CODE OF VIRGINIA

Title 3.2

Agriculture, Animal Care, and Food

Title 3.2 - AGRICULTURE, ANIMAL CARE, AND FOOD

Subtitle I - GENERAL PROVISIONS; PROTECTION AND PROMOTION OF AGRICULTURE

Chapter 1 - GENERAL PROVISIONS

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.

2008, c. 860.

§ 3.2-101. Department continued; appointment of Commissioner; agriculture education

A. The Department of Agriculture and Consumer Services is continued. The Department shall be under the management and control of a Commissioner appointed by the Governor, subject to confirmation by the General Assembly, for a term coincident with that of the Governor. 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.

Code 1950, § 3-7; 1966, c. 702, § 3.1-8; 1971, Ex. Sess., c. 34; 1978, c. 219; 1985, c. 397; 2004, c. 180, § 3.1-14.2; 2008, c. 860.

§ 3.2-101.1. Certified mail; subsequent mail or notices may be sent by regular mail

Whenever in this title the Board, the Commissioner, or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Board, the Commissioner, or the Department may be sent by regular mail.

2011, c. 566.

§ 3.2-102. General powers and duties of the Commissioner

A. 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 laws relating to the Department. 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. 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; and

2. 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.

Code 1950, §§ 3-7, 3-9, 3-13; 1966, c. 702, §§ 3.1-8, 3.1-10, 3.1-14; 1971, Ex. Sess., c. 34; 1975, c. 260; 1977, c. 186; 1978, cc. 219, 540; 1982, c. 150; 1985, c. 397; 1993, c. 455; 1994, cc. 261, 370; 1995, c. 10; 1996, c. 996; 2005, c. 633; 2007, cc. 352, 870, 932, §§ 3.1-14.4, 3.1-14.01; 2008, c. 860; 2012, cc. 803, 835.

§ 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; and

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.

Code 1950, § 3-13; 1966, c. 702, § 3.1-14; 1975, c. 260; 1977, c. 186; 1978, cc. 219, 540; 1982, c. 150; 1993, c. 455; 1994, cc. 261, 370; 1995, c. 10; 1996, c. 996; 2005, c. 633; 2008, c. 860.

§ 3.2-104. Commissioner may serve on board of national tobacco trust entity

The Commissioner 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.

2000, c. 1048, § 3.1-14.1; 2008, c. 860.

§ 3.2-105. Century farm program

The Commissioner shall establish a century farm program to honor farm families in 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 descendant of the original owners; and (iii) gross more than $2,500 annually from the sale of farm products.

1997, c. 161, § 3.1-17.1; 1999, c. 346; 2008, c. 860; 2016, c. 6.

§ 3.2-106. Horse breeder incentive program

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 that will encourage and supplement private capital.

B. To the extent that public or private funds become available, the Department may establish a program of financial incentives designed to encourage, expand, and develop the breeding of horses in 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 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 the Commonwealth that are owned by breeders who are actively engaged in the breeding of horses in the Commonwealth.

1981, c. 140, § 3.1-741.2; 2008, c. 860.

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

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

B. All fees and moneys collected or received by the Commissioner or the Department in its official capacity for the testing of samples of manufactured, processed, or natural products shall be paid into 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.

Code 1950, §§ 3-13.1, 3-13.2; 1964, c. 163; 1966, c. 702, §§ 3.1-15, 3.1-16; 1972, c. 741; 1978, cc. 219, 702; 2008, c. 860.

§ 3.2-108. 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 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.

2007, c. 806, § 3.1-14.5; 2008, c. 860.

§ 3.2-108.1. Virginia Pollinator Protection Strategy

A. The Department shall develop and maintain a Virginia Pollinator Protection Strategy (the Strategy) to (i) promote the health of and mitigate the risks to all pollinator species and (ii) ensure a robust agriculture economy and apiary industry for honeybees and other managed pollinators.

B. In developing the Strategy, the Department shall seek the assistance of the Department of Conservation and Recreation, the Department of Game and Inland Fisheries, and the Department of Environmental Quality and shall establish a stakeholder group composed of representatives of affected groups, including beekeepers, agricultural producers, commercial pesticide applicators, private pesticide applicators, pesticide manufacturers, retailers, lawn and turf service providers, agribusiness and farmer organizations, conservation interests, Virginia Polytechnic Institute and State University, Virginia State University, and the Virginia Cooperative Extension.

C. The Strategy shall include a plan for the protection of managed pollinators that provides voluntary best management practices for pesticide users, beekeepers, and landowners and agricultural producers. The protection plan shall support:

1. Communication between beekeepers and applicators;

2. Reduction of the risk to pollinators from pesticides;

3. Increases in pollinator habitat;

4. Maintenance of existing compliance with state pesticide use requirements;

5. Identification of needs for further research to promote robust agriculture and apiary industries; and

6. Identification of additional opportunities for education and outreach on pollinators.

2016, c. 11.

Article 2 - BOARD OF AGRICULTURE AND CONSUMER SERVICES

§ 3.2-109. Board of Agriculture and Consumer Services; appointments; qualifications; terms of office

The Board of Agriculture and Consumer Services 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 consist of (i) one member from each congressional district, at least eight of whom shall be currently practicing farmers, and (ii) two at-large members, one of whom shall be a structural commercial applicator of pesticides and one of whom shall be engaged in the commercial sale or application of agricultural pesticides; all members to be 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 or their designees shall be ex officio members of the Board with voting privileges. All members of the Board shall be citizens of the Commonwealth. No member of the Board, except the ex officio members, shall be eligible for more than two successive terms; provided that persons 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.

Code 1950, § 3-1; 1952, c. 175; 1956, c. 37; 1966, c. 702, § 3.1-1; 1971, Ex. Sess., c. 135; 1978, c. 219; 1985, c. 397; 1992, c. 121; 2008, c. 860; 2011, cc. 98, 185; 2012, cc. 803, 835.

§ 3.2-110. 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. Special meetings may be held at any time upon the call of the president of the Board, the request of the Commissioner, or the written request of a majority of the Board members.

Code 1950, §§ 3-2, 3-3; 1966, c. 702, §§ 3.1-2, 3.1-3; 1978, c. 219; 2008, c. 860.

§ 3.2-111. 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, hold in trust, and administer any donation made to it for the advancement of the agricultural interests of the Commonwealth.

B. The Board shall have power to purchase or lease land, not to exceed 1,000 acres, for the programs of the Department, and 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 advise him on promoting the development of the industry; encouraging persons, agencies, organizations, and industries to develop the industry; working closely with all agencies concerned with rural resources development; coordinating efforts toward maximum farm and off-farm

employment; examining marketing procedures and new techniques for selling the Commonwealth's farm products; formulating plans for developing new markets for such products; and such other matters as the Governor may request.

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.

F. To carry out the provisions of Chapter 39 (§ 3.2-3900 et seq.).

Code 1950, § 3-4; 1966, c. 702, § 3.1-4; 1972, c. 531; 1985, c. 173, § 3.1-4.1; 1994, c. 370; 2001, cc. 17, 398; 2005, c. 882, § 3.1-14.3; 2008, c. 860; 2012, cc. 803, 835.

§ 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.

1970, cc. 310, 431, §§ 3.1-796.17, 3.1-684.6; 1980, cc. 316, 395, §§ 3.1-796.06, 3.1-1036; 1982, c. 126, § 3.1-684.25; 1983, c. 375; 1991, c. 587, § 3.1-684.45; 1995, c. 691, § 3.1-1068; 1997, c. 873, § 3.1-1084; 2005, cc. 497, 588, 864, 875, §§ 3.1-22.59, 3.1-636.2; 2008, c. 860.

Article 3 - OFFICE OF CONSUMER AFFAIRS

§§ 3.2-113 through 3.2-115. Repealed

Repealed by Acts 2013, c. 24, cl. 2.

Chapter 2 - PRESERVATION OF FARM AND FOREST LANDS

Article 1 - OFFICE OF FARMLAND PRESERVATION

§ 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.

2001, c. 521, § 3.1-18.9; 2008, c. 860.

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

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

1. To develop, in cooperation with the Department of Small Business and Supplier Diversity, 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;

4. To provide technical, professional, and other assistance to local governments interested in developing additional farmland preservation policies and programs. Such policies and programs shall include (i) use value assessment and taxation pursuant to §§ 58.1-3230 and 58.1-3231; (ii) transfer of development rights pursuant to Article 7.1 (§ 15.2-2316.1 et seq.) of Chapter 22 of Title 15.2; (iii) agricultural and forestal districts pursuant to Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2; and (iv) establishment of local lease of development rights; and

5. To administer the Virginia Farm Link program established pursuant to § 3.2-202.

B. State grants shall be distributed to local purchase of development rights programs under policies, procedures, and guidelines developed by the Office of Farmland Preservation. In general, for each $1 in grant moneys awarded by the Office, the applicable local purchase of development rights program of the county or city shall be required to provide a $1 match. However, as part of these policies, procedures, and guidelines developed by the Office, the Office shall include incentives that recognize and encourage counties and cities participating in use value taxation pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1.

C. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Farmland Preservation 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 and such moneys as may be made available from any other source, public or private. 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 Commissioner.

2001, c. 521, § 3.1-18.10; 2008, cc. 530, 860; 2009, c. 389; 2011, cc. 95, 160; 2013, c. 482.

§ 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: (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.

2001, c. 521, § 3.1-18.11; 2008, c. 860.

§ 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 the Open-Space Land Act (§ 10.1-1700 et seq.) from being eligible to receive grants, loans, or other funds from public sources.

2001, c. 521, § 3.1-18.12; 2008, c. 860.

Article 2 - PROTECTION OF FARM AND FOREST LANDS

§ 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 § 3.2-205, and 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 § 3.2-205 are considered as part of the review of each project.

1981, c. 635, § 3.1-18.8; 1982, c. 417; 2000, cc. 22, 778; 2008, c. 860.

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

A. In preparing environmental impact reports in accordance with § 3.2-204, 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 where the land is located.

B. The governing body of each locality, with the cooperation of the 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, and that the 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 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.

1981, c. 635, § 3.1-18.5; 1982, c. 417; 2000, cc. 22, 778; 2003, c. 384; 2008, c. 860.

§ 3.2-206. Certain agencies to prepare plans for implementation of policy

The Department of Transportation, 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. The plan shall contain an analysis of the impact 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 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.

1981, c. 635, § 3.1-18.6; 1982, c. 417; 1984, c. 750; 1989, c. 656; 2000, cc. 22, 778; 2006, c. 490; 2008, c. 860; 2009, c. 585.

Chapter 3 - RIGHT TO FARM

§ 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.

1981, c. 384, §§ 3.1-22.28, 3.1-22.29; 1991, c. 293; 1994, c. 779; 2007, c. 444; 2008, c. 860.

§ 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 locality 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. Localities 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 locality shall enact zoning ordinances 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.

1981, c. 384, § 3.1-22.28; 1991, c. 293; 1994, c. 779; 2007, c. 444; 2008, c. 860; 2014, c. 246.

§ 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. The provisions of subsection A shall not affect or defeat the right of any person 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.

C. 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. 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.

1981, c. 384, § 3.1-22.29; 1994, c. 779; 2008, c. 860.

Chapter 3.1 - GOVERNOR'S AGRICULTURE AND FORESTRY INDUSTRIES DEVELOPMENT FUND

§ 3.2-303. Definitions

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

"Agricultural products" means crops, livestock, and livestock products, including field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs, aquaculture, commercially harvested wild fish, commercially harvested wild shellfish, and furs.

"Agriculture and forestry processing/value-added facilities" means any for-profit or nonprofit business that creates value-added agricultural or forestal products.

"Forestal products" means saw timber, pulpwood, posts, firewood, Christmas trees, and other tree and wood products for sale or for farm use.

"New job" means employment of an indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the employee's time a week for the entire normal year of the firm's operations, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted

from an existing location in the Commonwealth to the location of the economic development project, positions with suppliers, and multiplier or spin-off jobs shall not qualify as new jobs. The term "new job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

"Prevailing average wage" means that amount determined by the Virginia Employment Commission to be the average wage paid workers in the city or county of the Commonwealth where the economic development project is located. The prevailing average wage shall be determined without regard to any fringe benefits.

"Private investment" means the private investment required under this chapter.

"Value-added agricultural or forestal products" means any agricultural or forestal product that (i) has undergone a change in physical state; (ii) was produced in a manner that enhances the value of the agricultural commodity or product; (iii) is physically segregated in a manner that results in the enhancement of the value of the agricultural or forestal product; (iv) is a source of renewable energy; or (v) is aggregated and marketed as a locally produced agricultural or forestal product.

2012, cc. 466, 622; 2016, c. 169.

§ 3.2-304. Governor's Agriculture and Forestry Industries Development Fund established; purpose; use of funds

A. There is hereby created in the state treasury a nonreverting fund to be known as the Governor's Agriculture and Forestry Industries Development Fund (the Fund) to be used by the Governor to attract new and expanding agriculture and forestry processing/value-added facilities using Virginia-grown products. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller. The Governor shall report to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance as funds are awarded in accordance with this chapter.

B. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions. The criteria for making such grants or loans shall include (i) amount of jobs expected to be created, (ii) anticipated amount of private capital investment, (iii) anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created, (iv) anticipated amount of Virginia-grown agricultural and forestal products used by the project, (v) projected impact on agricultural and forestal producers, (vi) a return on investment analysis to determine the appropriate size of any grant or loan, and (vii) an analysis of the impact on competing businesses already located in the area.

C. Funds may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly or privately owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing. However, in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to the use of any property.

D. Moneys in the Fund shall not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality. The Secretary of Agriculture and Forestry shall enforce this policy and for any exception thereto shall promptly provide written notice to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any exception to such policy.

E. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds shall remain in the Fund for those future fiscal years. No grant shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

2012, cc. 466, 622.

§ 3.2-305. Guidelines and criteria for awarding grants from Fund

The Secretary of Agriculture and Forestry, in consultation with the Virginia Economic Development Partnership, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of Forestry, shall assist the Governor in developing objective guidelines and criteria that shall be used in awarding grants from the Fund. The guidelines may include a requirement for the affected localities to provide matching funds, which may be cash or in-kind, at the discretion of the Governor. The guidelines may require that as a condition of receiving any grant incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal. The guidelines and criteria shall include provisions for geographic diversity, a requirement that a project purchase a minimum percentage of Virginia-grown or Virginia-produced agricultural or forestal products to which its processes are adding value, and a cap on the amount of funds to be provided to any individual project.

2012, cc. 466, 622; 2013, c. 547.

§ 3.2-306. Contractual obligations of entities receiving grants or loans from the Fund

A. Notwithstanding any provision in this chapter or in the guidelines established pursuant to § 3.2-305, each political subdivision that receives a grant or loan from the Fund shall enter into a contract with each business beneficiary of moneys from the Fund. A person or entity shall be a business beneficiary of funds from the Fund if grant or loan moneys awarded from the Fund by the Governor are paid to a political subdivision and (i) subsequently distributed by the political subdivision to the person or entity or (ii) used by the political subdivision for the benefit of the person or entity but never distributed to the person or entity.

B. The contract between the political subdivision and the business beneficiary shall provide in detail (i) the fair market value of all funds that the Commonwealth has committed to provide, (ii) the fair market value of all matching funds (or in-kind match) that the political subdivision has agreed to provide, (iii) how funds committed by the Commonwealth, including funds from the Fund committed by the Governor, and funds that the political subdivision has agreed to provide are to be spent, (iv) the minimum private investment to be made and the number of new jobs projected to be created by the business beneficiary, (v) the minimum percentage of Virginia-grown or produced agricultural or forestal products to be purchased by the business beneficiary, (vi) the average wage (excluding fringe benefits) projected to be paid in the new jobs, (vii) the prevailing average wage, and (viii) the formula, means, or processes agreed to be used for measuring compliance with the minimum private investment and new jobs projections, including consideration of any layoffs instituted by the business beneficiary over the course of the period covered by the contract.

C. The contract shall state the date by which the agreed-upon private investment and minimum purchases of Virginia-grown agricultural and forestal products shall be met by the business beneficiary of moneys from the Fund and may provide for the political subdivision to grant up to a 15-month extension of such date if deemed appropriate by the political subdivision subsequent to the execution of the contract. Any extension of such date granted by the political subdivision shall be in writing and promptly delivered to the business beneficiary, and the political subdivision shall simultaneously provide a copy of the extension to the Secretary of Agriculture and Forestry.

D. The contract shall provide that if the private investment and minimum purchase requirements are not met by the expiration of the date stipulated in the contract, including any extension granted by the political subdivision, the business beneficiary shall be liable to the political subdivision for repayment of a portion of the funds provided under the contract. The contract shall include a formula for purposes of determining the portion of such funds to be repaid. The formula shall, in part, be based upon the fair market value of all funds that have been provided by the Commonwealth and the political subdivision and the extent to which the business beneficiary has met the private investment and minimum purchase requirements. Any such funds repaid to the political subdivision that relate to the award from the Fund shall promptly be paid by the political sub-

division to the Commonwealth by payment remitted to the State Treasurer. Upon receipt by the State Treasurer of such payment, the Comptroller shall deposit the repaid funds into the Fund.

The contract shall be amended to reflect changes in the funds committed by the Commonwealth or agreed to be provided by the political subdivision.

2012, cc. 466, 622.

§ 3.2-307. Copy of proposed contract to be submitted to the Attorney General

Notwithstanding any provision in this chapter or in the guidelines established pursuant to § 3.2-305, prior to executing any such contract with a business beneficiary, the political subdivision shall provide a copy of the proposed contract to the Attorney General. The Attorney General shall review the proposed contract (i) for enforceability as to its provisions and (ii) to ensure that it is in appropriate legal form. The Attorney General shall provide any written suggestions to the political subdivision within seven days of his receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the enforceability of the contract's provisions and the legal form of the contract.

2012, cc. 466, 622.

§ 3.2-308. Disposition of award by locality

Notwithstanding any provision in this chapter or in the guidelines established pursuant to § 3.2-305, a political subdivision shall not expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until such contract is executed with the business beneficiary.

2012, cc. 466, 622.

§ 3.2-309. Report submitted to chairmen of legislative committees

Within the 30 days immediately following June 30 and December 30 of each year, the Governor shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance which shall include the following information regarding each grant or loan awarded from the Fund during the immediately preceding six-month period for economic development projects: the name of the company that is the business beneficiary of the grant and the type of business in which it engages; the location (county, city, or town) of the project; the amount of the grant committed from the Fund and the amount of all other funds committed by the Commonwealth from other sources and the purpose for which such grants or other funds will be used; the amount of all moneys or funds agreed to be provided by political subdivisions and the purposes for which they will be used; the number of new jobs projected to be created by the business beneficiary; the amount of investment in the project agreed to be made by the business beneficiary; the minimum purchase agreed to be made of Virginia-grown agricultural and forestal products; projected impact on agricultural and forestal producers; the timetable for the completion of the project and new jobs created; the prevailing average wage; and the average wage (excluding fringe benefits) projected to be paid in the new jobs.

2012, cc. 466, 622.

Chapter 4 - AGRICULTURAL STEWARDSHIP

§ 3.2-400. Definitions

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

"Agricultural activity" means any activity used in the production of food and fiber, including 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.

"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 where an agricultural activity occurs.

"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 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 U.S. Department of Agriculture's Natural Resources Conservation Service Field Office Technical Guide.

1996, c. 773, § 10.1-559.1; 2000, c. 973; 2008, c. 860.

§ 3.2-401. Exclusions from chapter

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

1996, c. 773, § 10.1-559.2; 2008, c. 860.

§ 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 where the land lies determine the validity of the information within 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 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 where the agricultural activity is located. The notice shall state that, within 60 days of the receipt of the notice, the owner or operator shall submit to the Commissioner and district an agricultural stewardship plan 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 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 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 18 months from receipt of notice. 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 60 days before the scheduled completion date. The Commissioner shall, within 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 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.

1996, c. 773, § 10.1-559.3; 2000, c. 973; 2008, c. 860.

§ 3.2-403. Issuance of corrective orders

A. If any owner or operator who has been issued a notice under § 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 § 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 chapter, if the Commissioner determines that a recurring polluting condition that is the subject of an approved plan is occurring or that an emergency condition exists due to runoff from an agricultural activity 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 that has been reviewed by the district 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 that could not have been reasonably anticipated.

1996, c. 773, § 10.1-559.4; 2000, c. 973; 2008, c. 860.

§ 3.2-404. Right of entry; court enforcement

A. The district or the Commissioner may enter land 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 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 § 3.2-402, the Commissioner may present to the circuit court of the county or city where the land is located, a petition asking the court to require the owner or operator to allow the Commissioner 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 may enter the land involved and implement the measures. The Commissioner may recover the costs of implementing the stewardship measures from the owner or operator.

1996, c. 773, § 10.1-559.5; 2000, c. 973; 2008, c. 860.

§ 3.2-405. Appeal

Decisions of the Commissioner may be appealed by persons aggrieved to the 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.

1996, c. 773, § 10.1-559.6; 2008, c. 860.

§ 3.2-406. Penalties; injunctions; enforcement actions

A. Any person violating § 3.2-403 or 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 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 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 chapter.

1996, c. 773, § 10.1-559.7; 2008, c. 860.

§ 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 that are owed in the same manner as provided by law in respect to judgment of a circuit court.

1996, c. 773, § 10.1-559.8; 2008, c. 860.

§ 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 chapter. These guidelines shall address, among other things, the conduct of investigations, sources of assistance for owners and operators, and intergovernmental cooperation. Within 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 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 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.

1996, c. 773, § 10.1-559.9; 2008, c. 860.

§ 3.2-409. Ordinances

A. Any locality may adopt an ordinance creating a complaint, investigation, and agricultural stewardship plan development program. Ordinances adopted hereunder may contain only provisions that parallel §§ 3.2-401 and 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 § 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 (§ 62.1-44.15:67 et seq.).

1996, c. 773, § 10.1-559.10; 2008, c. 860; 2013, cc. 756, 793.

§ 3.2-410. Construction of chapter

Nothing in this chapter shall be construed as duplicative of regulations governing agricultural practices under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.).

1996, c. 773, § 10.1-559.11; 2008, c. 860; 2013, cc. 756, 793.

Chapter 5 - FARMER MAJOR DROUGHT, FLOOD, AND HURRICANE DISASTER ASSISTANCE

§ 3.2-500. Definitions

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

"Farmer" means any person who derives at least 75 percent of his gross income from a farming operation in 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 that would be eligible for special tax assessments pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 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 section relating to special tax assessments.

"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.

1978, c. 837, § 3.1-22.17; 2008, c. 860.

§ 3.2-501. Declaration by Governor

The provisions of this chapter shall be effective from the time that the Governor 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.

1978, c. 837, § 3.1-22.16; 2008, c. 860.

§ 3.2-502. Administration

The Commissioner shall establish administrative procedures necessary to give effect to this chapter including the adoption of regulations.

1978, c. 837, § 3.1-22.21; 2008, c. 860.

§ 3.2-503. (Repealed effective October 1, 2016) 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 the Commonwealth whenever agricultural conditions are present in such localities 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.

1978, c. 837, § 3.1-22.15; 2008, c. 860.

§ 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 and subject to the following terms and conditions:

1. 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 to exceed $10,000.

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

3. No interest shall be charged for the loan.

4. Repayment shall be made within one year or upon receipt of loan funds from any federal agency providing disaster relief, whichever is sooner. The Department 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.

5. A maximum of $10,000 may be loaned any one farmer. The Governor at his discretion may reduce or increase the maximum amount of the loan.

6. 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 § 3.2-506.

1978, c. 837, § 3.1-22.18; 2008, c. 860.

§ 3.2-505. Emergency services

A. The Commissioner 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.

1978, c. 837, § 3.1-22.19; 2000, c. 16; 2008, c. 860.

§ 3.2-506. Farmers Major Disaster Fund established

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.

1978, c. 837, § 3.1-22.20; 2008, c. 860.

Chapter 6 - RETURN AND FUTURE ADMINISTRATION OF ASSETS OF VIRGINIA RURAL REHABILITATION CORPORATION

§ 3.2-600. Commissioner designated to apply for and receive trust assets held by United States

The Commissioner is designated as the Commonwealth official to make application to and receive from the U.S. Department of Agriculture, or any other proper federal official, pursuant and subject to the provisions of 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 on behalf of the Virginia Rural Rehabilitation Corporation.

Code 1950, § 3-27.1; 1952, c. 118; 1966, c. 702, § 3.1-23; 2008, c. 860.

§ 3.2-601. Agreements of Commissioner with U.S. Department of Agriculture

The Commissioner, with the advice of the Board, may enter into agreements with the U.S. Department of Agriculture pursuant to § 2 (f) of the 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 U.S. Department of Agriculture to accept, administer, expend, and use in the Commonwealth 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 may do any and all things necessary to effectuate and carry out the purposes of said agreements.

Code 1950, § 3-27.2; 1952, c. 118; 1966, c. 702, § 3.1-24; 2008, c. 860.

§ 3.2-602. Virginia Farm Loan Revolving Account

Notwithstanding any other provisions of law, funds and the proceeds of the trust assets that are not authorized to be administered by the U.S. Department of Agriculture under the provisions of § 3.2-601 shall be paid to and received by the Commissioner 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 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 and the U.S. Department of Agriculture, subject to the applicable provisions of the federal Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. § 440 et seq.), or for the purposes of § 3.2-601. Such expenditure shall be paid by the State Treasurer on warrants of the Comptroller issued on vouchers signed by the Commissioner.

Code 1950, § 3-27.3; 1952, c. 118; 1966, c. 702, § 3.1-25; 2008, c. 860.

§ 3.2-603. Further powers of Commissioner; delegation to Secretary of Agriculture

The Commissioner may:

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;

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

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 U.S. Department of Agriculture with respect to funds or assets authorized to be administered and used by him under agreements entered into pursuant to § 3.2-601.

Code 1950, § 3-27.4; 1952, c. 118; 1966, c. 702, § 3.1-26; 2008, c. 860.

§ 3.2-604. Liability of the U.S. Department of Agriculture

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

Code 1950, § 3-27.5; 1952, c. 118; 1966, c. 702, § 3.1-27; 2008, c. 860.

Chapter 7 - TREE AND CROP PESTS

Article 1 - PESTS

§ 3.2-700. Definitions

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

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

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

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

"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" means the term as defined in § 1-230. The term also means any society.

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

1975, c. 29, § 3.1-188.20; 1980, c. 291; 2008, c. 860.

§ 3.2-701. Administration; regulations

The Commissioner shall protect the agricultural, horticultural, and other interests of the Commonwealth from plant pests and supervise and direct the execution of this article and regulations adopted hereunder.

1975, c. 29, § 3.1-188.21; 1980, c. 291; 2000, c. 730; 2008, c. 860.

§ 3.2-702. Abundance surveys; eradication or suppression of pests

The Commissioner shall direct abundance surveys for plant pests and may carry out operations or measures to locate, suppress, control, eradicate, 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 intends to go upon any property for the purpose of eradicating or suppressing pests, he shall before entering upon any such property, give a written notice to the owner or occupant thereof at least 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 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.

1975, c. 29, § 3.1-188.22; 1980, c. 291; 2008, c. 860.

