into the Commonwealth ~~of Virginia~~, to be assured of the original source of production, and to provide for the best interest of the Commonwealth ~~of Virginia~~, and for the protection of the consuming public.

**Drafting Note: Technical changes.**

~~§ 3.1-424~~ 3.2-5204. Warning and punishment of persons using or furnishing impure milk.

Whenever it is determined by the Commissioner ~~or his assistants~~ that any person is using, selling, or furnishing to any ~~skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy~~*facility*, milk dealer, the retail trade, or to any consumer of milk, any impure or unwholesome milk or cream, which impurity or unwholesomeness is caused by the unsanitary or filthy conditions of the premises where cows are kept or by the unsanitary or filthy care of handling of the cows, or from the use of unclean utensils or from unwholesome food, or from any other cause, such person shall first be notified and warned by the Commissioner ~~deputy or assistants~~ not to use, sell, or furnish such milk or cream to ~~such~~ *skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy* *any facility*, milk dealers, the retail trade, or to any consumer of milk, ~~and any~~. Any person ~~failing~~*who fails* to obey such notice and warning and ~~continuing~~*continues* to use, sell, or furnish to any ~~skimming station, creamery, cheese factory, condensed milk factory, farm dairy, milk dealer, or to the retail trade~~ such impure or unwholesome milk or cream, shall ~~be~~ *is* guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than fifty dollars and costs of prosecution, or imprisonment in the county or city jail not to exceed ninety days, or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court *Class 2 misdemeanor*.

**Drafting Note: Classified penalty as a Class 2 misdemeanor in accordance with § 18.2-11, Punishment for conviction of misdemeanor.**



~~§ 3.1 422. Warning and punishment in regard to unsanitary conditions of any skimming station, etc.~~

~~Whenever it is determined by the Commissioner, his deputy or assistants, that unsanitary conditions exist, or are permitted to exist, in the operation of any skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, the proprietor or proprietors or manager of the skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, shall be first notified and warned by the Commissioner, his deputy or assistants, to place such skimming station in a sanitary condition within a reasonable length of time; and any person or persons, owning or operating such skimming station, creamery, cheese factory, condensed milk factory, milk depot, or farm dairy, failing to obey such notice and warnings, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$300, and cost of prosecution, or imprisonment in jail not to exceed 90 days, or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court.~~

**Drafting Note: Deleted section. Proposed § 3.2-5126, Prohibited Acts; exceptions; Commissioner may seek injunction; penalties, prohibits the same activity and provides a Class 1 misdemeanor as penalty.**

~~§ 3.1 423. Penalty for adulterating milk.~~

~~Whoever shall knowingly sell, supply, or bring to be manufactured, to any cheese or butter manufactory in this Commonwealth, any milk, diluted with water, or in any way adulterated, or milk from which any cream has been taken, or milk commonly known as skimmed milk; or whoever shall keep back any part of the milk known as strippings, or knowingly bring or supply to any cheese manufactory milk that is tainted or partly sour, from want of proper care in keeping clean any vessel in which the milk is kept, after being notified of such taint or carelessness; or any cheese manufacturer who shall knowingly use, or direct any of his employees to use, for his or their individual benefit, any cream from the milk brought to the cheese manufacturer, without the consent of all the owners thereof, shall, for each offense, forfeit not less than \$25 nor more than \$100, to be recovered by any person upon whom such fraud is committed.~~

**Drafting Note: Deleted section. Proposed § 3.2-5126, Prohibited Acts; exceptions; Commissioner may seek injunction; penalties, prohibits the same activity and provides a Class 1 misdemeanor as penalty.**

~~§ 3.1 424. Sterilization of cans and other receptacles used as containers of milk, cream and ice cream; penalty.~~

~~No person, company, or corporation shall furnish or provide any can or other receptacle used for the purpose of transporting milk, cream or ice cream intended for human consumption or for manufacture into a product for human consumption, nor shall any person, company or corporation use any cans or other receptacles for the purpose of transporting milk, cream or ice cream intended for human consumption or for the manufacture into a product for human consumption, unless such can or other receptacle and the cover or stopple thereto be thoroughly cleansed and sterilized by the use of hot water or steam, or both hot water and steam, before such can or other receptacle is delivered to the person who is to fill same, or before such can or other receptacle is used for the purpose of transporting milk, cream or ice cream, as above set out.~~

~~Every person, company or corporation who receives milk, cream, or ice cream, which is delivered in cans, bottles or other receptacles shall thoroughly cleanse and sterilize such receptacle with hot water or steam, or both hot water and steam, as soon as practicable after the contents are removed, and before such receptacles are returned to the shippers or persons from whom the same were received; provided, that when milk, cream and ice cream is delivered in bottles and cans to school cafeterias, confectioneries and similar eating places which are not adequately provided with boiling water or live steam for the purpose of sterilization, in lieu of~~

~~sterilization by the use of boiling water or live steam such bottles, cans, et cetera, may be cleansed with clean warm water and rinsed in a chlorine solution of 100 parts per million of available chlorine.~~

~~Any person who is convicted for violating any of the provisions of this section shall be fined the sum of five dollars for each bottle, can or other receptacle furnished or used which has not been cleansed and sterilized as herein provided.~~

**Drafting Note: Deleted section. The sterilization requirements are set out in regulations adopted under the authority set out in proposed § 3.2-5206, Board authorized to establish standards and adopt regulations; guidance of State Health Commissioner.**

~~§ 3.1 530.8~~ 3.2-5205. Injunctions.

~~In the event of violation of~~ *If any person violates* any provision of this article or the regulations adopted ~~thereunder~~ *hereunder*, then either ~~commissioner~~ *the Commissioner or the State Health Commissioner* may petition any appropriate *circuit* court ~~of record~~ for relief by injunction, without being compelled to allege or prove that an adequate remedy at law does not exist.

**Drafting Note: Technical changes.**

## Article ~~3.1~~ 2.

### Standards of Quality, Grading, *and* Sanitary Standards, ~~etc.~~

~~§ 3.1 530.1~~ 3.2-5206. Board authorized to establish standards, ~~and~~ adopt regulations, ~~etc.~~; ~~advice and~~ guidance of State Health Commissioner.

A. The ~~State Board of Agriculture and Consumer Services~~ is authorized to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, market milk, market milk products, and those products manufactured or sold in semblance to or as substitutes ~~therefor~~ *for milk, milk products, market milk, market milk products*. Regulations concerning the processing and distributing of Grade A market milk and Grade A market milk products shall be adopted with the advice and guidance of the State Health Commissioner ~~or his authorized representative~~. ~~Regulations concerning the conditions under which~~ *The Board shall adopt regulations for the issuance of* the permits referred to in ~~§ 3.1 530.4 shall be issued will be promulgated by the Board~~ 3.2-5208. The Board may require permits in addition to those prescribed by the terms of this article, and shall ~~promulgate~~ *adopt* regulations concerning the conditions under which ~~such~~ *any* additional permits shall be issued.

B. In adopting any regulation pursuant to this section, the Board may adopt by reference:

1. Any regulation or part thereof under federal law that pertains to milk or milk products, amending the federal regulation as necessary for intrastate application.

2. Any model ordinance or regulation issued under federal law, including the Pasteurized Milk Ordinance (Public Health Service/Food and Drug Administration Publication Number 229) and the ~~United States~~ *U.S.* Department of Agriculture's Milk for Manufacturing Purposes and its Production and Processing Recommended Requirements (hereafter "the USDA Recommended Requirements"), amending it as necessary for intrastate application and to: (i) require milk on each dairy farm to be cooled and stored at a temperature of ~~forty~~ *40* degrees Fahrenheit or less, but not frozen; (ii) require the use of recording thermometers and interval timers on every milk storage tank installed on a permitted Grade A milk dairy farm; (iii) specify the design, fabrication, installation, inspection, and record keeping necessary for the proper use of such thermometers and timers; (iv) establish a definition for small-scale processors of cheese under the dairy plant processing requirements contained in the USDA Recommended Requirements; and (v) create exemptions for small-scale processors of cheese from the USDA Recommended

Requirements regarding processing requirements for dairy plants, provided such exemptions do not compromise food safety.

3. Any reference, standard, or part thereof relating to milk, milk products, or milk production published by the American Society of Agricultural Engineers, the American Public Health Association, the American Society of Mechanical Engineers, or the International Association of Food Protection.

4. Any method of analysis relating to milk or milk products including, ~~but not limited to,~~ any method of analysis published by the United States Public Health Service, the Association of Official Analytical Chemists, or the American Public Health Association.

C. Any regulation adopted pursuant to this section shall, unless a later effective date is specified in the regulation, be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption of any regulation pursuant to this section. Prior to ~~promulgating~~ *adopting* any regulation pursuant to this section, the Board shall publish a notice of opportunity to comment in the Virginia Register of Regulations. The notice of opportunity to comment shall contain: (i) a summary of the proposed regulation; (ii) instructions on how to obtain the complete text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. The notice of opportunity to comment shall be made at least ~~ninety~~ *90* days in advance of the last date prescribed in the notice for submittals of public comment. The legislative review provisions of § 2.2-4014 shall apply to the promulgation or final adoption process of regulations under this section. The Board shall consider and keep on file all public comments received for any regulation adopted pursuant to this section.

D. Notwithstanding the provisions of subsections B and C, any permits that may be issued or regulations that may be ~~promulgated~~ *adopted* for the sale or manufacture of cheese from milk from any species not required to be permitted or regulated in intrastate commerce prior to July 1, 2001, under this article, shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such regulations or permits apply to persons who manufacture less than 1,000 pounds of such cheese annually.

**Drafting Note: The State Health Commissioner, like the Commissioner of Agriculture and Consumer Services, has the authority to employ agents under § 2.2-602, Duties of agencies and their appointing authorities.**

~~§ 3.1-530.2. Conformity with recommendations, etc., of United States Department of Health and Human Services and Department of Agriculture; application of Administrative Process Act.~~

~~In adopting regulations for the purpose of sanitation and to prevent deception, the Board shall be guided by those regulations recommended from time to time by the United States Department of Health and Human Services and the United States Department of Agriculture. The definitions and standards so promulgated may conform, so far as practical, to the definitions and standards promulgated or recommended by the Secretary of the United States Department of Health and Human Services. The regulations authorized by this section shall be adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).~~

**Drafting Note: Deleted section. This provision is addressed in proposed § 3.2-5201, Conformity with regulations of U.S. Department of Health and Human Services and Department of Agriculture; compliance with Administrative Process Act.**

~~§ 3.1-530.3 3.2-5207. Powers and duties of Commissioner of Agriculture and Consumer Services and his agents; obstruction, etc., unlawful.~~

~~The Commissioner of Agriculture and Consumer Services or his agents shall administer and enforce the regulations adopted pursuant to § 3.1-530.1-3.2-5206 except as hereinafter~~

provided in ~~§ 3.1-530.4~~ 3.2-5208. ~~They are~~ He is empowered, in the performance of ~~their~~his duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article, or the regulations adopted hereunder. It shall be unlawful for any person to hinder, obstruct, or interfere with the Commissioner ~~of Agriculture and Consumer Services~~ in the performance of ~~their~~his duties under this article or under the regulations adopted pursuant ~~thereto~~ to this article.

**Drafting Note: Technical changes.**

~~§ 3.1-530.4~~ 3.2-5208. Powers and duties of State Health Commissioner ~~and his agents~~; obstruction, ~~etc.~~, unlawful.

The State Health Commissioner ~~or his agents~~, pursuant to the regulations promulgated ~~adopted~~ pursuant to ~~§ 3.1-530.1~~ 3.2-5206, shall issue permits to all plants ~~which~~that process and distribute Grade A market milk and Grade A market milk products. The State Health Commissioner ~~or his agents~~ shall also enforce the regulations adopted under ~~§ 3.1-530.1~~ 3.2-5206 in all ~~such~~ plants from the point of delivery at the plant to the consumer. ~~They are~~He is empowered, in the performance of ~~their~~his duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article, or the regulations adopted hereunder, pertaining to the processing and distribution of Grade A market milk, Grade A market milk products, ungraded milk products, and those products manufactured in semblance to or as substitutes ~~therefor~~ in Grade A market milk and Grade A market milk products plants from the point of delivery at the plant to the consumer. It shall be unlawful for any person to hinder, obstruct, or interfere with the State Health Commissioner ~~or his agents~~ in the performance of ~~their~~his duties under this article or under the regulations adopted ~~pursuant thereto~~hereunder.

**Drafting Note: Technical changes.**

~~§ 3.1-530.7.~~ Delegation of authority of commissioners.

~~All authority vested in either of the commissioners by virtue of the provisions of this article may, with like force and effect, be executed by such persons as either commissioner may from time to time designate for such purpose.~~

**Drafting Note: Deleted section. The authority of either Commissioner to delegate authority is provided for in § 2.2-604.**

~~§ 3.1-530.9~~ 3.2-5209. Penalties.

Any violation of the provisions of this article, or the regulations adopted ~~thereunder~~ hereunder, or failure to comply with such provisions or regulations, ~~shall be~~is a Class 1 misdemeanor and punished as provided by law. Each day of such failure or violation shall be a separate offense and shall be punished as such.

**Drafting Note: As per § 18.2-12, a misdemeanor for which no punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

~~§ 3.1-530.10~~ 3.2-5210. Civil penalties.

A. In addition to the penalties prescribed in ~~§ 3.1-530.9~~ 3.2-5209, any person violating any provision of this article or regulation adopted ~~thereunder~~hereunder may be assessed a civil penalty by the Commissioner for each violation in an amount not to exceed \$1,000. Any civil penalty may be in lieu of suspension of a permit issued pursuant to ~~§ 3.1-530.1~~ 3.2-5206. In determining the amount of any civil penalty, the Commissioner shall give due consideration to: (i) the previous violations committed by the person; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with this article or regulation adopted ~~thereunder~~hereunder after notification of the violation. Any civil penalty shall be in addition to any payment ~~which~~that may be required for the wholesale value of all milk and milk products ~~which~~that must be destroyed as a consequence of such violation.

B. A civil penalty may be assessed by the Commissioner only after the Commissioner has given the person charged with a violation an opportunity for a public hearing. Where such a public hearing has been held, the Commissioner shall make findings of fact and issue a written

decision as to the occurrence of the violation and the amount of the penalty ~~which~~<sup>that</sup> is warranted, incorporating, when appropriate, an order ~~therein~~ requiring that the penalty be paid. When appropriate, the Commissioner shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Commissioner after the Commissioner determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Civil penalties assessed under this section shall be paid into the general fund of the state treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

D. Final orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Nothing in this section shall require the Commissioner to institute proceedings for the imposition of civil penalties if the Commissioner considers the violations of this article to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing when he believes that the public interest will be served by so doing.

F. The penalty provisions of this section shall not apply to violations of this article or any regulation adopted ~~thereunder~~<sup>hereunder</sup> with respect to excessive drug residue. The penalty for any such violation shall be as provided in ~~§ 3.1-530.14~~ 3.2-5211.

**Drafting Note: Technical changes.**

~~§ 3.1-530.14~~ 3.2-5211. Excessive drug residue; penalty.

A. For the purposes of this section:

"Dairy farm" means any farm producing Grade A milk or milk for manufacturing purposes.

"Excessive drug residue" means drug residue that is: (i) greater than the value specified as a safe level by the ~~United States~~U.S. Food and Drug Administration; (ii) equal to or greater than the value specified as the minimum actionable level by the ~~United States~~U.S. Food and Drug Administration; or (iii) greater than the value specified as the maximum tolerance level established by federal law. In the event that no safe level, actionable level, or tolerance level for drug residue has been established under federal law, any drug residue shall be deemed to exceed the safe level, minimum actionable level, or tolerance level of drug residue.

"Official drug test" means a test: (i) performed by a laboratory that is certified by the Interstate Milk Shippers (IMS) and listed as certified in the IMS List Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers published by the ~~United States~~U.S. Food and Drug Administration; (ii) performed in a laboratory operated by the Commonwealth of Virginia; or (iii) performed using a method that has been reviewed and accepted by the United States Public Health Service, the Association of Official Analytical Chemists, or the American Public Health Association.

B. Where an official drug test detects the presence of excessive drug residue in milk produced at a dairy farm, the Commissioner may: (i) assess a civil penalty not to exceed \$100 against the operator of the dairy farm; or (ii) order the suspension of any permit issued to the operator pursuant to ~~§ 3.1-530.1~~ 3.2-5206. No civil penalty shall be assessed under this section unless the operator of the dairy farm has been given the opportunity for an informal fact-finding conference pursuant to § 2.2-4019. If the matter is not resolved by the informal fact-finding conference or the operator of the dairy farm is dissatisfied with the Commissioner's decision

from the informal fact-finding conference, the operator may request a second informal fact-finding conference. Any such request shall be submitted by the operator to the Commissioner within ~~thirty~~ 30 days after the operator's receipt of the decision. The Commissioner in his discretion may grant or deny such request.

Nothing in this section shall be construed to require the Commissioner to hold a formal hearing pursuant to § 2.2-4020 prior to the assessment of a civil penalty or the suspension of a permit pursuant to this section.

C. If the Commissioner assesses a civil penalty pursuant to this section and the operator of the dairy farm fails to pay the civil penalty in a timely manner, the Commissioner shall suspend any permit issued pursuant to § ~~3.1-530.4~~ 3.2-5206 to the operator.

D. Civil penalties assessed under this section shall be paid into the general fund of the state treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

**Drafting Note: Technical changes.**

### Article ~~5.1~~ 3.

#### Ice Cream and Similar Products.

~~§ 3.1-562.1~~ 3.2-5212. Authority of Board to establish standards, adopt regulations, etc.

The ~~State Board of Agriculture and Consumer Services~~ is authorized to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, labeling, and sanitary standards for ice cream, ice milk, frozen custards, sherbets, water ices, ~~and~~ related foods, ~~and~~ other similar products, and those products manufactured or sold in semblance to or as substitutes ~~therefor~~.

**Drafting Note: Technical changes.**

~~§ 3.1-562.3~~ 3.2-5213. Commissioner ~~and his agents~~ to enforce article; right of entry.

The Commissioner of ~~Agriculture and Consumer Services~~ ~~and his agents~~ shall administer and enforce the regulations adopted pursuant to this article. ~~They are~~ *He is* empowered, in the performance of ~~their~~ *his* duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article or the regulations adopted ~~hereunder~~ *hereunder*.

**Drafting Note: Technical changes.**

~~§ 3.1-562.4~~. Sale of products; not subject to local supervision.

~~Products produced, processed or manufactured under the regulations adopted in accordance with the provisions of this article may be sold in all counties, cities and towns in this Commonwealth and shall not be subject to the supervision or inspection of any political subdivision in which the products are sold.~~

**Drafting Note: Deleted section. This provision is addressed in proposed § 3.2-5202, Sale of products not subject to local supervision.**

~~§ 3.1-562.5~~. Products produced outside Commonwealth.

~~No regulation adopted under this article shall be construed so as to prohibit the sale within the Commonwealth of any product which is produced outside of the Commonwealth under laws or regulations of the exporting state or political subdivision thereof which are substantially equivalent to regulations promulgated under this article and which are enforced with equal effectiveness.~~

**Drafting Note: Deleted section. This provision is addressed in proposed § 3.2-5203, Importing of products.**

~~§ 3.1-562.6~~ 3.2-5214. Permits; delegation of enforcement of article to State Health Commissioner for restaurants.

~~Within thirty days after the adoption of initial regulations by the State Board of Agriculture and Consumer Services, every~~ Any person, firm or corporation engaged in the manufacture ~~within in this the~~ Commonwealth of any of the foods ~~covered by this article listed in § 3.2-5212~~ shall ~~make application apply~~ to the Commissioner of Agriculture and Consumer Services ~~on a-an~~ application form prescribed by him for a permit to manufacture such foods or any of them.

A separate application shall be made for each establishment where such foods are manufactured or are to be manufactured. The Commissioner may by agreement delegate the enforcement of this article to the State Health Commissioner for restaurants as defined in § 35.1-1. Such agreement shall provide for the combining of the permit required by this article and the license required by § 35.1-18.

The Commissioner, upon receipt and approval of such application properly executed, shall issue a permit authorizing the applicant to engage in the manufacture of such foods as are described in the application; ~~however, the~~. The Commissioner may, after a full hearing, refuse to issue a permit or renew a permit, or may suspend or revoke a permit in the case of any establishment ~~which that~~ does not meet the requirements of this article or of any regulation adopted for its administration and enforcement. ~~Such permit~~ Permits shall be renewable on July 1 of each year.

**Drafting Note: Technical changes.**

~~§ 3.1-562.7.~~ Injunctions.

~~In the event of violation of any provision of this article or the regulations adopted thereunder, the Commissioner of Agriculture and Consumer Services may petition any appropriate court of record for relief by injunction without being compelled to allege or prove that an adequate remedy at law does not exist.~~

**Drafting Note: Deleted section. This provision is addressed in proposed § 3.2-5205, Injunctions.**

~~§ 3.1-562.8~~ 3.2-5215. Detention of adulterated, misbranded, ~~etc.,~~ products.

Whenever any product subject to this article is found by ~~any authorized representative of~~ the Commissioner upon any premises where it is held and there is reason to believe that ~~any such the~~ product is adulterated or misbranded in violation of the regulations adopted by the Board pursuant to this article, or that such product has been or is intended to be distributed in violation of ~~any such~~ regulations, ~~it the product~~ may be detained by ~~such representative~~ for a period not to exceed ~~twenty~~ 20 days, pending action under § ~~3.1-562.9~~ 3.2-5216 of this article, and shall not be moved by any person from the place at which it is located when ~~so~~ detained, until released by ~~such representative~~ the Commissioner.

**Drafting Note: Technical changes.**

~~§ 3.1-562.9~~ 3.2-5216. Condemnation of adulterated, misbranded, ~~etc.,~~ products.

Any product referred to by § ~~3.1-562.8~~ 3.2-5215 shall be liable to be proceeded against and condemned.

At any time prior to the expiration of the ~~twenty~~ 20-day detention period provided by § ~~3.1-562.8~~, ~~the authorized representative of~~ 3.2-5215, the Commissioner ~~placing a product under detention shall, at the direction of the Commissioner or his authorized representative,~~ notify the attorney for the Commonwealth for the city or county ~~in which~~ where such detention was made in writing ~~of said detention~~. Upon receiving ~~such~~ written notification, the attorney for the Commonwealth shall forthwith file in the name of the Commonwealth any information against the detained product in the clerk's office of the circuit court of the county, ~~or of the corporation court, or other court of record of competent jurisdiction in the city wherein~~ where the detention was made. Upon the filing of such information, the clerk of court shall forthwith issue a warrant directing the sheriff ~~or city sergeant, as the case may be,~~ to seize the detained product and see to its transportation to a suitable place of storage, ~~which that~~, if necessary, may be outside of the

county or city served by the sheriff or city sergeant. Should the attorney for the Commonwealth, for any reason, fail to file such information within five days after receipt of written notice of detention of the product, the same may, at any time within ~~thirty~~ 30 days thereafter be filed by the Attorney General and the proceedings thereon shall be the same as if filed by the attorney for the Commonwealth.

Such information shall allege the seizure, and set forth in general terms the grounds of forfeiture of the seized product, and shall ~~pray~~ petition that the same be condemned and sold and the proceeds disposed of according to law, and that all persons concerned or interested be cited to appear and show cause why such product should not be condemned and sold to enforce the forfeiture. After the filing of the information, the attorney for the Commonwealth shall apply to the judge of the court wherein the information was filed for a hearing on the matters contained in the information. The judge of the court shall move the cause to the head of the docket and ~~such~~ *the* hearing, ~~as is prayed for by the information,~~ shall be had as soon as practical to do so.

The owner of and all persons in any manner then indebted or liable for the purchase price of the product and any person having a lien thereon, if they be known to the attorney who files the information, shall be made parties defendant thereto, and shall be served with the notice ~~hereinafter~~ provided for, in the manner provided by law for serving a notice, at least ~~ten~~ 10 days before the day ~~therein~~ specified for the hearing on the information, if they ~~be~~ *are* residents of ~~this~~ *the* Commonwealth; and if they ~~be~~ *are* unknown or nonresidents, or cannot with reasonable diligence be found in ~~this~~ *the* Commonwealth, they shall be deemed sufficiently served by publication of the notice once a week for two successive weeks in some newspaper published in ~~such~~ *the* county or city, or if there be none published therein, then in some newspaper having general circulation ~~therein~~, and a notice shall be sent by registered mail of such seizure to the last known address of the owner of the detained product.

Any person claiming to be the owner of such product or to hold a lien thereon, may appear at any time before final judgment of the trial court, and be made a party defendant to the information so filed, which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim, whether as owner or as lienor, and if as owner, the right or title by which he claims to be such owner, and if lienor, the amount and character of his lien, and the evidence thereof; and in either case, such defendant shall set forth fully any reason or cause ~~which~~ *that* he may have to show against the forfeiture of the product.

If such product is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the state treasury, but the product shall not be sold contrary to the regulations of the Board; provided, that upon the execution and delivery of a good and sufficient bond conditioned that the product shall not be sold or otherwise disposed of contrary to the regulations of the Board, the court may direct that such product be delivered to a claimant thereof, who may have appeared in the proceedings, subject to such supervision by ~~authorized representatives of the Commissioner as is necessary to insure compliance with the applicable regulations.~~ When a decree of condemnation is entered against a product and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses may, as the court deems just, be awarded against the person ~~or persons~~, if any, intervening as claimant of the product.

If a claimant ~~shall deny~~ *denies* for any reason that the product to be condemned is subject to condemnation as provided by this section, and shall demand a trial by jury of the issue thus made, *then* the court shall, under proper instructions, submit the same to a jury of five, to be selected and empanelled as prescribed by law, ~~and if such.~~ *If the jury shall find finds on the issue in favor of such* *the* claimant, or if the court, trying such issue without a jury, ~~shall so find finds,~~ the judgment of the court shall be to entirely relieve the product from forfeiture, and no costs shall be taxed against such claimant.



**Drafting Note: Technical changes.**

~~§ 3.1-562.10~~ 3.2-5217. Penalties.

Any violation of the provisions of this article or the regulations adopted ~~thereunder~~ *hereunder*, or failure to comply with such provisions or regulations, ~~shall be~~ is a *Class 1* misdemeanor and punished as provided by law. Each day of such failure or violation shall be a separate offense as such.

**Drafting Note: Pursuant to § 18.2-12, a misdemeanor for which no punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

Article 4.

Babcock and Other Machine Tests.

~~§ 3.1-545~~ 3.2-5218. "Person" or "holder" defined *Definitions.*

~~The word "person" or "holder" as~~ As used in this article ~~shall also include, unless the context requires a different meaning:~~

*"Holder"* means a corporation, association ~~or~~, partnership or two or more persons having a joint or common interest.

**Drafting Note: Deleted the definition of "person" since it is provided Code-wide in § 1-230.**

~~§ 3.1-531.1~~ 3.2-5219. No test or ~~centrifuge~~ *centrifuge apparatus* other than Babcock or other centrifugal machines to be used unless approved by Board.

No test or ~~centrifuge~~ *centrifuge apparatus* shall be used for the purpose of determining the composition of milk or cream as a basis for payment in buying or selling milk or cream or dairy products other than the Babcock or other centrifugal machines unless such other test or ~~centrifuge~~ *centrifuge apparatus* has been approved for such use by regulation of the Board of ~~Agriculture and Consumer Services~~. In the event that the Board approves such other test or ~~centrifuge~~ *centrifuge apparatus* for such use, then the provisions of this article shall apply, *mutatis mutandis*, to such approved test or ~~centrifuge~~ *centrifuge apparatus*.

**Drafting Note: Technical changes.**

~~§ 3.1-532~~ 3.2-5220. Inspection of centrifugal machines and scales; condemnation ~~thereof~~.

Every Babcock or other centrifugal machine, or cream test or butterfat test scale, used in ~~this~~ *the* Commonwealth by any inspector of milk or cream or by any person in any milk inspection laboratory for determining the composition of milk or cream for purposes of inspection, or by any person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, laboratory, or other place for determining the composition or value of milk or cream as a basis for payment in buying or selling, shall be subject to inspection at least once in each year by the Commissioner, ~~his assistants or agents~~. ~~Any~~ *The Commissioner may condemn any* Babcock or other centrifugal scale ~~so used, that is, in his opinion, not in the opinion of the Commissioner or his assistants or agents in condition to give giving accurate results, may be condemned by the Commissioner or his assistants or agents~~. No Babcock or other centrifugal machine or scale that has been condemned by the Commissioner ~~or his assistants or agents as not in condition to give accurate results~~ shall be used in ~~this~~ *the* Commonwealth by any person for determining the composition or value of milk or cream, unless the machine or scale ~~be has been changed to the satisfaction of and approved by the Commissioner or his assistants or agents, and approved by him~~.

**Drafting Note: Technical changes.**

~~§ 3.1-533~~ 3.2-5221. Manipulators of machines to procure certificates; renewal of certificate; revocation by Commissioner.

No inspector of milk or cream, and no person in any milk inspection laboratory, shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition of milk or cream for purposes of inspection without first obtaining a certificate from

the Commissioner that he is competent to perform such work. No person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, or other place in ~~this~~ *the* Commonwealth shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition or value of milk or cream, or shall take samples or weigh milk or cream, as a basis for payment in buying or selling, without first obtaining a certificate from the Commissioner that he is competent to perform such work. All such certificates shall be renewed annually without further examination at the discretion of the Commissioner upon application. Unless a person holding a valid tester's, weigher's, and sampler's certificate renews ~~said~~ *his* certificate within one year after its expiration date, he shall be required to pass the applicable examination before a new certificate shall be issued. If any holder of a certificate is notified by the Commissioner, ~~his assistants or agents~~ to correct his use of a Babcock or other centrifugal machine, or his method of sampling or weighing, and ~~such~~ *the* person or holder of a certificate ~~so~~ notified fails to comply with the notice and correct his use of a Babcock or other centrifugal machine, or his methods of sampling or weighing, he shall be deemed guilty of a violation of the provisions of this article, and the Commissioner may forfeit his certificate or assess a civil penalty as provided in ~~§ 3.1-545.1~~ 3.2-5233. No holder of a certificate whose authority to manipulate a Babcock or other centrifugal machine or to sample or weigh milk or cream has been revoked by the Commissioner shall thereafter manipulate in ~~this~~ *the* Commonwealth any centrifugal machine or sample or weigh milk or cream for the purposes herein specified until his certificate has been renewed.

**Drafting Note: Technical changes.**

~~§ 3.1-534~~ 3.2-5222. To whom certificates issued.

The Commissioner is authorized to issue certificates of competency to ~~such~~ persons desiring to manipulate the Babcock or other centrifugal machine or to sample or weigh milk or cream who may present certificates of ~~such~~ competency properly filled out and signed by the professor of dairy science or other authorized officer of the Virginia Polytechnic Institute and State University, and to ~~such~~ other persons as, in the opinion of the Commissioner, are competent to manipulate the machines, and to sample or weigh milk or cream.

**Drafting Note: Technical changes.**

~~§ 3.1-535~~ 3.2-5223. ~~Rules-Regulations~~ governing applications for certificates; revocation by Board; standards and regulations.

The Board of ~~Agriculture and Consumer Services~~ is authorized to ~~make~~ *adopt* and enforce ~~rules-regulations~~ governing applications for ~~such~~ certificates and the granting ~~thereof~~ *of certificates*. ~~and~~ *The Board* may, in its discretion, revoke the authority of any holder of a certificate who, in its opinion, is not correctly manipulating any Babcock or other centrifugal machine, or correctly sampling or weighing milk or cream ~~as aforesaid~~ or is using dirty or otherwise unsatisfactory glassware or utensils. The Board is authorized to fix such standards and to ~~issue~~ *adopt* such regulations as may be deemed necessary to carry out the provisions of this article.

**Drafting Note: Technical changes.**

~~§ 3.1-535.1~~ 3.2-5224. Regulations governing equipment, standards and procedures.

The ~~State Board of Agriculture and Consumer Services~~ shall have authority to ~~promulgate~~ *adopt* and enforce ~~rules and~~ regulations governing the equipment, standards, and procedures used in the receiving, weighing, measuring, sampling, and testing of milk or other fluid dairy products when the results are to be used for the purpose of inspection, check testing, or as a basis for payment in buying or selling.

**Drafting Note: Technical changes.**

~~§ 3.1-536~~ 3.2-5225. Capacity of standard measurers, ~~etc.~~

In the use of the Babcock or *any* other centrifugal machine, the standard milk measurer or pipettes shall have a capacity of ~~seventeen and six tenths~~ 17.6 cubic centimeters and the standard

test tubes or bottles for milk shall have a capacity of two cubic centimeters for each ten per centum-cent marked on the necks thereof.

**Drafting Note: Technical changes.**

~~§ 3.1-537~~ 3.2-5226. Units for testing cream.

Cream shall be tested by weight and the standard units for testing shall be ~~eighteen~~-18 grams, and nine grams, ~~and it~~. It is hereby made a violation of the provisions of this article to use any other standard of milk or cream measure where milk or cream is purchased by or furnished to creameries or cheese factories, and where the value of the milk or cream is determined by the per-centum-cent of butterfat contained ~~in the same~~ by the Babcock or other centrifugal test or cream test or butterfat test scales.

**Drafting Note: Technical changes.**

~~§ 3.1-538~~ 3.2-5227. Sampling to determine butterfat by composite tests.

In sampling milk or cream ~~from which for~~ composite tests ~~are to be made~~ to determine the per-centum-cent of butterfat contained ~~therein~~, no such sample or sampling shall be lawful unless a sample ~~be is~~ taken from each weighing, and the quantity ~~thus~~ used shall be proportioned to the total weight of the milk or cream tested.

**Drafting Note: Technical changes.**

~~§ 3.1-539~~ 3.2-5228. Test of measurers; inspection of machines and scales; right of entry.

The Commissioner shall inspect or cause to be inspected at least once each year every Babcock or other centrifugal machine or cream test or butterfat test scales used in ~~this~~-the Commonwealth by an inspector of milk or cream or by any person in any milk inspection laboratory for purposes of inspection, or by any person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, or other place for determining the composition or value of milk or cream as a basis for payment in buying or selling. The Commissioner, ~~his assistants or his agents~~ ~~are is~~ further authorized to enter upon any premises in ~~this~~-the Commonwealth where any centrifugal machine or cream test and butterfat test scales are used ~~as aforesaid~~ to inspect the ~~same~~ devices and to ascertain if the provisions of law are complied with.

**Drafting Note: Technical changes.**

~~§ 3.1-540~~ 3.2-5229. False manipulation and reading of tests.

Any person who shall, by himself or as the officer, servant, agent, or employee of any person, ~~firm or corporation~~, falsely manipulate, ~~or~~ underread, or overread the Babcock test or any other ~~contrivance~~-apparatus used for the purpose of determining the amount of milk fat in milk or cream, or who shall make any false determination of any test or ~~contrivance~~-apparatus used for the purpose of determining the amount of milk fat in any dairy products, ~~shall be is~~ guilty of a Class 1 misdemeanor.

**Drafting Note: As per § 18.2-12, a misdemeanor for which no punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

~~§ 3.1-541~~ 3.2-5230. Tender of payment as evidence of test.

The tender of payment for milk or cream at any given test, shall constitute prima facie evidence that such test was made.

**Drafting Note: No changes.**

~~§ 3.1-542~~ 3.2-5231. Commissioner to enforce article; persons exempt.

It shall be the duty of the Commissioner to see that the provisions of this article are complied with, and he may in his discretion prosecute ~~or cause to be prosecuted~~ any person violating any of its provisions. But ~~they~~-the provisions of this article shall not be construed to affect ~~any persons~~-a person using any centrifugal or other machine or test in determining the composition or value of milk or cream when such determination is made for the information of ~~such persons~~ that person only and not for purposes of inspection, or as a basis for payment in buying or selling.

**Drafting Note: Technical changes.**

~~§ 3.1-544 3.2-5232.~~ Obstructing Commissioner; violations of article.

Any person who shall hinder or obstruct the Commissioner, ~~his assistants or agents~~ in the discharge of the authority or duty imposed upon him ~~or them~~ by this article, and any person, ~~firm or corporation~~ violating any of ~~their~~-its provisions shall ~~be~~is guilty of a *Class 2* misdemeanor and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, and costs of prosecution, or by imprisonment in the county or city jail not to exceed ninety days or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court.

**Drafting Note: Classified penalty in accordance with § 18.2-11, Punishment for conviction of misdemeanor.**

~~§ 3.1-545.1 3.2-5233.~~ Civil penalties.

A. In addition to the penalties prescribed in § ~~3.1-540-3.2-5229~~ or § ~~3.1-544 3.2-5232~~, any person violating any provision of this article or regulation adopted ~~thereunder~~hereunder may be assessed a civil penalty by the Commissioner for each violation in an amount not to exceed \$15,000. In determining the amount of any civil penalty, the Commissioner shall give due consideration to: (i) the previous violations committed by the person; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with this article or ~~regulation~~the regulations adopted ~~thereunder~~hereunder after notification of the violation. Any civil penalty shall be in addition to any payment ~~which~~that may be required for the wholesale value of all milk and milk products ~~which~~that must be destroyed as a consequence of such violation.

B. A civil penalty may be assessed by the Commissioner only after ~~the Commissioner~~he has given the person charged with a violation an opportunity for a public hearing. Where such a public hearing has been held, the Commissioner shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty ~~which~~that is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Commissioner shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Commissioner after the Commissioner determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Civil penalties assessed under this section shall be paid into the general fund of the state treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

D. Final orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Nothing in this section shall require the Commissioner to institute proceedings for the imposition of civil penalties if the Commissioner considers the violations of this article to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing when he believes that the public interest will be served by so doing.

**Drafting Note: Technical changes.**

Article 6.

Licensing Creameries, Plants, and Stations.

~~§ 3.1 563. Application for license.~~

~~It shall be the duty of the proprietor or proprietors of every creamery, cheese plant, condensed milk plant, ice cream plant, milk distributing plant, and milk and cream buying station in this Commonwealth where milk or cream is received, by purchase or otherwise, to apply to the Commissioner, upon blanks furnished by the Commissioner, for a license for each separate place of business.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 564. Issuance, display and duration of license.~~

~~The license shall be issued by the Commissioner, after an adequate inspection by an authorized representative or agent of the Commissioner, and the license issued shall be displayed in a conspicuous place in the office or on the inside wall of the creamery, plant, or station for which issued. All such licenses shall expire on the thirty first day of December next following the date of issuance.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 565. License conditioned on compliance with article; revocation generally.~~

~~The license shall be conditioned on the compliance with the provisions of this article by the licensee, or by his employees acting within the scope of their employment, and the failure so to comply shall be a ground for the revocation of the license.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 566. Annual report to Commissioner.~~

~~It shall be the duty of the proprietor or proprietors of every creamery, cheese plant, condensed milk plant, ice cream plant, milk distributing plant, and milk or cream buying station in this Commonwealth, where milk or cream is received, by purchase or otherwise, to file on or before April 1 of each year, upon blanks furnished by the Commissioner a report with the Commissioner showing the amount of milk and cream received by the creamery, cheese plant, condensed milk plant, ice cream plant, milk distributing plant or milk or cream buying station during the year ending December 31 next preceding; the report shall also show the amount of butter, cheese, condensed milk, ice cream and other dairy products manufactured during such year.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 567. Records.~~

~~Records of the purchase of cream shall be kept at each such creamery, plant, or station, and shall show the date of purchase, the net pounds of cream purchased, the test for butterfat, the price per pound of butterfat, and the total amount paid therefor, in such manner as may be required by the Commissioner. When payment for cream is made in cash, a receipt signed by the person to whom such payment is made shall be kept among the records. When payment is made by check, the cancelled checks shall be returned within thirty days from the date of clearance and kept at each such creamery, plant, or station from which such checks were issued, for a period of six months from the date of such clearance, unless facsimile impression copies of all such checks or receipts are kept among the records. All such records shall be available for inspection by any authorized representative or agent of the Commissioner, including the record of payment therefor. The falsification of such records, or the failure to keep the same in the manner required by the Commissioner, including the record of payment therefor, or the false manipulation or overreading or underreading of the Babcock test as a basis for payment in buying or selling, by the holder of a license required by this article or by any employee of such holder, shall be a ground for the revocation by the Commissioner of the license of any such creamery, plant, or station.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 568. Commissioner to receive no extra compensation.~~

~~The duties herein imposed upon the Commissioner shall be performed by him without additional compensation.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 569. Penalty for violation.~~

~~Any person or persons owning or operating any creamery, cheese plant, condensed milk plant, ice cream plant, milk depot, or milk distributing plant, or milk or cream buying station, failing to comply with the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$100 or confinement in jail not to exceed sixty days, or both.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1 570. How license revoked.~~

~~Whenever it appears to the Commissioner that the provisions of this article have been violated, such violation shall be ground for revocation of license, but no license shall be revoked until the licensee has been accorded a hearing upon the merits of such revocation, of which hearing he shall be notified in writing at least ten days in advance of the date set for the same.~~

**Drafting Note: Deleted section. This provision is obsolete.**

## CHAPTER 27-53.

### Article 5

#### EGGS AND HATCHERY PRODUCTS.

**Chapter Drafting Note: The proposed chapter has been moved from Article 5 of existing Chapter 27, Livestock and Poultry. The definition of the term “egg processor” has been deleted because it is not used in the chapter. The requirement that eggs in commerce must maintain an internal temperature of 65°F has been deleted from proposed § 3.2-5308, Sanitation and related matters, because the temperature requirements are provided in federal regulations.**

~~§ 3.1 763.14~~ 3.2-5300. Application of ~~article~~ *chapter*.

This ~~article~~ *chapter* shall apply to the marketing of eggs to consumers, institutional consumers, and retailers.

**Drafting Note: Technical changes.**

~~§ 3.1 763.15~~ 3.2-5301. Definitions.

As used in this ~~article~~ *chapter*, unless the context ~~clearly~~ requires a different ~~construction~~ *meaning*:

(a) ~~"Eggs" mean eggs in the shell that are the product of domesticated chickens.~~

(b) ~~"Consumer" means any person who acquires eggs for consumption in his own household and not for resale.~~

*"Eggs" mean eggs in the shell that are the product of domesticated chickens.*

*"Grade" means specifications defining the limits of variation in quality of eggs in such a manner as to differentiate among classes of eggs, and the letter, number, or other symbol by which references may be made.*

(c) ~~"Institutional consumer" means a restaurant, hotel, boardinghouse, or any other business, facility, or place in which eggs are prepared or offered as food to for use by its patrons, residents, inmates, or patients.~~

(d) ~~"Retailer" means any person who markets eggs to ultimate consumers.~~

(e) ~~"Market" means sell, offer for sale, give in the channels of commerce, barter, exchange, or distribute in any manner.~~

*"Processor" includes any person who cleans, candles, grades, sizes, and packs shell eggs for human consumption.*

*"Retailer" means any person who markets eggs to consumers.*

~~(f) "Person" means any individual, producer, firm, partnership, exchange, association, trustee, receiver, corporation, or any other entity and any member, officer, employee or agent thereof.~~

~~(g) "Grade" means specifications defining the limits of variation in quality of eggs in such a manner as to differentiate among classes of eggs, and the letter, number, or other symbol by which references thereto may be made.~~

~~(h) "Standard" means specifications of the physical characteristics or any or all of the component parts of individual eggs.~~

~~(i) "Egg processor," and words of similar import and meaning, when used in any of the statutes of the Commonwealth of Virginia, shall include, but is not limited to, any person who cleans, candles, grades, sizes, and packs shell eggs for human consumption.~~

**Drafting Note: Alphabetized definitions and deleted the term "egg processor," which is not used throughout the chapter.**

~~§ 3.1-763.16 3.2-5302. Standards, grades, and size-weight classes; cracked or checked eggs; sale of inedible eggs.~~

~~(a)A. The Virginia Board of Agriculture and Consumer Services shall establish, and from time to time may amend or revise adopt standards, grades, and size-weight classes including standards for the term "ungraded" for eggs marketed in this the Commonwealth. In administering this article chapter, the Virginia Department of Agriculture and Consumer Services shall have due regard for the desirability of uniformity in the standards, grades, and size-weight classes for eggs moving in intrastate and interstate commerce.~~

~~(b)B. Cracked or checked eggs labeled as "cracks" may be sold only by producers or processors directly to consumers or for further processing, excluding institutional consumers.~~

~~C. The sale or offering for sale of inedible eggs as defined in the grades adopted by the Commissioner is prohibited except that incubated eggs may be sold for commercial purposes other than for human consumption provided such incubated eggs are marked, packaged, and disposed of in a manner approved by the Commissioner.~~

**Drafting Note: Proposed subsection C is moved from existing § 3.1-767.**

~~§ 3.1-764 3.2-5303. Requirements for eggs sold as fresh or with similar description.~~

~~The term "fresh eggs," or any legend, symbol, picture, representation or device declaring or tending to convey the impression that the eggs are fresh may be applied only to eggs meeting the requirements of grade A quality or better as established by the Virginia Board for fresh eggs.~~

**Drafting Note: Technical changes.**

~~§ 3.1-763.17 3.2-5304. Labeling and advertising.~~

~~No label, container, display, or advertisement of eggs shall contain incorrect, fraudulent, or misleading representations. No person shall advertise eggs for sale unless the unabbreviated grade and size-weight class, quality, or other required terms are conspicuously designated in letters at least half as high as the tallest letter in the word "eggs" or the tallest figure in the price, whichever is larger.~~

**Drafting Note: No changes.**

~~§ 3.1-765 3.2-5305. Certain producers exempt from law.~~

~~Producers selling a total of 150 dozen eggs or less per week produced by their own hens, or eggs purchased from other producers not to exceed 60 dozen per week are exempt from this law provided all eggs are of edible quality and of the quality as represented.~~

**Drafting Note: No changes.**

~~§ 3.1-766. Certain eggs not required to be marked.~~

~~Eggs moving into private or cooperative packing plants, which are first receivers, where they will be candled and graded, need not be marked.~~

**Drafting Note: Deleted section and moved to subsection B of proposed § 3.2-5306, Enforcement of chapter; how eggs marked and quality determined; requirements.**

~~§ 3.1-767. Sale or offering for sale of inedible eggs.~~

~~The sale or offering for sale of inedible eggs as defined in the grades adopted by the Commissioner of Agriculture and Consumer Services is prohibited except that incubated eggs may be sold for commercial purposes other than for human consumption provided such incubated eggs are marked, packaged, and disposed of in a manner approved by the Commissioner.~~

**Drafting Note: Deleted section and moved to subsection C of proposed § 3.2-5302, Standards, grades, and size-weight classes; cracked or checked eggs; sale of indelible eggs.**

~~§ 3.1-768 3.2-5306. Enforcement of ~~article~~ chapter; how eggs marked and quality determined; requirements.~~

~~A. This ~~article~~ chapter shall be enforced by the Commissioner of Agriculture and Consumer Services or his duly authorized agents and all eggs sold or offered for sale except those exempted in §§ 3.1-765 and 3.1-766 3.2-5305 shall be marked according to the grades, sizes, quality, ungraded or cracked and/or other required terms adopted by the Commissioner with the approval of the Board of Agriculture and Consumer Services and shall conform to the standards established for the grade, size, ungraded or cracked as labeled. Official determination of the quality of all eggs outlined in this ~~article~~ chapter shall be by candling.~~

~~B. Eggs moving into private or cooperative packing plants, which are first receivers, where they will be candled and graded, need not be marked.~~

**Drafting Note: Proposed subsection B is moved from existing § 3.1-766.**

~~§ 3.1-769 3.2-5307. When seller to furnish Seller invoice; what to appear thereon requirements.~~

~~Any person, firm or corporation selling or delivering eggs to restaurants, hotels, retail stores, bakeries or other institution purchasing eggs for serving to guests, patrons, employees or inmates not exempt under § 3.1-765, shall furnish the purchaser with an invoice showing the name and address of the seller and the quantity, grade, and size of such eggs. If the eggs are ungraded, such fact shall appear on the invoice. A copy of such invoice shall be retained by the seller and purchaser for not less than ~~thirty~~ 30 days.~~

**Drafting Note: Technical changes.**

~~§ 3.1-769.1 3.2-5308. Sanitation and related matters.~~

~~(a)A. Any person, firm, or corporation assembling, transporting, processing, holding, or offering for sale eggs of grade A quality or better destined for a consumer or an institutional consumer shall provide and maintain the internal temperature of the eggs not to exceed sixty five degrees Fahrenheit and provide a satisfactory relative humidity. In addition, any container, including the packaging material therein or associated therewith, shall be clean and free from foreign odor.~~

~~(b)B. The Virginia Board of Agriculture and Consumer Services shall by rules and regulations, provide for the keeping, processing, transporting, and the sale of eggs under sanitary conditions.~~

~~(c)C. Nothing in this ~~article~~ chapter or in any rules or regulations of the Virginia Board of Agriculture and Consumer Services shall be construed to exempt any persons or premises from the application thereto of any laws otherwise applicable and relating to the operation of establishments or facilities for the storing, transporting, sale, distribution, preparation, or serving of food.~~

**Drafting Note: The temperature requirements provided in subsection A are deleted as unnecessary because temperature provisions are established in federal regulations 21 CFR 115.50 and 9 CFR 590.50.**

~~§ 3.1-769.2 3.2-5309. Stop-sale order and seizure.~~

~~(a)A. If after inspection, the Virginia Department of Agriculture and Consumer Services determines that any eggs are being offered, displayed, stored, processed, or transported in~~



violation of this ~~article~~ *chapter*, the ~~Virginia Department of Agriculture and Consumer Services~~ may issue a stop-sale order as to such eggs directed to the owner or custodian thereof. Such order shall specify the reason for its issuance and shall detail the character of the violation. No eggs to which a stop-sale order applies shall be marketed until and unless the order has been withdrawn. The ~~Virginia Department of Agriculture and Consumer Services~~ shall withdraw a stop-sale order only upon its determination that the conditions leading to the issuance of the order have been corrected.

~~(b)B.~~ Whenever the public interest requires, the ~~Virginia Department of Agriculture and Consumer Services~~ may take possession or custody of the eggs against which a stop-sale order has been issued and may commence proceedings for the seizure thereof. Upon seizure and proof of violation, the eggs shall be disposed of in such manner as may be consistent with the public safety and interest. The owner or custodian of the eggs shall not be entitled to any compensation or damages on account of such seizure or disposition.

**Drafting Note: Technical changes.**

~~§ 3.1-769.3~~ 3.2-5310. Right of entry.

The ~~Commissioner of Agriculture and Consumer Services, acting by any duly authorized officer, employee, or agent,~~ may enter during normal business hours on or into any premises or any vehicle wherein eggs are bought, stored, sold, offered for sale, processed, or transported, or wherein the ~~Commissioner of the Virginia Department of Agriculture and Consumer Services~~ has reason to believe that any such activity is carried on, in order to inspect and examine eggs, egg containers, any equipment, facilities or records pertinent to the conduct of activities subject to this ~~article or rules~~ *chapter* or regulations implementing the same, or to ascertain the state of compliance with any order issued by the ~~Virginia Department of Agriculture and Consumer Services~~ pursuant to this ~~article~~ *chapter*.

**Drafting Note: Technical changes.**

~~§ 3.1-769.4~~ 3.2-5311. ~~Rule making~~ *Adopting regulations.*

The ~~Virginia Board of Agriculture and Consumer Services~~ may ~~make and amend, from time to time, such rules and adopt~~ regulations as may be necessary to administer and implement this article. Such rules and regulations shall be published and made available in accordance with the Administrative Process Act (~~§ 2.2-4000 et seq.~~) *chapter*.

**Drafting Note: Technical changes.**

~~§ 3.1-770~~ 3.2-5312. Violation a misdemeanor.

Any person, ~~firm or corporation which by itself, its agents or employees,~~ *that* violates any provision of this ~~article~~ *chapter* is guilty of a *Class 1* misdemeanor.

**Drafting Note: Pursuant to § 18.2-12, a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

~~§ 3.1-770.1~~ 3.2-5313. Injunction.

The ~~Virginia Department of Agriculture and Consumer Services~~ acting by the Attorney General or local prosecutor may enforce any provision of this ~~article~~ *chapter* or any ~~rule or~~ regulation issued pursuant thereto by injunction.

**Drafting Note: Technical changes.**

~~§ 3.1-770.2~~ 3.2-5314. Remedies not exclusive.

The institution of proceedings for the application of any remedy available pursuant to this ~~article~~, or the issuance of any order on account thereof, or the imposition of any fine or penalty pursuant to this ~~article~~ *chapter* shall not operate as a bar or limitation to the application of any other remedy available pursuant to this ~~article~~ *chapter* or any other applicable law.

**Drafting Note: Technical changes.**

~~§ 3.1-770.3~~ 3.2-5315. Judicial review.

Any determination of final actions of the ~~Virginia Department of Agriculture and Consumer Services~~ taken pursuant to or under color of this ~~article~~ *chapter* shall be reviewable in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: Technical changes.**

## CHAPTER ~~30-54~~.

### SLAUGHTERHOUSES, MEAT, AND DRESSED POULTRY.

The existing chapter consists of two articles. Existing Article 1, while titled "In General" contains three sections to define Smithfield hams and establish a penalty for hams sold as a Smithfield while not meeting the required standards. Existing Article 2 is the Virginia Meat and Poultry Products Inspection Act. The proposed chapter contains four articles. The first three are a restructuring of the existing Virginia Meat and Poultry Products Inspection Act: proposed Article 1, General Provisions; proposed Article 2, Inspection, Slaughter, and Official Marks; and proposed Article 3, Enforcement and Penalties. Proposed Article 4, Smithfield Hams, will contain the sections found in existing Article 1.

#### Article ~~4-1~~.

##### ~~Virginia Meat and Poultry Inspection Act~~ *General Provisions.*

§ ~~3.1-884.17~~. Name of article.

This article may be cited as the "~~Virginia Meat and Poultry Products Inspection Act.~~"

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

§ ~~3.1-884.18~~ 3.2-5400. Definitions.

As used in this ~~article~~ *chapter*, except as otherwise specified, the following terms shall have the meanings stated below unless the context requires a different meaning:

(1) The term "~~Commissioner~~" means the ~~Commissioner of Agriculture and Consumer Services~~ or his delegate.

(2) The term "~~Board~~" means the ~~Board of Agriculture and Consumer Services~~.

(3) The term "~~person~~" includes any individual, partnership, corporation, association, or other business unit, and any officer, agent or employee thereof. Where applicable the term shall also include the Commonwealth of Virginia or any political subdivision thereof.

*"Animal food manufacturer" means any person engaged in the business of preparing animal (including poultry) food derived wholly or in part from livestock or poultry carcasses or parts or products of such carcasses.*

(4) The term "~~broker~~" "*Broker*" means any person engaged in the business of buying or selling livestock products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person.

*"Capable of use as human food" shall apply to any livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.*

*"Container" or "package" means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.*

*"Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.*

*"Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesale Meat Act (81 Stat. 584); the term "Federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957 (71 Stat. 441), as*

amended by the Wholesale Poultry Products Act (82 Stat. 791); and the term "federal acts" means these two federal laws.

"Immediate container" means any consumer package; or any other container in which livestock products or poultry products, not consumer packaged, are packed.

"Inspector" means an employee or official of the Commonwealth authorized by the Commissioner or any employee or official of the government of any locality authorized by the Commissioner to perform any inspection functions under this article under an agreement between the Commissioner and such governmental subdivision.

~~(5) The term "render" means any person engaged in the business of rendering livestock or poultry carcasses, or parts of products of such carcasses, except rendering conducted under inspection or exemption under this article.~~

~~(6) The term "animal food manufacturer" means any person engaged in the business of preparing animal (including poultry) food derived wholly or in part from livestock or poultry carcasses or parts or products of such carcasses.~~

~~(7) The term "intrastate commerce" means commerce within the Commonwealth.~~

"Label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article.

"Labeling" means all labels and other written, printed, or graphic matter: (i) upon any article or any of its containers or wrappers; or (ii) accompanying such article.

~~(8) The term "livestock" "Livestock" means any cattle, sheep, swine, goats, horses, mules, or other equines, whether live or dead.~~

~~(9) The term "livestock" "Livestock product" means any carcass, part thereof, meat, or meat food product of any livestock.~~

~~(10) The term "meat" "Meat food product" means any product capable of use as human food which that is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which. Products that contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which that are exempted from definition as a meat food product by the Commissioner under such conditions as he may prescribe to assure that the meat or other portions of such carcass contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a comparable meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.~~

"Official certificate" means any certificate prescribed by regulations of the Board for issuance by an inspector or other person performing official functions under this article.

"Official device" means any device prescribed or authorized by the Commissioner for use in applying any official mark.

"Official establishment" means any establishment as determined by the Commissioner at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this article.

"Official inspection legend" means any symbol prescribed by regulations of the Board showing that an article was inspected and passed in accordance with this article.

"Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Board to identify the status of any article or livestock or poultry under this article.

"Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this article as under the Federal Food, Drug, and Cosmetic Act.