§ 3.2-703. Authority to quarantine

The Board may quarantine the Commonwealth or any portion thereof when it determines that such action is necessary to prevent or retard the spread of a pest into, within, or from 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 90 days. A public hearing, as provided herein,

shall be held if it appears that a quarantine for more than the 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 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 the Commonwealth contrary to regulations.

The regulations may restrict the movement of the pest and any regulated articles from the regulated area in the Commonwealth into or through other parts of the Commonwealth or other states and from the regulated area in other states into or through 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 including acceptable certification procedures, regulated articles, and exemptions.

1975, c. 29, § 3.1-188.23; 1980, c. 291; 2008, c. 860.

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

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

1975, c. 29, § 3.1-188.24; 2008, c. 860.

§ 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 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,

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 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.

1975, c. 29, § 3.1-188.25; 1980, c. 291; 2008, c. 860.

§ 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 the Commonwealth and may, without a warrant, stop and inspect, in a reasonable manner, any means of conveyance moving within 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 the Commonwealth, no warrant is required.

In accordance with § 19.2-52, the appropriate persons 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.

1975, c. 29, § 3.1-188.26; 1980, c. 291; 2008, c. 860.

§ 3.2-707. Cooperation with other agencies and private organizations

When the Commissioner deems it necessary to suppress, control, eradicate, prevent, or retard the spread of any pest, he may cooperate with:

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

2. Any agency of an adjacent state if the use of funds appropriated to carry out this article for operations in an adjacent are approved in advance by the Governor or his designee;

3. Any agency of a local government within the Commonwealth; and

4. Any public and private organizations within the Commonwealth.

1975, c. 29, § 3.1-188.27; 1990, c. 370; 2000, c. 730; 2008, c. 860.

§ 3.2-708. 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 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.

1990, c. 370, § 3.1-188.27:1; 2008, c. 860.

§ 3.2-709. 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. 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.

1975, c. 29, § 3.1-188.28; 2008, c. 860.

§ 3.2-710. 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 adopted hereunder is guilty of a Class 1 misdemeanor.

B. Any person who has knowingly moved any regulated article into 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, is guilty of a Class 1 misdemeanor.

1975, c. 29, § 3.1-188.29; 1980, c. 291; 2008, c. 860.

§ 3.2-711. Costs of administration; reimbursements to Commonwealth

Costs of administering this law shall be borne by the Commonwealth. 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.

1975, c. 29, § 3.1-188.30; 2008, c. 860.

§ 3.2-712. Permit required to sell and transport plant pests

No person shall sell, barter, offer for sale, move, transport, deliver, ship, or offer for shipment into or within 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.

Code 1950, § 3-178.14; 1964, c. 476; 1966, c. 702, § 3.1-188.31:1; 1980, c. 291; 2008, c. 860.

§ 3.2-713. Judicial review
Judicial review of any action of the Board or the Commissioner shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

1980, c. 291, § 3.1-188.31:2; 2008, c. 860.

Article 2 - PEST CONTROL COMPACT [Repealed]

§§ 3.2-714 through 3.2-731. Repealed
Repealed by Acts 2015, c. 373, cl. 1.

Chapter 8 - NOXIOUS WEEDS

§ 3.2-800. Definitions
As used in this chapter, unless the context requires a different meaning:

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

"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.

"Noxious weed" means any living plant, or part thereof, declared by the Board through 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, the environment, or the economy, except when in-state production of such living plant, or part thereof, is commercially viable or such living plant is commercially propagated in Virginia.

"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.

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

"Quarantine" means a legal declaration by the Board that specifies: (i) the noxious weed; (ii) the articles to be regulated; (iii) conditions governing movement; and (iv) exemptions.

"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.

1970, c. 175, § 3.1-296.12; 1996, c. 266; 2008, c. 860; 2016, c. 171.

§ 3.2-801. Powers and duties of Commissioner

The Commissioner 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 § 3.2-802.

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.

1970, c. 175, § 3.1-296.13; 1996, c. 266; 2008, c. 860; 2015, cc. 158, 180.

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

A. The Board 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. Prior to designating a living plant or part thereof as a noxious weed, the Board shall review the recommendations of an advisory committee established by the Commissioner to conduct a scientific risk assessment of the proposed plant. The assessment shall include the degree to which the plant is detrimental to crops; surface waters, including lakes; other desirable plants; livestock; land or other property; public health; the environment; and the economy. The advisory committee shall also include in its recommendations to the Board an analysis of the current and potential in-state commercial viability of the specific plant species and the economic impact on industries affected by the designation of the plant as a noxious weed.

B. The Board may establish a statewide quarantine 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 adopt other regulations as are necessary to carry out the purpose of this chapter. The Board may adopt regulations governing the movement of regulated articles entering 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 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.

1970, c. 175, § 3.1-296.14; 2008, c. 860; 2016, c. 171.

§ 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.

1970, c. 175, § 3.1-296.15; 2008, c. 860.

§ 3.2-804. Prohibited acts; noxious weeds

No person shall violate any provisions of this chapter or any regulation adopted hereunder. No person shall move, transport, deliver, ship, or offer for shipment into or within 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.

1970, c. 175, § 3.1-296.16; 2008, c. 860.

§ 3.2-805. Authority to stop sale or delivery of noxious weeds

The Commissioner, in order to prevent the introduction or dissemination of noxious weeds, 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 the Commonwealth, or if existing on any premises, or brought into 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.

1970, c. 175, § 3.1-296.17; 2008, c. 860.

§ 3.2-806. Access to plants or plant products; 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 ordinances in the Commonwealth insofar as carrying out its intent.

1970, c. 175, § 3.1-296.19; 2008, c. 860.

§ 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 the Commonwealth and any property therein or thereon and may stop and inspect in a reasonable manner any means of conveyance moving within the Commonwealth when there is probable cause to believe it maintains or carries any noxious weed subject to the provisions of this chapter.

1970, c. 175, § 3.1-296.20; 2008, c. 860.

§ 3.2-808. Injunctions

The Commissioner or landowner affected may apply to any appropriate court 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.

1970, c. 175, § 3.1-296.21; 2008, c. 860.

§ 3.2-809. Penalty for violation

Any person who fails to comply with the provisions of this chapter or the regulations adopted hereunder is guilty of a Class 1 misdemeanor.

1970, c. 175, § 3.1-296.18; 2008, c. 860.

Chapter 9 - NUISANCE BIRDS

§ 3.2-900. Definitions

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

"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.

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

1968, c. 64, § 3.1-1012; 2008, c. 860.

§ 3.2-901. Powers and duties of Commissioner

A. The Commissioner 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 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.

1968, c. 64, §§ 3.1-1013, 3.1-1014, 3.1-1015, 3.1-1019; 2008, c. 860.

Chapter 10 - ENDANGERED PLANT AND INSECT SPECIES

§ 3.2-1000. Definitions

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

"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 for listing under this chapter.

"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.

"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 threatened or endangered under 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.

1979, c. 372, § 3.1-1021; 1985, c. 326; 1989, c. 553; 1990, c. 369; 2008, c. 860.

§ 3.2-1001. Powers and duties of Commissioner

For the purpose of effectively administering this chapter, the Commissioner may:

1. Establish programs as are deemed necessary for the management of threatened or endangered species.

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.

3. Enter into reciprocal agreements with responsible officers of other states under which any part of this chapter would benefit.

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, 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.

1979, c. 372, §§ 3.1-1022, 3.1-1024; 1985, c. 326; 2008, c. 860.

§ 3.2-1002. Listing of threatened and endangered species; powers of Board; further powers of Commissioner

A. The Board may adopt regulations including the listing of 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.

1979, c. 372, § 3.1-1025; 1985, c. 326; 1989, c. 553; 1990, c. 369; 2008, c. 860.

§ 3.2-1003. 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 the Commonwealth that are listed in this chapter or the regulations 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 regulations adopted 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.

1979, c. 372, §§ 3.1-1023, 3.1-1024; 2008, c. 860.

§ 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.

1979, c. 372, §§ 3.1-1022; 1985, c. 326; 2008, c. 860.

§ 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.

1979, c. 372, § 3.1-1025; 1985, c. 326; 1989, c. 553; 1990, c. 369; 2008, c. 860.

§ 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 regulations adopted hereunder, without first obtaining a license to do so from the Commissioner. 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 $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 12 months on forms prescribed by the Commissioner. Records shall be sent or otherwise provided to the Commissioner within 30 days following the expiration of the license. Records shall be made available to the Commissioner during normal business hours for examination or information.

1979, c. 372, § 3.1-1026; 2008, c. 860.

§ 3.2-1007. Wild ginseng declared threatened plant species

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 regulations adopted hereunder. The wild ginseng harvest season shall be 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.

1979, c. 372, § 3.1-1027; 1983, c. 121; 2008, c. 860.

§ 3.2-1008. Export certificate required for export of ginseng

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. 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 for inspection.

1983, c. 121, § 3.1-1027.1; 2008, c. 860.

§ 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 to preserve those specimens known to occur in the Commonwealth.

1979, c. 372, § 3.1-1028; 2008, c. 860.

§ 3.2-1010. (Effective until July 1, 2018) 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 adopted hereunder as well as those who are so designated by the Commissioner. Those designated by the Commissioner may issue a summons to any person who violates any provision of this chapter to appear at a time and place to be specified in such summons.

1979, c. 372, § 3.1-1029; 2007, c. 87; 2008, c. 860.

§ 3.2-1010. (Effective July 1, 2018) Enforcement of chapter; summons

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

1979, c. 372, § 3.1-1029; 2007, c. 87; 2008, c. 860; 2015, cc. 38, 730.

§ 3.2-1011. Penalty

Any person who violates any provision of this chapter or the regulations adopted hereunder is guilty of a Class 1 misdemeanor.

1979, c. 372, § 3.1-1030; 1985, c. 326; 2008, c. 860.

Subtitle II - BOARDS, COUNCILS, FOUNDATIONS, AND COMMISSIONS

Part A - GENERAL PROVISIONS

Chapter 11 - GENERAL PROVISIONS

§ 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. The special funds are:

1. Apple Fund (§ 3.2-1206);

2. Peanut Fund (§ 3.2-1906);

3. Plant Pollination Fund (§ 3.2-2806);

4. Virginia Agricultural Foundation Fund (§ 3.2-2905);

5. Virginia Bright Flue-Cured Tobacco Promotion Fund (§ 3.2-2407);

6. Virginia Beef Industry Fund (§ 3.2-1305);

7. Virginia Corn Fund (§ 3.2-1411);

8. Virginia Cotton Fund (§ 3.2-1511);

9. Virginia Dark-Fired Tobacco Promotion Fund (§ 3.2-2407.1);

10. Virginia Egg Fund (§ 3.2-1605);

11. Virginia Horse Industry Promotion and Development Fund (§ 3.2-1704);

12. Virginia Marine Products Fund (§ 3.2-2705);

13. Virginia Milk Commission Assessments Fund (§ 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.

1970, c. 310, § 3.1-796.24; 1991, c. 498, § 3.1-6.1; 2004, cc. 89, 212, 319; 2008, c. 860; 2011, c. 158; 2012, cc. 803, 835; 2016, c. 167.

§ 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.

1985, c. 173, § 3.1-4.1; 2001, cc. 17, 398; 2008, c. 860.

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

Except as provided in §§ 3.2-1721, 3.2-1812, and 3.2-2408, 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.

Code 1950, §§ 3-525.14, 3-598.16; 1966, cc. 658, 702, §§ 3.1-660, 3.1-763.10; 1970, cc. 310, 431, §§ 3.1-684.16, 3.1-796.27; 1977, c. 396; 1980, cc. 316, 395 §§ 3.1-796.11:7, 3.1-1046; 1985, c. 237; 1991, c. 587, § 3.1-684.55; 1993, c. 809; 1995, c. 691, § 3.1-1079; 1997, c. 873, §§ 3.1-1098, 3.1-1102; 1999, c. 751; 2005, cc. 864, 875, § 3.1-636.10; 2008, c. 860; 2012, cc. 803, 835.

§ 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.

Code 1950, §§ 3-239.11, 3-256; 1964, c. 306; 1966, c. 702, §§ 3.1-318, 3.1-335; 1970, c. 310, § 3.1-796.28; 2008, c. 860.

§ 3.2-1104. Preemption by federal law

No provision of Chapter 12 (§ 3.2-1200 et seq.), Chapter 13 (§ 3.2-1300 et seq.), Chapters 15 (§ 3.2-1500 et seq.) through 21 (§ 3.2-2100 et seq.), Chapter 23 (§ 3.2-2300 et seq.), or Chapter 24 (§ 3.2-2400 et seq.) that is expressly preempted by a federal act or agreement governing commodity assessments shall be enforced or imposed until the termination of such act or agreement.

2016, c. 565.

§ 3.2-1105. Commodity boards; appointment terms; quorum

The following provisions apply to each commodity board established pursuant to the provisions of Chapter 12 (§ 3.2-1200 et seq.), Chapter 13 (§ 3.2-1300 et seq.), Chapters 16 (§ 3.2-1600 et seq.) through 19 (§ 3.2-1900 et seq.), or Chapter 21 (§ 3.2-2100 et seq.):

1. The term for each appointment to a commodity board shall be for four years, with the exception of an appointment to fill a vacancy, which shall be for the unexpired term, unless otherwise authorized in this subtitle; and

2. A majority of the members of a commodity board shall constitute a quorum of that commodity board unless otherwise authorized in this subtitle.

2016, c. 565.

§ 3.2-1106. Commodity board officers and reimbursement of expenses

The following provisions apply to each commodity board established pursuant to the provisions of Chapter 12 (§ 3.2-1200 et seq.), Chapter 13 (§ 3.2-1300 et seq.), Chapters 15 (§ 3.2-1500 et seq.) through 19 (§ 3.2-1900 et seq.), or Chapter 21 (§ 3.2-2100 et seq.):

1. The members of a commodity board shall elect one board member as chairman and such other officers as deemed appropriate unless otherwise authorized in this subtitle; and

2. Each appointed member of a commodity board shall serve without compensation. Such commodity board may reimburse any of its members for actual expenses incurred in the performance of his duties unless otherwise authorized in this subtitle. Such reimbursements shall be made from the special funds established pursuant to the provisions of Chapter 12 (§ 3.2-1200 et seq.), Chapter 13 (§ 3.2-1300 et seq.), Chapters 15 (§ 3.2-1500 et seq.) through 19 (§ 3.2-1900 et seq.), or Chapter 21 (§ 3.2-2100 et seq.).

2016, c. 565.

Part B - COMMODITY BOARDS

Chapter 12 - APPLE BOARD

§ 3.2-1200. Definitions

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

"District" means one of the districts set forth in § 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.

Code 1950, § 3-512.8; 1958, c. 149; 1966, c. 702, § 3.1-618; 1979, c. 531; 1985, c. 448; 1999, c. 793; 2004, c. 214; 2005, cc. 864, 875; 2008, c. 860.

§ 3.2-1201. Apple Board; composition and appointment of members

A. The Apple Board is continued within the Department. The Apple Board shall consist of six members, with two members representing each district. Each member shall be a citizen of the Commonwealth and engaged in producing apples in the Commonwealth with a majority of his apple production occurring in the district he represents.

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.

Code 1950, § 3-514; 1958, c. 148; 1964, c. 578; 1966, c. 702, § 3.1-634; 1974, c. 601; 1985, c. 448; 1999, c. 793, § 3.1-634.1; 2004, c. 214; 2008, c. 860; 2016, c. 565.

§ 3.2-1202. Apple Board membership

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.

Code 1950, § 3-514; 1958, c. 148; 1964, c. 578; 1966, c. 702, § 3.1-634; 1974, c. 601; 1985, c. 448; 1999, c. 793, § 3.1-634.1; 2004, c. 214; 2008, c. 860; 2016, c. 565.

§ 3.2-1203. Repealed

Repealed by Acts 2016, c. 565, cl. 2.

§ 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 chapter;

4. Cooperate with other state, regional, 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 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 under the Apple Fund.

Code 1950, § 3-515; 1958, c. 148; 1966, c. 702, § 3.1-635; 1978, c. 540; 1999, c. 793; 2004, c. 214; 2008, c. 860.

§ 3.2-1205. Commercial apple-producing districts designated

The commercial apple-producing districts of 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, Campbell, 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.

Whenever the commercial production of apples begins in any locality not included in this section, such locality shall become a part of the nearest district that has the lowest commercial apple production according to production records of the Department.

Code 1950, § 3-513.1; 1964, c. 578; 1966, c. 702, § 3.1-632; 1974, c. 601; 1982, c. 415; 1999, c. 793; 2008, c. 860; 2016, c. 565.

§ 3.2-1206. Apple Fund established

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 administration and enforcement of this 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 chapter, or as specifically provided in any referendum ratified pursuant to this 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.

Code 1950, §§ 3-512.16, 3-512.17; 1958, c. 149; 1966, c. 702, §§ 3.1-626, 3.1-627; 1999, c. 793; 2004, c. 214; 2005, cc. 864, 875; 2008, c. 860.

§ 3.2-1207. Repealed

Repealed by Acts 2016, c. 565, cl. 2.

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

The Board shall authorize the holding of a referendum as set forth in this article. The Commissioner 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 apple industry. The amount of tax to be voted upon in the referendum shall be 2.5 cents ($0.025) 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.

2005, cc. 864, 875, § 3.1-636.1; 2008, c. 860.

§ 3.2-1209. Management of referenda; Commissioner's duties; notice

A. The Commissioner shall, under the regulations adopted by the Board pursuant to § 3.2-112, 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 which the assessment will be used; and the regulations adopted by the Board pursuant to § 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.

2005, cc. 864, 875, § 3.1-636.3; 2008, c. 860.

§ 3.2-1210. Questions to be printed on ballots

The question to be printed on the ballots used in the referendum held under § 3.2-1208, shall be:

"Do you favor the levy of an excise tax of 2.5 cents ($0.025) 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."

2005, cc. 864, 875, § 3.1-636.4; 2008, c. 860.

§ 3.2-1211. Persons eligible to vote

Any producer 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 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.

2005, cc. 864, 875, § 3.1-636.5; 2008, c. 860.

§ 3.2-1212. 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 § 3.2-1210, 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 § 3.2-1210, then the Governor shall not so proclaim and the excise tax on apples shall not be established.

2005, cc. 864, 875, § 3.1-636.6; 2008, c. 860.

§ 3.2-1213. Referenda

The Board, 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 § 3.2-1208. The Board shall not act on such a petition for conducting a 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 chapter.

2005, cc. 864, 875, § 3.1-636.7; 2008, c. 860.

§ 3.2-1214. Referenda results; action of Governor

If the Governor finds 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 vot-

ing 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.

2005, cc. 864, 875, § 3.1-636.8; 2008, c. 860.

§ 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 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.

2005, cc. 864, 875, § 3.1-636.9; 2008, c. 860.

§ 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.

2005, cc. 864, 875, § 3.1-636.11; 2008, c. 860.

§ 3.2-1217. Falsification of records; misdemeanor

It 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.

2005, cc. 864, 875, § 3.1-636.12; 2008, c. 860.

Chapter 13 - BEEF INDUSTRY COUNCIL

§ 3.2-1300. Definitions

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

"Cattle" means beef cattle sold for slaughter or feeding purposes, veal calves sold for slaughter or feeding purposes, and dairy cattle sold for immediate slaughter providing such animals are sold for a consideration in excess of $20 per head in the Commonwealth.

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

"Processor" or "packer" means any person that slaughters cattle.

"Producer" means any person engaged in the business of raising cattle, or selling dairy cattle for slaughter.

1970, c. 310, §§ 3.1-796.13, 3.1-796.26; 1978, c. 540; 1983, c. 375; 1985, cc. 237, 448; 2008, c. 860.

§ 3.2-1301. Beef Industry Council; composition and appointment of members

A. The Beef Industry Council, established by the passage of a referendum held pursuant to Chapter 375 of the Acts of Assembly of 1983, is continued within the Department.

The Beef Industry Council shall be composed of 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 Beef Industry Council 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 as follows:

1. Seven commercial beef cattle producers, one from each feeder cattle production area of the Commonwealth. The seven areas shall be designated by the Virginia Cattlemen's Association in general accordance with feeder cattle marketing practices.

2. Two dairymen.

3. One commercial cattle feeder.

4. Two purebred beef cattle breeders.

5. Two livestock market operators.

6. One meat packer or processor.

C. Such appointments shall be chosen from the following recommendations made through the Commissioner:

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 these 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 Beef Industry Council.

2. The Virginia Cattle Feeders Association shall recommend two commercial cattle feeders.

3. The Virginia State Dairymen's Association shall recommend four dairymen.

4. The Beef Cattle Improvement Association shall recommend four purebred beef cattle breeders, provided that not more than one be nominated from each of the four predominant breeder associations.

5. The Virginia Association of Livestock Market Operators shall recommend four livestock market operators.

6. The Virginia Cattlemen's Association shall recommend two persons, each of whom shall be either a processor or a packer.

The recommendations shall be submitted before the expiration of the member's term for which the nomination is being provided. If said associations fail to provide the recommendations, the Governor may appoint other nominees that meet the foregoing criteria.

1970, c. 310, §§ 3.1-796.15, 3.1-796.21; 1983, c. 375; 1985, c. 448; 2008, c. 860; 2011, cc. 158, 691, 714; 2016, c. 565.

§ 3.2-1302. Beef Industry Council vacancies

The Governor shall immediately declare the office of any member of the Beef Industry Council 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 the Commonwealth, or is unable to perform the duties of his office. Whenever a new appointment is made, the person receiving the appointment shall be a representative of the same segment of the industry represented by his predecessor and shall be nominated pursuant to the provision of § 3.2-1301 under which his predecessor was nominated.

1970, c. 310, § 3.1-796.22; 2008, c. 860; 2011, c. 158; 2016, c. 565.

§ 3.2-1303. Repealed

Repealed by Acts 2016, c. 565, cl. 2.

§ 3.2-1304. Powers and duties of Beef Industry Council

A. The Beef Industry Council 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 Beef Industry Council 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 Beef Industry Council 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. To enter into contracts as the Beef Industry Council deems necessary for the experimental development of new or improved markets or marketing methods.

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. 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. 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. To cooperate with any local, state, or national organization or agency engaged in work or activities similar to that of the Beef Industry Council and enter into contracts with such organizations or agencies for carrying on joint programs.

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 Beef Industry Council as beneficial to the production, marketing, or promotion of the beef and veal industry of the Commonwealth and expend funds in connection with such programs provided they are compatible with this chapter.

7. To enter into contracts that it deems appropriate to the carrying out of the purposes of the Beef Industry Council as authorized by this chapter.

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. To borrow money not in excess of estimates of its revenue from the current year's tax.

10. To appoint subordinate officers and employees of the Beef Industry Council and prescribe their duties and fix their compensation within the limitations of the Virginia Personnel Act (§ 2.2-2900 et seq.).

11. To acquire and maintain such office space and equipment as necessary to carry out the duties of the Beef Industry Council.

12. From the tax revenues it receives, to contract with organizations to carry out work and programs, approved by the Beef Industry Council, on a national basis.

D. The Beef Industry Council 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 major-

ity of those most likely to have business with the Beef Industry Council or to be affected by this chapter.

E. The Beef Industry Council may adopt regulations necessary to carry out the purpose of this chapter.

F. An annual report shall be made by the Beef Industry Council to the Commissioner and shall be published as a public record to include a statement on receipts and itemized disbursements of the Virginia Beef Industry Fund.

1970, c. 310, §§ 3.1-796.14, 3.1-796.22 to 3.1-796.24; 2008, c. 860; 2011, c. 158; 2016, c. 565.

§ 3.2-1305. Virginia Beef Industry Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Beef 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 Beef Industry Council as is provided for in § 30-133. Expenditures and disbursements from the Fund shall be made by the Beef Industry Council on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Beef Industry Council.

1970, c. 310, § 3.1-796.26; 1978, c. 540; 1983, c. 375; 1985, c. 237; 2008, c. 860; 2011, c. 158.

§ 3.2-1306. Collection and disposition of assessment by handler; reports

A. Every handler shall deduct 25 cents ($0.25) 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 by the Tax Commissioner and submit such reports to the Tax Commissioner along with the assessments collected pursuant to subsection A. Each report shall include a statement of the number of cattle handled and the amount of money 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 Beef Industry Council with a list of taxpayers and amounts paid.

C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.

1970, c. 310, §§ 3.1-796.25, 3.1-796.26; 1978, c. 540; 1983, c. 375; 1985, c. 237; 2008, c. 860; 2011, c. 158.

§ 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.

1970, c. 310, § 3.1-796.26; 1978, c. 540; 1983, c. 375; 1985, c. 237; 2008, c. 860.

§ 3.2-1308. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any first handler to fail to submit to the Tax Commissioner any statement or report required in this chapter within 60 days from the time such statement or report is required to be submitted.

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.

1970, c. 310, § 3.1-796.27; 1985, c. 237; 2008, c. 860.

Chapter 14 - CORN BOARD

§ 3.2-1400. Definitions

As used in this chapter, 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.

1980, c. 395, §§ 3.1-1032, 3.1-1043, 3.1-1044; 1985, c. 448; 1987, c. 476; 2008, c. 860.

§ 3.2-1401. Corn Board; composition and appointment of members

The Corn Board, established by the passage of a referendum held pursuant to Chapter 395 of the 1980 Acts of Assembly, is continued within the Department. The Corn Board shall be composed of 11 members appointed by the Governor and confirmed in accordance with § 2.2-107 from nominations by producer organizations representing corn producers. These organizations shall nominate at least two producers from each production area of corn as defined in § 3.2-1410 and such nominations shall be submitted at least 90 days before the expiration of the member's term for which the recommendations are provided. If said organizations fail to provide the nominations at least 90 days before the expiration of the term, the Governor may appoint other nominees that meet the criteria provided by this section. The Governor shall appoint at least one producer from each production area and the membership of the 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.

1980, c. 395, § 3.1-1043; 1985, c. 448; 1987, c. 476; 2008, c. 860; 2011, cc. 691, 714.

§ 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.

1980, c. 395, § 3.1-1043; 1985, c. 448; 1987, c. 476; 2008, c. 860.

§ 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.

1980, c. 395, § 3.1-1043; 1985, c. 448; 1987, c. 476; 2008, c. 860.

§ 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.

1980, c. 395, § 3.1-1043; 1985, c. 448; 1987, c. 476; 2008, c. 860.

§ 3.2-1405. Referenda

The Board, upon petition by a group of corn producers representing at least 10 percent of the number of the Commonwealth's corn producers as determined by the Commissioner, may provide for a referendum on the continuation of the assessment. 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 referenda for at least one year after the Governor has declared his findings, and then only after receiving a petition signed by at least 10 percent of the number of the Commonwealth's corn producers. The cost of conducting any such referendum as above prescribed shall come from funds paid into the Virginia Corn Fund as defined in § 3.2-1411. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

1980, c. 395, § 3.1-1041; 2008, c. 860.

§ 3.2-1406. Management of referenda; Commissioner's duties; notice

A. The Commissioner shall arrange for and manage any referendum conducted under this chapter.

B. The Commissioner shall, 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 corn is 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 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.

1980, c. 395, §§ 3.1-1034, 3.1-1037 to 3.1-1039; 2008, c. 860.

§ 3.2-1407. Question to be printed on ballots

The question to be printed on the ballots used in a referendum held 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 Corn Board law?

_____ For

_____ Against."

1980, c. 395, § 3.1-1042; 1989 c. 401; 2008, c. 860.

§ 3.2-1408. Persons eligible to vote

Each 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 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. Any person who is not an individual shall vote by its authorized representative.

1980, c. 395, § 3.1-1035; 2008, c. 860.

§ 3.2-1409. Referenda results; action of Governor

If the Governor finds any referendum in order and that at least a simple majority of those voting are in opposition to the continuation of the assessment on corn, he shall so proclaim 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.

1980, c. 395, § 3.1-1039; 2008, c. 860.

§ 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, 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; and

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.

1980, c. 395, § 3.1-1043; 1985, c. 448; 1987, c. 476; 2008, c. 860.

§ 3.2-1411. Virginia Corn Fund established

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 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 set forth in this chapter. In carrying out the purposes of this chapter, the Corn Board 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.

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.

1980, c. 395, §§ 3.1-1047, 3.1-1048; 2008, c. 860.

§ 3.2-1412. Collection and disposition of assessment by handler; reports

A. Every handler shall deduct from payments for corn made to a producer the amount of the assessment levied thereon, and shall remit such assessment to the Tax Commissioner pursuant to this chapter.

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 corn handled by the handler and shall be filed with the Tax Commissioner covering corn 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 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. The assessment shall be paid to the 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.

1980, c. 395, §§ 3.1-1044, 3.1-1046; 1987, c. 476; 2008, c. 860.

§ 3.2-1413. Records to be kept by handlers

Every handler shall keep a complete record of the corn handled by him for a period of not less than three years from the time the corn was handled. Such records shall be open to the inspection of the Tax Commissioner, and shall be established and maintained as required by the Tax Commissioner.

1980, c. 395, § 3.1-1045; 2008, c. 860.

§ 3.2-1414. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any handler knowingly to report falsely to the Tax Commissioner the quantity of corn handled by him during any period.

2. For any handler to falsify the records of the corn handled by him.

3. For any handler to preserve the records of the corn handled by him for less than three years from the time such corn was handled.

1980, c. 395, § 3.1-1049; 2008, c. 860.

Chapter 15 - COTTON BOARD

§ 3.2-1500. Definitions

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

"Assessment" means moneys to be collected as authorized by this chapter.

"Bale" means a closely pressed package of ginned cotton that weighs approximately 480 pounds.

"Cotton" means the field crop of the genus Gossypium grown to be further processed into consumable goods.

"Farming unit" means any sole proprietorship, corporation, or partnership and includes land owned and leased by any such business entity.

"Gin" means to remove seed and foreign matter from cotton and make it into a bale.

"Handler" means a commercial enterprise that gins cotton.

"Producer" means any person who grows, harvests, and sells cotton in Virginia.

1997, c. 873, § 3.1-1081; 1999, c. 751; 2008, c. 860.

§ 3.2-1501. Cotton Board; composition and appointment of members; quorum

The Cotton Board, established by the passage of a referendum held pursuant to Chapter 873 of the Acts of Assembly of 1997, is 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 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. Each agricultural organization shall submit nominations for each available position before the expiration of the member's term for which the nomination is being provided. If said agricultural organizations fail to provide the nominations, the Governor may appoint other nominees that meet the foregoing criteria. Five members of the Cotton Board shall constitute a quorum.

1997, c. 873, § 3.1-1093; 1999, c. 751; 2008, c. 860; 2011, cc. 691, 714; 2016, c. 565.

§ 3.2-1502. Cotton Board membership terms

The terms for appointments to the Cotton Board shall be for 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.

1997, c. 873, § 3.1-1094; 1999, c. 751; 2008, c. 860.

§ 3.2-1503. Repealed

Repealed by Acts 2016, c. 565, cl. 2.

§ 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.

1997, c. 873, §§ 3.1-1095 to 3.1-1097; 2008, c. 860.

§ 3.2-1505. Referenda

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 this chapter. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

1997, c. 873, § 3.1-1089; 2005, c. 326; 2008, c. 860.

§ 3.2-1506. Management of referenda; Commissioner's duties; notice

A. The Commissioner shall, under the regulations adopted by the Board pursuant to § 3.2-112, 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 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 60 days prior to the holding of any referendum under this chapter, send a notice of the referendum (i) to a newspaper of general circulation in each locality where cotton is produced or (ii) by mail to all persons listed as cotton producers with the Department during the fiscal year preceding the referendum.

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 the assessment will be used; and the regulations adopted by the Board pursuant to § 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.

1997, c. 873, §§ 3.1-1085, 3.1-1087; 2008, c. 860; 2010, c. 14.

§ 3.2-1507. Questions to be printed on ballots

A. The question to be printed on the ballots used in a referendum authorized in § 3.2-1505 on the continuation of the Cotton Board shall be:

Do you favor the continuation of the Cotton Board for the purpose of research, education, and promotion of the growth and use of cotton?

B. The question to be printed on the ballots used in a referendum authorized in § 3.2-1505 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?

1997, c. 873, § 3.1-1091; 2005, c. 326; 2008, c. 860.

§ 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. Such person may vote provided that they are 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. Only one person per farming unit shall be eligible to vote in any referendum.

1997, c. 873, § 3.1-1086; 2008, c. 860.

§ 3.2-1509. Referenda results; action of Governor

If the Governor finds any separate referendum held pursuant to this chapter in order, that at least 50 percent of those who have met the requirements of § 3.2-1508 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 § 3.2-1511.

1997, c. 873, § 3.1-1090; 2005, c. 326; 2008, c. 860.

§ 3.2-1510. Production areas designated

The following production areas are 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, Greensville, and Campbell Counties; and

Area VIII: Accomack and Northampton Counties.

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 that had the lowest cotton production in the most recent calendar year according to the records of the Department.

1997, c. 873, § 3.1-1092; 1999, c. 751; 2008, c. 860.

§ 3.2-1511. Virginia Cotton Fund established

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 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. 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.

The Auditor of Public Accounts shall audit all the accounts of the Cotton Board as provided in § 30-133.

1997, c. 873, § 3.1-1101; 2008, c. 860.

§ 3.2-1512. Collection and disposition of assessment by handler; reports

A. Every handler shall collect an assessment of 95 cents ($0.95) per bale from the owner of all cotton that the handler gins for any owner 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 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 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.

1997, c. 873, § 3.1-1098; 1999, c. 751; 2008, c. 860; 2016, c. 565.

§ 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 three years from the time the cotton was ginned. Such records shall be open to the inspection of the Tax Commissioner and shall be established and maintained as required by the Tax Commissioner.

1997, c. 873, § 3.1-1099; 1999, c. 751; 2008, c. 860.

§ 3.2-1514. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any handler to fail to submit to the Tax Commissioner any report required pursuant to § 3.2-1512 within 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 § 3.2-1512.

3. For any producer knowingly to report falsely to the Commissioner any information required pursuant to § 3.2-1508.

1997, c. 873, § 3.1-1103; 2008, c. 860.

Chapter 16 - EGG BOARD

§ 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.

1980, c. 316, § 3.1-796.11:4; 1982, c. 172; 1984, c. 550; 1993, c. 809; 2008, c. 860.

§ 3.2-1601. Egg Board; composition and appointment of members

The Egg Board is continued 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 or any other organization that represents persons who are involved in the commercial egg industry in the Commonwealth.

The Virginia Egg Council or other organization shall provide nominations for each available position before the expiration of the member's term for which the nominations are being provided. If the Virginia Egg Council fails to provide nominations for each available position, the Governor may appoint to such available position another person who is involved in the commercial egg industry.

1980, c. 316, § 3.1-796.11:2; 1985, c. 448; 2008, c. 860; 2011, cc. 691, 714; 2016, c. 565.

§§ 3.2-1602, 3.2-1603. Repealed

Repealed by Acts 2016, c. 565, cl. 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.

1980, c. 316, § 3.1-796.11:2; 1985, c. 448; 2008, c. 860.

§ 3.2-1605. Virginia Egg Fund 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 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 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 chapter.

In carrying out the purposes of this article, the Egg Board 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.

1980, c. 316, §§ 3.1-796.11:8, 3.1-796.11:9; 1993, c. 809; 2008, c. 860.

§ 3.2-1606. Levy of tax; regulations; exemptions

A. There is hereby levied on eggs purchased or sold for use or consumption in the Commonwealth an excise tax of five cents ($0.05) per 30-dozen case or, if the eggs are purchased or sold in other than shell form, 11 cents ($0.11) per 100 pounds of liquid eggs or liquid equivalent. Such excise tax shall be levied only once. The Tax Commissioner, with the advice and consent of the Egg

Board, may adopt regulations as are necessary for the interpretation, administration, and enforcement of this tax.

B. The following categories of eggs shall be exempt from the tax levied pursuant to this chapter:

1. The eggs of any producer selling fewer than 500 cases (15,000 dozen), or the liquid equivalent thereof, per year.

2. Eggs when sold between registered handlers.

The Tax Commissioner shall provide a mechanism for returning taxes paid by exempt persons.

1980, c. 316, § 3.1-796.11:3; 1982, c. 172; 1985, c. 173; 1993, c. 809; 2008, c. 860; 2016, c. 565.

§ 3.2-1607. Collection and disposition of tax by handler; reports

A. Every handler shall collect the tax imposed by this chapter from the person who purchases eggs for use or consumption in the Commonwealth and shall remit the tax to the Tax Commissioner 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 the Tax Commissioner together with the tax submitted pursuant to subsection A. Each report shall include a statement of the gross volume of taxed eggs that have been packed, processed, purchased, sold, or handled by the handler. Notwithstanding the provisions of § 58.1-3, upon request, the Tax Commissioner shall provide to the Commissioner or the Egg Board copies of reports submitted pursuant to this section.

C. Every person who engages in business in the Commonwealth as a handler shall register, collect, and pay the tax on all eggs sold or delivered to anyone other than a registered handler for storage, use, or consumption in the Commonwealth. Such handlers shall maintain a certificate of registration, file returns, and perform all other duties required of handlers.

D. Any tax that is not paid when due shall be collected pursuant to § 3.2-1102.

E. Every handler shall keep a complete record of the eggs subject to the provisions of this 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 the eggs were packed, processed, or handled. Such records shall be open for inspection by the Tax Commissioner and shall be established and maintained as required by the Tax Commissioner.

1980, c. 316, § 3.1-796.11:4; 1982, c. 172; 1984, c. 550; 1993, c. 809; 2008, c. 860; 2016, c. 565.

§§ 3.2-1608, 3.2-1609. Repealed

Repealed by Acts 2016, c. 565, cl. 2.

§ 3.2-1610. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any handler knowingly to report falsely to the 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 maintain a complete record of the eggs processed, packed, or handled by him for at least three years from the time such eggs are processed, packed, or handled.

1980, c. 316, § 3.1-796.11:10; 1993, c. 809; 2008, c. 860.

Chapter 17 - HORSE INDUSTRY BOARD

Article 1 - HORSE INDUSTRY BOARD

§ 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 Acts of Assembly of 1993, 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.). Each organization shall submit nominations or recommendations for each available position. If the organizations fail to provide the nominations, the Governor may appoint other nominees that meet the foregoing criteria.

An extension equine 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.

2005, cc. 497, 588, § 3.1-22.54; 2008, c. 860; 2011, cc. 691, 714; 2016, c. 565.

§ 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.

2005, cc. 497, 588, § 3.1-22.55; 2008, c. 860.

§ 3.2-1702. Repealed

Repealed by Acts 2016, c. 565, cl. 2.

§ 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.

2005, cc. 497, 588, § 3.1-22.57; 2008, c. 860.

§ 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.

2005, cc. 497, 588, § 3.1-22.58; 2008, c. 860.

§ 3.2-1705. Management of referenda; 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 locality where those eligible to vote in the referendum reside. 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 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 regulations adopted by the Board pursuant to § 3.2-112.

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 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.

2005, cc. 497, 588, § 3.1-22.60; 2008, c. 860.

§ 3.2-1706. 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.

2005, cc. 497, 588, § 3.1-22.61; 2008, c. 860.

Article 2 - EQUINE INFECTIOUS ANEMIA TEST FEE

§ 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 § 3.2-1704.

2005, cc. 497, 588, § 3.1-22.62; 2008, c. 860.

§ 3.2-1708. 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 §§ 3.2-112 and 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.

2005, cc. 497, 588, § 3.1-22.63; 2008, c. 860.

§ 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."

2005, cc. 497, 588, § 3.1-22.64; 2008, c. 860.

§ 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 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.

2005, cc. 497, 588, § 3.1-22.65; 2008, c. 860.

§ 3.2-1711. Referenda results; action of Governor

If the Governor finds any 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.

2005, cc. 497, 588, § 3.1-22.66; 2008, c. 860.

Article 3 - EQUINE FEED ASSESSMENT

§ 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 § 3.2-4800 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 § 3.2-4803.

2005, cc. 497, 588, § 3.1-22.67; 2008, c. 860.

§ 3.2-1713. 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 §§ 3.2-112 and 3.2-1705, 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.

2005, cc. 497, 588, § 3.1-22.68; 2008, c. 860.

§ 3.2-1714. 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.

2005, cc. 497, 588, § 3.1-22.69; 2008, c. 860.

§ 3.2-1715. Question to be printed on ballots

The question to be printed on the ballots used in the initial referendum held pursuant to § 3.2-1713, 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."

2005, cc. 497, 588, § 3.1-22.70; 2008, c. 860.

§ 3.2-1716. 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.

2005, cc. 497, 588, § 3.1-22.71; 2008, c. 860.

§ 3.2-1717. 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.

2005, cc. 497, 588, § 3.1-22.72; 2008, c. 860.

§ 3.2-1718. Referenda

If the Governor issues a proclamation under § 3.2-1716, 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.

2005, cc. 497, 588, § 3.1-22.73; 2008, c. 860.

§ 3.2-1719. 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.

2005, cc. 497, 588, § 3.1-22.74; 2008, c. 860.

§ 3.2-1720. 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.

2005, cc. 497, 588, § 3.1-22.75; 2008, c. 860.

§ 3.2-1721. 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 for the collection of any money due, including interest thereon.

2005, cc. 497, 588, § 3.1-22.76; 2008, c. 860.

§ 3.2-1722. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any manufacturer to fail to submit to the Department any report required pursuant to § 3.2-1719 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.

2005, cc. 497, 588, § 3.1-22.77; 2008, c. 860.

Chapter 18 - POTATO BOARD

Article 1 - POTATO BOARD MEMBERSHIP AND AUTHORITY

§ 3.2-1800. Definitions

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

"Approved seed potatoes" means disease-free potatoes and parts thereof that conform to the standards established by the Potato Board.

"Board" means the Potato Board.

"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 any locality where potatoes are produced according to the records of the Department.

"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.

"Seed potatoes" means potatoes and parts thereof intended for the propagation or production of commercial potatoes.

1982, c. 126, §§ 3.1-684.21, 3.1-684.39; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-1801. Potato Board; composition and appointment of members

The Potato Board, established by the passage of a 1994 referendum held pursuant to Chapter 126 of the Acts of Assembly of 1982, is continued within the Department. The 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. All members of the Potato Board shall be producers of potatoes. Each grower organization shall submit nominations for each available position before the expiration of the member's term for which the nomination is being provided. If said organizations fail to provide nominations, the Governor may appoint other nominees that meet the criteria provided by this section.

1982, c. 126, § 3.1-684.32; 1985, c. 448; 2008, c. 860; 2011, cc. 691, 714; 2016, c. 565.

§ 3.2-1802. Repealed

Repealed by Acts 2016, c. 565, cl. 2.

§ 3.2-1803. Potato Board meetings and quorum

The 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. A majority of the members shall constitute a quorum.

1982, c. 126, § 3.1-684.32; 1985, c. 448; 2008, c. 860; 2012, cc. 803, 835; 2016, c. 565.

§ 3.2-1804. Powers and duties of the Potato Board

A. The Board shall have charge of the management and expenditures of the Virginia Potato Fund established in the state treasury.

B. The 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 Board may cooperate with other state, regional, and national agricultural organizations in research, education, publicity, advertising, and other promotional activities.

D. The Board may establish an executive committee and charge it with those powers, duties, and functions as the Board deems proper.

E. The chairman of the Board shall make an annual report to the 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.

F. The Board shall adopt regulations to establish standards for seed potatoes and to carry out the provisions of this chapter and, at the recommendation of the chairman, request that the Commissioner, the Dean of the College of Agriculture and Life Sciences at 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 Board.

1982, c. 126, §§ 3.1-684.32, 3.1-684.36; 1985, c. 448; 2008, c. 860; 2012, cc. 803, 835.

Article 2 - POTATO REFERENDA AND FUND

§ 3.2-1805. Referenda

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 potatoes shall continue to be levied and collected as provided for in this article. The cost of conducting any referendum as prescribed in this article shall be paid from funds paid into the Virginia Potato Fund. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

1982, c. 126, § 3.1-684.30; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-1806. Management of referenda; Commissioner's duties; notice

A. The Commissioner shall arrange for and manage any referendum conducted pursuant to this article.

B. The Commissioner shall, at least 60 days before the referendum is to be held, mail notice to the clerk of the circuit court in each locality where producers are located.

The clerk of the circuit court shall post the notice and the 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 article. 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.

1982, c. 126, §§ 3.1-684.23, 3.1-684.26, 3.1-684.27; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-1807. Question to be printed on ballots

The question to be printed on the ballots used in a referendum pursuant to this article shall be as follows:

"Do you favor additional research, education, publicity, advertising, and other promotion of potatoes and the continuation of the levy of two cents ($0.02) per 100 pounds in accordance with the provisions of the Board law to support the same?

_____ Yes

_____ No."

1982, c. 126, § 3.1-684.31; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-1808. Persons eligible to vote

Each producer in the Commonwealth who produced 40,000 pounds of potatoes during the year next preceding the date of the referendum held pursuant to this article 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. Any person who is not an individual shall vote by its authorized representative.

1982, c. 126, § 3.1-684.24; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-1809. Referenda results; action of Governor

The Governor shall examine all matters relating to the referendum and whether a majority of the producers voting 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 of those voting are in opposition to the continuation of the levying of the tax on potatoes, he shall so proclaim and 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.

1982, c. 126, § 3.1-684.28; 2008, c. 860.

§ 3.2-1810. Virginia Potato Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Potato 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 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 solely for the purposes set forth in this chapter.

Expenditures and disbursements from the Fund shall be made by the Board on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the Board.

The Auditor of Public Accounts shall audit all the accounts of the Board as is provided for in § 30-133.

1982, c. 126, §§ 3.1-684.36, 3.1-684.37; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-1811. Collection and disposition of tax by handler; reports

A. Every handler who purchases from a producer shall deduct, from payments made to the producer for any potatoes, a tax of two cents ($0.02) per 100 pounds of potatoes and shall remit the tax to the Commissioner 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 of a statement of the gross volume of potatoes on which the tax was levied that were packed, processed, or handled by the handler and shall file such report with the Commissioner together with the tax submitted pursuant to subsection A. The tax levied on potatoes shall be due by the handler on the same day that the report is due.

1982, c. 126, § 3.1-684.33; 2008, c. 860.

§ 3.2-1812. Collection of delinquent tax; civil action

The tax imposed under the provisions of this article and unpaid on the date when due 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 article, including interest thereon.

1982, c. 126, § 3.1-684.35; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-1813. Records to be kept by handlers

Every handler shall keep a complete record of the potatoes subject to the provisions of this article that have been packed, processed, or handled by him for a period of time not less than three years from the time the potatoes were packed, processed, or handled. The records shall be open to the inspection of the Commissioner and shall be established and maintained as required by the Commissioner.

1982, c. 126, § 3.1-684.34; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-1814. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any handler knowingly to report falsely to the Commissioner the quantity of potatoes processed or handled by him.

2. For any handler to fail to keep a complete record of the potatoes processed or handled by him.

3. For any handler to preserve the records for a period of time less than three years from the time such potatoes are processed or handled.

1982, c. 126, § 3.1-684.38; 2008, c. 860.

§ 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 article.

1982, c. 126, § 3.1-684.40; 2008, c. 860; 2012, cc. 803, 835.

Article 3 - SEED POTATO STANDARDS

§ 3.2-1816. Standards required of seed potatoes

Any seed potatoes sold, offered for sale, advertised, or shipped in the Commonwealth shall conform to the standards of approved seed potatoes.

Code 1950, § 3-228.4; 1950, p. 1029; 1958, c. 94; 1966, cc. 686, 702, § 3.1-288; 2008, c. 860, § 3.2-4105; 2012, cc. 803, 835.

§ 3.2-1817. Exempted sales

Nothing in this article shall prohibit the sale of seed potatoes sold by the grower to a planter who has personal knowledge of the conditions under which the seed potatoes were grown.

Code 1950, § 3-228.10; 1950, p. 1030; 1958, c. 94; 1966, c. 702, § 3.1-294; 2008, c. 860, § 3.2-4106; 2012, cc. 803, 835.

§ 3.2-1818. Inspection of potatoes; right of entry; fees; records required

A. The Commissioner shall inspect any seed potatoes. The Commissioner may enter any place of business, warehouse, common carrier, or other place where seed potatoes may be found for the purpose of an inspection. It is unlawful for any person to interfere with such inspections.

B. The fee for inspection shall not exceed the lesser of the current rate for federal-state inspection of table stock potatoes or the reasonable cost of inspection. The Commissioner shall abate any fee to the extent funds are appropriated from the general fund for seed potato inspection.

C. Bills of lading, invoices, or other records accompanying any shipment of approved seed potatoes shall give the name of the consignee, consignor, and custodian, if any. The Commissioner shall have the right to inspect such records.

Code 1950, § 3-228.8; 1950, p. 1030; 1966, cc. 686, 702, § 3.1-292; 1978, c. 540; 1980, c. 308; 2008, c. 860, § 3.2-4107; 2012, cc. 803, 835.

§ 3.2-1819. "Stop sale" order; seizure; condemnation

A. When the Commissioner finds seed potatoes sold or offered for sale in violation of this article 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 article shall be subject to seizure on complaint of the Commissioner to the appropriate court in the county or city 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 for 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 this subsection, then the court shall order that the seed potatoes be denatured, destroyed, or processed for other than propagation purposes.

Code 1950, § 3-228.8; 1950, p. 1030; 1966, cc. 686, 702, § 3.1-292; 1978, c. 540; 1980, c. 308; 2008, c. 860, § 3.2-4108; 2012, cc. 803, 835.

§ 3.2-1820. Commissioner may permit sale of substandard potatoes and experimental varieties

The Commissioner may permit the sale of seed potatoes that do not meet the standards of approved seed potatoes when he deems necessary. The Commissioner may permit the sale of experimental varieties of potatoes for propagation purposes. He may delegate the authority granted in this section to the Board.

Code 1950, § 3-228.9; 1950, p. 1030; 1966, cc. 686, 702, § 3.1-293; 2008, c. 860, § 3.2-4109; 2012, cc. 803, 835.

§ 3.2-1821. Notice; hearings

A. If the Commissioner finds a violation of this article or of any regulation adopted pursuant to this article, he shall notify the custodian of the seed potatoes in writing, designating a time and place for a hearing, and send a copy of the notice to the owner or shipper. Any party notified shall be given an opportunity to be heard under the regulations adopted pursuant to this article. If it appears after proper hearing that any of the provisions of this article have been violated, the Commissioner may certify the facts to the attorney for the Commonwealth in the county or city where the violation occurred and furnish him with a copy of the results of the inspection duly authenticated and under the oath of the inspector.

B. It shall be the duty of each attorney for the Commonwealth with responsibility for the enforcement of this article, and to whom any violation is reported, to commence proceedings in the appropriate court.

Code 1950, § 3-228.11; 1950, p. 1030; 1966, cc. 686, 702, § 3.1-295; 1978, c. 540; 2008, c. 860; § 3.2-4110; 2012, cc. 803, 835.

§ 3.2-1822. Penalties

Any person violating any provision of this article or any regulation adopted pursuant to this article is guilty of a Class 1 misdemeanor.

Code 1950, § 3-228.11; 1950, p. 1030; 1966, cc. 686, 702, § 3.1-295; 1978, c. 540; 2008, c. 860, § 3.2-4111; 2012, cc. 803, 835.

Chapter 19 - PEANUT BOARD

§ 3.2-1900. Definitions

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

"Processor" means any person that cleans, shells, or crushes peanuts.

Code 1950, § 3-525.1; 1966, c. 702, § 3.1-647; 1985, c. 448; 2008, c. 860.

§ 3.2-1901. Peanut Board; composition and appointment of members

The Peanut Board is continued within the Department. The Peanut Board shall consist of eight members representing as nearly as possible each peanut-producing section of 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 other organizations representing peanut growers in peanut-producing counties. If the Virginia Peanut Growers Association or other organizations representing peanut growers fail to provide nominations, the Governor may appoint other nominees that meet the foregoing criteria.

Code 1950, §§ 3-525.2, 3-525.3; 1966, c. 702, §§ 3.1-648, 3.1-649; 1978, c. 540; 1985, c. 448; 2008, c. 860; 2011, cc. 691, 714; 2016, c. 565.

§§ 3.2-1902, 3.2-1903. Repealed

Repealed by Acts 2016, c. 565, cl. 2.

§ 3.2-1904. 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 enter into an agreement with the Federal Commodity Credit Corporation or its designee to collect and remit the specified assessment on all peanuts pledged as collateral for a marketing assistance or price support loan.

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.

Code 1950, §§ 3-525.4, 3-525.6 to 3-525.10; 1966, c. 702, §§ 3.1-650, 3.1-652 to 3.1-656; 1978, c. 540; 2008, c. 860; 2010, cc. 7, 37; 2016, c. 565.

§ 3.2-1905. Levy of excise tax

Beginning July 1, 2010, and ending July 1, 2021, an excise tax shall be levied at a rate of $0.30 per 100 pounds on all peanuts grown in and sold in the Commonwealth for processing. Peanuts shall not be subject to the tax after the tax has been paid once.

Code 1950, § 3-525.11; 1964, c. 609; 1966, c. 702, § 3.1-657; 1973, c. 200; 1983, c. 177; 1995, c. 160; 2008, c. 860; 2010, cc. 7, 37; 2013, cc. 6, 40; 2016, cc. 5, 165.

§ 3.2-1906. 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 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 paying the costs of collecting the tax levied on peanuts pursuant to this chapter, the administration of this chapter, including payment for personal services and expenses of agents of the Peanut Board, rent, services, materials, and supplies necessary to effectuate the purposes 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.

Code 1950, §§ 3-525.16, 3-525.17; 1966, c. 702, §§ 3.1-662, 3.1-663; 1978, c. 540; 2008, c. 860; 2016, c. 565.

§ 3.2-1907. Collection and disposition of tax; reports

A. Every processor shall collect the tax on all peanuts bought by him and pay it into the 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. Notwithstanding the provisions of § 58.1-3, upon request, the Tax Commissioner may provide the Peanut Board with a list of assessment payers and amounts paid.

Code 1950, § 3-525.12; 1966, c. 702, § 3.1-658; 2008, c. 860; 2010, cc. 7, 37.

§ 3.2-1908. Record to be kept by processor

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 three years. Such record shall be open to the inspection of the Tax Commissioner and his duly authorized agents.

Code 1950, § 3-525.13; 1966, c. 702, § 3.1-659; 2008, c. 860.