~~(11) The term "poultry" "Poultry" means any domesticated bird, whether live or dead.~~

~~(12) The term "poultry" *Poultry* product" means any poultry carcass or part thereof; or any product ~~which~~*that* is made wholly or in part from any poultry carcass or part thereof, excepting products ~~which~~*that* contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and ~~which~~*that* are exempted by the Commissioner from definition as a poultry product under such conditions as he may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.~~

~~(13) The term "capable of use as human food" shall apply to any livestock or poultry carcass, or part or product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.~~

~~(14) The term "prepared" *Prepared*" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.~~

~~(15) The term "adulterated" shall apply to any livestock product or poultry product under one or more of the following circumstances:~~

~~(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;~~

~~(b) If it bears or contains (by reason of administration of any substance to the livestock or poultry or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Commissioner, make such article unfit for human food;~~

~~(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of § 408 of the Federal Food, Drug, and Cosmetic Act;~~

~~(d) If it bears or contains any food additive which is unsafe within the meaning of § 409 of the Federal Food, Drug, and Cosmetic Act;~~

~~(e) If it bears or contains any color additive which is unsafe within the meaning of § 706 of the Federal Food, Drug, and Cosmetic Act; provided, that an article which is not otherwise deemed adulterated under subdivision (c) or (d) of this subsection or this subdivision shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Board in official establishments;~~

~~(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;~~

~~(g) If it has been 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;~~

~~(h) If it is, in whole or in part, the product of an animal (including poultry) which has died otherwise than by slaughter;~~

~~(i) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;~~

~~(j) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to § 409 of the Federal Food, Drug, and Cosmetic Act;~~

~~(k) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or~~

~~(l) If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.~~

~~(16) The term "misbranded" shall apply to any livestock product or poultry product under one or more of the following circumstances:~~

~~(a) If its labeling is false or misleading in any particular;~~

~~(b) If it is offered for sale under the name of another food;~~

~~(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;~~

~~(d) If its container is so made, formed, or filled as to be misleading;~~

~~(e) Unless it bears a label showing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this subdivision, exemptions as to livestock products not in containers may be established by regulations prescribed by the Board; and provided, further, that under clause (2) of this subdivision, reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the Board;~~

~~(f) If any word, statement, or other information required by or under authority of this article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in 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;~~

~~(g) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations of the Board under § 3.1 884.20 unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;~~

~~(h) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under § 3.1 884.20, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;~~

~~(i) If it is not subject to the provisions of subdivision (g) of this subsection, unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and colorings without naming each; provided, that, to the extent that compliance with the requirements of clause (2) of this subdivision is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;~~

~~(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner, after consultation with the Secretary of Agriculture of the United States, determines to be, and prescribes as, necessary in order fully to inform purchasers as to its value for such uses;~~

~~(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that, to the extent that compliance with the requirements of this subparagraph (k) is impracticable, exemptions shall be established by regulations promulgated by the Board; or~~

~~(l) If it fails to bear, directly thereon and on its containers, as the Board may by regulations prescribe, the official inspection legend and establishment number of the establishment where the product was prepared, and, unrestricted by any of the foregoing, such~~

~~other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.~~

~~(17) The term "label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article.~~

~~(18) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.~~

~~(19) The term "container" or "package" means any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.~~

~~"Render" means any person engaged in the business of rendering livestock or poultry carcasses, or parts of products of such carcasses, except rendering conducted under inspection or exemption under this article.~~

~~(20) The term "shipping"Shipping container" means any container used or intended for use in packaging the product packed in an immediate container.~~

~~(21) The term "immediate container" means any consumer package; or any other container in which livestock products or poultry products, not consumer packaged, are packed.~~

~~(22) The term "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesale Meat Act (81 Stat. 584); the term "Federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957 (71 Stat. 441), as amended by the Wholesale Poultry Products Act (82 Stat. 791); and the term "federal acts" means these two federal laws.~~

~~(23) The term "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.~~

~~(24) The terms "pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this article as under the Federal Food, Drug, and Cosmetic Act.~~

~~(25) The term "official mark" means the official inspection legend or any other symbol prescribed by regulations of the Board to identify the status of any article or livestock or poultry under this article.~~

~~(26) The term "official inspection legend" means any symbol prescribed by regulations of the Board showing that an article was inspected and passed in accordance with this article.~~

~~(27) The term "official certificate" means any certificate prescribed by regulations of the Board for issuance by an inspector or other person performing official functions under this article.~~

~~(28) The term "official device" means any device prescribed or authorized by the Commissioner for use in applying any official mark.~~

~~(29) The term "official establishment" means any establishment as determined by the Commissioner at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this article.~~

~~(30) The term "inspector" means an employee or official of the Commonwealth of Virginia authorized by the Commissioner or any employee or official of the government of any city, county or other governmental subdivision of this Commonwealth, authorized by the Commissioner to perform any inspection functions under this article under an agreement between the Commissioner and such governmental subdivision.~~

**Drafting Note: Alphabetized definitions and deleted the definitions of the terms "Commissioner," "Board," and "person" because they are previously defined in proposed § 3.2-100, Definitions, and § 1-230. The definitions of "adulterated" and "misbranded" are moved to proposed §§ 3.2-5401, Adulterated livestock product or poultry product, and 3.2-5402, Misbranded livestock product or poultry product.**

*§ 3.2-5401. Adulterated livestock product or poultry product.*

*Any livestock product or poultry product shall be deemed to be adulterated:*

- 1. If it bears or contains any poisonous or deleterious substance that may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;*
- 2. If it bears or contains (by reason of administration of any substance to the livestock or poultry or otherwise) any added poisonous or added deleterious substance (other than one that is: (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) that may, in the judgment of the Commissioner, make such article unfit for human food;*
- 3. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical that is unsafe within the meaning of § 408 of the Federal Food, Drug, and Cosmetic Act;*
- 4. If it bears or contains any food additive that is unsafe within the meaning of § 409 of the Federal Food, Drug, and Cosmetic Act;*
- 5. If it bears or contains any color additive that is unsafe within the meaning of § 706 of the Federal Food, Drug, and Cosmetic Act; provided, that an article that is not otherwise deemed adulterated under subsection C or D of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Board in official establishments;*
- 6. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;*
- 7. If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;*
- 8. If it is, in whole or in part, the product of an animal (including poultry) that has died otherwise than by slaughter;*
- 9. If its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;*
- 10. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to § 409 of the Federal Food, Drug, and Cosmetic Act;*
- 11. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or*
- 12. If it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance.*

**Drafting Note: New section. Provisions moved from existing § 3.1-884.18.**

*§ 3.2-5402. Misbranded livestock product or poultry product.*

*Any livestock product or poultry product shall be deemed to be misbranded:*

- 1. If its labeling is false or misleading in any particular;*
- 2. If it is offered for sale under the name of another food;*
- 3. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;*
- 4. If its container is so made, formed, or filled as to be misleading;*
- 5. Unless it bears a label showing: (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this subsection, exemptions as to livestock products not in containers may be established by regulations*

prescribed by the Board; and provided, further, that under clause (ii) of this subsection, reasonable variations may be permitted, and exemptions as to small packages may be established for livestock products or poultry products by regulations prescribed by the Board;

6. If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in 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;

7. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations of the Board under § 3.2-5404 unless: (i) it conforms to such definition and standard; and (ii) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

8. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under § 3.2-5404 and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

9. If it is not subject to the provisions of subsection G, unless its label bears: (i) the common or usual name of the food, if any there be; and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and colorings without naming each; provided that, to the extent that compliance with the requirements of clause (ii) of this subsection is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

10. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner, after consultation with the U.S. Department of Agriculture, determines to be, and prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

11. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations adopted by the Board; or

12. If it fails to bear, directly thereon and on its containers, as the Board may by regulations prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

**Drafting Note: New section. Provisions moved from existing § 3.1-884.18.**

~~§ 3.1-884.19~~ 3.2-5403. Objective of article; designation of Department of Agriculture and Consumer Services to cooperate with United States Secretary U.S. Department of Agriculture.

~~It is the objective of this article—The Department shall cooperate with the U.S. Department of Agriculture in administration of this chapter to provide for meat and poultry products inspection programs—that. These programs will impose and enforce requirements with respect to intrastate operations and commerce that are at least equal to those imposed and enforced under the Federal Meat Inspection Act and the Federal Poultry Products Inspection Act with respect to operations and transactions in interstate commerce; and the Commissioner is directed to administer this article—chapter so as to accomplish this purpose. The Virginia Department of Agriculture and Consumer Services is designated as the appropriate state agency~~



~~to cooperate with the Secretary of Agriculture of the United States in administration of this article.~~

**Drafting Note: Technical changes.**

~~§ 3-1-884.203.2-5404.~~ Duties of *the* Board of Agriculture and Consumer Services.

In order to accomplish the objective stated in § ~~3-1-884.193.2-5403~~, the Board:

1. Shall, by regulations, require antemortem and postmortem inspections, quarantine, segregation and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all establishments in ~~this~~*the* Commonwealth, except those exempted by the Commissioner pursuant to subdivision ~~(9)~~<sup>9</sup> of § ~~3-1-884.213.2-5405~~, at which livestock or poultry are slaughtered or livestock products or poultry products are prepared for human food solely for distribution in intrastate commerce;

2. Shall, by regulations, require the identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers, or both, as "Virginia Inspected and Passed" if the products are found upon inspection to be not adulterated and as "Virginia Inspected and Condemned" if they are found upon inspection to be adulterated, and the destruction for food purposes of all such condemned products under the supervision of an inspector;

3. Shall prohibit the entry into official establishments of livestock products and poultry products not prepared under federal inspection or inspection pursuant to this article and further limit the entry of such articles and other materials into such establishments under such conditions as it deems necessary to effectuate the purposes of this article;

4. Shall, by regulations, require that when livestock products and poultry products leave official establishments they shall bear directly thereon or on their containers, or both, as it may require, all information required under ~~subdivision (16) of § 3-1-884.183.2-5402~~; and require approval of all labeling and containers to be used for such products when sold or transported in intrastate commerce to assure that they comply with the requirements of this article;

5. Shall require the investigation of the sanitary conditions of each establishment within subdivision 1 of this section and require the Commissioner to withdraw or otherwise refuse to provide inspection service at any such establishment where the sanitary conditions are such as to render adulterated any livestock products or poultry products prepared or handled thereat;

6. Shall prescribe regulations relating to sanitation for all establishments required to have inspection under subdivision 1 of this section;

7. Shall, by regulations, require that the following classes of persons shall keep such records and for such periods as are specified in the regulations to fully and correctly disclose all transactions involved in their business, and afford to the Commissioner ~~and his representatives~~, access to such places of business, an opportunity, at all reasonable times, to examine the facilities, inventory and records thereof, to copy the records, and to take reasonable samples of the inventory upon payment of the fair market value therefor: any persons that engage in or for intrastate commerce: (i) in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling (as brokers, wholesalers or otherwise), transporting, or storing any livestock products or poultry products for human or animal food; or (ii) in business as renderers or in the business of buying, selling or transporting any dead, dying, disabled or diseased livestock or poultry, or parts of the carcasses of any such animals (including poultry) that died otherwise than by slaughter;

8. Shall, by regulations, prescribe the size and style of type to be used for labeling information required under this article, and definitions and standards of identity or composition or standards of fill of container, consistent with federal standards, when it deems such action appropriate for the protection of the public;

9. Shall, by regulations, prescribe conditions of storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing,

storing, or transporting such articles in or for intrastate commerce to assure that such articles will not be adulterated or misbranded when delivered to the consumer;

10. Shall, by regulations, require that every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouseman of livestock products or poultry products, or engaged in the business of buying, selling or transporting in intrastate commerce, any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of any such animals (including poultry) that died otherwise than by slaughter shall register with the Commissioner his name and the address of each place of business at which and all trade names under which he conducts such business;

11. May adopt by reference or otherwise such provisions of the rules and regulations under the federal acts (with such changes therein as it deems appropriate to make them applicable to operations and transactions subject to this article) ~~which~~*that* shall have the same force and effect as if promulgated under this article, and promulgate such other rules and regulations it deems necessary for the efficient execution of the provisions of this article;

12. Shall promulgate rules of practice providing opportunity for hearing in connection with issuance of orders under subdivision 5 of this section or subdivision ~~(1) A 1, (2)A 2, or (3)A 3 of § 3.1-884.21-3.2-5405~~ pending issuance of a final order in any such proceeding.

**Drafting Note: Technical changes.**

~~§ 3.1-884.21 3.2-5405. Powers of Commissioner of Agriculture and Consumer Services.~~

~~In order to accomplish the objective stated in § 3.1-884.19, the A. The Commissioner may:~~

~~(1) Remove 1. Order removal of inspectors from any establishment that fails to destroy condemned products as required under subdivision 2 of § 3.1-884.20; 3.2-5404;~~

~~(2) Refuse to provide 2. Order cessation of inspection service under this article chapter with respect to any establishment for causes specified in § 401 of the Federal Meat Inspection Act or § 18 of the Federal Poultry Products Inspection Act;~~

~~(3) 3. Order labeling and containers to be withheld from use if he determines that the labeling is false or misleading or the containers are of a misleading size or form;~~

~~(4) 4. Require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared;~~

~~(5) 5. Appoint and prescribe the duties of such inspectors and other personnel as he deems necessary for the efficient execution of the provisions of this article chapter;~~

~~(6) 6. Cooperate with the Secretary of U.S. Department of Agriculture of the United States in administration of this article chapter to effectuate the purposes stated in § 3.1-884.19 3.2-5403; accept federal assistance for that purpose and spend public funds of this the Commonwealth appropriated for administration of this article chapter to pay fifty 50 percent of the estimated total cost of the cooperative program;~~

~~(7) 7. Recommend to the Secretary of U.S. Department of Agriculture of the United States for appointment to the advisory committees provided for in the federal acts, such officials or employees of the Virginia Department of Agriculture and Consumer Services as the Commissioner shall designate;~~

~~(8) 8. Serve as the representative of the Governor for consultation with said Secretary under paragraph (c) of § 301 of the Federal Meat Inspection Act and paragraph (c) of § 5 of the Federal Poultry Products Inspection Act unless the Governor selects another representative; and~~

~~(9) 9. Exempt the operations of any person from inspection or other requirements of this article if and to the extent such operations would be exempt from the corresponding requirements under the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act if they were conducted in or for interstate commerce or if the Commonwealth was designated under the federal acts as one in which the federal requirements apply to intrastate commerce.~~

B. Any order issued under subdivisions 1, 2, or 3 of subsection A shall be final unless appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: The language in proposed subsection B is moved from existing § 3.1-884.30.**

Article 2.

*Inspection, Slaughter, and Official Marks.*

~~§ 3.1-884.21:1 3.2-5406. Meat inspection regulations; Commissioner to promulgate; Board to revise.~~

A. ~~In order to accomplish the objective stated in § 3.1-884.19, the~~The Commissioner may adopt: (i) by reference any regulation under the federal acts as it pertains to this ~~article~~chapter, amending it as necessary for intrastate applicability; and (ii) any regulation containing provisions no less stringent than those contained in federal regulation. Such regulation adopted by the Commissioner shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations.

The regulation shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation.

B. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. Such revised regulation shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption, reconsideration, or revision of any regulation adopted pursuant to this section.

**Drafting Note: Technical changes.**

~~§ 3.1-884.21:2. Hourly charge for inspection of ratites and ratite products.~~

~~The hourly rate charged by the Department of Agriculture and Consumer Services to producers for inspection of ratites and ratite products shall not exceed fifty percent of the actual costs to the Department of performing the inspection service.~~

**Drafting Note: Deleted section. The definition of poultry in 9 CFR 381.1 was changed to include ratites. Ratites are now subject to mandatory inspection for which there can not be an associated fee charged.**

~~§ 3.1-884.22 3.2-5407. Prohibitions against slaughtering livestock or poultry or preparing products except in compliance with article; intrastate distribution of adulterated, misbranded or uninspected products; distributing New York dressed or similar poultry without authorization; violating regulations and orders in general.~~

~~(1)A. No person shall, with respect to any livestock or poultry or any livestock products or poultry products:~~

~~(a)1. Slaughter any such animals or prepare any such articles which that are capable of use as human food, at any establishment preparing such articles solely for intrastate commerce, except in compliance with the requirements of this article chapter;~~

~~(b)2. Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any such articles which (1)that: (i) are capable of use as human food, and (2)ii) are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or any articles required to be inspected under this articlechapter unless they have been so inspected and passed; or~~

~~(c)3. Do, Perform any act, with respect to any such articles which that are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale~~

after such transportation, ~~which~~ *that* is intended to cause or has the effect of causing such articles to be adulterated or misbranded.

(2)B. No person shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, or from an official establishment, any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the Board ~~except as may be authorized by such regulations.~~

(3)C. No person shall violate any provision of the regulations of the Board under subdivisions 7, 8, 9, or 10 of ~~§ 3.1-884.20~~ 3.2-5404 or orders of the Commissioner under subdivisions (3)A 3 and (4)A 4 of ~~§ 3.1-884.21~~ 3.2-5405.

**Drafting Note: Technical changes.**

~~§ 3.1-884.23~~ 3.2-5408. Prohibitions against ~~counterfeiting, forging, unauthorized use, alteration, or destruction or failure to use or to destroy, when required, of any official marks, devices, or certificates; possession of official or counterfeit devices, or products with counterfeit marks; false certification; false representation regarding inspection; similar offenses.~~

(1)A. No brand manufacturer, printer, or other person shall cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the Commissioner.

(2)B. No person shall:

(a)1. Forge any official device, mark, or certificate;

(b)2. Without authorization from the Commissioner, use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(c)3. Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(d)4. Knowingly possess, without promptly notifying the Commissioner ~~or his representative~~, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal (including poultry), or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(e)5. Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board; or

(f)6. Knowingly represent that any article has been inspected and passed, or exempted, under this article when, in fact, it has, respectively, not been so inspected and passed, or exempted.

**Drafting Note: Technical changes.**

~~§ 3.1-884.24~~ 3.2-5409. Prohibitions against intrastate distribution of equine products ~~unless so marked, products not for human food unless denatured or identified as required, dead, dying, disabled or diseased livestock or poultry or parts of their carcasses, except in accordance with regulations.~~

(1)A. No person shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived.

(2)B. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock products or poultry products ~~which~~ *that* are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Board or are naturally inedible by humans.

(3)C. No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, in such commerce, any dead, dying, disabled, or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, unless such transaction or transportation, is made in accordance with such regulations as the Board may prescribe to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.

**Drafting Note: Technical changes.**

### Article 3.

#### *Enforcement and Penalties.*

~~§ 3.1 884.25~~ 3.2-5410. Prohibitions ~~concerning~~ of bribery ~~of~~ or gifts to state employees ~~having duties under article~~; assaults or interference with such employees.

(1)A. Any person that shall give, pay, or offer, directly or indirectly, to any officer or employee of ~~this~~ *the* Commonwealth authorized to perform any of the duties prescribed by this ~~article~~ *chapter* or by the regulations of the Board, any money or other thing of value, with intent to influence said officer or employee in the discharge of any such duty, ~~shall be deemed~~ *is* guilty of a *Class 6* felony. ~~and, upon conviction thereof, shall be punished by a fine not less than \$1,000 nor more than \$10,000 and by imprisonment not less than one year nor more than three years, either or both; and any~~ Any officer or employee of ~~this~~ *the* Commonwealth authorized to perform any of the duties prescribed by this article who shall accept any money, gift, or other thing of value from any person, given with intent to influence his official action, or who shall receive or accept from any person engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, ~~shall be deemed~~ *is* guilty of a *Class 6* felony and shall, upon conviction ~~thereof, be summarily discharged from office and shall be punished by a fine not less than \$1,000 nor more than \$10,000 or by imprisonment not less than one year nor more than three years, either or both, in the discretion of the jury or the court trying the case without jury.~~

(2)B. Any person that forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person engaged in or on account of the performance of his official duties under ~~this article~~ *chapter* with the intent to hinder, delay, or prevent the performance of such duties ~~shall be fined not more than \$5,000 and/or be confined in a state correctional facility not less than one year nor more than three years, or be confined in jail not exceeding one year at the discretion of the jury or court trying the case without jury~~ *is guilty of a Class 6 felony.*

**Drafting Note: Classified penalty as a Class 6 felony.**

~~§ 3.1 884.26~~ 3.2-5411. Limitation of inspection to plants preparing products for human food; ~~denaturing or identification required for other products unless naturally inedible.~~

Inspection shall not be provided under this ~~article~~ *chapter* at any establishment for the slaughter of livestock or poultry or the preparation of any livestock products or poultry products ~~which~~ *that* are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the Board to deter their use for human food.

**Drafting Note: Technical changes.**

~~§ 3.1 884.27~~ 3.2-5412. ~~When inspection~~ *Inspection* of products placed in container ~~completed~~; right of access ~~to plants~~ at any time ~~to plants subject to inspection.~~

(1)A. No inspection of products placed in any container at any official establishment shall be deemed to be complete until the products are sealed or enclosed therein under the supervision of an inspector.

(2)B. For purpose of any inspection of products required by this ~~article~~chapter, inspectors authorized by the Commissioner shall have access at all times, by day or night, to every part of every establishment required to have inspection under this ~~article~~chapter, whether the establishment is operated or not.

**Drafting Note: Technical changes.**

~~§ 3.1-884.28~~ 3.2-5413. Administrative detention of violative animals and products.

Whenever any livestock product or poultry product exempted from the definition of a livestock product and from the definition of a poultry product, or any dead, dying, disabled, or diseased livestock or poultry, is found by ~~any authorized representative of the Commissioner~~ upon any premises where it is held for purposes of, or during or after distribution in, intrastate commerce or is otherwise subject to this ~~article~~chapter, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of this ~~article~~chapter or of the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act or the Federal Food, Drug, and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained ~~by such representative~~ for a period not to exceed ~~twenty~~ 20 days, pending action under ~~§ 3.1-884.29~~ 3.2-5414 or notification of any federal authorities having jurisdiction over such article or animal, and shall not be moved by any person from the place ~~at which~~where it is located when so detained, until released ~~by such representative~~. All official marks may be required ~~by such representative~~ to be removed from such article or animal before it is released unless it appears to the satisfaction of the Commissioner that the article or animal is eligible to retain such marks.

**Drafting Note: Technical changes.**

~~§ 3.1-884.29~~ 3.2-5414. Seizure and condemnation provisions.

(1)A. Any livestock product or poultry product or any dead, dying, disabled, or diseased livestock or poultry that is being transported in intrastate commerce, or is otherwise subject to this ~~article~~chapter, or is held for sale in ~~this the~~ Commonwealth after such transportation, and that: (1i) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this ~~article, or~~chapter; (2ii) is capable of use as human food and is adulterated or misbranded; or (3iii) in any other way is in violation of this ~~article~~chapter, shall be liable to be proceeded against and seized and condemned.

At any time prior to the expiration of the ~~twenty~~20-day detention period provided by ~~§ 3.1-884.28~~ 3.2-5413, ~~the authorized representative of the Commissioner placing an article or animal under detention shall, at the direction of the Commissioner or his authorized representative,~~ notify the attorney for the Commonwealth for the city or county ~~in which~~where such detention was made in writing of said detention. Upon receiving such written notification, the attorney for the Commonwealth shall forthwith file in the name of the Commonwealth an information against the detained property in the clerk's office of the circuit court of the county; ~~or of the corporation court, or other court of record of competent jurisdiction in the city wherein the~~where detention was made. Upon the filing of such information, the clerk of court shall forthwith issue a warrant directing the sheriff ~~or city sergeant, as the case may be,~~ to seize the detained property and see to its transportation to a suitable place of storage, ~~which that,~~ if necessary, may be outside of the county or city served by the sheriff ~~or city sergeant~~. Should the attorney for the Commonwealth, for any reason, fail to file such information within five days after receipt of written notice of detention of articles or animals, the same may, at any time within thirty days thereafter be filed by the Attorney General and the proceedings thereon shall be the same as if filed by the attorney for the Commonwealth.

Such information shall allege the seizure, and set forth in general terms the grounds of forfeiture of the seized property, and shall ~~pray~~ *petition* that the same be condemned and sold and the proceeds disposed of according to law, and that all persons concerned or interested be cited to appear and show cause why such property should not be condemned and sold to enforce the forfeiture. After the filing of the information, the attorney for the Commonwealth shall apply to the judge of the court wherein the information was filed for a hearing on the matters contained in the information. The judge of the court shall move the matter to the head of the docket and such hearing ~~as is prayed for by the information~~ shall be had as soon as practical to do so.

The owner of and all persons in any manner then indebted or liable for the purchase price of the article or animal, and any person having a lien thereon, if they be known to the attorney who files the information, shall be made parties defendant thereto, and shall be served with the notice hereinafter provided for, in the manner provided by law for serving a notice, at least ten days before the day therein specified for the hearing on the information, if they be residents of ~~this~~ *the* Commonwealth; and if they be unknown or nonresidents, or cannot with reasonable diligence be found in ~~this~~ *the* Commonwealth, they shall be deemed sufficiently served by publication of the notice once a week for two successive weeks in some newspaper published in such county or city, or if none be published therein, then in some newspaper having general circulation therein, and a notice shall be sent by registered mail of such seizure to the last known address of the owner of such article or animal. If any such person be served by publication, then no hearing shall be had prior to the expiration of ten days from the date of the record publication of the notice.

Any person claiming to be the owner of such seized article or animal, or to hold a lien thereon, may appear at any time before final judgment of the trial court, and be made a party defendant to the information so filed, which appearance shall be in person or by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim, whether as owner or as lienor, and if as owner, the right or title by which he claims to be such owner, and if lienor, the amount and character of his lien, and the evidence thereof; and in either case, such defendant shall set forth fully any reason or cause ~~which~~ *that* he may have to show against the forfeiture of the article or animal.

If such article or animal is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the treasury of the Commonwealth, but the article or animal shall not be sold contrary to the provisions of this ~~article~~ *chapter*, or the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act, or the Federal Food, Drug, and Cosmetic Act; provided, that upon the execution and delivery of a good and sufficient bond conditioned that the article or animal shall not be sold or otherwise disposed of contrary to the provisions of this ~~article~~ *chapter*, or the laws of the United States, the court may direct that such article or animal be delivered to a claimant thereof, who may have appeared in the proceedings, subject to such supervision by ~~authorized representatives~~ *of the Commissioner* as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the article or animal and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses may as the court deems just, be awarded against the person ~~or persons~~, if any, intervening as claimant of the article or animal.

If a claimant shall deny for any reason that the article or animal to be condemned is subject to condemnation as provided by this section, and shall demand a trial by jury of the issue thus made, the court shall, under proper instructions, submit the same to a jury of five, to be selected and empanelled as prescribed by law, and if such jury shall find on the issue in favor of such claimant, or if the court, trying such issue without a jury, shall so find, the judgment of the

court shall be to entirely relieve the property from forfeiture, and no costs shall be taxed against such claimant.

(2)B. The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this ~~article~~chapter, or other laws.

**Drafting Note: Technical changes.**

~~§ 3.1 884.30. Provisions for judicial review of certain orders.~~

~~Any order issued under subdivision (1), (2), or (3) of § 3.1 884.21 shall be final unless appealed in accordance with the provisions of the Administrative Process Act (§ 2.2 4000 et seq.).~~

**Drafting Note: Deleted section and moved to proposed § 3.2-5405, Powers of the Commissioner.**

~~§ 3.1 884.31~~ 3.2-5415. General criminal penalties; warning letter.

(1)A. Any person that violates any provisions of this ~~article~~chapter for which no other criminal penalty is provided by this ~~article~~ shall upon conviction be subject to confinement in jail for not more than one year, or a fine of not more than \$500, or both; but if *is guilty of a Class 1 misdemeanor*. If such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in ~~subdivision (15)(k) subsection K of § 3.1 884.18~~ 3.2-5401) knowing the article to be adulterated, such person shall be subject to imprisonment in a state correctional facility for not less than one year, nor more than three years or a fine of not more than \$10,000 or both *is guilty of a Class 6 felony*.

(2)B. Nothing in this ~~article~~ chapter shall be construed as requiring the Commissioner to report for prosecution or for the institution of condemnation or injunction proceedings, minor violations of this ~~article~~ chapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

**Drafting Note: Classified penalty in accordance with § 18.2-1, Punishment for conviction of misdemeanor.**

~~§ 3.1 884.32~~ 3.2-5416. Authority of Commissioner to investigate, require reports, examine documentary evidence, issue subpoenas and obtain judicial enforcement thereof, and order depositions; witness fees; compulsory testimony and immunity from prosecution; penalties for refusal to testify, false entries in reports or records, failure to file reports or related offenses; improper disclosure of information obtained under article.

The Commissioner shall also have power:

(1)1. To gather and compile information concerning and, to investigate from time to time the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons; *and*

(2)2. To require, by general or special orders, persons engaged in intrastate commerce, or any class of them, or any of them, to file with the Commissioner in such form as the Commissioner may prescribe, annual or special, or both annual and special, reports or answers in writing to specific questions furnishing the Commissioner such information as he may require as to the organization, business, conduct, practices, management, and relation to other persons, of the person filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commissioner may prescribe, and shall be filed with the Commissioner within such reasonable period as the Commissioner may prescribe, unless additional time be granted in any case by the Commissioner;

(a)a. For the purpose of this ~~article~~chapter the Commissioner shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The Commissioner or a representative



~~designated by him~~ may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

~~(b)~~*b.* Such attendance of witnesses, and the production of such documentary evidence, may be required at any designated place of hearing. In case of disobedience to a subpoena, the Commissioner may invoke the aid of an appropriate *circuit* court ~~of record~~ to require the attendance and testimony of witnesses and the production of documentary evidence.

~~(c)~~*c.* Any *circuit* court ~~of record~~ within the jurisdiction ~~of which~~ *where* such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Commissioner or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

~~(d)~~*d.* The Commissioner ~~or his designated representatives~~ may order testimony to be taken by deposition in any proceeding or investigation pending under this ~~article~~ *chapter* at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner ~~or his designated representative~~ and having the power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Commissioner ~~or his designated representatives~~ as hereinbefore provided.

~~(e)~~*e.* Witnesses summoned before the Commissioner ~~or his designated representative~~ shall be paid the same fees and mileage that are paid witnesses in the courts of ~~this~~ *the* Commonwealth, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for the like services in such courts.

~~(f)~~*f.* No person shall be excused from attending and testifying or from producing books, papers, schedules of charges, contracts, agreements, or other documentary evidence before the Commissioner ~~or his designated representatives~~ or in obedience to the subpoena of the Commissioner ~~or his designated representative~~, whether such subpoena be signed or issued by him or his delegate, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of this ~~article~~ *chapter*, or of any amendments thereto, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him or it may tend to incriminate him or it or subject him or it to a penalty or forfeiture; but no individual shall be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

~~(g)~~*g.* Any person that shall refuse to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the subpoena of the Commissioner ~~or his designated representative~~ shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment for not more than one year, or by both such fine and imprisonment *is guilty of a Class 1 misdemeanor*.

~~(h)~~*h.* Any person that shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this ~~article~~ *chapter*, or that shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person subject to this ~~article~~ *chapter* or that shall willfully neglect or fail to make or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person or that shall willfully remove out of the jurisdiction of ~~this~~ *the* Commonwealth, or willfully mutilate, alter or by any other means falsify any documentary evidence of any person subject to this ~~article~~ *chapter* or that shall

willfully refuse to submit to the Commissioner ~~or to any of his authorized agents~~, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this ~~article~~chapter in his possession or within his control, ~~shall be deemed is~~ guilty of a ~~an~~ offense and shall be subject, upon conviction in any court of competent jurisdiction to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment *Class 6 felony*.

(~~i~~)i. If any person required by this ~~article~~chapter to file any annual or special report shall fail so to do within the time fixed by the Commissioner for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to ~~this~~the Commonwealth the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the treasury of ~~this~~the Commonwealth, and shall be recoverable in a civil suit in the name of the Commonwealth brought in the city or county where the person has his ~~or its~~ principal office or in any city or county ~~in which~~ where he ~~or it~~ shall do business. It shall be the duty of the Attorney General to prosecute for the recovery of such forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Department of Agriculture and Consumer Services.

(~~j~~)j. Any officer or employee of ~~this~~ the Commonwealth who shall make public any information obtained by the Commissioner, without his authority, unless directed by a court, ~~shall be deemed is~~ guilty of a *Class 1* misdemeanor, ~~and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment, not exceeding one year, or both such fine and imprisonment, in the discretion of the court.~~

**Drafting Note: Classified penalty in accordance with § 18.2-11, Punishment for conviction of misdemeanor.**

~~§ 3.1-884.33~~ 3.2-5417. Power of injunction.

The Commissioner is authorized to apply to any *appropriate* court ~~of competent jurisdiction~~ for an injunction and such court may grant a temporary or permanent injunction restraining a person from violating or continuing the violation of any provision of this ~~article~~chapter, when the court determines that the testimony and evidence presented warrants such action, without reference to adequacy of any remedy existing at law.

**Drafting Note: Technical changes.**

~~§ 3.1-884.34~~ 3.2-5418. Limitation on applicability of ~~article~~chapter to matters regulated under federal acts.

The requirements of this ~~article~~chapter shall apply to persons, establishments, animals, and articles regulated under the Federal Meat Inspection Act or the Federal Poultry Products Inspection Act only to the extent provided for in said federal acts.

**Drafting Note: Technical changes.**

~~§ 3.1-884.35~~. Authorization for appropriations.

~~There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this article.~~

**Drafting Note: Deleted section. This provision is obsolete.**

~~§ 3.1-7884.36~~. Separability Provisions.

~~If any provision of this act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the act and of the application of such provision to other persons and circumstances shall not be affected thereby.~~

**Drafting Note: Deleted section. This section is currently not set out. A Code-wide severability clause is provided in § 1-243, in Title 1.**

Article 14.

~~In General~~Smithfield Hams.

~~§ 3.1-867~~ 3.2-5419. Smithfield hams defined.

Genuine Smithfield hams are hereby defined to be hams processed, treated, smoked, aged, cured by the long-cure, dry salt method of cure and aged for a minimum period of six months; such six-month period to commence when the green pork cut is first introduced to dry salt, all such salting, processing, treating, smoking, curing, and aging to be done within the corporate limits of the town of Smithfield, Virginia.

**Drafting Note: Technical changes.**

~~§ 3.1-868~~ 3.2-5420. Only genuine Smithfield hams to be labeled or advertised as such.

No person, ~~firm or corporation~~ shall knowingly, label, stamp, pack, advertise, sell, or offer for sale any ham, either wrapped or unwrapped, in a container or loose, as a genuine Smithfield ham unless such ham be a genuine Smithfield ham as defined in ~~§ 3.1-867~~ 3.2-5419.

**Drafting Note: Technical changes.**

~~§ 3.1-871~~ 3.2-5421. Penalty for violation.

Any person, ~~firm, corporation or association~~ violating any of the provisions of this article shall be guilty of a *Class 4* misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$300.

**Drafting Note: Classified penalty in accordance with § 18.2-11.**

CHAPTER ~~3255~~.

VINEGAR.

**Chapter Drafting Note: The penalty for a violation of this chapter has been classified as a Class 3 misdemeanor in accordance with § 18.2-11.**

~~§ 3.1-900~~ 3.2-5500. Definitions.

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

~~The terms "ciderApple vinegar," and "applecider vinegar," or words of and similar import, shall be construed to words~~ mean the product made exclusively from the expressed juice of washed, fresh, whole apples or portions thereof by alcoholic and subsequent acetous fermentations.

*"Corn sugar vinegar," "glucose vinegar," and similar words mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of corn sugar or glucose prepared from cornstarch.*

*"Distilled vinegar," "grain vinegar," or "spirit vinegar," or similar words mean the product made by the acetous fermentation of dilute distilled alcohol derived from grain, sugar, syrup, molasses, or refiners' syrup.*

*"Evaporated apple products vinegar," "vinegar made from evaporated apple products," and similar words mean the product made by the alcoholic and subsequent acetous fermentations of the aqueous extract obtained from clean, sound dried apples, dried chopped apples, or dried apple skins or cores.*

~~The terms "wineGrape vinegar," and "grapewine vinegar," or words of and similar import, shall be construed to words~~ mean the product made by the alcoholic and subsequent acetous fermentations of the expressed juice of fresh whole grapes or portions thereof.

~~The term "maltMalt vinegar" or words of and similar import, shall be construed to words~~ mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley malt or cereals whose starch has been converted by malt.

~~The term "sugarSugar vinegar" or words of and similar import, shall be construed to words~~ mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of sugar, syrup, molasses, or refiners' syrup.

~~The terms "glucose vinegar" or "corn sugar vinegar" or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of corn sugar or glucose prepared from cornstarch.~~

~~The terms "spirit vinegar," "distilled vinegar" or "grain vinegar" or words of similar import, shall be construed to mean the product made by the acetous fermentation of dilute distilled alcohol derived from grain, sugar, syrup, molasses or refiners' syrup.~~

~~The term "evaporated apple products vinegar" or "vinegar made from evaporated apple products," or words of similar import, shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of the aqueous extract obtained from clean, sound dried apples, dried chopped apples or dried apple skins or cores.~~

**Drafting Note: Alphabetized definitions.**

~~§ 3.1 899~~ 3.2-5501. Contents; compliance with definitions.

All vinegar made by fermentation without distillation must carry in solution only the extractive matter derived exclusively from the fruit, grain, sugar or syrup from which it was derived and fermented, and comply with the definitions given in ~~§ 3.1 900~~ 3.2-5500.

**Drafting Note: Technical changes.**

~~§ 3.1 901~~ 3.2-5502. When deemed adulterated; exception.

Vinegar ~~which~~ *that* fails to comply with ~~such~~ *the* definitions contained in § 3.2-5500 or ~~which~~ *that* contains any substance or ingredient not derived exclusively from the fruit, grain, sugar, or syrup from which it ~~shall so be~~ *is* made, or ~~which~~ *that* is composed of a compound or mixture of vinegars made from fruit, grain, sugar and syrup, or any two or more of the same, unless its label bears a principal title differing from any of the named substance and clearly identifies the ingredients in the order of their predominance in the mixture, or ~~which~~ *that* contains less than four grams of acetic acid in 100 cubic centimeters of the vinegar at 20 degrees centigrade, shall be deemed adulterated.

**Drafting Note: Technical changes.**

~~§ 3.1 902~~ 3.2-5503. Pyroligneous or acetic acid not to be sold as vinegar.

The product made by the destructive distillation of wood known as pyroligneous acid, or acetic acid derived from other sources than fruit, grain, sugar or syrup, or a product in which any such acid shall be used, mixed or compounded, shall not be sold, offered or had in possession for sale as vinegar.

**Drafting Note: No changes.**

~~§ 3.1 903~~ 3.2-5504. Marking packages containing vinegar reduced with water; sale of certain reduced vinegar prohibited.

Packages containing vinegar ~~which~~ *that* has been reduced with water must be plainly marked to indicate the acidity to which it has been reduced and the sale of any vinegar containing less than four ~~per centum~~ *percent* acid strength is prohibited.

**Drafting Note: Technical changes.**

~~§ 3.1 904~~ 3.2-5505. Marking casks, barrels or other containers.

Each cask, barrel, or other container of ~~such~~ vinegar, shall be plainly marked with the name and place of business of the manufacturer or distributor thereof, and the kind of vinegar contained therein, in the ~~terms defined~~ *definitions contained* in ~~§ 3.1 900~~ 3.2-5500; and no person shall falsely mark any package containing any vinegar so defined, with any other brand or designation or with any additional words, marks, or ~~description which shall be~~ *descriptions that are* false or deceptive in any particular whatever.

**Drafting Note: Technical changes.**

~~§ 3.1 905~~ 3.2-5506. Sales of certain vinegar prohibited.

No person, ~~firm or corporation~~ shall sell in ~~this~~ Commonwealth, offer to sell in ~~this~~ Commonwealth, or have in possession for sale in ~~this~~ *the* Commonwealth:

~~(1)1.~~ Any vinegar defined in ~~§ 3.1-900 which~~ 3.2-5500 that does not comply with such definitions.

~~(2)2.~~ Any adulterated or misbranded vinegar.

~~(3)3.~~ Any vinegar or product in imitation of any vinegar so defined.

~~(4)4.~~ Any vinegar to which any artificial coloring matter has been added of any kind whatever, or ~~which~~that contains any substance or ingredient not derived exclusively from the fruit, grain, sugar or syrup from which it purports to have been derived.

**Drafting Note: Technical changes.**

~~§ 3.1-906~~ 3.2-5507. Penalty.

Violation of this chapter shall be a *Class 3* misdemeanor and punished by a fine of not less than \$100, nor more than \$500 for the first offense, and not less than \$500 nor more than \$1,000 for all subsequent offenses.

**Drafting Note: Classified penalty in accordance with § 18.2-11, Punishment for conviction of misdemeanor.**

CHAPTER ~~35-56.~~

WEIGHTS AND MEASURES.

**Chapter Drafting Note: Several conforming changes have been made to this chapter. The definitions have been alphabetized. Existing §§ 3.1-930 and 3.1-936 have been deleted because the Commissioner's authority to delegate responsibility is provided in § 2.2-604 and § 3.2-102 in proposed Chapter 1, General Provisions. The penalty for violation of proposed § 3.2-5612, Stop-sale, stop-use and stop-removal orders; seizure and impounding of commodities, weights or measures; violation a misdemeanor; judicial review, proposed § 3.2-5643, Obstructing Commissioner or sealers; penalty, and proposed § 3.2-5644, Impersonating Commissioner or sealer, has been classified as a Class 1 misdemeanor in accordance with § 18.2-12.**

~~§ 3.1-919~~ 3.2-5600. Definitions generally.

The following definitions shall apply in the interpretation and the enforcement of this chapter: ~~As used in this chapter, unless the context requires a different meaning:~~

"Department" means the Department of Agriculture and Consumer Services.

"Board" means the Board of Agriculture and Consumer Services.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services.~~

"Commodity in package form" means any commodity packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive of an auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.

"Cord" means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

"Dockage" means the weight of impurities deducted by agreement between the seller and the buyer.

"Fractional parts of units of weight or measure" means like fractional parts of the value of such unit as prescribed or defined in this chapter, and all contracts concerning the sale of commodities and services shall be construed in accordance with this definition.

"Gross weight" means the total weight of the commodity, including any wrapper, and any other material or thing weighed or packed with such commodity, and including the vehicle or vessel containing the commodity.

*"Inspector" means a state inspector who is employed and authorized to test, certify, and seal weights and measures.*

*"Livestock auction market" means any place of business or establishment where, during the regular course of business, cattle, sheep, swine, or other livestock are offered or exposed for sale, or sold, by weight, or by head, at auction, for compensation or profit.*

*"Net weight" means the net weight of a commodity, that is, the weight of the commodity exclusive of any wrapper, and any other material or thing weighed or packed with such commodity, and excluding the vehicle or vessel containing the commodity. Net weight is the difference between the gross weight and the tare weight.*

*"Point-of-sale system" means an electronic cash register capable of recovering stored information related to the sale price of individual retail items.*

*"Sealer" means an inspector of weights and measures of a city, a county, or a joint city-county jurisdiction.*

*"Sell" or "sale" includes barter and exchange.*

~~"Person" means both the plural and singular, as the case demands, and includes, but is not limited to, individuals, partnerships, corporations, companies, firms, businesses, trustees, societies, and associations.~~

*"Tare weight" means the weight of any wrapper, and any other vehicle, vessel, material or thing that is weighed with, but not an actual part of, a commodity sold by weight; thus, tare weight may include, in the case of a packaged commodity, a wrapper, container, packaging material, binding material, preservative, or the like, or in the case of bulk commodity, a vehicle, box, can, jar, or the like.*

*"Ton" means a unit of 2,000 pounds avoirdupois weight.*

~~"Sell" or "sale" includes, but is not limited to, barter and exchange.~~

*"Weighmaster" means the person responsible for weighing livestock that will be offered for sale, based on his weight determination.*

*"Weight" means the net weight when used in connection with this chapter. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.*

*"Weights and measures" means all weights and measures of every kind, including instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices.*

~~"Inspector" means a state inspector who is employed and authorized to test, certify, and seal weights and measures.~~

~~"Sealer" means an inspector of weights and measures of a city, of a county, or of a joint city-county jurisdiction.~~

~~"Weight(s) and measure(s)" means all weights and measures of every kind, including, but not limited to, instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices.~~

~~"Net weight" means the net weight of a commodity, that is, the weight of the commodity exclusive of any wrapper, and any other material or thing weighed or packed with such commodity, and excluding the vehicle or vessel containing the commodity. Net weight is the difference between the gross weight and the tare weight.~~

~~"Tare weight" means the weight of any wrapper, and any other vehicle, vessel, material or thing that is weighed with, but not an actual part of, a commodity sold by weight; thus, tare weight may include, in the case of a packaged commodity, a wrapper, container, packaging material, binding material, preservative, or the like, or in the case of bulk commodity, a vehicle, box, can, jar, or the like.~~

~~"Commodity in package form" means commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an~~

~~auxiliary shipping container enclosing packages that individually conform to the requirements of this chapter. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.~~

~~"Livestock auction market" means any place of business or establishment at which, during the regular course of business, cattle, sheep, swine, or other livestock are offered or exposed for sale, or sold, by weight, or by head, at auction, for compensation or profit.~~

~~"Point of sale system" means an electronic cash register capable of recovering stored information related to the sale price of individual retail items.~~

~~"Cord" means the amount of wood that is contained in a space of 128 cubic feet when the wood is raked and well stowed.~~

~~"Dockage" means the weight of impurities deducted by agreement between the seller and the buyer.~~

~~"Fractional parts of units of weight or measure" means like fractional parts of the value of such unit as prescribed or defined in this chapter, and all contracts concerning the sale of commodities and services shall be construed in accordance with this definition.~~

~~"Gross weight" means the total weight of the commodity, including any wrapper, and any other material or thing weighed or packed with such commodity, and including the vehicle or vessel containing the commodity.~~

~~"Ton" means a unit of 2,000 pounds avoirdupois weight.~~

~~"Weighmaster" means the person responsible for weighing livestock that will be offered for sale, based on his weight determination.~~

~~"Weight" means the net weight when used in connection with this chapter. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.~~

**Drafting Note: Alphabetized definitions. Deleted definitions of the terms "Board," "Commissioner," "Department," and "person" as previously defined in proposed § 3.2-100, Definitions, and § 1-230.**

~~§ 3.1-924 3.2-5601. Powers and duties of Commissioner generally.~~

The Commissioner shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this chapter, and shall keep accurate records of the same. The Commissioner shall enforce the provisions of this chapter, and shall have and keep a general supervision over the weights and measures offered for sale, sold, or in use in the Commonwealth.

**Drafting Note: Technical changes.**

~~§ 3.1-930. Commissioner may appoint assistants, deputies and inspectors.~~

~~The Commissioner may appoint assistants, deputies and inspectors to assist in carrying out the provisions of this chapter and the rules and regulations adopted and established pursuant thereto.~~

**Drafting Note: Deleted section. The general powers of the Commissioner are cited in § 2.2-604 and proposed § 3.2-102, General powers and duties of the Commissioner, in Chapter 1, General Provisions, and include the authority to appoint assistants.**

~~§ 3.1-936. Powers of assistants, deputies and inspectors.~~

~~The powers and duties given to and imposed upon the Commissioner by §§ 3.1-924.1, 3.1-927, 3.1-928, 3.1-929, 3.1-932, 3.1-933, 3.1-934, 3.1-935, 3.1-941, and 3.1-966.1 of this chapter are hereby given to and imposed upon his assistants, deputies and inspectors in the employment of the Commonwealth. Such powers are hereby given to such assistants, deputies and inspectors when acting under the instructions and at the direction of the Commissioner.~~

**Drafting Note: Deleted section. The general powers of the Commissioner are cited in § 2.2-604 and proposed § 3.2-102, General powers and duties of the Commissioner, in Chapter 1, General Provisions, and include the authority to appoint assistants.**

~~§ 3.1-924.1~~ 3.2-5602. Commissioner to test accuracy of point-of-sale systems.

The Commissioner shall inspect and test point-of-sale systems, as he deems necessary, to determine: (i) the accuracy and correct operation of the equipment; and (ii) if such system utilizes coding means in lieu of manual entry, the accuracy of the data base.

**Drafting Note: No changes.**

~~§ 3.1-920~~ 3.2-5603. Two systems of weights and measures recognized; definitions, *and* tables, *etc.*, of National Institute of Standards and Technology to govern.

Both the system of weights and measures in customary use in the United States and the metric system of weights and measures are recognized, and one or the other, or both, of these systems shall be used for all commercial purposes in the Commonwealth. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, as published by the National Institute of Standards and Technology, are recognized and shall govern weighing and measuring equipment and transactions in the Commonwealth.

**Drafting Note: No changes.**

~~§ 3.1-922~~ 3.2-5604. State standards of weight and measure.

Such weights and measures in conformity with the standards of the United States as have been supplied to the Commonwealth by the federal government or otherwise obtained by the Commonwealth for use as state standards shall, when the same have been certified as being satisfactory for use as such by the National Institute of Standards and Technology, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory designated by the Commissioner, they shall not be removed from the said office or laboratory except for repairs or for certification, and they shall be maintained in such calibration as prescribed by the National Institute of Standards and Technology. The state standards shall be used only in verifying the office standards and for scientific purposes.

**Drafting Note: No changes.**

~~§ 3.1-923~~ 3.2-5605. Office standards and field standards.

In addition to the state standards provided for in ~~§ 3.1-922 of this chapter~~ 3.2-5604, there shall be supplied by the Commonwealth at least one complete set of copies of the state standards to be kept in the office or laboratory designated by the Commissioner and to be known as "office standards," and in addition such "field standards" and such equipment as may be found necessary to carry out the provisions of this chapter. The office standards and field standards shall be verified upon their initial receipt and at least once each year thereafter. The office standards shall be verified by direct comparison with the state standards. After verification of the office standards the field standards shall be verified by comparison with the office standards.

**Drafting Note: Technical changes.**

~~§ 3.1-925~~ 3.2-5606. Advice and recommendations of National Institute of Standards and Technology; publications of Institute.

The Commissioner may be guided in the performance of his duties by the advice and recommendations of the National Institute of Standards and Technology. In addition to the provisions of ~~§ 3.1-932~~ 3.2-5611 (relating to the Institute's publication Handbook 133), ~~§ 3.1-941.1~~ 3.2-5620 (relating to the Institute's publication, Handbook 44), and ~~§ 3.1-943~~ 3.2-5622 (relating to the Institute's publication, Handbook 130), the Board may give official status to any manual of inspection or other publication of that Institute.

**Drafting Note: Technical changes.**

~~§ 3.1-926~~ 3.2-5607. The Board may adopt regulations.

A. The Board may ~~issue from time to time~~ *adopt* regulations for the enforcement of this chapter. These regulations may include: (i) methods of sale of commodities; (ii) standards of net



weight, measure, or count, and standards of fill, for any commodity in package form; (iii) standards concerning the sale and exchange of grains and other agriculture products; (iv) rules governing the technical and reporting procedures to be followed; and (v) the report and record forms and marks of approval and rejection to be used by inspectors and by sealers of weights and measures in the discharge of their official duties; ~~however, the~~. *The* governing body of any city or county employing a sealer may provide for the technical and reporting procedures to be followed, and the report and record forms and marks of approval and rejection to be used by such sealer within such city or county, unless the Board, after a hearing and with notice to the governing body of the city or county involved, finds that such procedures and forms are inadequate to carry out the purposes of this chapter.

B. Regulations may also include: (i) exemptions from the sealing or marking requirements of ~~§ 3-1-934~~ 3.2-5613 for weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question; and (ii) exemptions from the requirements of ~~§ 3-1-928~~ 3.2-5609 for classes of weights and measures found to be of such character that annual retesting is unnecessary to continued accuracy, provided that such exemptions specify, in a schedule, the frequency of required retests for classes of devices so exempted.

C. Specifications, tolerances, and regulations for weights and measures of the character of those specified in ~~§ 3-1-928~~ 3.2-5609, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those that: (i) are inaccurate; (ii) are, or are likely to be, faulty because their construction is such that their adjustments are insufficiently permanent or their indications will not repeat correctly; or (iii) facilitate the perpetration of fraud.

**Drafting Note: Technical changes.**

~~§ 3-1-927~~ 3.2-5608. Testing and inspection of standards procured by cities and counties.

The Commissioner shall annually test the standards of weights and measures procured by any city or county for which the appointment of a sealer of weights and measures is provided by this chapter, and shall approve the same when found to be correct.

**Drafting Note: No changes.**

~~§ 3-1-928~~ 3.2-5609. Testing and inspection of weights and measures offered for sale or commercially used.

A. When not otherwise provided by law, the Commissioner shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the Commissioner to inspect and test on a periodic basis as he deems necessary, to ascertain if they are correct, all weights and measures commercially used: (i) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count; or (ii) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count. ~~However, with~~ *With* respect to any single-service devices and any uniformly mass-produced devices, a test may be made on representative samples of such devices; and any lot of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples. As used in this chapter, "single-service devices" means any devices designed to be used commercially once and then discarded. "Uniformly mass-produced devices" includes, ~~but is not limited to~~, any devices made by means of a mold or die, and not susceptible to individual adjustment.

B. The Commissioner of ~~Agriculture and Consumer Services~~ shall submit a report by October 1 of each year to the Chairmen of the Senate Committee on Finance and the Senate Committee on Agriculture, Conservation and Natural Resources, and the Chairmen of the House Appropriations Committee and House Committee on Agriculture, Chesapeake and Natural Resources on the testing and inspection activities of the Department ~~of Agriculture and~~

~~Consumer Services~~ weights and measures program including the number and frequency of inspections for the weights and measures devices.

**Drafting Note: Technical changes.**

~~§ 3.1-929~~ 3.2-5610. Investigations by Commissioner.

The Commissioner shall investigate complaints made to him concerning violations of the provisions of this chapter, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determinations and on possible violations of the provisions of this chapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

**Drafting Note: No changes.**

~~§ 3.1-932~~ 3.2-5611. Commissioner to weigh or measure packages and commodities; packages and commodities ordered off sale.

The Commissioner shall, ~~from time to time~~ *on a periodic basis as he deems necessary*, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale, or sold, in accordance with law; and when such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the Commissioner may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the Commissioner may employ sampling and testing procedures as adopted by the National Conference on Weights and Measures, and published in National Institute of Standards and Technology Handbook 133, "Checking the Net Contents of Packaged Goods," and supplements thereto, or in any publication revising, supplementing, or superseding Handbook 133, for the inspection of packaged commodities in the Commonwealth, except insofar as modified or rejected by regulation. The procedures will determine compliance of a given lot of packages on the basis of the result obtained on a composite sample selected from, and representative of, such lot. No person shall: (i) sell, keep, offer, or expose for sale, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all requirements of this chapter; or (ii) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section, and that has not been brought into compliance with the requirements of this chapter, in any manner except with the specific approval of the Commissioner.

**Drafting Note: The language "time to time" is a changed to "on a periodic basis as he deems necessary" to parallel the language used in proposed § 3.2-5609, Testing and inspection of weights and measures offered for sale or commercially used.**

~~§ 3.1-933~~ 3.2-5612. Stop-sale, stop-use and stop-removal orders; seizure and impounding of commodities, weights or measures; violation a misdemeanor; judicial review.

Whenever it appears to the Commissioner that there is a violation of any of the provisions of this chapter, he may, in his discretion, issue and enforce a written or printed stop-sale, stop-use, or stop-removal order against any owner or custodian of any commodity, weight, or measure ~~which~~*that* is being used, sold, offered, or exposed for sale, or involved in any manner in connection with such violation, and he may further, in his discretion, seize and impound any such commodity, weight, or measure until the Commissioner is satisfied that such violation has ceased and that the owner or custodian thereof is in all respects complying with the provisions of this chapter.

Any owner or custodian of any commodity, weight, or measure who sells, or offers for sale, or otherwise disposes of, or attempts to dispose of, any such commodity, weight or

measure, while subject to a stop-sale, stop-use, or stop-removal order, or while seized and impounded, shall be guilty of a *Class 1* misdemeanor. Any owner or custodian of any such commodity, weight or measure who feels aggrieved by any action of the Commissioner hereunder shall have the right to apply for a judicial review of the action in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: Classified penalty in accordance with § 18.2-12.**

~~§ 3.1-934~~ 3.2-5613. Sealing or marking of weights and measures; condemnation of incorrect weights and measures.

The Commissioner shall approve for use and seal or mark such weights and measures as he finds, upon inspection and test, to be in compliance as specified in ~~§ 3.1-941.1~~ 3.2-5620, and shall reject and mark or tag as "Condemned for Repairs" such weights and measures as he finds, upon inspection or test, not to be in compliance as specified in ~~§ 3.1-941.1 of this chapter~~ 3.2-5620, but ~~which~~ that in his best judgment are susceptible to satisfactory repair; ~~however, such sealing.~~ Sealing or marking shall not be required for weights and measures exempted by a Board regulation issued under the authority of ~~§§ 3.1-926~~ 3.2-5607 and ~~3.1-941.1~~ 3.2-5620. The Commissioner shall condemn, and may seize and may destroy, weights and measures found not to be in compliance that, in his best judgment, are not susceptible to satisfactory repair. Weights and measures that have been "condemned for repairs" may be confiscated and may be destroyed by the Commissioner if not brought into compliance as required by ~~§ 3.1-942~~ 3.2-5621 of this chapter, and may be confiscated and destroyed if used or disposed of contrary to the requirements of that section.

**Drafting Note: Technical changes.**

~~§ 3.1-935~~ 3.2-5614. Police powers of Commissioner.

With respect to the enforcement of this chapter and any other acts dealing with weights and measures that he is, or may be, empowered to enforce, the Commissioner is hereby vested with police powers, and is authorized to arrest any violator of the said acts and to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity, found to be used, retained, offered, or exposed for sale, or sold in violation of law. In the performance of his official duties, the Commissioner is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever if necessary to apprehend such person and to require him to proceed, with or without any vehicle of which he may be in charge, to some place ~~which~~ that the Commissioner may specify.

**Drafting Note: No changes.**

~~§ 3.1-937~~ 3.2-5615. Appointment, terms and compensation of local sealers of weights and measures; discontinuance of local program.

The governing bodies of the respective counties and cities may appoint ~~for their respective counties and cities~~ a sealer of weights and measures. However, two or more counties may appoint jointly ~~for their respective counties and towns~~ a sealer subject to the approval of the Commissioner. Sealers appointed under this chapter shall hold office for such terms and shall receive such salaries, as the appointing powers may prescribe. Such salaries shall be paid out of the county or city treasury, as the case may be. No county or city employing a sealer or sealers and conducting a weights and measures program shall discontinue the program without first giving the Commissioner ~~twelve~~ 12 months' written notice of its intent to do so.

**Drafting Note: Technical changes.**

~~§ 3.1-938~~ 3.2-5616. Fees of sealers.

No fee shall be charged by the sealer of weights and measures, or by the county or city, for inspecting, testing, or sealing of weights or measures, except that the governing body of a city or county employing a sealer may, by ordinance, prescribe a schedule of fees for such

services as are rendered by agreement with or at the request of the person or party served. Such fees shall be used only to defray the cost of such services.

**Drafting Note: No changes.**

~~§ 3.1-939~~ 3.2-5617. Powers and duties of sealers and deputies.

The sealer of a city or of a county, and his deputy when acting under his instructions and at his direction, shall have the same powers and shall perform the same duties within the city or the county for which appointed as are granted to and imposed upon the Commissioner by §§ ~~3.1-928 3.2-5609, 3.1-929 3.2-5610, 3.1-932 3.2-5611, 3.1-933 3.2-5612, 3.1-934 3.2-5613, 3.1-935 3.2-5614, and 3.1-941~~ of this chapter 3.2-5619.

**Drafting Note: Technical changes.**

~~§ 3.1-940~~ 3.2-5618. Standards, equipment, *and* office space, ~~etc.~~, for sealers.

The governing body of each city and county for which a sealer has been appointed as provided for by § ~~3.1-937 3.2-5615~~ of this chapter shall: *(i)* procure at the expense of the city or county, as the case may be, such standards of weight and measure and such additional equipment, to be used for the enforcement of the provisions of this chapter in such city or county, as may be prescribed by the Commissioner; *(ii)* provide a suitable office for the sealer; and *(iii)* make provisions for the necessary clerical services, supplies, and transportation, and for defraying contingent expenses incident to the official activities of the sealer in carrying out the provisions of this chapter. When the standards of weight and measure required by this section to be provided by a city or county shall have been examined and approved by the Commissioner, they shall be the official standards for such city or county. It shall be the duty of the sealer to make, or to arrange to have made, at least as frequently as once a year, comparison between his field standards and appropriate standards of a higher order belonging to his city or county ~~(as the case may be)~~ or to the Commonwealth, in order to maintain such field standards in accurate condition.

**Drafting Note: Technical changes.**

~~§ 3.1-941~~ 3.2-5619. Commissioner to have concurrent authority with sealers; ~~local~~ ordinances in conflict with chapter.

In cities and counties ~~for which~~ *where* sealers of weights and measures have been appointed as provided for in this chapter, the Commissioner shall have concurrent authority to enforce the provisions of this chapter. The provisions of this chapter shall be the law throughout the Commonwealth and no city or county shall pass or enforce ordinances in conflict ~~therewith~~.

**Drafting Note: Technical changes.**

~~§ 3.1-941.1~~ 3.2-5620. Specifications and tolerances for weighing and measuring devices.