§ 3.2-1909. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any processor knowingly to report falsely to the Tax Commissioner the quantity of peanuts subject to tax bought by him during any period.

2. For any processor to falsify the records of the peanuts subject to tax bought by him.

Code 1950, § 3-525.18; 1966, c. 702, § 3.1-664; 2008, c. 860.

§ 3.2-1910. Failure to file reports; misdemeanor

Any processor who fails to file the required reports, or who fails to keep the required records, is guilty of a Class 1 misdemeanor. Each month of such failure is a separate offense.

Code 1950, § 3-525.19; 1966, c. 702, § 3.1-665; 2008, c. 860.

Chapter 20 - PORK INDUSTRY BOARD

§ 3.2-2000. Definitions

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

"Feeder pig" means a hog not weighing 140 pounds or less.

"Processor" means any person that slaughters hogs commercially, or agent thereof.

"Producer" means any person 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.

Code 1950, § 3-598.12; 1966, c. 658, § 3.1-763.6; 1985, c. 448; 2008, c. 860.

§ 3.2-2001. Pork Industry Board; composition and appointment of members

The Pork Industry Board is continued within the Department. The Pork Industry Board shall consist of 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.

Code 1950, § 3-598.13; 1966, c. 658, § 3.1-763.7; 1978, c. 540; 1979, c. 72; 1985, c. 448; 2008, c. 860.

§ 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.

Code 1950, § 3-598.13; 1966, c. 658, § 3.1-763.7; 1978, c. 540; 1979, c. 72; 1985, c. 448; 2008, c. 860.

§ 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.

Code 1950, § 3-598.13; 1966, c. 658, § 3.1-763.7; 1978, c. 540; 1979, c. 72; 1985, c. 448; 2008, c. 860.

§ 3.2-2004. 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 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 chapter.

D. The Pork Industry Board may cooperate with other 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.

Code 1950, §§ 3-598.13, 3-598.14; 1966, c. 658, §§ 3.1-763.7, 3.1-763.8; 1978, c. 540; 1979, c. 72; 1985, c. 448; 2008, c. 860.

§ 3.2-2005. Virginia Pork Industry Fund; established

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 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 set forth in this chapter, including paying the costs of collecting the tax levied on hogs pursuant to this chapter, and the administration of this chapter, including payment for personal services, materials, and supplies necessary to effect the purposes of this chapter. 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.

The Auditor of Public Accounts shall audit all the accounts of the Pork Industry Board as is provided for in § 30-133.

Code 1950, § 3-598.17; 1966, c. 658, § 3.1-763.11; 1978, c. 540; 2008, c. 860.

§ 3.2-2006. Levy of excise tax

An excise tax of 10 cents ($0.10) per head shall be levied on all hogs sold in the Commonwealth for slaughter, and an excise tax of five cents ($0.05) per head shall be levied on all hogs sold in the Commonwealth as feeder pigs. 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.

Code 1950, § 3-598.15; 1966, c. 658, § 3.1-763.9; 1979, c. 72; 1982, c. 99; 2008, c. 860.

§ 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.

Code 1950, § 3-598.15; 1966, c. 658, § 3.1-763.9; 1979, c. 72; 1982, c. 99; 2008, c. 860.

§ 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.

Code 1950, § 3-598.15; 1966, c. 658, § 3.1-763.9; 1979, c. 72; 1982, c. 99; 2008, c. 860.

§ 3.2-2009. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any person knowingly to report falsely the number of slaughter hogs and feeder pigs subject to tax bought or handled by him during any period.

2. For any person to falsify the records of the slaughter hogs and feeder pigs subject to tax bought or handled by him.

3. For any person to fail to file the report, or to fail to keep the records as required by this chapter.

Code 1950, § 3-598.18; 1966, c. 658, § 3.1-763.12; 2008, c. 860.

Chapter 21 - SHEEP INDUSTRY BOARD

§ 3.2-2100. Definitions

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

"Handler" means the operator of a stockyard, livestock dealership, slaughterhouse, packing plant, or livestock auction market, or any other person making a purchase from a sheep producer, at the point where the sheep is sold or traded.

"Sheep" means sheep or lambs of all ages.

1995, c. 691, § 3.1-1065; 2008, c. 860.

§ 3.2-2101. Sheep Industry Board; composition and appointment of members

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 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.

Each association or organization shall submit nominations for each available position before the expiration of the member's term for which the nomination or recommendation is being provided. If the organizations fail to provide the nominations, the Governor may appoint other nominees that meet the foregoing criteria.

1995, c. 691, §§ 3.1-1074, 3.1-1075; 1996, c. 169; 2004, c. 56; 2008, c. 860; 2011, cc. 691, 714; 2016, c. 565.

§§ 3.2-2102, 3.2-2103. Repealed

Repealed by Acts 2016, c. 565, cl. 2.

§ 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 ($0.50) for each sheep sold within the Commonwealth no more than 10 cents ($0.10) 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.

1995, c. 691, §§ 3.1-1066, 3.1-1074; 2008, c. 860.

§ 3.2-2105. Referenda

The Board, upon petition by at least 10 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 cost of conducting such referendum shall be from funds paid into the Virginia Sheep Industry Promotion and Development Fund as established in § 3.2-2111. Such referendum shall be conducted in the manner provided in this chapter. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

1995, c. 691, § 3.1-1072; 2008, c. 860.

§ 3.2-2106. Management of referenda; 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, 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 locality where those eligible to vote in the referendum reside. 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 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 where members of the sheep industry reside, at least 60 days prior to the holding of any referendum under this chapter.

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 how the assessments will be used; and the regulations adopted by the Board pursuant to § 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.

1995, c. 691, §§ 3.1-1069, 3.1-1070; 2008, c. 860.

§ 3.2-2107. Question to be printed on ballots

The question to be printed on the ballots used in any referendum authorized in § 3.2-2105 on the continuation of the Sheep Industry Board and assessment shall be as follows:

"Do you favor the continuation of the Sheep Industry Board and the continuation of the levy of an assessment of up to $1 per head for all sheep sold within the Commonwealth?

_____ Yes

_____ No."

1995, c. 691, § 3.1-1073; 2008, c. 860.

§ 3.2-2108. Persons eligible to vote

Each member of the Virginia sheep industry who has sold one or more sheep or 50 or more pounds of wool within the Commonwealth in the year preceding any referendum shall be eligible to vote in the referendum, provided that he certifies that he has conducted such sale. Any person who meets the requirements of this section shall be eligible to vote provided that they are 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.

1995, c. 691, § 3.1-1067; 2008, c. 860.

§ 3.2-2109. 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 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 Sheep Industry Board and 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 Sheep Industry Board and the assessment, he shall not so proclaim.

1995, c. 691, § 3.1-1071; 2008, c. 860.

§ 3.2-2110. Production districts designated

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, 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, Surry, Sussex, Westmoreland, and York Counties; and the Cities of Chesapeake, Suffolk, and Virginia Beach.

1995, c. 691, § 3.1-1075; 1996, c. 169; 2004, c. 56; 2008, c. 860.

§ 3.2-2111. Virginia Sheep Industry Promotion and Development Fund established

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 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. 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.

The Auditor for Public Accounts shall audit all the accounts of the Sheep Industry Board as provided in § 30-133.

1995, c. 691, § 3.1-1076; 2008, c. 860.

§ 3.2-2112. Collection and disposition of assessment by handler; reports

A. 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 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 three years from the time the report was produced. Each report shall include a statement of the number of sheep that have been handled; the amount of money 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.

C. Any assessment that is not paid when due shall be collected pursuant to § 3.2-1102.

1995, c. 691, §§ 3.1-1077, 3.1-1078; 2008, c. 860.

§ 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.

1995, c. 691, § 3.1-1078; 2008, c. 860.

§ 3.2-2114. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any handler to fail to submit to the Tax Commissioner any report required in this chapter within 60 days from the time such report is required to be submitted.

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.

1995, c. 691, § 3.1-1079; 2008, c. 860.

Chapter 22 - SMALL GRAINS BOARD

§ 3.2-2200. Definitions

As used in this chapter, unless the context otherwise requires:

"Country buyer" means any person who buys small grains from a producer.

"Exporter" means any person offering small grains for export sale.

"Handler" means any person who purchases small grains from a producer and any producer 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 person who has grown and sold small grains in the Commonwealth in the preceding three years.

"Seedsman" means any person who offers small grains seeds for sale.

"Small grains" means barley, oats, rye, or wheat.

1991, c. 587, §§ 3.1-684.41, 3.1-684.53; 1992, c. 776; 2008, c. 860.

§ 3.2-2201. Small Grains Board; composition and appointment of members

The Small Grains Board, established by the passage of a referendum held pursuant to Chapter 587 of the 1991 Acts of Assembly, is continued within the Department. The Small Grains Board shall be composed of 11 members appointed by the Governor from nominations by the Virginia Grain Producers Association or other organizations representing small grain producers, the appointments to be subject to confirmation by the General Assembly. The Virginia Grain Producers Association and any other organization submitting nominations shall nominate at least two producers from each production area of small grains. The Governor shall appoint at least one producer from each production area and the membership of the 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, country buyer, and exporter.

Nominations shall be submitted at least 90 days before the expiration of the member's term for which the nomination is being provided. If the Virginia Grain Producers Association or any other organization submitting nominations fail to provide the nominations at least 90 days before the expiration date pursuant to this section, the Governor may appoint other nominees that meet the foregoing criteria.

1991, c. 587, § 3.1-684.52; 2008, c. 860; 2011, cc. 691, 714.

§ 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.

1991, c. 587, § 3.1-684.52; 2008, c. 860.

§ 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.

1991, c. 587, § 3.1-684.52; 2008, c. 860.

§ 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.

1991, c. 587, § 3.1-684.52; 2008, c. 860.

§ 3.2-2205. Referenda

The Board, upon petition by a group of small grains producers representing at least 10 percent of the number of producers, 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 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, but at the expiration of one year and upon petition by 10 percent of the Commonwealth's small grains producers that voted in the most recent referendum, the Board may provide for a referendum. The cost of conducting any referendum under this section shall be paid from funds paid into the Virginia Small Grains Fund as defined in § 3.2-2211. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

1991, c. 587, §§ 3.1-684.45, 3.1-684.50; 2008, c. 860.

§ 3.2-2206. Management of referenda; Commissioner's duties; notice

A. The Commissioner shall arrange for and manage any referendum conducted 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, 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 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, 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 regulations adopted by the Board pursuant to § 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 the Board.

1991, c. 587, §§ 3.1-684.43, 3.1-684.46, 3.1-684.47; 1992, c. 776; 2008, c. 860.

§ 3.2-2207. Question to be printed on ballots

The question to be printed on the ballots used in any referendum held 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 of one-half of one percent of the selling price per bushel in accordance with the provisions of the Small Grains Board law?

_____ Yes

_____ No."

1991, c. 587, § 3.1-684.51; 2008, c. 860.

§ 3.2-2208. Persons eligible to vote

Each 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 the referendum, provided that he shall certify sale and point of sale on forms 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. Any person who is not an individual shall vote by its authorized representative.

1991, c. 587, § 3.1-684.44; 1992, c. 776; 2008, c. 860.

§ 3.2-2209. Referenda results; action of Governor

If the Governor finds any referendum in order and that at least a simple majority of those voting are in opposition to the continuation of the assessment on small grains, he shall so proclaim and 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.

1991, c. 587, § 3.1-684.48; 2008, c. 860.

§ 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; and

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.

1991, c. 587, § 3.1-684.52; 2008, c. 860.

§ 3.2-2211. Virginia Small Grains Fund 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 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 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 Small Grains Board 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 Small Grains Board as provided for in § 30-133.

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.

1991, c. 587, §§ 3.1-684.56, 3.1-684.57; 2008, c. 860.

§ 3.2-2212. Collection and disposition of assessment by handler; reports

A. Every handler shall deduct from payments made to the producer for small grains the amount of the assessment levied thereon and shall remit such assessment to the Tax Commissioner pursuant to this chapter.

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 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 Tax Commissioner. The Tax Commissioner shall set forth the filing date or dates for reports and assessments and the period to be covered after consultation with the 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. 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.

1991, c. 587, § 3.1-684.53; 1992, c. 776; 2008, c. 860.

§ 3.2-2213. Records to be kept by handlers

Every handler shall keep a complete record of the small grains handled by him for a period of not less than three years from the time the small grains were handled. Such records shall be open to the inspection of the Tax Commissioner, and shall be established and maintained as required by the Tax Commissioner.

1991, c. 587, § 3.1-684.54; 2008, c. 860.

§ 3.2-2214. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any handler knowingly to report falsely to the Tax Commissioner the quantity of small grains handled by him during any period.

2. For any handler to falsify the records of the small grains handled by him.

3. For any handler to fail to preserve the records of the small grains handled for a period of three years from the time such small grains were handled.

1991, c. 587, § 3.1-684.58; 2008, c. 860.

Chapter 23 - SOYBEAN BOARD

§ 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.

1970, c. 431, §§ 3.1-684.2, 3.1-684.13, 3.1-684.14; 1974, c. 297; 1978, c. 540; 1982, c. 603; 1985, c. 448; 1987, c. 476; 1990, c. 183; 1992, c. 124; 2008, c. 860.

§ 3.2-2301. Soybean Board; composition and appointment of members

The 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 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. The Governor shall appoint at least one producer from each production area as 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, country buyer, and exporter. Such appointments shall be made from nominations from the several producer organizations representing soybean producers.

Each organization shall submit nominations at least 90 days before the expiration of the member's term for which the nomination or recommendation is being provided. If the organizations fail to provide the nominations at least 90 days before the expiration date pursuant to this section, the Governor may appoint other nominees that meet the foregoing criteria.

1970, c. 431, § 3.1-684.13; 1974, c. 297; 1978, c. 540; 1985, c. 448; 1987, c. 476; 2008, c. 860; 2011, cc. 691, 714.

§ 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.

1970, c. 431, § 3.1-684.13; 1974, c. 297; 1978, c. 540; 1985, c. 448; 1987, c. 476; 2008, c. 860.

§ 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.

1970, c. 431, § 3.1-684.13; 1974, c. 297; 1978, c. 540; 1985, c. 448; 1987, c. 476; 2008, c. 860.

§ 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.

1970, c. 431, § 3.1-684.13; 1974, c. 297; 1978, c. 540; 1985, c. 448; 1987, c. 476; 2008, c. 860.

§ 3.2-2305. Referenda

Every five years from the date of the imposition of the tax assessment on soybeans, another referendum shall be held to determine whether the assessment for research, education, publicity, and promotion of the sale and use of soybeans shall be continued. The Board, upon petition by a group of soybean producers representing at least 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 cost of conducting any such referendum as above prescribed shall come from funds paid into the Virginia Soybean Fund. The Board shall adopt regulations governing the conduct of referenda pursuant to § 3.2-112.

1970, c. 431, § 3.1-684.11; 2008, c. 860.

§ 3.2-2306. Management of referenda; Commissioner's duties; notice

A. The Commissioner shall arrange for and manage any referendum conducted under this chapter.

B. The Commissioner shall, 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 on the front door or public bulletin board of the courthouse 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.

1970, c. 431, §§ 3.1-684.4, 3.1-684.7, 3.1-684.8; 2008, c. 860.

§ 3.2-2307. Question to be printed on ballots

The question to be printed on the ballots used in a referendum held pursuant to this chapter 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 ($0.02) per bushel in accordance with the provisions of the Soybean Board?

_____ Yes

_____ No."

1970, c. 431, § 3.1-684.12; 1982, c. 603; 1990, c. 183; 2008, c. 860.

§ 3.2-2308. Persons eligible to vote

Each 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 that shall be prepared 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.

1970, c. 431, § 3.1-684.5; 2008, c. 860.

§ 3.2-2309. Referenda results; action of Governor

If the Governor finds any referendum in order and that at least 60 percent of those voting are in opposition to the continuation of the assessment on soybeans, he shall so proclaim and 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.

1970, c. 431, §§ 3.1-684.9, 3.1-684.10; 1982, c. 603; 2008, c. 860.

§ 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; and

Area VII: Buckingham, Cumberland, Powhatan, Amelia, Prince Edward, Appomattox, Campbell, Charlotte, Lunenburg, Nottoway, Mecklenburg, Halifax, Pittsylvania, and Henry Counties.

1970, c. 431, § 3.1-684.13; 1974, c. 297; 1978, c. 540; 1985, c. 448; 1987, c. 476; 2008, c. 860.

§ 3.2-2311. Virginia Soybean Fund 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 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.

In carrying out the purposes of this chapter, the Soybean Board 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 may sell printed materials, rent exhibit space at meetings, and engage in any type of ethical revenue-producing activity 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.

1970, c. 431, §§ 3.1-684.17, 3.1-684.18; 1978, c. 540; 2008, c. 860.

§ 3.2-2312. Collection and disposition of assessment by handler; reports

A. Every handler shall deduct from payments made to the producer for soybeans an assessment of two cents ($0.02) per bushel and shall remit such assessment to the Tax Commissioner pursuant to this chapter. The handler shall also deduct from payments made to the 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 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.

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 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 by the handler on the same day as the report is due. 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.

1970, c. 431, § 3.1-684.14; 1982, c. 603; 1987, c. 476; 1990, c. 183; 1992, c. 124; 2008, c. 860.

§ 3.2-2313. Records to be kept by handlers

The handler shall keep a complete record of the soybeans handled by him for a period of not less than three years from the time the soybeans were handled. Such records shall be open to the inspection of the Tax Commissioner and shall be established and maintained as required by the Tax Commissioner.

1970, c. 431, § 3.1-684.15; 2008, c. 860.

§ 3.2-2314. Falsification of records; misdemeanor

It is a Class 1 misdemeanor:

1. For any handler knowingly to report falsely to the Tax Commissioner the quantity of soybeans handled by him during any period.

2. For any handler to falsify the records of the soybeans handled by him.

3. For any handler to fail to preserve the records of the soybeans handled by him for at least three years from the time such soybeans are handled.

1970, c. 431, § 3.1-684.19; 2008, c. 860.

Chapter 24 - TOBACCO BOARD

§ 3.2-2400. Definitions

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

"Grower" means any person actually engaged in the growing and producing of bright flue-cured tobacco or type 21 dark-fired tobacco.

"Handler" means any manufacturer, dealer, processor, or any other business entity that purchases tobacco directly from the grower.

"Warehouse" means any person authorized by law to conduct auction sales of loose-leaf tobacco.

Code 1950, § 3-240; 1966, c. 702, § 3.1-319; 1985, c. 448; 2002, c. 57; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2401. Tobacco Board; composition and appointment of members

The Tobacco Board is hereby established within the Department. The Tobacco Board shall consist of nine members. Each of the six production areas of flue-cured tobacco set out in § 3.2-2402 shall have a representative on the Tobacco Board, and three members shall represent, as nearly as possible, each important type 21 dark-fired tobacco-producing section in the Commonwealth. The

Governor shall appoint members from nominations made by the 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. Each organization shall submit two or more nominations for each available position at least 90 days before the expiration of the member's term for which the nomination is being provided. If the organizations fail to provide the nominations at least 90 days before the expiration date pursuant to this section, the Governor may appoint other nominees that meet the foregoing criteria.

Code 1950, § 3-241; 1966, c. 702, § 3.1-320; 1978, c. 540; 1985, c. 448; 1994, c. 964; 2008, c. 860; 2011, cc. 691, 714; 2012, cc. 803, 835.

§ 3.2-2402. Production areas designated

The following production areas of flue-cured tobacco are designated for the purposes of this chapter:

Area I -- Pittsylvania County;

Area II -- Counties of Henry, Patrick, Carroll, Franklin, Bedford, Campbell, and Appomattox;

Area III -- Halifax County;

Area IV -- Mecklenburg County;

Area V -- Counties of Charlotte, Lunenburg, Prince Edward, Nottoway, Cumberland, Amelia, Powhatan, and Chesterfield; and

Area VI -- Counties of Brunswick, Dinwiddie, Greensville, Prince George, Sussex, and Southampton and the City of Suffolk.

Code 1950, § 3-241; 1966, c. 702, § 3.1-320; 1978, c. 540; 1985, c. 448; 1994, c. 964; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2403. Tobacco Board membership terms

The terms for appointments to the Tobacco Board shall be for four years. The Governor shall fill any vacancy occurring before the expiration of any term for the unexpired term.

Code 1950, § 3-243; 1966, c. 702, § 3.1-322; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2404. Tobacco Board officers and compensation

A. The Tobacco Board shall elect one of its members as chairman and such other officers as deemed appropriate.

B. The members of the Tobacco Board shall receive a per diem of $10 for each day spent in attendance on meetings of the Tobacco Board and shall be reimbursed for actual expenses incurred in such attendance.

Code 1950, §§ 3-243, 3-244; 1966, c. 702, §§ 3.1-322, 3.1-323; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2405. Powers and duties of the Tobacco Board

A. All funds levied and collected under this chapter shall be administered by the Tobacco Board.

B. The Tobacco Board shall plan and conduct campaigns of education, advertising, publicity, sales promotion, and research to increase the demand for, and the consumption of, bright flue-cured and type 21 dark-fired tobaccos.

C. The Tobacco Board may make contracts, expend moneys of the Bright Flue-Cured Tobacco Promotion Fund and the Dark-Fired Tobacco Promotion Fund, and do whatever else may be necessary to effectuate the purposes of this chapter.

D. The 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 and type 21 dark-fired tobaccos, and expend moneys of the Bright Flue-Cured Tobacco Promotion Fund and the Dark-Fired Tobacco Promotion Fund for such purposes.

E. The Tobacco Board may appoint a secretary and such other employees as may be necessary, at salaries to be fixed by the 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 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.

Code 1950, §§ 3-245 to 3-248; 1966, c. 702, §§ 3.1-324 to 3.1-327; 1978, c. 540; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2406. Levy of excise tax

An excise tax of 20 cents ($0.20) per 100 pounds is levied on all bright flue-cured and type 21 dark-fired tobaccos that are harvested in the Commonwealth and sold by the grower and shall be payable by the grower.

Code 1950, § 3-249; 1960, c. 47; 1966, c. 702, § 3.1-328; 1970, c. 408; 1974, c. 74; 1980, c. 87; 1990, c. 523; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2407. Bright Flue-Cured Tobacco Promotion Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Bright Flue-Cured Tobacco Promotion Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under this chapter on all bright flue-cured tobacco 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 administration and enforcement of this chapter with respect to bright flue-cured tobacco, including the collection of taxes, the payment of personal services and

expenses of employees and agents of the Tobacco Board, and the payment of rent, services, materials, and supplies necessary to effectuate the purposes of this chapter. Expenditures and disbursements from the Fund shall be made by the Tobacco Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Tobacco Board.

The Auditor of Public Accounts shall audit all the accounts of the Tobacco Board as is provided for in § 30-133.

Code 1950, §§ 3-253, 3-254; 1966, c. 702, §§ 3.1-332, 3.1-333; 1978, c. 540; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2407.1. Dark-Fired Tobacco Promotion Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Dark-Fired Tobacco Promotion Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys levied and collected under this chapter on type 21 dark-fired tobacco 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 administration and enforcement of this chapter with respect to type 21 dark-fired tobacco, including the collection of taxes, the payment of personal services and expenses of employees and agents of the Tobacco Board, and the payment of rent, services, materials, and supplies necessary to effectuate the purposes of this chapter. Expenditures and disbursements from the Fund shall be made by the Tobacco Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Tobacco Board.

The Auditor of Public Accounts shall audit all the accounts of the Tobacco Board as is provided for in § 30-133.

2012, cc. 803, 835.

§ 3.2-2408. Collection and disposition of tax; reports

Every grower shall pay the excise taxes on bright flue-cured and all type 21 dark-fired tobacco to the warehouse or handler where and when the tobacco is first sold. Each warehouse or handler is designated an agent of the Department for the purpose of collecting such excise tax. The tax shall be paid to the Department, to the credit of the Tobacco Board, on or before the tenth day of the month following its collection. Taxes paid on bright flue-cured tobacco shall be promptly paid into the state treasury to the credit of the Bright Flue-Cured Tobacco Promotion Fund and taxes paid on type 21 dark-fired tobacco shall be promptly paid into the state treasury to the credit of the Dark-Fired Tobacco Promotion Fund.

Code 1950, § 3-250; 1966, c. 702, § 3.1-329; 2002, c. 57; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2409. Records to be kept by warehouse and handler

Each warehouse or handler shall keep a complete record of the excise tax collected by him and shall preserve such record for a period of not less than three years from the time of collection. Such record shall be open to the inspection of the Tobacco Board and its duly authorized agents.

Code 1950, § 3-251; 1966, c. 702, § 3.1-330; 2002, c. 57; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2410. Collection of unpaid excise tax and interest thereon

If the tax imposed by this chapter is not paid when due or any funds collected by a warehouse or handler are not remitted to the Tobacco Board as required in this chapter, the amount due shall bear interest at the rate of one percent per month from 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 Tobacco Board, the amount shall be collected by civil action in the name of the Commonwealth at the relation of the Tobacco Board, and the person adjudged in default shall pay the cost of such action. The Attorney General, at the request of the Tobacco Board, shall institute action for the collection of the amount of any tax past due under this chapter, including interest thereon.

Code 1950, § 3-252; 1966, c. 702, § 3.1-331; 2002, c. 57; 2008, c. 860; 2012, cc. 803, 835.

§ 3.2-2411. Violation a misdemeanor

It is a Class 1 misdemeanor for any person knowingly to violate any provision of this chapter.

Code 1950, § 3-255; 1966, c. 702, § 3.1-334; 2008, c. 860.

Chapter 25 - DARK-FIRED TOBACCO BOARD [Repealed]

§§ 3.2-2500 through 3.2-2510. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 28.

Part C - OTHER COMMODITY-RELATED BOARDS, COUNCILS, AND FOUNDATIONS

Chapter 26 - AQUACULTURE ADVISORY BOARD

§ 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 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 fish, shellfish, marine fish, and marine organisms as those terms are defined by § 28.2-100.

1992, c. 643, § 3.1-73.6; 2008, c. 860.

§ 3.2-2601. Powers and duties of Commissioner
The Commissioner shall have the following powers and duties:

1. To provide information and assistance in obtaining permits relating to aquacultural activities;

2. To promote aquaculture including encouraging investment in aquaculture facilities to expand production, processing capacity, and marketing;

3. To work with appropriate state and federal agencies to review, develop, and implement policies and procedures to facilitate aquacultural development;

4. To consult with and assist aquaculture industry groups, aquaculture associations, and academic institutions to develop, maintain, and expand the aquaculture industry; and

5. To develop, support, and implement policies beneficial to Virginia aquaculture.

1992, c. 643, § 3.1-73.7; 2001, c. 320; 2008, c. 860.

§ 3.2-2602. Aquaculture Advisory Board; 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 Board shall meet at the call of the Commissioner.

1992, c. 643, § 3.1-73.8; 2008, c. 860.

§ 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.

1992, c. 643, § 3.1-73.8; 2008, c. 860.

Chapter 27 - MARINE PRODUCTS BOARD

§ 3.2-2700. Marine Products Board; composition and appointment of members
A. The Marine Products Board is established within the Department.

B. The Marine Products Board shall consist of 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.

1979, c. 274, §§ 28.1-230, 28.1-231, 28.1-237; 1980, c. 712; 1984, cc. 265, 750; 1985, c. 448; 1992, c. 836, § 3.1-684.59; 2008, c. 860.

§ 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.

1979, c. 274, §§ 28.1-230, 28.1-231, 28.1-237; 1980, c. 712; 1984, cc. 265, 750; 1985, c. 448; 1992, c. 836, § 3.1-684.59; 2008, c. 860.

§ 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.

1979, c. 274, §§ 28.1-230, 28.1-231, 28.1-237; 1980, c. 712; 1984, cc. 265, 750; 1985, c. 448; 1992, c. 836, § 3.1-684.59; 2008, c. 860.

§ 3.2-2703. 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.

1979, c. 274, § 28.1-232; 1992, c. 836, § 3.1-684.60; 2008, c. 860.

§ 3.2-2704. 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.

1979, c. 274, §§ 28.1-234 to 28.1-236; 1992, c. 836, §§ 3.1-684.61, 3.1-684.62, 3.1-684.64; 2008, c. 860.

§ 3.2-2705. Virginia Marine Products Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Marine Products Fund, 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 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.

Expenditures and disbursements from the Fund shall be made by the Marine Products Board on warrants issued by the Comptroller upon written request signed by the duly authorized officer of the Marine Products Board.

The Auditor of Public Accounts shall audit all the accounts of the Marine Products Board as provided in § 30-133.

1979, c. 274, §§ 28.1-233, 28.1-238, 28.1-239; 1986, c. 344; 1992, c. 836, § 3.1-684.63; 2008, c. 860.

Chapter 28 - PLANT POLLINATION FUND

§ 3.2-2800. Definitions

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

"Beekeeper" means any person who keeps and manages bees for profit, and shall include those growers who keep bees for pollinating crops.

"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.

"Pollination contractor" means any person who contracts to supply a means of cross pollinating the blossoms of any specified plant.

"Producer" means any person engaged in the business of raising crops that benefit from cross pollination by honeybees or other pollinating insects.

1977, c. 452, § 3.1-610.23; 2008, c. 860; 2011, cc. 594, 681.

§§ 3.2-2801 through 3.2-2804. Repealed

Repealed by Acts 2011, cc. 594 and 681, cl. 2.

§ 3.2-2805. Powers and duties of Commissioner

The Commissioner shall have the following powers and duties:

1. To receive and dispense funds;

2. To develop and administer 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;

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.);

9. To encourage research, education, methods of improvement in apicultural practices, and promotion projects and the award of funds for such projects as deemed necessary or advisable to accomplish the objectives set forth in this chapter; and

10. To report to the Board in the manner and at such times as the Board may prescribe, regarding the receipt and expenditure of funds. The Commissioner shall ensure that funds made available to the Plant Pollination Fund are expended only for the purposes authorized by this chapter.

1977, c. 452, §§ 3.1-610.25, 3.1-610.26:1; 1978, c. 267; 1992, c. 121; 2004, c. 201; 2008, c. 860; 2011, cc. 594, 681.

§ 3.2-2806. Plant Pollination Fund established

There is hereby created in the state treasury a special nonreverting fund 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 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 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.

1977, c. 452, § 3.1-610.27; 1978, c. 267; 2008, c. 860; 2011, cc. 594, 681.

§ 3.2-2807. Repealed

Repealed by Acts 2011, cc. 594 and 681, cl. 2.

Chapter 29 - AGRICULTURAL COUNCIL

§ 3.2-2900. Definitions

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.

Code 1950, § 3-16.7; 1966, c. 536, § 3.1-22.3; 1968, c. 85; 2008, c. 860.

§ 3.2-2901. Agricultural Council; composition and appointment of members

The Agricultural Council is continued within the executive branch of state government. The Agricultural Council shall 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, 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.

Code 1950, § 3-16.8; 1966, c. 536, § 3.1-22.4; 1979, c. 69; 1984, c. 734; 1985, cc. 146, 448; 1992, c. 121; 2004, c. 650; 2008, c. 860.

§ 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.

Code 1950, § 3-16.8; 1966, c. 536, § 3.1-22.4; 1979, c. 69; 1984, c. 734; 1985, cc. 146, 448; 1992, c. 121; 2004, c. 650; 2008, c. 860.

§ 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.

Code 1950, § 3-16.8; 1966, c. 536, § 3.1-22.4; 1979, c. 69; 1984, c. 734; 1985, cc. 146, 448; 1992, c. 121; 2004, c. 650; 2008, c. 860.

§ 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.

Code 1950, § 3-16.8; 1966, c. 536, § 3.1-22.4; 1979, c. 69; 1984, c. 734; 1985, cc. 146, 448; 1992, c. 121; 2004, c. 650; 2008, c. 860.

§ 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. All transfers made to the Fund under §§ 3.2-3617, 3.2-3710, 3.2-4004, 3.2-4814, 58.1-2259, and 58.1-2289, 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 shall be expended in accordance with the directions of the Agricultural Council and drawn from the state treasury in the manner provided by law.

Code 1950, § 3-16.9; 1966, c. 536, § 3.1-22.5; 1970, c. 457; 1976, c. 91; 1994, cc. 577, 649, 740, 743; 2008, c. 860.

Chapter 30 - WINE BOARD

§ 3.2-3000. Definitions

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

"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.

2004, cc. 89, 319, § 3.1-1064.1; 2008, c. 860.

§ 3.2-3001. Wine Board; purpose; composition and appointment of members; quorum; meetings

A. The Wine Board is established within the Department. The purpose of the Wine Board is to foster the development of the Virginia wine industry by expanding viticulture and enological research, increasing education, and promoting the production of grapes and 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 tenth 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. Each entity or person shall submit two or more recommendations for each available position at least 90 days before the expiration of the member's term for which the recommendation is being provided. If said entities or persons fail to provide the nominations at least 90 days before the expiration date pursuant to this section, the Governor may appoint other nominees that meet the foregoing criteria.

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.

2004, cc. 89, 319, §§ 3.1-1064.2, 3.1-1064.3; 2008, c. 860; 2011, cc. 691, 714.

§ 3.2-3002. Wine Board membership terms; vacancies

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. 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.

2004, cc. 89, 319, § 3.1-1064.3; 2008, c. 860.

§ 3.2-3003. 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 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 § 3.2-3005.

2004, cc. 89, 319, § 3.1-1064.3; 2008, c. 860.

§ 3.2-3004. Powers and duties of the Wine Board

The Wine Board shall have the following powers and duties:

1. To receive and dispense funds or donations from the Virginia Wine Promotion Fund;

2. To enter into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;

3. To contract for research services to improve viticulture and enological practices in Virginia;

4. 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 viticulture projects;

5. 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. To rent or purchase office and laboratory space, land, equipment, and supplies as necessary to carry out its duties;

7. To employ such personnel as may be required to carry out those duties conferred by law;

8. To acquire any licenses or permits necessary for the performance of the powers and duties of the Wine Board;

9. 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 the Commonwealth and to expend moneys from the Fund for such purposes;

10. To adopt a general statement of policy and procedures; and

11. To receive from the Chairman of the 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.

2004, cc. 89, 319, § 3.1-1064.5; 2008, c. 860.

§ 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 Wine Board.

B. The Wine Board shall meet and evaluate proposals from applicants for funding from the Fund. The Wine Board's final recommendations shall be made by recorded vote. Not less than one-third of the funding allocated by the Wine Board annually, excluding revenue-producing activities engaged in pursuant to § 3.2-3006, shall be expended for projects that advance viticulture 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.

2004, cc. 89, 319, § 3.1-1064.6; 2008, c. 860.

§ 3.2-3006. Revenue-producing activities of the Wine Board

To help defray the costs of its program, the 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 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 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 shall apply to such contracts.

2004, cc. 89, 319, § 3.1-1064.7; 2008, c. 860.

Part D - TOBACCO REGION REVITALIZATION COMMISSION AND VIRGINIA TOBACCO REGION REVOLVING FUND

Chapter 31 - TOBACCO REGION REVITALIZATION COMMISSION

§ 3.2-3100. Definitions

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

"Active tobacco producer" means a person 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.

"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 Region Revitalization Commission created pursuant to § 3.2-3101.

"Commission Allocation" means 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 § 3.2-3104.

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to § 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.

"Strategic Plan" means the strategic plan required pursuant to subsection C of § 3.2-3103.

"Tobacco Assets" means all right, title, and interest in and to the portion of the Commission Allocation that may be sold to the Corporation.

1999, cc. 880, 962, § 9-380; 2001, cc. 807, 844, § 3.1-1106; 2002, cc. 482, 488; 2008, c. 860; 2015, cc. 399, 433.

§ 3.2-3101. Tobacco Region Revitalization Commission created; purposes

The Tobacco Region 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 § 3.2-3103.

1999, cc. 880, 962, § 9-381; 2001, c. 844, § 3.1-1107; 2008, c. 860; 2015, cc. 399, 433.

§ 3.2-3102. Membership; terms; vacancies; compensation and expenses; chairman; chairman's executive summary

A. The Commission shall be composed of 28 members as follows:

1. Six members of the House of Delegates appointed by the Speaker of the House of Delegates;

2. Four members of the Senate appointed by the Senate Committee on Rules;

3. The Secretary of Commerce and Trade or his designee;

4. The Secretary of Finance or his designee;

5. The Secretary of Agriculture and Forestry or his designee;

6. Five nonlegislative citizen members who shall be active flue-cured or burley tobacco producers or active farmers appointed by the Governor from a list of seven persons provided by the members of the General Assembly appointed to the Commission. Three of the tobacco producers or active farmers shall reside in the Southside region and two shall reside in the Southwest region;

7. 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

8. Nine members shall be nonlegislative citizens appointed by the Governor. Of the nine nonlegislative citizen members, three shall be appointed by the Governor from a list of six 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 Secretary of Agriculture and Forestry 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. Thirteen of the 28 members shall have experience in business, economic development, investment banking, finance, or education.

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 Secretary of Agriculture and Forestry or his designee 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. 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.

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 Commission shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the 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.

1999, cc. 880, 962, § 9-382; 2000, c. 1067; 2001, cc. 807, 844, § 3.1-1108; 2003, c. 885; 2005, c. 758; 2006, c. 45; 2008, c. 860; 2015, cc. 399, 433.

§ 3.2-3103. Powers and duties of the Tobacco Region 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 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;

6. Authorize grants, loans, or other distributions of moneys in the Fund for the purposes set forth in this chapter;

7. For each economic development grant or award, including a grant from the Tobacco Region Opportunity Fund, require a dollar-for-dollar match from non-Commission sources. Performance bonds shall be considered acceptable matching payment. No more than 25 percent of the match shall be in-kind. However, a match of less than 50 percent may be considered by a two-thirds majority vote of the Commission;

8. Adopt policies governing the Tobacco Region Opportunity Fund, including a repayment policy. The Commission shall apply the policies consistently;

9. Enter into a contractual or employment agreement with a financial viability manager (the Manager). The management agreement shall require the Manager to provide a written financial viability and feasibility report to the Commission as to the financial propriety of certain loans, grants, or other distributions of money made for the revitalization of a tobacco-dependent locality as proposed in accordance with the Commission's strategic objectives. The Commission shall not make

any loan, except a loan made through the Virginia Tobacco Region Revolving Fund created in Chapter 31.1 (§ 3.2-3112 et seq.); grant; or other distribution of money until the Manager has provided the Commission with a written recommendation as to the financial viability and feasibility of the proposed distribution of funds. However, nothing in this section shall eliminate consideration of strategic economic initiatives;

10. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

11. Invest its funds as provided in this chapter or permitted by applicable law; and

12. 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 at least biennially develop a strategic plan containing specific priorities, measureable goals, and quantifiable outcomes. In developing the Strategic Plan, the Commission shall solicit input from local and regional economic developers, the Virginia Department of Agriculture and Consumer Services, the Virginia Economic Development Partnership, the Virginia Department of Housing and Community Development, the Virginia Tourism Authority, the Virginia Resources Authority, and the Center for Rural Virginia. The Strategic Plan shall state how each Fund award is consistent with the Commission's achievement of measurable goals and outcomes and its advancement of the specific priorities of the Strategic Plan. The Strategic Plan shall also state how awards from the Fund are projected to affect key economic indicators of employment, income, educational attainment, amount of Virginia-grown agricultural and forestal products used by the project, and return on investment.

D. The Commission shall develop a publicly available online database of all Commission awards, listing for each project the project's goals, the means by which the project fits into the Strategic Plan, the project's expected and achieved outcomes, and the total amount of funding the Commission has awarded to the project through any prior grants.

E. The Commission shall submit a report annually to the Governor and the General Assembly.

1999, cc. 880, 962, §§ 9-383, 9-388; 2001, cc. 807, 844, § 3.1-1109; 2008, c. 860; 2015, cc. 399, 433.

§ 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 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 six percent of the corpus of the Endowment shall be paid to the Fund annually upon request of the Commission, by majority vote, to the Treasury Board. Upon two-thirds vote of the Commission, up to 10 percent of the corpus of the Endowment shall be so paid. Upon three-fourths vote of the Commission, up to 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 Prudent Management of Institutional Funds Act (§ 64.2-1100 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.

2002, cc. 482, 488, § 3.1-1109.1; 2008, cc. 184, 860; 2015, cc. 399, 433.

§ 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.

1999, cc. 880, 962, § 9-384; 2001, cc. 807, 844, § 3.1-1110; 2002, cc. 482, 488; 2008, c. 860.

§ 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 §§ 3.2-3104 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, 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 § 3.2-3104. 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. 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, 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.

1999, cc. 880, 962, § 9-385; 2000, c. 1042; 2001, cc. 807, 844, § 3.1-1111; 2002, cc. 482, 488; 2004, Sp. Sess. I, c. 1; 2008, c. 860; 2016, c. 305.

§ 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.

2001, c. 757, § 9-385.1; 2001, c. 844, § 3.1-1111.1; 2008, c. 860.

§ 3.2-3108. Distribution of Fund

A. The Fund shall be distributed by the Commission for the following purposes:

1. 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; and

2. Scientific research performed at one of the Commonwealth's National Cancer Institute-designated research institutes designed to advance the treatment and prevention of cancers that directly impact the citizens of tobacco-dependent communities throughout the Southside and Southwest regions of the Commonwealth.

B. The Commission may require that as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal.

The Commission shall require that each project have an accountability matrix. For an economic development program, the matrix shall be based on return on investment, jobs, wages, and capital investment. For a scholarship program, the matrix shall be based on attainment of bachelor's degrees, credentials, or jobs. For a health care program, the matrix shall be based on health care outcomes. For an agriculture or forestry program, the matrix shall be based on jobs, capital investment, amount of Virginia-grown agricultural and forestal products used by the project, projected impact on agricultural and forestal producers, and a return on investment analysis.

The Commission shall require each applicant to provide with its application (i) baseline figures, (ii) explicit and quantified outcome expectations, (iii) the method used to calculate outcome expectations, (iv) details on the timing of the expected outcomes, and (v) a specific link to economic revitalization and the Strategic Plan.

The Commission shall require that as a condition of receiving any grant or loan incentive each project (a) demonstrate how it will address low employment levels, per capita income, educational attainment, or other workforce indicators; (b) be consistent with the Strategic Plan; and (c) receive a written recommendation as to its financial viability and feasibility from the Manager pursuant to subdivision A 9 of § 3.2-3103.

1999, cc. 880, 962, § 9-383; 2001, cc. 807, 844, § 3.1-1112; 2008, c. 860; 2012, c. 629; 2013, c. 547; 2015, cc. 399, 433.

§ 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.

1999, cc. 880, 962, §§ 9-386, 9-387; 2001, c. 844, § 3.1-1113; 2008, c. 860.

§ 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.

1999, cc. 880, 962, § 9-389; 2001, c. 844, § 3.1-1114; 2008, c. 860.

§ 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 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 and the Manager selected pursuant to subdivision A 9 of § 3.2-3103.

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.

2001, c. 757, § 9-389.1; 2001, c. 844, § 3.1-1114.1; 2008, c. 860; 2015, cc. 399, 433.

Chapter 31.1 - VIRGINIA TOBACCO REGION REVOLVING FUND

§ 3.2-3112. Definitions

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

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of Title 62.1.

"Commission" means the Tobacco Region Revitalization Commission created pursuant to § 3.2-3101.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning, and feasibility studies, surveys, plans, and specifications; architectural, engineering, financial, legal, or other special services; the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings, or improvements; site preparation and development, including demolition or removal of existing structures; construction and reconstruction; labor; materials, machinery, and equipment; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges incurred before the project is placed in service; interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service; necessary expenses incurred in connection with placing the project in service; the funding of accounts and reserves that the Authority may require; and the cost of other items that the Authority determines to be reasonable and necessary.

"Endowment" means the Tobacco Indemnification and Community Revitalization Endowment as established in § 3.2-3104.

"Fund" means the Virginia Tobacco Region Revolving Fund created by this chapter.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution of Virginia or laws of the Commonwealth, or any combination of any two or more of the foregoing, located in any of the tobacco-dependent communities in the Southside and Southwest regions of Virginia.

"Project" means the same as that term is defined in § 62.1-199.

2015, cc. 399, 433.

§ 3.2-3113. Creation and management of Virginia Tobacco Region Revolving Fund

A. There shall be set apart as a permanent and perpetual fund, to be known as the Virginia Tobacco Region Revolving Fund, with a sum of up to $50 million made available from (i) the corpus of the taxable portion of the Endowment paid to the Fund per request from the Commission within the limits imposed pursuant to § 3.2-3104, (ii) sums, if any, appropriated to the Fund by the General Assembly, (iii) all receipts by the Fund from loans made by it to local governments, (iv) all income from the investment of moneys held in the Fund, and (v) any other sums designated for deposit to the Fund from any source public or private, including, without limitation, any federal grants, awards, or other forms of assistance received by the Commonwealth that are eligible for deposit therein under federal law. Transfers from the Endowment to the Fund shall occur as required for loan disbursements.

B. The Authority shall administer and manage the Fund and establish the interest rates and repayment terms of such loans as are provided for by this chapter in accordance with a memorandum of agreement with the Commission. In order to carry out the administration and management of the Fund, the Authority, in consultation with the Commission, is granted the power to employ officers, employees, agents, advisers, and consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers, and public accountants, and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund the reasonable costs and expenses it incurs in the administration and management of the Fund and a reasonable fee to be approved by the Commission for its management services, but the Authority shall not charge its ordinary expenses to the Fund or the Commission. The Department of the Treasury, as the party holding the Endowment, shall be a party to the memorandum of agreement. Under all circumstances, the Commission shall select the projects eligible for the loans.

C. The Commission shall direct the distribution of loans from the Fund to particular local governments. Consistent with this chapter, the Commission shall, after consultation with all

interested parties, develop a guidance document governing project eligibility and project priority criteria.

2015, cc. 399, 433.

§ 3.2-3114. Deposit of money; expenditures; investments

A. All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations located in the Commonwealth, or savings institutions located in the Commonwealth and organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the Authority or another officer or employee designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies, and savings institutions are authorized to give security for the deposits.

B. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth, including the Local Government Investment Pool Act (§ 2.2-4600 et seq.).

2015, cc. 399, 433.

§ 3.2-3115. Collection of money due the Fund

The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan to a local government, including, if appropriate, by taking the action required by § 15.2-2659 or 62.1-216.1 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

2015, cc. 399, 433.

§ 3.2-3116. Loans to local governments

A. Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project that has an identifiable revenue stream from which the loan proceeds may be repaid. The local government to which a loan is to be made, the purpose of the loan, the amount of the loan, and the associated identifiable revenue stream shall be designated in writing by the Commission to the Authority following consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

B. Except as otherwise provided in this chapter, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the

Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions, and other information as it may deem necessary or convenient.

C. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant to perform any of the following:

1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund to the local government; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or in part, for future increases in rents, rates, fees, or charges.

2. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable.

3. Create and maintain other special funds as required by the Authority.

4. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

a. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements, or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

b. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities, and systems to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

c. The maintenance, replacement, renewal, and repair of the project; and

d. The procurement of casualty and liability insurance.

5. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts or his legally authorized representative. The Authority may request additional reviews at any time during the term of the loan. In addition, anyone receiving a report in accordance with § 3.2-3109 may request an additional review as set forth in this section.

D. Any local government borrowing money from the Fund is authorized to perform any acts, take any actions, adopt any proceedings, and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments but may be structured as determined by the Authority according to the needs of the contracting local government and the Fund.

E. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

2015, cc. 399, 433.

§ 3.2-3117. Pledge of loans to secure bonds of the Authority

A. The Authority is empowered at any time and from time to time to pledge, assign, or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project located in the tobacco-dependent communities in the Southside and Southwest regions of Virginia. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment, or transfer.

B. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned, or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority.

C. Any assets of the Fund pledged, assigned, or transferred in trust as set forth in this section and any payments of principal, interest, or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment, or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned, or transferred until no longer required for such purpose by the terms of the pledge, assignment, or transfer.

2015, cc. 399, 433.

§ 3.2-3118. Sale of loans

The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to

this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

2015, cc. 399, 433.

§ 3.2-3119. Powers of the Authority

The Authority is authorized to do any act necessary or convenient to the exercise of the powers granted in this chapter or reasonably implied thereby.

2015, cc. 399, 433.

§ 3.2-3120. Report to the General Assembly and the Governor

The Commission, in conjunction with the Authority, shall report annually to the General Assembly and the Governor on all loans made from the Fund.

2015, cc. 399, 433.

§ 3.2-3121. Liberal construction of chapter

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special, or local, the provisions of this chapter shall be controlling.

2015, cc. 399, 433.

Subtitle III - PRODUCTION AND SALE OF AGRICULTURAL PRODUCTS

Chapter 32 - MILK COMMISSION

§ 3.2-3200. Definitions

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

"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.

"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 the Commonwealth:

1. Persons, regardless of whether any such person is a producer:

a. Who pasteurize or bottle milk or process milk into fluid milk;

b. Who sell or market fluid milk at wholesale or retail to: (i) hotels, restaurants, stores, or other establishments for consumption on the premises; (ii) stores or other establishments for resale; or (iii) consumers; or

c. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.

2. 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.

"Licensee" means a licensed milk distributor.

"Market" means any locality, or two or more localities, and surrounding territory designated by the Commission as a marketing area.

"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 to selling.

"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.

"Sanitary regulations" include all laws and ordinances relating to the production, handling, transportation, distribution, and sale of milk and, so far as applicable, regulations adopted by the 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.

Code 1950, § 3-346; 1966, c. 702, § 3.1-425; 2008, c. 860.

§ 3.2-3201. Milk Commission; composition and appointment of members

The Milk Commission is continued within the Department and shall report directly to the Commissioner. 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, 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 the Department, the Virginia 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 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.

Code 1950, § 3-347; 1958, c. 110; 1966, cc. 526, 702, § 3.1-426; 1974, c. 467; 1984, c. 444; 1985, c. 397; 2004, c. 57; 2008, c. 860.

§ 3.2-3202. Milk Commission membership terms

The 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 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 may serve for more than two consecutive terms of four years each. 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 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.

Code 1950, § 3-347.1; 1966, c. 526, § 3.1-426.1; 1974, c. 467; 1984, c. 355; 2008, c. 860.

§ 3.2-3203. Meetings; quorum

The Commission shall meet on the call of the chairman or three of its members 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.

Code 1950, §§ 3-347.2, 3-351; 1966, cc. 526, 702, §§ 3.1-426.2, 3.1-429; 2008, c. 860.

§ 3.2-3204. General powers of the Milk Commission

The Commission shall be vested with the following powers:

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 chapter and to enter into a compact or compacts for such uniform system of milk control;

2. To investigate all matters pertaining to the production, processing, storage, transportation, distribution, and sale of milk in the Commonwealth;

3. To supervise, regulate, and control the production, transportation, processing, storage, distribution, delivery, and sale of milk for consumption within the Commonwealth;

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;

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;

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; and

7. To make, adopt, and enforce all regulations or orders necessary to carry out the purposes of this chapter. Every 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. An order, applying only to a person named therein, shall be served on the person affected. An order, 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; or, in the case of a corporation, to any officer or agent of the corporation upon whom legal process may be served. If an order is not required to be served, then it shall be posted in the main office of the Commission and filed in the office of the Commissioner, which shall constitute due and sufficient notice to any person affected by the order.

Code 1950, § 3-352; 1966, c. 702, § 3.1-430; 2008, c. 860.

§ 3.2-3205. Grant of specific power not to impair general power

Any provision of this chapter conferring a general power upon the Commission shall not be impaired or qualified by the granting to the Commission by this chapter of a specific power.

Code 1950, § 3-353; 1966, c. 702, § 3.1-431; 2008, c. 860.

§ 3.2-3206. Public hearing required

A. The Commission shall neither exercise its powers in any market, nor withdraw the exercise of its powers from any market, until after a public hearing is held for such market, and the Commission determines whether it will be in the public interest to exercise its powers in 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.

Code 1950, §§ 3-354 to 3-357; 1966, c. 702, §§ 3.1-432 to 3.1-435; 2008, c. 860.

§ 3.2-3207. Defining market areas

The Commission may define a market area and define and fix the limits of the territorial area where milk shall be produced to supply a market area. Any producers, producer-distributors, or their successors currently shipping milk to any market may continue to do so until they voluntarily discontinue shipping to the designated milk market.

Code 1950, § 3-362; 1966, c. 702, § 3.1-441; 1974, c. 467; 2008, c. 860.

§ 3.2-3208. Establishing prices generally

The Commission, after a public hearing and investigation, may establish the prices to be paid producers or associations of producers by distributors in any market, may fix the minimum and maximum wholesale and maximum retail prices to be charged for milk in any market, and may also 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 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 the Commonwealth, including compliance with all sanitary regulations in force in such market, 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 that will adjust automatically the prices to be paid producers or associations of producers by distributors in any market, 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.

Code 1950, § 3-359; 1966, c. 702, § 3.1-437; 1974, c. 467; 2008, c. 860.

§ 3.2-3209. 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 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 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, 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 § 3.2-3208. The Commission shall periodically review all outstanding minimum retail price orders to insure that they do not remain in effect any longer than the public interest requires.

1974, c. 467, § 3.1-437.1; 2008, c. 860.

§ 3.2-3210. Accounting system for distributors; inspection and audit of books and records; offenses; penalty

The Milk Commission shall prepare and 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 distributor of each grade or class of milk; the total sales by each distributor and the revenue therefrom, for each grade or class of milk and the quantity thereof. Such accounting system shall be designed to show total purchases including the respective grades or classes of milk bought, as well as the total sales and the respective classes or grades of milk sold.

Each distributor of milk and milk products under the supervision of the Commission shall adopt and use the system of accounting adopted by the Milk Commission. The books and records of each 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 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. It shall be unlawful for any distributor to fail to use the system of accounting herein prescribed or refuse to allow the same to be inspected or audited.

Code 1950, § 3-359.1; 1956, c. 74; 1966, c. 702, § 3.1-438; 2008, c. 860.

§ 3.2-3211. Right of entry and inspection; publication of information

Any Commission 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 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 Commission to administer this 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 and make it public.

Code 1950, § 3-361; 1966, c. 702, § 3.1-440; 2008, c. 860.

§ 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 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 to a particular market within the Commonwealth.

Code 1950, § 3-360; 1966, c. 702, § 3.1-439; 2008, c. 860.

§ 3.2-3213. Report of licensees

Each licensee shall furnish to the Commission verified reports containing information as required by the Commission.