The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology, and published in the National Institute of Standards and Technology Handbook 44 and supplements thereto, or any publication revising, supplementing, or superseding Handbook 44, shall be the specifications, tolerances, and regulations for commercial weighing and measuring devices of ~~this~~ *the* Commonwealth, except insofar as specifically modified, amended, or rejected by ~~a rule or~~ regulation issued by the Board. For purposes of this chapter, weights and measures shall be deemed to be in compliance with this chapter: (i) when they conform to all applicable requirements of Handbook 44 and supplements thereto, or any publication revising, supplementing, or superseding Handbook 44; or (ii) when they conform to any ~~rule or~~ regulation ~~promulgated~~ *adopted* by the Board to modify, amend, or reject Handbook 44, as specified in this section. Other weights and measures shall not be in compliance.

**Drafting Note: Technical changes.**

~~§ 3.1-942~~ 3.2-5621. Rejected weights and measures.

Weights and measures that have been rejected or condemned for repair under the authority of the Commissioner, of an inspector, or of a sealer shall remain subject to the control

of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made in compliance with this chapter within such time as may be authorized by the rejecting authority, or, in lieu of this, may dispose of the same, but only in such a manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially reexamined by the rejecting authority, and found to be in compliance with this chapter, or until specific written permission for such use is issued by the rejecting authority.

**Drafting Note: No changes.**

~~§ 3.1-943~~ 3.2-5622. How certain commodities to be sold.

Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this chapter, commodities not in liquid form shall be sold by weight, by measure of length or area, or by count. Liquid commodities may be sold by weight, and commodities not in liquid form may be sold by count, only if such methods give accurate information as to the quantity of commodity sold; ~~however, the~~. The provisions of this section shall not apply to: (i) commodities when sold for immediate consumption on the premises where sold; (ii) vegetables when sold by the head or bunch; (iii) commodities in containers standardized by law; (iv) commodities in package form when there exists a general consumer usage to express the quantity in some other manner; (v) concrete aggregates, concrete mixtures, and loose solid materials, including, ~~but not limited to~~, earth, soil, gravel and crushed stone, when sold by cubic measure; (vi) unprocessed vegetable and animal fertilizer when sold by cubic measure; or (vii) peanuts in large multiple bag lots being sold by cleaners or shellers to processors for further processing or repacking. The articles in clauses (i) through (vii) may be sold on a gross weight basis if agreed upon in writing by the mutual consent of the buyer and seller.

The Uniform Regulation for the Method of Sale of Commodities as adopted by the National Conference on Weights and Measures and published in National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the method of sale of commodities in the Commonwealth, except insofar as modified, amended, or rejected by ~~rule or~~ regulation issued by the Board.

**Drafting Note: Technical changes.**

~~§ 3.1-944~~ 3.2-5623. Information to be shown on packages.

Except as otherwise provided in this chapter, any commodity in package form, introduced or delivered for introduction into, or received in, intrastate commerce, kept for the purpose of sale, or offered or exposed for sale, shall bear on the outside of the package a definite, plain, and conspicuous declaration of: (i) the identity of the commodity in the package unless the same can easily be identified by an actual or prospective buyer through the wrapper or container; (ii) the net quantity of the contents in terms of weight, measure, or count; and (iii) in the case of any package kept, offered, or exposed for sale, or sold any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor. In connection with the declaration required under clause (ii) of this section the qualifying term "when packed," or words of similar import shall not be used, nor shall any term qualifying a unit of weight, measure, or count including, ~~but not limited to~~, "jumbo," "giant," "full" that tends to exaggerate the amount of commodity in a package be used.

The Uniform Regulation for Packaging and Labeling as adopted by the National Conference on Weights and Measures and published in National Institute of Standards and Technology Handbook 130, "Uniform Laws and Regulations," and supplements thereto or revisions thereof, shall apply to the method of sale of commodities in the Commonwealth, except insofar as modified or rejected by regulation.

**Drafting Note: Technical changes.**

~~§ 3.1-945~~ 3.2-5624. Certain packages to show price per single unit of weight, measure, or count.

In addition to the declarations required by ~~§ 3.1-944~~ 3.2-5623 of this chapter, any commodity in package form, the package being one of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

**Drafting Note: Technical changes.**

~~§ 3.1-946~~ 3.2-5625. Misleading containers prohibited; contents of container not to fall below standard.

No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled, as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the Board.

**Drafting Note: No changes.**

~~§ 3.1-947~~ 3.2-5626. Advertisement of commodities in package form.

Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package. Such declaration shall be close to, and conspicuously associated with, the statement of price on the package.

**Drafting Note: No changes.**

~~§ 3.1-949.1~~ 3.2-5627. Pricing of retail merchandise.

A. In a point-of-sale system the selling price of a consumer item displayed or offered for sale at retail shall be clearly and conspicuously indicated in Arabic numerals, so as to be readable and understandable by visual inspection, and shall be stamped upon or affixed to the consumer item or posted at or adjacent to the display.

The provisions of this section shall not apply to: (i) greeting cards sold individually ~~which~~*that* have a code price, readable and understandable by visual inspection, on the back of the card; or (ii) merchandise ordered as a gift by a consumer ~~which~~*that* is sent by mail or other delivery service to a person other than the consumer by the retailer at the request of the consumer.

B. Any person who knowingly violates the provisions of this section ~~shall, upon conviction, be~~ is guilty of a Class 4 misdemeanor.

**Drafting Note: Technical changes.**

~~§ 3.1-949.23.2-~~ 3.2-5628. Weights and Measures Fund established; purpose.

There is hereby established in the state treasury a special *nonreverting* fund to be ~~designated~~*known as* the "Weights and Measures Fund-", *hereinafter referred to as "the Fund."* This Fund shall consist of civil penalties assessed pursuant to §§ ~~3.1-966.1 and 3.1-969.15~~ and any gifts, grants, fees and contributions ~~which are specifically~~ *be established on the books of the Comptroller. All money designated for inclusion in the Fund or collected pursuant to this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.* The income and principal of this Fund shall be used only for the purposes of administering and enforcing this chapter and Chapter ~~35.157~~ (§ ~~3.1-969.1~~ 3.2-5700 et seq.) of this title.

**Drafting Note: No substantive changes have been made. Inserted special fund model language because current practice avoids the use of unnamed special funds. This special**

**fund is already established, but interest earned will remain in the fund and will no longer revert to the general fund.**

~~§ 3.1-931.3.2-5629.~~ Fees and other moneys received.

No fees shall be charged for the services of any appointee under this chapter unless such services are special, unusual or noncommercial and rendered by agreement with or at the request of the person ~~or party~~ served.

In the event services be rendered by agreement with or at the request of the party served such fees may be charged as the Commissioner may deem proper. All fees and moneys collected or received pursuant hereto shall be paid into the state treasury to be there maintained in ~~a separate fund which is hereby appropriated to the Department of Agriculture and Consumer Services~~ *the Weights and Measures Fund* (§ 3.2-5628) for the administration and carrying out of the provisions of this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-949.3.2-5630.~~ Violations of pricing requirements.

It shall be a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) for a retail merchant to fail to comply with the provisions of ~~§ 3.1-949.1 3.2-5627.~~

**Drafting Note: Technical changes.**

~~§ 3.1-949 3.2-5631.~~ Representations as to price; signs advertising price of petroleum products.

Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure or count, the price shall not be misrepresented, nor shall the price be represented in any manner tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one half the height and width of, the numerals representing the whole cents. Whenever the price of petroleum products is advertised or posted at retail, the amount of any taxes may not be shown separately in such advertising or posting unless the words "plus tax" and the numerals expressing the taxes are prominently displayed in letters and numerals of the same general design and style as, and at least one half the height and width of, the numerals representing the price as specified in this section. The total price of the petroleum products so advertised or posted shall not differ from the price as shown on the pump or in any computed price charged the customer.

**Drafting Note: No changes.**

~~§ 3.1-949.01 3.2-5632.~~ Failure to pay advertised cash discount.

Where a discount for the cash purchase of retail petroleum products is offered, willful failure by any person, ~~servant, or agent~~ to pay to the customer the full cash discount as offered shall constitute a violation of this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-949.4 3.2-5633.~~ Commissioner to receive enforcement authority for the Stage II Vapor Recovery Programs.

A. Upon the request of the Commissioner, the State Air Pollution Control Board may delegate to the Commissioner its authority under Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, to implement and enforce any provisions of its regulations covering the storage and transfer of petroleum liquids. Upon receiving such delegation, the authority to implement and enforce the regulations under Chapter 13 of Title 10.1 shall be vested solely in the Commissioner, notwithstanding any provision of law contained in Title 10.1, except as provided herein. The State Air Pollution Control Board, in delegating its authority under this section, may make the delegation subject to any conditions it deems appropriate to ensure effective implementation of the regulations according to the policies of the State Air Pollution Control Board.

B. In addition to the Commissioner's authority to implement and enforce any provisions of the regulations of the State Air Pollution Control Board covering the storage and transfer of petroleum liquids, the Board of Agriculture and Consumer Services shall have the authority to promulgate such *may adopt* regulations as are reasonably necessary for the administration, monitoring and enforcement of the law relating to the storage and transfer of petroleum liquids. Any violation of the provisions covering the storage and transfer of petroleum liquids shall be deemed to be a violation of this chapter, and the Commissioner may take appropriate enforcement action pursuant to the provisions of this chapter.

**Drafting Note: Technical changes.**

~~§ 3-1-950~~ 3.2-5634. Meat, poultry, and seafood.

All meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or exposed for sale, or sold, as food shall be offered or exposed for sale and sold by weight, except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold. When meat, poultry, or seafood is combined with or associated with some other food elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination: ~~Provided, that when cooked.~~ *Cooked* poultry *that* is offered or exposed for sale, or sold, as a commodity in package form, it may be sold by minimum net weight and so labeled notwithstanding the provisions of ~~§ 3-1-944~~ 3.2-5623 of this chapter.

**Drafting Note: Technical changes.**

~~§ 3-1-954~~ 3.2-5635. Bulk sale and delivery of commodities.

All sales in which the buyer and seller are not both present to witness the measurement of a bulk delivery shall be accompanied by duplicate delivery tickets containing the following information:

1. The name and address of the buyer and seller;
2. The date of delivery;
3. The quantity delivered in terms of pounds, tons, gallons or cubic measure; and
4. If applicable, the count of individually wrapped packages, if more than one.

**Drafting Note: No changes.**

~~§ 3-1-958~~ 3.2-5636. Scale house in establishment where livestock is bought from producers.

The scale house at any livestock auction market, receiving station, packing plant, or other establishment where livestock is regularly bought from producers shall be constructed so that all parties in interest may readily observe the weighing of livestock. The weighbeam or indicating apparatus shall be situated so that the weight indications thereon are clearly visible to public view. Provisions shall be made whereby the weighmaster from his normal weighing position has full view of the stock rack on the scale platform, the approaches thereto, and the livestock being weighed. Ready access from the unloading platform or chutes to the scale house must be provided to enable owners of livestock to get to the scale in time to see their livestock weighed. A sign clearly visible to public view shall be affixed on or adjacent to the scale house with the following phrase in letters at least three inches in height: "TO HELP AVOID ERRORS WATCH LIVESTOCK WEIGHED."

**Drafting Note: No changes.**

~~§ 3-1-959~~ 3.2-5637. Type registering weighbeams or automatic weight recorders required.

Type registering weighbeams or automatic weight recorders shall be installed and used with proper tickets for weighing livestock at all livestock auction markets.



**Drafting Note: No changes.**

~~§ 3.1-960~~ 3.2-5638. Weight of livestock to be determined on date of sale.

When livestock is offered for sale on a weight basis at livestock auction markets on regular sale days, the weights thereof shall be determined on the date of the sale at such auction markets unless otherwise publicly announced at the auction ring at time of sale.

**Drafting Note: No changes.**

~~§ 3.1-961~~ 3.2-5639. Announcement of day and hour of livestock sale.

The operator of the livestock auction market shall publicly announce the day and hour at ~~which~~when an auction sale of livestock is to begin at least one week in advance of the day of sale so chosen and shall include the time of sale in all information thereafter published concerning the sale. Auction sale of livestock shall begin on the day and hour so selected.

**Drafting Note: No changes.**

~~§ 3.1-962~~ 3.2-5640. Certain merchants to provide scales for use of customers.

Any person engaged, in the sale of items by weight from a self-service bulk display, shall make available a scale for use by his customers and shall upon request provide customer assistance in weighing of all commodities. ~~Such~~ The scale shall be accurate and maintained in good working order.

**Drafting Note: Technical changes.**

~~§ 3.1-956~~ 3.2-5641. Use of word "cord" in connection with purchase or sale of wood, bark, or other forest product.

It shall be unlawful to use the word "cord" or any abbreviation thereof other than to mean the standard as defined in ~~§ 3.1-919~~ 3.2-5600 in, or in connection with the purchase or sale of pulpwood, firewood, tanbark, or any forest product customarily measured in cords of any size whatever, or in connection with any quotation of price, or measurement of, or settlement, or payment for any such wood, bark or product, in reference to any cord, unit or measurement.

**Drafting Note: Technical changes**

~~§ 3.1-957~~ 3.2-5642. Determining number of board feet in tree or log.

The standard rule for determining the number of board feet in a tree or log in ~~this~~ the Commonwealth shall be the "International 1/4 Inch Log Rule." The provisions of this section shall not prevent the buyer and the seller from agreeing that some other unit of measurement shall be used to determine the number of board feet in trees or logs, provided that such other unit of measurement is specified in a written contract between them.

**Drafting Note: Technical changes.**

~~§ 3.1-963~~ 3.2-5643. Obstructing Commissioner, or sealers, etc; penalty.

Any person who shall hinder or obstruct in any way the Commissioner, his assistant, or any one of the inspectors, or a sealer in the performance of his official duties shall ~~be~~is guilty of a *Class 1* misdemeanor.

**Drafting Note: Classified penalty as a Class 1 misdemeanor in accordance with § 18.2-12.**

~~§ 3.1-964~~ 3.2-5644. Impersonating Commissioner, or sealer, etc.

Any person who shall impersonate in any way the Commissioner, his ~~assistant~~agent, or any one of the inspectors, or a sealer by the use of his seal or a counterfeit of his seal, or in any other manner, shall ~~be~~is guilty of a *Class 1* misdemeanor.

**Drafting Note: Classified penalty as a Class 1 misdemeanor in accordance with § 18.2-12.**

~~§ 3.1-965~~ 3.2-5645. Certain acts declared misdemeanors.

Any person who, by himself or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subdivisions 1 through 9 of this section shall ~~be~~is guilty of a *Class 1* misdemeanor:

1. Use or have in possession for the purpose of using for any commercial purpose, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an

incorrect weight or measure of any device or instrument used to or calculated to falsify any weight or measure.

2. Use or have in possession for the purpose of current use for any commercial purpose specified in ~~§ 3.1-928~~ 3.2-5609 a weight or measure that does not bear a seal or mark such as is specified in ~~§ 3.1-934~~ 3.2-5613, unless such weight or measure has been exempted from testing by the provisions of ~~§ 3.1-928~~ 3.2-5609 or by a regulation of the Board issued under the authority of ~~§ 3.1-926~~ 3.2-5607 or ~~§ 3.1-941.1~~ 3.2-5620.

3. Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

4. Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.

5. Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

6. Take more than the quantity he represents of any commodity, thing, or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

7. Keep for the purpose of sale, advertise, or offer or expose for sale, or sell, any commodity, thing, or service in a condition or manner contrary to law or regulation.

8. Use in retail trade a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position ~~which~~*that* may reasonably be assumed by a customer, except in the preparation of packages put up in advance of sale and of medical prescriptions.

9. Violate any provisions of this chapter or of the regulations promulgated under the provisions of this chapter for which a specific penalty has not been prescribed.

**Drafting Note: Technical changes.**

~~§ 3.1-966.1~~ 3.2-5646. Civil penalties; ~~action-suit~~ to enjoin violation; compromise.

A. The Commissioner may bring ~~an action-a suit~~ to enjoin the violation of any provision of this chapter, or any regulation made pursuant thereto, in the circuit court of the county or city ~~in which~~ *where* the violation occurs, or in the Circuit Court of the City of Richmond if the violation may affect more than one county or city. The Commissioner may request either the attorney for the Commonwealth or the Attorney General to ~~bring~~ *take* action under this section, when appropriate.

B. Any person violating a provision of this chapter or regulations adopted ~~thereunder~~*hereunder* may be assessed a civil penalty by the Board in an amount not to exceed \$1,000. In determining the amount of any civil penalty, the Board shall give due consideration to: (i) the history of previous violations of the person; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with the chapter after notification of the violation.

C. Civil penalties assessed under this section shall be paid into the Weights and Measures Fund as established in ~~§ 3.1-949.2~~ 3.2-5628. The Commissioner shall prescribe procedures for payment of *uncontested* penalties ~~which are not contested by persons~~. The procedure shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. ~~Such~~*The* orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: Technical changes.**

~~§ 3.1-966.2~~ 3.2-5647. Warning instead of report of violation.

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

**Drafting Note: No changes.**

~~§ 3.1-967~~ 3.2-5648. Presumptive proof of use of weight, measure or weighing or measuring device.

For the purposes of this chapter, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes, and shall be presumptive proof of such regular use by the person in charge of such building, enclosure, stand, or vehicle.

**Drafting Note: No changes.**

~~§ 3.1-968. Prosecutions for violation of chapter.~~

~~Prosecutions for violation of any provision of this chapter are declared to be valid and proper notwithstanding the existence of any other valid general or specific act of this Commonwealth dealing with matters that may be the same as or similar to those covered by this chapter.~~

**Drafting Note: Deleted section. This provision is unnecessary.**

~~§ 3.1-969. How chapter cited.~~

~~This chapter may be cited as the "Weights and Measures Act of Virginia."~~

**Drafting Note: Deleted section. This section is unnecessary because of the Code-wide application of § 1-244 which states that the caption of a subtitle, chapter, or article serves as a short title citation.**

## CHAPTER ~~35.1~~ 57.

### WEIGHTS AND MEASURES SERVICE AGENCIES AND TECHNICIANS.

**Chapter Drafting Note: Only technical changes have been made to this chapter.**

~~§ 3.1-969.1~~ 3.2-5700. Definitions.

As used in this chapter, unless the context requires a different meaning, ~~the following words and terms shall have the following meanings:~~

~~"Board" means the Board of Agriculture and Consumer Services.~~

"Certificate of Conformance" means a document issued by the National Type Evaluation Program of the National Institute of Standards and Technology (NIST) of the ~~United States~~ U.S. Department of Commerce based on testing in participating laboratories, said document constituting evidence of conformance of a type with the requirements of:

1. National Institute of Standards and Technology Handbook 44; Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices;
2. National Institute of Standards and Technology Handbook 105-1, Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (NIST Class F);
3. National Institute of Standards and Technology Handbook 105-2, Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Measuring Flasks; and
4. National Institute of Standards and Technology Handbook 105-3, Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards, and supplements thereto, or any publication revising or superseding the publications specified in this definition.

~~"Commissioner" means the Commissioner of Agriculture and Consumer Services or his designated representative.~~

"Condemnation tag" means a tag applied to a weight or measure that fails to pass an official inspection, the application of which tag requires the immediate removal of the weight or measure from service.

"Official inspection" means an inspection by the Commissioner of a commercially used weight or measure pursuant to ~~§ 3.1-928~~ 3.2-5609.

"Rejection tag" means a tag applied to a weight or measure that fails to pass an official inspection, the application of which tag requires the removal of the weight or measure from service if the weight or measure is not adjusted to conform to requirements specified by the Weights and Measures Act of Virginia (~~§ 3.1-919~~ 3.2-5600 et seq.) or any regulation adopted ~~thereunder~~hereunder.

"Service agency" means: (i) a business; or (ii) that portion of a government or political subdivision engaged in the adjustment, installation, placing in service, recommending for use, reconditioning, repairing, servicing, or selling of any weight or measure commercially used or employed (a) in establishing the size, quantity, extent, area, or measurement of quantities, things, products, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or (b) in computing any basic charge or payment for services rendered on the basis of something's weight or its measure.

"Service technician" means any individual who for hire, award, commission, or any other payment of any kind, adjusts, installs, places in service, recommends for use, reconditions, repairs, services, or sells a commercial weight or measure.

"Standard" means a required basis for conformance, adjustment, or verification.

"System" means the grouping of interacting, interrelated, or interdependent weights or measures to form a complex whole.

"Traceability" means an accounting of the relationship of the calibration of a weight or measure standard or calibrating equipment to a national standard maintained or adopted by the National Institute of Standards and Technology of the ~~United States~~U.S. Department of Commerce.

"Weight or measure" means ~~the same terms~~ as defined in ~~§ 3.1-919~~ 3.2-5600 and shall ~~be construed to also~~ include the term "system" as defined in this chapter.

**Drafting Note: Deleted the definitions for the terms "Board" and "Commissioner" because these are provided in § 3.2-100, Definitions.**

~~§ 3.1-969.2~~ 3.2-5701. Powers of the Board.

The Board may adopt regulations establishing: (i) schedules for the verification of weights or measures standards and calibrating equipment used by service agencies and service technicians; (ii) fees for the registration of service agencies and the certification of service technicians; (iii) categories of registration of service agencies and additional requirements for such registration; (iv) categories of certification of service technicians and additional requirements for such certification; (v) curricula of training courses for certification and renewal thereof for service technicians; and (vi) any other provision for the enforcement and implementation of this chapter, or otherwise necessary or convenient to carry out the purposes of this chapter.

**Drafting Note: No changes.**

~~§ 3.1-969.3~~ 3.2-5702. Delegation of authority.

The Board may delegate to the Commissioner: (i) any authority vested in it under this chapter, except the authority to adopt regulations; and (ii) any authority contained in ~~§ 3.1-966.1~~3.2-5646 relating to the assessment of civil penalties.

**Drafting Note: Technical changes.**

~~§ 3.1-969.4~~ 3.2-5703. Registration of service agency.

A. A service agency shall not operate in ~~Virginia~~ *the Commonwealth* without first obtaining registration issued annually by the Commissioner. The application for registration as a service agency or renewal of application shall be made in writing on a form supplied by the Commissioner. Each application for registration or renewal shall contain:

1. The name of the service agency, including any fictitious names under which it intends to operate;
2. The principal business address of the service agency;
3. The name of every person functioning as a service technician in ~~Virginia~~ *the Commonwealth* who is in the employ of the service agency;
4. Documentation of verification pursuant to ~~§ 3.1-969.7~~ 3.2-5706 of the weights or measures standards and calibrating equipment used or to be used by the service agency; and
5. The fee required by ~~§ 3.1-969.5~~ 3.2-5704.

B. The Commissioner may deny, suspend or revoke any registration or renewal if the application is incomplete, false, or fraudulent. It shall be a violation of this chapter for a person to submit to the Commissioner an application for registration or renewal that he knows to be false or fraudulent.

**Drafting Note: Technical changes.**

~~§ 3.1-969.5~~ 3.2-5704. Registration fee.

Except as otherwise provided by ~~§ 3.1-969.6~~ 3.2-5705, ~~every~~ *each* service agency shall pay annually a registration fee of \$100 ~~per service agency per year~~. All fees collected pursuant to this section shall be deposited in the state treasury and credited to the Weights and Measures Fund, established by ~~§ 3.1-949.2~~ 3.2-5628.

**Drafting Note: Technical changes.**

~~§ 3.1-969.6~~ 3.2-5705. Exemption from registration fee.

A. No service agency shall be required to pay a registration fee under the provisions of this chapter if it is:

1. A business employing service technicians to install, place in service, adjust, repair, service, or recondition weights or measures that are owned or operated by the business but that are used by no other business; or
2. A government or political subdivision engaged in the installation, placing in service, adjusting, repairing, servicing, or reconditioning of weights or measures owned or operated by the government or political subdivision.

B. A service technician that is employed by a business that is exempt from paying a registration fee pursuant to subsection A of this section shall not be required to pay a certification fee under the provisions of this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-969.7~~ 3.2-5706. Examination and verification of standards and calibrating equipment.

Every service agency shall submit any weights or measures standard and calibrating equipment used or to be used by the service agency to the Commissioner for examination and verification, in accordance with a schedule established by the Commissioner. Any weights or measures standard or calibrating equipment calibrated by the weights and measures laboratory of another state, of a territory, or of a protectorate of the United States shall be deemed to be properly calibrated and hence lawful for use in ~~Virginia~~ *the Commonwealth* if the service agency proffering for use the weights or measures standard or calibrating equipment can demonstrate the traceability of the weights or measures standard or calibrating equipment.

**Drafting Note: Technical changes.**

~~§ 3.1-969.8~~ 3.2-5707. Certification of service technicians.

A. A person shall not be certified as a service technician unless the service technician is employed by a registered service agency. Every service technician shall obtain certification by

the Commissioner before operating in ~~Virginia~~ *the Commonwealth* and shall renew the certification annually. The application for certification as a service technician or renewal shall be made in writing on a form supplied by the Commissioner. Each application for certification or renewal thereof shall contain:

1. The full name of the applicant;
2. The name of the service agency employing the applicant;
3. The principal business address of the service agency that employs the service technician;
4. Presentation of proof of completion of a course of training related to weights and measures offered by the Commissioner, or in the absence of a training course offered by the Commissioner, a training course approved by the Commissioner. Except as otherwise provided by regulation, such training course shall be valid for a period of three years after the date of taking the course;
5. The fee required by ~~§ 3.1-969.9~~ 3.2-5708; and
6. A declaration by the applicant that the applicant has the authority to be lawfully employed in the United States.

B. The Commissioner may deny, suspend, or revoke any certification or renewal if the application for certification is incomplete, false, or fraudulent. It shall be a violation of this chapter for a person to submit to the Commissioner an application for certification or renewal that he knows to be false or fraudulent.

**Drafting Note: Technical changes.**

~~§ 3.1-969.9~~ 3.2-5708. Certification fee.

~~Every~~ *Each* service technician applying for a certification or renewal of certification shall pay annually a certification fee of ~~twenty five~~ \$25 dollars ~~per service technician~~. All fees collected pursuant to this section shall be deposited in the state treasury and credited to the Weights and Measures Fund established by ~~§ 3.1-949.2~~ 3.2-5628.

**Drafting Note: Technical changes.**

~~§ 3.1-969.10~~ 3.2-5709. Service of weights and measures; repair.

A. Any registered service agency or any certified service technician in the employ of the service agency may: (i) place into service, subject to random official inspection, a new or used weight or measure; and (ii) following corrective repair, remove and destroy any rejection tag or condemnation tag and return the weight or measure to service.

B. A service agency or service technician in the employ of the service agency exercising authority under subsection A of this section shall adjust any weight or measure governed by subsection A as closely as practicable to zero error.

**Drafting Note: Technical changes.**

~~§ 3.1-969.11~~ 3.2-5710. Certificate of Conformance.

Any service agency engaged in the sale of any weights or measures shall sell only weights or measures that have received a Certificate of Conformance. Any service agency or service technician engaged in the adjustment, installation, placing in service, recommending for use, repair, or servicing of any weight or measure shall do so in a manner so as to ensure the continued validity of the Certificate of Conformance.

**Drafting Note: Technical changes.**

~~§ 3.1-969.12~~ 3.2-5711. Service report.

Every service agency shall furnish each service technician in its employ with a supply of report forms entitled "Placed into Service Report" prescribed by the Commissioner. Within five business days after its service technician has placed in or restored to service a weight or measure, the service agency shall provide to the Commissioner a fully executed Placed into Service Report. The service agency shall provide a copy of the fully executed Placed into Service Report to the owner or operator of the weight or measure and shall retain for a period of one year,

reckoned from the date of execution, a copy of the fully executed Placed into Service Report, which is subject to inspection by the Commissioner. The Commissioner may accept the Placed into Service Report as sufficient to meet the statutory testing and inspection requirements in § ~~3.1-928~~3.2-5609.

**Drafting Note: Technical changes.**

§ ~~3.1-969.13~~ 3.2-5712. Denial, suspension, or revocation of registrations and certifications.

A. The Commissioner may deny, suspend, or revoke the registration of any service agency ~~when the Commissioner~~ *if he* determines that: (i) the service agency has violated any provision of this chapter, any provision of ~~the Weights and Measures Act of Virginia Chapter 56~~ (§ ~~3.1-919~~3.2-5600 et seq.), or any regulation adopted under either chapter; or (ii) when, in the service of the service agency, any officer of the service agency or any service technician has been convicted in any *appropriate court of competent jurisdiction* of violating any provision of this chapter, any provision of ~~the Weights and Measures Act of Virginia Chapter 56~~, or any regulation adopted under either chapter.

B. The Commissioner may deny, suspend, or revoke the certification of any service technician when the Commissioner determines that: (i) the service technician has violated any provision of this chapter or any regulation adopted pursuant to this chapter; or (ii) the service technician has been convicted in any *appropriate court of competent jurisdiction* of violating any provision of this chapter, any provision of ~~the Weights and Measures Act of Virginia Chapter 56~~, or any regulation adopted under either chapter.

C. The Commissioner shall afford reasonable notice of an informal fact finding pursuant to § 2.2-4019 to: (i) any service agency prior to and in connection with the denial, suspension, or revocation of its registration under subsection A ~~of this section~~; and (ii) any service technician prior to and in connection with the denial, suspension, or revocation of the service technician's certification under subsection B ~~of this section~~.

**Drafting Note: Technical changes.**

§ ~~3.1-969.14~~ 3.2-5713. Penalties.

A. Any person violating any provision of this chapter ~~shall be~~ *is* guilty of a Class 1 misdemeanor, and may, in addition to or in lieu thereof, be assessed a civil penalty, as provided in § ~~3.1-969.15~~ 3.2-5714.

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

**Drafting Note: Technical changes.**

§ ~~3.1-969.15~~ 3.2-5714. Civil penalties.

A. Any person violating any provision of this chapter or regulations ~~promulgated thereunder~~ *adopted hereunder* may be assessed a civil penalty by the Board in an amount not to exceed \$1,000 per violation. In determining the amount of any civil penalty, the Board shall give due consideration to: (i) the history of the person's previous violations; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with the chapter after notification of the violation.

B. Civil penalties assessed under this section shall be paid into the Weights and Measures Fund as established by § ~~3.1-949.2~~ 3.2-5628. The Commissioner shall prescribe procedures for payment of uncontested penalties. The procedure shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

C. Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: Technical changes.**

## CHAPTER 36-58.

### PUBLIC WEIGHMASTERS.

**Chapter Drafting Note: The provision in existing § 3.1-977 that "any license issued on or after June 29, 1962, and on or before December 31, 1962, shall be issued to expire on December 31 of the next ensuing calendar year" is deleted as obsolete. The penalty for violating the provisions of this chapter is updated to fit the current practice of using the authorized punishments for conviction of a misdemeanor in accordance with § 18.2-11. Any person found guilty of one of the violations specified in "Requesting false weighing or false weight certificate; issuance of weight certificate by unlicensed person" shall be guilty of a Class 4 misdemeanor for the first offense and a Class 2 misdemeanor for a second or subsequent offense. A person who violates any provision of the chapter for which no penalty is specified is guilty of a Class 4 misdemeanor.**

~~§ 3.1-970~~ 3.2-5800. Definitions.

~~When~~ As used in this chapter, unless the context requires otherwise a different meaning:

(a) ~~The words "licensed public weighmaster" shall mean and refer to a natural person licensed under the provisions of this chapter.~~

(b) ~~The word~~

*"Public weighing," means the weighing for any person, upon request, of property, produce, commodities, or articles other than those that the weigher or his employer, or any, is either buying or selling.*

~~"vehicle"~~ *Vehicle* shall ~~mean~~ means any device in, upon, or by which any property, produce, commodity, or article is or may be transported or drawn.

(e) ~~The word "Commissioner" shall mean and refer to the State Commissioner of Agriculture and Consumer Services.~~

**Drafting Note: Deleted definition of the term "Commission" since it appears in a title-wide provision. Added the definition of "public weighing" from existing § 3.1-986**

~~§ 3.1-971~~ 3.2-5801. Commissioner to ~~enforce chapter; rules and~~ adopt regulations.

~~The Commissioner is authorized to enforce the provisions of this chapter and to promulgate, in the manner provided by law, such rules and~~ may adopt regulations as are deemed ~~he deems~~ necessary to carry out the provisions of this chapter.

**Drafting Note: The general powers of the Commissioner are cited in § 2.2-604 and proposed § 3.2-102, General powers and duties of the Commissioner. in Chapter 1, General Provisions.**

~~§ 3.1-972~~ 3.2-5802. Qualifications of licensed public weighmasters.

A citizen of the United States or a person who has been lawfully admitted for permanent residence, and is not less than ~~eighteen~~ 18 years of age, of good moral character, and who has the ability to weigh accurately and to make correct weight certificates, and who has received from the Commissioner a license as a licensed public weighmaster shall be ~~styled and~~ authorized to act as a licensed public weighmaster.

**Drafting Note: Technical changes.**

~~§ 3.1-973~~ 3.2-5803. Application for license.

Application for a license as a licensed public weighmaster shall be made upon a form provided by the Commissioner and the application shall furnish evidence that the applicant has the qualifications required by ~~§ 3.1-972 of this chapter~~ 3.2-5802.



**Drafting Note: Technical changes.**

~~§ 3.1-974~~ 3.2-5804. Determining qualifications of applicant; granting of license; record of applications and licenses.

The Commissioner may adopt ~~rules~~ *guidelines* for determining the qualifications of the applicant for a license as a licensed public weighmaster. He may pass upon the qualifications of the applicant upon the basis of the information supplied in the application, or he may examine such applicant orally or in writing or both for the purpose of determining his qualifications. He shall grant licenses as licensed public weighmasters to such applicants as may be found to possess the qualifications required by ~~§ 3.1-972~~ 3.2-5802 of this chapter. The Commissioner shall keep a record of all such applications and of all licenses issued thereon.

**Drafting Note: Technical changes.**

~~§ 3.1-975~~ 3.2-5805. Licenses and renewal fees.

Before the issuance of any license as a licensed public weighmaster, or any renewal thereof, the applicant shall pay to the Commissioner a fee of ~~ten \$10-dollars~~. Such fees shall be deposited with the State Treasurer to be credited to a fund to be used by the Commissioner for the administration of this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-976~~ 3.2-5806. Issuance of limited licenses to certain public officers and employees.

The Commissioner may, upon request and without charge, issue a limited license as a licensed public weighmaster to any qualified officer or employee of a city or county ~~of this~~ *of the* Commonwealth or of a state commission, board, institution, or agency, authorizing such officer or employee to act as a licensed public weighmaster only within the scope of his official employment in the case of an officer or employee of a city or county or only for and on behalf of the state commission, board, institution, or agency in the case of an officer or employee thereof.

**Drafting Note: Technical changes.**

~~§ 3.1-977~~ 3.2-5807. Expiration of licenses; applications for renewal.

Each license as licensed public weighmaster shall be issued to expire on December 31 of the calendar year for which it is issued: ~~Provided, that any.~~ *Any* such license shall be valid through January 31 of the next ensuing calendar year or until issuance of the renewal license, whichever event first occurs, if the holder thereof shall have filed a renewal application with the Commissioner on or before December 15 of the year for which the current license was issued; ~~and provided further, that any license issued on or after June 29, 1962, and on or before December 31, 1962, shall be issued to expire on December 31 of the next ensuing calendar year.~~ Renewal applications shall be in such form as the Commissioner shall prescribe.

**Drafting Note: Technical changes.**

~~§ 3.1-978~~ 3.2-5808. Oath and seal of licensed public weighmaster; Commonwealth not obligated to pay compensation.

Each licensed public weighmaster shall, before entering upon his duties, make oath to execute faithfully his duties. The issuance of a license as licensed public weighmaster shall not obligate the Commonwealth to pay to the licensee any compensation for his services as a licensed public weighmaster. Each licensed public weighmaster shall, at his own expense, provide himself with an impression seal. His name and the words "Commonwealth of Virginia" shall be inscribed around the outer margin of the seal and the words "licensed public weighmaster" shall appear in the center thereof. The seal shall be impressed upon each weight certificate issued by a licensed public weighmaster.

**Drafting Note: No changes.**

~~§ 3.1-979~~ 3.2-5809. Form of weight certificate and information to be stated thereon; weight certificate as evidence.

The Commissioner shall prescribe the form of weight certificate to be used by a licensed public weighmaster. The weight certificate shall state the date of issuance, the kind of property,

produce, commodity, or article weighed, the name of the declared owner or agent of the owner or of the consignee of the material weighed, the accurate weight of the material weighed, the means by which the material was being transported at the time it was weighed, and such other available information as may be necessary to distinguish or identify the property, produce, commodity, or article from others of like kind. Such weight certificate when so made and properly signed and sealed shall be prima facie evidence of the accuracy of the weights shown.

**Drafting Note: No changes.**

~~§ 3.1-980~~ 3.2-5810. Entries on weight certificate.

A licensed public weighmaster shall not enter on a weight certificate issued by him any weight values but ~~such as~~ *those* he has personally determined, and he shall make no entries on a weight certificate issued by some other person. A weight certificate shall be so prepared as to show clearly what weight or weights were actually determined. If the certificate form provides for the entry of gross, tare, and net weights, in any case in which only the gross, the tare, or the net weight is determined by the weighmaster he shall strike through or otherwise cancel the printed entries for the weights not determined or computed. If gross and tare weights are shown on a weight certificate and both of these were not determined on the same scale and on the day for which the certificate is dated, the weighmaster shall identify on the certificate the scale used for determining each ~~such~~ weight and the date of each ~~such~~ determination.

**Drafting Note: Technical changes.**

~~§ 3.1-981~~ 3.2-5811. Only suitable, tested and approved weighing devices to be used.

When making a weight determination as provided for by this chapter a licensed public weighmaster shall use a weighing device ~~which~~ *that* is of a type suitable for the weighing of the amount and kind of material to be weighed, and ~~which~~ *that* has been tested and approved for use by a weights and measures officer of ~~this~~ *the* Commonwealth within a period of ~~twelve~~ *12* months immediately preceding the date of the weighing.

**Drafting Note: Technical changes.**

~~§ 3.1-982~~ 3.2-5812. Capacity of scales not to be exceeded; determining gross or tare weight of vehicle or combination of vehicles.

A licensed public weighmaster shall not use any scale to weigh a load the value of which exceeds the nominal or rated capacity of the scale. When the gross or tare weight of any vehicle or combination of vehicles is to be determined, the weighing shall be performed upon a scale having a platform of sufficient size to accommodate such vehicle or combination of vehicles fully, completely, and as one entire unit. If a combination of vehicles must be broken up into separate units in order to be weighed as prescribed herein, each such separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each such separate unit.

**Drafting Note: No changes.**

~~§ 3.1-983~~ 3.2-5813. Copies of weight certificates to be retained and kept open for inspection.

A licensed public weighmaster shall keep and preserve for at least one year, or for such longer period as may be specified in the regulations authorized to be issued for the enforcement of this chapter, a legible ~~carbon~~ copy of each weight certificate issued by him, which copies shall be open at all reasonable times for inspection by any weights and measures officer of ~~this~~ *the* Commonwealth.

**Drafting Note: Technical changes.**

~~§ 3.1-984~~ 3.2-5814. Weight certificates issued by weighmasters in other states.

Whenever in any other state ~~which~~ *that* licenses public weighmasters, there is statutory authority for the recognition and acceptance of the weight certificates issued by licensed weighmasters of ~~this~~ *the* Commonwealth, the Commissioner of ~~this~~ *the* Commonwealth is authorized to recognize and accept the weight certificates of ~~such~~ *the* other state.

**Drafting Note: Technical changes.**

~~§ 3.1-985~~ 3.2-5815. Certain persons permitted but not required to obtain licenses.

The following persons shall not be required but shall be permitted to obtain licenses as licensed public weighmasters: ~~(+i)~~ a weights and measures officer when acting within the scope of his official duties; ~~(2ii)~~ a person weighing property, produce, commodities, or articles ~~which~~ that he or his employers, if any, is either buying or selling; and ~~(3iii)~~ a person weighing property, produce, commodities, or articles in conformity with the requirements of federal statutes or the statutes of his state relative to warehousemen or processors.

**Drafting Note: Technical changes.**

~~§ 3.1-986~~ 3.2-5816. Certain acts forbidden to persons not licensed as public weighmasters.

No person shall assume the title "licensed public weighmaster," or any title of similar import, perform the duties or acts to be performed by a licensed public weighmaster under this chapter, hold himself out as a licensed public weighmaster, issue any weight certificate, ticket, memorandum, or statement for which a fee is charged or engage in the full-time or part-time business of public weighing, unless he holds a valid license as a licensed public weighmaster. ~~"Public weighing," as used in this section, shall mean the weighing for any person, upon request, of property, produce, commodities, or articles other than those which the weigher or his employer, or any, is either buying or selling.~~

**Drafting Note: Moved the definition of "public weighing" to proposed § 3.2-5800, Definitions.**

~~§ 3.1-987~~ 3.2-5817. Suspension or revocation of license.

The Commissioner is authorized to suspend or revoke the license of any licensed public weighmaster: ~~(+i)~~ when he is satisfied, after a hearing upon ~~ten~~-10 days' notice to the licensee, that the said licensee has violated any provision of this chapter or of any ~~valid~~ regulation of the Commissioner affecting licensed public weighmasters; or ~~(2ii)~~ when a licensed public weighmaster has been convicted in any *appropriate* court ~~of competent jurisdiction~~ of violating any provision of this chapter or of any regulation issued under authority of this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-988~~ 3.2-5818. Requesting false weighing or false weight certificate; issuance of weight certificate by unlicensed person.

Any person who requests a licensed public weighmaster to weigh any property, produce, commodity, or article falsely or incorrectly, or who requests a false or incorrect weight certificate, or any person who issues a weight certificate simulating the weight certificate prescribed in this chapter and who is not a licensed public weighmaster, ~~shall be~~ is guilty of a *Class 4* misdemeanor; ~~and upon conviction for the first offense shall be punished by a fine in any sum not less than \$50 nor more than \$100; and upon a second or subsequent conviction such person shall be punished by a fine in any sum not less than \$100 or more than \$500 or by imprisonment for not less than thirty days or more than ninety days or by both such fine and imprisonment~~ is guilty of a *Class 2* misdemeanor.

**Drafting Note: Classified penalty in accordance with § 18.2-11.**

~~§ 3.1-989~~ 3.2-5819. Falsification or presealing of weight certificate by licensed weighmaster; delegation of authority to unlicensed person.

Any licensed public weighmaster who falsifies a weight certificate, or who delegates his authority to any person not licensed as a licensed public weighmaster, or who preseals a weight certificate with his official seal before performing the act of weighing, ~~shall be~~ is guilty of a *Class 2* misdemeanor. ~~and upon conviction shall be punished by a fine in any sum not less than \$50 or more than \$500 or by imprisonment for not less than thirty days or more than ninety days or by both such fine and imprisonment.~~

**Drafting Note: Classified penalty in accordance with § 18.2-11.**

~~§ 3.1-990~~ 3.2-5820. Penalty for violation of chapter.

Any person who violates any provision of this chapter or any ~~rule or~~ regulation promulgated *adopted* pursuant thereto for which no specific penalty has been provided shall be guilty of a *Class 4* misdemeanor. ~~and upon conviction shall be punished by a fine in any amount not less than \$50 or more than \$100.~~

**Drafting Note: Classified penalty in accordance with § 18.2-11.**

*Subtitle V.*

*Domestic Animals.*

*CHAPTER 59.*

*GENERAL PROVISIONS.*

**Chapter Drafting Note: This is a new chapter created to contain general provisions applicable throughout Subtitle V, Domestic Animals. Proposed § 3.2-5900, Definitions, collects a number of terms that are provided in various existing sections of Title 3.1, including definitions for "horse" and "livestock" to clarify that equine animals, unless otherwise provided, are considered to be livestock as noted in existing §§ 3.1-4 and 3.1-14. This chapter also includes sections establishing the State Veterinarian; requiring a certificate of veterinary inspection to import certain animals; requiring the Commissioner to operate a laboratory for the diagnosis of livestock and poultry diseases; authorizing the Commissioner to control the coyote population; and providing compensation to animal owners damaged by efforts to control or eradicate disease.**

*§ 3.2-5900. Definitions.*

*As used in this subtitle, unless the context requires a different meaning:*

*"Accredited veterinarian" means a veterinarian approved by the Administrator of the U.S. Department of Agriculture in accordance with 9 CFR Part 161 (2004), which includes the authority to issue health certificates.*

*"Animal" means any organism of the kingdom Animalia, other than a human being.*

*"Hatching egg" means any egg of any chicken, turkey, waterfowl, or game bird, or the egg of any other avian species that is used or intended to be used for hatching purposes.*

*"Horse" means any stallion, colt, gelding, mare, or filly.*

*"Livestock" includes all domestic or domesticated bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; capradae animals; animals of the genus Lama; ratites; fish or shellfish in aquaculture facilities, as defined in § 3.2-2600; enclosed rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.*

*"Passport" means a document that may be used in lieu of a Certificate of Veterinary Inspection and shall contain animal identifiers and health maintenance history such as vaccinations and laboratory tests.*

*"Poultry" includes all domestic fowl and game birds raised in captivity.*

*"State Veterinarian" means the veterinarian employed by the Commissioner as provided in § 3.2-5901.*

*"State Veterinarian's representative" means any person who is either: (i) an employee of the Department under the direction of the State Veterinarian; or (ii) a veterinarian deputized pursuant to § 3.2-5901.*

**Drafting Note: New section. Definitions are moved from other sections for clarification. "Accredited veterinarian" is moved from existing § 3.1-741.3, and the CFR citation is updated. The definition of "animal" is added and is broad so as to apply to the whole subtitle, except where it is defined more specifically in the Comprehensive Animal Laws. The definition of "hatching egg" is also moved from existing § 3.1-741.3, the definition**

section from Article 1.1, Testing for Avian Influenza. The definition of "passport" is added to reflect current practice, and is used in proposed § 3.2-5902. The definitions of the terms "livestock," "poultry," "State Veterinarian," and "State Veterinarian's representative" are taken from existing § 3.1-796.66 and will now apply to all of Subtitle V, Domestic Animals. The definition of horse and livestock are provided together to clarify that equine animals shall generally be considered livestock as provided in existing §§ 3.1-4 and 3.1-14.

~~§ 3.1-723~~ 3.2-5901. State Veterinarian and assistants *representatives*.

The Commissioner of ~~Agriculture and Consumer Services~~ shall employ *and direct* a qualified veterinarian who shall be known as the State Veterinarian, ~~and may employ assistant veterinarians~~ whose duties ~~it~~ shall be to carry out the laws of the Commonwealth and the rules and regulations of the Board of ~~Agriculture and Consumer Services~~ *and the Commissioner*. The State Veterinarian shall reside at such point in the Commonwealth as the Commissioner may, from time to time, designate as most suited to the efficient dispatch of the business of his office. The State Veterinarian, ~~and all other veterinarians~~ *his representatives*, shall have the power to carry into effect all lawful orders given by the Board or the Commissioner.

The State Veterinarian may deputize, ~~duly~~ *for a specific period of time*, licensed ~~practicing~~ veterinarians, *veterinarians employed by the Virginia-Maryland Regional College of Veterinary Medicine*, and veterinarians in the employment of the ~~United States~~ U.S. Department of Agriculture, ~~and all such veterinarians~~ shall have authority to perform the duties of assistant veterinarians employed by the Commissioner.

**Drafting Note: The second sentence is deleted as obsolete. The Commissioner is added at the end of the first sentence because he has limited authority to adopt federal regulations by reference. The proposed changes in the second paragraph are substantive and are made to improve emergency response capabilities. The changes increase the pool of veterinarians that may be deputized by the State Veterinarian by allowing non-practicing licensed veterinarians and veterinarians employed by the Virginia-Maryland Regional College of Veterinary Medicine to be deputized.**

~~§ 3.1-735~~ 3.2-5902. Certificate of veterinary inspection required for importation of certain pet animals ~~or poultry~~; examination, ~~etc.~~, where imported without certificate; exceptions; *penalty*.

~~NoA.~~ *It shall be unlawful for any person* ~~shall~~ to import into ~~this~~ *the* Commonwealth from another state any pet animal, including ~~but not limited to~~, dogs, cats, monkeys, or other animals, *ferae naturae*, wild or tame under domestication or in custody, or any poultry not intended for commercial use ~~which~~ *that* by its nature is fit for use only as a pet ~~until~~, *unless* such animal ~~or poultry~~ is accompanied by a certificate of veterinary inspection ~~made~~ *issued* by a ~~properly qualified~~ *an accredited* veterinarian. Such certificate shall be ~~under oath~~ on an official interstate ~~health~~ *certificate of veterinary inspection* issued by the state of origin, shall be dated no more than ~~ten~~ 10 days before shipment, and shall contain such evidence of proof of the health of the animal ~~or poultry~~ as the Board, by regulation, may require.

B. Any such animal ~~or poultry~~, which may be imported into ~~this~~ *the* Commonwealth without ~~such~~ a certificate, may be examined immediately by the State Veterinarian, *his representative*, or by a licensed veterinarian, designated by him, and the examination cost may be charged to the owner or the person in possession of ~~such~~ *the* animal ~~or poultry~~. If, in the opinion of the ~~veterinarian~~ *State Veterinarian or his representative*, there is danger from contagion or infection, ~~such~~ *the* animal ~~or poultry~~ may be placed in ~~elose~~ quarantine at the expense of the owner until all danger of infection or contagion has passed, whereupon the animal ~~or poultry~~ shall be released upon the order of ~~such~~ *veterinarian* ~~the State Veterinarian or his representative~~.

C. The provisions of this section shall not apply to any ornamental aquarium fish or invertebrate animal, *or an animal accompanied by a passport approved by the State*

*Veterinarian.* The provisions of this section shall also not apply to: (i) any animal ~~or poultry~~ as herein defined passing directly through the Commonwealth to another state in interstate commerce, or when such animal ~~or poultry~~ is kept properly under control by ~~the~~ its owner or custodian ~~of such animal or poultry~~ when passing through ~~this~~ the Commonwealth to another state; (ii) ~~to any such animal or poultry~~ brought into ~~this~~ the Commonwealth by a resident of ~~this~~ Commonwealth or by a resident of another state who intends to make his residence in ~~this~~ the Commonwealth except if brought into the Commonwealth with the intent of offering it for public sale, trade, or promotional incentive; or (iii) to any animal brought into ~~this~~ the Commonwealth temporarily for the purpose of hunting or legal exhibition within this state.

*D. Any person who violates any of the provisions of this section is guilty of a Class 1 misdemeanor.*

**Drafting Note: Deleted the term "properly qualified veterinarian" and replaced it with "accredited veterinarian." Poultry is deleted throughout the section because poultry are properly included as animals. The penalty provision for this section was added in proposed subsection D for consistency with existing § 3.1-736, which finds any person who imports any animal into the Commonwealth in violation of any regulation adopted by the Board is guilty of a Class 1 misdemeanor and existing § 3.1-733, which also provides a Class 1 misdemeanor penalty for violations of the contagious and infectious disease control provisions.**

~~§ 3.1-725~~ 3.2-5903. Laboratory for diagnosis of diseases.

The ~~Board~~ Commissioner shall maintain and operate ~~at some suitable location in the County of Rockingham and in such other places within the Commonwealth as the Board may determine~~ a laboratory system for the diagnosis of diseases of livestock and poultry, and for such other uses and purposes as may be determined by the ~~Board~~ Commissioner.

**Drafting Note: The Department operates the laboratories and determines the number and location of the laboratories, not the Board. There are currently five laboratories.**

~~§ 3.1-796.67.1~~ 3.2-5904. Authority of the Commissioner; *coyotes*.

The Commissioner ~~of Agriculture and Consumer Services shall have the power to~~ may enter into agreements with local, state and federal agencies, or other persons for the control of coyotes ~~which~~ that pose a danger to agricultural animals.

**Drafting Note: Technical changes.**

~~§ 3.1-741.73.2~~ 3.2-5905. Compensation for animals slaughtered or animals or animal products destroyed to control or eradicate an animal disease outbreak.

When, in the judgment of the State Veterinarian, it is necessary for the control or eradication of an animal disease outbreak to slaughter or destroy animals or destroy animal products affected with or exposed to such disease and when the Commissioner determines that there should be compensation to owners and, when applicable, individuals contracted by the owners to produce such animals or animal products for loss thereof, the Commissioner, with the approval of the Governor and the Secretary of Agriculture and Forestry, may, within his discretion, use funds so appropriated to pay to the appropriate persons ~~and individuals~~ a portion of the difference between the appraised value of each animal destroyed or slaughtered or animal product destroyed and the total value of the salvage thereof and any compensation made for each animal or animal product by the federal government.

**Drafting Note: Technical changes.**

## CHAPTER ~~27-60~~.

### LIVESTOCK AND POULTRY.

**Chapter Drafting Note: Existing Chapter 27, Livestock and Poultry, contains fifteen articles, most of which have been deleted or moved elsewhere in proposed Title 3.2.**

Existing Article 1, In General, is moved to become proposed Chapter 60, Livestock and Poultry; existing Article 4.2, Virginia Pork Industry Board, is moved to become proposed Chapter 20, Pork Industry Board; existing Article 5, Eggs and Hatchery Products, is moved to become proposed Chapter 53, Eggs and Hatchery Products; and existing Article 10, Virginia Egg Board, is moved to become proposed Chapter 16, Egg Board. While existing Article 1.1, Testing for Avian Influenza, is deleted, the relevant provisions have been moved to proposed § 3.2-5900, Definitions. Existing Article 1.2, Control of Avian Influenza, is deleted, but its only section remains in this chapter and is moved to proposed § 3.2-6023, Prevention and control measures; penalty. Existing Article 1.3, Compensation for Loss of Animals or Animal Products, is deleted, but its only section is moved to proposed § 3.2-5905, Compensation for animals slaughtered or animals or animal products destroyed to control or eradicate an animal disease outbreak. Existing Article 4.1, Destruction of Swine Affected with Hog Cholera, has been deleted, but existing § 3.1-763.3 has been moved and remains in this chapter as proposed § 3.2-6022, Indemnity to owner for the euthanasia or slaughter of swine. Existing Article 6, Certified Hatchery Products, existing Article 8.1, Promotion of Sale and Use of Poultry, and existing Article 9, Quality Mark for Eggs, have been deleted as obsolete. The remaining sections have been combined into four proposed articles: Article 1, Contagious and Infections Diseases; Article 2, Disposal of Dead Poultry; Article 3, Prohibitions on Feeding Garbage to Swine; and Article 4, Shooting Enclosures.

*Article 1.*

*Contagious and Infectious Diseases.*

~~§ 3.1-731~~ 3.2-6000. Right of entry.

The State Veterinarian and his ~~assistants~~*representatives* are authorized and empowered to enter upon any ~~grounds or premises to carry out the provisions of §§ 3.1-726 to 3.1-733 for the purpose of performing the duties imposed upon them by this chapter.~~

**Drafting Note: The State Veterinarian's right to enter is expanded to carry out the provisions of the whole chapter, not just the contagious and infectious disease provisions of this article. This is necessary for the State Veterinarian to carry out the provisions of proposed Article 2, Disposal of Dead Poultry, proposed Article 3, Prohibitions on Feeding Garbage to Swine, and proposed Article 4, Shooting Enclosures.**

~~§ 3.1-724~~ 3.2-6001. Protection of domestic animals *livestock* and poultry.

The ~~State Commissioner, the Board of Agriculture and Consumer Services, the State Veterinarian, and all other veterinarians within the Commonwealth, shall have authority, and it shall be their duty, to use their best efforts to protect domestic animals~~*livestock* and poultry from *contagious and infectious* disease. It shall also be the duty of the *Commissioner, the Board,* and the State Veterinarian to cooperate with the livestock ~~sanitary and poultry disease~~ control officials of other states; and with the ~~Secretary of Agriculture of the United States, and the United States~~*U.S.* Department of Agriculture in establishing such ~~interstate quarantine lines, rules and regulations so as to best protect the livestock and poultry of this~~*the* Commonwealth against all contagious and infectious diseases.

**Drafting Note: Adds the Commissioner as an individual with the duty to protect livestock and poultry from contagious and infectious disease to reflect current practice. Clarifies that the State Veterinarian's duty in this section applies to protecting livestock and poultry from contagious and infectious disease, not all domesticated animals from all diseases.**

~~§ 3.1-726~~ 3.2-6002. Contagious and infectious diseases; *prevention and eradication*; presence of biological residues; ~~eradication and prevention.~~

A. ~~The diseases known as tuberculosis, foot and mouth disease, anthrax, Bang's abortion disease, hemorrhagic septicemia, Texas fever, hog cholera, cattle scab, sheep scab, pullorum disease and all such other diseases of livestock and poultry, whether or not of similar character, as may be found to be of a contagious and infectious nature, shall be classed as contagious and infectious diseases of livestock and poultry, and The State Veterinarian shall take such measures shall be taken by the Board or its authorized veterinarian as to them may seem be necessary, to eradicate and prevent the spread of such~~ *and eradicate contagious and infectious livestock and poultry diseases.* The Board may adopt ~~such~~ regulations as may be necessary to effectuate the purposes of this article. The Board and the Commissioner are also authorized to make the regulations adopted under this article conform, insofar as practicable, to those regulations adopted under federal statutes governing animal health.

B. The Commissioner may adopt by reference any federal regulation adopted pursuant to any federal statute relating to animal health, ~~including, but not limited to, 21 U.S.C. §§ 111-113, 115, 117, 120, 123-126, 134a, 134b, and 134f; the Animal Industry Act; the Cattle Contagious Diseases Act; and the Animal Quarantine Act~~ *amending it as necessary for intrastate applicability.* Any regulation adopted by the Commissioner pursuant to this subsection shall be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations, *or upon a date specified by the Department that is after the filing.*

The regulation shall contain a preamble stating that the Board will receive, consider and respond to a petition by any interested person at any time with respect to reconsideration or revision of such regulation. Neither the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption of any regulation by the Commissioner pursuant to this subsection.

C. The Board, after giving notice in the Virginia Register of Regulations, may reconsider *and revise* the regulation adopted by the Commissioner. If, upon reconsideration, the Board determines that the regulation should be revised other than as authorized by subsection B ~~of this section~~, the Board may amend the regulation only as authorized by the Administrative Process Act.

D. ~~The Commissioner and the Board of Agriculture and Consumer Services~~ may use the powers granted by this article to abate the presence of biological residues in or on livestock or poultry. Biological residues shall mean those substances remaining in or on any animal prior to or at the time of slaughter as the result of treatment or exposure ~~which~~ *that* are determined by the ~~Commissioner and the Board of Agriculture and Consumer Services~~ to be or to have the potential for being injurious to the health of humans or animals.

**Drafting Note: In subsection A, the list of specific diseases is deleted because some of the names of the diseases have changed over the years. The subsection is amended so the State Veterinarian must take action to prevent the spread of and eradicate all contagious and infectious diseases in livestock and poultry. Subsections B and C are amended to reflect current practice. In subsection D, the Commissioner is added as an entity with power to abate biological residues. With the exception of approval of regulations, the Board, which meets for about three hours once every three months, is not active in biological residue abatement. This also reflects current practice.**

~~§ 3.1-727~~ 3.2-6003. Duty of State Veterinarian when animals ~~or poultry are~~ suspected of ~~such~~ *having a contagious or infectious disease.*

~~It shall be the duty of the~~ *A. The State Veterinarian at any time, upon receipt of reliable information of the existence of any contagious or infectious disease among domestic animals or poultry of the Commonwealth of any infectious or contagious disease, to go at once, or order an assistant veterinarian to go with potential impact on livestock or poultry, shall immediately make an evaluation that may include going to the place where such disease is alleged to exist for the*



~~purpose of making a careful examination~~ has been reported. The evaluation may include conducting tests of the animals ~~or poultry~~ believed to be affected with such disease, and ascertain, if possible, what, if any, disease exists, and whether the same is contagious or infectious.