Code 1950, § 3-364; 1966, c. 702, § 3.1-443; 2008, c. 860.

§ 3.2-3214. Unlawful buying and selling

No distributor in a market covered by the provisions of this chapter shall buy milk from producers, or others, for sale within the Commonwealth, or sell or distribute milk within the Commonwealth, unless the distributor is duly licensed under the provisions of this 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 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 chapter.

Code 1950, § 3-365; 1966, c. 702, § 3.1-444; 2008, c. 860.

§ 3.2-3215. Application for license

Each distributor shall submit an application to the Commission for a license to operate as a distributor by mail, or otherwise, within five days after the provisions of this chapter become effective in a market. Thereafter, any distributor shall obtain a license to operate as a distributor before beginning business in that market. The application shall be made on forms furnished by the Commission.

Code 1950, § 3-366; 1966, c. 702, § 3.1-445; 2008, c. 860.

§ 3.2-3216. Licenses to be in addition to those required by existing laws

The licenses required by this chapter shall be in addition to any other licenses required by existing laws of the Commonwealth or by any municipal ordinance.

Code 1950, § 3-367; 1966, c. 702, § 3.1-446; 2008, c. 860.

§ 3.2-3217. Appeals generally

A. 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 may appeal to the Circuit Court 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.

Code 1950, §§ 3-369, 3-371; 1966, c. 702, §§ 3.1-448, 3.1-450; 1996, c. 573; 2008, c. 860.

§ 3.2-3218. Penalties for failure to comply with subpoenas; compelling obedience

Any person failing to comply with any subpoena issued by the Commission or pursuant to its authority is guilty of a Class 2 misdemeanor, 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 regulation or order of the Commission, or obey any subpoena issued, 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 Circuit Court where the principal offices of the Commission are located, 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 the court, refusal to testify therein, or disobedience of an order or decree of the court. The proceedings herein authorized in the 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.

Code 1950, § 3-372; 1966, c. 702, § 3.1-451; 2008, c. 860.

§ 3.2-3219. Annual budget; assessment of distributors and producers; bond 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 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 chapter shall be met by an assessment of not over five cents ($0.05) per 100 pounds of milk, and

cream (converted to terms of milk) handled by distributors and not over five cents ($0.05) 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 the bonds shall be paid by the Commission and the Commission shall determine the amount and sufficiency of the bonds.

Code 1950, § 3-373; 1958, c. 110; 1966, c. 702, § 3.1-452; 1974, c. 467; 1986, c. 408; 2008, c. 860.

§ 3.2-3220. 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 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 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.

Code 1950, § 3-374; 1966, c. 702, § 3.1-453; 2008, c. 860.

§ 3.2-3221. Injunction

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.

Code 1950, § 3-379; 1966, c. 702, § 3.1-458; 2008, c. 860.

§ 3.2-3222. Penalties

Any person violating any provision of this chapter or of any license issued by the Commission is guilty of a Class 2 misdemeanor. Each day during which such violation shall continue shall be deemed a separate violation. Prosecutions shall be instituted by the attorney for the Commonwealth.

Code 1950, § 3-380; 1966, c. 702, § 3.1-459; 2008, c. 860.

§ 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 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 chapter, be considered illegal or in restraint of trade.

Code 1950, § 3-382; 1966, c. 702, § 3.1-461; 2008, c. 860.

§ 3.2-3224. Chapter inapplicable to interstate commerce

No provision of this 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.

Code 1950, § 3-381; 1966, c. 702, § 3.1-460; 2008, c. 860.

Chapter 33 - SOUTHERN DAIRY COMPACT

§ 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:

"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.

"Commission" means the Southern Dairy Compact Commission established by this compact.

"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.

"Compact" means this interstate compact.

"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.

"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.

"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.

"Participating state" means a state which has become a party to this compact by the enactment of concurring legislation.

"Pool plant" means any milk plant located in a regulated area.

"Region" means the territorial limits of the states which are parties to this compact.

"Regulated area" means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

"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, Mis-

sissippi, 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.

1998, c. 706, § 3.1-461.1; 2008, c. 860.

§ 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.

1998, c. 706, § 3.1-461.2; 2008, c. 860.

§ 3.2-3302. Cooperation of departments, agencies, and officers of the Commonwealth

All departments, agencies, and officers of 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.

1998, c. 706, § 3.1-461.3; 2008, c. 860.

§ 3.2-3303. Milk Commission powers preserved

Nothing in this chapter shall be construed to diminish or limit the powers and responsibilities of the Milk Commission established by Chapter 32 of this title or to invalidate any action of the Milk Commission previously taken including any regulation adopted by the Milk Commission.

1998, c. 706, § 3.1-461.4; 2008, c. 860.

Chapter 34 - CERTIFICATION OF AGRICULTURAL PRODUCTS

§ 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 the Commonwealth, the Commissioner may, when requested by parties financially interested in a lot of any agricultural products, investigate and certify the quality, condition, grade, or other classification of such agricultural product, pursuant to regulations adopted by the Board, including prescribing payment of fees as the Commissioner deems reasonable for the services provided by employees or licensed agents of the Department.

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.

Code 1950, §§ 3-28, 3-29; 1966, c. 702, §§ 3.1-28, 3.1-29; 2008, c. 860.

§ 3.2-3401. Licensing of agents

The Commissioner may license as inspectors persons not in the employ of the Department. No person who is not an employee of the Department may 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 U.S. Department of Agriculture.

Code 1950, § 3-30; 1966, c. 702, § 3.1-30; 2008, c. 860.

§ 3.2-3402. Certificates as evidence

Certificates of inspection and reinspection issued under this chapter by authorized agents of the Department 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 the Commonwealth as prima facie evidence of the true grade, classification, condition, or quality of such agricultural product at the time of its inspection.

Code 1950, § 3-31; 1966, c. 702, § 3.1-31; 2008, c. 860.

Chapter 35 - FARMERS MARKET SYSTEM

§ 3.2-3500. Development of farmers market system

In overseeing the development of a farmers market system, the Board shall:

1. Identify farmers market needs throughout the Commonwealth;

2. Promote the orderly growth and development of farmers markets;

3. Promote public awareness of farmers markets;

4. Promote the coordination of Virginia's 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

5. Advise the Governor on the development of the system of state-owned farmers market facilities.

1986, c. 375, § 3.1-73.3; 1989, c. 413; 2001, cc. 17, 398; 2009, c. 860.

§ 3.2-3501. Commissioner to manage farmers market operations

A. In order to establish, operate and maintain a system of state-owned farmers market facilities within the Commonwealth, the Commissioner may carry out the provisions of this chapter, including the power to:

1. Cooperate with various state agencies and other organizations contributing to the development of the farmers market system;

2. Develop and implement policy for the management of state-owned 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 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 market system;

6. Provide marketing and promotional services for the farmers market system;

7. Develop detailed technical plans for, acquire or build, and manage the farmers market system;

8. Conduct such studies as are necessary to ensure the success of the farmers market system;

9. Make contracts and agreements and execute other instruments necessary for the operation of the farmers market system;

10. Enter into agreements with and accept grants from any governmental agency in furtherance of this chapter;

11. Enter into joint ventures with cities, towns, counties or combinations thereof in developing wholesale, shipping point, and retail 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 regarding the receipt and expenditure of funds as well as the policies, programs, and activities of the market operators in the state-owned farmers market facilities.

1989, c. 413, § 3.1-73.5; 2000, c. 536; 2001, cc. 17, 398; 2005, c. 633; 2008, c. 860.

§ 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.

2000, c. 15, § 3.1-73.5:1; 2008, c. 860.

Chapter 36 - FERTILIZER

§ 3.2-3600. Definitions

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

"AAPFCO" means the Association of American Plant Food Control Officials.

"AOAC International" means the Association of Analytical Communities, formerly the Association of Official Analytical Chemists.

"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.

"Compost" means a biologically stable material derived from the composting process.

"Composting" means the biological decomposition of organic matter through a process that inhibits pathogens, viable weed seeds, and odors, 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 apply any regulated product pursuant to § 3.2-3608.

"Custom medium" means a horticultural growing medium 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.

"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 that: (i) contains important quantities of no more than one of the primary plant nutrients: nitrogen (N), phosphate (P205) and potash (K20); (ii) has 85 percent or more of its plant nutrient content present in the form of a single chemical compound; or (iii) is derived from a plant or animal residue, a by-product, or a natural material deposit 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 the minimum percentage of plant nutrients claimed as 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 that is promoted as or is intended to function as an artificial soil for the managed growth of horticultural crops.

"Industrial co-product" means any industrial waste or byproduct, including exceptional quality biosolids and waste treatment residuals, that can be beneficially recycled for its plant nutrient content or soil amendment characteristics, that meets the definition of fertilizer, soil amendment, 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, television and radio announcements, and internet content used in promoting the sale of the regulated product.

"Lawn fertilizer" means any fertilizer intended for nonagricultural use on newly established turf areas from sod or seed during the first growing season, turf areas being repaired or renovated, and turf areas where soil tests performed within the past three years indicate a nutrient deficiency.

"Lawn maintenance fertilizer" means any fertilizer intended for the nonagricultural routine maintenance of turf.

"Licensee" means the person who receives a license to distribute any regulated product under the provisions of this chapter.

"Lot" means an identifiable quantity of produced material that can be sampled officially according to AOAC International procedures, up to and including a freight car load or 50 tons maximum, or that amount contained in a single vehicle, or that amount delivered under a single invoice.

"Manipulated manure" means animal or vegetable manure that is ground, pelletized, mechanically dried, packaged, supplemented with plant nutrients or other substances other than phosphorus, or otherwise treated in a manner to assist with the sale or distribution of the manure as a fertilizer or soil or plant additive.

"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.

"Official sample" means the sample of regulated product taken by the Commissioner.

"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, and horticultural growing medium.

"Soil amendment" means any substance or mixture of substances intended to improve the physical, chemical, biochemical, biological, or other characteristics of the soil. The following are exempt from the definition of "soil amendment": fertilizer, unmanipulated or composted animal and vegetable manures, horticultural growing media, agricultural liming materials, unmixed mulch and unmixed peat.

"Specialty fertilizer" means a fertilizer distributed for nonfarm use, including 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 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 the court gives written permission to sell, relocate, use or dispose of the lot of regulated product or portion thereof.

"Ton" means a unit of 2000 pounds avoirdupois weight.

"Turf" means nonagricultural land that is planted as closely mowed, managed grass and includes golf courses, parks, cemeteries, publicly owned lands, and residential, commercial, or industrial property.

"Unmanipulated manure" means substances composed of the excreta of domestic animals, or domestic fowls, that has not been processed or conditioned in any manner including processing or conditioning by drying, grinding, pelleting, shredding, addition of plant food, mixing artificially with any material or materials (other than those that have been used for bedding, sanitary or feeding purposes for such animals or fowls), or by any other means.

1994, c. 740, § 3.1-106.2; 2002, c. 473; 2008, c. 860; 2011, cc. 341, 353, 552, 564.

§ 3.2-3601. Authority of the Board and the Commissioner to adopt regulations

A. The Board may adopt such regulations as are necessary to carry out the provisions of this chapter. Such regulations may include investigational allowances, definitions, records, and manufacturing practices, and the distribution and storage of regulated product prior to final sale.

B. The Commissioner may adopt as a regulation:

1. The Official Fertilizer Terms, Definitions, and Standards adopted by AAPFCO;

2. The methods of sampling and analysis for regulated products adopted by AOAC International; 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, or the U.S. Department of Agriculture.

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. The Commissioner shall provide notice by first-class mail of regulations adopted by him pursuant to this section 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, C, and D of this section.

1994, c. 740, § 3.1-106.4; 1995, c. 104; 2008, c. 860; 2011, cc. 552, 564.

§ 3.2-3602. Local government regulation of fertilizer

No locality shall regulate the registration, packaging, labeling, sale, use, application, storage or distribution of fertilizers except by ordinance as provided for in the requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), the Stormwater Management Act (§ 62.1-44.15:24 et seq.) or other nonpoint source regulations adopted by the Department of Environmental Quality or the State Water Control Board. 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.

2007, c. 563, § 3.1-106.4:1; 2008, c. 860; 2011, cc. 341, 353; 2013, cc. 756, 793.

§ 3.2-3602.1. Board authorized to adopt regulations for the application of regulated products to nonagricultural property; civil penalty

A. The Board shall adopt regulations to certify the competence of (i) contractor-applicators, (ii) licensees, and (iii) employees, representatives, or agents of state agencies, localities, or other governmental entities who apply any regulated product to nonagricultural lands.

B. The regulations shall establish (i) training requirements; (ii) proper nutrient management practices in accordance with § 10.1-104.2, including soil analysis techniques, equipment calibration, and the timing of the application; and (iii) reporting requirements, including the submission of an annual report as specified by the Commissioner regarding the location of lawn fertilizer and lawn maintenance fertilizer applications. Contractor-applicators and licensees who apply lawn fertilizer and lawn maintenance fertilizer to more than a total of 100 acres of nonagricultural lands annually and employees, representatives, or agents of state agencies, localities, or other governmental entities who apply lawn fertilizer and lawn maintenance fertilizer to nonagricultural lands shall submit an annual report on or before February 1 and on a form prescribed by the Commissioner. The annual report shall include the total acreage or square footage by zip code of the land receiving lawn fertilizer and lawn maintenance fertilizer in the preceding calendar year. The Department shall provide for optional reporting by electronic methods. The Department shall make publicly available every year the total acreage or square footage by zip code. Any personal information collected pursuant to this section shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Commissioner may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information.

C. The Board may impose a civil penalty of up to $250 on any contractor-applicator or licensee who fails to comply with the regulations. The amount of the civil penalty shall be paid into the special fund established in § 3.2-3617.

D. The Board shall form a technical advisory committee of stakeholders. The Board shall consult with the technical advisory committee of stakeholders and the Department of Conservation and Recreation in the development of the regulations.

E. Any person who is subject to regulation and who applies any regulated product to nonagricultural lands shall comply with the regulations within 12 months of the effective date of the regulations.

F. Contractor-applicators and licensees in compliance with regulations adopted by the Board pursuant to this section shall not be subject to local ordinances governing the use or application of lawn fertilizer and lawn maintenance fertilizer.

2008, c. 686, § 3.1-106.4:2; 2011, cc. 341, 353, 552, 564.

§ 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 §§ 3.2-3600 and 3.2-3611; and commercial value of nutrients as determined under § 3.2-3614.

1994, c. 740, § 3.1-106.19; 2008, c. 860.

§ 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.

1994, c. 740, § 3.1-106.20; 2008, c. 860.

§ 3.2-3605. License and registration year; permit year

A. The license year for all distributors, the registration year for any regulated product, and the tonnage reporting year is July 1 through June 30 of the following year. Each license or registration shall expire on June 30 of the year for which it is issued, provided that the license or registration shall be valid through July 31 of the next ensuing license or registration year or until the issuance of the renewal license or registration, whichever event occurs first, if the holder has filed a properly completed renewal application with the Commissioner on or before June 30 of the year for which the current license or registration was issued.

B. The permit year for all contractor-applicators is April 1 through March 31 of the following year. Each permit shall expire on March 31 of the permit year for which it is issued, provided that the permit shall be valid through March 31 of the next ensuing permit year or until the issuance of the renewal permit, whichever event occurs first, if the holder has filed a properly completed renewal application with the Commissioner on or before March 31 of the permit year for which the current permit was issued.

1994, c. 740, § 3.1-106.6; 1995, c. 104; 2002, c. 473; 2008, c. 860; 2011, cc. 552, 564.

§ 3.2-3606. Distributor required to obtain license; fee

A. It is unlawful for any person whose name appears upon the label of any regulated product as 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 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 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.

F. Any new applicant who fails to obtain a license within 15 working days of notification of the requirement to obtain a license, or any licensee who fails to comply with the license renewal requirements, shall pay a $35 late fee to the Commissioner in addition to the license fee.

1994, c. 740, § 3.1-106.6; 1995, c. 104; 2002, c. 473; 2008, c. 860; 2011, cc. 552, 564.

§ 3.2-3607. Product registration and label requirements; exemptions

A. In addition to licensing requirements:

1. Any person who is the guarantor of and who distributes in the Commonwealth any specialty fertilizer shall: (i) apply for registration for such specialty fertilizer with the Commissioner on forms furnished 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 is the guarantor and who distributes in the Commonwealth a soil amendment or horticultural growing medium shall: (i) apply for registration for such soil amendment or horticultural growing medium with the Commissioner on forms furnished 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 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 certificate of registration to the applicant after approval of the registration.

C. Any person applying for registration of a specialty fertilizer, soil amendment or horticultural growing medium shall include with the application the following information:

1. For specialty fertilizer, the grade under a given brand; for soil amendments 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 and any composition of 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. Beginning December 31, 2013, no lawn maintenance fertilizer containing more than zero percent phosphorus or other compounds containing phosphorus, such as phosphate, shall be registered with the Commissioner or offered for sale, distribution, or use in the Commonwealth. This prohibition does not include lawn fertilizer, manipulated manure, yard waste compost, products derived from sewage sludge, soils containing fertilizer, fertilizer products intended primarily for gardening, tree, shrub, and indoor plant application, including nurseries, or reclaimed water. The provisions of this section shall not restrict the continued sale by retailers of any prohibited fertilizer from any existing inventories in stock on December 31, 2013.

G. Beginning July 1, 2014, only lawn maintenance fertilizer that, when applied in accordance with its directions for use, results in the application of nitrogen at rates that are consistent with the nitrogen application rates recommended for turfgrass in the Virginia Nutrient Management Standards and Criteria shall be registered with the Commissioner or offered for sale, distribution, or use in the Commonwealth. The provisions of this subsection shall not restrict the continued sale by retailers of any prohibited fertilizer from existing inventories in stock on July 1, 2014.

H. The Commissioner shall give the guarantor or distributor 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 or fails to comply with registration renewal requirements 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.

1994, c. 740, § 3.1-106.6; 1995, c. 104; 2002, c. 473; 2008, c. 860; 2011, cc. 341, 353, 552, 564; 2012, c. 796.

§ 3.2-3607.1. Consumer education

A. The Department, in consultation with representatives of the fertilizer industry, fertilizer retailers, and statewide turf and lawn care organizations, and other interested parties, may develop consumer information and recommended best practices for the application of lawn fertilizer.

B. The Department shall provide a public listing of contractor-applicators who apply fertilizer on nonagricultural lands and have met the training requirements of § 3.2-3602.1. The Department shall encourage consumers to consult the listing when hiring a lawn care professional.

2011, cc. 341, 353.

§ 3.2-3607.2. Sale of deicing agents

Beginning December 31, 2013, it is unlawful for any person to offer for sale any deicing agent containing urea or other forms of nitrogen or phosphorus intended for application to parking lots, roadways, and sidewalks or other paved surfaces in the Commonwealth. The provisions of this section shall not (i) restrict the continued sale by retailers of any deicing agent from any existing inventories in stock on December 31, 2013, or (ii) prohibit the offer for sale or sale of any deicing agents containing urea to any municipal corporation or political subdivision for the purpose of applying such deicing agents pursuant to subsection B of § 15.2-1123.

2011, cc. 341, 353; 2013, c. 758.

§ 3.2-3608. Contractor-applicator permit

A. It is unlawful for any person, other than a licensee or an agent of a licensee, to apply any regulated product for profit without first 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.

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 permit within 15 working days of notification of the requirement to obtain a permit shall pay a $35 late fee to the Commissioner, in addition to the permit fee. Any permit holder who fails to comply with permit renewal requirements shall pay a $35 late fee to the Commissioner in addition to the permit fee.

C. An annual permit shall be required for each location or outlet that applies any regulated product.

D. The contractor-applicator shall guarantee the consumer that the contractor-applicator and the contractor-applicator's employees or agents applying any regulated product shall comply with all provisions of this chapter and with regulations adopted by the Board, which shall include an assurance of the delivery of the grade of fertilizer as described on the consumer's invoice.

1994, c. 740, § 3.1-106.6; 1995, c. 104; 2002, c. 473; 2008, c. 860; 2011, cc. 552, 564.

§ 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.

B. Any person who distributes any regulated product to a non-licensed person:

1. Shall file the tonnage statement with the Commissioner and pay to the Commissioner the inspection fee by August 1; or

2. 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 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.

C. Any person who distributes any regulated product in Virginia to a nonlicensee shall pay to the Commissioner an inspection fee of 25 cents ($0.25) per ton of regulated product or $35, whichever is greater, per tonnage reporting year.

D. Any person who distributes any regulated product to a nonlicensee 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.

1994, c. 740, § 3.1-106.8; 2008, c. 860; 2011, cc. 552, 564.

§ 3.2-3610. Statistical reports

A. For commercial fertilizer:

1. Any person distributing commercial fertilizer to a nonlicensee shall furnish the Commissioner an annual statistical report showing:

a. The county or city of the nonlicensee consignee;

b. The amounts (expressed in tons, or decimal portions) 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. This information shall be submitted in the following form and shall specify shipments made during the preceding year:

a. A statistical summary report on a form prescribed by the Commissioner, on or before August 1; or

b. A statistical summary report by electronic transfer, utilizing the Uniform Fertilizer Tonnage Reporting System. Prior to using the electronic transfer method, the person responsible for submitting the annual tonnage report shall make arrangements with the Commissioner for the Commissioner's receipt of the report by such method.

3. If the annual statistical report is not filed within 15 working days of the specified filing date, a late fee of $35 shall be assessed against the licensee.

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) of each grade under a given brand of product.

2. Any person listed in subdivision B 1 who fails to file this report by August 1 shall pay a late fee of $35 to the Commissioner.

1994, c. 740, § 3.1-106.9; 1995, c. 104; 2008, c. 860; 2011, cc. 552, 564.

§ 3.2-3611. Labeling

A. The distributor 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 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. The grade shall not be required when no primary nutrients are claimed;

3. The guaranteed analysis, which shall:

a. For fertilizers, conform to the requirements adopted by AAPFCO in its Official Publication in the Rules and Regulations-Fertilizer section of the Officially Adopted Documents, as amended, with the percentage of each plant nutrient stated as follows:

(1) Total Nitrogen (N) ..... %
Available Phosphate (P205) ..... %
Soluble Potash (K20) ..... %

(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;

(3) Guarantees for plant nutrients other than nitrogen (N), phosphate (P205), and potash (K20) shall be expressed in the form of the element. A statement of the sources of nutrients including 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 Agricultural 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. For soil amendments, conform to the requirements adopted by AAPFCO in its Official Publication in the Labeling section of the Uniform Soil Amendment Bill of the Officially Adopted Documents, as amended;

c. For horticultural growing media, include a list of ingredients and other guarantees as required by regulation and a statement of added fertilizers, if any;

d. 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;

e. When an industrial co-product is used as an ingredient, identify the source material and percentage or other acceptable unit; and

f. Include a list of such other ingredients and guarantees as may be required by the Board through regulation.

4. The name and address of the registrant or licensee; and

5. Directions for use and warning statements in accordance with the standards adopted by AAPFCO in its Officially Adopted Documents of the Official Publication, as amended.

B. A commercial fertilizer that is formulated according to specifications provided by a consumer prior to mixing 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. [Repealed.]

D. Beginning December 31, 2013, lawn fertilizer and lawn maintenance fertilizer shall be labeled as follows:

"DO NOT APPLY NEAR WATER, STORM DRAINS, OR DRAINAGE DITCHES. DO NOT APPLY IF HEAVY RAIN IS EXPECTED. APPLY THIS PRODUCT ONLY TO YOUR LAWN/GARDEN, AND SWEEP ANY PRODUCT THAT LANDS ON THE DRIVEWAY, SIDEWALK, OR STREET, BACK ONTO YOUR LAWN/GARDEN."

1994, c. 740, § 3.1-106.5; 1995, c. 104; 2008, c. 860; 2011, cc. 341, 353, 552, 564.

§ 3.2-3612. Misbranding

A. It is unlawful to distribute misbranded regulated product. A regulated product shall be deemed to be misbranded if:

1. It has a label 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 § 3.2-3611, and in accordance with regulations 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 guarantor of any regulated product found to be misbranded shall pay to the consumer an assessment equal to 10 percent of the retail value of the regulated product sold to the consumer and found to be in violation of subsection A not to exceed $5,000 per occurrence. 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 has inspected the lot or a portion thereof. The assessment for misbranding shall be in addition to any assessment for plant food deficiency.

1994, c. 740, § 3.1-106.10; 2008, c. 860; 2011, cc. 552, 564.

§ 3.2-3613. Adulteration

A. It is unlawful to distribute an adulterated regulated product. 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 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 guarantor of any regulated product found to be adulterated shall pay to the consumer an assessment equal to 10 percent of the retail value of the regulated product sold to the consumer and found to be in violation of subsection A not to exceed $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 has inspected the lot or a portion thereof. The assessment for adulteration shall be in addition to any assessment for plant food deficiency.

1994, c. 740, § 3.1-106.11; 2008, c. 860; 2011, cc. 552, 564.

§ 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 shall determine the values per unit of total nitrogen (N), available phosphate (P205), soluble potash (K20), and micronutrients in fertilizers in the Commonwealth.

1994, c. 740, § 3.1-106.12; 2008, c. 860.

§ 3.2-3615. Plant food deficiency

A. The Commissioner 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: (a) in one or more of the guaranteed primary plant nutrients, beyond the investigational allowances and compensations, as established by regulation; or (b) 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, not to exceed $5,000 per occurrence, shall be paid to the consumer by the guarantor. When the fertilizer is subject to an assessment under both clauses (a) and (b), the Commissioner 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, a person is found to have: (i) altered the content of any fertilizer shipped to him by a licensee; or (ii) mixed, or commingled, fertilizer from two or more distributors, 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: (a) obtain a license and register the altered or mixed product; (b) be held liable for all assessments; and (c) be subject to other provisions of this chapter including 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.

1994, c. 740, § 3.1-106.13; 2008, c. 860; 2011, cc. 552, 564.

§ 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 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 60-day period during which payment to the consumer is made.

B. If the guarantor cannot locate the consumer within 60 days; the amount of the assessment shall be paid to the Commissioner, who shall deposit it in the state treasury, and report to the State Comptroller, who shall credit the 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 90 days. The State Comptroller shall transfer any balance remaining in the fund for a period of 90 days to the Feed, Lime, Fertilizer, and Animal Remedies Fund as specified by § 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 10 percent of the assessment, or $50, whichever is greater, in addition to the assessment. The Commissioner may cancel the license of such person who fails to pay the assessment.

1994, c. 740, § 3.1-106.14; 2008, c. 860.

§ 3.2-3617. Fund established; 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 § 3.2-3616, received by the Commissioner under this chapter shall be paid into 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 § 3.2-2905, five cents ($0.05) of the inspection fee per ton of regulated product.

1994, c. 740, § 3.1-106.22; 2008, c. 860.

§ 3.2-3618. Inspection, sampling and analysis; penalty

A. The Commissioner 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 chapter as such duties relate to insuring the quality, analysis, and quantity of fertilizer sold and distributed in the state.

The Commissioner is authorized to enter during operating hours the premises or carriers of any person subject to regulation under this chapter, in order to have access to: (i) the regulated product, storage facilities and manufacturing practices; 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 in the performance of his official duties is guilty of a Class 3 misdemeanor.

C. The Commissioner shall use the methods of sampling and analysis adopted by the Commissioner or the Board.

D. The Commissioner, in determining for administrative purposes whether any fertilizer is deficient in plant food, shall be guided solely by the official sample. The Commissioner shall obtain and analyze samples as specified in subsection C of this section.

E. The Commissioner may distribute information regarding official analysis of fertilizers. The Commissioner shall retain official samples establishing an assessment for variance from guarantee for a minimum of 90 days from issuance of a deficiency report.

1994, c. 740, § 3.1-106.7; 1995, c. 104; 2008, c. 860.

§ 3.2-3619. Stop sale, use, removal, or seizure orders; penalty

A. The Commissioner 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 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 determines that the regulated product cannot be brought into compliance with the chapter, the Commissioner shall release the regulated product to be remanufactured, returned to the manufacturer, or destroyed.

B. The Board may impose a civil penalty of up to $250 on any person violating a written or printed stop sale, use, removal, or seizure order.

1994, c. 740, § 3.1-106.15; 2008, c. 860; 2011, cc. 552, 564.

§ 3.2-3620. Seizure and condemnation

The Commissioner may seize any lot of regulated product not in compliance with this chapter. The Commissioner may make application for seizure to an appropriate court in the city or county 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 that, in the opinion of the Commissioner, is consistent with the quality of the regulated product, and 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 the regulated product, or for permission to process or relabel the regulated product, to bring it into compliance with this chapter.

1994, c. 740, § 3.1-106.16; 2008, c. 860; 2011, cc. 552, 564.

§ 3.2-3621. Cancellation of registration, permit, or license

A. The Commissioner may: (i) cancel the license or permit of any person; (ii) cancel the registration of any brand of regulated product; or (iii) refuse to register any brand of regulated product, or issue any license. The Commissioner shall cancel or refuse a license or registration upon satisfactory evidence that the registrant or licensee, has used fraudulent or deceptive practices in the evasion, or attempted evasion, of this chapter or any regulations 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.

1994, c. 740, §§ 3.1-106.8, 3.1-106.18; 2008, c. 860; 2011, cc. 552, 564.

§ 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.

1994, c. 740, § 3.1-106.17; 2008, c. 860.

§ 3.2-3623. Repealed

Repealed by Acts 2011, cc. 552 and 564, cl. 2.

§ 3.2-3624. Warning

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.

2011, cc. 552, 564.

§ 3.2-3625. Violations; civil penalties

A. The Commissioner shall give notice of the violation to the registrant or the licensee responsible for the regulated product. The Commissioner may give notice to the distributor from whom the Commissioner sampled the regulated product.

B. To determine the amount of any civil penalty, the Commissioner shall give due consideration to (i) the history of 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.

C. The Commissioner shall determine procedures for payment of uncontested 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. 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, the person against whom the civil penalty has been upheld shall have 15 days to pay the proposed penalty in full, or if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Commissioner'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 30 days of that determination remit the appropriate amount to the person with interest accrued thereon.

E. Final orders of the Commissioner 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.).

F. Except as otherwise provided, any person convicted of violating any of the provisions of this chapter or the regulations adopted hereunder is guilty of a Class 3 misdemeanor.

2011, cc. 552, 564.

Chapter 37 - AGRICULTURE LIMING MATERIALS

§ 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.

"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.

"Contractor" means any person required to hold a permit to sell any bulk liming material to the consumer pursuant to § 3.2-3704.

"Distributor" means any person who imports or consigns, manufactures, produces, compounds, mixes, or blends any liming material, or who offers for sale, sells, barters 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 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 that has the capacity, and whose intended purpose is, to neutralize soil acidity.

"Kind" means one of the two classes of liming material.

"Label" means any written or printed matter on, or attached to, the package, or on the delivery ticket 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.

"Manufacturer" means any person who manufactures, produces, compounds, mixes, blends, imports or consigns liming material, or who offers for sale, sells, barters 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 90 percent.

"Stop sale, use, removal or seizure order" means an order 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 a court gives written permission to sell, relocate, use or dispose of the lot of liming material or portion thereof.

"Ton" means a 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. "Calcitic" means any agricultural liming material in which 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 15 percent or more of the total carbonate content is magnesium carbonate.

4. "Hydrated" means any agricultural liming material, made from burnt lime, 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.

1994, c. 649, § 3.1-126.2:1; 2002, c. 473; 2008, c. 860.

§ 3.2-3701. Authority of Board and Commissioner to adopt regulations

A. The Board may adopt such regulations as are necessary to carry out the provisions of this chapter. Such regulations may include to investigational allowances, definitions, records, manufacturing practices and the distribution and storage of liming material.

B. The Commissioner may adopt, as a regulation:

1. The Official Fertilizer Terms and Definitions adopted by the Association of American Plant Food Control Officials;

2. The methods of sampling and analysis for liming material adopted by the Association of Official Analytical Chemists; and

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 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 subsections B, C, and D.

1994, c. 649, § 3.1-126.12:1; 2008, c. 860.

§ 3.2-3702. Registration; permitting of distributors

A. Any distributor of agricultural liming material in the Commonwealth shall register 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 $50 per brand of agricultural liming material per registration year. Upon approval by the Commissioner, the Commissioner 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 issued the registration. Any registration shall be valid through July 31 of the next registration year or until issuance of the renewal registration, whichever occurs first, if the holder of the registration has filed a renewal application with the Commissioner on or before June 30 of the registration year for which the Commissioner issued the registration.

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, 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. The Commissioner 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 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 occurs first, if the holder of the registration has filed a renewal application with the Commissioner on or before June 30 of the registration year for which the Commissioner issued the registration.

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 identifies any unregistered liming material in commerce in the Commonwealth during the registration year, the Commissioner shall grant a grace period of 15

working days from issuance of notification to the distributor of the liming material 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 15th day of the grace period, shall pay to the Commissioner a $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.

1974, c. 647, § 3.1-126.4; 1994, c. 649; 2002, c. 473; 2008, c. 860.

§ 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.

1974, c. 647, § 3.1-126.4; 1994, c. 649; 2002, c. 473; 2008, c. 860.

§ 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.

1974, c. 647, § 3.1-126.4; 1994, c. 649; 2002, c. 473; 2008, c. 860.

§ 3.2-3705. 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 documenting the number of tons of each liming material sold by the distributor for use in each county or city in the Commonwealth. 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 ($0.05) per ton of liming material sold per reporting year. The minimum inspection fee shall be $35 per distributor per reporting year. If the distributor fails to submit the tonnage statement and pay the inspection fee by August 1 of each year, the Commissioner shall notify the distributor and grant a grace period of 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 15th day of the grace period has expired, the distributor shall pay to the Commissioner a late fee of 10 percent of the inspection fee, or $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 in the distributor's records the tonnage of liming materials sold by the distributor in the Commonwealth. The Commissioner may inspect the distributor's records that the distributor shall maintain for a period of three years.

C. Any person who distributes liming materials to a nonlicensed person:

1. Shall file the tonnage statement with the Commissioner and pay to the Commissioner the inspection fee; or

2. 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.

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.

1974, c. 647, § 3.1-126.5; 1976, c. 91; 1994, c. 649; 2008, c. 860.

§ 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, 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 § 3.2-3700, 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 in its most recent publication. Minimum calcium carbonate equivalents as prescribed by regulation;

6. The Effective Neutralizing Value of the liming material as calculated using the following formula:

(percent by weight passing 20 mesh sieves - percent by weight passing 60 mesh sieves) x 0.4 = (a)

(percent by weight passing 60 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 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:

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 guaranteed analysis of the final product; and

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:

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 guaranteed analysis of the final product; and

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 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 that has been adulterated subsequent to packaging, labeling or loading, 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.

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) .....%

Total Magnesium (Mg) .....%

1974, c. 647, § 3.1-126.3; 1994, c. 649; 2008, c. 860.

§ 3.2-3707. Inspection, sampling, and analysis

A. The Commissioner shall sample, inspect, analyze, and test liming material distributed within the Commonwealth to determine whether such liming material is in compliance with the provisions of this chapter. The Commissioner may enter upon any public or private premises during operating hours, or any carrier, in order to have access to liming material that is subject to the provisions of this chapter and regulations hereunder, and to the records relating to its distribution.

B. The Commissioner shall distribute the results of official analyses of liming material and portions of official samples of liming material as provided in regulations.

1974, c. 647, § 3.1-126.6; 1994, c. 649; 2008, c. 860.

§ 3.2-3708. Stop sale, use, removal or seizure order; review

A. The Commissioner 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 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 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 provisions of this section shall not be construed: (i) as limiting the right of the Commissioner to proceed as authorized by other provisions of this chapter; or (ii) as limiting or prohibiting the operation of § 2.2-4028.

1974, c. 647, § 3.1-126.7; 1986, c. 615; 1994, c. 649; 2008, c. 860.

§ 3.2-3709. Assessments for violations of chapter

A. Any person convicted of violating any provision of this chapter or the regulations 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 an appropriate court.

B. The Commissioner shall make an assessment for variance from guarantee in accordance with the regulations established by the Board, not to exceed $5,000 per occurrence, when any shipment of liming material that the Commissioner samples and upon analysis, fails to meet the guarantee for chemicals, neutralizing value, or screen size.

C. The person whose name appears on the label of the violative lot of liming material shall pay the assessment for variance from guarantee assessed by the Commissioner. The person assessed shall obtain a receipt signed by the purchaser for each payment, and promptly forward the 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 guarantee within 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 ($1.00), 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 subsection D.

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 90 days to the credit of the fund specified in § 3.2-3710.

1974, c. 647, § 3.1-126.8; 1994, c. 649; 2008, c. 860.

§ 3.2-3710. Disposition of funds

All fees, penalties, funds (including those transferred as specified in subsection D of § 3.2-3709 and except as provided in subsection C of § 3.2-3709), and assessments under this chapter that the Commissioner receives shall be paid into 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 ($0.05) per ton of liming material sold per reporting year of the inspection fee.

1994, c. 649, § 3.1-126.12:3; 2008, c. 860.

§ 3.2-3711. Seizure of liming material when assessments not paid

The Commissioner 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 60 days after the Commissioner has given notice to such person.

1974, c. 649, § 3.1-126.9; 1994, c. 649; 2008, c. 860.

§ 3.2-3712. Appeal from 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.).

1974, c. 647, § 3.1-126.10; 1986, c. 615; 1994, c. 649; 2008, c. 860.

§ 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.

1974, c. 647, § 3.1-126.8; 1994, c. 649; 2008, c. 860.

§ 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 commence proceedings and prosecute in an appropriate court without delay.

1994, c. 649, § 3.1-126.12:2; 2008, c. 860.

§ 3.2-3715. Prohibited acts; penalty

A. It is unlawful to:

1. Sell or offer to sell any liming material unless it complies with provisions of this chapter;

2. Sell or offer for sale liming material that contains toxic materials in quantities injurious to plants or animals; and

3. Hinder or obstruct in any way the Commissioner in the performance of his official duties.

B. Any person who violates any provision of this chapter is guilty of a Class 3 misdemeanor.

1974, c. 647, § 3.1-126.11; 1994, c. 649; 2008, c. 860.

Chapter 38 - PLANTS AND PLANT PRODUCTS INSPECTION

§ 3.2-3800. Definitions

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

"Dealer" means any person that acquires nursery stock for the purpose of resale and distribution who is not a grower of nursery stock.

"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.

"Nursery" means any premises where nursery stock is propagated, grown, fumigated, treated, packed, stored, or otherwise prepared for sale or distribution.

"Nursery stock" means all trees, shrubs, woody vines (including ornamentals), bush fruits, grapevines, fruit trees, and nut trees 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 shall also mean herbaceous plants (including strawberry plants, narcissus plants, and narcissus bulbs) if the Board determines that controlling the movement of such plants or bulbs is necessary to control any plant pest. Unless designated by the Board, nursery stock shall not include florist or greenhouse plants for inside culture or use.

"Nurseryman" means any person that produces nursery stock for sale or distribution.

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

"Plant pest" means any living stage of insects, mites, nematodes, slugs, snails, protozoa, other invertebrate animals, bacteria, fungi, other parasitic plants, parasitic plant parts, viruses, any other similar organism, or any infectious substances that can injure, infect, or damage any plants or plant products.

"Plants or plant products" means any trees, shrubs, vines, forage, fiber, cereal, and all other plants; cuttings, grafts, scions, buds, and all other plant parts; fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all other plant products; or any container, soil, and packing material with plants or plant products.

Code 1950, § 3-178.1; 1964, c. 476; 1966, c. 702, § 3.1-135; 1980, c. 291, § 3.1-188.32; 1988, c. 552; 2008, c. 860.

§ 3.2-3801. Powers and duties of the Commissioner

A. The Commissioner shall:

1. Protect the agricultural, horticultural, and other interests of the Commonwealth from plant pests; 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.

Code 1950, §§ 3-178.4, 3-178.15, 3-178.20; 1964, c. 476; 1966, c. 702, §§ 3.1-138, 3.1-149, 3.1-154; 1980, c. 291, §§ 3.1-188.34, 3.1-188.43, 3.1-188.48; 2008, c. 860.

§ 3.2-3802. Permit required to sell or transport plant pests

It is unlawful to sell, barter, offer for sale, move, transport, deliver, ship, or offer for shipment any plant pests without a permit from the Commissioner stating that such plant pests are: (i) not injurious; (ii) generally present already; or (iii) to be used for scientific purposes subject to specified safeguards.

Code 1950, § 3-178.14; 1964, c. 476; 1966, c. 702, § 3.1-148; 1980, c. 291, § 3.1-188.42; 2008, c. 860.

§ 3.2-3803. Licenses required of nurserymen or dealers; inspection fees

A. It is unlawful for any nurseryman or dealer to offer for sale, sell, deliver, or give away nursery stock unless such person shall have first procured a license from the Commissioner.

B. The Commissioner shall not issue any license to a dealer except upon the payment of $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. At the issuance of the license, each nursery shall also pay an inspection fee of $1.50 for each acre above 50 acres of nursery stock inspected by the Commissioner.

D. All licenses shall expire on December 31.

Code 1950, § 3-178.9; 1964, c. 476; 1966, c. 702, § 3.1-143; 1980, c. 291, §§ 3.1-188.36, 3.1-188.37; 1988, c. 552; 2008, c. 860.

§ 3.2-3804. Inspection certificate required to transport nursery stock

A. It is unlawful to knowingly deliver, send, ship, or transport nursery stock 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 may be sold and moved by a licensed nurseryman or dealer or agent, but this shall not preclude inspection at any time within the Commonwealth.

Code 1950, § 3-178.11; 1964, c. 476; 1966, c. 702, § 3.1-145; 1980, c. 291, § 3.1-188.38; 2008, c. 860.

§ 3.2-3805. Inspections upon request

Any person may apply to the Commissioner for an inspection certificate. The applicant shall agree to pay the expenses incurred by the Commissioner, who may respond to the applicant at his discretion. The Commissioner shall issue an inspection certificate upon successful completion of the inspection and the payment of inspection expenses.

Code 1950, § 3-178.13; 1964, c. 476; 1966, c. 702, § 3.1-147; 1980, c. 291, § 3.1-188.41; 2008, c. 860.

§ 3.2-3806. Authority for inspections; right of entry

A. All nursery stock or plant products for sale or distribution shall be subject to inspection at any time.

B. The Commissioner may enter any nursery or dealer premises, other than a private dwelling, at reasonable times and under reasonable circumstances to examine nursery stock or plant products for sale or distribution to detect plant pests and discharge the duties prescribed herein.

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.

Code 1950, §§ 3-178.9, 3-178.16, 3-178.18; 1964, c. 476; 1966, c. 702, §§ 3.1-143, 3.1-150, 3.1-152; 1980, c. 291, §§ 3.1-188.37, 3.1-188.44, 3.1-188.46; 2008, c. 860.

§ 3.2-3807. Eradication and control measures

The Commissioner may order the owner or custodian of any infested nursery stock or plant products for sale or distribution to take eradication and control measures. The owner or custodian shall promptly carry out the order of the Commissioner. The Commissioner may take the eradication or control measures required by the order if the owner or custodian refuses or neglects to carry out the order.

Code 1950, § 3-178.9; 1964, c. 476; 1966, c. 702, § 3.1-143; 1980, c. 291, § 3.1-188.37; 2008, c. 860.

§ 3.2-3808. Nursery stock or plant products for sale or distribution subject to stop delivery or stop sale

A. The Commissioner may stop delivery, stop sale, treat, or order returned to point of origin any nursery stock or plant products for sale or distribution if he finds: (i) a plant pest infection; or (ii) the exhibition of visual symptoms of a plant pest infestation.

B. The Commissioner may stop delivery or stop sale of: (i) any nursery stock or plant products for sale or distribution in the possession of an unlicensed nurseryman or dealer; or (ii) any nursery stock or plant products for sale or distribution that are not accompanied by an inspection certificate.

C. Any order of the Commissioner under this section shall be carried out at the owner's expense.

1980, c. 291, § 3.1-188.39; 2008, c. 860.

§ 3.2-3809. Seizure and disposition of nursery stock or plant products for sale or distribution

Any nursery stock or plant products for sale or distribution shall be subject to seizure on complaint of the Commissioner to the appropriate court. If the court finds the nursery stock or plant products for sale or distribution to be in violation of this chapter and orders condemnation, such nursery stock or plant products shall be seized, destroyed, treated, or returned to the point of origin at the owner's expense.

Code 1950, § 3-178.12; 1964, c. 476; 1966, c. 702, § 3.1-146; 1980, c. 291, § 3.1-188.40; 2008, c. 860.

§ 3.2-3810. Penalty for violation

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 chapter or regulations adopted hereunder or interfering in any way with the Commissioner in the discharge of his duties herein is guilty of a Class 1 misdemeanor.

Code 1950, §§ 3-178.18, 3-178.19; 1964, c. 476; 1966, c. 702, §§ 3.1-152, 3.1-153; 1980, c. 291, §§ 3.1-188.36, 3.1-188.46, 3.1-188.47; 1988, c. 552; 2008, c. 860.

§ 3.2-3811. Judicial review

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

1980, c. 291, § 3.1-188.49; 2008, c. 860.

Chapter 39 - PESTICIDE CONTROL

Article 1 - GENERAL PROVISIONS

§ 3.2-3900. 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 that will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

"Agricultural commodity" means any plant or part thereof, 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.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3.

"Certification" or "certified" means the recognition granted by the Board to an applicator 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 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.

"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.

"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, weeds or other pests as may be designated by the Commissioner. Device shall not include treated wood products, simple mechanical devices such as rattraps, or equipment used for the application of pesticide when sold separately.

"Fumigant" means any substance or mixture of substances that emits or liberates gases, fumes, or vapors 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 containing: (i) the name and percentage of each active ingredient; (ii) the total percentage of the inert ingredients; and (iii) if the pesticide contains arsenic in any form, the percentages of total and water soluble arsenic.

"Insect" means any small invertebrate animal generally having a segmented form and belonging to the class Insecta including beetles, bugs, and bees. For purposes of this act, the term insect shall also mean classes of arthropods whose members are usually wingless and have more than six legs 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 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) referenced on the label or in literature accompanying the pesticide or device. Labeling shall not include current official publications of the agricultural experiment station, the Virginia

Polytechnic Institute and State University, the Department, the State Board of Health, or similar federal or state institutions 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 a person issued a license by the Board to engage in the sale, storage, distribution, recommendation, or application of pesticides for compensation.

"Pest" means any deleterious organism that is: (i) any vertebrate animal other than man; (ii) any invertebrate animal excluding any internal parasite of living man or other living animals; (iii) any plant growing where not wanted, 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 by the Federal Food, Drug, and Cosmetic Act at 21 U.S.C. § 321 (g)(1), and cosmetics as defined by the Federal Food, Drug, and Cosmetic Act at 21 U.S.C. § 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, other forms of plant or animal life, 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 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 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 individual who uses or supervises the use of any pesticide 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 the 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.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the 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 declared by the Commissioner to be a pest.

"Serious violation" means a violation of this chapter or regulation adopted hereunder that results in a substantial probability of death or serious physical harm to persons, serious harm to property, or serious harm to the environment 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 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 applying, mixing, handling, or transferring a pesticide after the manufacturer's original seal is broken, and any act consistent with the label.

1989, c. 575, § 3.1-249.27; 1993, c. 773; 1995, c. 103; 2008, c. 860; 2012, cc. 803, 835.

§§ 3.2-3901 through 3.2-3903. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 32.

§ 3.2-3904. Powers and duties of the Board

The Board shall have the following powers and duties:

1. Appoint 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 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 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 to promote the purposes of this chapter;

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.

1987, c. 15, § 3.1-249.25; 1989, c. 575, §§ 3.1-249.29, 3.1-249.62; 1991, c. 333; 2005, c. 633; 2008, c. 860.

§ 3.2-3905. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 32.

§ 3.2-3906. Board to adopt regulations

The Board may adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), including:

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;

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 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

10. Other regulations necessary or convenient to carry out the purposes of this chapter.

1989, c. 575, §§ 3.1-249.30, 3.1-249.31; 1992, c. 114; 2008, c. 860.

§ 3.2-3907. Delegation of authority; exclusive authority to regulate

The Board may delegate any authority vested in it under this chapter to the Commissioner or other employees of the Department. 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 locality.

1989, c. 575, § 3.1-249.33; 1992, c. 289; 2008, c. 860.

§ 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 that he believes are trade secrets or commercial or financial information; and (ii) submit such marked materials separately from other material.

B. The Commissioner shall not make public information that, in his judgment, contains or relates to trade secrets or commercial or financial information. The Commissioner may reveal information:

1. Relating to formulas of products to any consulting federal, state, or local agency 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.1. The Commissioner shall notify the applicant or registrant in writing by certified mail if he proposes to release information that the applicant or registrant marked as confidential. The Commissioner shall not release such information for inspection until 30 days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in circuit court for a declaratory judgment as to whether such information is subject to protection.

2. The Commissioner shall notify the submitter by certified mail if he proposes to release information under subdivision B 4 or B 5. The Commissioner shall not release such information without the submitter's consent until 30 days after receipt of the notice by the submitter. The Commissioner may select alternative notice procedures and a shorter period of notice if he finds that disclosure is necessary to avoid or mitigate an imminent and substantial risk or injury to the public health. During such period the submitter may institute an action in circuit court to enjoin or limit the proposed disclosure. The court shall give expedited consideration to any such action. The court may enjoin disclosure, 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.

D. The Commissioner shall not knowingly disclose information submitted by an applicant or registrant under this chapter to any employee or agent of any entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or to any person who intends to deliver such data to any such entity unless the applicant or registrant has consented to 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.

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.

F. Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired pursuant to this chapter is guilty of a Class 6 felony.

Code 1950, § 3-208.36; 1966, c. 702, § 3.1-238; 1975, c. 102; 1989, c. 575, § 3.1-249.68; 2008, c. 860.

§ 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.

1975, c. 377, § 3.1-249.10; 1981, c. 260; 1989, c. 575, § 3.1-249.56; 2008, c. 860.

§ 3.2-3910. 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. 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 § 3.2-3946.

1989, c. 575, § 3.1-249.32; 2008, c. 860.

§ 3.2-3911. Damages resulting from pesticide use or application

A. Any person claiming damages from the use or application of any pesticide classified for restricted use shall file with the Commissioner a written statement within 60 days after the date that damages occurred and, if a growing crop is alleged to have been damaged, prior to the time that 25 percent of the crop has been harvested. Such statement shall contain: (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 where the crop is grown and the damage is alleged to have occurred; and (iii) the date of the alleged damage. Upon receipt of the 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 the statement as requested.

B. The Commissioner shall inspect damages where possible and make his findings available to the parties. The claimant shall permit the Commissioner, the certificate holder, and his representatives to observe within reasonable hours any plants, animals, or other property alleged to have been damaged. 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.

1975, c. 377, § 3.1-249.10; 1981, c. 260; 1989, c. 575, § 3.1-249.56; 2008, c. 860.

§ 3.2-3912. Pesticide Control Fund established

There is hereby created in the state treasury a special nonreverting fund 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.

1989, c. 575, § 3.1-249.34; 2008, c. 860.

§ 3.2-3913. Exclusion of medicinal and toilet preparations

This chapter shall not apply to any preparation, drug, or chemical intended solely for medicinal use or for toilet purposes.

Code 1950, § 3-208.45; 1966, c. 702, § 3.1-247; 1989, c. 575, § 3.1-249.75; 2008, c. 860.

Article 2 - LICENSING AND REGISTRATION

§ 3.2-3914. Registration required

Every pesticide manufactured, distributed, sold, offered for sale, used, or offered for use shall be registered in accordance with regulations adopted by the Board. Registration shall lapse unless the registrant pays an annual fee set forth in regulations adopted by the Board.

Code 1950, § 3-208.19; 1966, c. 702, § 3.1-221; 1976, c. 627; 1981, c. 260; 1989, c. 575, § 3.1-249.35; 1993, c. 773; 2008, c. 860.

§ 3.2-3915. Products registered under Federal Act

The Commissioner may register and permit the sale and use of any pesticide registered under the Federal Insecticide, Fungicide and Rodenticide Act. Such products shall be subject to the registration fees and all other provisions of this chapter.

Code 1950, § 3-208.20; 1966, c. 702, § 3.1-222; 1975, c. 102; 1981, c. 260; 1989, c. 575, § 3.1-249.36; 2008, c. 860.

§ 3.2-3916. Products registered as single pesticide

Products that: (i) have the same formula; (ii) are manufactured by the same person; (iii) include labelings with the same claims; and (iv) bear designations identifying the products as the same pesticide may be registered as a single pesticide without an additional fee.

Code 1950, § 3-208.22; 1960, c. 535; 1966, c. 702, § 3.1-224; 1981, c. 260; 1989, c. 575, § 3.1-249.37; 2008, c. 860.

§ 3.2-3917. Change in labeling or formulas without reregistration

The Commissioner may allow a change in the labeling or formulas of a pesticide within a registration period without requiring reregistration provided that such changes do not lower the efficacy of the product.

Code 1950, §§ 3-208.23, 3-208.31; 1960, c. 535; 1966, c. 702, §§ 3.1-225, 3.1-233; 1976, c. 627; 1981, c. 260; 1989, c. 575, §§ 3.1-249.38, 3.1-249.63; 1993, c. 773; 2008, c. 860.

§ 3.2-3918. Statement to be filed by registrant

A. The registrant shall file a statement with the Commissioner 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. Other information requested by the Board such as product efficacy, all known health and environmental impacts, and known incidents of human or wildlife illnesses.

B. In the case of renewal of registration, a statement shall be required only with respect to information different from that furnished when the pesticide was last registered or in response to additional requirements imposed by the Board.

Code 1950, § 3-208.24; 1966, c. 702, § 3.1-226; 1981, c. 260; 1989, c. 575; § 3.1-249.39; 2008, c. 860.

§ 3.2-3919. Each brand or grade to be registered; fees

Before manufacturing, distributing, selling, offering for sale, or offering for use any pesticide, the registrant shall register each brand or grade of a pesticide with the Commissioner annually upon forms furnished by the Department and shall pay the Department an annual registration fee for each brand or grade offered for sale or use. The Commissioner shall issue a registration entitling the registrant to manufacture, distribute, or sell all registered brands until the expiration of the registration.