B. Upon notice by the State Veterinarian or his representative, the owner or custodian of any animal to be evaluated shall isolate and confine the animals if necessary to accomplish the evaluation or to prevent the spread of contagious or infectious disease.

C. 1. If a disease is found to be contagious or infectious, the State Veterinarian, or ~~an~~ ~~assistant~~ his representative, may adopt and enforce such quarantine lines and regulations and shall enforce such cleaning and disinfection of premises, cars or vehicles, as may be deemed necessary to prevent the spread of such disease, ~~which quarantine~~. Quarantine lines, and regulations, when so adopted, shall supersede any similar provisions made by the ~~board of supervisors governing body~~ of any county under the provisions of Chapter 12 (§ ~~15.1-503.4:10~~ 15.2-1200 et seq.) of Title ~~15.1~~ 15.2.

2. The State Veterinarian may issue and enforce a proclamation limiting live animal sales and events or the movement of manure, bedding, equipment, vehicles, or other material that may be infectious to prevent the spread of contagious or infectious diseases to livestock and poultry.

**Drafting Note: Modernized language to reflect changes in industry and biosecurity awareness. Although it may be assumed that an evaluation may include tests, this language is now specified in proposed subsection A. Existing § 3.1-724 directs the State Veterinarian to protect livestock and poultry from disease. To help the State Veterinarian, new language is added to proposed subsection B specifying that owners shall assist in the isolation and confinement of animals that are suspected of having a contagious or infectious disease. This new language follows existing § 3.1-753, which requires owners to submit cattle for testing and to separate and confine the cattle to be tested. That section is proposed to be deleted. There is another proposed substantive addition in proposed subdivision C 2. The proposed language specifies that the State Veterinarian, by proclamation, may limit live animal events and limit the movement of possible infectious material to prevent the assembly of potentially infectious animals and the movement of potentially infectious materials. He currently does not have the specific authority to issue such a proclamation for animals that are in state. Such proclamations have been issued citing the general authority provision of protecting livestock and poultry from contagious and infectious diseases. Existing § 3.1-730 authorizes the State Vet to "give and enforce such directions and prescribe such rules and regulations as to separating, feeding and caring for diseased or exposed animals. . ." Existing § 3.1-734 directs the State Vet, by proclamation, to prohibit the importation of any animal from other states.**

~~§ 3.1-730~~ 3.2-6004. Rules ~~as to~~ Regulation for the separation and caring for diseased animals ~~or poultry~~.

The Board ~~or may adopt regulations and~~ the State Veterinarian shall also, from time to time, may give and enforce such directions and orders ~~prescribe such rules and regulations as to~~ separating, feeding, and caring for diseased or exposed animals ~~or poultry as shall be necessary~~ to prevent the animals ~~or poultry so~~ affected with such disease, or capable of communicating disease, from coming in contact with ~~other animals~~ livestock or poultry not so affected.

**Drafting Note: The term "orders" was added to reflect current practice. Directions for quarantine and depopulation are given on forms referred to as "orders," not "rules."**

~~§ 3.1-732~~ 3.2-6005. Notice of quarantine.

The State Veterinarian, or ~~an assistant veterinarian~~ his representative, may give such notice as may be necessary to make ~~the a~~ quarantine effective.

**Drafting Note: Technical changes.**

~~§ 3.1-729~~ 3.2-6006. Quarantine of persons *individuals*.

~~Persons~~ Any individual exposed to contagious or infectious animal and poultry diseases which that, in the reasonable opinion of the State Veterinarian, may be transmitted by such persons individual to animals or poultry, may be quarantined when, in the reasonable opinion of the State Veterinarian, such quarantine will prevent the spread of such contagious or infectious diseases among livestock or poultry. The provisions of § 32.1-48.010 shall apply, mutatis mutandis, to appeal any order of quarantine issued pursuant to this section. For purposes of this section only, significant health threat shall include threat of contagious or infectious diseases to livestock or poultry.

**Drafting Note: A cross reference to § 32.1-48.010, Appeal of any order of quarantine, is added from the Health Department's chapter on Disease Prevention and Control to provide any person detained under quarantine the right to a hearing in an expeditious manner.**

~~§ 3.1-728~~ 3.2-6007. ~~Animals or poultry~~ Domestic animals not permitted to enter or leave quarantine.

~~No domestic animals or poultry infected~~ Any domestic animal with any infectious or contagious or infectious disease, or which have been any domestic animal exposed to such a disease, or are any domestic animal that is otherwise capable of communicating the such a disease, to livestock or poultry shall not be permitted to enter or leave the any quarantined district, premises, or grounds so quarantined, except by authority of the State Veterinarian.

**Drafting Note: Technical changes.**

§ 3.2-6008. Disposition of quarantined animals with potential to impact livestock or poultry.

Disposition of quarantined animals, including condemnation, shall be determined by the State Veterinarian or his representative after confirmation by diagnostic testing, the results of which shall be provided to the owner and grower of such animal upon request.

**Drafting Note: New section. The language in this proposed section is taken from existing § 3.1-734, which gives the State Veterinarian authority to quarantine and release animals from other states, and §§ 3.1-749, 3.1-751, and 3.1-763.2, which authorize the State Veterinarian to condemn cattle and hogs. New language is added to provide, upon request, any test results to the owner and grower of quarantined animals.**

§ 3.2-6009. Euthanasia or slaughter of livestock or poultry by owner.

A. The State Veterinarian may require the owner or custodian to euthanize or slaughter condemned livestock or poultry within a specified period of time, and under state or federal supervision, or under regulations of the Board. The carcasses shall be disposed of pursuant to regulations adopted by the Board.

B. If the owner or custodian fails to euthanize or slaughter any condemned livestock or poultry pursuant to subsection A, then the State Veterinarian or his representative may seize the condemned livestock or poultry and euthanize or slaughter the animals as required.

**Drafting Note: New section. "Euthanasia" is added to this section to clarify that it is an option for destroying condemned animals. The term "slaughter" may mean to send the animal to the slaughterhouse to slaughter and process the animal, which may be the preferred method to control some diseases. It can also mean a controlled slaughter to prevent the spread of a disease. Proposed subsection A is developed from existing § 3.1-751, which is cattle specific. Proposed subsection B is modeled after existing § 3.1-752, which refers to "any condemned animal."**

~~§ 3.1-734~~ 3.2-6010. Quarantine against diseased animals or poultry in other states Proclamation prohibiting animal importation; required tests.

A. When the ~~Board-Commissioner~~ or the State Veterinarian shall have good reason to believe a reasonable belief of the existence of contagious and or infectious diseases of animals or poultry in localities in other states, territories, or countries, or that conditions exist therein which that, in the judgment of the ~~Board-Commissioner~~ or of the State Veterinarian, render the

importation of ~~domestic animals or poultry~~ from such localities a menace to the health of the livestock or poultry of ~~this~~ *the* Commonwealth, the ~~Board~~ *Commissioner* or the State Veterinarian shall, by proclamation, prohibit the importation of any or all kinds of ~~livestock, or poultry~~ *animals* from any locality of other states, territories or countries, into ~~this~~ *the* Commonwealth, ~~unless accompanied by a certificate of health given by a properly authorized veterinarian designated by him, and the cost thereof may be charged to the owner or person in possession. If, in the opinion of the examining veterinarian, there is danger from contagion or infection, any or all such animals or poultry may be placed in close quarantine at the expense of the owner until all danger of infection or contagion is passed; thereupon, the animals or poultry shall be released by the order of the State Veterinarian or other veterinarian in charge~~ *except pursuant to subsection B.*

*B. The Commissioner or the State Veterinarian may require documentation of negative laboratory test results using a test specified by the State Veterinarian within a specific time period prior to an animal, embryo, hatching egg, or semen entering the Commonwealth. Expenses associated with meeting entry requirements shall be borne by the owner of the animal.*

**Drafting Note: The Commissioner replaces the Board for the authority to issue a proclamation for practical reasons. The Board meets three to four hours quarterly, which may not be sufficient in an emergency situation. The proposed subsection B incorporates existing Article 1.1, Testing for Avian Influenza, language concerning poultry testing prior to entering Virginia. Deleted text relating to release from quarantine because it is addressed in proposed § 3.2-6008, Disposition of quarantined animals with potential to impact livestock and poultry. The final sentence is restated from earlier in the section.**

~~§ 3.1-736 3.2-6011. Bringing into Commonwealth animals or poultry infected with disease into the Commonwealth, or in violation of rule-order or regulation; disinfecting cars transport vehicles, etc.~~

~~Any~~ *It shall be unlawful for any person, firm or corporation who, for himself shall to: (i) transport from outside the Commonwealth into this the Commonwealth any animal or poultry, knowing the same to be infected with a contagious or infectious disease, or any animal or poultry known by the importer to have been exposed to a contagious or infectious disease, or known to bear upon its body fever-ticks or other germs-disease vectors or known to be a carrier of contagious or infectious disease, or who imports; (ii) import any animal or poultry in violation of any legally adopted quarantine or other rule-order or regulation of the Board, or of the State Veterinarian adopted under this article, or who violates a rule or; or (iii) violate any order or regulation of the Board or the State Veterinarian adopted under this article requiring railroad, navigation, trucking and airline companies or corporations, firms or persons to cleanse-clean and disinfect cars or vehicles used by them for transporting livestock-animals into or through the Commonwealth, as may be reasonably necessary to prevent the spread of contagious and infectious diseases of animals within the Commonwealth, shall be guilty of a Class 1 misdemeanor.*

**Drafting Note: This section is amended to now apply to all transporters of animals into Virginia, whether they are transporting the animal for themselves or for another. Originally, this section applied only to someone who transported an animal into Virginia for himself. The penalty provision was deleted from this section because of the chapter-wide penalty provision, proposed § 3.2-6018, Penalty, which provides a Class 1 misdemeanor penalty for violations of this chapter.**

~~§ 3.1-737 3.2-6012. Duty of operators of stockyards, and poultry slaughter-facility, etc facilities.~~

~~Any person, firm or corporation who operates a stockyard, livestock auction sale, slaughterhouse pens, or poultry slaughteryards slaughter facility, or any other places or premises where livestock or poultry are repeatedly assembled, and which may harbor diseases of livestock~~

~~or poultry;~~ (i) shall maintain such premises, yards, pens, saleyards or poultry slaughteryards or other premises in a sanitary condition as directed by the State Veterinarian; (ii) shall obey all orders or regulations of the Board or the State Veterinarian adopted pursuant to this chapter as to handling livestock or poultry that may be affected with contagious or infectious disease, or that have been exposed to contagious or infectious disease; and (iii) shall clean and disinfect such pens, yards, premises, or other establishments or vehicles used in connection therewith, or any part thereof, when ordered to do so by the State Veterinarian or his representative. Any person, firm or corporation who shall fail or refuse to obey or comply with any such order or regulation shall be deemed guilty of a Class 1 misdemeanor.

**Drafting Note: The penalty provision is proposed to be deleted because of the proposed chapter-wide penalty section, proposed § 3.2-6018, Penalty.**

~~§ 3.1-738~~ 3.2-6013. Duty of officers to execute orders of the Commissioner, Board, or State Veterinarian.

The Commissioner, the Board, or the State Veterinarian, shall have power to call upon any law-enforcement officer, as defined in § 9.1-101, to execute their orders, ~~and such~~. Such officers shall obey the orders of the Commissioner, the Board, or the State Veterinarian.

**Drafting Note: The Commissioner is added to reflect current practice.**

~~§ 3.1-738.1~~ 3.2-6014. Circuit court judges may enforce orders of Commissioner, Board, or State Veterinarian.

Upon proper application ~~petition~~ by the Commissioner, the Board, or the State Veterinarian, ~~the judges of all a circuit courts in this Commonwealth~~ court judge may issue such ~~decrees orders~~ as are necessary to enforce the orders of the Commissioner, the Board, or State Veterinarian.

**Drafting Note: The Commissioner and the Board are added to be consistent with other sections in this article.**

~~§ 3.1-739.1~~ 3.2-6015. ~~Suppression of pleuropneumonia and other diseases among domestic animals~~ Cooperation with U.S. Department of Agriculture to prevent contagious or infectious diseases.

The Governor is authorized to accept ~~in~~, on behalf of the ~~states~~ state, the rules and regulations prepared by the ~~Commissioner~~ U.S. Department of Agriculture under and in pursuance of section three of an act of Congress approved May 29, 1884, entitled ~~an~~ "An act for the establishment of a bureau of animal industry, to prevent the exportation of diseased cattle and to provide means for the suppression and extirpation of pleuropneumonia and other contagious diseases among domestic animals," and to cooperate with the authorities of the United States in the enforcement of the provisions of the act.

The inspectors of the ~~bureau of animal industry of the United States~~ U.S. Department of Agriculture shall have the right of inspection, quarantine, and condemnation of animals affected with any contagious, or infectious, or communicable diseases, or suspected to be so affected, or that have been exposed to any such disease, and for these purposes are hereby authorized and empowered to enter upon any ground or premises. Such inspectors shall have the power to call on sheriffs and peace officers to assist them in the discharge of their duties in carrying out the provisions of the act of Congress aforesaid, and it is made the duty of sheriffs and peace officers to assist such inspectors when so requested, and such inspectors shall have the same powers and protection as peace officers while engaged in the discharge of their duties.

All expenses of quarantine, condemnation of animals exposed to disease, and the expenses of any and all measures that may be used to suppress and extirpate pleuropneumonia shall be paid by the United States, and in no case shall ~~this~~ the Commonwealth be liable for any damages or expenses of any kind under the provisions of this section.

**Drafting Note: The functions of the bureau of animal industry were transferred to the Secretary of Agriculture and the USDA. Although the United States was declared free of**

**pleuropneumonia in 1893, references to that disease are not deleted as obsolete because outbreaks of pleuropneumonia in cattle have occurred more recently in Africa, Europe, and Asia.**

~~§ 3.1-755 3.2-6016. Altering, substituting, etc., tag, brand, etc disease control identification of livestock or poultry.~~

~~Any~~ ~~It shall be unlawful for any person who shall to, otherwise than unless~~ in accordance with such rules and regulations as may be adopted by the Board pursuant to this article, alter, deface, change from one animal to another, mutilate, substitute, remove, misrepresent, or otherwise interfere with any tag, brand, tattoo, mark, or other identification adopted or used by any county in this Commonwealth, by the Commissioner, the Board, by the United States Bureau of Animal Industry U.S. Department of Agriculture, or by any other state, for the identification of any animal in this the Commonwealth or shipped into this the Commonwealth, affected with tuberculosis or Bang's disease, suspected of being so affected, or undergoing tests to determine whether such animal or animals are so affected, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than \$100 nor more than \$500 for the purpose of controlling or eradicating disease.

**Drafting Note: Updated the section so it applies to all contagious and infectious diseases not just tuberculosis and Bang's disease. The penalty language was deleted because of the article-wide penalty provision, which is a Class 1 misdemeanor.**

~~§ 3.1-756 3.2-6017. Unlawful to buy, etc., or administer possess anthrax germs or hog cholera non-inactivated classical swine fever virus without permission; report of product administered; testing of living biologicals for use in livestock or poultry; rules as to unsafe, etc., for biologicals.~~

~~It shall be unlawful for any person, firm or corporation to~~ *A. No person shall* buy, sell or have in possession, or to administer to livestock, or to permit any other to administer to livestock, any product or biological preparation, commonly called vaccine, containing attenuated or unattenuated spores or germs of anthrax commonly called vaccine, killed, live, or as a spore, or non-inactivated hog cholera-classical swine fever virus, prepared as a preventative or remedy for anthrax or hog cholera, without permission in writing from the State Veterinarian for each such purchase, sale, or administration. Any person or persons permitted to administer any such product or biological preparation shall furnish-remit to the State Veterinarian, a report within ten 10 days thereafter of such administration, a report of such administration, showing the kind, and the amount, and the make or brand of the vaccine or virus used, when and from whom purchased, where, when, and by whom administered, including all persons assisting in the administration, together with a description of all animals to which administered, including the breed, age, and sex of each animal.

*B. The State Veterinarian is authorized and empowered to examine and test any living biological, commonly called vaccine, intended for use in livestock or poultry to determine if it is safe, pure, potent, or effective. The Board of Agriculture and Consumer Services is authorized and empowered to make and promulgate rules and adopt regulations providing for the limitation, prohibition, or use, of any biological found to be unsafe, impure, impotent or ineffective intended for use in livestock or poultry.*

**Drafting Note: In proposed subsection B, "biological" is clarified to mean a vaccine. The new language in the last sentence is intended to make it clear that the authority to adopt regulations concerning any biological is limited to biologicals intended for use in livestock or poultry.**

~~§ 3.1-733 3.2-6018. Penalty.~~

~~Any person who shall fail to do any of the things required of him in §§ 3.1-726 to 3.1-732, or fail or refuse: (i) fails to comply with any of the provisions of Articles 1 through 3 of this chapter; (ii) fails to allow the State Veterinarian or his agent-representative to do or to perform~~

any duty required of him by ~~§§ 3.1-726 to 3.1-732~~, pursuant to Articles 1 through 3 of this chapter; or who shall violate ~~(iii) violates~~ any of the rules and regulations authorized by these sections, or who shall violate quarantines established by virtue of these sections, shall be deemed ~~adopted or quarantines established under Articles 1 through 3 of this chapter~~ is guilty of a Class 1 misdemeanor.

**Drafting Note: Proposed changes make this section a catchall for violating any of the provisions of Articles 1 through 3. Currently, wherever a penalty is specifically provided throughout Articles 1 through 3, it is a misdemeanor. Those specific provisions are proposed to be deleted. The penalty provision for Article 4, Shooting Enclosures, is a Class 2 misdemeanor.**

~~§ 3.1-740~~ 3.2-6019. Liability for damages for violating this and next article, etc.

Any person, ~~firm or corporation~~ who knowingly ~~disregarding~~ *disregards*, ~~violating~~ *violates*, or ~~evading~~ *evades* any provision of any section of this article, with the exception of § 3.1-725, or of Article 2 (§ 3.1-742.1 3.2-6024 et seq.) of this chapter, or any rules, regulation or order of the Commissioner, Board, State Veterinarian, or any other person lawfully deputized to enforce the law, or any such rule, regulation or order *his representative*, shall, in addition to the punishment otherwise provided for, or any other remedy, be liable to the owner thereof, for any damages to his livestock or poultry, occasioned by such disregarding, violating, or evading of any of such provisions, ~~rules, regulations, or orders~~.

**Drafting Note: The Commissioner is added because he has limited authority to adopt regulations. The word "rules" is deleted because "rules" and "regulations" mean the same thing. The reference to existing § 3.1-725, Laboratory for diagnosis of diseases, is deleted because that section directs the Commissioner to develop a laboratory for diagnosis of diseases and is proposed to be moved to Chapter 59, In General.**

~~§ 3.1-750~~ 3.2-6020. Appraisal of condemned cattle.

All condemned cattle shall be appraised at their fair cash value by three persons, one of whom shall be appointed by the Board or State Veterinarian or ~~other agent duly authorized by the Board or its veterinarian~~ *his representative*, one by the owner, and the third by the two thus selected. Their appraisal shall be made in writing and shall be returned to the Board.

**Drafting Note: Technical changes.**

~~§ 3.1-754~~ 3.2-6021. Additional compensation to owners of *euthanized or* slaughtered animals; liability of purchaser of condemned animal; ~~slaughter of animals exposed to brucellosis~~.

In addition to the amount received for the carcasses of animals *euthanized or* slaughtered, further compensation may be paid to the owners by the Department out of funds appropriated for that purpose at a rate not exceeding that set forth by the ~~United States~~ U.S. Department of Agriculture, provided that the total amount received by the owner shall not exceed the appraised value of such animal or animals less the amount received for slaughter.

Whenever the owner selling an animal that has been condemned is unable to obtain compensation out of state and federal appropriations because of the failure of the purchaser to furnish the seller with such proof of slaughter as may be required, the purchaser shall, in addition to the agreed purchase price, be liable to the seller for the amounts he would otherwise receive out of state and federal appropriations.

The Commissioner may, in his discretion, at the request of the owner, order the slaughter of nonreactor animals if he finds that they have been exposed to brucellosis as members of an infected herd and that the entire herd should be depopulated to control the spread of the disease. In such case, the owner shall be entitled to receive, within the amount appropriated for such purposes, indemnity in an amount equal to the difference between the full appraised value of the animal and the total of the amounts received by the owner from the federal government as indemnity and from the sale of the animal as salvage.

~~The Commissioner may, in his discretion, order the slaughter of any animal, or of all or part of any herd, which he finds has been exposed to brucellosis by association with a positive reactor or by any other manner of exposure which he finds may make the animal or herd liable to contract or communicate the disease. In such case, the owner shall be entitled to receive, within the amount appropriated for such purpose, indemnity for each reactor animal and for each nonreactor animal as set forth in this section unless the Commissioner finds that such owner has failed to comply with any laws, rules or regulations relating to the control or eradication of brucellosis.~~

**Drafting Note: The last two paragraphs are deleted because the State Veterinarian is given the authority to dispose of quarantined animals in proposed § 3.2-6008, Disposition of quarantined animals with potential to impact livestock or poultry, and to require the euthanasia or slaughter of condemned livestock or poultry in proposed § 3.2-6009, Euthanasia or slaughter of livestock and poultry by owner.**

~~§ 3.1-763.3 3.2-6022. Indemnity to owner for the euthanasia or slaughter of swine.~~

At such time as the Commonwealth is approved for and becomes eligible to participate in and receive funds from the ~~United States~~U.S. Department of Agriculture pursuant to United States Public Law 87-209; 75 Stat. 481 (21 U.S.C.A. 111-113 et seq.), the Commissioner may obtain an appraisal of the fair market value of any swine destroyed pursuant to this article and indemnify the owner thereof for the value of such swine destroyed in an amount equal to the indemnity paid by the ~~United States~~U.S. Department of Agriculture, ~~but in no event shall such indemnity exceed fifty dollars per head for registered stock and forty dollars per head for grade stock,~~ and in no event shall the total indemnity paid by the Commissioner and the ~~United States~~U.S. Department of Agriculture exceed the appraised value of such swine. In cases where salvage is received by the owner of the swine, the amount of salvage shall be deducted from the appraised value of the swine in computing the amount of State indemnity.

**Drafting Note: The cash limits on reimbursement for swine are deleted as obsolete. This section was last amended in 1966.**

~~§ 3.1-741. Cost of administering this and next article.~~

~~The cost and expenses of administering this article, with the exception of § 3.1-725, and the next succeeding article (§ 3.1-742.1 et seq.) shall be paid out of money appropriated for the protection of livestock from disease.~~

**Drafting Note: Deleted section. The Appropriation Act currently provides \$4,976,273 for Animal and Poultry Disease and Pest Control.**

~~§ 3.1-741.1. Extension of authority under this article to include native and exotic wild animals and birds.~~

~~In each instance where the terms "livestock and/or poultry," "domestic animals and/or poultry," and "animals and/or poultry" are used in this article, these terms shall be construed to include native and exotic wild animals and birds, including those wild animals and birds which are indigenous to this Commonwealth, which are being held in captivity and maintained for public viewing or for other purposes.~~

**Drafting Note: Deleted section and moved the definitions of the terms "animal," "livestock," and "poultry" to § 3.2-5900, Definitions.**

~~§ 3.1-741.63.2-6023. Prevention and control measures; penalty.~~

A. The Commissioner may adopt regulations to prevent and control avian influenza in the live-bird marketing system and is authorized to participate in the federal Live Bird Marketing Program of the ~~United States~~U.S. Department of Agriculture, as it may be amended from time to time. In adopting such regulations, the Commissioner shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) and from public participation guidelines adopted pursuant thereto. The State Veterinarian and his representatives are authorized and empowered to enter the premises of any entity within the live-bird marketing system to carry out the provisions of any

regulations adopted pursuant to this section. Any regulations adopted pursuant to this section shall, unless a later effective date is specified, take effect upon filing with the Registrar of Regulations, who shall publish the regulations as final regulations in the Virginia Register of Regulations, except that no requirement authorized by subsection B that a person be registered or licensed may take effect any sooner than 90 days after the promulgation date of the regulations containing such requirement, the promulgation date being the date of publication in the Virginia Register of Regulations of the final regulations containing such requirement. The regulations shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulations.

B. The Commissioner shall establish by regulation a registration or licensing system to regulate the live-bird marketing system in Virginia. As a part of such registration or licensing system, the Commissioner shall register or license all persons who participate in any component of the live-bird marketing system. Such registration or licensing system may include, ~~but not be limited to,~~ the granting, denial, suspension, or revocation of any registration or license, including governing: (i) the grounds for granting such registration or license; and (ii) the grounds for the denial, suspension, or revocation of such registration or license.

C. Any person violating any regulation adopted pursuant to this section may be assessed a civil penalty by the Commissioner in an amount not to exceed \$2,500 per day per violation. In determining the amount of any civil penalty, the Commissioner shall give due consideration to: (i) the history of the person's previous violations; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with the regulation after notification of the violation. Civil penalties assessed under this section shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the purposes of this section or any regulations adopted ~~thereunder~~*hereunder*. The Commissioner shall prescribe procedures for payment of uncontested penalties. The procedure shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation. Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

D. For the purposes of this section: (i) "live-bird marketing system" includes live-bird markets and the production and distribution units that supply live-bird markets with birds; (ii) "live-bird markets" includes any facility that receives live poultry to be resold or slaughtered and sold onsite, not including any producer or grower that prior to the sale of his own birds slaughters or processes them onsite or at an approved slaughter facility or any producer or grower that sells live birds grown exclusively on his premises and is not a "production unit" or "distribution unit" as defined herein; (iii) "production unit" includes a production facility or farm that is the origin of or participates in the production of poultry offered for sale in a live-bird market; and (iv) "distribution unit" includes a person or business such as a wholesaler, dealer, hauler, and auction market engaged in the transportation or sale of poultry within the live-bird market system.

**Drafting Note: Technical changes.**

~~Article 1.1.~~

~~Testing for Avia Influenza.~~

~~§ 3.1 741.3. Definitions.~~

~~As used in this article, unless the context requires a different meaning:~~



~~"Accredited veterinarian" means a veterinarian approved by the United States Department of Agriculture in accordance with 9 CFR Section 160.1 (2002).~~

~~"Broiler" means any chicken that is grown exclusively for food purposes.~~

~~"Hatching egg" means any egg of any chicken, turkey, waterfowl, or game bird, or the egg of any other avian species susceptible to avian influenza that is used or intended to be used for hatching purposes.~~

~~"Subject avian species" means any chicken, turkey, waterfowl, game bird, or other avian species that is susceptible to avian influenza.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-5900, Definitions.**

~~§ 3.1-741.4. Importation of subject avian species; test.~~

~~A. Except as provided in subsection D, no person may bring or ship to Virginia any type of subject avian species or hatching egg from any state that is subject to a current avian influenza testing proclamation, issued pursuant to § 3.1-741.5, unless:~~

~~1. The subject avian species or hatching egg is first tested and found negative for avian influenza, or comes from a flock that has first been tested and found negative for avian influenza, within 10 days before the subject avian species or hatching egg enters Virginia; and~~

~~2. The results of the test for avian influenza are recorded on a health certificate signed by an accredited veterinarian in the state of origin or on a report issued by a laboratory approved by any state or federal animal health authority.~~

~~B. In testing for avian influenza pursuant to this section, the accredited veterinarian shall use only a test method approved by the State Veterinarian, conducted in a laboratory approved by any state or federal animal health authority.~~

~~C. Any person who violates this section shall be guilty of a Class 1 misdemeanor.~~

~~D. Nothing in this section shall apply to:~~

~~1. Any subject avian species or hatching egg passing directly through Virginia to another state without being removed from its primary container;~~

~~2. Any hatching egg, day old chicken, day old game bird or day old turkey, so long as the flock from which the hatching egg, day old chicken, day old game bird or day old turkey originates participates in the National Poultry Improvement Plan's Avian Influenza Clean Program, unless otherwise expressly provided by the proclamation of avian influenza testing issued pursuant to § 3.1-741.5; or~~

~~3. Any broiler going directly to slaughter unless otherwise expressly provided by the proclamation of avian influenza testing issued pursuant to § 3.1-741.5.~~

**Drafting Note: Deleted section.**

~~§ 3.1-741.5. State Veterinarian's proclamation of avian influenza testing.~~

~~When (i) avian influenza of the H5 or H7 subtype has been found in another state, (ii) the State Veterinarian determines that conditions in another state render the importation of any specific type of subject avian species or hatching egg a menace to the health of any animal in the Commonwealth, or (iii) the protection of any animal in the Commonwealth from avian influenza so requires, the State Veterinarian may issue with respect to that state, or any portion thereof, a proclamation of avian influenza testing. Such proclamation shall set forth the specific types of subject avian species or hatching eggs to be tested. Nothing in this article shall be deemed to limit the State Veterinarian's authority pursuant to § 3.1-734.~~

**Drafting Note: Deleted section.**

Article 2.

Disposal of Dead Poultry.

~~§ 3.1-742.1~~ 3.2-6024. Definitions.

As used in this article unless the context requires a different meaning:

"Composting" means the natural process, ~~carried out pursuant to § 3.1-745.2,~~ in which beneficial microbes reduce dead poultry into a biologically safe by-product.

"Dead poultry" means poultry, exclusive of those intentionally slaughtered, ~~which that~~ die as a result of disease, injury, or of natural causes, upon any premises in the Commonwealth.

"Disposal" means *to put dead poultry into a landfill* or the complete destruction of dead poultry in an incinerator or a disposal pit, or by rendering or composting.

"Disposal pit" means an opening dug in the ground to a minimum depth of six feet, containing a minimum capacity of 150 cubic feet, covered with a minimum of ~~twelve~~ 12 inches of dirt, and provided with one or more openings for the introduction of poultry therein. Openings shall be of a minimum size of eight inches square and equipped with tight lids.

"Incinerator" means a ~~firebox constructed of masonry or metal in which dead poultry are burned by the use of fuel~~ device designed for treatment of waste by combustion.

"Landfill" means an area permitted by the Department of Environmental Quality allowing the disposal of dead poultry.

"Person" means any person, ~~firm, partnership, corporation, or institution which~~ who engages in the raising or keeping of poultry for profit in ~~this~~ the Commonwealth.

"Poultry" means all chickens, ducks, turkeys, or other domestic fowls being raised or kept on any premises in the Commonwealth for profit.

"Premises" means the entire tract of land including, ~~but not limited to,~~ the buildings thereon, owned, leased, or used by any person for the raising or keeping of poultry for profit.

"Raising or keeping of poultry for profit" means the raising or keeping of 500 or more poultry at one time for the purpose of sale of such poultry or the eggs produced therefrom.

"Rendering" means treating dead poultry according to the process described in 9 CFR § 381.95 (a) 82.1.

**Drafting Note: The definition of "landfill," a term that may not have been commonly used when the article was originally written, is added and used in the article. The definitions of "disposal" and "incinerator" are modernized.**

~~§ 3.1-743~~ 3.2-6025. Proper disposal of dead poultry required of ~~persons~~ any person raising or keeping poultry for profit.

It shall be unlawful for any person to engage in the raising or keeping of poultry for profit on any premises ~~within the Commonwealth of Virginia,~~ or to enter into a contract to raise or keep poultry for profit for another person, without providing for the disposal of dead poultry using either: (i) a disposal pit; (ii) *a landfill*; (iii) incineration, ~~(iii)~~; (iv) composting; or ~~(iv)~~ rendering.

**Drafting Note: Clarified that a landfill is also an acceptable methods of disposal.**

~~§ 3.1-745~~ 3.2-6026. Disposal of dead poultry.

It shall be unlawful for any person engaged in the raising or keeping of poultry for profit to dispose of dead poultry on his premises in any manner except in a disposal pit, ~~or~~ *landfill*, incinerator, or by *composting*; or rendering ~~or composting~~.

**Drafting Note: Clarified that a landfill is also an acceptable methods of disposal.**

~~§ 3.1-745.1~~ 3.2-6027. Transportation of dead poultry.

The State Veterinarian may specify requirements governing the transportation of dead poultry.

**Drafting Note: No changes.**

~~§ 3.1-745.2.~~ Composting requirements.

A person shall not compost dead poultry unless he does so in a composter which meets the following requirements:

1. The composter shall be of a size sufficient to provide one cubic foot of compost space, the space to be equally divided between primary and secondary treatment areas, for each 0.4 pound of dead poultry anticipated to be composted each day.

~~2. The composter shall be located under a roofed structure and be constructed of reinforced concrete or wood that is treated for protection against damage from moisture.~~

~~3. The primary treatment area, when used, shall be filled with the following components in the named ratios by weight and in the order stated, which may be placed therein daily: (i) one and two tenths parts poultry manure; (ii) one part dead poultry; (iii) one tenth part straw or other carbon source; and (iv) one part water except as otherwise specified by the State Veterinarian.~~

~~4. When the temperature in the core of the stack of components peaks (at 140 to 160 degrees Fahrenheit after seven to ten days), the person composting shall remove the mixture and move it to the secondary treatment area. After the temperature in the stack contained in the secondary treatment area peaks (at 140 to 160 degrees Fahrenheit after seven to ten days), the composting process is complete.~~

**Drafting Note: Deleted section. In accordance with existing § 3.1-747, composting requirements are best addressed by regulation, not in the Code, so that they may be updated as needed. Currently, the Department of Environmental Quality regulates composting facilities.**

~~§ 3.1-746 3.2-6028. Exemptions from provisions of article.~~

~~The State Veterinarian may authorize disposal of dead poultry by a method other than as provided in § 3.1-743 3.2-6025 or § 3.1-745 3.2-6026 when it is his determination if he determines that the alternative method meets standards for disposal of dead poultry.~~

**Drafting Note: Technical changes.**

~~§ 3.1-747 3.2-6029. Regulations.~~

~~The Board of Agriculture and Consumer Services is authorized to adopt regulations concerning the specifications of disposal pits, incinerators, composting and rendering and all other matters within the purview and scope of this article to carry out the provisions of this article.~~

**Drafting Note: Technical changes.**

~~§ 3.1-748. Violation a Class 1 misdemeanor.~~

~~Any person violating any provisions of this article or failing to comply with the provisions thereof or any rules and regulations promulgated thereunder shall be guilty of a Class 1 misdemeanor and punished as provided by law.~~

**Drafting Note: Deleted section. This provision is unnecessary because of the proposed chapter-wide penalty provision, § 3.2-6018, Penalty.**

~~§ 3.1-748.1 3.2-6030. Applicability.~~

~~Nothing in this article shall apply to the disposal of entire flocks of dead poultry governed by regulations adopted pursuant to § 3.1-726 3.2-6002.~~

**Drafting Note: Technical changes.**

### ~~Article 3.~~

#### ~~Tuberculosis, Para Tuberculosis and Bang's Disease.~~

~~§ 3.1-749. Condemnation or quarantine of cattle.~~

~~A report of all tests for tuberculosis, para tuberculosis and Bang's disease shall, within five days from the date of such tests, be made to the Board. All cattle found, upon tests, to be affected with tuberculosis or para tuberculosis and all reacting positive to the agglutination test for Bang's disease in the laboratories of the Virginia Department of Agriculture and Consumer Services shall be immediately condemned and quarantined by the State Veterinarian or other veterinarians appointed or deputized.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-6008, Disposition of quarantined animals with potential to impact livestock and poultry**

~~§ 3.1-751. Slaughter of condemned cattle by owner.~~

~~Within ninety days after the tests are made, or within such other period of time as the State Veterinarian may require, the owner or custodian of all diseased cattle shall sell or slaughter such cattle, or cause such cattle to be slaughtered, under State or federal supervision, or under rules and regulations of the Board, and the carcasses shall be disposed of under rules and regulations prescribed by the Board or State Veterinarian, and the proceeds retained by or paid to the owner.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-6008, Disposition of quarantined animals with potential to impact livestock and poultry**

~~§ 3.1 752. Slaughter by State Veterinarian when owner fails to act.~~

~~Should the owner or custodian fail to slaughter any condemned animal within the period provided in the preceding section (§ 3.1 751), the State Veterinarian, or anyone authorized by him, may forthwith seize such condemned animal and slaughter the same.~~

**Drafting Note: Deleted section.**

~~§ 3.1 753. Duty of owner or custodian to submit cattle to tests for tuberculosis, paratuberculosis or Bang's disease; place and time of testing; confinement of cattle to be tested; penalty.~~

~~In every county where the State Veterinarian knows or suspects tuberculosis, paratuberculosis or Bang's disease to exist, the owners or custodians of cattle therein shall, upon demand of the State Veterinarian, be compelled to submit cattle to tests for tuberculosis, paratuberculosis or Bang's disease, on the premises where found, at such time as the State Veterinarian shall designate after five days' notice of the day and time to the custodian and to the owner, or one of the several owners, provided the owner, or one of the several owners, is in the county at the time of service on the custodian and the officer serving the notice on the custodian has actual knowledge of the ownership of the cattle.~~

~~Every person to whom the notice shall have been given, shall keep the cattle separate from all other cattle in the enclosure in which they may then be when notice is received; shall assemble and have the cattle which are to be tested in reasonably close confinement on the premises on the day and at the hour appointed in the notice, and shall assist the persons performing the tests. Any person removing such cattle, or allowing their removal or escape from such enclosure, or allowing them to come in contact with other animals, or, without good cause, failing or refusing to confine the cattle subject to the proposed test, or to assist in the tests, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than \$100 nor more than \$500.~~

**Drafting Note: Deleted section.**

~~§ 3.1 757. Penalty for violation of § 3.1 756.~~

~~Any person, firm or corporation who shall violate the provisions of § 3.1 756 shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than \$100 nor more than \$500.~~

**Drafting Note: Deleted section.**

### Article 4 3.

#### Prohibitions on Feeding Garbage to Swine.

~~§ 3.1 758 3.2-6031. Definitions.~~

*As used in this article, unless the context requires a different meaning:*

"Garbage" shall ~~mean means~~ animal, poultry, and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods containing animal or poultry carcasses or parts thereof. The Commissioner of Agriculture and Consumer Services may in his discretion exclude from this definition such wastes that have been heat treated to the extent that the resultant material is of a uniform consistency, contains by analysis not more than ~~ten~~ 10 percent

moisture, and ~~which~~<sup>that</sup> he has determined to be nonputrescible. Such treated nonputrescible wastes shall be "commercial feed" as the term is defined in ~~§ 3.1 828.2~~ 3.2-4800, and shall be subject to the provisions of Chapter ~~28.1 48~~ (§ ~~3.1 828.1~~ 3.2-4800 et seq.) of this title.

~~"Raw garbage" shall mean all garbage which may contain animal or poultry carcasses or parts thereof regardless of previous processing, which before being fed to swine, has not been heated or otherwise treated so as to destroy the contagion of vesicular disease.~~

~~"Cooked garbage" shall mean all garbage which may contain animal or poultry carcasses or parts thereof regardless of previous processing which before being fed to swine has been thoroughly heated to at least 212 degrees Fahrenheit for at least 30 minutes.~~

~~"Person" shall mean any person, firm, partnership, corporation, institution, or agency of the State of Virginia, or of any county, city, or town. The term shall not apply to persons feeding domestic household garbage originating on the premises where fed, provided no swine fed such garbage in any amount or any part or parts of such swine shall leave such premises for any purpose.~~

**Drafting Note: "Poultry" is deleted from within the definition of "garbage" because poultry are animals. The definitions of "raw" and "cooked" garbage are deleted as unnecessary, because now all garbage is prohibited from being fed to swine. There is no longer a differentiation between the two.**

~~§ 3.1 759 3.2-6032. Unlawful to feed raw garbage to swine on own premises; feeding garbage to swine after July 1, 1971.~~

~~It shall be unlawful for any No person shall to feed or knowingly allow any other person to feed any raw garbage to swine on his premises or any premises over which he has any control. Except as hereinafter provided in § 3.1 760, it shall be unlawful for any person to feed garbage to swine in this Commonwealth on and after July 1, 1971.~~

**Drafting Note: Technical changes.**

~~§ 3.1 760. Permit required.~~

~~It shall be unlawful for any person to feed garbage to swine without a permit for such feeding from the Commissioner of Agriculture and Consumer Services of Virginia. A separate permit is required for each location upon which such garbage feeding operations are carried on or conducted. For the twelve months beginning July 1, 1970, the Commissioner of Agriculture and Consumer Services shall issue only renewal permits for those persons already holding permits and for such premises as are already approved for garbage feeding. Such renewal shall not be for a period beyond the twelve months beginning July 1, 1970, or as hereinafter provided. When the Commissioner of Agriculture and Consumer Services finds that such limitation represents a bona fide hardship or is not in the public interest, he may grant such extension of time as he feels will serve the public interest; but in no case shall such extension be for a period beyond December 31, 1971.~~

**Drafting Note: This section is proposed to be deleted because it has expired.**

~~§ 3.1 761. Application for renewal of permit; fee.~~

~~Application for such renewal of permit shall be made to the Commissioner of Agriculture and Consumer Services in writing on forms to be furnished by the Commissioner. Such application shall set forth the name of the applicant, whether a person, firm, partnership, association, corporation, or other entity; the address of the applicant, the location of the garbage feeding operation for which the permit is sought; a brief description and location of the facilities for the treatment of garbage, and such other information as the Commissioner may require.~~

~~The application shall be accompanied by a fee of \$25 in the case of any person feeding not more than twenty five swine at any given time, \$50 in the case of any person feeding not less than twenty six nor more than fifty swine at any given time, and \$100 in the case of any person feeding fifty one or more swine at any given time. The fees collected are hereby appropriated to~~

~~the Board of Agriculture and Consumer Services for the purpose of enforcing this article and the regulations authorized herein.~~

**Drafting Note: This section is proposed to be deleted because it has expired.**

~~§ 3.1-762. Rules and regulations; inspection of premises; rules and regulations void after January 1, 1972.~~

~~The Board of Agriculture and Consumer Services shall have authority and at its discretion may adopt and enforce regulations regarding the feeding, hauling, handling, transportation on the highways of the Commonwealth of garbage and garbage fed swine. The said Board also may, at its discretion, provide for the regular inspection of premises where garbage is fed to swine and may adopt and enforce such regulations as it deems necessary regarding the sanitation of such premises and methods and practices involved in the processing and feeding of garbage to swine. All such rules and regulations as are herein provided for shall become null and void on January 1, 1972.~~

**Drafting Note: This section is proposed to be deleted because it has expired.**

~~§ 3.1-762.1 3.2-6033. Ordinances prohibiting feeding of certain putrescible wastes.~~

~~The governing body of any city, county, or town of this Commonwealth locality may by ordinance prohibit the feeding to swine within its jurisdiction of putrescible wastes resulting from the handling, preparation, cooking, and consumption of foods that do not contain animal or poultry carcasses or parts thereof.~~

**Drafting Note: Technical changes.**

~~§ 3.1-763 3.2-6034. Violations.~~

~~Any person who shall violate the provisions violates any provision of this article shall be is guilty of a Class 1 misdemeanor and shall be punished by a fine of not less than \$100 nor more than \$500. Each day upon which such violation occurs shall constitute is a separate offense. In addition to the penalties herein provided, such person may be enjoined from continuing such violation.~~

~~Furthermore, if applicable, the Commissioner shall forthwith revoke, and not thereafter reissue, the permit of any person upon receiving a record of his conviction of any offense or offenses otherwise punishable under this article.~~

**Drafting Note: Section 18.2-12 provides that where no punishment or maximum punishment is prescribed for a misdemeanor, it shall be punishable by a Class 1 misdemeanor. Section 18.2-11 provides that the authorized punishment for conviction of a Class 1 misdemeanor is confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. Deleted obsolete language, the permits were not authorized after 1971, therefore there are no permits to revoke.**

#### Article 4.1.

#### ~~Destruction of Swine Affected With Hog Cholera.~~

~~§ 3.1-763.1. Definitions.~~

~~The following words and phrases when used in this article shall, for the purposes of this article, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:~~

~~(a) "Hog cholera." The contagious, infectious, and communicable disease of swine commonly known as hog cholera.~~

~~(b) "Destroy." To condemn under State authority and slaughter or otherwise kill as a result of or pursuant to such condemnation.~~

~~(c) "Commissioner." The Commissioner of Agriculture and Consumer Services.~~

~~(d) "Board." The Board of Agriculture and Consumer Services.~~

**Drafting Note: Deleted section.**

~~§ 3.1-763.2. Destruction authorized.~~

~~The Commissioner may destroy or require the destruction of any swine after receipt of written notice from the State Veterinarian that in his opinion such swine is affected with or exposed to hog cholera, and the Commissioner finds such destruction necessary to prevent or reduce the danger of the spread of hog cholera.~~

**Drafting Note: Deleted section and moved to proposed § 3.2-6008, Disposition of quarantined animals with potential to impact livestock and poultry**

~~§ 3.1-763.4. Rules and regulations.~~

~~The Board of Agriculture and Consumer Services may make, promulgate, amend, repeal, and enforce necessary rules and regulations for implementing and executing the provisions of this article.~~

**Drafting Note: Deleted section.**

~~§ 3.1-763.5. Authority of employees of Department.~~

~~All authority vested in the Commissioner by virtue of the provisions of this article may with like force and effect be executed by such employees of the Department of Agriculture and Consumer Services as the Commissioner may, from time to time, designate for such purpose.~~

**Drafting Note: Deleted section.**

#### Article 4.1:1 4.

#### Shooting Enclosures.

~~§ 3.1-763.5:1 3.2-6035. Definitions.~~

~~As used in this article, unless the context requires a different meaning:~~

~~"Board" means the Board of Agriculture and Consumer Services.~~

~~"Department" means the Department of Agriculture and Consumer Services.~~

~~"Shooting enclosure" or "enclosure" means any fenced area (i)-open commercially to the public or (ii)-any private facility where animals are held for the purpose of being shot.~~

~~"Wildlife" means any native or exotic wild animal or bird.~~

**Drafting Note: The definitions of Board and Department are deleted as unnecessary because of the proposed title-wide definitions provided in proposed § 3.2-100, Definitions.**

~~§ 3.1-763.5:2 3.2-6036. Department authorized to may issue, deny, and revoke licenses; exceptions.~~

~~A. The Department shall issue a license for shooting enclosures only to those enclosures which-that were in operation on or before January 1, 1995. However, these-These enclosures may continue to operate until the effective date of regulations but shall hold only those animals described in § 3.1-763.5:63.2-6040 and subsequently-as specified in regulations. The Department shall issue a license to a shooting enclosure when-only if it meets the requirements of this article and regulations-promulgated thereunder-adopted hereunder. Upon the effective date of regulations, no-No person shall operate an enclosure unless he has obtained a license from the Department.~~

~~B. The Department may deny, suspend, or revoke a license if the applicant for a license or a licensee, violates, or is otherwise not in compliance with this article or the regulations adopted pursuant thereto.~~

~~C. Before a shooting enclosure is licensed and throughout the duration of the license, the Department shall inspect the shooting enclosure to ensure compliance with this article or the regulations adopted pursuant thereto.~~

~~D. The State Veterinarian is authorized to seize and dispose of any livestock, as described in § 3.1-763.5:63.2-6040, found in shooting enclosures that are not licensed under this article.~~

E. Any person convicted of operating an unlicensed shooting enclosure shall pay all reasonable costs incurred by the Department in the seizure and disposal of any confiscated livestock.

F. It is unlawful for any person to knowingly provide livestock, as described in § ~~3.1-763.5:6-3.2-6040~~, to an unlicensed shooting enclosure.

**Drafting Note: Technical changes.**

§ ~~3.1-763.5:3~~ 3.2-6037. Grounds for denial, suspension, or revocation of license.

The Department may deny, suspend, or revoke a license to operate a shooting enclosure, if the:

1. Applicant for a license does not own or lease the land that will be used for the shooting enclosure;
2. Applicant for a license does not meet local zoning and land-use requirements;
3. Operation of the shooting enclosure poses a threat to the health of humans, wildlife, or livestock;
4. Operation of the enclosure poses a threat of harm to: (i) wildlife species, whether native or naturalized; (ii) agricultural practices; or (iii) livestock;
5. Shooting enclosure is constructed or maintained in such a way that animals being held may escape; or
6. Applicant for a license or the licensee fails to meet any requirement of this article or regulations adopted pursuant thereto.

**Drafting Note: No changes.**

§ ~~3.1-763.5:4~~ 3.2-6038. Application and license fees; other costs.

A. Any person ~~desiring~~ *seeking* to obtain a license to operate a shooting enclosure shall pay to the Department a one-time *nonrefundable* application fee to be established by the Department in an amount sufficient to cover the cost of reviewing the application. The revenue generated by the ~~nonrefundable~~ fee shall be used to defray the costs of reviewing the application for a license. Upon approval of the application for a license, the applicant shall pay to the Department an annual license fee to be established by the Department in an amount sufficient to cover the costs of regulating the operation of such enclosures. Except in instances in which licenses are denied, suspended, or revoked, all licenses shall expire on June 30 of each year. License fees collected by the Department shall be used to carry out its responsibilities to regulate the operation of shooting enclosures.

B. The Department may recover from the licensee the actual costs incurred by the Department for: (i) investigating the conditions of, examining, or disposing of animals pursuant to this article; and (ii) apprehending animals that escape from a shooting enclosure.

**Drafting Note: Technical changes.**

§ ~~3.1-763.5:5~~ 3.2-6039. Board to ~~promulgate~~ *adopt* regulations.

A. The Board shall ~~promulgate~~ *adopt* regulations to carry out the provisions of this article including, ~~but not limited to~~, the requirements for licensing and operating shooting enclosures located within the Commonwealth. In addition, the Board may ~~promulgate~~ *adopt* regulations governing the veterinary care to be provided to animals held in shooting enclosures.

B. In ~~promulgating~~ *adopting* such regulations, the Board shall establish criteria for the following:

1. Specific species of goats, sheep, and hogs that may be held;
2. Minimum contiguous acreage necessary;
3. Humane care and humane killing of animals being held;
4. Methods and procedures for disposal of animals;
5. Reporting the death of every animal being held in the shooting enclosure not killed by the clientele; and
6. Ensuring the reasonable utilization of all animals killed by the clientele.



**Drafting Note: Technical changes.**

~~§ 3.1 763.5:6~~ 3.2-6040. Limitation on animals to be held.

In no instance shall any animals other than goats of the genus *Capri*, sheep of the genera *Ammotragus* and *Ovis*, and hogs of the genus *Sus*, be held in such enclosures. The Board shall delineate the specific species of goats, sheep, and hogs that shall be allowed to be held in an enclosure. The importation, possession, and shooting of these animals shall be in accordance with state and federal laws and regulations.

**Drafting Note: Technical changes.**

~~§ 3.1 763.5:7~~ 3.2-6041. Exemption from article.

Nothing in this article or any regulation promulgated thereunder ~~promulgated thereunder~~ adopted hereunder shall apply to shooting preserves licensed under Chapter 6 (§ 29.1-600 et seq.) of Title 29.1.

**Drafting Note: Technical change.**

~~§ 3.1 763.5:8~~ 3.2-6042. Penalty.

Any person who violates any provision of this article or a regulation promulgated thereunder shall be adopted hereunder is guilty of a Class 1 misdemeanor.

**Drafting Note: Technical changes.**

Article 6.

Certified Hatchery Products.

~~§ 3.1 771. Illegal use of term "certified".~~

~~It shall be unlawful for any person, firm or corporation to use, orally or in writing, relative to any hatchery products, poultry breeding stock, chicks or turkey poults, sold or advertised or offered for sale in this Commonwealth, the term "certified," alone or with other words, or to so use any other term or form of words which suggests that there has been inspection and certification, or either, unless such hatchery products, poultry breeding stock, chicks, or turkey poults, have been certified as hereinafter provided.~~

**Drafting Note: Deleted section.**

~~§ 3.1 772. Inspection and certification.~~

~~If such hatchery products, poultry breeding stock, chicks or turkey poults were produced in another state or in a foreign country, certification by the legally constituted inspection official of such state or country or of the United States shall be sufficient. If they were produced in Virginia, certification shall be by the Division of Marketing of the Department of Agriculture and Consumer Services. The Director of such Division with the approval of the Commissioner of Agriculture and Consumer Services shall adopt and promulgate appropriate standards for general health, vigor, type and production for certifying such hatchery products, poultry breeding stock, chicks, or turkey poults as are suited to the needs of agriculture in this and other states.~~

**Drafting Note: Deleted section.**

~~§ 3.1 773. Penalty for violation.~~

~~Any person, firm or corporation who shall violate any of the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$10 and not to exceed \$500.~~

**Drafting Note: Deleted section.**

~~§ 3.1 774. Separate offenses.~~

~~Each violation of the preceding section (§ 3.1 773) shall constitute a separate offense.~~

**Drafting Note: Deleted section.**

~~§ 3.1 775. Prosecutions for violations.~~

~~The Director of the Division of Marketing, with the approval of the Commissioner, is hereby empowered and directed, in his discretion, to cause prosecutions for violation of this article to be instituted through the attorneys for the Commonwealth of this Commonwealth, or~~

~~otherwise, in counties or cities of the Commonwealth where in his opinion violations of this article are found.~~

**Drafting Note: Deleted section.**

#### ~~Article 8.1.~~

#### ~~Promotion of Sale and Use of Poultry.~~

~~§ 3.1 796.01. Legislative findings; purpose of article.~~

~~Subject to § 3.1 796.09, the General Assembly finds and declares that poultry is important to the prosperity of this State and is a major source of income to a large segment of the State's population. Additional research, education, publicity, advertising and other means of promoting the sale and use of poultry and poultry products are required to enhance the economical production and orderly marketing of poultry and will be beneficial to the State as a whole. This legislation is adopted in furtherance of these purposes.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.02. Declaration of public interest; definitions.~~

~~Subject to § 3.1 796.09, the General Assembly hereby declares it to be in the public interest that farmers producing turkeys or chicken broilers each be permitted to express in a separate advisory referendum whether taxes and assessments should be levied upon any one of these commodities with revenues therefrom to be used in encouraging an expanded program of research, education, publicity, advertising and other means of promotion of the specified product upon which such tax or assessment is levied. The word "farmer" as used herein shall include all producers of poultry as defined in § 3.1 796.05. The word "county" means a county, city or town in which poultry is a major source of income.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.03. Petition for referendum on question of levying tax; action of Board and Commissioner thereon; amount of tax; expenses of referendum.~~

~~The Board of Agriculture and Consumer Services, hereinafter referred to as the Board, upon petition being filed with it by the Virginia State Poultry Federation, Incorporated, hereinafter referred to as the Federation, requesting an advisory referendum and upon finding that sufficient interest exists among the producers of poultry in this Commonwealth to justify a referendum, shall authorize the holding of a referendum as hereinafter set forth. The Commissioner of Agriculture and Consumer Services, hereinafter referred to as the Commissioner, or his designated agents, shall thereupon be fully empowered and directed to hold and conduct a referendum on the question of whether or not the farmers in this Commonwealth who are the producers of poultry are of the opinion that such additional research, education, publicity, advertising and other means of promotion are required and are willing to pay additional taxes and assessments upon such poultry product for the purposes stated in this article. The amount of tax to be voted upon in the separate referendum authorized by this article shall be one cent per turkey marketed, and twenty five cents per thousand pounds of chicken broilers marketed. Upon filing the petition under the authority of this section, the Federation shall thereby agree to pay all expenses or costs of the holding of such referendum, if the same is determined to be held, and the Federation shall become indebted for and shall pay all such expenses. Upon the passage of said referendum and the creation of the Virginia Poultry Products Board, the cost of holding the said referendum shall be reimbursed to the Federation by the Board. The expenses mentioned herein shall not include payment for services of any employee of the Department of Agriculture and Consumer Services or the Virginia Agricultural Extension Service.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.04. Commissioner to arrange for and manage referendum; notice to be posted.~~

~~The Commissioner shall arrange for and manage any referendum conducted under this chapter. The Commissioner is directed, sixty days before the date upon which a referendum is to be held, to mail notice to the clerk of the circuit court in each county in which poultry is produced. The notice shall contain the date, hours and method of voting in such referendum, the amount of assessment to be collected, the means by which such assessment shall be collected, the general purposes for which the assessments will be used, and the rules and regulations adopted by the Board pursuant to § 3.1 796.06. The clerk of the circuit court shall post the notice and rules and regulations on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.05. Persons eligible to vote.~~

~~Each farmer in Virginia who raised 500 or more turkeys or 1,000 or more chicken broilers during the year next preceding the date of the referendum held pursuant to this article shall be eligible to vote in the referendum provided that he shall certify to such production on forms which shall be approved by the State Board. Any person meeting such requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in other respects. The farmer may be a natural person, partnership, or corporation. The vote of the partnership shall be cast by one of the general partners. The corporation shall vote by its president, general manager, or such other person as may be authorized by the corporation to cast its vote.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.06. Rules governing ballots, conduct of referendum and canvassing and declaring results.~~

~~The Board shall further adopt rules governing the ballots to be used in the referendum, the conduct of the referendum, canvassing the results thereof, and declaring the results of the referendum. Such rules shall be adopted after consultation with the Federation.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.07. Date of referendum; areas, hours, voting places, etc.; publication of notice.~~

~~The State Board shall fix the date, areas, hours, voting places, rules and regulations with respect to the holding of any referendum provided for in this chapter and the State Board may provide for voting by mail if it deems it advisable. The Commissioner shall give general notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and is directed to send a notice of the referendum to a newspaper of general circulation in each county in which poultry is produced, at least sixty days prior to the holding of any referendum under this chapter. Such notice shall contain the date, hours, and method of voting in such referendum, the amount of assessment to be collected, the means by which such assessments shall be collected, the general purposes for which the assessments will be used, and the rules and regulations adopted by the Board pursuant to § 3.1 796.06.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.08. Distribution of ballots and supplies; arranging for polling places; canvass and declaration of results.~~

~~The Commissioner with the assistance of the Federation shall prepare and distribute in advance of such referendum all necessary ballots and supplies required for such referendum and shall under rules and regulations adopted and promulgated by the State Board and with the assistance of the Federation and the Extension Service arrange for the necessary polling places. He shall, within ten days after such referendum, canvass and publicly declare the results thereof and certify the same to the Governor and the State Board.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.09. Action of Governor if voters favor levy of tax.~~

~~The Governor shall examine all matters relating to the referendum and whether a majority of the farmers voting in a referendum or farmers owning more than fifty per centum of the turkeys or broilers owned by the farmers voting in a referendum provided for under this article expressed themselves as favoring additional research, education, publicity, advertising and other means of promotion and the levying of the tax and assessment to support the same. In addition, the Governor shall examine the general need for such agricultural research and promotion of the particular poultry product concerning which the referendum was held and determine whether or not additional research, education, publicity, advertising and other means of promotion concerning the poultry product are needed. If he finds that the same are needed, he shall so proclaim and shall establish within the Department of Agriculture and Consumer Services a Virginia Poultry Products Board as defined in § 3.1 796.013.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.010. Action of Governor if voters oppose levy of tax.~~

~~If the Governor finds that the referendum results do not meet the conditions set forth in § 3.1 796.09 or finds that additional research, education, publicity, advertising and other means of promotion of the poultry product which was the subject of the referendum are not needed, he shall so proclaim.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.011. Subsequent referenda.~~

~~If the Governor issues a proclamation under § 3.1 796.010, the Board may call, in the manner prescribed in this article, another referendum in the next succeeding year for the purposes specified in § 3.1 796.02 or in any year in which a petition is filed with the Board under § 3.1 796.03. If the Governor issues a proclamation under § 3.1 796.09, then no other referendum shall be held on the poultry product which was the subject of the proclamation until after the expiration of five years from the effective date of the imposition of the tax or assessment and upon a petition of the Federation to the Board requesting an advisory referendum on continuance of the tax. If no such petition is presented to the Board, the tax to support additional research and promotion of the product which was the subject of the proclamation under § 3.1 796.09 shall continue to be levied and collected as provided for in this article. The cost of conducting any such referendum as above prescribed will come from funds paid into the Virginia Poultry Products Fund.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.012. Question to be printed on ballots.~~

~~The question to be printed on the ballots used in a referendum held under this article, unless otherwise specified herein, shall be as follows:~~

~~"Do you favor additional research, education, publicity, advertising and other promotion of [insert the name of the poultry product which is the subject of the referendum] and the levy or tax or assessment of [insert the amount of tax to be levied on such poultry product] in accordance with the provisions of this article to support the same?~~

~~Yes~~

~~No."~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.013. Virginia Poultry Products Commission continued as Virginia Poultry Products Board; composition; appointment and terms of members; vacancies; officers; compensation; powers and duties.~~

~~The Virginia Poultry Products Commission within the Virginia Department of Agriculture and Consumer Services is continued and shall hereafter be known as the Virginia Poultry Products Board. The Poultry Products Board shall be composed of seven members appointed by the Governor from nominations submitted to him by the Federation. The appointments shall be subject to confirmation by the General Assembly. The terms of the~~

~~members shall run concurrently with the term of the Governor making the appointment but vacancies occurring before the expiration of the term shall be filled for the unexpired term. The Poultry Products Board shall elect a chairman, vice chairman and such other officers as may be required. The Poultry Products Board shall have charge of the management and expenditures of the Virginia Poultry Products Fund established in the state treasury. The Poultry Products Board may establish an executive committee and charge it with such powers, duties and functions as the Poultry Products Board deems proper.~~

~~The members of the Poultry Products Board shall be paid a per diem of ten dollars while transacting official business for the Poultry Products Board and shall be entitled to be reimbursed for expenses incurred in connection with their attendance at regular or special meetings of the Poultry Products Board.~~

~~The Poultry Products Board shall have power to expend funds to provide for programs of research, education, publicity, advertising, and other promotion of each poultry product on which taxes are being levied in accordance with the provisions of this article; to manage the fund so as to accumulate a reserve for contingencies; to establish an office and employ such technical, professional and other assistants as may be required; to contract for research, publicity, advertising and other promotional services; and to take all such measures as will assist in strengthening and promoting the best interest of farmers producing the poultry products on which such tax has been levied in accordance with the provisions of this article. The Poultry Products Board shall not expend funds produced from a tax on one poultry product except that the proceeds collected by a tax on each of the poultry products specified in this article may be charged its proportionate share of the general operating costs of the Poultry Products Board.~~

~~The chairman of the Poultry Products Board shall make a report at each annual meeting of the Poultry Products Board and furnish the members of the Poultry Products Board with a statement of the total receipts and disbursements for the year as to each poultry product specified in this article. He shall file a copy of such report and the audit required by § 3.1 796.017 with the Commissioner and shall make copies of such report available for publication.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.014. Handler to deduct tax from payment to farmer; report and payment of tax by handler.~~

~~For the purpose of carrying out the provisions of this article, the packer, processor or handler, hereinafter referred to as "the handler," of any poultry product on which a tax has been levied in accordance with the provisions of this article, and who purchases from the farmer shall deduct from payments made to the farmer for any such farm product the amount of the tax levied thereon and shall remit such tax or assessment to the State Tax Commissioner in the manner and at the time hereinafter provided. The term "handler" also includes the farmer who packs, processes or performs the functions of handler for a portion or all of his products. Deductions shall be made on each purchase or separate farmer to handler transaction in instances where the farmer is eligible to vote as set forth in § 3.1 796.05, so long as the farmer shall remain subject to payment of the tax by his continued ownership or raising of birds equal to or in excess of the numbers specified in § 3.1 796.05. The report to the State Tax Commissioner shall be on forms prescribed and furnished by the State Tax Commissioner and shall be a statement of the gross volume of the farm product on which the tax or assessment is levied which has been packed, processed or handled by the handler and shall be filed with the Commissioner on the twentieth day of each month. The tax or assessment levied on the poultry product shall be due and payable by the handler on the same day that the report is due. Such tax or assessment shall be paid to the State Tax Commissioner and shall be promptly paid into the state treasury to the credit of the Virginia Poultry Products Fund.~~

~~Subsequent to a successful referendum among producers of a commodity, farmers or others who enter into the production of that commodity or who increase already existing~~

~~production to or beyond the flock sizes hereinbefore stated for eligibility to vote in a referendum shall be required to pay the applicable tax imposed on producers who are eligible to vote in the referendum when it was held.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.015. Records to be kept by handlers.~~

~~The handler shall keep a complete record of the poultry products subject to the provisions of this article which have been packed, processed or handled by him and shall preserve such records for a period of not less than two years from the time such poultry products were packed, processed or handled. Such records shall be opened to the inspection of the State Tax Commissioner and his duly authorized agents and shall be established and maintained as required by the State Tax Commissioner.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.016. Interest on tax; collection of delinquent tax.~~

~~The tax imposed under the provisions of this article and unpaid on the date on which such tax was due and payable shall bear interest at a rate determined in accordance with § 58.1 1812, from and after such due date until paid. If any person defaults in any payment of the tax or interest thereon, the amount shall be collected by a civil action in the name of the Commonwealth at the relation of the State Tax Commissioner and the person adjudged in default shall pay the costs of such action. The Attorney General, at the request of the State Tax Commissioner, shall institute such action in the proper court for the collection of the amount of any tax past due under this article including interest thereon.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.017. Virginia Poultry Products Fund; audit; Board may cooperate with other agencies.~~

~~All moneys levied and collected under the provisions of this article shall be credited on the Comptroller's books to a fund to be known as the "Virginia Poultry Products Fund." All moneys credited to the Virginia Poultry Products Fund are hereby appropriated for the purposes set forth in this article and shall be used exclusively for the purposes set out in this article. In carrying out the purposes of this article, the Board shall have the authority to cooperate with other state, regional and national agricultural organizations in research, education, publicity, advertising and other promotional activities. The Auditor of Public Accounts shall audit all the accounts of the Board as is provided for in § 30 133.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.018. Expenditures.~~

~~All moneys collected under this article shall be expended by the Virginia Poultry Products Board by warrants of the Comptroller on the state treasury issued on vouchers signed by the duly authorized officer of the Board.~~

~~The unexpended balance of the Virginia Poultry Products Fund at the end of each biennium shall not be transferred to the general fund of the state treasury.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.019. Misdemeanors.~~

~~It shall be a Class 1 misdemeanor for any handler knowingly to report falsely to the Virginia Department of Taxation the quantity of poultry products processed or handled by him, or to fail to keep a complete record of the poultry products processed or handled by him, or to preserve such records for a period of not less than two years from the time such poultry products are processed or handled.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.020. Who deemed "handler".~~

~~In the case of turkeys and broilers, the "handler" shall be the processor or live hauler who purchases from the farmer.~~

**Drafting Note: Deleted section.**

Article 9.

Quality Mark for Eggs.

~~§ 3.1 796.1. Virginia Egg Board authorized to adopt quality mark; purposes.~~

~~The Virginia Egg Board is authorized to adopt a quality mark. The purpose for adopting and promoting this official quality mark is to provide assurance to the homemaker that eggs bearing the quality mark are of consistent high quality. All eggs bearing such mark must be produced within the geographical boundaries of Virginia.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.2. What eggs may bear quality mark; control of quality.~~

~~The Board is only authorized to grant the use of this quality mark to identify or advertise eggs of at least A quality as defined by the Virginia Department of Agriculture and Consumer Services and must meet any other specifications established by the Board. All eggs bearing such quality mark must follow such egg quality controls as set forth by the Board. These controls shall include approved methods of gathering, cleaning, cooling, candling, packing, transporting, temperature and humidity controls, throughout the marketing process. All consumer containers must clearly mark an expiration date which is no more than twenty one days from packing and is to be strictly observed by the seller.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.3. Where, how and by whom mark to be used.~~

~~The official Virginia egg quality mark, owned and controlled by the Virginia Egg Board, may be imprinted on any label, insert, carton, sealing tape or in advertisements by any person, firm or corporation who is licensed to do so by the Virginia Egg Board or its authorized agent. Any person, firm or corporation not so licensed is forbidden to imprint or make any other unauthorized use of the official quality mark.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.4. Requirements for license to use mark.~~

~~Application for license to use the official quality mark as outlined above shall be made in writing upon a form to be supplied by the Board at the request of the applicant.~~

~~The applicant must be a Virginia producer of table eggs or must be a person, firm, partnership, corporation or association who receives, at least weekly, a considerable volume of premium quality eggs from Virginia producers. Licenses will be issued to successful applicants without charge once his plant and facilities have been determined to conform with the requirements established by the Virginia Department of Agriculture and Consumer Services.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.5. Facsimile reproduction of mark may be obtained from Board for printing.~~

~~Any person, firm or corporation licensed or the manufacturer or printer supplying the licensee with cartons, sealing tapes, labels or inserts bearing the quality mark may obtain from the Virginia Egg Board a facsimile reproduction of the official quality mark from which printing plates may be made at the expense of the licensee.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.6. Reproduction to be approved by Board.~~

~~A specimen showing the reproduction of the official quality mark as it is to appear on any label, insert or carton or in any advertisement shall be submitted to the Board or its authorized agent for approval prior to its use.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.7. Records and reports required of licensee; if license revoked, mark to be disposed of.~~

~~The licensee shall agree to supply the Board with the names, addresses and sizes of flocks of his Virginia producer suppliers and/or the size of his own flocks, to report any changes monthly and to furnish the Board with a monthly report on the number of dozens of eggs sold under the quality mark. If the license of any person, firm or corporation to use the official quality mark as outlined above has been suspended or revoked for any reason, all cartons, sealing tapes, inserts or labels bearing the quality mark in the licensee's possession shall be impounded, surrendered to the Board, destroyed, rendered unusable, or otherwise disposed of in a manner acceptable to the Board.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.8. Information on container.~~

~~All consumer containers in which eggs are kept for the purpose of sale or offered or exposed for sale shall be marked according to one of the official grades and sizes. The marking, identity of the commodity in the package, and net quantity of the contents in terms of count shall appear on the principal display panel of the package. The retail containers shall bear the name and address of the packer or distributor, when kept, offered, or exposed for sale, or sold any place other than on the premises where packed. The grade and size shall be spelled out in full. All information required to appear on the container shall be prominent, definite, and plain and shall be conspicuous as to size and style of letters and numbers.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.9. Department of Agriculture and Consumer Services to supervise and control use of mark; Department may suspend licenses; review by Board.~~

~~The Virginia Department of Agriculture and Consumer Services is authorized to supervise and control the use of the quality mark, to establish such procedures and make such inspections as are deemed necessary to determine whether eggs packed under the quality mark were, in fact, produced within the geographical boundaries of the Commonwealth of Virginia and otherwise meet the requirements of the quality program throughout the marketing process. Department representatives, acting for the Board, are authorized to suspend the license of any individual, firm or corporation found to be in violation of these regulations, subject to review and final action by the Board.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.10. Board may subpoena records, enter upon premises, etc.~~

~~The Board shall have the power to subpoena records of handlers to determine if a proper accounting has been made of the packages containing the mark of the Board. The Board is also empowered to enter upon the premises and inspect the records of all licensees or handlers who are using the quality mark.~~

**Drafting Note: Deleted section.**

~~§ 3.1 796.11. Violation of article.~~

~~Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor.~~

**Drafting Note: Deleted section.**

CHAPTER 27.261.

CATTLE BRANDING AND REGISTRATION.

**Chapter Drafting Note: Only technical changes have been made to this chapter.**

§ 3.1 796.293.2-6100. Definitions.

The following words as used in this chapter, *unless the context requires a different* shall have the meaning ascribed to them herein:

(a) "Commissioner" shall mean the Commissioner of Agriculture and Consumer Services.



~~(b) "Department" means the Department of Agriculture and Consumer Services.~~

~~(c) "Board" means the Board of Agriculture and Consumer Services.~~

~~(d) "Brand" means any recorded identification mark applied to any position on the hide of a live animal by means of heat, freezing, acid or chemical, except tattoo marks in the ear or numbers used to keep production records, record of age or identification marks used by any governmental agency.~~

~~(e) "Person" means any individual, partnership, corporation or association.~~

~~(f) "Livestock market" means a place where a person assembles livestock for public sale if such person is required to procure a license or permit from the Department of Agriculture and Consumer Services to operate such market.~~

**Drafting Note: The deleted definitions are provided in proposed § 3.2-100, Definitions. The definition of "person" is provided Code-wide in Title 1.**

~~§ 3.1-796.36 3.2-6101. Rules and regulations~~*Authority to adopt regulations.*

~~The Commissioner, with the approval of the Board, shall have authority to promulgate such rules and may adopt regulations as are reasonably necessary to carry out the intent and purposes of this chapter and which will that facilitate the tracing and identification of cattle and afford protection against stealing and unlawful dealing in cattle.~~

**Drafting Note: Technical changes.**

~~§ 3.1-796.30 3.2-6102. Registration of brand required; transfer of brand.~~

Any cattle owner who uses a brand to identify his cattle must register his brand by applying to the Department for such registration. The application shall be made on forms prescribed and furnished by the Department, which application shall be accompanied by a fee of ~~ten \$10 dollars~~ and a facsimile of the brand to be registered shall also be furnished by the applicant. All fees collected hereunder for registration, transfer, and reregistration of brands shall be deposited in a special fund of the state treasury for the administration of this chapter. If the brand described in the application, or one similar, or closely resembling a registered brand has not been previously registered by another cattle owner, the Department shall approve the application, register the brand in the name of the applicant and issue to the applicant a certificate of registration. In the event the Department denies registration of a brand for any reason the registration fee of ~~ten \$10 dollars~~ shall be returned to the person making application for registration. When a cattle owner, who has registered a brand with the Department, transfers such brand to another, he shall immediately notify the Department of the transfer, giving the date of transfer, and the name of the transferee. Upon receipt of the notice and a transfer fee of ~~three dollars~~ \$3, the Department shall ~~cause note~~ such transfer to be noted in the register of brands, and such brand shall not be used by the new owner until permission has been given by the Department for use of such brand.

**Drafting Note: Technical changes.**

~~§ 3.1-796.32 3.2-6103. Renewal of brand.~~

There shall be a renewal period for recording brands ~~which that~~ shall be once every five years ~~beginning July 1, 1974. All brands recorded on or after July 1, 1974, shall be renewed or rerecorded on or before July 1, 1979, and each five year period thereafter.~~ At least ~~ninety 90~~ days prior to the renewal date for ~~all brands~~ a brand, the Department shall notify all persons having ~~brands~~ a registered brand of the date on which such brands must be renewed. On or before the renewal date of ~~all brands~~ the registered owner ~~thereof of a brand~~ shall pay to the Department a renewal fee of ~~ten \$10 dollars~~ per registered brand and shall furnish ~~such any~~ additional information as the Department may require on forms to be furnished by the Department. If any cattle owner fails to renew any brand registered in his name, such brand shall be forfeited and shall be available to any other applicant.

**Drafting Note: Technical changes.**

~~§ 3.1-796.33 3.2-6104. Forms.~~

The Department shall prescribe and furnish forms on which applications for registration, ~~reregistration-renewal~~ and transfer of brands shall be made.

**Drafting Note: Technical changes.**

~~§ 3.1-796.34~~ 3.2-6105. Register of brands.

The Department shall maintain a complete register of all brands, showing the name and address of the owner, and shall annually publish and distribute copies of this register as prescribed in ~~rules and the~~ regulations ~~promulgated-adopted~~ pursuant to this chapter.

**Drafting Note: Technical changes.**

~~§ 3.1-796.35~~ 3.2-6106. Livestock market to keep copy of register and records on cattle sold.

~~(a) Every~~ Each operator of a livestock market where cattle are sold shall: (i) keep a copy of the register of brands in his place of business where it will be easily accessible for public inspection; and (ii) ~~(b) The operator of every livestock market where cattle are sold shall~~ keep a record, for at least two years, ~~covering of~~ all cattle received ~~which shall show thereon and~~ the name and address of the owner.

**Drafting Note: Technical changes.**

~~§ 3.1-796.34~~ 3.2-6107. Brand registration as evidence of ownership.

In all suits at law or in equity, or in any criminal proceedings when the title or right of possession is involved, a copy of the certificate of brand registration verified by affidavit of the Commissioner shall be received in evidence by the court as evidence of the registration of such brand in accordance with the requirements of this chapter.

**Drafting Note: No changes.**

~~§ 3.1-796.37~~ 3.2-6108. Prohibited acts.

It shall be unlawful for:

~~(a) 1.~~ Any person to use any brand for branding cattle unless the brand is registered with the Department;

~~(b) 2.~~ Any person to obliterate, alter or deface the brand of any animals;

~~(c) 3.~~ Any livestock market to receive and sell cattle unless records of such sale are kept in accordance with the requirements of this chapter; or

~~(d) 4.~~ Any livestock market to fail to post a copy of the register of brands furnished to them by the Department in a place easily accessible to interested parties.

**Drafting Note: Technical changes.**

~~§ 3.1-796.38~~ 3.2-6109. Penalties.

Any person who violates any of the provisions of this chapter ~~shall be~~ is guilty of a Class 1 misdemeanor. All amounts paid as fines for violations of this chapter, when collected by the proper authority, shall be transmitted to the Department and deposited in the state treasury.

**Drafting Note: Pursuant to § 18.2-12, a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

## CHAPTER ~~27-5-62.~~

### EQUINE ACTIVITY LIABILITY ~~ACT.~~

**Chapter Drafting Note: Only technical have been made to this chapter.**

~~§ 3.1-796.130~~ 3.2-6200. Definitions.

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

"Engages in an equine activity" means: (i) any person, whether mounted or unmounted, who rides, handles, trains, drives, assists in providing medical or therapeutic treatment of, or is a passenger upon an equine; (ii) any person who participates in an equine activity but does not necessarily ride, handle, train, drive, or ride as a passenger upon an equine; (iii) any person

visiting, touring or utilizing an equine facility as part of an event or activity; or (iv) any person who assists a participant or equine activity sponsor or management in an equine activity. The term "engages in an equine activity" does not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to an equine or equine activity.

"Equine" means a horse, pony, mule, donkey, or hinny.

"Equine activity" means: (i) equine shows, fairs, competitions, performances, or parades that involve any or all breeds of equines and any of the equine disciplines, including, ~~but not limited to,~~ dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeple chasing, endurance trail riding and western games, and hunting; (ii) equine training or teaching activities; (iii) boarding equines; (iv) riding, inspecting, or evaluating an equine belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine; (v) rides, trips, hunts, or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor; (vi) conducting general hoofcare, including, ~~but not limited to~~ placing or replacing horseshoes or hoof trimming of an equine; and (vii) providing or assisting in breeding or therapeutic veterinary treatment.

"Equine activity sponsor" means any person or his agent who, for profit or not for profit, sponsors, organizes, or provides the facilities for an equine activity, including, ~~but not limited to~~ pony clubs, 4-H clubs, hunt clubs, riding clubs, school- and college-sponsored classes and programs, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including, ~~but not limited to~~ stables, clubhouses, ponyride strings, fairs, and arenas ~~at which~~ where the activity is held.

"Equine professional" means a person or his agent engaged for compensation in: (i) instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon an equine; or (ii) renting equipment or tack to a participant.

"Intrinsic dangers of equine activities" means those dangers or conditions that are an integral part of equine activities, including, ~~but not limited to,~~: (i) the propensity of equines to behave in ways that may result in injury, harm, or death to persons on or around them; (ii) the unpredictability of an equine's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals; (iii) certain hazards such as surface and subsurface conditions; (iv) collisions with other animals or objects; and (v) the potential of a participant acting in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the equine or not acting within the participant's ability.

"Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

**Drafting Note: Technical changes.**

~~§ 3.1-796.131~~ 3.2-6201. Horse racing excluded.

The provisions of this chapter shall not apply to horse racing, as that term is defined by § 59.1-365.

**Drafting Note: No changes.**

~~§ 3.1-796.132~~ 3.2-6202. Liability limited; liability actions prohibited.

A. Except as provided in ~~§ 3.1-796.133~~ 3.2-6203, an equine activity sponsor, an equine professional, or any other person, which shall include a corporation, partnership, or limited liability company, shall not be liable for an injury to or death of a participant resulting from the intrinsic dangers of equine activities and, except as provided in ~~§ 3.1-796.133~~ 3.2-6203, no participant nor any participant's parent, guardian, or representative shall have or make any claim against or recover from any equine activity sponsor, equine professional, or any other person for

injury, loss, damage, or death of the participant resulting from any of the intrinsic dangers of equine activities.

B. Except as provided in ~~§ 3.1-796.133~~ 3.2-6203, no participant or parent or guardian of a participant who has knowingly executed a waiver of his rights to sue or agrees to assume all risks specifically enumerated under this subsection may maintain an action against or recover from an equine activity sponsor or an equine professional for an injury to or the death of a participant engaged in an equine activity. The waiver shall give notice to the participant of the intrinsic dangers of equine activities. The waiver shall remain valid unless expressly revoked in writing by the participant or parent or guardian of a minor.

**Drafting Note: No changes.**

~~§ 3.1-796.133~~ 3.2-6203. Liability of equine activity sponsors, equine professionals.

No provision of this chapter shall prevent or limit the liability of an equine activity sponsor or equine professional or any other person who:

1. Intentionally injures the participant;
2. Commits an act or omission that constitutes negligence for the safety of the participant and such act or omission caused the injury, unless such participant, parent or guardian has expressly assumed the risk causing the injury in accordance with subsection B of ~~§ 3.1-796.132~~ 3.2-6202; or
3. Knowingly provides faulty equipment or tack and such equipment or tack was faulty to the extent that it did cause the injury or death of the participant.

**Drafting Note: No changes.**

CHAPTER ~~27.6~~ 63.

OX ACTIVITY LIABILITY ~~ACT~~.

**Chapter Drafting Note: Only technical changes have been made in this chapter.**

~~§ 3.1-796.134~~ 3.2-6300. Definitions.

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

"Directly engages in an ox activity" means a person who rides, trains, drives, leads, or is a passenger upon an ox, whether mounted or unmounted, or on an ox drawn vehicle, but does not mean a spectator at an ox activity or a person who participates in the ox activity but does not ride, train, drive, lead, or ride as a passenger upon an ox or ox drawn vehicle.

"Ox" means a castrated bovine used for draft, recreational, educational, entertainment or display purposes and shall not include bovines raised primarily for food or fiber.

"Ox activity" means: (i) ox shows, fairs, competitions, rodeos, pulling, driving, performances, or parades; (ii) ox training or teaching activities; (iii) boarding oxen; (iv) riding, inspecting, or evaluating an ox belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the ox or is permitting a prospective purchaser of the ox to ride, inspect, or evaluate the ox; and (v) rides, trips or other ox activities of any type however informal or impromptu that are sponsored by an ox activity sponsor.

"Ox activity sponsor" means any person or his agent who, for profit or not for profit, sponsors, organizes, or provides the facilities for an ox activity, including ~~but not limited to~~ 4-H clubs, riding clubs, school-sponsored and college-sponsored classes and programs, therapeutic riding programs, and operators, instructors, and promoters of ox facilities, including ~~but not limited to~~ stables, fairs, and arenas ~~at which~~ *where* the activity is held.

"Ox professional" means a person or his agent engaged for compensation in: (i) instructing a participant or renting to a participant an ox for the purpose of riding, driving, or being a passenger upon an ox; or (ii) renting equipment or tack to a participant.

"Participant" means any person, whether amateur or professional, who directly engages in an ox activity, whether or not a fee is paid to participate in the ox activity.

**Drafting Note: Technical changes.**

§ ~~3.1-796.135~~ 3.2-6301. Liability limited; liability actions prohibited.

A. Except as provided in § ~~3.1-796.136~~ 3.2-6302, an ox activity sponsor or an ox professional shall not be liable for an injury to or death of a participant engaged in an ox activity.

B. Except as provided in § ~~3.1-796.136~~ 3.2-6302, no participant or parent or guardian of a participant who has knowingly executed a waiver of his rights to sue or agrees to assume all risks specifically enumerated under this subsection may maintain an action against or recover from an ox activity sponsor or an ox professional for an injury to or the death of a participant engaged in an ox activity. The waiver shall give notice to the participant of the risks inherent in ox activities, including: (i) the propensity of an ox to behave in dangerous ways ~~which~~*that* may result in injury to the participant; (ii) the inability to predict an ox's reaction to sound, movements, objects, persons, or animals; and (iii) hazards of surface or subsurface conditions. The waiver shall remain valid unless expressly revoked by the participant or parent or guardian of a minor. In the case of school-sponsored and college-sponsored classes and programs, waivers executed by a participant or parent or guardian of a participant shall apply to all ox activities in which the participant is involved in the next succeeding ~~twelve~~-12-month period unless earlier expressly revoked in writing.

**Drafting Note: Technical changes.**

§ ~~3.1-796.136~~ 3.2-6302. Liability of ox activity sponsors, ox professionals.

No provision of this chapter shall prevent or limit the liability of an ox activity sponsor or ox professional who:

1. Intentionally injures the participant;
2. Commits an act or omission that constitutes negligence for the safety of the participant and such act or omission caused the injury, unless such participant, parent or guardian has expressly assumed the risk causing the injury in accordance with subsection B of § ~~3.1-796.135~~ 3.2-6301; or
3. Knowingly provides faulty equipment or tack and such equipment or tack causes the injury or death of the participant.

**Drafting Note: No changes.**

CHAPTER ~~27-7-64~~.

AGRITOURISM ACTIVITY LIABILITY.

**Chapter Drafting Note: No changes have been made to this chapter.**

§ ~~3.1-796.137~~ 3.2-6400. Definitions.

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

"Agricultural products" means any livestock, aquaculture, poultry, horticultural, floricultural, viticultural, silvicultural, or other farm crops.

"Agritourism activity" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

"Agritourism professional" means any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

"Farm or ranch" means one or more areas of land used for the production, cultivation, growing, harvesting or processing of agricultural products.

"Inherent risks of agritourism activity" mean those dangers or conditions that are an integral part of an agritourism activity including certain hazards, including surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or

domestic animals; and ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity also include the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in the agritourism activity.

"Participant" means any person, other than an agritourism professional, who engages in an agritourism activity.

**Drafting Note: No changes.**

§ ~~3.1-796.138~~3.2-6401. Liability limited; liability actions prohibited.

A. Except as provided in subsection B, an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning contained in § ~~3.1-796.139~~3.2-6402 is posted as required and, except as provided in subsection B, no participant or participant's representative is authorized to maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities; provided that in any action for damages against an agritourism professional for agritourism activity, the agritourism professional shall plead the affirmative defense of assumption of the risk of agritourism activity by the participant.

B. Nothing in subsection A shall prevent or limit the liability of an agritourism professional if the agritourism professional does any one or more of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant, and that act or omission proximately causes injury, damage, or death to the participant;

2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the activity, or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant; or

3. Intentionally injures the participant.

C. Any limitation on legal liability afforded by this section to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

**Drafting Note: No changes.**

§ ~~3.1-796.139~~3.2-6402. Warning required.

A. Every agritourism professional shall post and maintain signs that contain the warning notice specified in subsection B. The sign shall be placed in a clearly visible location at the entrance to the agritourism location and at the site of the agritourism activity. The warning notice shall consist of a sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an agritourism professional for the providing of professional services, instruction, or the rental of equipment to a participant, whether or not the contract involves agritourism activities on or off the location or at the site of the agritourism activity, shall contain in clearly readable print the warning notice specified in subsection B.

B. The signs and contracts described in subsection A shall contain the following notice of warning:

"WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this agritourism activity."

C. Failure to comply with the requirements concerning warning signs and notices provided in this section shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.

**Drafting Note: No changes.**

## CHAPTER ~~27.4-65.~~

### COMPREHENSIVE ANIMAL ~~LAWS-CARE.~~

**Chapter Drafting Note: Overall, only technical and organizational changes have been made to this chapter. Proposed Article 3, Transportation and Sale of Animals, combines sections from existing Article 2, Animal Welfare, existing Article 3, Sale of Dogs and Cats by Dealers, and existing Article 3.1, Boarding Establishments. Placed sections concerning unleashed dogs together in proposed Article 6, Authority of Local Governing Bodies. Classified penalty in proposed § 3.2-6545, Regulation of sale of animals procured from animal shelters, in accordance with § 18.2-12, as a Class 1 misdemeanor. Deleted existing § 3.1-796.120, which deals with the gift or sale of animals from pounds and shelters, because such provisions are addressed in other sections.**

#### Article 1.

##### General Provisions.

###### § ~~3.1-796.66.~~ 3.2-6500 Definitions.

~~The following words as~~ As used in this chapter shall have the following meanings *unless the context requires a different meaning*:

"Abandon" means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § ~~3.1-796.68~~ 3.2-6503 for a period of five consecutive days.

"Adequate care" or "care" means the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health.

"Adequate exercise" or "exercise" means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.

"Adequate feed" means access to and the provision of food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.

"Adequate shelter" means provision of and access to shelter that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; and, for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters whose wire, grid, or slat floors: (i)

permit the animals' feet to pass through the openings; (ii) sag under the animals' weight; or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.

"Adequate space" means sufficient space to allow each animal to: (i) easily stand, sit, lie, turn about, and make all other normal body movements in a comfortable, normal position for the animal; and (ii) interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means a tether that permits the above actions and is appropriate to the age and size of the animal; is attached to the animal by a properly applied collar, halter, or harness configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from extending over an object or edge that could result in the strangulation or injury of the animal; and is at least three times the length of the animal, as measured from the tip of its nose to the base of its tail, except when the animal is being walked on a leash or is attached by a tether to a lead line. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space.

"Adequate water" means provision of and access to clean, fresh, potable water of a drinkable temperature that is provided in a suitable manner, in sufficient volume, and at suitable intervals, but at least once every 12 hours, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles that are accessible to each animal and are placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.

"Adoption" means the transfer of ownership of a dog or a cat, or any other companion animal, from a releasing agency to an individual.

"Agricultural animals" means all livestock and poultry.

"Ambient temperature" means the temperature surrounding the animal.

"Animal" means any nonhuman vertebrate species except fish. For the purposes of § ~~3.1-796.98~~ 3.2-6522, animal means any species susceptible to rabies. For the purposes of § ~~3.1-796.122~~ 3.2-6570, animal means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable and customary manner.

"Animal control officer" means a person appointed as an animal control officer or deputy animal control officer as provided in § ~~3.1-796.104~~ 3.2-6555.

"Animal shelter" means a facility, other than a private residential dwelling and its surrounding grounds, that is used to house or contain animals and that is owned, operated, or maintained by a nongovernmental entity including, ~~but not limited to,~~ a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

~~"Board" means the Board of Agriculture and Consumer Services.~~

"Boarding establishment" means a place or establishment other than a pound or animal shelter where companion animals not owned by the proprietor are sheltered, fed, and watered in exchange for a fee.

"Collar" means a well-fitted device, appropriate to the age and size of the animal, attached to the animal's neck in such a way as to prevent trauma or injury to the animal.

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.



"Consumer" means any natural person purchasing an animal from a dealer or pet shop or hiring the services of a boarding establishment. The term "consumer" shall not include a business or corporation engaged in sales or services.

"Dealer" means any person who in the regular course of business for compensation or profit buys, sells, transfers, exchanges, or barter companion animals. The following shall not be considered dealers: (i) any person who transports companion animals in the regular course of business as a common carrier; or (ii) any person or organization whose primary purpose is to find permanent adoptive homes for companion animals.

"Direct and immediate threat" means any clear and imminent danger to an animal's health, safety or life.

"Dump" means to knowingly desert, forsake, or absolutely give up without having secured another owner or custodian any dog, cat, or other companion animal in any public place including the right-of-way of any public highway, road or street or on the property of another.

"Emergency veterinary treatment" means veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression.

"Enclosure" means a structure used to house or restrict animals from running at large.

"Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent that causes painless loss of consciousness, and death during such loss of consciousness.

"Exhibitor" means any person who has animals for or on public display, excluding an exhibitor licensed by the ~~United States~~ U.S. Department of Agriculture.

"Facility" means a building, other than a private residential dwelling and its surrounding grounds, that is used to contain a primary enclosure or enclosures in which animals are housed or kept.

"Foster care provider" means an individual who provides care or rehabilitation for companion animals through an affiliation with a pound, animal shelter, or other releasing agency.

"Foster home" means a private residential dwelling and its surrounding grounds at which site through an affiliation with a pound, animal shelter, or other releasing agency care or rehabilitation is provided for companion animals.

"Groomer" means any person who, for a fee, cleans, trims, brushes, makes neat, manicures, or treats for external parasites any animal.

"Home-based rescue" means any person or organization that accepts: (i) more than 12 companion animals; or (ii) more than nine companion animals and more than three unweaned litters of companion animals in a calendar year for the purpose of finding permanent adoptive homes for the companion animals and houses the companion animals in a private residential dwelling or uses a system of housing companion animals in private residential foster homes.

"Humane" means any action taken in consideration of and with the intent to provide for the animal's health and well-being.

"Humane investigator" means a person who has been appointed by a circuit court as a humane investigator as provided in ~~§ 3.1-796.106~~ 3.2-6558.

"Humane society" means any incorporated, nonprofit organization that is organized for the purposes of preventing cruelty to animals and promoting humane care and treatment or adoptions of animals.

"Kennel" means any establishment in which five or more canines, felines, or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing.

"Law-enforcement officer" means any person who is a full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or

any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"Livestock" includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; capradae animals; animals of the genus Lama; ratites; fish or shellfish in aquaculture facilities, as defined in § ~~3.1-73.6~~ 3.2-2600; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.

~~"Local ordinance" means any law, rule, regulation, or ordinance promulgated by the governing body of any county, city, or town.~~

~~"Locality" or "local government" means a county, city, or town, as the context may require.~~

"New owner" means an individual who is legally competent to enter into a binding agreement pursuant to subdivision B 2 of § ~~3.1-796.126:1~~ 3.2-6574, and who adopts or receives a dog or cat from a releasing agency.

*"Ordinance" means any law, rule, regulation, or ordinance adopted by the governing body of any locality.*

"Other officer" includes all other persons employed or elected by the people of Virginia, or by any ~~municipality, county, or incorporated town thereof~~ *locality*, whose duty it is to preserve the peace, to make arrests, or to enforce the law.

"Owner" means any person who: (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.

~~"Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.~~

"Pet shop" means an establishment where companion animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

"Poultry" includes all domestic fowl and game birds raised in captivity.

"Pound" means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; or a facility operated for the same purpose under a contract with any ~~county, city, town,~~ *locality* or incorporated society for the prevention of cruelty to animals.

"Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment, or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

"Properly cleaned" means that carcasses, debris, food waste, and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with the above-mentioned contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to hazardous chemicals or disinfectants.

"Properly lighted" when referring to a facility means sufficient illumination to permit routine inspections, maintenance, cleaning, and housekeeping of the facility, and observation of the animals; to provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout the facility; and to promote the well-being of the animals. "Properly lighted" when referring to a private residential dwelling and its surrounding grounds means sufficient illumination to permit routine maintenance and cleaning thereof, and observation of the companion animals; and to provide regular diurnal lighting cycles of either natural or artificial light to promote the well-being of the animals.

"Releasing agency" means a pound, animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue, that releases companion animals for adoption.

"Research facility" means any place, laboratory, or institution licensed by the U.S. Department of Agriculture at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.

"Sanitize" means to make physically clean and to remove and destroy, to a practical minimum, agents injurious to health.

"Sore" means, when referring to an equine, that an irritating or blistering agent has been applied, internally or externally, by a person to any limb or foot of an equine; any burn, cut, or laceration that has been inflicted by a person to any limb or foot of an equine; any tack, nail, screw, or chemical agent that has been injected by a person into or used by a person on any limb or foot of an equine; any other substance or device that has been used by a person on any limb or foot of an equine; or a person has engaged in a practice involving an equine, and as a result of such application, infliction, injection, use, or practice, such equine suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of an equine by or under the supervision of a licensed veterinarian. Notwithstanding anything contained herein to the contrary, nothing shall preclude the shoeing, use of pads, and use of action devices as permitted by 9 C.F.R. Part 11.2.

~~"State Veterinarian" means the veterinarian employed by the Commissioner of Agriculture and Consumer Services as provided in § 3.1-723.~~

~~"State Veterinarian's representative" means an employee of the Department of Agriculture and Consumer Services who is under the direction of the State Veterinarian.~~

"Sterilize" or "sterilization" means a surgical or chemical procedure performed by a licensed veterinarian that renders a dog or cat permanently incapable of reproducing.

"Treasurer" includes the treasurer and his assistants of each county or city or other officer designated by law to collect taxes in such county or city.

"Treatment" or "adequate treatment" means the responsible handling or transportation of animals in the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of the animal.

"Veterinary treatment" means treatment by or on the order of a duly licensed veterinarian.

"Weaned" means that an animal is capable of and physiologically accustomed to ingestion of solid food or food customary for the adult of the species, and has ingested such food, without nursing, for a period of at least five days.

**Drafting Note: Deleted the definitions of "Board," "locality," and "person" as previously defined in the Code-wide and title-wide definitions sections in §§ 1-231, 1-230, and proposed 3.2-100, Definitions. The definitions of "State Veterinarian" and "State Veterinarian's representative" are moved to the definitions in proposed Chapter 59, In General, and apply to all of Subtitle V.**

~~§ 3.1-796.67 3.2-6501. Rules, regulations, Regulations and guidelines.~~

The Board may ~~promulgate rules and~~ *adopt* regulations ~~or~~ *and* guidelines consistent with the objectives and intent of this chapter concerning the care and transportation of animals.

**Drafting Note: Technical changes.**

~~§ 3.1-796.67:2 3.2-6502.~~ State Veterinarian's power to inspect premises where animals are kept; investigations and search warrants.

A. The State Veterinarian and each State Veterinarian's representative shall have the power to conduct inspections of animal shelters, and inspect any business premises where animals are housed or kept, including any boarding establishment, kennel, pet shop, pound, or

the business premises of any dealer, exhibitor or groomer, at any reasonable time, for the purposes of determining if a violation of: (i) this chapter; (ii) any other state law governing the care, control or protection of animals; or (iii) any other state law governing property rights in animals has occurred.

B. Provisions for investigation of suspected violations of this chapter and other laws pertaining to animals are provided in ~~§ 3.1-796.107~~ 3.2-6564. Provisions for obtaining a warrant and the power of search for violations of animal cruelty laws are provided in ~~§ 3.1-796.113~~ 3.2-6568.

**Drafting Note: Technical changes.**

## Article 2.

### Animal Welfare.

~~§ 3.1-796.68~~ 3.2-6503. Care of *companion* animals by owner; penalty.

A. Each owner shall provide for each of his companion animals:

1. Adequate feed;
2. Adequate water;
3. Adequate shelter that is properly cleaned;
4. Adequate space in the primary enclosure for the particular type of animal depending upon its age, size, species, and weight;
5. Adequate exercise;
6. Adequate care, treatment, and transportation; and
7. Veterinary care when needed or to prevent suffering or disease transmission.

The provisions of this section shall also apply to every pound, animal shelter, or other releasing agency, and every foster care provider, dealer, pet shop, exhibitor, kennel, groomer, and boarding establishment. This section shall not require that animals used as food for other animals be euthanized.

~~B. Game and wildlife species shall be cared for in accordance with regulations promulgated by the Board of Game and Inland Fisheries by January 1, 1994.~~

~~EB.~~ Violation of this section is a Class 4 misdemeanor.

**Drafting Note: Deleted subsection B, Department of Game and Inland Fisheries has established a permitting process for regulating the care of game and wildlife species.**

~~§ 3.1-796.73~~ 3.2-6504. Abandonment of animal; penalty.

No person shall abandon or dump any animal. Violation of this section is a Class 3 misdemeanor. Nothing in this section shall be construed to prohibit the release of an animal by its owner to a pound, animal shelter, or other releasing agency.

**Drafting Note: No changes.**

~~§ 3.1-796.77~~ 3.2-6505. Disposal of animals by means of decompression chamber prohibited.

No animal shall be euthanized pursuant to the provisions of this chapter by means of a high altitude decompression chamber.

**Drafting Note: No changes.**

~~§ 3.1-796.74~~ 3.2-6506. Exceptions regarding veterinarians.

Sections ~~3.1-796.68—3.2-6503, 3.2-6504, 3.2-6508 through 3.1-796.73, 3.1-796.78 through 3.1-796.83:2, 3.1-796.105 through 3.1-796.108, 3.1-796.120 3.2-6519, 3.2-6557, 3.2-6559, 3.2-6561, 3.2-6564, 3.2-6565, and 3.1-796.126:1 3.2-6574 through 3.1-796.126:7 3.2-6580~~ shall not apply to: (i) a place or establishment ~~which~~*that* is operated under the immediate supervision of a duly licensed veterinarian as a hospital or boarding establishment where animals are harbored, boarded and cared for incident to the treatment, prevention, or alleviation of

disease processes during the routine practice of the profession of veterinary medicine; or (ii) animals boarded under the immediate supervision of a duly licensed veterinarian.

**Drafting Note: The provisions included in existing § 3.1-796.120, which have been proposed to be deleted because the subject material is covered elsewhere, will not be applicable to veterinarians.**

~~§ 3.1-796.76~~ 3.2-6507. Injured or sick animal; action by veterinarian.

A. If a licensed veterinarian is called or by his own action comes upon an animal that is sick or injured and the owner of such animal cannot be immediately located, then the licensed veterinarian, in his professional judgment, may treat, hospitalize or euthanize the animal without the permission of the owner. The veterinarian shall make such reports and keep such records of such sick or injured animals as may be prescribed by the Board of Veterinary Medicine, including the information required under subsection B of ~~§ 3.1-796.105~~ 3.2-6557.

B. In no event shall a licensed veterinarian who has acted in good faith and properly exercised professional judgment regarding an animal be subject to liability for his actions in: (i) acting in accordance with subsection A; or (ii) reporting cases of suspected cruelty to animals.

**Drafting Note: Technical changes.**

### Article 3.

#### ~~Sale of Dogs and Cats by Dealers~~ *Transportation and Sale of Animals.*

~~§ 3.1-796.69~~ 3.2-6508. Transporting animals; requirements; penalty.

A. No owner, railroad or other common carrier when transporting any animal shall allow that animal to be confined in any type of conveyance more than twenty-four consecutive hours without being exercised, properly rested, fed and watered as necessary for that particular type and species of animal. A reasonable extension of this time shall be permitted when an accident, storm or other act of God causes a delay. Adequate space in the primary enclosure within any type of conveyance shall be provided each animal depending upon the particular type and species of animal.

B. No person shall import into the Commonwealth, nor export from the Commonwealth, for the purpose of sale or offering for sale any dog or cat under the age of eight weeks without its dam.

C. Violation of this section ~~shall be punishable as~~ a Class 1 misdemeanor.

**Drafting Note: Technical changes.**

~~§ 3.1-796.72~~ 3.2-6509. Misrepresentation of animal's condition; penalties.

No person shall misrepresent the physical condition of any animal at the animal's sale, trade, delivery, or other method of transfer. For the purpose of this section, misrepresentation shall include selling, trading, delivering or otherwise transferring an animal to another person with the knowledge that the animal has an infection, communicable disease, parasitic infestation, abnormality or other physical defect that is not made known to the person receiving the animal. ~~However, sale~~ *The sale* of an agricultural animal that has external or internal parasites that are not made known to the person receiving the animal shall not be a violation of this section unless the animal is clinically ill or debilitated due to such parasites at the time of sale, trade, delivery or transfer of the animal. Violation of this section ~~shall be punishable as~~ a Class 3 misdemeanor.

**Drafting Note: Technical changes.**

~~§ 3.1-796.70~~ 3.2-6510 ~~Sale, etc., of unweaned or certain immature animals prohibited, vaccinations required for dogs and cats; penalty.~~

A. No person shall sell, raffle, give away, or offer for sale as pets or novelties, or offer or give as a prize, premium, or advertising device any living chicks, ducklings, or other fowl under two months old in quantities of less than six or any unweaned mammalian companion animal or any dog *or cat* under the age of seven weeks without its dam, ~~or any cat under the age of seven~~

~~weeks without its~~ queen. Dealers may offer immature fowl, unweaned mammalian companion animals, dogs or cats under the age of seven weeks for sale as pets or novelties with the requirement that prospective owners take possession of the animals only after fowl have reached two months of age, mammalian companion animals have been weaned, and dogs and cats are at least seven weeks of age. Nothing in this section shall prohibit the sale, gift, or transfer of an unweaned animal: (i) as food for other animals; (ii) with the lactating dam or queen or a lactating surrogate dam or queen that has accepted the animal; (iii) due to a concern for the health or safety of the unweaned animal; or (iv) to animal control, an animal shelter, or a veterinarian.

B. Dealers shall provide all dogs and cats with current vaccinations against contagious and infectious diseases, as recommended in writing and considered appropriate for the animal's age and breed by a licensed veterinarian, or pursuant to written recommendations provided by the manufacturer of such vaccines at least five days before any new owner takes possession of the animal. For dogs, the vaccinations required by this subsection shall include at a minimum canine distemper, adenovirus type II parainfluenza, and parvovirus. For cats, the vaccinations required by this subsection shall include at a minimum rhinotracheitis, calicivirus, and panleukopenia. Dealers shall provide the new owner with the dog's or cat's immunization history.

C. A violation of this section is ~~punishable as~~ a Class 3 misdemeanor.

**Drafting Note: Technical changes.**

§ ~~3.1-796.71~~ 3.2-6511. Failure of dealer or pet shop to provide adequate care, ~~etc.~~; penalty.

Any dealer or pet shop that fails to adequately house, feed, water, exercise or care for animals in his or its possession or custody as provided for under this chapter ~~shall be~~ guilty of a Class 3 misdemeanor. Such animals shall be subject to seizure and impoundment, and upon conviction of such person the animals may be sold, euthanized, or disposed of as provided by § ~~3.1-796.96~~ 3.2-6546 for licensed, tagged, or tattooed animals. Such failure ~~shall~~ is also ~~constitute~~ grounds for revocation of a permit or certificate of registration after public hearing. Any funds that result from such sale shall be used first to pay the costs of the local jurisdiction for the impoundment and disposition of the animals, and any funds remaining shall be paid to the owner, if known. If the owner is not found, the remaining funds shall be paid into the Literary Fund.

**Drafting Note: Technical changes.**

§ ~~3.1-796.78~~ 3.2-6512. Sale without pet dealer's animal history certificate violation of Consumer Protection Act; contents of certificate.

It shall be a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) for any pet dealer to sell a dog or cat within the Commonwealth stating, promising or representing that the animal is registered or capable of being registered with any animal pedigree registry organization, without providing the consumer with a pet dealer's animal history certificate at the time the consumer takes possession of the dog or cat. The pet dealer's animal history certificate shall be signed by the pet dealer, his agent or employee, and shall contain the following information:

1. The animal's breed, sex, age, color, and birth date;
2. The name and address of the person from whom the pet dealer purchased the animal;
3. The breeder's name and address;
4. The name and registration number of the animal's ~~sire and dam~~ parents;
5. If the animal has been so examined, the date on which the animal has been examined by a licensed veterinarian, the name and address of such veterinarian, and a brief statement of any findings made; and

6. A statement of all vaccinations administered to the animal, including the identity and quantity of the vaccine, and the name and address of the person or licensed veterinarian administering or supervising the vaccinations.

The information contained in the pet dealer's animal history certificate required herein shall be informative only, and the pet dealer shall not be responsible in any manner for the accuracy of such information unless he knows or has reason to know that such information is erroneous.

A copy of the pet dealer's animal history certificate signed by the consumer shall be maintained by the pet dealer for a period of one year following the date of sale.

**Drafting Note: Technical changes.**

§ ~~3.1-796.79~~ 3.2-6513. Inclusion of false or misleading statements in certificate violation of Consumer Protection Act.

It shall be a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) for a pet dealer to include in the pet dealer's animal history certificate provided for in § ~~3.1-796.78~~ 3.2-6512 any false or misleading statement regarding the information to be contained therein.

**Drafting Note: Technical changes.**

§ ~~3.1-796.80~~ 3.2-6514. Consumer remedies for receipt of diseased animal upon certification by veterinarian.

A. If, at any time within ~~ten~~ 10 days following receipt of an animal described as being registered or capable of being registered with any animal pedigree organization and subject to this chapter, a licensed veterinarian certifies such animal to be unfit for purchase due to illness, a congenital defect deleterious to the health of the animal, or the presence of symptoms of a contagious or infectious disease, the pet dealer shall afford the consumer the right to choose one of the following options:

1. The right to return the animal and receive a refund of the purchase price including sales tax; or
2. The right to return the animal and to receive an exchange animal of equivalent value from the dealer, subject to the choice of the consumer.

The refund or reimbursement required by this section shall be made by the pet dealer not later than ~~ten~~ 10 business days following receipt of a signed veterinary certification as ~~hereinafter~~ provided in § 3.2-6515.

**Drafting Note: The cross reference added to the end of the section refers to existing § 3.1-796.81.**

§ ~~3.1-796.81~~ 3.2-6515. Written notice of consumer remedies required to be supplied by pet dealers.

A pet dealer shall give the notice hereinafter set forth in writing to a consumer prior to the delivery of a dog or cat. Such notice shall be embodied in ~~either~~ a written contract, the pet dealer's animal history certificate, or a separate document and shall state in ten point bold face type the following:

NOTICE

The sale of certain dogs and cats described as being registered or capable of being registered with any animal pedigree organization is subject to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.). In the event that a licensed veterinarian certifies your animal to be unfit for purchase within ten days following receipt of your animal, you may choose: (i) to return your animal and receive a refund of the purchase price; or (ii) to return the animal and receive an exchange animal of your choice of equivalent value.

In order to exercise these rights you must present a written veterinary certification that the animal is unfit to the pet dealer within three business days after receiving such certification.

If the pet dealer has promised to register your animal or to provide the papers necessary therefor and fails to do so within 120 days following the date of contract, you are entitled to return the animal and receive a refund of the purchase price or to retain the animal and receive a refund of an amount not to exceed fifty percent of the purchase price.

**Drafting Note: Technical changes.**

§ ~~3.1-796.82~~ 3.2-6516. Failure of pet dealer to effect registration after promise; violation of Consumer Protection Act; remedies; veterinary certification; finding of intestinal parasites; illness subsequent to sale.

A. It shall be a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) for a pet dealer to state, promise, or represent that a dog or cat is registered or capable of being registered with any animal pedigree registry organization if the pet dealer shall then fail to either effect such registration or provide the consumer with the documents necessary therefor within 120 days following the date of sale of such animal. In the event that a pet dealer fails to effect registration or to provide the necessary documents therefor within 120 days following the date of sale, the consumer shall be entitled to choose one of the following options:

1. To return the animal and to receive a refund of the purchase price plus sales tax; or
2. To retain the animal and to receive a refund of an amount not to exceed fifty percent of the purchase price and sales tax.

B. The veterinary certification and statement required herein shall be presented to the pet dealer not later than three business days following receipt thereof by the consumer and shall contain the following information:

1. The name of the owner;
2. The date or dates of the examination;
3. The breed, color, sex, and age of the animal;
4. A description of the veterinarian's findings;
5. A statement that the veterinarian certifies the animal to be unfit for purchase; and
6. The name and address of the certifying veterinarian and the date of the certification.

C. A veterinary finding of intestinal parasites shall not be grounds for declaring the animal unfit for purchase unless the animal is clinically ill due to such condition. An animal may not be found unfit for purchase on account of an injury sustained or illness contracted subsequent to the consumer taking possession thereof.

**Drafting Note: No changes.**

§ ~~3.1-796.83~~ 3.2-6517. Remedies cumulative.

The remedies provided for pursuant to this article are cumulative and not exclusive and shall be in addition to any other remedy provided for by law.

**Drafting Note: No changes.**

Article ~~3.1~~ 4.

Boarding Establishments *and* Groomers.

§ ~~3.1-796.83:1~~ 3.2-6518. Boarding establishments and groomers; veterinary care requirements; consumer notification; penalty.

A. When an animal is boarded at a boarding establishment, or under the care, custody or subject to the actions of a groomer, the boarding establishment or groomer shall be responsible for providing the animal care requirements for each animal as specified in § ~~3.1-796.68~~ 3.2-6503.

B. If an animal becomes ill or injured while in the custody of the boarding establishment or groomer, the boarding establishment or groomer shall provide the animal with emergency veterinary treatment for the illness or injury. The consumer shall bear the reasonable and necessary costs of emergency veterinary treatment for any illness or injury occurring while the animal is in the custody of the boarding establishment or groomer. The boarding establishment



or groomer shall pay for veterinary treatment of any injury that the animal sustains while at the establishment or under the care or custody of a groomer if the injury resulted from the establishment's or groomer's failure, whether accidental or intentional, to provide the care required by ~~§ 3.1-796.68~~ 3.2-6503, or if the injury is a result of the actions of the boarding establishment or groomer; ~~however, boarding~~. *Boarding* establishments and groomers shall not be required to bear the cost of veterinary treatment for injuries resulting from the animal's self-mutilation.

C. If an animal is seized from a boarding establishment or groomer because of the establishment's or groomer's failure to provide adequate food, water, shelter, exercise, and care as defined in ~~§ 3.1-796.66~~ 3.2-6500 and required by ~~§ 3.1-796.68~~ 3.2-6503 or because of any other violation of this chapter, the animal shall be returned to the rightful owner as soon as possible or, if the owner refuses to reclaim the animal, be impounded and disposition made pursuant to ~~§ 3.1-796.115~~ 3.2-6569.

D. Violation of this section by a boarding establishment or groomer is a Class 1 misdemeanor.

**Drafting Note: Technical changes.**

~~§ 3.1-796.83:2~~ 3.2-6519. Written notice of consumer remedies required to be supplied by boarding establishments; penalty.

A. A boarding establishment shall give the notice hereinafter set forth in writing to a consumer prior to the consumer's delivery of the animal to the boarding establishment. Such notice shall be embodied in a written document and shall state in ten-point bold-faced type the following:

NOTICE

The boarding of animals is subject to Article ~~3.1-4~~ (§ ~~3.1-796.83:1~~ 3.2-6518 et seq.) of Chapter ~~27.465~~ of Title ~~3.1~~ 3.2. If your animal becomes ill or injured while in the custody of the boarding establishment, the boarding establishment shall provide the animal with emergency veterinary treatment for the illness or injury.

The consumer shall bear the reasonable and necessary costs of emergency veterinary treatment for any illness or injury occurring while the animal is in the custody of the boarding establishment. The boarding establishment shall bear the expenses of veterinary treatment for any injury the animal sustains while at the boarding establishment if the injury resulted from the establishment's failure, whether accidental or intentional, to provide the care required by ~~§ 3.1-796.68; however, boarding~~ 3.2-6503. *Boarding* establishments shall not be required to bear the cost of veterinary treatment for injuries resulting from the animal's self-mutilation.

B. In addition, the boarding establishment shall display the following notice, in ten-point bold-faced type, on a sign placed in a conspicuous location and manner at the boarding establishment's intake area:

PUBLIC NOTICE

THE BOARDING OF ANIMALS BY A BOARDING ESTABLISHMENT IS SUBJECT TO ARTICLE ~~3.1-4~~ (§ ~~3.1-796.83:1~~ 3.2-6518 et seq.) OF CHAPTER ~~27.4~~ 65 OF TITLE ~~3.1~~ 3.2 OF THE CODE OF VIRGINIA. YOU HAVE SPECIFIC REMEDIES WHEN BOARDING ANIMALS IN THIS OR ANY OTHER BOARDING ESTABLISHMENT IN VIRGINIA. A COPY IS AVAILABLE IMMEDIATELY UPON REQUEST AND IS TO BE PRESENTED TO YOU AT THE TIME OF INTAKE IN THE FORM OF A WRITTEN DOCUMENT. IF YOU HAVE A COMPLAINT, YOU MAY CONTACT YOUR LOCAL LAW-ENFORCEMENT OFFICER OR THE VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, RICHMOND, VIRGINIA.

C. Failure to display or provide the consumer with the written notice as required by this section is ~~punishable~~ as a Class 3 misdemeanor.

**Drafting Note: Technical changes.**

§ ~~3.1-796.75~~–3.2-6520. Procedure for animals left unclaimed with veterinarian or boarding establishment after public notice; lien; sale.

Any animal not claimed by its owner from a licensed veterinarian or boarding establishment within fourteen days after a letter of notice has been sent to the owner, by the veterinarian or boarding establishment, may be sold by the veterinarian or boarding establishment. The animal may be sold at public or private sale for fair compensation to a person capable of providing care consistent with this chapter. Any expense incurred by the veterinarian or boarding establishment becomes a lien on the animal and the proceeds of the sale shall first discharge this lien. Any balance of the proceeds shall be paid to the owner. If the owner cannot be found within the next ensuing thirty days, the balance shall be paid to the ~~state treasury~~ *Literary Fund*. If no purchaser is found, the animal may be offered for adoption or euthanized.

**Drafting Note: Changed the receiving fund from the state treasury to the Literary Fund to be consistent with the destination of funds from proposed § 3.2-6511, Failure of dealer or pet shop to provide adequate care; penalty.**

*Article 5.*

*Rabies Control and Licensing of Dogs and Cats.*

§ ~~3.1-796.97:1~~–3.2-6521. Rabies inoculation of dogs and domesticated cats; availability of certificate; *rabies clinics*.

A. The owner or custodian of all dogs and domesticated cats four months of age and older shall have them currently vaccinated for rabies by a licensed veterinarian or licensed veterinary technician who is under the immediate and direct supervision of a licensed veterinarian on the premises. The supervising veterinarian on the premises shall provide the owner of the dog or the custodian of the domesticated cat with a certificate of vaccination. The owner of the dog or the custodian of the domesticated cat shall furnish within a reasonable period of time, upon the request of an animal control officer, humane investigator, law-enforcement officer, State Veterinarian's representative, or official of the Department of Health, the certificate of vaccination for such dog or cat. The vaccine used shall be licensed by the ~~United States~~ *U.S.* Department of Agriculture for use in that species.

*B. Rabies clinics, approved by the appropriate health department and governing body, shall be held at least once per year when the governing body finds that the number of resident veterinarians is otherwise inadequate to meet the need.*

**Drafting Note: Proposed subsection B is moved from existing § 3.1-796.97.**

§ ~~3.1-796.98~~–3.2-6522. Rabid animals.

When there is sufficient reason to believe that a rabid animal is at large, the governing body of any ~~county, city or town~~ *locality* shall have the power to pass an emergency ordinance that shall become effective immediately upon passage, requiring owners of all dogs and cats therein to keep the same confined on their premises unless leashed under restraint of the owner in such a manner that persons or animals will not be subject to the danger of being bitten by the rabid animal. Any such emergency ordinance enacted pursuant to the provisions of this section shall be operative for a period not to exceed 30 days unless renewed by the governing body of such ~~county, city or town~~ *locality*. The governing body of any ~~county, city or town~~ *locality* shall also have the power and authority to pass ordinances restricting the running at large in their respective jurisdiction of dogs and cats ~~which~~ *that* have not been inoculated or vaccinated against rabies and to provide penalties for the violation thereof.

Dogs or cats showing active signs of rabies or suspected of having rabies shall be confined under competent observation for such a time as may be necessary to determine a diagnosis. If confinement is impossible or impracticable, such dog or cat shall be euthanized by one of the methods approved by the State Veterinarian as provided in § ~~3-1-796.96~~ 3.2-6546.

Every person having knowledge of the existence of an animal apparently afflicted with rabies shall report immediately to the local health department the existence of such animal, the place where seen, the owner's name, if known, and the symptoms suggesting rabies.

Any dog or cat, for which no proof of current rabies vaccination is available, and ~~which~~ *that* is exposed to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, by an animal believed to be afflicted with rabies, shall be confined in a pound, kennel or enclosure approved by the health department for a period not to exceed six months at the expense of the owner; ~~however, if~~ *If* this is not feasible, the dog or cat shall be euthanized by one of the methods approved by the State Veterinarian as provided in § ~~3-1-796.96~~ 3.2-6546. A rabies vaccination shall be administered prior to release. Inactivated rabies vaccine may be administered at the beginning of confinement. Any dog or cat so bitten, or exposed to rabies through saliva or central nervous system tissue, in a fresh open wound or mucous membrane with proof of a valid rabies vaccination, shall be revaccinated immediately following the bite and shall be confined to the premises of the owner, or other site as may be approved by the local health department, for a period of 45 days.

At the discretion of the director of a local health department, any animal that has bitten a person shall be confined under competent observation for 10 days, unless the animal develops active symptoms of rabies or expires before that time. A seriously injured or sick animal may be ~~humanely~~ euthanized as provided in § ~~3-1-796.96~~ 3.2-6546, and its head sent to the Division of Consolidated Laboratory Services of the Department of General Services, or the local health department, for evaluation.

When any potentially rabid animal, other than a dog or cat, exposes or may have exposed a person to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, that animal shall be confined at the discretion of a local health director in a manner approved by the health department or ~~humanely~~ euthanized as provided in § ~~3-1-796.96~~ 3.2-6546 and its head sent to the Division of Consolidated Laboratory Services of the Department of General Services or the local health department for evaluation.

When any animal, other than a dog or cat, is exposed to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, by an animal believed to be afflicted with rabies, that newly exposed animal shall be confined at the discretion of a local health director in a manner approved by the health department or ~~humanely~~ euthanized as provided in § ~~3-1-796.96~~ 3.2-6546.

**Drafting Note: Technical changes.**

§ ~~3-1-796.99~~ 3.2-6523. Inoculation for rabies at animal shelters.

Dogs and cats being adopted from an animal shelter during the period an emergency ordinance is in force, as provided for in § ~~3-1-796.98~~ 3.2-6522 may be inoculated for rabies by a certified animal technician at such shelter if the certified animal technician is under the immediate and direct supervision of a licensed veterinarian.

**Drafting Note: Technical changes.**

§ ~~3-1-796.85~~ 3.2-6524. Unlicensed dogs prohibited; ~~local~~ ordinances for licensing cats.

A. It shall be unlawful for any person other than a releasing agency that has registered as such annually with local animal control to own a dog four months old or older in ~~this~~ *the* Commonwealth unless such dog is licensed, as required by the provisions of this article.

B. The governing body of any ~~county, city or town~~ *locality* may, by ~~local~~ ordinance, prohibit any person other than a releasing agency that has registered as such annually with local

animal control from owning a cat four months old or older within such locality unless such cat is licensed as provided by this article.

**Drafting Note: No changes**

~~§ 3.1-796.100-3.2-6525. Regulations to prevent spread of rabies and running at large of vicious dogs.~~

~~A. The governing body of any county, city or town locality may adopt such ordinances, regulations or other measures as may be deemed reasonably necessary to prevent the spread within its boundaries of the disease of rabies, and to regulate and control the running at large within its boundaries of vicious or destructive dogs. Penalties may be provided for the violation of any such ordinances. If the ordinance declares the existence of an emergency, then the ordinance shall be in force upon passage.~~

~~B. The governing body of any county that has adopted the urban county executive form of government Fairfax County may adopt an ordinance creating a program for the distribution of oral rabies vaccine within its boundaries to prevent the spread of rabies. An ordinance enacted pursuant to this subsection shall contain the following provisions:~~

~~1. Notice shall be given to the owner or occupant of property prior to the entry upon the property for the purpose of the distribution of oral rabies vaccine or the use of any other methods to place oral rabies vaccine on the property. Notice shall be given by: (i) sending two letters by first-class mail, at successive intervals of not less than two weeks set forth in the ordinance; and (ii) printing a copy thereof, at least once, in a newspaper of general circulation in the locality concerned. Written notice shall be in a form approved by the governing body and shall include a description of the purpose for which entry upon the property is to be made, the time and method of rabies vaccine distribution at the property, and the submission deadline for requests by any owner or occupant of property who wishes to be excluded from the oral rabies vaccine distribution program.~~

~~2. The owner or occupant of property may refuse to allow the distribution of oral rabies vaccine upon such property. The ordinance shall establish procedures to be followed by any owner or occupant who wishes to be excluded from the oral rabies vaccine distribution program, including the time and method by which requests for nonparticipation must be received. If the governing body receives a request for nonparticipation by the owner or occupant of property for the distribution of oral rabies vaccine, no further action shall be taken to distribute oral vaccine, on such property for a period of one year.~~

~~Nothing in this subsection shall be construed to limit any authority for the distribution of oral rabies vaccine otherwise provided by law.~~

**Drafting Note: Deleted provisions that addresses the running at large of vicious and destructive dogs because it is addressed in existing §§ 3.1-796.93 and 3.1-796.93:1**

~~§ 3.1-796.90 3.2-6526. What dog or cat license shall consist of.~~

~~A. A dog or cat license shall consist of a license receipt and a metal tag. The tag shall be stamped or otherwise permanently marked to show the jurisdiction issuing the license and bear a serial number or other identifying information prescribed by the locality.~~

~~B. No license tag shall be issued for any dog or cat unless there is presented, to the treasurer or other officer of the locality, or other agent charged by law with the duty of issuing license tags for dogs and cats, satisfactory evidence that such dog or cat has been inoculated or vaccinated against rabies by a currently licensed veterinarian or currently licensed veterinary technician who was under the immediate and direct supervision of a licensed veterinarian on the premises.~~

**Drafting Note: Proposed subsection B is moved from existing § 3.1-796.97.**

~~§ 3.1-796.86-3.2-6527. How to obtain license.~~

~~Any person may obtain a dog license or cat license if required by an ordinance adopted pursuant to subsection B of § 3.1-796.853.2-6524, by making oral or written application to the~~

treasurer of the ~~county or city in which~~ *locality where* such person resides, accompanied by the amount of license tax and current certificate of vaccination as required by this article or satisfactory evidence that such certificate has been obtained. The treasurer or other officer charged with the duty of issuing dog and cat licenses shall only have authority to license dogs and cats of resident owners or custodians who reside within the boundary limits of his county or city and may require information to this effect from any applicant. Upon receipt of proper application and current certificate of vaccination as required by this article or satisfactory evidence that such certificate has been obtained, the treasurer or other officer charged with the duty of issuing dog and cat licenses shall issue a license receipt for the amount on which he shall record the name and address of the owner or custodian, the date of payment, the year for which issued, the serial number of the tag, whether dog or cat, whether male or female, whether spayed or neutered, or whether a kennel, and deliver the metal license tags or plates provided for herein. The information thus received shall be retained by the treasurer, open to public inspection, during the period for which such license is valid. The treasurer may establish substations in convenient locations in the county or city and appoint agents for the collection of the license tax and issuance of such licenses.

**Drafting Note: Technical changes.**

§ ~~3.1-796.87~~ 3.2-6528. Amount of license tax.

The governing body of each county or city shall impose by ordinance a license tax on the ownership of dogs within its jurisdiction. The governing body of any ~~county, city or town which~~ *locality that* has adopted an ordinance pursuant to subsection B of § ~~3.1-796.85~~ 3.2-6524 shall impose by ordinance a license tax on the ownership of cats within its jurisdiction. The governing body may establish different rates of taxation for ownership of female dogs, male dogs, spayed or neutered dogs, female cats, male cats, and spayed or neutered cats. The tax for each dog or cat shall not be less than ~~one dollar~~ \$1 and not more than ~~ten dollars~~ \$10 for each year. If the dog or cat has been spayed, the tax shall not exceed the tax provided for a male dog or cat. Any ordinance may provide for a license tax for kennels of ~~ten~~10, ~~twenty~~20, ~~thirty~~30, ~~forty~~40, or ~~fifty~~50 dogs or cats not to exceed ~~fifty dollars~~ \$50 for any one such block of kennels.

No license tax shall be levied on any dog that is trained and serves as a guide dog for a blind person, that is trained and serves as a hearing dog for a deaf or hearing impaired person or that is trained and serves as a service dog for a mobility-impaired person.

As used in this section, "hearing dog" means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond and "service dog" means a dog trained to accompany its owner for the purpose of carrying items, retrieving objects, pulling a wheelchair or other such activities of service or support.

**Drafting Note: Technical changes.**

§ ~~3.1-796.87~~:~~13.2-6529~~. Veterinarians to provide treasurer with rabies certificate information; civil penalty.

A. Each veterinarian who vaccinates a dog against rabies or directs a veterinary technician in his employ to vaccinate a dog against rabies shall provide the owner a copy of the rabies vaccination certificate. The veterinarian shall forward within 45 days a copy of the rabies vaccination certificate or the relevant information contained in such certificate to the treasurer of the locality ~~in which~~ *where* the vaccination occurs.

The rabies vaccination certificate shall include at a minimum the signature of the veterinarian, the animal owner's name and address, the species of the animal, the sex, the age, the color, the primary breed, whether or not the animal is spayed or neutered, the vaccination number, and expiration date. The rabies vaccination certificate shall indicate the locality ~~in which~~ *where* the animal resides.

B. It shall be the responsibility of the owner of each vaccinated animal that is not already licensed to apply for a license for the vaccinated dog. Beginning January 1, 2008, if the treasurer

determines, from review of the rabies vaccination information provided by veterinarians, that the owner of an unlicensed dog has failed to apply for a license within 90 days of the date of vaccination, the treasurer shall transmit an application to the owner and request the owner to submit a completed application and pay the appropriate fee. Upon receipt of the completed application and payment of the license fee, the treasurer or other agent charged with the duty of issuing the dog licenses shall issue a license receipt and a permanent tag.

The treasurer shall remit any rabies vaccination certificate received for any animal owned by an individual residing in another locality to the local treasurer for the appropriate locality.

Any veterinarian that willfully fails to provide the treasurer of any locality with a copy of the rabies vaccination certificate or the information contained in such certificate may be subject to a civil penalty not to exceed \$10 per certificate. Monies raised pursuant to this subsection shall be placed in the locality's general fund for the purpose of animal control activities including, ~~but not limited to,~~ spay or neuter programs.

~~This section shall become effective July 1, 2007.~~

**Drafting Note: Technical changes.**

~~§ 3.1-796.88~~ 3.2-6530. When license tax payable.

A. The license tax as prescribed in § ~~3.1-796.87~~3.2-6528 is due not later than 30 days after a dog or cat has reached the age of four months, or not later than 30 days after an owner acquires a dog or cat four months of age or older and each year thereafter.

B. Licensing periods for individual dogs and cats may be equal to and may run concurrently with the rabies vaccination effective period. Any kennel license tax prescribed pursuant to § ~~3.1-796.87~~3.2-6528 shall be due on January 1 and not later than January 31 of each year.

**Drafting Note: Technical changes.**

~~§ 3.1-796.92~~ 3.2-6531. Displaying receipts; dogs to wear tags.

Dog and cat license receipts shall be carefully preserved by the licensees and exhibited promptly on request for inspection by any animal control officer or other officer. Dog license tags shall be securely fastened to a substantial collar by the owner or custodian and worn by such dog. It shall be unlawful for the owner to permit any licensed dog four months old or older to run or roam at large at any time without a license tag. The owner of the dog may remove the collar and license tag required by this section when: (i) the dog is engaged in lawful hunting; (ii) the dog is competing in a dog show; (iii) the dog has a skin condition ~~which~~*that* would be exacerbated by the wearing of a collar; (iv) the dog is confined; or (v) the dog is under the immediate control of its owner.

**Drafting Note: No changes.**

~~§ 3.1-796.91~~ 3.2-6532. Duplicate license tags.

If a dog or cat license tag is lost, destroyed or stolen, the owner or custodian shall at once apply to the treasurer or his agent who issued the original license for a duplicate license tag, presenting the original license receipt. Upon affidavit of the owner or custodian before the treasurer or his agent that the original license tag has been lost, destroyed or stolen, he shall issue a duplicate license tag ~~which~~*that* the owner or custodian shall immediately affix to the collar of the dog. The treasurer or his agent shall endorse the number of the duplicate and the date issued on the face of the original license receipt. The fee for a duplicate tag for any dog or cat shall be ~~one dollar~~\$1.

**Drafting Note: No changes.**

~~§ 3.1-796.89~~ 3.2-6533. Effect of dog or cat not wearing collar ~~as~~ *a license tag* as evidence.

Any dog or cat not wearing a collar bearing a valid license tag shall prima facie be deemed to be unlicensed, and in any proceedings under this chapter the burden of proof of the fact that such dog or cat has been licensed, or is otherwise not required to bear a tag at the time, shall be on the owner of the dog or cat.

**Drafting Note: Technical changes.**

§ ~~3.1-796.101~~ 3.2-6534. Disposition of funds.

Unless otherwise provided by ordinance of the local governing body, the treasurer of each locality shall keep all moneys collected by him for dog and cat license taxes in a separate account from all other funds collected by him. The locality shall use the funds for the following purposes:

1. The salary and expenses of the animal control officer and necessary staff;
2. The care and maintenance of a pound;
3. The maintenance of a rabies control program;
4. Payments as a bounty to any person neutering or spaying a dog up to the amount of one year of the license tax as provided by ordinance;
5. Payments for compensation as provided in § ~~3.1-796.118~~ 3.2-6553; and
6. Efforts to promote sterilization of dogs and cats.

Any part or all of any surplus remaining in such account on December 31 of any year may be transferred by the governing body of such locality into the general fund of such locality.

**Drafting Note: Technical changes.**

§ ~~3.1-796.102~~ 3.2-6535. Supplemental funds.

Localities may supplement the dog and cat license tax fund with other funds as they consider appropriate. ~~However, localities~~ Localities shall supplement the dog and cat license tax fund to the extent necessary to provide for the salary and expenses of the animal control officer and staff and the care and maintenance of a pound as provided in subdivisions 1 and 2 of § ~~3.1-796.101~~ 3.2-6534.

**Drafting Note: Technical Changes.**

§ ~~3.1-796.103~~ 3.2-6536. Payment of license tax subsequent to summons.

Payment of the license tax subsequent to a summons to appear before a court for failure to pay the license tax within the time required shall not operate to relieve such owner from the penalties provided.

**Drafting Note: No changes.**

Article 46.

Authority of Local Governing Bodies ~~and Licensing of Dogs.~~

§ ~~3.1-796.84~~ 3.2-6537. ~~Local ordinances~~ Ordinances; penalties.

The governing body of any ~~county, city or town~~ locality may, by ~~local~~ ordinance, require a person operating a pet shop or operating as a dealer in companion animals to obtain a permit. Such local governing body may charge no more than \$50 per year for such permit. The revenues derived therefrom shall be used for the administration and enforcement of such ordinance.

The aforementioned ~~local~~ ordinance may provide: (i) that records be kept by the permittees as are deemed necessary; (ii) for public hearing prior to issuance, renewal or revocation of any such permit; or (iii) for the denial of issuance, denial of renewal or for the revocation of such permit for fraudulent practices or inhumane treatment of the animals dealt with by the permittee.

The ~~local~~ ordinance may provide for either a criminal penalty not to exceed a Class 3 misdemeanor or a civil penalty not to exceed \$500 for any violation of the ordinance. Any civil penalties collected shall be deposited by the local treasurer pursuant to § ~~3.1-796.101~~ 3.2-6534.

**Drafting Note: Technical changes.**

§ ~~3.1-796.93~~ 3.2-6538. Governing body of ~~county, city or town~~ any locality may prohibit dogs from running at large.

The governing ~~bodies~~ body of the ~~counties, cities and towns of this Commonwealth are hereby authorized to~~ any locality may prohibit the running at large of all or any category of dogs

in all or any designated portion of such ~~county, city or town~~ *locality* during such months as they may designate. Governing bodies may also require that dogs be confined, restricted or penned up during such periods. For the purpose of this section, a dog shall be deemed to run at large while roaming, running or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control. Any person who permits his dog to run at large, or remain unconfined, unrestricted or not penned up shall be deemed to have violated the provisions of this section.

**Drafting Note: Technical changes.**

§ ~~3.1-796.95-3.2-6539~~. ~~Referendum on ordinance~~ *Ordinance* requiring dogs to be kept on leash, etc.

The governing body of any ~~city~~ *locality* may adopt ~~regulations or ordinances~~ requiring that dogs within ~~the confines of~~ any such ~~city~~ *locality* be kept on a leash or otherwise restrained and may, by resolution directed to the circuit court ~~of such city~~, request the court to order a referendum as to whether any such ordinance so adopted shall become effective ~~in the city~~. Such referendum shall be held and conducted, and the results thereof ascertained and certified in accordance with § 24.2-684. The court shall require the governing body to give appropriate notice of the time, place and subject matter of such referendum.

The results of the referendum shall not be binding upon the governing body of ~~any such city~~ *the locality* but may be used in ascertaining the sense of the voters.

**Drafting Note: Placed sections concerning unleashed or at large dogs together. Replaced the term "city" with "locality" because existing § 3.1-796.94 authorizes any locality to adopt ordinances which parallel this section.**

§ ~~3.1-796.93-1-3.2-6540~~. Control of dangerous or vicious dogs; penalties.

A. As used in this section:

"Dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. ~~However, when~~ *When* a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous: (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite; (ii) if both animals are owned by the same person; (iii) if such attack occurs on the property of the attacking or biting dog's owner or custodian; or (iv) for other good cause as determined by the court. No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event.

"Vicious dog" means a canine or canine crossbreed that has: (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or, on or before July 1, 2006, by an animal control officer as authorized by ~~local~~ ordinance, that it is a dangerous dog, provided that its owner has been given notice of that finding.

B. Any law-enforcement officer or animal control officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog or vicious dog shall apply to a magistrate of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner



that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harbinger of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of § ~~3.1-796.1193.2-6562~~. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

C. No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was: (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian;; (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian;; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous dog or a vicious dog.

D. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

E. The owner of any animal found to be a dangerous dog shall, within 10 days of such finding, obtain a dangerous dog registration certificate from the local animal control officer or treasurer for a fee of \$50, in addition to other fees that may be authorized by law. The local animal control officer or treasurer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained. The animal control officer shall provide a copy of the dangerous dog registration certificate and verification of compliance to the State Veterinarian.

F. All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons 18 years of age or older who present satisfactory evidence: (i) of the animal's current rabies vaccination, if applicable;; (ii) that the animal has been neutered or spayed;; and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that: (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property; and (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least \$100,000, that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least \$100,000.

G. While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to

prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

H. The owner of any dog found to be dangerous shall register the animal with the Commonwealth of Virginia Dangerous Dog Registry, as established under § ~~3.1-796.93~~~~33.2-6542~~, within 45 days of such a finding by ~~any appropriate court of competent jurisdiction~~.

The owner shall also cause the local animal control officer to be promptly notified of: (i) the names, addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) tattoo or chip identification information or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

I. After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the local animal control authority to be notified if the animal: (i) is loose or unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has moved and the new address to which the animal has been moved.

J. Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:

1. Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person;

2. Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury; or

3. Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking and causing serious bodily injury to any person.

The provisions of this subsection shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.

K. The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section is guilty of a Class 1 misdemeanor.

L. All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund in the treasury of the locality for the purpose of paying the expenses of any training course required under § ~~3.1-796.104~~~~13.2-6556~~.

M. The governing body of any locality may enact an ordinance parallel to this statute regulating dangerous and vicious dogs; ~~provided, however, that no~~ *No* locality may impose a felony penalty for violation of such ~~local~~ ordinances.

**Drafting Note: Technical changes.**

§ ~~3.1-796.93~~~~2-3.2-6541~~. Authority to prohibit training of attack dogs.

~~Any county with the urban county executive form of government~~ *Fairfax County* may enact an ordinance ~~which~~*that* prohibits persons from training dogs on residential property to

attack. As used in this section, "attack" means to attack or respond aggressively, either with or without command. Any such ordinance shall exempt from its provisions the training of dogs owned by any person who resides on the property.

**Drafting Note: No changes.**

~~§ 3.1-796.93:3.2-6542.~~ Establishment of Dangerous Dog Registry.

The Commissioner shall establish the Commonwealth of Virginia Dangerous Dog Registry to be maintained by the ~~Virginia Department of Agriculture and Consumer Services,~~ Office of Veterinary Services. Each owner of any canine or canine crossbreed found by any ~~appropriate court of competent jurisdiction~~ to be a dangerous dog shall be required to register the animal as a dangerous dog within 45 days of such finding. The State Veterinarian shall receive, post, and maintain the information provided by the owner, animal control officers, and other such officials statewide on a website. All information collected for the Dangerous Dog Registry shall be available to animal control officers via the website. Registration shall include the name of the animal, a photograph, sex, age, weight, primary breed, secondary breed, color and markings, whether spayed or neutered, the acts that resulted in the dog being designated as dangerous and associated trial docket information, microchip or tattoo number, address where the animal is maintained, name of the owner, address of the owner, telephone numbers of the owner, and a statement that the owner has complied with the provisions of the dangerous dog order. The address of the owner along with the name and breed of the dangerous dog, the acts that resulted in the dog being deemed dangerous, and information necessary to access court records of the adjudication shall be available to the general public. By January 31 of each year, until such time as the dangerous dog is deceased, the owner shall submit a renewal registration that shall include all information contained in the original registration and any updates. The owner shall verify the information is accurate by annual resubmissions. The owner shall submit to the State Veterinarian a \$100 initial registration fee and a \$35 renewal registration fee. In the event that the dangerous dog is moved to a different location, or contact information for the owner changes in any way at any time, the owner shall submit a renewal containing the address of the new location or other updated information within 10 days of such move or change. There shall be no charge for any updated information provided between renewals. Any funds collected pursuant to this section shall be used by the State Veterinarian to maintain the registry and website. The website list shall be known as the Virginia Dangerous Dog Registry.

Actions of the Department relating to the establishment, operation, and maintenance of the Commonwealth of Virginia Dangerous Dog Registry under this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting Note: No changes.**

~~§ 3.1-796.94-3.2-6543.~~ Governing body of ~~county, city, or town~~ *any locality* may adopt certain ordinances.

A. The governing ~~bodies~~ *body* of ~~counties, cities, and towns~~ *any locality* of the Commonwealth ~~are hereby authorized to~~ *may adopt, and make more stringent, in their discretion,* ordinances ~~which~~ *that* parallel §§ ~~3.1-796.84 3.2-6521 through 3.2-6539, through 3.1-796.93, 3.1-796.95 3.2-6546 through 3.1-796.104 3.2-6555, 3.1-796.115 3.2-6562, 3.2-6569, 3.2-6570, through 3.1-796.119, 3.1-796.121, 3.1-796.122, 3.1-796.126:13.2-6574 through 3.1-796.126:7 3.2-6580, and 3.1-796.127 3.2-6585 through 3.1-796.129 3.2-6590~~ *of this chapter.*

Any funds collected pursuant to the enforcement of ordinances adopted pursuant to the provisions of this section may be used for the purpose of defraying the costs of local animal control, including efforts to promote sterilization of cats and dogs.

~~Nothing in this section shall be construed so as to prevent or restrict any local governing body from adopting local animal control ordinances which are more stringent than §§ 3.1-796.84 through 3.1-796.93, 3.1-796.95 through 3.1-796.104, 3.1-796.115 through 3.1-796.119, 3.1-~~

~~796.121, 3.1 796.122, 3.1 796.126:1 through 3.1 796.126:7, and 3.1 796.127 through 3.1 796.129 of this chapter.~~

~~B. The governing bodies of counties, cities and towns of the Commonwealth are hereby authorized to adopt, in their discretion, ordinances establishing~~ *Any locality may, by ordinance, establish* uniform schedules of civil penalties for violations of specific provisions of ordinances adopted pursuant to this section. ~~However, civil~~ *Civil* penalties may not be imposed for violations of ordinances ~~which~~ *that* parallel § ~~3.1 796.122~~ *3.2-6570*. Designation of a particular violation for a civil penalty shall be in lieu of criminal sanctions and preclude prosecution of such violation as a criminal misdemeanor. The schedule for civil penalties shall be uniform for each type of specified violation and the penalty for any one violation shall not be more than \$150. Imposition of civil penalties shall not preclude an action for injunctive, declaratory or other equitable relief. Moneys raised pursuant to this subsection shall be placed in the locality's general fund.

An animal control officer or law-enforcement officer may issue a summons for a violation. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the ~~county, city or town~~ *locality* issuing the summons or ticket prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged.

**Drafting Note: Technical changes.**

~~§ 3.1 796.94:1~~ *3.2-6544*. Regulation of keeping of animals and fowl.

~~A. Any county~~ *locality* may, ~~whenever, in the judgment of the board of supervisors, the same is necessary~~ for the preservation of public health, regulate by ordinance the keeping of animals or fowl, other than dogs and cats, within a certain distance of residences or other buildings or wells, springs, streams, creeks, or brooks, and provide that all or certain of such animals shall not be kept within certain areas.

~~B. Any county, city, or town~~ *locality* may, by ordinance, prohibit cruelty to and abuse of animals and fowl; and may regulate or prohibit the running at large and the keeping of animals and fowl and provide for the impounding and confiscation of any such animal or fowl found at large or kept in violation of such regulations. Any such ordinance may require that owners of any exotic or poisonous animal found running at large pay a fee to cover the locality's actual cost in locating and capturing or otherwise disposing of the animal.

**Drafting Note: Broadened the scope of the governing bodies that may regulate animals or fowl from "county" to "locality."**

~~§ 3.1 796.94:2~~ *3.2-6545*. Regulation of sale of animals procured from animal shelters.

~~Any city, county or town which~~ *locality that maintains or* supports, in whole or in part, ~~an a pound or~~ animal shelter may by ordinance provide that no person who acquires an animal from such ~~pound or~~ shelter shall be able to sell ~~such~~ *the* animal within a period of six months from the time the animal is acquired from the shelter. Violation of ~~such an~~ *the* ordinance ~~shall constitute~~ *is* a *Class 1* misdemeanor.

**Drafting Note: Pursuant to § 18.2-12, a misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.**

~~§ 3.1 796.96~~ *3.2-6546*. County or city pounds; confinement and disposition of animals; affiliation with foster care providers; penalties; injunctive relief.

*A. For purposes of this section:*

*"Animal" shall not include agricultural animals.*

*"Rightful owner" means a person with a right of property in the animal.*

~~AB.~~ The governing body of each county or city shall maintain or cause to be maintained a pound and shall require dogs running at large without the tag required by § ~~3.1 796.92~~ *3.2-6531* or in violation of an ordinance passed pursuant to § ~~3.1 796.93~~ *3.2-6538* to be confined

therein. Nothing in this section shall be construed to prohibit confinement of other companion animals in such a pound. The governing body of any county or city need not own the facility required by this section but may contract for its establishment with a private group or in conjunction with one or more other local governing bodies. The governing body shall require that :

1. The pound shall be accessible to the public at reasonable hours during the week;
2. The pound shall obtain a signed statement from each of its directors, operators, staff, or animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment, and each pound shall update such statement as changes occur;
3. If a person contacts the pound inquiring about a lost companion animal, the pound shall advise the person if the companion animal is confined at the pound or if a companion animal of similar description is confined at the pound;
4. The pound shall maintain a written record of the information on each companion animal submitted to the pound by an animal shelter in accordance with subsection D of § ~~3.1-796.96:2~~ 3.2-6548 for a period of 30 days from the date the information is received by the pound. If a person contacts the pound inquiring about a lost companion animal, the pound shall check its records and make available to such person any information submitted by an animal shelter or allow such person inquiring about a lost animal to view the written records;
5. The pound shall maintain a written record of the information on each companion animal submitted to the pound by a releasing agency other than a pound or animal shelter in accordance with subdivision F 2 of § ~~3.1-796.96:5~~ 3.2-6549 for a period of 30 days from the date the information is received by the pound. If a person contacts the pound inquiring about a lost companion animal, the pound shall check its records and make available to such person any information submitted by such releasing agency or allow such person inquiring about a lost companion animal to view the written records; and
6. The pound shall maintain a written record of the information on each companion animal submitted to the pound by an individual in accordance with subdivision A 2 of § ~~3.1-796.96:7~~ 3.2-6551 for a period of 30 days from the date the information is received by the pound. If a person contacts the pound inquiring about a lost companion animal, the pound shall check its records and make available to such person any information submitted by the individual or allow such person inquiring about a lost companion animal to view the written records.

**BC.** An animal confined pursuant to this section shall be kept for a period of not less than five days, such period to commence on the day immediately following the day the animal is initially confined in the facility, unless sooner claimed by the rightful owner thereof.

The operator or custodian of the pound shall make a reasonable effort to ascertain whether the animal has a collar, tag, license, tattoo, or other form of identification. If such identification is found on the animal, the animal shall be held for an additional five days, unless sooner claimed by the rightful owner. If the rightful owner of the animal can be readily identified, the operator or custodian of the pound shall make a reasonable effort to notify the owner of the animal's confinement within the next 48 hours following its confinement.

If any animal confined pursuant to this section is claimed by its rightful owner, such owner may be charged with the actual expenses incurred in keeping the animal impounded.

**CD.** If an animal confined pursuant to this section has not been claimed upon expiration of the appropriate holding period as provided by subsection **BC**, it shall be deemed abandoned and become the property of the pound.

Such animal may be ~~humanely destroyed~~ *ethanized in accordance with the methods approved by the State Veterinarian* or disposed of by the methods set forth in subdivisions 1 through 5. No pound shall release more than two animals or a family of animals during any 30-day period to any one person under subdivisions 2, 3, or 4.

1. Release to any humane society, animal shelter, or other releasing agency within the Commonwealth, provided that each humane society, animal shelter, or other releasing agency obtains a signed statement from each of its directors, operators, staff, or animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment and updates such statements as changes occur;

2. Adoption by a resident of the county or city ~~for which~~ *where* the pound is operated and who will pay the required license fee, if any, on such animal, provided that such resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;

3. Adoption by a resident of an adjacent political subdivision of the Commonwealth, ~~provided that such~~ *if the* resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment;

4. Adoption by any other person, provided that such person has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and provided that no ~~animal~~ *dog or cat* may be adopted by any person who is not a resident of the county or city ~~for which~~ *where* the pound is operated, or of an adjacent political subdivision, unless the ~~animal~~ *dog or cat* is first sterilized, and the pound may require that the sterilization be done at the expense of the person adopting the ~~animal~~ *dog or cat*; or

5. Release for the purposes of adoption or euthanasia only, to an animal shelter, or any other releasing agency located in and lawfully operating under the laws of another state, provided that such animal shelter, or other releasing agency: (i) maintains records that would comply with § ~~3.1-796.105~~ *3.2-6557*; (ii) requires that adopted dogs and cats be sterilized; (iii) obtains a signed statement from each of its directors, operators, staff, and animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment, and updates such statement as changes occur; and (iv) has provided to the pound, animal shelter, or other releasing agency within the Commonwealth a statement signed by an authorized representative specifying the entity's compliance with clauses (i) through (iii), and the provisions of adequate care and performance of humane euthanasia, as necessary in accordance with the provisions of this chapter.

For purposes of recordkeeping, release of an animal by a pound to a pound, animal shelter or other releasing agency shall be considered a transfer and not an adoption. If the animal is not first sterilized, the responsibility for sterilizing the animal transfers to the receiving entity.

*Any proceeds deriving from the gift, sale, or delivery of such animals shall be paid directly to the treasurer of the locality. Any proceeds deriving from the gift, sale, or delivery of such animals by an animal shelter or other releasing agency shall be paid directly to the clerk or treasurer of the animal shelter or other releasing agency for the expenses of the society and expenses incident to any agreement concerning the disposing of such animal. No part of the proceeds shall accrue to any individual except for the aforementioned purposes.*

~~DE.~~ Nothing in this section shall prohibit the immediate euthanasia of a critically injured, critically ill, or unweaned animal for humane purposes. Any animal euthanized pursuant to the provisions of this chapter shall be euthanized by one of the methods prescribed or approved by the State Veterinarian.

~~EF.~~ Nothing in this section shall prohibit the immediate euthanasia or disposal by the methods listed in subdivisions 1 through 5 of subsection ~~CD~~ of an animal that has been released to a pound, animal shelter, other releasing agency, or animal control officer by the animal's rightful owner after the rightful owner has read and signed a statement: (i) surrendering all property rights in such animal; (ii) stating that no other person has a right of property in the animal; and (iii) acknowledging that the animal may be immediately euthanized or disposed of in accordance with subdivisions 1 through 5 of subsection ~~CD~~.

~~FG.~~ Nothing in this section shall prohibit any feral dog or feral cat not bearing a collar, tag, tattoo, or other form of identification ~~which~~*that*, based on the written statement of a disinterested person, exhibits behavior that poses a risk of physical injury to any person confining the animal, from being euthanized after being kept for a period of not less than three days, at least one of which shall be a full business day, such period to commence on the day the animal is initially confined in the facility, unless sooner claimed by the rightful owner. The statement of the disinterested person shall be kept with the animal as required by § ~~3.1-796.105~~ ~~3.2-6557~~. For purposes of this subsection, a disinterested person shall not include a person releasing or reporting the animal.

~~GH.~~ No pound shall place a companion animal in a foster home with a foster care provider unless the foster care provider has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and each pound shall update such statement as changes occur. The pound shall maintain the original statement and any updates to such statement in accordance with this chapter and for at least so long as the pound has an affiliation with the foster care provider.

~~HI.~~ A pound that places a companion animal in a foster home with a foster care provider shall ensure that the foster care provider complies with § ~~3.1-796.68~~ ~~3.2-6503~~.

~~IJ.~~ If a pound finds a direct and immediate threat to a companion animal placed with a foster care provider, it shall report its findings to the animal control agency in the locality where the foster care provider is located.

~~J.~~ For purposes of this section:

~~"Animal" shall not include agricultural animals.~~

~~"Rightful owner" means a person with a right of property in the animal.~~

K. The governing body shall require that the pound be operated in accordance with regulations issued by the Board. If this chapter or such regulations are violated, the locality may be assessed a civil penalty by the Board or its designee in an amount that does not exceed \$1,000 per violation. Each day of the violation ~~shall constitute~~*is* a separate offense. In determining the amount of any civil penalty, the Board or its designee shall consider: (i) the history of previous violations at the pound; (ii) whether the violation has caused injury to, death or suffering of, an animal; and (iii) the demonstrated good faith of the locality to achieve compliance after notification of the violation. All civil penalties assessed under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the purposes of this chapter.

L. If this chapter or any laws governing pounds are violated, the Commissioner may bring an action to enjoin the violation or threatened violation of this chapter or the regulations pursuant thereto regarding pounds, in the circuit court where the pound is located. The Commissioner may request the Attorney General to bring such an action, when appropriate.

**Drafting Note: Definitions are moved to the beginning of the section. New language in subdivision D 5 is moved from existing § 3.1-796.120.**

~~§ 3.1-796.96:1-3.2-6547. Disposition of animals other than those in county or city pounds~~  
*Acceptance of animals for research or experimentation; prohibition.*

*No person shall use or accept for the purpose of medical research or experimentation any animal bearing a tag, license, or tattooed identification—shall be used or accepted by any person for the purpose of medical research or experimentation, unless the individual who owns such animal consents thereto in writing.*

**Drafting Note: Technical changes.**

~~§ 3.1-796.96:2-3.2-6548. Animal shelters; confinement and disposition of animals; affiliation with foster care providers; penalties; injunctive relief.~~

A. An animal shelter may confine and dispose of animals in accordance with the provisions of subsections B through ~~F G~~ of § ~~3.1-796.96~~ 3.2-6546.

B. Each animal shelter shall obtain a signed statement from each of its directors, operators, staff, and animal caregivers specifying that the individual has never been convicted of animal cruelty, neglect, or abandonment, and each animal shelter shall update such statement as changes occur.

C. The State Veterinarian or his ~~designee~~ *representative* shall inspect an animal shelter prior to the animal shelter confining or disposing of animals pursuant to this section. The animal shelter shall meet the requirements of all laws with regard to confinement and disposition of animals before the animal shelter is approved to receive animals and provide a reasonable and comfortable climate appropriate for the age, species, condition, size, and type of animal.

D. An animal shelter that confines an animal that has not been received from its owner shall, pursuant to this section, transmit a description of the animal including at least species, color, breed, size, sex, and other identification or markings and where the animal was found, and its contact information, including its name, address, and telephone number, to the pound in the county or city where the animal was found within 48 hours of the animal shelter receiving the animal. An animal shelter that confines and disposes of animals pursuant to this subsection shall be accessible to the public at reasonable hours, shall have its telephone number and address listed in a telephone directory, and shall post its contact information, including at least its name, address, and telephone number, in the pound in the locality where the animal shelter is located.

E. For purposes of recordkeeping, release of an animal by an animal shelter to a pound, animal shelter or other releasing agency shall be considered a transfer and not an adoption. If the animal is not first sterilized, the responsibility for sterilizing the animal transfers to the receiving entity.

F. No animal shelter shall place a companion animal in a foster home with a foster care provider unless the foster care provider has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and the animal shelter shall update the statement as changes occur. The animal shelter shall maintain the original statement and any updates to such statement in accordance with this chapter and for at least so long as the animal shelter has an affiliation with the foster care provider.

G. An animal shelter that places a companion animal in a foster home with a foster care provider shall ensure that the foster care provider complies with § ~~3.1-796.68~~ 3.2-6503.

H. If an animal shelter finds a direct and immediate threat to a companion animal placed with a foster care provider, it shall report its findings to the animal control agency in the locality where the foster care provider is located.

I. No animal shelter shall be operated in violation of any local zoning ordinance.

J. An animal shelter that confines and disposes of animals pursuant to this section shall be operated in accordance with this chapter. If this chapter is violated, the animal shelter may be assessed a civil penalty by the Board or its designee in an amount that does not exceed \$1,000 per violation. Each day of the violation ~~shall constitute~~ *is* a separate offense. In determining the amount of any civil penalty, the Board or its designee shall consider: (i) the history of previous violations at the animal shelter; (ii) whether the violation has caused injury to, death or suffering of, an animal; and (iii) the demonstrated good faith of the animal shelter to achieve compliance after notification of the violation. All civil penalties assessed under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the purposes of this chapter.

K. If this chapter or any laws governing animal shelters are violated, the Commissioner may bring an action to enjoin the violation or threatened violation of this chapter or the regulations pursuant thereto regarding animal shelters, in the circuit court where the animal



shelter is located. The Commissioner may request the Attorney General to bring such an action, when appropriate.

**Drafting Note: Technical changes.**

§ ~~3.1-796.96:5~~–~~3.2-6549~~. Releasing agencies other than pounds or animal shelters; confinement and disposition of companion animals; recordkeeping; affiliation with foster care providers; penalties.

A. A releasing agency other than a pound or animal shelter:

1. May confine and dispose of companion animals in accordance with subsections B through ~~F~~ G of § ~~3.1-796.96~~ ~~3.2-6546~~; and

2. Shall keep accurate records of each companion animal received for two years from the date of disposition of the companion animal. Records shall: (i) include a description of the companion animal including species, color, breed, sex, approximate weight, age, reason for release, owner's or finder's name, address and telephone number, license number or other identifying tags or markings, as well as disposition of the companion animal; and (ii) be made available upon request to the Department, animal control officers, and law-enforcement officers at mutually agreeable times. A releasing agency other than a pound or animal shelter shall submit a summary of such records to the State Veterinarian annually in a format prescribed by him, wherein a post office box may be substituted for a home address.

3. For purposes of recordkeeping, release of a companion animal by a releasing agency to a pound, animal shelter or other releasing agency shall be considered a transfer and not an adoption. If the animal is not first sterilized, the responsibility for sterilizing the animal transfers to the receiving entity.

B. Each releasing agency other than a pound or animal shelter shall obtain a signed statement from each of its directors, operators, staff, or animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment, and each such releasing agency shall update such statement as changes occur.

C. No releasing agency other than a pound or animal shelter shall place a companion animal in a foster home with a foster care provider unless the foster care provider has read and signed a statement specifying that the foster care provider has never been convicted of animal cruelty, neglect, or abandonment, and such releasing agency shall update the statement as changes occur. A releasing agency other than a pound or animal shelter shall maintain the original statement and any updates to such statement for so long as the releasing agency has an affiliation with the foster care provider.

D. A releasing agency other than a pound or animal shelter that places a companion animal in a foster home with a foster care provider shall ensure that the foster care provider complies with § ~~3.1-796.68~~ ~~3.2-6503~~.

E. If a releasing agency other than a pound or animal shelter finds a direct and immediate threat to a companion animal placed with a foster care provider, it shall report its findings to the animal control agency in the area where the foster care provider is located.

F. Any releasing agency other than a pound or animal shelter that finds a companion animal or receives a companion animal that has not been released by its owner and: (i) provides care or safekeeping; or (ii) takes possession of such companion animal shall, within 48 hours:

1. Make a reasonable attempt to notify the owner of the companion animal, if the owner can be ascertained from any tag, license, collar, tattoo, or other identification or markings, or if the owner of the companion animal is otherwise known to the releasing agency; and

2. Notify the pound that serves the locality where the companion animal was found and provide to the pound contact information including at least a name and a contact telephone number, a description of the companion animal including at least species, breed, sex, size, color, information from any tag, license, collar, tattoo, or other identification or markings, and the location where the companion animal was found.

G. A releasing agency other than a pound or animal shelter shall comply with the provisions of § ~~3.1-796.68~~ 3.2-6503.

H. No releasing agency other than a pound or animal shelter shall be operated in violation of any local zoning ordinance.

I. A releasing agency other than a pound or animal shelter that violates any provision of this section, other than subsection G, may be subject to a civil penalty not to exceed \$250.

**Drafting Note: Technical changes.**

§ ~~3.1-796.96:6~~ 3.2-6550. Requirements for foster homes; penalty.

In addition to any other requirements of this chapter, foster homes shall be subject to the following:

1. No foster home shall be operated in violation of any local zoning ordinance; and
2. No foster home shall keep more than 50 companion animals on-site at one time.

Any foster home found in violation of this section may be subject to a civil penalty not to exceed \$250.

**Drafting Note: No changes.**

§ ~~3.1-796.96:7~~ 3.2-6551. Notification by individuals finding companion animals; penalty.

A. Any individual who finds a companion animal and: (i) provides care or safekeeping; or (ii) retains a companion animal in such a manner as to control its activities shall, within 48 hours:

1. Make a reasonable attempt to notify the owner of the companion animal, if the owner can be ascertained from any tag, license, collar, tattoo, or other form of identification or markings, or if the owner of the animal is otherwise known to the individual; and

2. Notify the pound that serves the locality where the companion animal was found and provide to the pound contact information including at least a name and a contact telephone number, a description of the animal including information from any tag, license, collar, tattoo, or other identification or markings, and the location where the companion animal was found.

B. If an individual finds a companion animal and: (i) provides care or safekeeping; or (ii) retains a companion animal in such a manner as to control its activities, the individual shall comply with the provisions of § ~~3.1-796.68~~ 3.2-6503.

C. Any individual who violates this section may be subject to a civil penalty not to exceed \$50 per companion animal.

**Drafting Note: Technical changes.**

§ ~~3.1-796.120~~ . Gift, sale, or delivery of animals from pounds or animal shelters.

~~A. The governing body of any political subdivision shall dispose of impounded animals in accordance with the provisions of § 3.1-796.96. Any proceeds deriving from the gift, sale, or delivery of such animals shall be paid directly to the treasurer of the political subdivision, and no part of such proceeds shall accrue to any individual.~~

~~B. The following shall confine and dispose of animals in their custody in accordance with the provisions of § 3.1-796.96:~~

- ~~1. Any humane investigator who has custody of any animal pursuant to his official duties;~~
- ~~2. Any humane society; and~~
- ~~3. Any animal shelter.~~

~~Animals that have been confined at a county or city pound as required by § 3.1-796.96 prior to being delivered to a local humane society or animal shelter may be immediately placed for adoption, or humanely euthanized in accordance with methods approved by the State Veterinarian. Any proceeds deriving from the gift, sale, or delivery of such animals shall be paid directly to the clerk or treasurer of the humane society for the expenses of the society and expenses incident to any agreement concerning the disposing of such animal. No part of the proceeds shall accrue to any individual except for the aforementioned purposes. Humane societies, humane investigators and animal shelters shall keep accurate records of all animals~~

~~handled. Records shall include a description of the animal including color, breed, sex, approximate weight, reason for bringing in, age, owner's or finder's name, address and telephone number, license number or other identifying tags or markings, as well as disposition of the animal. Humane societies and animal shelters shall submit a summary of such records to the State Veterinarian annually in a format prescribed by him.~~

**Drafting Note: Deleted section. This provision is generally addressed by existing §§ 3.1-796.96 and 3.1-796.105. The provision regarding proceeds derived from an adopted animal is moved to proposed § 3.2-6546, County or city pounds; confinement and disposition of animals; affiliation with foster care providers; penalties; injunctive relief.**

~~§ 3.1-796.97. Evidence showing inoculation for rabies prerequisite to obtaining dog or cat license; rabies clinics.~~

~~No license tag shall be issued for any dog or cat unless there is presented, to the treasurer or other officer of the county or city, or other agent charged by law with the duty of issuing license tags for dogs and cats, satisfactory evidence that such dog or cat has been inoculated or vaccinated against rabies by a currently licensed veterinarian or currently licensed veterinary technician who was under the immediate and direct supervision of a licensed veterinarian on the premises.~~

~~Rabies clinics, approved by the appropriate health department and governing body, shall be held at least once per year in each county in which the governing body finds that the number of resident veterinarians is otherwise inadequate to meet the need.~~

**Drafting Note: Deleted section and moved to proposed §§ 3.2-6526, What dog or cat license shall consist of, and 3.2-6521, Rabies inoculation of dogs and domesticated cats; availability of certificate; rabies clinics.**

~~§ 3.1-796.116-3.2-6552. Dogs killing, injuring or chasing livestock or poultry.~~

~~It shall be the duty of any animal control officer or other officer who may find a dog in the act of killing or injuring livestock or poultry to kill such dog forthwith whether such dog bears a tag or not. Any person finding a dog committing any of the depredations mentioned in this section shall have the right to kill such dog on sight as shall any owner of livestock or his agent finding a dog chasing livestock on land utilized by the livestock when the circumstances show that such chasing is harmful to the livestock. Any court shall have the power to order the animal control officer or other officer to kill any dog known to be a confirmed livestock or poultry killer, and any dog killing poultry for the third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the dog to produce the dog.~~

~~Any animal control officer who has reason to believe that any dog is killing livestock or poultry shall be empowered to seize such dog solely for the purpose of examining such dog in order to determine whether it committed any of the depredations mentioned herein. Any animal control officer or other person who has reason to believe that any dog is killing livestock, or committing any of the depredations mentioned in this section, shall apply to a magistrate of the county, city or town *locality* wherein such ~~the~~ dog may be, who shall issue a warrant requiring the owner or custodian, if known, to appear before a general district court at a time and place named therein, at which time evidence shall be heard. If it shall appear that the dog is a livestock killer, or has committed any of the depredations mentioned in this section, the district court shall order that the dog be: (i) killed immediately by the animal control officer or other officer designated by the court; or (ii) removed to another state ~~which~~ that does not border on the Commonwealth and prohibited from returning to the Commonwealth. Any dog ordered removed from the Commonwealth ~~which~~ that is later found in the Commonwealth shall be ordered by a court to be killed immediately.~~

**Drafting Note: Technical changes.**

~~§ 3.1-796.118-3.2-6553. Compensation for livestock and poultry killed by dogs.~~

Any person who has any livestock or poultry killed or injured by any dog not his own shall be entitled to receive as compensation the fair market value of such livestock or poultry not to exceed \$400 per animal or \$10 per fowl, ~~provided that~~ if: (i) the claimant has furnished evidence within ~~sixty~~ 60 days of discovery of the quantity and value of the dead or injured livestock and the reasons the claimant believes that death or injury was caused by a dog; (ii) the animal control officer or other officer shall have been notified of the incident within ~~seventy-two~~ 72 hours of its discovery; and (iii) the claimant first has exhausted his legal remedies against the owner, if known, of the dog doing the damage for which compensation under this section is sought. Exhaustion shall mean a judgment against the owner of the dog upon which an execution has been returned unsatisfied.

Local jurisdictions may by ordinance waive the requirements of (ii) or (iii) or both provided that the ordinance adopted requires that the animal control officer has conducted an investigation and that his investigation supports the claim. Upon payment under this section the local governing body shall be subrogated to the extent of compensation paid to the right of action to the owner of the livestock or poultry against the owner of the dog and may enforce the same in an appropriate action at law.

**Drafting Note: Technical changes.**

§ ~~3.1-796.121~~ 3.2-6554. Disposal of dead companion animals.

The owner of any companion animal ~~which has died from disease or other cause~~ shall forthwith cremate, bury, or sanitarily dispose of the ~~same~~ animal upon its death. If, after notice, any owner fails to do so, the animal control officer or other officer shall bury or cremate the companion animal, and he may recover on behalf of the local jurisdiction from the owner his cost for this service.

**Drafting Note: Technical changes.**

Article ~~5~~ 7.

Animal Control Officers and Humane Investigators.

§ ~~3.1-796.104~~ 3.2-6555. Position of animal control officer created.

The governing body of each county or city shall, or each town may, ~~appoint~~ employ an officer to be known as the animal control officer who shall have the power to enforce this chapter, all ordinances enacted pursuant to this chapter and all laws for the protection of domestic animals. The governing body may also ~~appoint~~ employ one or more deputy animal control officers to assist the animal control officer in the performance of his duties. Animal control officers and deputy animal control officers shall have a knowledge of the animal control and protection laws of ~~Virginia~~ ~~which~~ the Commonwealth that they are required to enforce. When in uniform or upon displaying a badge or other credentials of office, animal control officers and deputy animal control officers shall have the power to issue a summons or obtain a felony warrant as necessary, providing the execution of such warrant shall be carried out by any law-enforcement officer as defined in § 9.1-101, to any person found in the act of violating any such law or any ordinance enacted pursuant to such law of the locality ~~in which~~ where the animal control officer or deputy animal control officer is ~~appointed~~ employed. The animal control officer and the deputy animal control officers shall be paid as the governing body of each locality shall prescribe.

Any locality ~~in which~~ where an animal control officer or deputy animal control officers have been ~~appointed~~ employed may contract with one or more additional localities for enforcement of animal protection and control laws by the animal control officers or deputy animal control officers. Any such contract may provide that the locality employing the animal control officer or deputy animal control officers shall be reimbursed a portion of the salary and expenses of the animal control officer or deputy animal control officers.

Every locality employing an animal control officer shall submit to the State Veterinarian, on a form provided by him, information concerning the employment and training status of the animal control officers employed by the locality. The State Veterinarian may require that the locality notify him of any change in such information.

**Drafting Note: Technical changes.**

§ ~~3.1-796.104:1~~ 3.2-6556. Training of animal control officers.

A. ~~After April 1, 1999, every~~ Every locality ~~appointing~~ employing animal control officers shall require that every animal control officer and deputy animal control officer completes the following training:

1. Within two years ~~after appointment from the date of hire~~, a basic animal control course that has been approved by the State Veterinarian, ~~who may consult with the Department of Criminal Justice Services, Department of Social Services, Virginia Farm Bureau Federation, Virginia Animal Control Association, Virginia Veterinary Medical Association, Virginia Association of Counties, Virginia Municipal League, Virginia Federation of Humane Societies, or other appropriate agencies and sportsmen advocacy groups.~~ The basic animal control course shall include training in recognizing suspected child abuse and neglect and information on how complaints may be filed and shall be approved and implemented ~~by July 1, 2005~~; and

2. Every three years, additional training approved by the State Veterinarian, 15 hours of which shall be training in animal control and protection.

The State Veterinarian shall develop criteria to be used in approving training courses and shall provide an opportunity for public comment on proposed criteria before the final criteria are adopted.

Subdivision 1 shall not apply to animal control officers or deputy animal control officers ~~appointed~~ hired before July 1, 1998. The State Veterinarian may grant exemptions from the requirements of subdivision 1 to animal control officers ~~appointed~~ hired on or after July 1, 1998, based on the animal control officer's previous training.

The State Veterinarian shall work to ensure the availability of these training courses through regional criminal justice training academies or other entities as approved by him. Based on information provided by authorized training entities, the State Veterinarian shall maintain the training records for all animal control officers for the purpose of documenting and ensuring that they are in compliance with this subsection.

B. Upon cause shown by a locality, the State Veterinarian may grant additional time during which the training required by subsection A may be completed by an animal control officer ~~in such~~ for the locality.

C. Any animal control officer that fails to complete the training required by subsection A shall be removed from office, unless the State Veterinarian has granted additional time as provided in subsection B.

**Drafting Note: Technical changes.**

§ ~~3.1-796.105~~ 3.2-6557. Animal control officers and humane investigators; limitations; records; penalties.

A. No animal control officer, humane investigator, humane society or custodian of any pound or animal shelter shall: (i) obtain the release or transfer of an animal by the animal's owner to such animal control officer, humane investigator, humane society or custodian for personal gain; or (ii) give or sell or negotiate for the gift or sale to any individual, pet shop, dealer, or research facility of any animal ~~which~~ that may come into his custody in the course of carrying out his official assignments. No animal control officer, humane investigator or custodian of any pound or animal shelter shall be granted a dealer's license. Violation of this subsection ~~shall be~~ is a Class 1 misdemeanor. Nothing in this section shall preclude any animal control officer or humane investigator from lawfully impounding any animal pursuant to § ~~3.1-796.115~~ 3.2-6569.

B. An animal control officer, law-enforcement officer, humane investigator or custodian of any pound or animal shelter, upon taking custody of any animal in the course of his official duties, or any representative of a humane society, upon obtaining custody of any animal on behalf of the society, shall immediately make a record of the matter. Such record shall include:

1. The date on which the animal was taken into custody;
2. The date of the making of the record;
3. A description of the animal including the animal's species, color, breed, sex, approximate age and approximate weight;
4. The reason for taking custody of the animal and the location where custody was taken;
5. The name and address of the animal's owner, if known;
6. Any license or rabies tag, tattoo, collar or other identification number carried by or appearing on the animal; and
7. The disposition of the animal.

Records required by this subsection shall be maintained for at least five years, and shall be available for public inspection upon request. A summary of such records shall be submitted annually to the State Veterinarian in a format prescribed by him.

C. Any animal control officer or custodian of any pound who violates any provision of this chapter ~~which~~*that* relates to the seizure, impoundment and custody of animals by an animal control officer may be subject to suspension or dismissal from his position.

D. Custodians and animal control officers engaged in the operation of a pound shall be required to have ~~a~~ knowledge of the laws of ~~Virginia~~ *the Commonwealth* governing animals, including this chapter, as well as basic animal care.

**Drafting Note: Technical changes.**

§ ~~3.1-796.106~~ 3.2-6558. Humane investigators; qualifications; appointment; term.

A. A circuit court may reappoint any person as a humane investigator for any locality within its jurisdiction if the person:

1. Was appointed as a humane investigator prior to July 1, 2003; and
2. Has never been convicted of animal cruelty or neglect, any felony, or any crime of moral turpitude according to a criminal background check, which shall be performed by the attorney for the Commonwealth at the expense of the person seeking the appointment.

B. A circuit court may appoint a person to fill a vacancy in that jurisdiction created when a humane investigator who was appointed prior to July 1, 2003, is no longer willing or eligible to be a humane investigator, provided the person seeking appointment:

1. Has received a written recommendation from the administrative entity that oversees animal control in the locality where the humane investigator seeks appointment;
2. Has never been convicted of animal cruelty or neglect, any felony, or any crime of moral turpitude according to a criminal background check, which shall be performed by the attorney for the Commonwealth at the expense of the person seeking the appointment; and
3. Has completed a basic animal control course approved by the State Veterinarian pursuant to § ~~3.1-796.104~~ 3.2-6556.

C. A person residing outside the Commonwealth may be appointed as a humane investigator only if he is employed by a humane society located within the locality ~~for~~ *where* he is seeking appointment.

D. Reappointments of humane investigators shall be for terms of three years. Each humane investigator shall, during each term for which he is appointed, complete 15 hours of training in animal care and protection approved for animal control officers. If a humane investigator is appointed to a succeeding term before or within 30 days after his current term expires, a criminal background check shall not be required. If a humane investigator's term expires and he is not appointed to a succeeding term before or within 30 days after his current term expires, the humane investigator shall not be appointed to another term.

**Drafting Note: Technical changes.**

§ ~~3.1-796.106:2-3.2-6559~~. Powers and duties of humane investigators.

A. Any humane investigator may, within the locality ~~for which~~ *where* he has been appointed, investigate violations of laws and ordinances regarding care and treatment of animals and disposal of dead animals.

B. Each humane investigator shall carry during the performance of his powers and duties under this chapter an identification card issued by the locality where the humane investigator is appointed. The identification card shall include the following information regarding the humane investigator:

1. His full name;
2. The locality ~~for which~~ *where* he has been appointed;
3. The name of the circuit court that appointed him;
4. The signature of the circuit court judge that appointed him;
5. A photograph of his face; and
6. The date of expiration of his appointment.

C. Each humane investigator shall record on a form approved by the administrative entity that oversees animal control every investigation he performs, maintain such record for five years, and make such record available upon request to any law-enforcement officer, animal control officer or State Veterinarian's representative. Each humane investigator shall file quarterly a report summarizing such records with the administrative agency that oversees animal control on an approved form. A humane investigator's appointment may be revoked as provided in § ~~3.1-796.106:1-3.2-6561~~ if he fails to file such report.

**Drafting Note: Technical changes.**

§ ~~3.1-796.110-3.2-6560~~. Expenses of humane investigators.

Neither the appointment of any humane investigator, nor the performance of any service or duty by him, shall require any locality or the Commonwealth to pay any cost or expense incurred by or on behalf of a humane investigator. Any locality may reimburse any humane investigator appointed for that locality for reasonable expenses incurred as the result of a specific request for services from the locality.

**Drafting Note: No changes.**

§ ~~3.1-796.106:1-3.2-6561~~. Revocation of appointment of humane investigators.

A. Upon a motion by the attorney for the Commonwealth, the circuit court that appointed a humane investigator may revoke his appointment if he is no longer able to perform the duties of a humane investigator; has been convicted of any felony, Class 1 misdemeanor, or a violation of any provision of this chapter or any other law regarding animals; or for good cause shown. The court shall notify the administrative entity that oversees animal control in the locality where the humane investigator was appointed of such revocation.

B. Any law-enforcement officer may investigate any allegation that a humane investigator has violated this chapter and report his findings and recommendations to the attorney for the Commonwealth.

**Drafting Note: No changes.**

§ ~~3.1-796.119-3.2-6562~~. Capturing, confining, and euthanizing companion animals by animal control officers; approval of drugs, ~~etc.~~, used.

It shall be the duty of the animal control officer or any other officer to capture and confine any companion animal of unknown ownership found running at large on which the license fee has not been paid. Following the expiration of the holding period prescribed in § ~~3.1-796.96 3.2-6546~~, the animal control officer or other officer may deliver such companion animal to any person in his jurisdiction who will pay the required license fee on such companion animal. Prior to disposition by euthanasia or otherwise, all the provisions of § ~~3.1-796.96 3.2-6546~~ shall have been complied with. For all companion animals not otherwise disposed of as provided for

in this chapter, it shall be the duty of the animal control officer or any other officer to euthanize such companion animals. Any person, animal control officer, or other officer euthanizing a companion animal under this chapter shall cremate, bury, or sanitarily dispose of the same.

All drugs and drug administering equipment used by animal control officers or other officers to capture companion animals pursuant to this chapter shall have been approved by the State Veterinarian.

**Drafting Note: Technical changes.**

§ ~~3.1-796.114~~ 3.2-6563. When animals to be ~~destroyed~~ euthanized; procedure.

Any humane investigator may lawfully cause to be ~~destroyed~~ euthanized any animal in his charge or found abandoned or not properly cared for when, in the judgment of the humane investigator and two reputable citizens called to view the same in his presence, and who shall give their written certificate, the animal appears to be injured, disabled or diseased, past recovery, or the injury, disease or disability is such that a reasonable owner would cause the animal to be ~~destroyed~~ euthanized.

Any humane investigator shall make every reasonable effort immediately to notify the owner of the animal that the humane investigator intends for the animal to be ~~destroyed~~ euthanized. The owner shall have a right to select one of the two reputable citizens called to view the animal and give written certificate of the animal's condition. In no event shall the determination as to disposition of the animal be delayed beyond ~~forty-eight~~ 48 hours after such humane investigator first decides the animal should be ~~destroyed~~ euthanized. In the event that the two citizens called to give such certificate are unable to agree, they shall select a third reputable citizen and his decision shall be final.

**Drafting Note: Technical changes.**

*Article 8.*

*Search, Seizure, Impounding, and Enforcement.*

§ ~~3.1-796.107~~ 3.2-6564. Complaint of suspected violation; investigation.

A. Upon receiving a complaint of a suspected violation of this chapter, any ordinance enacted pursuant to this chapter or any law for the protection of domestic animals, any animal control officer, law-enforcement officer, or State Veterinarian's representative may, for the purpose of investigating the allegations of the complaint, enter upon, during business hours, any business premises, including any place where animals or animal records are housed or kept, of any dealer, pet shop, groomer, or boarding establishment. Upon receiving a complaint of a suspected violation of any law or ordinance regarding care or treatment of animals or disposal of dead animals, any humane investigator may, for the purpose of investigating the allegations of the complaint, enter upon, during business hours, any business premises, including any place where animals or animal records are housed or kept, of any dealer, pet shop, groomer, or boarding establishment.

Upon obtaining a warrant as provided for in § ~~3.1-796.113~~ 3.2-6568, the law-enforcement officer, animal control officer, State Veterinarian's representative, or humane investigator may enter upon any other premises where the animal or animals described in the complaint are housed or kept. Attorneys for the Commonwealth and law-enforcement officials shall provide such assistance as may be required in the conduct of such investigations.

B. If the investigation discloses that a violation of § ~~3.1-796.68~~ 3.2-6503 has occurred, the investigating official shall notify the owner or custodian of the complaint and of what action is necessary to comply with this chapter.

**Drafting Note: Technical changes.**

§ ~~3.1-796.108~~ 3.2-6565. Impoundment; expenses; lien; disposition of animal.



When an animal control officer, humane investigator, law-enforcement officer or State Veterinarian's representative finds that an apparent violation of this chapter has rendered an animal in such a condition as to constitute a direct and immediate threat to its life, safety or health ~~which~~*that* the owner or custodian has failed ~~or refuses~~ to remedy, such animal control officer, humane investigator, law-enforcement officer or State Veterinarian's representative may impound the animal pursuant to § ~~3.1-796.115~~ 3.2-6569 in a facility ~~which~~*that* will provide the elements of good care as set forth in § ~~3.1-796.68~~ 3.2-6503 and shall then proceed to take such steps as are required to dispose of the animal pursuant to § ~~3.1-796.115~~ 3.2-6569.

**Drafting Note: Technical changes.**

§ ~~3.1-796.111~~ 3.2-6566. Preventing cruelty to animals; interference; penalty.

Each animal control officer, humane investigator or State Veterinarian's representative shall interfere to prevent the perpetration of any act of cruelty upon any animal in his presence. Any person who shall interfere with or obstruct or resist any animal control officer, humane investigator or State Veterinarian's representative in the discharge of his rights, powers, and duties as authorized and prescribed by law ~~shall be deemed~~*is* guilty of a Class 4 misdemeanor.

**Drafting Note: No changes.**

§ ~~3.1-796.112~~ 3.2-6567. Enforcement authority.

All law-enforcement officers in the Commonwealth ~~of Virginia~~ and State Veterinarian's representatives shall enforce the provisions of this chapter to the same extent other laws in the Commonwealth are enforced.

**Drafting Note: Technical changes.**

§ ~~3.1-796.113~~ 3.2-6568. Power of search for violations of statutes against cruelty to animals.

When a sworn complaint is made to any proper authority by any animal control officer, humane investigator, law-enforcement officer or State Veterinarian's representative that the complainant believes and has reasonable cause to believe that the laws in relation to cruelty to animals have been, are being, or are about to be violated in any particular building or place, such authority, if satisfied that there is reasonable cause for such belief, shall issue a warrant authorizing any sheriff, deputy sheriff or police officer, to search the building or place. No search shall be made after sunset unless specially authorized by the authority upon satisfactory cause shown.

**Drafting Note: No changes.**

§ ~~3.1-796.115~~ 3.2-6569. Seizure and impoundment of animals; notice and hearing; disposition of animal; disposition of proceeds upon sale.

A. Any humane investigator, law-enforcement officer or animal control officer may lawfully seize and impound any animal that has been abandoned, has been cruelly treated, or is suffering from an apparent violation of this chapter that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health. Before seizing or impounding any agricultural animal, such humane investigator, law-enforcement officer or animal control officer shall contact the State Veterinarian or a State Veterinarian's representative, who shall recommend to such person the most appropriate action for the disposition of the agricultural animal, ~~provided, however, that the~~. *The* seizure or impoundment of an equine resulting from a violation of subdivision A (iii) or subdivision B (ii) of § ~~3.1-796.122~~ 3.2-6570 may be undertaken only by the State Veterinarian or State Veterinarian's representative who has received training in the examination and detection of sore horses equivalent to that required by 9 C.F.R. Part 11.7 and that is approved by the State Veterinarian. The humane investigator, law-enforcement officer or animal control officer shall notify the owner of the agricultural animal and the local attorney for the Commonwealth of the recommendation. The humane investigator, law-enforcement officer or animal control officer may impound the agricultural animal on the land where the agricultural animal is located if:

1. The owner or tenant of the land where the agricultural animal is located gives written permission;
2. A general district court so orders; or
3. The owner or tenant of the land where the agricultural animal is located cannot be immediately located, and it is in the best interest of the agricultural animal to be impounded on the land where it is located until the written permission of the owner or tenant of the land can be obtained.

If there is a direct and immediate threat to an agricultural animal, the humane investigator, law-enforcement officer or animal control officer may seize the animal, in which case the humane investigator, law-enforcement officer or animal control officer shall file within five business days on a form approved by the State Veterinarian a report on the condition of the animal at the time of the seizure, the disposition of the animal, and any other information required by the State Veterinarian.

Upon seizing or impounding an animal, the humane investigator, law-enforcement officer or animal control officer shall petition the general district court in the city or county ~~wherein~~ *where* the animal is seized for a hearing. The hearing shall be not more than ten business days from the date of the seizure of the animal. The hearing shall be to determine whether the animal has been abandoned, has been cruelly treated, or has not been provided adequate care.

B. The humane investigator, law-enforcement officer, or animal control officer shall cause to be served upon the person with a right of property in the animal or the custodian of the animal notice of the hearing. If such person or the custodian is known and residing within the jurisdiction wherein the animal is seized, written notice shall be given at least five days prior to the hearing of the time and place of the hearing. If such person or the custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the Code of Virginia shall be given. If such person or the custodian is not known, the humane investigator, law-enforcement officer, or animal control officer shall cause to be published in a newspaper of general circulation in the jurisdiction wherein such animal is seized notice of the hearing at least one time prior to the hearing and shall further cause notice of the hearing to be posted at least five days prior to the hearing at the place provided for public notices at the city hall or courthouse wherein such hearing shall be held.

C. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

D. The humane investigator, law-enforcement officer, or animal control officer shall provide for such animal until the court has concluded the hearing. Any locality may, ~~by ordinance,~~ require the owner of any animal held pursuant to this subsection for more than thirty days to post a bond in surety with the locality for the amount of the cost of boarding the animal for a period of time set ~~in the~~ *by* ordinance, not to exceed nine months.

If the court determines that the animal has been neither abandoned, cruelly treated, nor deprived of adequate care, the animal shall be returned to the owner. If the court determines that the animal has been abandoned, cruelly treated, or deprived of adequate care, then the court shall order that the animal be: (i) sold by a local governing body; (ii) humanely destroyed, or disposed of by sale or gift to a federal agency, state-supported institution, agency of the Commonwealth, agency of another state, or a licensed federal dealer having its principal place of business located within the Commonwealth; (iii) delivered to any local humane society or shelter, or to any person who is a resident of the county or city where the animal is seized or an adjacent county or city in the Commonwealth and who will pay the required license fee, if any, on such animal; or (iv) delivered to the person with a right of property in the animal as provided in subsection E.

E. In no case shall the owner be allowed to purchase, adopt, or otherwise obtain the animal if the court determines that the animal has been abandoned, cruelly treated, or deprived of

adequate care; however, ~~the~~. The court shall direct that the animal be delivered to the person with a right of property in the animal, upon his request, if the court finds that the abandonment, cruel treatment, or deprivation of adequate care is not attributable to the actions or inactions of such person.

F. The court shall order the owner of any animal determined to have been abandoned, cruelly treated, or deprived of adequate care to pay all reasonable expenses incurred in caring and providing for such animal from the time the animal is seized until such time that the animal is disposed of in accordance with the provisions of this section, to the provider of such care.

G. The court may prohibit the possession or ownership of other companion animals by the owner of any companion animal found to have been abandoned, cruelly treated, or deprived of adequate care. In making a determination to prohibit the possession or ownership of companion animals, the court may take into consideration the owner's past record of convictions under this chapter or other laws prohibiting cruelty to animals or pertaining to the care or treatment of animals and the owner's mental and physical condition.

H. If the court finds that an agricultural animal has been abandoned or cruelly treated, the court may prohibit the possession or ownership of any other agricultural animal by the owner of the agricultural animal if the owner has exhibited a pattern of abandoning or cruelly treating agricultural animals as evidenced by previous convictions of violating § ~~3.1-796.73~~ 3.2-6504 or § ~~3.1-796.122~~ 3.2-6570. In making a determination to prohibit the possession or ownership of agricultural animals, the court may take into consideration the owner's mental and physical condition.

I. Any person who is prohibited from owning or possessing animals pursuant to subsection G or H may petition the court to repeal the prohibition after two years have elapsed from the date of entry of the court's order. The court may, in its discretion, repeal the prohibition if the person can prove to the satisfaction of the court that the cause for the prohibition has ceased to exist.

J. When a sale occurs, the proceeds shall first be applied to the costs of the sale then next to the unreimbursed expenses for the care and provision of the animal, and the remaining proceeds, if any, shall be paid over to the owner of the animal. If the owner of the animal cannot be found, the proceeds remaining shall be paid into the Literary Fund ~~of the state treasury~~.

K. Nothing in this section shall be construed to prohibit the humane destruction of a critically injured or ill animal for humane purposes by the impounding humane investigator, law-enforcement officer, animal control officer, or licensed veterinarian.

**Drafting Note: Technical changes.**

## Article ~~6~~ 9.

### Cruelty to Animals.

#### § ~~3.1-796.122~~ 3.2-6570. Cruelty to animals; penalty.

A. Any person who: (i) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly or unnecessarily beats, maims, mutilates, or kills any animal, whether belonging to himself or another; (ii) deprives any animal of necessary food, drink, shelter or emergency veterinary treatment; (iii) sores any equine for any purpose or administers drugs or medications to alter or mask such sores for the purpose of sale, show, or exhibition of any kind, unless such administration of drugs or medications is within the context of a veterinary client-patient relationship and solely for therapeutic purposes; (iv) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; (v) carries or causes to be carried ~~in or upon~~ by any vehicle, vessel or otherwise any animal in a cruel, brutal, or inhumane manner, so as to produce torture or unnecessary suffering; or (vi) causes any of the above things,

or being the owner of such animal permits such acts to be done by another, ~~shall be~~ is guilty of a Class 1 misdemeanor.

*In addition to the penalties provided in this subsection, the court may, in its discretion, require any person convicted of a violation of this subsection to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of such a program or counseling upon the person convicted.*

B. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly and unnecessarily beats, maims, mutilates or kills any animal whether belonging to himself or another; (ii) sores any equine for any purpose or administers drugs or medications to alter or mask such sores for the purpose of sale, show, or exhibit of any kind, unless such administration of drugs or medications is under the supervision of a licensed veterinarian and solely for therapeutic purposes; (iii) maliciously deprives any companion animal of necessary food, drink, shelter or emergency veterinary treatment; (iv) instigates, engages in, or in any way furthers any act of cruelty to any animal set forth in clauses (i) through (iv); or (v) causes any of the actions described in clauses (i) through (iv), or being the owner of such animal permits such acts to be done by another; and has been within five years convicted of a violation of this subsection or subsection A, ~~shall be~~ is guilty of a Class 6 felony if the current violation or any previous violation of this subsection or subsection A resulted in the death of an animal or the euthanasia of an animal based on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, and such condition was a direct result of a violation of this subsection or subsection A.

C. Nothing in this section shall be construed to prohibit the dehorning of cattle *conducted in a reasonable and customary manner.*

~~D. For the purposes of this section and §§ 3.1-796.111, 3.1-796.113, 3.1-796.114, 3.1-796.115, and 3.1-796.125, the word animal shall be construed to include birds and fowl.~~

~~E. This section shall not prohibit authorized wildlife management activities or hunting, fishing or trapping as regulated under other titles of the Code of Virginia, including, but not limited to Title 29.1, or to farming activities as provided under this title or regulations promulgated thereto adopted hereunder.~~

~~F. In addition to the penalties provided in subsection A, the court may, in its discretion, require any person convicted of a violation of subsection A to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of such a program or counseling upon the person convicted.~~

~~G. It is unlawful for any person to kill a domestic dog or cat for the purpose of obtaining the hide, fur or pelt of the dog or cat. A violation of this subsection shall constitute a Class 1 misdemeanor. A second or subsequent violation of this subsection shall constitute a Class 6 felony.~~

~~H. Any person who: (i) tortures, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation or cruelly and unnecessarily beats, maims or mutilates any dog or cat that is a companion animal whether belonging to him or another; and (ii) as a direct result causes the death of such dog or cat that is a companion animal, or the euthanasia of such animal on the recommendation of a licensed veterinarian upon determination that such euthanasia was necessary due to the condition of the animal, shall be guilty of a Class 6 felony. If a dog or cat is attacked on its owner's property by a dog so as to cause injury or death, the owner of the injured dog or cat may use all reasonable and necessary force against the dog at the time of the attack to protect his dog or cat. Such owner may be presumed to have taken necessary and appropriate action to defend his dog or cat and shall therefore be presumed not to have violated this subsection. The provisions of this subsection shall not overrule § 3.1-796.93; 3.2-6540 or § 3.1-796.116 3.2-6552.~~

~~4~~G. Any person convicted of violating this section may be prohibited by the court from possession or ownership of companion animals.

**Drafting Note: Reorganized section for clarity. Existing subsection D deleted as unnecessary; existing subsection C is merged with existing subsection E as proposed subsection C; existing subsection F merged into proposed section A.**

§ ~~3.1-796.124~~ 3.2-6571. Dogfighting; penalty.

A. No person shall knowingly do any of the following:

1. Promote, engage in, or be employed in the fighting of dogs for amusement, sport or gain;

2. Wager money or anything of value on the result of such fighting;

3. Receive money or anything of value for the admission of another person to a place for dogfighting;

4. Possess, own, train, transport, or sell any dog with the intent that such dog engage in an exhibition of fighting with another dog; or

5. Permit any act described in subdivisions 1 through 4 of this subsection on any premises under his charge or control, or aid or abet any such act.

B. Any animal control officer, as defined in § ~~3.1-796.66~~ 3.2-6500, shall confiscate any dogs that have been, are, or are intended to be used in dogfighting and any equipment used in training such dogs or used in dogfighting.

C. Any person convicted of violating this section may be prohibited by the court from possession or ownership of other companion animals.

D. Any person who violates any provision of this section ~~shall be~~ is guilty of a Class 6 felony.

E. In addition to any other fines and costs, any person who is convicted of a violation of this section shall pay all reasonable costs incurred in housing or euthanizing any confiscated dogs.

**Drafting Note: Technical changes.**

§ ~~3.1-796.125~~ 3.2-6572. Fighting cocks or other animals; attendance at fighting; penalty.

A. Any person engaging in the fighting of cocks or other animals, except dogs, for money, prize or anything of value, or betting or wagering money or anything of value on the result of such fight, ~~shall be~~ is guilty of a Class 3 misdemeanor.

B. Attendance at the fighting of cocks or other animals, except dogs, where an admission fee is charged, directly or indirectly, ~~shall constitute~~ is a Class 3 misdemeanor.

C. Attendance at an exhibition of the fighting of dogs ~~shall constitute~~ is a Class 1 misdemeanor.

**Drafting Note: No changes.**

§ ~~3.1-796.126~~ 3.2-6573. Shooting ~~pigeons, etc.,~~ birds for amusement, and renting premises for such purposes; penalty.

Live pigeons or other birds or fowl shall not be kept or used for the purpose of a target, or to be shot at either for amusement or as a test of skill in marksmanship. It ~~shall be~~ is a Class 4 misdemeanor to shoot at a bird kept or used as aforesaid, or to be a party to such shooting. Any person who lets any building, room, field or premises, or knowingly permits the use thereof for the purpose of such shooting ~~shall be~~ is guilty of a Class 4 misdemeanor.

Nothing contained herein shall apply to the shooting of wild game.

**Drafting Note: The title of this section was changed from "shooting pigeons" to "shooting birds" to better reflect the purpose of the statute.**

Article ~~6.4~~ 10.

Mandatory Sterilization of Dogs and Cats Adopted from Releasing Agencies.

§ ~~3.1-796.126:1~~-3.2-6574. Sterilization of adopted dogs and cats; enforcement; civil penalty.

A. Every new owner of a dog or cat adopted from a releasing agency shall cause to be sterilized the dog or cat pursuant to the agreement required by subdivision 2 of subsection B of this section *article*.

B. A dog or cat shall not be released for adoption from a releasing agency unless:

1. The animal has already been sterilized; or
2. The individual adopting the animal signs an agreement to have the animal sterilized by a licensed veterinarian: (i) within thirty days of the adoption, if the animal is sexually mature; or (ii) within ~~thirty~~ 30 days after the animal reaches six months of age, if the animal is not sexually mature at the time of adoption.

C. A releasing agency may extend for thirty days the date by which a dog or cat must be sterilized on presentation of a written report from a veterinarian stating that the life or health of the adopted animal may be jeopardized by sterilization. In cases involving extenuating circumstances, the veterinarian and the releasing agency may negotiate the terms of an extension of the date by which the animal must be sterilized.

D. Nothing in this section shall preclude the sterilization of a sexually immature dog or cat upon the written agreement of the veterinarian, the releasing agency, and the new owner.

E. Upon the petition of an animal control officer, humane investigator, the State Veterinarian or a State Veterinarian's representative to the district court of the county or city where a violation of this article occurs, the court may order the new owner to take any steps necessary to comply with the requirements of this article. This remedy shall be exclusive of and in addition to any civil penalty ~~which~~ *that* may be imposed under this article.

F. Any person who violates subsection A or B of this section shall be subject to a civil penalty not to exceed ~~fifty dollars~~ \$50.

**Drafting Note: Technical changes.**

§ ~~3.1-796.126:2~~-3.2-6575. Sterilization agreement.

Any agreement used by a releasing agency pursuant to subsection B of § ~~3.1-796.126:1~~-3.2-6574 shall contain:

1. The date of the agreement;
2. The names, addresses, and signatures of the releasing agency and the new owner;
3. A description of the dog or cat to be adopted;
4. The date by which the dog or cat is required to be sterilized; and
5. A statement printed in conspicuous, bold print, that sterilization of the dog or cat is required under this article; that a person who violates this article is subject to a civil penalty; and that the new owner may be compelled to comply with the provisions of this article.

**Drafting Note: Technical changes.**

§ ~~3.1-796.126:3~~-3.2-6576. Sterilization confirmation; civil penalty.

Each new owner who signs a sterilization agreement shall, within seven days of the sterilization, cause to be delivered or mailed to the releasing agency written confirmation signed by the veterinarian who performed the sterilization. The confirmation shall briefly describe the dog or cat; include the new owner's name and address; certify that the sterilization was performed; and specify the date of the procedure. Any person who violates this section shall be subject to a civil penalty not to exceed \$150.

**Drafting Note: No changes.**

§ ~~3.1-796.126:4~~-3.2-6577. Notification concerning lost, stolen or dead dogs or cats; civil penalty.

If an adopted dog or cat is lost or stolen or dies before the animal is sterilized and before the date by which the dog or cat is required to be sterilized, the new owner shall, within seven days of the animal's disappearance or death, notify the releasing agency of the animal's

disappearance or death. Any person who violates this section shall be subject to a civil penalty not to exceed ~~twenty five dollars~~ \$25.

**Drafting Note: Technical changes.**

§ ~~3.1-796.126:5~~ 3.2-6578. Exemptions.

This article shall not apply to:

1. An owner reclaiming his dog or cat from a releasing agency;
2. A releasing agency ~~located in~~ *within* a ~~county, city, or town~~ *locality* that has adopted a more stringent mandatory sterilization ordinance; and
3. A local governing body ~~which~~ *that* has disposed of an animal by sale or gift to a federal agency, state-supported institution, agency of the Commonwealth, agency of another state, or licensed federal dealer having its principal place of business located within the Commonwealth.

**Drafting Note: Technical changes.**

§ ~~3.1-796.126:6~~ 3.2-6579. Releasing agency; fees and deposits.

A local governing body or releasing agency may charge and collect from the new owner a fee or deposit before releasing a dog or cat for adoption to ensure sterilization.

**Drafting Note: No changes.**

§ ~~3.1-796.126:7~~ 3.2-6580. Civil penalties.

Any animal control officer, humane investigator, releasing agency, the State Veterinarian or State Veterinarian's representative shall be entitled to bring a civil action for any violation of this article that is subject to a civil penalty. Any civil penalty assessed pursuant to this article shall be paid into the treasury of the city or county ~~in which~~ *where* such civil action is brought and used for the purpose of defraying the costs of local animal control, including efforts to promote sterilization of cats and dogs.

**Drafting Note: No changes.**

~~Article 6.2. II.~~

Hybrid Canines.

§ ~~3.1-796.126:8~~ 3.2-6581. Definitions.

As used in this article:

"Adequate confinement" means that, while on the property of its owner and not under the direct supervision and control of the owner or custodian, a hybrid canine shall be confined in a humane manner in a securely enclosed and locked structure of sufficient height and design to: (i) prevent the animal's escape; or if the hybrid canine is determined to be a dangerous dog pursuant to § ~~3.1-796.93:1~~ 3.2-6540, the structure shall prevent direct contact with any person or animal not authorized by the owner to be in direct contact with the hybrid canine; and (ii) provide a minimum of 100 square feet of floor space for each adult animal. Tethering of a hybrid canine not under the direct supervision and control of the owner or custodian shall not be considered adequate confinement.

"Hybrid canine" means any animal ~~which~~ *that* at any time has been or is permitted, registered, licensed, advertised or otherwise described or represented as a hybrid canine, wolf or coyote by its owner to a licensed veterinarian, law-enforcement officer, animal control officer, humane investigator, official of the Department of Health, or State Veterinarian's representative.

"Responsible ownership" means the ownership and humane care of a hybrid canine in such a manner as to comply with all laws and ordinances regarding hybrid canines and prevent endangerment by the animal to public health and safety.

**Drafting Note: Technical changes.**

§ ~~3.1-796.126:9~~ 3.2-6582. Hybrid canine ordinance; penalty.

A. Any ~~county, city or town~~ *locality* may, by ordinance, establish a permit system to ensure the adequate confinement and responsible ownership of hybrid canines. Such ordinance may include requirements pertaining to: (i) the term and expiration date of the permit; (ii) the number of hybrid canines that may be owned by a permittee; (iii) identification tags or tattooing of the animal; (iv) where the animal may be kept; (v) handling of the animal while not on the property of the owner; and (vi) information required to be provided when applying for a permit, such as the sex, color, height, vaccination records, length, or identifying marks of the hybrid canine. The ordinance shall not require that hybrid canines be disposed of by the owner unless the owner fails or refuses to obtain or renew any required permit or violates a provision of the ordinance or any other law pertaining to the responsible ownership of the hybrid canine. The locality may impose a permit fee to cover the cost of the permitting system.

B. Violation of an ordinance enacted pursuant to this section ~~shall be~~ is a Class 3 misdemeanor for the first violation and a Class 1 misdemeanor for ~~a second or any~~ subsequent violation. The ordinance may require a violator to surrender the hybrid canine for euthanasia in accordance with § ~~3.1-796.119~~ 3.2-6562.

C. The provisions of this section shall not affect any ordinance adopted prior ~~to the effective date of this section~~ July 1, 1997.

**Drafting Note: Technical changes.**

§ ~~3.1-796.126:10~~ 3.2-6583. Hybrid canines killing, injuring or chasing livestock.

It shall be the duty of any animal control officer or other officer who may find a hybrid canine in the act of killing or injuring livestock or poultry to kill such hybrid canine forthwith, whether such hybrid canine bears a tag or not. Any person finding a hybrid canine committing any of the depredations mentioned in this section ~~shall have the right to~~ may kill such hybrid canine on sight as ~~shall may~~ any owner of livestock or his agent finding a hybrid canine chasing livestock on land lawfully utilized by the livestock when the circumstances show that such chasing is harmful to the livestock. Any court ~~shall have the power to~~ may order the animal control officer or other officer to kill any hybrid canine known to be a confirmed livestock or poultry killer, and any hybrid canine ~~killing that kills~~ poultry for ~~the a~~ third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian, or harbinger of the hybrid canine to produce the hybrid canine.

Any animal control officer who has reason to believe that any hybrid canine is killing livestock or poultry shall be empowered to seize such hybrid canine solely for the purpose of examining such hybrid canine in order to determine whether it committed any of the depredations mentioned herein. Any animal control officer or other person who has reason to believe that any hybrid canine is killing livestock, or committing any of the depredations mentioned in this section, shall apply to a magistrate for the ~~county, city or town~~ *locality where* such hybrid canine may be, who shall issue a warrant requiring the owner or custodian, if known, to appear before a general district court ~~at a time and place named therein~~, at which time evidence shall be heard. If it appears that the hybrid canine is a livestock killer, or has committed any of the depredations mentioned in this section, the district court shall order that the hybrid canine be: (i) killed immediately by the animal control officer or other officer designated by the court; or (ii) removed to another state ~~which that~~ does not border on the Commonwealth and prohibited from returning to the Commonwealth. Any hybrid canine ordered removed from the Commonwealth ~~which that~~ is later found in the Commonwealth shall be ordered by a court to be killed immediately.

**Drafting Note: Technical changes.**

§ ~~3.1-796.126:11~~ 3.2-6584. Compensation for livestock and poultry killed by hybrid canines.

Any person who has any livestock or poultry killed or injured by any hybrid canine not his own shall be entitled to receive as compensation the fair market value of such livestock or



poultry not to exceed \$400 per animal or \$10 per fowl, ~~provided that~~ if: (i) the claimant has furnished evidence within ~~sixty~~ 60 days of discovery of the quantity and value of the dead or injured livestock and the reasons the claimant believes that death or injury was caused by a hybrid canine; (ii) the animal control officer or other officer shall have been notified of the incident within ~~seventy-two~~ 72 hours of its discovery; and (iii) the claimant first has exhausted his legal remedies against the owner, if known, of the hybrid canine doing the damage for which compensation under this section is sought. Exhaustion shall mean a judgment against the owner of the hybrid canine upon which an execution has been returned unsatisfied.

Local jurisdictions may by ordinance waive the requirements of (ii) or (iii) or both provided that the ordinance adopted requires that the animal control officer has conducted an investigation and that his investigation supports the claim. Upon payment under this section the local governing body shall be subrogated to the extent of compensation paid to the right of action to the owner of the livestock or poultry against the owner of the hybrid canine and may enforce the same in an appropriate action at law.

**Drafting Note: Technical changes.**

## Article 7 I2.

### Miscellaneous Provisions.

§ ~~3.1-796.127~~ 3.2-6585. Dogs and cats deemed personal property; rights relating thereto.

All dogs and cats shall be deemed personal property and may be the subject of larceny and malicious or unlawful trespass. Owners, as defined in § ~~3.1-796.66~~ 3.2-6500, may maintain any action for the killing of any such animals, or injury thereto, or unlawful detention or use thereof as in the case of other personal property. The owner of any dog or cat ~~which~~ *that* is injured or killed contrary to the provisions of this chapter by any person shall be entitled to recover the value thereof or the damage done thereto in an appropriate action at law from such person.

An animal control officer or other officer finding a stolen dog or cat, or a dog or cat held or detained contrary to law, shall have authority to seize and hold such animal pending action before a general district court or other court. If no such action is instituted within seven days, the animal control officer or other officer shall deliver the dog or cat to its owner.

The presence of a dog or cat on the premises of a person other than its legal owner shall raise no presumption of theft against the owner, and the animal control officer may take such animal ~~in charge~~ and notify its legal owner ~~to remove it~~. The legal owner of the animal shall pay a reasonable charge as the local governing body by ordinance shall establish for the keep of such animal while in the possession of the animal control officer.

**Drafting Note: Technical changes.**

§ ~~3.1-796.127~~ 3.2-6586. Dog injuring or killing other companion animals.

The owner of any companion animal that is injured or killed by a dog shall be entitled to recover damages consistent with the provisions of § ~~3.1-796.127~~ 3.2-6585 from the owner of such dog in an appropriate action at law if: (i) the injury occurred on the premises of the companion animal's owner; and (ii) the owner of the offending dog did not have the permission of the companion animal's owner for the dog to be on the premises at the time of the attack.

**Drafting Note: Technical changes.**

§ ~~3.1-796.128~~ 3.2-6587. Unlawful acts; penalties.

A. The following shall be unlawful acts and ~~constitute~~ *are* Class 4 misdemeanors:

1. ~~License application.~~—For any person to make a false statement in order to secure a dog or cat license to which he is not entitled.

2. ~~License tax.~~—For any dog or cat owner to fail to pay any license tax required by this chapter before February 1 for the year in which it is due. In addition, the court may order confiscation and the proper disposition of the dog or cat.

3. ~~Leash ordinance.~~—For any dog owner to allow a dog to run at large in violation of an ordinance passed pursuant to § ~~3.1-796.95~~ 3.2-6539.

4. ~~Rabies regulations.~~—For any person to fail to obey an ordinance passed pursuant to §§ ~~3.1-796.98-3.2-6522~~ and ~~3.1-796.100~~ 3.2-6525.

5. ~~Dead companion animals.~~—For any owner to fail to dispose of the body of his companion animals in accordance with § ~~3.1-796.121~~ 3.2-6554.

6. ~~Diseased dogs and cats.~~—For the owner of any dog or cat with a contagious or infectious disease to permit such dog or cat to stray from his premises if such disease is known to the owner.

7. ~~Concealing a dog or cat.~~—For any person to conceal or harbor any dog or cat on which any required license tax has not been paid.

8. ~~Removing collar and tag.~~—For any person, except the owner or custodian, to remove a legally acquired license tag from a dog or cat without the permission of the owner or custodian.

9. ~~Other violations.~~—Any other violation of this chapter for which a specific penalty is not provided.

B. It ~~shall be~~ is a Class 1 misdemeanor for any person to:

1. Present a false claim or to receive any money on a false claim under the provisions of § ~~3.1-796.118~~ 3.2-6553; or

2. Impersonate a humane investigator.

**Drafting Note: Technical changes.**

§ ~~3.1-796.128:1~~ 3.2-6588. Intentional interference with a guide or leader dog; penalty.

A. It is unlawful for a person to, without just cause, willfully impede or interfere with the duties performed by a dog if the person knows or has reason to believe the dog is a guide or leader dog. A violation of this subsection is ~~punishable~~ as a Class 3 misdemeanor.

B. It is unlawful for a person to, without just cause, willfully injure a dog if the person knows or has reason to believe the dog is a guide or leader dog. A violation of this subsection is ~~punishable~~ as a Class 1 misdemeanor.

"Guide or leader dog" means a dog that: (i) serves as a dog guide for a blind person as defined in § 51.5-60 or for a person with a visual disability; (ii) serves as a listener for a deaf or hard-of-hearing person as defined in § 51.5-111; or (iii) provides support or assistance for a physically disabled or handicapped person.

**Drafting Note: No changes.**

§ ~~3.1-796.128:2~~ 3.2-6589. Selling garments containing dog or cat fur prohibited; penalty.

It is unlawful for any person to sell a garment containing the hide, fur, or pelt ~~which~~ that he knows to be that of a domestic dog or cat. A violation of this section ~~shall be~~ is punishable by a fine of not more than \$10,000.

**Drafting Note: No changes.**

§ ~~3.1-796.129~~ 3.2-6590. Jurisdiction of general district courts; right of appeal.

Unless otherwise provided, the provisions of this article may be enforced by any general district court in cities or counties wherein the offense is committed; or the offender or owner may be found. Every such offender shall have the right of appeal to the appropriate circuit court.

**Drafting Note: No changes.**

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HORTICULTURE, AND FOOD**

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Consumer Services.**

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3.1-3	3.2-109A
3.1-4	3.2-110 3.2-5900
3.1-4.1	3.2-110 3.2-1101
3.1-5	Repealed, 1980
3.1-6	Deleted

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**Chapter 2. Agricultural Research and  
Education Commission.**

3.1-7	Repealed, 1966
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**Chapter 3. Commissioner of Agriculture and  
Consumer Services.**

3.1-8	3.2-101 3.2-102
3.1-9	Deleted
3.1-10	3.2-102
3.1-11	Deleted
3.1-12	Deleted
3.1-13	Deleted
3.1-14	3.2-102A 3.2-103 3.2-5900
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3.1-17	Deleted
3.1-17.1	3.2-105
3.1-18	Repealed, 1984

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3.1-18.2	3.2-113
3.1-18.3	3.2-114

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Lands.**

3.1-18.4	Deleted (Not set out)
3.1-18.5	3.2-205
3.1-18.6	3.2-206
3.1-18.7	Repealed, 1992

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3.1-18.11	3.2-202
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Chapter 3.4. Agricultural Enterprise Act of 2005.

3.1-18.13 through 3.1-18.25	Not in effect
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Chapter 4. Commission of the Industry of Agriculture.

3.1-19 through 3.1-22	Repealed, 1972
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Chapter 4.1. Virginia Agricultural Council.

3.1-22.1	Deleted
3.1-22.2	Deleted (Not set out)
3.1-22.3	3.2-2900
3.1-22.4	3.2-2901 3.2-2902 3.2-2903 3.2-2904A 3.2-2904B
3.1-22.5	3.2-2905

Chapter 4.2. Chippokes Plantation Farm Foundation.

3.1-22.6	Deleted (Not set out)
3.1-22.7	10.1-217.1
3.1-22.8	10.1-217.2
3.1-22.9	10.1-217.3

3.1-22.10	10.1-217.4
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Chapter 4.3 The Virginia Farmer Major Drought, Flood and Hurricane Disaster Act.

3.1-22.13	Deleted
3.1-22.14	Deleted (Not set out)
3.1-22.15	3.2-503
3.1-22.16	3.2-501
3.1-22.17	3.2-500
3.1-22.18	3.2-504
3.1-22.19	3.2-505
3.1-22.20	3.2-506
3.1-22.21	3.2-502

Chapter 4.4. Foreign Agricultural Investment Disclosure Act.

3.1-22.22 through 3.1-22.27	Repealed, 1996
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Chapter 4.5. Right to Farm Act.

3.1-22.28	3.2-300 3.2-301
3.1-22.29	3.2-300 3.2-302

Chapter 4.6. Virginia Equine Center Foundation.

3.1-22.30 through 3.1-22.37	Repealed, 2007
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Chapter 4.7. Virginia Horse Industry Board Act.

3.1-22.38 through 3.1-22.51	Repealed, 2005
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3.1-22.52	Expired, 1994
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3.1-22.53	Deleted
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3.1-22.56	3.2-1702
3.1-22.57	3.2-1703
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Chapter 5.1. Agricultural Development Authority.

3.1-27.1 through 3.1-27.36	Repealed, 1996
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Chapter 5.2. Rural Virginia Development Foundation.

3.1-27.37	Deleted
3.1-27.38	Deleted (Not set out)
3.1-27.39	Deleted
3.1-27.40	Deleted
3.1-27.41	Deleted
3.1-27.42	Deleted
3.1-27.43	Deleted
3.1-27.44	Deleted
3.1-27.45	Deleted
3.1-27.46	Deleted
3.1-27.47	Deleted
3.1-27.48	Deleted
3.1-27.49	Deleted
3.1-27.50	Deleted

Chapter 6. Certification of Agricultural Products in General.

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3.1-29	3.2-3400B
3.1-30	3.2-3401
3.1-31	3.2-3402

Chapter 7. Virginia Truck and Ornamentals Research Station.

3.1-32 through 3.1-39	Repealed, 1985
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Chapter 8 Extension Division of Virginia Polytechnic Institute and State University.

3.1-40 through	Repealed, 1994
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3.1-51	Deleted
3.1-52	Deleted
3.1-53	Deleted
3.1-54	Deleted
3.1-55	Deleted
3.1-56	Deleted
3.1-57	Deleted
3.1-58	Deleted
3.1-59	Deleted
3.1-60	Deleted
3.1-61	Deleted
3.1-62	Deleted
3.1-63	Deleted
3.1-64	Deleted
3.1-65	Deleted
3.1-66	Deleted
3.1-67	Deleted
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3.1-69	Deleted
3.1-70	Deleted
3.1-71	Deleted
3.1-72	Deleted
3.1-73	Deleted
3.1-73.1	Deleted (Not set out)
3.1-73.2	Repealed, 2001
3.1-73.3	3.2-3500
3.1-73.4	Repealed, 1989
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Chapter 10. Virginia Fertilization Law of 1970.

3.1-74 through 3.1-106	Repealed, 1994
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Chapter 10.1. Virginia Fertilizer Act.

3.1-106.1	Deleted
3.1-106.2	3.2-3600
3.1-106.3	Deleted
3.1-106.4	3.2-3601
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3.1-106.6	3.2-3605 3.2-3606A-E 3.2-3607A-F 3.2-3608A-C
3.1-106.7	3.2-3618
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3.1-106.18	3.2-3621
3.1-106.19	3.2-3603
3.1-106.20	3.2-3604
3.1-106.21	Deleted
3.1-106.22	3.2-3617

Chapter 11. Agricultural Liming Materials.

3.1-107 through 3.1-126	Repealed, 1974
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Chapter 11.1. The Virginia Agricultural Liming Materials Act.

3.1-126.1	Deleted
3.1-126.2	Repealed, 1994
3.1-126.2:1	3.2-3700
3.1-126.2:2	Deleted
3.1-126.3	3.2-3706
3.1-126.4	3.2-3702 3.2-3703A-B 3.2-3704A-C
3.1-126.5	3.2-3705
3.1-126.6	3.2-3707
3.1-126.7	3.2-3708
3.1-126.8	3.2-3709 3.2-3713
3.1-126.9	3.2-3711
3.1-126.10	3.2-3712
3.1-126.11	3.2-3715
3.1-126.12.	Repealed, 1994
3.1-126.12:1	3.2-3701
3.1-126.12:2	3.2-3714
3.1-126.12:3	3.2-3710
3.1-126.13.	Repealed, 1994

Chapter 12. Lime Grinding.

3.1-127 through 3.1-134	Repealed, 1972
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Chapter 13. Tree and Crop Pests.

3.1-135 through 3.1-157	Repealed, 1980
3.1-158	Repealed, 1984

through 3.1-169	
3.1-170 through 3.1-176	Repealed, 1984
3.1-177	15.2-902
3.1-177.1	15.2-902
3.1-178 through 3.1-188	Repealed, 1992
3.1-188.1	3.2-715
3.1-188.2	3.2-716
3.1-188.3	3.2-714
3.1-188.4	3.2-717
3.1-188.5	3.2-718
3.1-188.6	3.2-719
3.1-188.7	3.2-720
3.1-188.8	3.2-721
3.1-188.9	3.2-722
3.1-188.10	3.2-723
3.1-188.11	3.2-724
3.1-188.12	3.2-725
3.1-188.13	3.2-726
3.1-188.14	3.2-727
3.1-188.15	3.2-728
3.1-188.16	3.2-729
3.1-188.17	3.2-730
3.1-188.18	3.2-714
3.1-188.19	3.2-731
3.1-188.20	3.2-700
3.1-188.21	3.2-701
3.1-188.22	3.2-702
3.1-188.23	3.2-703
3.1-188.24	3.2-704
3.1-188.25	3.2-705
3.1-188.26	3.2-706
3.1-188.27	3.2-707
3.1-188.27:1	3.2-708
3.1-188.28	3.2-709

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3.1-188.29	3.2-710
3.1-188.30	3.2-711
3.1-188.31	Repealed, 1980.
3.1-188.31:1	3.2-712
3.1-188.31:2	3.2-713
3.1-188.32	3.1-3800
3.1-188.33	Deleted
3.1-188.34	3.2-3801
3.1-188.35	Deleted
3.1-188.36	3.2-3803 3.2-3810A
3.1-188.37	3.2-3803C 3.2-3806A 3.2-3807
3.1-188.38	3.2-3804
3.1-188.39	3.2-3808
3.1-188.40	3.2-3809
3.1-188.41	3.2-3805
3.1-188.42	3.2-3802
3.1-188.43	3.2-3801A
3.1-188.44	3.2-3806C
3.1-188.45	Deleted
3.1-188.46	3.2-3806 3.2-3810B
3.1-188.47	3.2-3810
3.1-188.48	3.2-3801B
3.1-188.49	3.2-3811

Chapter 14. Virginia Pesticide Law.

3.1-189 through 3.1-249.26	Repealed, 1989
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Chapter 14.1. Virginia Pesticide Control Act.

3.1-249.27	3.2-3900 3.2-3938
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3.1-249.28	3.2-3902
3.1-249.29	3.2-3904
3.1-249.30	3.2-3906
3.1-249.31	3.2-3906
3.1-249.32	3.2-3910
3.1-249.33	3.2-3907
3.1-249.34	3.2-3912
3.1-249.35	3.2-3914
3.1-249.36	3.2-3915
3.1-249.37	3.2-3916
3.1-249.38	3.2-3917
3.1-249.39	3.2-3918
3.1-249.40	3.2-3919
3.1-249.41	3.2-3920
3.1-249.42	3.2-3921
3.1-249.43	3.2-3921
3.1-249.44	3.2-3922
3.1-249.45	3.2-3923
3.1-249.46	3.2-3924
3.1-249.47	3.2-3925
3.1-249.48	3.2-3926
3.1-249.49	3.2-3927
3.1-249.50	3.2-3928
3.1-249.51	3.2-3929
3.1-249.52	3.2-3930
3.1-249.53	3.2-3931
3.1-249.54	3.2-3932
3.1-249.55	3.2-3933
3.1-249.56	3.2-3911 3.2-3909
3.1-249.57	3.2-3934
3.1-249.58	3.2-3942
3.1-249.59	3.2-3935
3.1-249.60	3.2-3936
3.1-249.61	3.2-3937
3.1-249.62	3.2-3904

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3.1-249.63	3.2-3917 3.2-3939 3.2-3940A-B, E
3.1-249.64	3.2-3939B-D
3.1-249.65	3.2-3939E
3.1-249.66	3.2-3939F
3.1-249.67	3.2-3939G
3.1-249.68	3.2-3908
3.1-249.69	3.2-3939H
3.1-249.70	3.2-3943 3.2-3947
3.1-249.71	3.2-3946A
3.1-249.72	3.2-3946B
3.1-249.73	3.2-3946C
3.1-249.74	3.2-3941
3.1-249.75	3.2-3913
3.1-249.76	3.2-3940C-D
3.1-249.77	3.2-3944
3.1-249.78	3.2-3945

Chapter 15. Hazardous Household Substances.

3.1-250 through 3.1-261	Repealed, 1984
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Chapter 16. Seeds.

3.1-262	Deleted
3.1-263	3.2-4000
3.1-264	3.2-4008
3.1-265	3.2-4015
3.1-266	3.2-4006
3.1-267	3.2-4016
3.1-268	3.2-4017
3.1-269	3.2-4001
3.1-270	3.2-4003 3.2-4011

	3.2-4012
3.1-271	3.2-4001
3.1-271.1	3.2-4002
3.1-272	3.2-4013
3.1-273	3.2-4014 3.2-4020
3.1-274	3.2-4018
3.1-275	3.2-4007
3.1-275.1	3.2-4009
3.1-275.2	3.2-4005
3.1-275.3	3.2-4010
3.1-275.4	3.2-4008K
3.1-275.5	3.2-4001
3.1-275.6	3.2-4019
3.1-275.7	3.2-4004
3.1-276	3.2-4021 3.2-4022
3.1-277	3.2-4024
3.1-278	3.2-4023
3.1-279	3.2-4022
3.1-280	3.2-4025
3.1-281	3.2-4024
3.1-282	3.2-4024
3.1-283	3.2-4024 3.2-4026
3.1-284	3.2-4027

Chapter 17. Seed Potatoes.

3.1-285	Deleted
3.1-286	Deleted
3.1-287	3.2-4100
3.1-288	3.2-4105
3.1-289	3.2-4104
3.1-290	3.2-4102 3.2-4104
3.1-291	Deleted
3.1-292	3.2-4107 3.2-4108

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3.1-293	3.2-4109
3.1-294	3.2-4106
3.1-295	3.2-4110 3.2-4111
3.1-296	Deleted

Chapter 17.1. Turfgrass, Sod, Plugs and Sprigs.

3.1-296.1 through 3.1-296.10:1	Repealed, 1984
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Chapter 17.2. Noxious Weed Law.

3.1-296.11	Deleted
3.1-296.12	3.2-800
3.1-296.13	3.2-801
3.1-296.14	3.2-802
3.1-296.15	3.2-803
3.1-296.16	3.2-804
3.1-296.17	3.2-805
3.1-296.18	3.2-809
3.1-296.19	3.2-806
3.1-296.20	3.2-807
3.1-296.21	3.2-808

Chapter 18. Tobacco.

3.1-297.	Deleted
3.1-298	Deleted
3.1-299	Deleted
3.1-300	Deleted
3.1-301	Deleted
3.1-302	Deleted
3.1-303	Deleted
3.1-304	Deleted
3.1-305	Deleted
3.1-306	Deleted
3.1-307	Deleted
3.1-308	3.2-2500
3.1-309	3.2-2501

	3.2-2502 3.2-2503 3.2-2504
3.1-310	3.2-2504
3.1-311	3.2-2505
3.1-312	3.2-2507
3.1-313	3.2-2508
3.1-314	3.2-2509
3.1-315	3.2-2506
3.1-316	3.2-2506
3.1-317	3.2-2510
3.1-318	3.2-1103
3.1-319	3.2-2400
3.1-320	3.2-2401
3.1-321	3.2-2401
3.1-322	3.2-2403 3.2-2404A
3.1-323	3.2-2404
3.1-324	3.2-2405
3.1-325	3.2-2405B 3.2-2405C 3.2-2405F
3.1-326	3.2-2405D
3.1-327	3.2-2405E
3.1-328	3.2-2406
3.1-329	3.2-2408
3.1-330	3.2-2409
3.1-331	3.2-2410
3.1-332	3.2-2407
3.1-333	3.2-2407
3.1-334	3.2-2411
3.1-335	3.2-1103
3.1-336	Deleted
3.1-336.1	3.2-4200
3.1-336.2	3.2-4201
3.1-336.2:1	3.2-4202
3.1-336.2:2	3.2-4203
3.1-336.3	3.2-4204
3.1-336.4	3.2-4205
3.1-336.5	3.2-4206

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3.1-336.6	3.2-4207
3.1-336.7	3.2-4208
3.1-336.8	3.2-4209
3.1-336.9	3.2-4210
3.1-336.9:1	3.2-4211
3.1-336.10	3.2-4212
3.1-336.11	3.2-4213
3.1-336.12	3.2-4214
3.1-336.13	3.2-4215
3.1-336.14	3.2-4216
3.1-336.15	3.2-4217
3.1-336.16	3.2-4218

### Chapter 19. Grades, Marks and Brands Generally.

3.1-337	3.2-4300
3.1-338	3.2-4302
3.1-339	3.2-4303
3.1-340	3.2-4304
3.1-341	3.2-4306
3.1-342	3.2-4307
3.1-343	3.2-4308
3.1-344	3.2-4305
3.1-345	3.2-4301
3.1-346	3.2-4309
3.1-347	3.2-4310
3.1-348	3.2-4311
3.1-348.1	3.2-4322
3.1-348.2	3.2-4323
3.1-348.3	3.2-4324
3.1-348.4	3.2-4325
3.1-348.5	3.2-4326
3.1-348.6	3.2-4327
3.1-349	3.2-4312
3.1-350	3.2-4313
3.1-351	3.2-4314
3.1-352	3.2-4320
3.1-353	3.2-4315
3.1-354	3.2-4316

3.1-355	Deleted
3.1-356	3.2-4317
3.1-357	3.2-4321
3.1-358	3.2-4318A
3.1-359	3.2-4318B
3.1-360	3.2-4319
3.1-360.1 through 3.1-360.8	Repealed, 1983

### Chapter 20. Food and Drink Generally.

3.1-361	Deleted
3.1-362.	Repealed, 2004
3.1-363	3.2-5104
3.1-364	3.2-5103
3.1-365	3.2-5105
3.1-366	3.2-5106A
3.1-367	3.2-5106B
3.1-368	3.2-5111
3.1-369	3.2-5106C
3.1-370	3.2-5110
3.1-371	3.2-5112
3.1-372	3.2-5107A
3.1-373	3.2-5107A
3.1-374	3.2-5107B
3.1-375	3.2-5108
3.1-376	3.2-5115
3.1-377	3.2-5113
3.1-378.	Repealed, 1997
3.1-379	3.2-5114
3.1-380	3.2-5109
3.1-381	3.2-5117
3.1-382	3.2-5118
3.1-382.1	3.2-5116
3.1-383	Deleted
3.1-384	Deleted
3.1-385	3.2-5119
3.1-385.1 through 3.1-385.8	Repealed, 2003

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3.1-386	Deleted.
3.1-387	3.2-5120 3.2-5123A-B
3.1-388	3.2-5126A
3.1-388.1	3.2-5127
3.1-389	3.2-5126 E
3.1-390	3.2-5126 B-D
3.1-391	3.2-5134
3.1-392	3.2-5128A-B
3.1-393	3.2-5128C
3.1-394	3.2-5101
3.1-395	3.2-5122
3.1-396	3.2-5123
3.1-396.1	3.2-5124
3.1-397	3.2-5125
3.1-398	3.2-5121
3.1-398.1	3.2-5130
3.1-399	3.2-5102
3.1-400	Deleted
3.1-401	3.2-5141
3.1-402	3.2-5100A
3.1-403	3.2-5100B
3.1-404	3.2-5100C
3.1-405	3.2-5131
3.1-406	3.2-5132
3.1-407	3.2-5133
3.1-408	3.2-5135A
3.1-409	3.2-5135B
3.1-410	3.2-5135C
3.1-411	3.2-5137
3.1-412	3.2-5138
3.1-413	3.2-5139
3.1-414	3.2-5140
3.1-415	3.2-5141
3.1-416	3.2-5142
3.1-417	3.2-5136
3.1-418	3.2-5145
3.1-418.1	3.2-5144
3.1-419	3.2-5143

### Chapter 21. Milk, Milk Products and Dairies.

3.1-420	3.2-5200
3.1-421	3.2-5204
3.1-422	Deleted
3.1-423	Deleted
3.1-424	Deleted
3.1-425	3.2-3200
3.1-426	3.2-3201
3.1-426.1	3.2-3202
3.1-426.2	3.2-3203
3.1-427	Deleted
3.1-428	Deleted
3.1-429	3.2-3203
3.1-430	3.2-3204
3.1-431	3.2-3205
3.1-432	3.2-3206
3.1-433	3.2-3206A
3.1-434	3.2-3206B
3.1-435	3.2-3206C
3.1-436.	Repealed, 1974
3.1-437	3.2-3208
3.1-437.1	3.2-3209
3.1-438	3.2-3210
3.1-439	3.2-3212
3.1-440	3.2-3211
3.1-441	3.2-3207
3.1-442	Deleted
3.1-443	3.2-3213
3.1-444	3.2-3214
3.1-445	3.2-3215
3.1-446	3.2-3216
3.1-447	Deleted
3.1-448	3.2-3217A
3.1-449	Deleted

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3.1-450	3.2-3217B 3.2-3217C
3.1-451	3.2-3218
3.1-452	3.2-3219
3.1-453	3.2-3220
3.1-454 through 3.1- 457	Repealed, 1974
3.1-458	3.2-3221
3.1-459	3.2-3222
3.1-460	3.2-3224
3.1-461	3.2-3223
3.1-462	Repealed, 1974
3.1-461.1	3.2-3300
3.1-461.2	3.2-3301
3.1-461.3	3.2-3302
3.1-461.4	3.2-3303
3.1-463 through 3.1- 530	Repealed, 1970
3.1-530.1	3.2-5206
3.1-530.2	Deleted
3.1-530.3	3.2-5207
3.1-530.4	3.2-5208
3.1-530.5	3.2-5202
3.1-530.6	3.2-5203
3.1-530.7	Deleted
3.1-530.8	3.2-5205
3.1-530.9	3.2-5209
3.1-530.10	3.2-5210
3.1-530.11	3.2-5211
3.1-531	Repealed, 1996
3.1-531.1	3.2-5219
3.1-532	3.2-5220
3.1-533	3.2-5221
3.1-534	3.2-5222
3.1-535	3.2-5223
3.1-535.1	3.2-5224
3.1-536	3.2-5225
3.1-537	3.2-5226

3.1-538	3.2-5227
3.1-539	3.2-5228
3.1-540	3.2-5229
3.1-541	3.2-5230
3.1-542	3.2-5231
3.1-543.	Repealed, 1996
3.1-544	3.2-5232
3.1-545	3.2-5218
3.1-545.1	3.2-5233
3.1-546 through 3.1- 562	Repealed, 1970
3.1-562.1	3.2-5212
3.1-562.2	3.2-5201
3.1-562.3	3.2-5213
3.1-562.4	Deleted.
3.1-562.5	Deleted.
3.1-562.6	3.2-5214
3.1-562.7	Deleted
3.1-562.8	3.2-5215
3.1-562.9	3.2-5216
3.1-562.10	3.2-5217
3.1-563	Deleted
3.1-564	Deleted
3.1-565	Deleted
3.1-566	Deleted
3.1-567	Deleted
3.1-568	Deleted
3.1-569	Deleted
3.1-570.	Deleted
3.1-571.	Repealed, 1996
3.1-572 through 3.1- 581	Repealed, 1988
3.1-582 through 3.1-587	Repealed, 1982

Chapter 22. Regulation of Bee Industry.

3.1-588	Repealed, 1972
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through 3.1-610	
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### Chapter 22.1. Beekeeping.

3.1-610.1	3.2-4400 3.2-4408 3.2-4411
3.1-610.2	3.2-4402
3.1-610.3	3.2-4402
3.1-610.4	Deleted
3.1-610.5	3.2-4410
3.1-610.6	3.2-4410 E
3.1-610.7	3.2-4409
3.1-610.8	3.2-4404
3.1-610.9	3.2-4401
3.1-610.10	3.2-4403
3.1-610.11	3.2-4410 D
3.1-610.12	3.2-4408
3.1-610.13	3.2-4408
3.1-610.14	3.2-4406
3.1-610.15	3.2-4405
3.1-610.16	Deleted
3.1-610.17	3.2-4407
3.1-610.18	3.2-4411
3.1-610.19	3.2-4412
3.1-610.20	3.2-4413
3.1-610.21	3.2-4414

### Chapter 22.2. Plant Pollination Advisory Board.

3.1-610.22	Deleted (Not set out)
3.1-610.23	3.2-2800
3.1-610.24	3.2-2801
3.1-610.25	3.2-2801 3.2-2802 3.2-2803 3.2-2805
3.1-610.26	3.2-2804

3.1-610.26:1	3.2-2805
3.1-610.27	3.2-2806
3.1-610.28	3.2-2806 3.2-2807

### Chapter 23. Apples.

3.1-611	3.2-4500
3.1-612	3.2-4502
3.1-613	3.2-4503
3.1-614	3.2-4504
3.1-615	3.2-4501
3.1-616	3.2-4505
3.1-617	3.2-4506
3.1-618	3.2-1200
3.1-619	Repealed, 1999
3.1-620	
3.1-621 through 3.1-625	Repealed, 2001
3.1-626	3.2-1206
3.1-627	3.2-1206
3.1-628	Repealed, 1999
3.1-629	Repealed, 2001
3.1-630	
3.1-631	Repealed, 1999
3.1-632	3.2-1205
3.1-633	Repealed, 1999
3.1-634	3.2-1201A 3.2-1202 3.2-1203
3.1-634.1	3.2-1201B 3.2-1202
3.1-635	3.2-1204
3.1-636	3.2-1207
3.1-636.1	3.2-1208
3.1-636.2	3.2-112
3.1-636.3	3.2-1209
3.1-636.4	3.2-1210
3.1-636.5	3.2-1211
3.1-636.6	3.2-1212

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3.1-636.7	3.2-1213
3.1-636.8	3.2-1214
3.1-636.9	3.2-1215
3.1-636.10	3.2-1102
3.1-636.11	3.2-1216
3.1-636.12	3.2-1217
3.1-637 through 3.1-646	Repealed, 1999
3.1-646.01 through 3.1-646.09	Repealed, 2004

### Chapter 23.1. Nurseries, Nurserymen, Horticulture and Floriculture.

3.1-646.1	Deleted
3.1-646.2	Deleted
3.1-646.3	Deleted

### Chapter 24. Peanuts.

3.1-647	3.2-1900
3.1-648	3.2-1901
3.1-649	3.2-1901 3.2-1902
3.1-650	3.2-1903 3.2-1904F
3.1-651	3.2-1903B
3.1-652	3.2-1904
3.1-653	3.2-1904B
3.1-654	3.2-1904C
3.1-655	3.2-1904D
3.1-656	3.2-1904E
3.1-657	3.2-1905
3.1-658	3.2-1907
3.1-659	3.2-1908
3.1-660	3.2-1102
3.1-661	3.2-1102
3.1-662	3.2-1906
3.1-663	3.2-1906
3.1-664	3.2-1909

3.1-665	3.2-1910
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### Chapter 25. Sweet Potatoes.

3.1-666 through 3.1-684.	Repealed, 2004
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### Chapter 25.1. Soybeans.

3.1-684.1	Deleted (Not set out.)
3.1-684.2	3.2-2300
3.1-684.3	Deleted
3.1-684.4	3.2-2306
3.1-684.5	3.2-2308
3.1-684.6	3.2-112
3.1-684.7	3.2-2306
3.1-684.8	3.2-2306
3.1-684.9	3.2-2309
3.1-684.10	3.2-2309
3.1-684.11	3.2-2305
3.1-684.12	3.2-2307
3.1-684.13	3.2-2300 3.2-2301 3.2-2302 3.2-2303 3.2-2304 3.2-2310
3.1-684.14	3.2-2300 3.2-2312
3.1-684.15	3.2-2313
3.1-684.16	3.2-1102
3.1-684.17	3.2-2311
3.1-684.18	3.2-2311
3.1-684.19	3.2-2314

### Chapter 25.2. Irish Potato Board.

3.1-684.20	Deleted (Not set out.)
3.1-684.21	3.2-1800

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3.1-684.22	Deleted
3.1-684.23	3.2-1806
3.1-684.24	3.2-1808
3.1-684.25	3.2-112
3.1-684.26	3.2-112 3.2-1806B
3.1-684.27	3.2-1806C 3.2-1806D
3.1-684.28	3.2-1809
3.1-684.29	Deleted
3.1-684.30	3.2-1805
3.1-684.31	3.2-1807
3.1-684.32	3.2-1801 3.2-1802 3.2-1803 3.2-1804
3.1-684.33	3.2-1811
3.1-684.34	3.2-1813
3.1-684.35	3.2-1812
3.1-684.36	3.2-1804C 3.2-1810
3.1-684.37	3.2-1810
3.1-684.38	3.2-1814
3.1-684.39	3.2-1800
3.1-684.40	3.2-1815

### Chapter 25.3. Small Grains.

3.1-684.41	3.2-2200
3.1-684.42	Deleted
3.1-684.43	3.2-2206
3.1-684.44	3.2-2208
3.1-684.45	3.2-112
3.1-684.46	3.2-2206B
3.1-684.47	3.2-2206A 3.2-2206C 3.2-2206D
3.1-684.48	3.2-2209
3.1-684.49	Deleted
3.1-684.50	3.2-2205

3.1-684.51	3.2-2207
3.1-684.52	3.2-2201 3.2-2202 3.2-2203 3.2-2204 3.2-2210
3.1-684.53	3.2-2200 3.2-2212
3.1-684.54	3.2-2213
3.1-684.55	3.2-1102 3.2-2212
3.1-684.56	3.2-2211
3.1-684.57	3.2-2211
3.1-684.58	3.2-2214

### Chapter 25.4. Virginia Marine Products Board.

3.1-684.59	3.2-2700 3.2-2701 3.2-2702
3.1-684.60	3.2-2703
3.1-684.61	3.2-2704
3.1-684.62	3.2-2704C
3.1-684.63	3.2-2705
3.1-684.64	3.2-2704D

### Chapter 26. Sale of Farm Produce.

3.1-685	3.2-4700 3.2-4701
3.1-686	3.2-4702
3.1-687	3.2-4705
3.1-688	3.2-4706 3.2-4707
3.1-689	3.2-4703
3.1-690	3.2-4702
3.1-690.1	3.2-4704
3.1-690.2	3.2-4708
3.1-691	Deleted

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3.1-692	3.2-4709 3.2-4710
3.1-693	3.2-4736
3.1-694	3.2-4711
3.1-695	3.2-4711C-D
3.1-696	3.2-4712
3.1-697	3.2-4713
3.1-698	3.2-4714
3.1-699	3.2-4716
3.1-699.1	3.2-4717
3.1-700	3.2-4718
3.1-700.1	3.2-4719
3.1-701	3.2-4720
3.1-702	3.2-4721
3.1-703	3.2-4722
3.1-704	3.2-4722B
3.1-705	3.2-4723
3.1-706	3.2-4723
3.1-707	3.2-4726
3.1-708	3.2-4727
3.1-709	3.2-4724
3.1-710	3.2-4725
3.1-711	3.2-4715
3.1-712	3.2-4728
3.1-713	3.2-4729
3.1-714	3.2-4730
3.1-715	3.2-4731
3.1-716	3.2-4732
3.1-717	3.2-4733
3.1-718.	3.2-4737
3.1-719	3.2-4734
3.1-720	3.2-4735
3.1-721	Deleted
3.1-722	Deleted
3.1-722.1	3.2-4738
3.1-722.1:1	Deleted
3.1-722.2	3.2-4739E 3.2-4750
3.1-722.3	3.2-4739
3.1-722.4	3.2-4740

3.1-722.5	3.2-4741
3.1-722.5:1	3.2-4742
3.1-722.6	Repealed, 1994
3.1-722.6:1	3.2-4739
3.1-722.7	3.2-4743
3.1-722.8	3.2-4744
3.1-722.9	3.2-4746
3.1-722.10	3.2-4747
3.1-722.11	3.2-4749 3.2-4751
3.1-722.12	3.2-4748
3.1-722.13	Deleted
3.1-722.14	3.2-4745
3.1-722.15	3.2-4752
3.1-722.16	3.2-4753
3.1-722.17	3.2-4754A
3.1-722.18	3.2-4754B
3.1-722.19	3.2-4755A
3.1-722.20	3.2-4756
3.1-722.20:1	3.2-4757
3.1-722.21	3.2-4755B
3.1-722.22	3.2-4758
3.1-722.23	3.2-4759
3.1-722.24	3.2-4760
3.1-722.25	3.2-4761
3.1-722.26	3.2-4762
3.1-722.27	Deleted
3.1-722.28	3.2-4763
3.1-722.29	3.2-4764
3.1-722.30	3.2-4765A
3.1-722.31	3.2-4765
3.1-722.32	3.2-4765B
3.1-722.33	3.2-4766
3.1-722.34	Deleted
3.1-722.35	3.2-4767
3.1-722.36	3.2-4768
3.1-722.37	3.2-4769
3.1-722.38	3.2-4770

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3.1-722.39	3.2-4771
3.1-722.40	3.2-4772
3.1-722.41	3.2-4773
3.1-722.42	3.2-4774
3.1-722.43	3.2-4775

Chapter 27. Livestock and Poultry.

3.1-723	3.2-5901
3.1-724	3.2-6001
3.1-725	3.2-5903
3.1-726	3.2-6002
3.1-727	3.2-6003
3.1-728	3.2-6007
3.1-729	3.2-6006
3.1-730	3.2-6004
3.1-731	3.2-6000
3.1-732	3.2-6005
3.1-733	3.2-6018
3.1-734	3.2-6008 3.2-6010
3.1-735	3.2-5902
3.1-736	3.2-6011
3.1-737	3.2-6012
3.1-738	3.2-6013
3.1-738.1	3.2-6014
3.1-739.	Repealed, 1983
3.1-739.1	3.2-6015
3.1-740	3.2-6019
3.1-741	Deleted
3.1-741.1	3.2-5900
3.1-741.2	3.2-106
3.1-741.3	3.2-5900
3.1-741.4	Deleted
3.1-741.5	Deleted
3.1-741.6	3.2-6023
3.1-741.7	3.2-5905
3.1-742.	Repealed, 1992
3.1-742.1	3.2-6024
3.1-743	3.2-6025

3.1-744.	Repealed, 1992
3.1-745	3.2-6026
3.1-745.1	3.2-6027
3.1-745.2	Deleted
3.1-746	3.2-6028
3.1-747	3.2-6029
3.1-748	Deleted
3.1-748.1	3.2-6030
3.1-749	3.2-6008
3.1-750	3.2-6020
3.1-751	3.2-6008 3.2-6009
3.1-752	Deleted
3.1-753	Deleted
3.1-754	3.2-6021
3.1-755	3.2-6016
3.1-756	3.2-6017
3.1-757	Deleted
3.1-758	3.2-6031
3.1-759	3.2-6032
3.1-760	Deleted
3.1-761	Deleted
3.1-762	Deleted
3.1-762.1	3.2-6033
3.1-763	3.2-6034
3.1-763.1	Deleted
3.1-763.2	3.2-6008
3.1-763.3	3.2-6022
3.1-763.4	Deleted
3.1-763.5	Deleted
3.1-763.5:1	3.2-6035
3.1-763.5:2	3.2-6036
3.1-763.5:3	3.2-6037
3.1-763.5:4	3.2-6038
3.1-763.5:5	3.2-6039
3.1-763.5:6	3.2-6040
3.1-763.5:7	3.2-6041
3.1-763.5:8	3.2-6042
3.1-763.6	3.2-2000

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3.1-763.7	3.2-2001 3.2-2002 3.2-2003 3.2-2004
3.1-763.8	3.2-2004
3.1-763.9	3.2-2006 3.2-2007 3.2-2008
3.1-763.10	3.2-1102
3.1-763.11	3.2-2005
3.1-763.12	3.2-2009
3.1-763.13	Repealed, 1979
3.1-763.14	3.2-5300
3.1-763.15	3.2-5301
3.1-763.16	3.2-5302
3.1-763.17	3.2-5304
3.1-764	3.2-5303
3.1-765	3.2-5305
3.1-766	3.2-5306B
3.1-767	3.2-5302C
3.1-768	3.2-5306
3.1-769	3.2-5307
3.1-769.1	3.2-5308
3.1-769.2	3.2-5309
3.1-769.3	3.2-5310
3.1-769.4	3.2-5311
3.1-770	3.2-5312
3.1-770.1	3.2-5313
3.1-770.2	3.2-5314
3.1-770.3	3.2-5315
3.1-771	Deleted
3.1-77	Deleted
3.1-773	Deleted
3.1-774	Deleted
3.1-775	Deleted
3.1-776	Repealed, 1977
3.1-777 through 3.1-	Repealed, 1980

796	
3.1-796.01	Deleted (Not set out)
3.1-796.02	Deleted
3.1-796.03	Deleted
3.1-796.04	Deleted
3.1-796.05	Deleted
3.1-796.06	Deleted
3.1-796.07	Deleted
3.1-796.08	Deleted
3.1-796.09	Deleted
3.1-796.010	Deleted
3.1-796.011	Deleted
3.1-796.012	Deleted
3.1-796.013	Deleted
3.1-796.014	Deleted
3.1-796.015	Deleted
3.1-796.016	Deleted
3.1-796.017	Deleted
3.1-796.018	Deleted
3.1-796.019	Deleted.
3.1-796.020	Deleted
3.1-796.1	Deleted
3.1-796.2	Deleted
3.1-796.3	Deleted
3.1-796.4	Deleted
3.1-796.5	Deleted
3.1-796.6	Deleted
3.1-796.7	Deleted
3.1-796.8	Deleted
3.1-796.9	Deleted
3.1-796.10	Deleted
3.1-796.11	Deleted
3.1-796.11:1	Deleted (Not set out)
3.1-796.11:2	3.2-1601 3.2-1602 3.2-1603 3.2-1604

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3.1-796.11:3	3.2-1606
3.1-796.11:4	3.2-1600 3.2-1607
3.1-796.11:5	3.2-1608
3.1-796.11:6	3.2-1609
3.1-796.11:7	Deleted
3.1-796.11:8	3.2-1605
3.1-796.11:9	3.2-1605
3.1-796.11:10	3.2-1610

**Chapter 27.1. Virginia Cattle Industry Board.**

3.1-796.12	Deleted (Not set out)
3.1-796.13	3.2-1300
3.1-796.14	3.2-1304A 3.2-1304B
3.1-796.15	3.2-1301
3.1-796.16	Deleted
3.1-796.17	3.2-112
3.1-796.18	Deleted
3.1-796.19	Deleted
3.1-796.20	Deleted
3.1-796.21	3.2-1301A
3.1-796.22	3.2-1302 3.2-1303 3.2-1304F 3.2-1304D
3.1-796.23	3.2-1304
3.1-796.24	3.2-1100B 3.2-1304E
3.1-796.25	3.2-1306A
3.1-796.26	3.2-1300 3.2-1305 3.2-1306 3.2-1307
3.1-796.27	3.2-1102 3.2-1308
3.1-796.28	3.2-1103

**Chapter 27.2. Cattle Branding and Registration.**

3.1-796.29	3.2-6100
3.1-796.30	3.2-6102
3.1-796.31	3.2-6107
3.1-796.32	3.2-6103
3.1-796.33	3.2-6104
3.1-796.34	3.2-6105
3.1-796.35	3.2-6106
3.1-796.36	3.2-6101
3.1-796.37	3.2-6108
3.1-796.38	3.2-6109

**Chapter 27.3. Animal Welfare Act.**

3.1-796.39 through 3.1-796.65	Repealed, 1984
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**Chapter 27.4. Comprehensive Animal Laws.**

3.1-796.66	3.2-5900 3.2-6500
3.1-796.67	3.2-6501
3.1-796.67:1	3.2-5904
3.1-796.67:2	3.2-6502
3.1-796.68	3.2-6503
3.1-796.69	3.2-6508
3.1-796.70	3.2-6510
3.1-796.71	3.2-6511
3.1-796.72	3.2-6509
3.1-796.73	3.2-6504
3.1-796.74	3.2-6506
3.1-796.75	3.2-6520
3.1-796.76	3.2-6507
3.1-796.77	3.2-6505
3.1-796.78	3.2-6512
3.1-796.79	3.2-6513
3.1-796.80	3.2-6514
3.1-796.81	3.2-6515

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3.1-796.82	3.2-6516
3.1-796.83	3.2-6517
3.1-796.83:1	3.2-6518
3.1-796.83:2	3.2-6519
3.1-796.84	3.2-6537
3.1-796.85	3.2-6524
3.1-796.86	3.2-6527
3.1-796.87	3.2-6528
3.1-796.87:1	3.2-6529
3.1-796.88	3.2-6530
3.1-796.89	3.2-6533
3.1-796.90	3.2-6526
3.1-796.91	3.2-6532
3.1-796.92	3.2-6531
3.1-796.93	3.2-6538
3.1-796.93:1	3.2-6540
3.1-796.93:2	3.2-6541
3.1-796.93:3	3.2-6542
3.1-796.94	3.2-6543
3.1-796.94:1	3.2-6544
3.1-796.94:2	3.2-6545
3.1-796.95	3.2-6539
3.1-796.96	3.2-6546
3.1-796.96:1	3.2-6547
3.1-796.96:2	3.2-6548
3.1-796.96:3	Repealed, 2003
3.1-796.96:4	
3.1-796.96:5	3.2-6549
3.1-796.96:6	3.2-6550
3.1-796.96:7	3.2-6551
3.1-796.97	3.2-6521B 3.2-6526B
3.1-796.97:1	3.2-6521A
3.1-796.98	3.2-6522
3.1-796.99	3.2-6523
3.1-796.100	3.2-6525
3.1-796.101	3.2-6434
3.1-796.102	3.2-6435
3.1-796.103	3.2-6436
3.1-796.104	3.2-6555

3.1-796.104:1	3.2-6556
3.1-796.105	3.2-6557
3.1-796.106	3.2-6558
3.1-796.106:1	3.2-6561
3.1-796.106:2	3.2-6559
3.1-796.107	3.2-6564
3.1-796.108	3.2-6565
3.1-796.109	Repealed, 1998
3.1-796.110	3.2-6560
3.1-796.111	3.2-6566
3.1-796.112	3.2-6567
3.1-796.113	3.2-6568
3.1-796.114	3.2-6563
3.1-796.115	3.2-6569
3.1-796.116	3.2-6552
3.1-796.117	Repealed, 2006
3.1-796.118	3.2-6553
3.1-796.119	3.2-6562
3.1-796.120	Deleted
3.1-796.121	3.2-6554
3.1-796.122	3.2-6570
3.1-796.123	Repealed, 2002
3.1-796.124	3.2-6571
3.1-796.125	3.2-6572
3.1-796.126	3.2-6573
3.1-796.126:1	3.2-6574
3.1-796.126:2	3.2-6575
3.1-796.126:3	3.2-6576
3.1-796.126:4	3.2-6577
3.1-796.126:5	3.2-6578
3.1-796.126:6	3.2-6579
3.1-796.126:7	3.2-6580
3.1-796.126:8	3.2-6581
3.1-796.126:9	3.2-6582
3.1-796.126:10	3.2-6583
3.1-796.126:11	3.2-6584



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3.1-796.127	3.2-6585
3.1-796.127:1	3.2-6586
3.1-796.128	3.2-6587
3.1-796.128.1	3.2-6588
3.1-796.128.2	3.2-6589
3.1-796.129	3.2-6590

### Chapter 27.5. Equine Activity Liability Act.

3.1-796.130	3.2-6200
3.1-796.131	3.2-6201
3.1-796.132	3.2-6202
3.1-796.133	3.2-6203

### Chapter 27.6. Ox Activity Liability Act.

3.1-796.134	3.2-6300
3.1-796.135	3.2-6301
3.1-796.136	3.2-6302

### Chapter 27.7. Agritourism Activity Liability.

3.1-796.137	3.2-6400
3.1-796.138	3.2-6401
3.1-796.139	3.2-6402

### Chapter 28. Stock and Poultry Feeds.

3.1-797 through 3.1-828	Repealed, 1994
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### Chapter 28.1. Virginia Commercial Feed Act.

3.1-828.1	Deleted
3.1-828.2	3.2-4800
3.1-828.3	Deleted
3.1-828.4	3.2-4801
3.1-828.5	3.2-4806
3.1-828.6	3.2-4803
3.1-828.7	3.2-4804

	3.2-4805
	3.2-4816
3.1-828.8	3.2-4809
3.1-828.9	3.2-4807
3.1-828.10	3.2-4808
3.1-828.11	3.2-4810
3.1-828.12	3.2-4812
3.1-828.13	3.2-4811
	3.2-4815
	3.2-4817
3.1-828.14	3.2-4813
3.1-828.15	Deleted
3.1-828.16	3.2-4802
3.1-828.17	3.2-4814

### Chapter 29. Animal Remedies.

3.1-829	3.2-4900
	3.2-4907
3.1-830	Deleted
3.1-831	3.2-4906
3.1-832	3.2-4907
3.1-833	3.2-4908
3.1-834	3.2-4902
3.1-835	3.2-4909
3.1-836	3.2-4903
3.1-837	3.2-4912
3.1-838	3.2-4910
3.1-839	Deleted
3.1-840	3.2-4911
3.1-841	3.2-4901
3.1-842	3.2-4904
3.1-843	3.2-4905
3.1-844	3.2-4913
3.1-845	3.2-4914

### Chapter 30. Slaughterhouses, Meat and Dressed Poultry.

3.1-846 through 3.1-866	Repealed, 1968
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3.1-867	3.2-5419
3.1-868	3.2-5420
3.1-869, 3.1-870.	Repealed, 1968
3.1-871	3.2-5421
3.1-872 through 3.1-876	Repealed, 1966
3.1-877 through 3.1-884	Repealed, 1966
3.1-884.1 through 3.1-884.16	Repealed, 1970
3.1-884.17	Deleted
3.1-884.18	3.2-5400 3.2-5401 3.2-5402
3.1-884.19	3.2-5403
3.1-884.20	3.2-5404
3.1-884.21	3.2-5405
3.1-884.21:1	3.2-5406
3.1-884.21:2	Deleted
3.1-884.22	3.2-5407
3.1-884.23	3.2-5408
3.1-884.24	3.2-5409
3.1-884.25	3.2-5410
3.1-884.26	3.2-5411
3.1-884.27	3.2-5412
3.1-884.28	3.2-5413
3.1-884.29	3.2-5414
3.1-884.30	3.2-5405B
3.1-884.31	3.2-5415
3.1-884.32	3.2-5416
3.1-884.33	3.2-5417
3.1-884.34	3.2-5418
3.1-884.35	Deleted
3.1-884.36	Deleted (Not set out)

### Chapter 31. Animal Foods.

3.1-885 through 3.1-898	Repealed, 1983
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### Chapter 32. Vinegar.

3.1-899	3.2-5501
3.1-900	3.2-5500
3.1-901	3.2-5502
3.1-902	3.2-5503
3.1-903	3.2-5504
3.1-904	3.2-5505
3.1-905	3.2-5506
3.1-906	3.2-5507

### Chapter 33. Miscellaneous Food Products.

3.1-907 through 3.1-917	Repealed, 1979
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### Chapter 34. Farm Machinery and Equipment.

3.1-918	3.2-5000
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### Chapter 35. Weights and Measures.

3.1-919	3.2-5600
3.1-920	3.2-5603
3.1-921	Repealed, 1993
3.1-922	3.2-5604
3.1-923	3.2-5605
3.1-924.	3.2-5601
3.1-924.1	3.2-5602
3.1-925	3.2-5606
3.1-926	3.2-5607
3.1-927	3.2-5608
3.1-928	3.2-5609
3.1-929	3.2-5610
3.1-930	Deleted
3.1-931	3.2-5629
3.1-932	3.2-5611

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3.1-933	3.2-5612
3.1-934	3.2-5613
3.1-935	3.2-5614
3.1-936	Deleted
3.1-937	3.2-5615
3.1-938	3.2-5616
3.1-939	3.2-5617
3.1-940	3.2-5618
3.1-941	3.2-5619
3.1-941.1	3.2-5620
3.1-942	3.2-5621
3.1-943	3.2-5622
3.1-944	3.2-5623
3.1-945	3.2-5624
3.1-946	3.2-5625
3.1-947	3.2-5626
3.1-948.	Repealed, 1993
3.1-949	3.2-5631
3.1-949.01	3.2-5632
3.1-949.1	3.2-5627
3.1-949.2	3.2-5628
3.1-949.3	3.2-5630
3.1-949.4	3.2-5633
3.1-950	3.2-5634
3.1-951 through 3.1-954	Repealed, 1993
3.1-954.1	3.2-5635
3.1-955.	Repealed, 1993
3.1-956	3.2-5641
3.1-957	3.2-5642
3.1-958	3.2-5636
3.1-959	3.2-5637
3.1-960	3.2-5638
3.1-961	3.2-5639
3.1-962	Repealed, 1993
3.1-962.1	3.2-5640
3.1-963	3.2-5643
3.1-964	3.2-5644
3.1-965	3.2-5645

3.1-966.	Repealed, 1991
3.1-966.1	3.2-5646
3.1-966.2	3.2-5647
3.1-967	3.2-5648
3.1-968	Deleted
3.1-969	Deleted

Chapter 35.1. Weights and Measures Service Agencies and Technicians.

3.1-969.1	3.2-5700
3.1-969.2	3.2-5701
3.1-969.3	3.2-5702
3.1-969.4	3.2-5703
3.1-969.5	3.2-5704
3.1-969.6	3.2-5705
3.1-969.7	3.2-5706
3.1-969.8	3.2-5707
3.1-969.9	3.2-5708
3.1-969.10	3.2-5709
3.1-969.11	3.2-5710
3.1-969.12	3.2-5711
3.1-969.13	3.2-5712
3.1-969.14	3.2-5713
3.1-969.15	3.2-5714

Chapter 36. Public Weighmasters.

3.1-970	3.2-5800
3.1-971	3.2-5801
3.1-972	3.2-5802
3.1-973	3.2-5803
3.1-974	3.2-5804
3.1-975	3.2-5805
3.1-976	3.2-5806
3.1-977	3.2-5807
3.1-978	3.2-5808
3.1-979	3.2-5809
3.1-980	3.2-5810
3.1-981	3.2-5811

**APPENDIX A**

3.1-982	3.2-5812
3.1-983	3.2-5813
3.1-984	3.2-5814
3.1-985	3.2-5815
3.1-986	3.2-5800 3.2-5816
3.1-987	3.2-5817
3.1-988	3.2-5818
3.1-989	3.2-5819
3.1-990	3.2-5820

Chapter 37. Controlled Atmosphere Storage of Apples and Peaches.

3.1-991	3.2-4600
3.1-992	3.2-4607
3.1-993	3.2-4608
3.1-994	3.2-4602
3.1-995	3.2-4603
3.1-996	Deleted
3.1-997	3.2-4601
3.1-998	3.2-4609
3.1-999	3.2-4603C
3.1-1000	3.2-4604
3.1-1001	3.2-4605
3.1-1002	3.2-4610
3.1-1003	3.2-4606
3.1-1004	3.2-4611
3.1-1005	3.2-4612
3.1-1006	Deleted
3.1-1007	3.2-4613
3.1-1008	Deleted
3.1-1009	Repealed, 1997
3.1-1010	Deleted

Chapter 38. Nuisance Bird Law.

3.1-1011	Deleted
3.1-1012	3.2-900
3.1-1013	3.2-901
3.1-1014	3.2-901C

3.1-1015	3.2-901D
3.1-1016	Deleted
3.1-1017	Deleted
3.1-1018	Deleted
3.1-1019	3.2-901E

Chapter 39. Endangered Plant and Insect Species Act.

3.1-1020	Deleted
3.1-1021	3.2-1000
3.1-1022	3.2-1001 3.2-1004
3.1-1023	3.2-1003
3.1-1024	3.2-1001 3.2-1003
3.1-1025	3.2-1002 3.2-1005
3.1-1026	3.2-1006
3.1-1027	3.2-1007
3.1-1027.1	3.2-1008
3.1-1028	3.2-1009
3.1-1029	3.2-1010
3.1-1030	3.2-1011

Chapter 40. Virginia Corn Act.

3.1-1031	Deleted
3.1-1032	3.2-1400
3.1-1033	Deleted
3.1-1034	3.2-1406
3.1-1035	3.2-1408
3.1-1036	3.2-112
3.1-1037	3.2-1406B
3.1-1038	3.2-1406C 3.2-1406D
3.1-1039	3.2-1406 3.2-1409
3.1-1040	Deleted
3.1-1041	3.2-1405
3.1-1042	3.2-1407

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3.1-1043	3.2-1400 3.2-1401 3.2-1402 3.2-1403 3.2-1404 3.2-1410
3.1-1044	3.2-1400 3.2-1412
3.1-1045	3.2-1413
3.1-1046	3.2-1102 3.2-1412
3.1-1047	3.2-1411
3.1-1048	3.2-1411
3.1-1049	3.2-1414

Chapter 41. Industrial Ethanol.

3.1-1050 through 3.1-1056	Repealed, 1996
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Chapter 42. Virginia Winegrowers Advisory Board.

3.1-1057 through 3.1-1064	Repealed, 2004
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Chapter 42.1. Virginia Wine Board.

3.1-1064.1	3.2-3000
3.1-1064.2	3.2-3001
3.1-1064.3	3.2-3001B 3.2-3001C 3.2-3002 3.2-3003A
3.1-1064.4	3.2-3003
3.1-1064.5	3.2-3004
3.1-1064.6	3.2-3005
3.1-1064.7	3.2-3006

Chapter 43. Virginia Sheep Industry Board Act.

3.1-1065	3.2-2100
3.1-1066	3.2-2104B
3.1-1067	3.2-2108
3.1-1068	3.2-112
3.1-1069	3.2-2106
3.1-1070	3.2-2106
3.1-1071	3.2-2109
3.1-1072	3.2-2105
3.1-1073	3.2-2107
3.1-1074	3.2-2101 3.2-2104A
3.1-1075	3.2-2101 3.2-2102 3.2-2103 3.2-2110
3.1-1076	3.2-2111
3.1-1077	3.2-2112A
3.1-1078	3.2-2112 3.2-2113
3.1-1079	3.2-2114
3.1-1080	Expired

Chapter 44. Virginia Cotton Board.

3.1-1081	3.2-1500
3.1-1082	Deleted
3.1-1083	Deleted
3.1-1084	3.2-112
3.1-1085	3.2-1506
3.1-1086	3.2-1508
3.1-1087	3.2-1506C 3.2-1506D
3.1-1088	Deleted
3.1-1089	3.2-1505
3.1-1090	3.2-1509
3.1-1091	3.2-1507
3.1-1092	3.2-1510
3.1-1093	3.2-1501
3.1-1094	3.2-1502
3.1-1095	3.2-1503

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	3.2-1504A
3.1-1096	3.2-1504B
3.1-1097	3.2-1504C
3.1-1098	3.2-1512
3.1-1099	3.2-1513
3.1-1100	Deleted
3.1-1101	3.2-1511
3.1-1102	3.2-1102
3.1-1103	3.2-1514

### Chapter 45. Virginia Charity Food Assistance Act.

3.1-1104, 3.1-1105	Repealed, 2004
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### Chapter 46. Tobacco Indemnification and Community Revitalization Commission.

3.1-1106	3.2-3100
3.1-1107	3.2-3101
3.1-1108	3.2-3102
3.1-1109	3.2-3103
3.1-1109.1	3.2-3104
3.1-1110	3.2-3105
3.1-1111	3.2-3106
3.1-1111.1	3.2-3107
3.1-1112	3.2-3108
3.1-1113	3.2-3109
3.1-1114	3.2-3110
3.1-1114.1	3.2-3111

APPENDIX B  
OTHER AFFECTED TITLES

Title 2.2.

Administration of Government.

CHAPTER 2.

GOVERNOR'S SECRETARIES.

§ 2.2-203.3. Position established; agencies for which responsible; additional duties.

The position of Secretary of Agriculture and Forestry (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Forestry, Department of Agriculture and Consumer Services, *and* Virginia Agricultural Council, ~~and Virginia Marine Products Board~~. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

**Drafting note: The Marine Products Board is deleted because it is not a separate agency under the Secretary of Agriculture and Forestry, it is established within the Department of Agriculture and Consumer Services.**

Title ~~3.1~~10.1.

CHAPTER ~~4.2~~.

PARKS AND RECREATION.

**Chapter Drafting Note: Existing Chapter 4.2 in Title 3.1 is moved to Title 10.1, Conservation, under the Department of Conservation and Recreation, because the Chippokes Plantation Farm Foundation functions primarily as a state park.**

Article 4.

Chippokes Plantation Farm Foundation.

§ ~~3.1~~ 22.6 Legislative findings.

~~The General Assembly finds and declares that agriculture, a major force in the development and effective conservation of our natural resources, continues as a major and viable contributor to the social and economic growth of the Commonwealth of Virginia and the nation. It is vital to the public interest, as the life styles and cultural backgrounds of large portions of our population change, that all citizens be knowledgeable of the history of agriculture and the important role it fulfills today. It is therefore in the public interest to develop a facility, which provides educational, demonstrational and recreational opportunities at the Chippokes Plantation State Park. Such a facility will enable all citizens living or traveling in Virginia to visit, interpret and enjoy a typical agricultural enterprise as it has developed during the past three centuries.~~

~~It is also in the public interest to preserve a great pastoral landscape and its principal structures, which have been managed since before the year of sixteen hundred twenty six as a working plantation on the southern banks of the James River directly across from Jamestown Island, the site of the first permanent settlement in the New World. This plantation, which was given to the Commonwealth for the enjoyment of all citizens, will provide outstanding outdoor~~

~~recreational opportunities and fulfill important new roles in educating the public on the history and evolving developments of agricultural production and rural living. The act is adopted in furtherance of these purposes.~~

**Drafting note: This section is currently not set out in the Code. It is deleted because it is a policy statement.**

§ ~~3.1-22.7~~10.1-217.1. Foundation created.

There is hereby created the Chippokes Plantation Farm Foundation, hereinafter referred to as the Foundation, a body politic and corporate to be organized and to have such powers as hereinafter provided.

**Drafting note: No changes**

§ ~~3.1-22.8~~10.1-217.2. Administration of Foundation; appointment and terms of board of trustees.

A. The Foundation shall be governed and administered by a board of trustees, consisting of 16 members as follows: two members of the House of Delegates, one of whom shall be a member of the House Committee on Agriculture, Chesapeake and Natural Resources and one of whom shall represent Surry County, appointed by the Speaker of the House of Delegates; two members of the Senate, one of whom shall be a member of the Senate Committee on Agriculture, Conservation and Natural Resources and one of whom shall represent Surry County, appointed by the Senate Committee on Rules; the Commissioner of Agriculture and Consumer Services and the Director of the Department of Conservation and Recreation who shall serve ex officio without voting privileges; and 10 nonlegislative citizen members appointed by the Governor, subject to confirmation by the General Assembly, as follows: one member shall be appointed after conferring with the board of supervisors of Surry County, which member may be either a member of the board of supervisors or from the county at large; one member shall be appointed after conferring with the dean of the College of Agriculture and Life Sciences at Virginia Polytechnic Institute and State University; and eight members shall be appointed from the Commonwealth at-large. Legislative members, the Commissioner of Agriculture and Consumer Services, and the Director of the Department of Conservation and Recreation shall serve terms coincident with their terms of office. Members appointed by the Governor shall serve terms of four years. Vacancies occurring before the expiration of term shall be filled for the unexpired term. All members appointed may be reappointed.

B. Trustees of the Foundation shall be reimbursed for all reasonable and necessary expenses incurred by them in the performance of their duties on behalf of the Foundation. Such reimbursement shall be paid from the Chippokes Plantation Farm Foundation Fund.

C. The Foundation shall elect from its membership a chairman, vice-chairman, and such other officers as it deems appropriate.

D. The chairman of the Board, the treasurer, and any other person designated by the Board to handle the funds of the Foundation, shall give bond, with corporate surety, in such penalty as is fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on the bonds shall be paid from funds available to the Foundation.

**Drafting note: No changes**

§ ~~3.1-22.9~~10.1-217.3. Purpose of Foundation; establishment of Chippokes Plantation Model Farm and the Agriculture and Forestry Center.

The purpose of this Foundation shall be to plan, manage and provide financial and material resources and technical assistance for the development, maintenance and operation of the Chippokes Plantation Model Farm and the Agriculture and Forestry Center, which shall be



established at Chippokes Plantation State Park, or a portion thereof, subject to the approval of the Director of the Department of Conservation and Recreation. The model farm shall be a working farm of diversified operation, utilizing modern practices which shall display and interpret for the public the daily activities of farming and contribute to the public's knowledge of agricultural production. The model farm may be operated under a lease or contract between the Director of the Department of Conservation and Recreation and the Foundation.

The Foundation will provide interpretation of day-to-day activities of farm life and the transition of agricultural and forestry equipment and practices during the past three centuries through the Agriculture and Forestry Center, sawmill, antique farm and forest equipment displays and best management practices for agriculture. The consent and approval of the General Assembly shall not be required therefor.

**Drafting note: No changes**

~~§ 3-1-22-10~~10.1-217.4. Powers of Foundation.

In order to carry out its purpose, the Foundation shall have the following powers:

1. To establish, administer, manage, including the creation of reserves, and make expenditures from the Chippokes Plantation Farm Foundation Fund hereinafter referred to as the fund, for the sole purpose of constructing the physical facilities and acquiring the necessary equipment, and whenever necessary, to maintain the continued operation and well-being of the model farm and physical facilities;
2. To request the General Assembly to authorize the creation of debt secured by a pledge of net revenues derived from rates, fees or other charges and the full faith and credit of the Commonwealth of Virginia, provided that such debt is created for specific revenue producing capital projects, including the enlargement or improvement thereof;
3. To accept, hold, administer and receive gifts and bequests of money, securities or other property of whatsoever character, absolutely or in trust, to the fund, for the purposes for which the Foundation is created;
4. To enter into contracts and agreements to accomplish the purposes of the Foundation;
5. To sublease, with the approval of the Director of the Department of Conservation and Recreation, all or any part of the Chippokes Plantation Park leased to it by the Director;
6. To establish a nonprofit corporation as an instrumentality to assist in the details of administering the affairs of the Foundation; and
7. Generally to do any and all lawful acts necessary or appropriate to carry out the purposes for which the Foundation is created.

**Drafting note: No changes**

~~§ 3-1-22-11~~10.1-217.5. Executive secretary.

The Director of the Department of Conservation and Recreation may appoint an executive secretary to the Foundation to perform such administrative duties as the Director and the Foundation may direct.

**Drafting note: No changes**

~~§ 3-1-22-12~~10.1-217.6. Gifts and bequests to Foundation.

Gifts and bequests of money, security and other property to the fund shall be deemed to be gifts of the Commonwealth, and the fund shall be exempt from all state and local taxes except income earned by the farm operator or operators in the operation of the model farm. Any income earned from gifts, bequests, rent, security and other property shall be deposited to the credit of the fund. In the event that the model farm cannot be established, operated, or maintained, the

Director of the Department of Conservation and Recreation may dispose of the property remaining at the farm and in the fund in any manner which he deems fit.

**Drafting note: No changes**

Title ~~3.1~~5.2.

CHAPTER ~~13~~9.

GENERAL POWERS OF LOCAL GOVERNMENT.

Article 41.

~~Musk Thistle and Curled Thistle~~ *Public Health and Safety; Nuisances.*

§ 15.2-902. Authority of locality to control certain noxious weeds.

A. *Johnson grass or multiflora rose.*

1. Any locality may by ordinance prevent, control and abate the growth, importation, spread and contamination of uninfested lands by the species of grass *Sorghum halepense*, commonly known as Johnson grass or by the woody shrub *rosa multiflora*, commonly known as multiflora rose.

~~B-2.~~ The Virginia Department of Agriculture and Consumer Services is authorized to provide financial and technical assistance to, and enter into agreements with, any locality which adopts an ordinance for the control of Johnson grass or multiflora rose.

B. *Musk thistle and curled thistle.*

1. *As used in this subsection:*

*"Musk thistle" means the weed designated as Carduus nutans L., a biennial weed of the Compositae family.*

*"Curled thistle" means the weed designated as Carduus acanthoides L., an annual and biennial weed of the Compositae family.*

2. *Any locality may by ordinance control the growth of musk thistle or curled thistle. Any such musk thistle or curled thistle growing in the locality may be declared a public nuisance and noxious weed, harmful to plant and grass growth and to pastures, and may be destroyed.*

**Drafting note: New subsection. Moved from Article 4 of Chapter 13 (Tree and Crop Pests) of existing Title 3.1.**

APPENDIX C  
REPEALED CHAPTERS

CHAPTER 5.2

~~RURAL VIRGINIA DEVELOPMENT FOUNDATION~~

**Chapter Drafting Note:** This chapter is deleted as obsolete. No governor has appointed the board of directors that oversees the Rural Virginia Development Foundation in approximately 12 years.

~~§ 3.1 27.37. Short title.~~

~~This chapter shall be known and may be cited as the "Rural Virginia Development Foundation Act."~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.38. Legislative findings, purpose of chapter. The General Assembly finds that there exists a need for diversified economic opportunity in many rural areas of the Commonwealth. Many rural communities face poor economic conditions manifested by high unemployment, underemployment and low farm income. Such problems can be alleviated by economic growth and employment opportunities provided by small businesses. Creation of a Rural Virginia Development Foundation is within the public interest to promote small industry, improve management development and labor productivity, and to identify, encourage, and coordinate new approaches to economic development in rural communities of the Commonwealth.~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.39. Definitions.~~

~~As used in this chapter:~~

~~"Board of trustees" means the board of trustees of the Rural Virginia Development Foundation.~~

~~"Economic development corporation" means an enterprise incorporated pursuant to the provisions of this chapter with the authority to promote and assist the growth and development of small business concerns.~~

~~"Foundation" means the Rural Virginia Development Foundation.~~

~~"Local government" means the governing body of any county, city or town in the Commonwealth.~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.40. Foundation created.~~

~~The Rural Virginia Development Foundation is created to be organized and to have the powers set forth in this chapter.~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.41. Creation of the board of trustees; membership.~~

~~A. The Rural Virginia Development Foundation shall be governed and administered by a board of trustees consisting of seventeen members. Members of the board shall be appointed by the Governor, subject to confirmation by the General Assembly. The board of trustees shall consist of the following individuals appointed by the Governor: Director of the Department of Minority Business Enterprise, two department heads of state government, two representatives of~~

~~the financial community, four members of the business community, four members of the education community, and four members who are elected local officials. Initially the trustees shall be appointed for the following terms: six for a term of four years, six for a term of three years, and two for a term of two years. Thereafter, successors to trustees whose terms expire shall be appointed for terms of four years. The Director of the Department of Minority Business Enterprise and the two department heads of state government shall serve at the pleasure of the Governor. All trustees may be reappointed.~~

~~B. Trustees of the Foundation shall be reimbursed from Foundation funds for their actual traveling expenses incurred in the performance of their duties on behalf of the Foundation.~~

~~C. The board shall elect from its membership a chairman, vice chairman, and other officers as it deems appropriate.~~

~~D. The chairman of the board, the treasurer, and any other person designated by the board to handle the funds of the Foundation shall give bond, with corporate surety, in such penalty as is fixed by the State Treasurer, conditioned upon the faithful discharge of their duties. The premium on the bonds shall be paid from funds available to the Foundation.~~

~~E. A majority of the members of the board serving at any one time shall constitute a quorum for the transaction of business.~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.42. Purpose of Foundation; objectives.~~

~~The Foundation will have the following objectives:~~

~~1. To develop and promote programs of economic growth in rural Virginia that are compatible with its cultural, resource and economic environment. The Foundation will encourage entrepreneurial efforts to increase value added production, processing and marketing activities in rural Virginia.~~

~~2. To pursue programs that ensure the delivery of coordinated leadership and manpower training activities and efforts.~~

~~3. To identify emerging needs and technological changes that generate products which can be produced by rural enterprises.~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.43. Committees.~~

~~The board shall appoint standing committees which will constitute the basic structure and provide leadership for the Foundation's principal objectives.~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.44. Meetings, staff, etc.~~

~~The Foundation's board shall meet at least twice annually to conduct the duties assigned to it under this chapter. The board shall appoint an Executive Director who shall supervise the activities of the Foundation on a day to day basis. The Executive Director may request assistance from state agencies and institutions, and the board may hire additional staff as needed.~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.45. Annual reports.~~

~~The Executive Director shall provide annual reports to the Governor summarizing the activities of the Foundation.~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.46. Powers of the Foundation.~~

~~To enable it to carry out its functions, the Foundation shall have the following general powers:~~

- ~~1. To sue and be sued in contractual matters in its own name;—~~
- ~~2. To adopt all procedural and substantive rules necessary for the administration of this chapter;—~~
- ~~3. To make contracts and agreements, and execute other instruments necessary or appropriate to carry out its purposes;—~~
- ~~4. To enter into agreement with, and accept grants from, any governmental agency in furtherance of this chapter;—~~
- ~~5. To accept services, gifts, grants, and any property of any character, and to utilize or dispose of them for the purposes for which the Foundation is created;—~~
- ~~6. To acquire by gift, devise, purchase, or otherwise, absolutely or in trust, and to hold and, unless otherwise restricted by the terms of the gift or devise, to encumber, convey, or otherwise dispose of, any real property, or any estate or interest therein, as may be necessary and proper in carrying into effect the purposes of the Foundation;—~~
- ~~7. To appoint and prescribe the duties of officers, agents, and employees as necessary to carry out its functions, and to fix and pay compensation to them as determined by the board;—~~
- ~~8. To coordinate the formation of any economic development corporation as defined in this chapter and to own stock in such a corporation; and—~~
- ~~9. Generally to do all lawful acts necessary or appropriate to carry out the purposes for which the Foundation is created.—~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.47. Subsidiary corporations.~~

~~Economic development corporations may be incorporated in this Commonwealth pursuant to the provisions of Article 3 (§ 13.1 618 et seq.) of Chapter 9 of Title 13.1, and all the provisions of Chapter 9 (§ 13.1 601 et seq.) of Title 13.1 not in conflict with or inconsistent with the provisions of this chapter shall apply to such corporations. The purpose clause of the articles of incorporation shall recite that the purpose for which the corporation is formed is to stimulate and promote the economic prosperity of the Commonwealth and its citizens and to encourage and assist through equity investments, loans, loan guarantees, advice, technical assistance and other appropriate means, the creation and location of new businesses and industries and the expansion of existing businesses and industry, in the rural areas of the Commonwealth. In furtherance of these purposes, economic development corporations shall coordinate their activities with the Virginia Division of Industrial Development, the Virginia Department of Agriculture and Consumer Services and other organizations, public and private.—~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.48. Limitations, subsidiary corporations.~~

~~A. Any economic development corporation formed pursuant to this chapter shall restrict its equity investments and related business dealings to business firms which will use such investments for the creation or location of new businesses and industries in rural Virginia or for the expansion of existing businesses and industries in the rural areas of the Commonwealth. Consistent with the purpose for which an economic development corporation may be formed, funds invested in Virginia business firms by purchase of stock or otherwise shall be used by the firms solely for the purpose of enhancing their productive capacities or ability to do business within the Commonwealth, or to facilitate their ability to add value within the Commonwealth to goods or services for export to out of state markets.—~~

~~B. No person, firm or corporation other than the Foundation shall subscribe for, own or hold directly or indirectly more than twenty five percent of the issued shares of the common~~

stock of any economic development corporation at any time.—

~~C. Any local government may in accordance with present law, participate or invest in the funding or operation of any economic development corporation formed pursuant to this chapter.—~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.49. Federal Small Business Investment Act; applicability.~~

~~Any corporation organized under the provisions of this chapter shall be a state development company, as defined in the Small Business Investment Act of 1958, Public Law 85-699, or any other federal legislation, and shall be authorized to operate on a statewide basis.—~~

**Drafting Note: Deleted section.**

~~§ 3.1 27.50. Credit of the Commonwealth not pledged.~~

~~Under no circumstances is the credit of the Commonwealth pledged herein.—~~

**Drafting Note: Deleted section.**

## CHAPTER 23.1

### NURSERIES, NURSERYMEN, HORTICULTURE AND FLORICULTURE

**Chapter Drafting Note: This chapter is deleted as obsolete.**

~~§ 3.1 646.1. Definitions.~~

~~For the purpose of this chapter:—~~

~~(1) "Nursery" means any grounds or premises on or in which nursery stock is being propagated or grown for sale or distribution, including any grounds or premises on or in which nursery stock is being fumigated, treated, packed or stored, or otherwise prepared or offered for sale or movement to other localities.—~~

~~(2) "Nurseryman" means any person engaged in the production of nursery stock for sale or distribution.—~~

~~(3) "Horticulture and floriculture." Whenever the terms "agriculture, agricultural purposes, agricultural uses" or words of similar import are used in any of the statutes of the Commonwealth of Virginia, such terms shall include horticulture and floriculture, horticultural purposes and floricultural purposes, horticultural uses and floricultural uses, and words of similar import applicable to agriculture shall likewise be applicable to horticulture and floriculture.—~~

**Drafting Note: Deleted section.**

~~§ 3.1 646.2. Nurseryman producing nursery stock and plants for sale is a farmer.~~

~~A nurseryman producing nursery stock and plants for sale shall be classified and placed in the same category as any other farmer or person producing agricultural products for market in the interpretation and construction of statutes and laws of the Commonwealth of Virginia.—~~

**Drafting Note: Deleted section.**

~~§ 3.1 646.3. Producer growing certain plants under natural or controlled conditions is a farmer.~~

~~A producer growing greenhouse plants, flowers, nursery stock, bedding plants, vegetables or vegetable transplants or any other plants grown under natural or controlled conditions, including plants grown in greenhouses, cold frames, plastic houses or slat houses, for sale shall be classified as a farmer and placed in the same category as any other farmer or person producing agricultural products for market in the interpretation and construction of statutes and laws of the Commonwealth of Virginia. Nothing herein shall be construed to provide an exemption from the sales and use tax for any products sold at retail by any such producer.—~~

**Drafting Note: Deleted section.**

## APPENDIX D

## COMPARATIVE OUTLINE OF TITLE 3.1 AND 3.2

Title ~~3.1~~3.2Agriculture, ~~Horticulture~~Animal Care, and Food*Subtitle I**General Provisions; Protection and Promotion of Agriculture*

<i>Chapter 1.</i>	<i>General Provisions</i>
<del>—Article 1.</del> Chapter 3	<i>Department and Commissioner of Agriculture and Consumer Services.</i>
<del>—Article 2.</del> Chapter 1.	<i>Board of Agriculture and Consumer Services.</i>
<del>—Article 3.</del> Chapter 3.1.	<i>Administrator—Office of Consumer Affairs.</i>
<i>Chapter 2.</i>	<i>Preservation of Farm and Forest Lands.</i>
<del>—Article 1.</del> Chapter 3.3.	<i>Office of Farmland Preservation.</i>
<del>—Article 2.</del> Chapter 3.2.	<i>Protection of Farm and Forest Lands.</i>
Chapter 4.5-3.	<i>Right to Farm—Act.</i>
<i>Chapter 4.</i>	<i>Agricultural Stewardship.</i>
Chapter 4.3-5.	<del>The Virginia</del> Farmer Major Drought, Flood, and Hurricane Disaster <del>Act</del> Assistance.
Chapter 5-6.	<i>Return and Future Administration of Assets of Virginia Rural Rehabilitation Corporation.</i>
Chapter 13-7.	<i>Tree and Crop Pests.</i>
<del>—Article 6 1.</del>	<del>Virginia Pest Law</del> Pests.
<del>—Article 5 2.</del>	<i>Pest Control Compact.</i>
Chapter 17-2-8.	<del>Noxious Weed Law</del> Weeds.
Chapter 38 9.	<del>Nuisance Bird Law</del> Birds.
Chapter 39 10.	<i>Endangered Plant and Insect Species—Act.</i>

*Subtitle II**Boards, Councils, Foundations, and Commissions*

<i>Part A.</i>	<i>General Provisions.</i>
Chapter 1-1 11.	<del>Dedicated Funds</del> General Provisions.
<i>Part B.</i>	<i>Commodity Boards.</i>
Chapter 23, Article 2-12.	<del>Virginia State Apple Board; Excise Tax on Apples.</del>
Chapter 27-1 13.	<del>Virginia</del> Cattle Industry Board.
Chapter 40 14.	<del>Virginia</del> Corn Act Board.
Chapter 44 15.	<del>Virginia</del> Cotton Board.
Chapter 27, Article 10-16.	<del>Virginia</del> Egg Board.
Chapter 4-8 17.	<del>Virginia</del> Horse Industry Board Act.
—Article 1.	<i>Horse Industry Board.</i>
—Article 2.	<i>Equine Infectious Anemia Test Fee.</i>
—Article 3.	<i>Equine Feed Assessment.</i>
Chapter 25-2 18.	<del>Irish</del> Potato Board.
Chapter 24 19.	<del>Peanuts</del> Peanut Board.
Chapter 27, Article 4-220.	<del>Virginia</del> Pork Industry Board.

Chapter <del>43</del> 21.	<del>Virginia</del> Sheep Industry Board Act.
Chapter <del>25.3</del> 22.	Small Grains <i>Board</i> .
Chapter <del>25.1</del> 23.	<del>Soybeans</del> Soybean Board.
Chapter <del>18, Article 3</del> 24.	Bright Flue-Cured Tobacco <i>Board</i> .
Chapter <del>18, Article 2</del> 25.	<del>Virginia</del> Dark-Fired Tobacco Board.
<i>Part C.</i>	<i>Other Commodity-Related Boards, Councils, and Foundations.</i>
Chapter <del>9.1</del> 26.	Aquaculture <del>development act</del> <i>Advisory Board</i> .
Chapter <del>25.4</del> 27.	<del>Virginia</del> Marine Products Board.
Chapter <del>22.2</del> 28.	Plant Pollination Advisory Board.
Chapter <del>4.1</del> 29.	<del>Virginia</del> Agricultural Council.
Chapter <del>42.1</del> 30.	<del>Virginia</del> Wine Board.
<i>Part D.</i>	<i>Tobacco Indemnification and Community Revitalization Commission.</i>
Chapter <del>46</del> 31.	Tobacco Indemnification and Community Revitalization Commission.

*Subtitle III*

*Production and Sale of Agricultural Products*

Chapter <del>21, Article 2</del> 32.	Milk Commission.
Chapter <del>21, Article 2.1</del> 33.	Southern Dairy Compact.
Chapter <del>6</del> 34.	Certification of Agricultural Products <del>in General</del> .
Chapter <del>9, Article 3</del> 35.	Farmers Market System.
Chapter <del>10.1</del> 36.	<del>Virginia</del> Fertilizer Act.
Chapter <del>11.1</del> 37.	<del>The Virginia</del> Agricultural Liming Materials Act.
Chapter <del>13, Article 7</del> 38.	Plants and Plant Products Inspection <del>Law</del> .
Chapter <del>14.1</del> 39.	<del>Virginia</del> Pesticide Control Act.
—Article 1.	General Provisions.
—Article 2.	<i>Licensing and Registration.</i>
—Article 3.	Pesticide Application and Certification.
—Article 4.	Marine Antifoulant Paints.
—Article 5.	Violations, Penalties, and Proceedings in Case of Violations.
Chapter <del>16</del> 40.	Seeds.
—Article 1.	<del>Virginia</del> Seed Law.
—Article 2.	State-Certified Seed Board.
Chapter <del>17</del> 41.	Seed Potatoes.
Chapter <del>18</del> 42.	<i>Implementation of Tobacco Master Settlement Agreement.</i>
—Article 1.	Dark fire-cured tobacco.
—Article 4.	<del>Commission for regulation of sale, etc.</del>
—Article 5.1.	Requirements for Tobacco Product Manufacturers.
—Article 5.1.2.	Escrow Funds Contributed to the Commonwealth.
—Article 6.3.	Enforcement of Requirements for Tobacco Product Manufacturers.
Chapter <del>19</del> 43.	Grades, Marks, and Brands <del>Generally</del> .
—Article 1.	General Provisions.
—Article 2.	Virginia Quality Label.
—Article <del>1.1</del> 3.	Grain Handlers.



Chapter 22.1 44.	Beekeeping.
Chapter 23 45.	<i>Grading, Packing, and Marking of Apples.</i>
—Article 1.	<del>Grading, Packing, and Marking.</del>
Chapter 37 46.	Controlled Atmosphere Storage of Apples and Peaches.
Chapter 26 47	Sale of Farm Produce.
—Article 1.	<del>In-<i>General Provisions.</i></del>
—Article 2.	Commission Merchants.
—Article 3.	Dealers in Agricultural Produce.
—Article 4.	Dealers in Grain Products.
—Article 5.	Cotton Handlers.
Chapter 28.1 48.	<del>Virginia-Commercial Feed-act.</del>
Chapter 29 49.	Animal Remedies.
Chapter 34-50.	Farm Machinery and Equipment.
	<i>Subtitle IV</i>
	<i>Food and Drink; Weights and Measures</i>
Chapter 20 51.	Food and Drink <del>generally.</del>
—Article 1.	<del>In-<i>General Provisions.</i></del>
—Article 2.	Sanitary Requirements <del>in-<i>General.</i></del>
—Article 3.	Adulteration, Misbranding, and False Advertising <del>in-<i>General.</i></del>
—Article 4.	Seizures, Prosecutions, <del>and Penalties,</del> and Enforcement <del>Generally.</del>
Chapter 24 52.	Milk, Milk Products, and Dairies.
—Article 1.	<del>In-<i>General Provisions.</i></del>
—Article 3.12.	Standards of Quality, Grading, <i>and</i> Sanitary Standards, <del>etc.</del>
—Article 5.13.	Ice Cream and Similar Products.
—Article 4.	Babcock and other Machine Tests.
Chapter 27, Article 553.	Eggs and Hatchery Products.
Chapter 30 54.	Slaughterhouses, Meat, and Dressed Poultry.
—Article 1.	<del>In-<i>General Provisions.</i></del>
—Article 4.1.	<del>Virginia meat and poultry products inspection act.</del>
—Article 2.	<i>Inspection, Slaughter, and Official Marks.</i>
—Article 3.	<i>Enforcement and Penalties.</i>
—Article 4.	<i>Smithfield Hams.</i>
Chapter 32 55.	Vinegar.
Chapter 35 56.	Weights and Measures.
Chapter 35.1 57.	Weights and Measures Service Agencies and Technicians.
Chapter 36 58.	Public Weighmasters.
	<i>Subtitle V</i>
	<i>Domestic Animals</i>
Chapter 59.	<i>General Provisions.</i>
Chapter 27 60.	Livestock and Poultry.
—Article 1.	<del>In-<i>General Contagious and Infectious Diseases.</i></del>
—Article 1.1.	<del>Testing for Avian Influenza.</del>
—Article 1.2.	<del>Control of Avian Influenza.</del>
—Article 1.3.	<del>Compensation for Loss of Animals or Animal Products.</del>
—Article 2.	Disposal of Dead Poultry.
—Article 3.	<del>Tuberculosis, Para-Tuberculosis and Bang's Disease.</del>

<del>—Article 4.1.</del>	<del>Destruction of Swine Affected With Hog Cholera.</del>
<del>—Article 4.3.</del>	<del>Prohibitions on Feeding Garbage to Swine.</del>
<del>—Article 4.1:1 4.</del>	<del>Shooting Enclosures.</del>
<del>Chapter 27.261.</del>	<del>Cattle Branding and Registration.</del>
<del>Chapter 27.562.</del>	<del>Equine Activity Liability—æ.</del>
<del>Chapter 27.663.</del>	<del>Ox Activity Liability—æ.</del>
<del>Chapter 27.764.</del>	<del>Agritourism Activity Liability.</del>
<del>Chapter 27.465.</del>	<del>Comprehensive Animal Care.</del>
<del>—Article 1.</del>	<del>General Provisions.</del>
<del>—Article 2.</del>	<del>Animal Welfare.</del>
<del>—Article 3.</del>	<del>Sale of dogs and cats by dealers</del> <i>Transportation and Sale of Animals.</i>
<del>—Article 3.14.</del>	<del>Boarding Establishments and Groomers.</del>
<del>—Article 5.</del>	<del>Rabies Control and Licensing of Dogs and Cats.</del>
<del>—Article 4.6.</del>	<del>Authority of Local Governing Bodies and Licensing of Dogs.</del>
<del>—Article 57.</del>	<del>Animal Control Officers and Humane Investigators.</del>
<del>—Article 8.</del>	<del>Search, Seizure, Impounding, and Enforcement.</del>
<del>—Article 69.</del>	<del>Cruelty to Animals.</del>
<del>—Article 6.10.</del>	<del>Mandatory Sterilization of Dogs and Cats Adopted from Releasing Agencies.</del>
<del>—Article 6.211.</del>	<del>Hybrid Canines.</del>
<del>—Article 712.</del>	<del>Miscellaneous Provisions.</del>

Deleted Articles and Chapters:

Chapter 5.2.	Rural Virginia Development Foundation.
Chapter 9, Article 1.	Produce Market Authorities.
Chapter 9, Article 2.	Produce Market Loan Fund.
Chapter 18, Article 1.	Dark Fire-Cured Tobacco.
Chapter 18, Article 4.	Commission for Regulation of Sale, etc.
Chapter 21, Article 6.	Licensing Creameries, Plants and Stations.
Chapter 23.1.	Nurseries, Nurserymen, Horticulture and Floriculture.
Chapter 27, Article 6.	Certified Hatchery Products.
Chapter 27, Article 8.1.	Promotion of Sale and Use of Poultry.
Chapter 27, Article 9.	Quality Mark for Eggs.

Other Affected Titles:

Chapter 4.	Agricultural Stewardship, moved from Title 10.1.
Chapter 4.2.	Chippokes Plantation Farm Foundation, moved to Title 10.1.
Chapter 13, Article 4.	Musk Thistle and Curled Thistle, moved to Title 15.2.
Section 2.2-203.3	Governor's Secretaries—Position established; agencies for which established