Code 1950, § 3-208.25; 1966, c. 702, § 3.1-227; 1970, c. 376; 1976, c. 627; 1981, c. 260; 1989, c. 575; § 3.1-249.40; 2008, c. 860.

§ 3.2-3920. Submission of complete formula

The Commissioner may require the submission of the complete formula of any pesticide at any time.

Code 1950, § 3-208.26; 1966, c. 702, § 3.1-228; 1981, c. 260; 1989, c. 575, § 3.1-249.41; 2008, c. 860.

§ 3.2-3921. Requirements for registration

The Commissioner shall register a pesticide if: (i) he finds the composition of the pesticide warrants any proposed claims; and (ii) the pesticide, its labeling, and any other submitted material comply with the requirements of this chapter. 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.

Code 1950, §§ 3-208.27, 3-208.28; 1966, c. 702, §§ 3.1-229, 3.1-230; 1981, c. 260; 1989, c. 575, §§ 3.1-249.42, 3.1-249.43; 2008, c. 860.

§ 3.2-3922. When Commissioner may refuse or cancel registration

The Commissioner may refuse to register or cancel the registration of any brand of pesticide upon satisfactory proof that the registrant has committed any of the acts prohibited by subsection A of § 3.2-3939 or any regulation adopted by the Board. No registration shall be revoked or refused until the registrant shall have been given a hearing by the Commissioner.

Code 1950, § 3-208.29; 1966, c. 702, § 3.1-231; 1981, c. 260; 1982, c. 361; 1989, c. 575, § 3.1-249.44; 2008, c. 860.

§ 3.2-3923. 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;

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 or the pesticide fails to comply with a requirement of this chapter or a regulation adopted hereunder.

1989, c. 575, § 3.1-249.45; 1992, c. 114; 2008, c. 860.

§ 3.2-3924. Annual business license required

A. No pesticide business may sell, distribute, or store any pesticide without a pesticide business license issued pursuant to regulations adopted by the Board. The Board shall adopt regulations 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 may apply or recommend for use any pesticide commercially without a pesticide business license and the employment of a certified commercial applicator responsible for: (i) the safe application of the pesticides; and (ii) providing recommendations for the use of pesticides.

C. An annual business license shall be required for each location or outlet that sells, distributes, stores, applies, or recommends for use any pesticide.

1975, c. 377, § 3.1-249.7; 1989, c. 575, § 3.1-249.46; 1993, c. 773; 2008, c. 860.

§ 3.2-3925. Fees

A. A nonrefundable annual licensing fee shall be required with each application for a pesticide business license.

B. If a person fails to apply for renewal of a pesticide business license prior to expiration, the applicant shall pay the licensing fee and a late fee of 20 percent of the licensing fee as a condition of renewal.

1989, c. 575, § 3.1-249.47; 1993, c. 773; 2008, c. 860.

§ 3.2-3926. Records

A. As a condition of obtaining or renewing a license, each pesticide business required to be licensed shall maintain records as required by the Board.

B. The Board may require the submission of records from a licensed pesticide business. Failure to submit a record requested by the Board is a ground for license revocation.

1975, c. 377, § 3.1-249.11; 1989, c. 575, § 3.1-249.48; 2008, c. 860.

§ 3.2-3927. 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 the Commonwealth that protects persons who suffer legal damages as a result of the use of any pesticide by the applicant. 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 for financial responsibility.

B. The amount of financial responsibility shall be established by the Board at a minimum of $100,000 for property damage; $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 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 adopt 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 10 days prior to any reduction at the request of the applicant or cancellation by the insurer.

1975, c. 377, § 3.1-249.9; 1981, c. 260; 1984, c. 272; 1987, cc. 258, 291; 1989, c. 575, § 3.1-249.49; 1993, c. 773; 2008, c. 860.

§ 3.2-3928. 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 U.S. Department of Transportation.

1989, c. 575, § 3.1-249.50; 2008, c. 860.

Article 3 - PESTICIDE APPLICATION AND CERTIFICATION

§ 3.2-3929. 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 under the direct supervision of a certified applicator on-site and training for certification as a commercial applicator or registered technician; 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. The Board may specify by regulation the amount of training and service required to qualify a person for each classification or subclassification of certification as a commercial applicator or registered technician.

1975, c. 377, § 3.1-249.3; 1989, c. 575, § 3.1-249.51; 1993, c. 773; 1995, c. 103; 2008, c. 860.

§ 3.2-3930. Application and certification of commercial applicators

A. No person shall 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 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; (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; (iv) the principal business address of the applicant in the Commonwealth and elsewhere; and (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 subject to payment of the required fee and presentation of proof of completion of a Board-approved recertification course. 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 B of § 3.2-3940; (ii) if significant technological developments have occurred requiring additional knowledge; (iii) when required by additional standards established by the U.S. Environmental Protection Agency; (iv) when applying for a different classification of certification; 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. The Commissioner shall issue a certificate for classifications for which the applicant is qualified if he finds the applicant meets the 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, has met all of the requirements of the Federal Aviation Agency, the Department of Aviation of the Commonwealth, and any other applicable laws. 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 inform the applicant in writing of the reasons within 30 days. Copies of such action shall be reported to the Board.

1975, c. 377, § 3.1-249.4; 1989, c. 575, § 3.1-249.52; 1993, c. 773; 2008, c. 860.

§ 3.2-3931. 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 hereunder concerning the application of pesticides.

B. Individuals, employees, or representatives 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 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: (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 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; and (vi) classes of persons specified by regulation whose use or supervision of the use of 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 paint only under the direct, on-site supervision of a commercial applicator is not required to be a commercial applicator or a registered technician, provided that one commercial applicator may not provide on-site supervision for more than eight paint applicators.

E. Neither the provisions of this chapter nor regulations adopted hereunder shall require the certification of any person who uses or supervises the use of any pesticide that is not a restricted use pesticide only on property owned or leased by his employer as part of his job duties. This exemption shall not apply to any person who: (i) uses or supervises the use of any pesticide on any area open to the general public at educational institutions, health care facilities, day-care facilities, or convalescent facilities; (ii) uses or supervises the use of any pesticide within any area where open food is stored, processed, or sold; (iii) uses or supervises the use of any pesticide on any recreational land over five acres in size; and (iv) is otherwise specifically required by this article to be certified as a commercial applicator.

1975, c. 377, § 3.1-249.5; 1989, c. 575, § 3.1-249.53; 1993, c. 773; 1995, c. 103; 2008, c. 860.

§ 3.2-3932. Application and certification of private applicators

A. It is unlawful to use or supervise the use of any pesticide classified for restricted use on any property, unless the applicator: (i) has first obtained certification from the Commissioner as a private applicator; (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. The Commissioner shall require reexamination or special examination of any applicator if: (i) certification has been suspended, revoked, or modified pursuant to § 3.2-3940; (ii) significant technological developments have occurred requiring additional knowledge; (iii) required by additional standards established by the

U.S. Environmental Protection Agency; or (iv) 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.

C. The Commissioner shall inform the applicant in writing of his decision within 30 days.

1975, c. 377, § 3.1-249.6; 1976, c. 236; 1989, c. 575, § 3.1-249.54; 1993, c. 773; 2008, c. 860.

§ 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 20 percent shall be added to the renewal fee and paid by the applicant before renewal. If the certificate is not renewed within 60 days following the expiration of the certificate, then 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.

1975, c. 377, § 3.1-249.7; 1989, c. 575, § 3.1-249.55; 1993, c. 773; 2008, c. 860.

§ 3.2-3934. Reciprocal agreement

The Commissioner may issue a certificate on a reciprocal basis 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 as other certifications issued hereunder, and may be suspended or revoked if the nonresident's base state or federal certification is suspended or revoked.

1975, c. 377, § 3.1-249.12; 1976, c. 236; 1989, c. 575, § 3.1-249.57; 2008, c. 860.

Article 4 - MARINE ANTIFOULANT PAINTS

§ 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.); or a lower release rate if adopted by the Board as necessary to protect health or the environment.

"Commercial boat yard" means any facility 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.

1987, c. 15, § 3.1-249.22; 1989, c. 575, § 3.1-249.59; 2008, c. 860.

§ 3.2-3936. Sale and application of tributyltin compounds

A. Except as otherwise provided in this section, 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 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, apply, or purchase an antifoulant paint containing tributyltin with an acceptable release rate. Such paint may be applied only within a commercial boat yard and only to vessels that exceed 25 meters (82.02 feet) in length or that have aluminum hulls.

C. A person may distribute, sell or apply a marine antifoulant paint containing tributyltin with an acceptable release rate if: (i) the paint is distributed or sold in a spray can in a quantity of 16 ounces avoirdupois weight or less; and (ii) is commonly referred to as outboard or lower unit paint.

1987, c. 15, § 3.1-249.23; 1989, c. 575, § 3.1-249.60; 2008, c. 860.

§ 3.2-3937. Educational programs

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 shall through cooperative programs develop and implement a program to inform interstate and intrastate paint manufacturers and distributors, vessel owners, and commercial boat yards of the properties of tributyltin in marine antifoulant paints and the law to restrict its use.

1987, c. 15, § 3.1-249.24; 1989, c. 575, § 3.1-249.61; 2008, c. 860.

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.

1989, c. 575, § 3.1-249.27; 1993, c. 773; 1995, c. 103; 2008, c. 860.

§ 3.2-3939. Violations generally

A. It is unlawful for any person to manufacture, distribute, sell, offer for sale, use or offer for use:

1. Any pesticide not registered pursuant to the provisions of this chapter; 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.

2. Any pesticide sold, offered for sale, or offered for use that is not in the registrant's or the manufacturer's unbroken container, and does not have an affixed and visible label 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 reasonable variations as permitted by the Commissioner.

3. Any pesticide containing any substance in quantities highly toxic to man, unless the label 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 as provided by regulations issued hereunder. Any other white powder pesticide that the Commissioner requires to be distinctly colored after an investigation of and after a public hearing on the necessity for such action. The Commissioner may exempt any pesticide to the extent that it is intended for a particular use if he determines that distinctive coloring is unnecessary for the protection of the public health.

5. Any pesticide that is adulterated or misbranded, or any device that is misbranded.

6. Any pesticide that is the subject of a stop sale, use, or removal order as provided for in § 3.2-3944 until such time as the provisions of that section have been met.

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.

Code 1950, §§ 3-208.31, 3-208.32, 3-208.34, 3-208.35, 3-208.37; 1960, c. 535; 1966, c. 702, §§ 3.1-233, 3.1-234, 3.1-236, 3.1-237, 3.1-239; 1970, c. 376, § 3.1-233.1; 1975, c. 102; 1976, c. 627; 1981, c. 260; 1989, c. 575, §§ 3.1-249.63 to 3.1-249.67, 3.1-249.69; 1993, c. 773; 2008, c. 860.

§ 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.

Code 1950, § 3-208.31; 1960, c. 535; 1966, c. 702, § 3.1-233; 1976, c. 627; 1981, c. 260; 1989, c. 575, §§ 3.1-249.63, 3.1-249.76; 1993, c. 773; 2008, c. 860.

§ 3.2-3941. Exemptions from penalties

The penalties provided for violations of subsection A of § 3.2-3939 and § 3.2-3940 shall not apply to:

1. Any carrier transporting pesticides if such carrier permits the Commissioner to copy all records showing the transactions in and movements of the pesticides upon request;

2. Public officials of the Commonwealth and the federal government engaged in the performance of their official duties;

3. Individuals 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; and

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 that would otherwise attach to the person holding the guaranty under the provisions of this chapter.

Code 1950, § 3-208.44; 1966, c. 702, § 3.1-246; 1981, c. 260; 1989, c. 575, § 3.1-249.74; 2008, c. 860.

§ 3.2-3942. Right of entry; warrant requirements; procedure

A. The 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 for carrying out the purposes of this chapter.

B. If the Commissioner is denied access, he may apply for an administrative search warrant from a judge with authority to issue criminal warrants or a magistrate whose jurisdiction encompasses the premises.

1. No warrant shall be issued 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 is to be made.

2. Probable cause shall exist if either (i) reasonable legislative or administrative standards for conducting inspection, testing, or collection of samples are satisfied with respect to the particular place, thing, or person, or (ii) there is cause to believe that a condition, object, activity, or circumstance legally justifies the inspection, testing, or collection of samples.

3. The supporting affidavit shall contain either (i) a statement that consent to inspect, test, or collect samples has been sought and refused, or (ii) facts or circumstances reasonably justifying the failure to seek consent. 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 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. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54.

C. Any administrative search warrant shall be effective for a period of not more than 15 days unless extended or renewed by the judicial officer who issued the original warrant. The warrant shall be executed and returned to the clerk of the circuit court of the city or county wherein the search was made within the time specified or within the extended or renewed time. The return shall list any records removed or samples taken pursuant to the warrant. The warrant 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 custodian of the premises unless the issuing judicial officer specifically authorizes that such authority is reasonably necessary to affect the purposes of the law or regulation. Entry pursuant to such a warrant shall not be made forcibly. The issuing officer may authorize a forcible entry where the facts (i) create a reasonable suspicion of an immediate threat to the health and safety of persons or to the environment, or (ii) 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 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, except as a defense in a contempt proceeding or if the owner or custodian of the place to be inspected submits a substantial preliminary showing by affidavit and accompanied by proof that (i) a statement 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, and (ii) the false statement was necessary to the finding of probable cause. The court may conduct in camera review as appropriate.

F. After the warrant has been executed and returned, the validity of the warrant may be reviewed either as a defense to any Notice of Violation or by declaratory judgment action brought in a circuit court. The review shall be confined to the face of the warrant, affidavits, and supporting materials presented to the issuing judicial officer. If the owner or custodian of the place inspected submits a substantial showing by affidavit and accompanied by proof that (i) a statement included in the warrant was false and made knowingly and intentionally or with reckless disregard for the truth, and (ii) the false statement was necessary to the finding of probable cause, the reviewing court shall limit its inquiry to whether there is substantial evidence in the record supporting the issuance of the warrant and shall not conduct a de novo determination of probable cause.

1975, c. 377, § 3.1-249.18; 1989, c. 575, § 3.1-249.58; 1993, c. 773; 2008, c. 860; 2014, c. 354.

§ 3.2-3943. Civil penalties; procedure

A. The Board may assess against any person violating this chapter or regulations adopted hereunder a civil penalty after providing written notice of the alleged violation. Such notice shall not constitute a case decision as defined in § 2.2-4001. The person so notified shall have 30 days to provide any additional, relevant facts to the Board, including facts that demonstrate a good-faith attempt to achieve compliance. 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.

B. No sooner than 30 days after providing written notice of the alleged violation pursuant to subsection A, 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.).

Code 1950, §§ 3-208.39, 3-208.42; 1966, c. 702, §§ 3.1-241, 3.1-244; 1970, c. 376; 1989, c. 575, § 3.1-249.70; 1993, c. 773; 2008, c. 860; 2016, c. 320.

§ 3.2-3944. "Stop-sale or removal" orders; "stop-use" orders; judicial review

A. 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. 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 until this chapter has been complied with and the pesticide is released in writing by the Commissioner or the violation is 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 shall release the pesticide 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. 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 until the Pesticide Control Act has been complied with or the violation has been otherwise legally disposed of by written authority. The person 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.

Code 1950, § 3-208.46; 1966, c. 702, § 3.1-248; 1981, c. 260; 1986, c. 615; 1989, c. 575, § 3.1-249.77; 1993, c. 773; 2008, c. 860.

§ 3.2-3945. Seizure, condemnation, and sale

Any lot of pesticide in violation of this chapter shall be subject to seizure on complaint of the Commissioner to the circuit court in the area where the pesticide is located. If the court finds the pesticide to be in violation of this chapter and orders its condemnation, it shall be disposed of

after the claimant is provided an opportunity to apply for the release of the pesticide or for permission to process, relabel, or otherwise bring it into compliance with this chapter.

Code 1950, § 3-208.47; 1966, c. 702, § 3.1-249; 1981, c. 260; 1989, c. 575, § 3.1-249.78; 2008, c. 860.

§ 3.2-3946. Proceedings in case of violations

A. If the examination of laboratory results or other evidence collected during an investigation appears to show a violation of this chapter or any of the regulations issued hereunder, the Commissioner may provide notice of the alleged violation to the registrant, distributor, possessor, licensee, applicator, or other person from whom such evidence was taken. This notice shall not constitute a case decision as defined in § 2.2-4001.

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.

Code 1950, §§ 3-208.40, 3-208.41, 3-208.43; 1966, c. 702, §§ 3.1-242, 3.1-243, 3.1-245; 1981, c. 260; 1989, c. 575, §§ 3.1-249.71 to 3.1-249.73; 2008, c. 860; 2016, c. 320.

§ 3.2-3947. Penalties

A. Except as otherwise provided, any person who knowingly violates any provisions of this chapter or regulations adopted hereunder is 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 this chapter or any regulation adopted hereunder in the circuit court of the county or city 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.

Code 1950, §§ 3-208.39, 3-208.42; 1966, c. 702, §§ 3.1-241, 3.1-244; 1970, c. 376; 1989, c. 575, § 3.1-249.70; 1993, c. 773; 2008, c. 860.

Chapter 40 - SEEDS

Article 1 - SEEDS

§ 3.2-4000. Definitions

As used in this chapter, unless the context requires another meaning:

"Advertisement" means any representation relating to seed within the scope of this article that is not also required labeling.

"Agricultural seed" means seeds of grass, forage, cereal, and fiber crops; any other seed commonly recognized as agricultural seed; and any lawn seed, turf seed, and mixtures thereof (including any noxious-weed seeds that may be present).

"Bag" or "packet" means a container in the form of a sack or pouch.

"Blend" means a mechanical combination of varieties of the same kind that is identified by a blend designation and is always present in the same percentages in each lot so designated.

"Brand" means the name, term, design, or trademark of seed offered for sale.

"Bulk" or "in bulk" means loose seed in bins or other containers, but not bags or packets.

"Certified seed," "registered seed," or "foundation seed" means seed produced and labeled 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 an identification assigned by the U.S. Department of Agriculture.

"Conditioning" means any process of cleaning, scarifying, treating, or blending seed that changes the purity or germination of the seed.

"Controlled conditions" means minimum seed stock standards established by regulation.

"Cool-season lawn and turf seed" means the seed of any lawn and turf grass identified in the section of the most current Recommended Uniform State Seed Law, as established by the Association of American Seed Control Officials, pertaining to label requirements for agricultural, vegetable, and flower seeds.

"Distribute" means to import, consign, produce, mix, blend, condition, sell, offer for sale, barter, warehouse, or supply seeds in the Commonwealth.

"Dormant seed" means viable seed other than hard seed that fails to germinate when provided the specified germination conditions.

"Flower seed" means any seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts; any other seeds commonly recognized as flower seeds; and any seeds designated as flower seeds by regulations.

"Germination" means the percentage, by count, of seeds under consideration capable of producing normal seedlings in a given period of time and under conditions specified by regulations.

"Guarantor" means the person whose name appears on the label.

"Hard seed" means seeds that do not absorb moisture and germinate, thus remaining hard during the period prescribed for germination by regulations.

"Hybrid" means the first generation seed of a cross produced by controlling pollination or using sterile lines and combining: (i) two, three, or four inbred lines; (ii) one inbred line, or a single cross, with an open-pollinated variety; or (iii) two varieties or species, except open-pollinated varieties of corn.

"Inbred line" means a relatively stable and pure breeding strain resulting from: (i) four or more successive generations of controlled self-pollination; or (ii) four successive generations of back-crossing male sterile lines.

"Inert matter" means all matter not seeds and includes broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods prescribed by regulations.

"Kind" means related species or subspecies known by a common name including 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 pertaining to any seed.

"Lawn and turf seed" means seeds of grasses commonly recognized and sold for lawns 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 that are combined and sold for lawns or other areas where turf is grown for beautification or erosion control.

"Lot" means a definite quantity of seed that is identified by a number or other identification and is uniform throughout for the factors 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 designating a specific lawn or turf seed mixture.

"Noxious-weed seed" means prohibited noxious-weed seeds and restricted noxious weed seeds.

"Origin" means the state, territory, foreign country, or designated portion thereof, where the seed was grown.

"Prohibited noxious-weed seed" means seeds of weeds that are highly destructive and not controllable by common practices.

"Pure seed" means agricultural or vegetable seed exclusive of inert matter and other seeds distinguishable from the kind, or kind and variety, being considered. Pure seed shall be determined by methods prescribed by regulations.

"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 first assigned to the variety or hybrid by the person who developed and introduced it for production or sale.

"Registrant" means the person registering a lawn or turf seed mixture pursuant to 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.

"Sale" means the transfer of ownership of seed as evidenced by the exchange of payment or seed, in whole or in part.

"Screenings" means 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 that prohibits the distributor from selling, relocating, using, or disposing of seed until the Commissioner or the court gives written permission.

"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 and is based on the law of normal variation from a mean.

"Transgenetic" means any plant material or seed that has undergone the transfer of a gene from one genera to another.

"Treated" means seed that has received an effective application of: (i) a generally approved substance; (ii) a process designed to control or repel certain disease organisms, insects, or other pests; or (iii) any other treatment to improve its planting value.

"Tree and shrub seed" means seeds of woody plants commonly recognized as trees and shrubs and designated by regulations.

"Turf" means the same as that term is defined in § 3.2-3600.

"Variety" means a subdivision of a kind characterized by growth, plant, fruit, seed, or other characteristics that distinguish it from other plants of the same kind.

"Vegetable seed" means seeds of crops grown in gardens and on truck farms commonly recognized as vegetable seed and designated by regulations.

"Weed seed" means seeds, bulblets, or tubers of plants commonly recognized as weeds, including noxious-weed seeds.

Code 1950, § 3-219.2; 1958, c. 483; 1966, cc. 9, 702, § 3.1-263; 1994, c. 577; 2008, c. 860; 2012, c. 297.

§ 3.2-4001. Authority of Board to adopt regulations

The Board may adopt regulations:

1. Governing: (i) methods of sampling; (ii) methods of inspection; (iii) methods of testing in the laboratory and in the field; (iv) the establishment of standards; (v) the establishment of code designations; and (vi) the establishment of tolerances for agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such seeds, and screenings;

2. Providing a list of prohibited and restricted noxious-weed seeds;

3. Providing for the labeling of flower seeds by kind, variety, type, or performance characteristics as required by § 3.2-4008;

4. Providing a list of tree and shrub seeds subject to the seed purity and germination labeling requirements of subsection I of § 3.2-4008;

5. Providing for the registration of the pedigree of any hybrid;

6. Providing a list of those kinds of seed that may be sold only by variety name;

7. Establishing special labeling requirements, in addition to the requirements of § 3.2-4008, for the sale or distribution of seeds produced from transgenetic plant material;

8. Providing a list of second generation hybrids that may be sold as a hybrid;

9. Providing a list 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.

Code 1950, §§ 3-219.8, 3-219.9:1; 1958, c. 483; 1966, cc. 9, 702, §§ 3.1-269, 3.1-271; 1994, c. 577, § 3.1-275.5; 2008, c. 860.

§ 3.2-4002. Authority of Commissioner to adopt regulations

A. The Commissioner may, by regulation: (i) adopt the Rules for Testing Seeds established by the Association of Official Seed Analysts; (ii) amend the standards for seed; (iii) amend the prohibited noxious-weed seed list; and (iv) amend the restricted noxious-weed seed list.

B. Such 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 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.

C. The Board, after giving notice in the Virginia Register of Regulations, may reconsider and revise the regulation adopted by the Commissioner. 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.

1994, c. 577, § 3.1-271.1; 2008, c. 860.

§ 3.2-4003. Powers and duties of the Commissioner

The Commissioner may:

1. Establish and maintain seed-testing facilities;

2. Fix and collect fees for testing seeds for farmers and dealers that have requested the tests;

3. Establish and maintain facilities for the verification of kind and variety;

4. Publish the results of analyses, tests, examinations, studies, and investigations authorized by this article together with any other information he may deem advisable;

5. Cooperate with the U.S. Department of Agriculture in seed law enforcement;

6. Require the registrant of any variety or hybrid offered for sale to furnish: (i) the recognized variety name or recognized hybrid designation of such variety or hybrid; (ii) a 1,000 viable seed sample of such seed; and (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;

7. Require the registration annually of all fields planted for the production of hybrid seed on or before June 20 and provide for inspection of such fields; and

8. Appoint a seed advisory committee.

Code 1950, § 3-219.9; 1958, c. 483; 1966, cc. 9, 702, § 3.1-270; 1986, c. 615; 1994, c. 577; 2008, c. 860.

§ 3.2-4004. Seed Fund; established

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 solely for carrying out the purpose of this article, except that the Commissioner shall deposit 50 percent of the inspection fee to the credit of the Virginia Agricultural Foundation Fund. The Virginia Agricultural Council shall administer all funds received from this section for the exclusive funding of lawn and turf research.

1994, c. 577, § 3.1-275.7; 2008, c. 860.

§ 3.2-4005. 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 to sell such seed in the Commonwealth. The applicant shall submit the application on a form furnished or approved by the Commissioner and shall pay a license fee of $50 at the time of application. Any person who fails to obtain a license prior to distributing, selling, or offering to sell seed shall be given a grace period of 15 working days from issuance of notification to obtain a license without penalty. Any person who fails to

obtain a license by the end of the grace period shall pay a late fee of $50 in addition to the license fee amount. The assessment of this late fee shall not prohibit the Commissioner from taking further action.

B. Every license shall expire on December 31. If the holder files a renewal application on or before December 31, his license shall remain valid through January 31 or until issuance of the renewal license, whichever event first occurs.

C. 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.

1994, c. 577, § 3.1-275.2; 2008, c. 860.

§ 3.2-4006. Duty to maintain records

Any person who sells, offers for sale, transports, or delivers agricultural or vegetable seed for transportation shall keep a complete record of sale, origin, germination, purity, variety, noxious weed seeds, and treatment of each lot of agricultural or vegetable seed offered for three years. The Commissioner shall have the right to inspect such records.

Code 1950, § 3-219.5; 1958, c. 483; 1966, c. 702, § 3.1-266; 1994, c. 577; 2008, c. 860.

§ 3.2-4007. Guaranty by seller

A. Any person who sells seeds for producing crops shall be bound as guarantor that such seeds are true to kind and variety as represented at the time of sale. 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.

B. Any person that sells seed for planting in a container that bears printed or written statements regarding the kind, variety, or quality of the seeds therein shall be bound as guarantor that such statement is accurate unless the seller affirmatively proves the existence of a contrary agreement between the parties.

Code 1950, § 3-219.13; 1958, c. 483; 1966, c. 702, § 3.1-275; 1994, c. 577; 2008, c. 860.

§ 3.2-4008. Labeling and advertising requirements

A. All seed sold, offered for sale, transported, or advertised for planting purposes and all screenings shall bear or have attached in a conspicuous place a plainly written or printed label in the English language that provides the following information without further modification or denial in the labeling or advertisement.

B. For treated seed:

1. A word or statement indicating that the seed has been treated;

2. The commonly accepted chemical or generic name of the applied substance or treatment; and

3. 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.

C. For agricultural seeds:

1. The recognized name of each kind (or kind and variety if that kind has been adopted by the Board pursuant to subdivision 6 of § 3.2-4001) of agricultural seed component in excess of five percent of the whole and the percentage by weight in order of predominance. Mixtures and agricultural seed may be sold by kind name if the seed is not for the production of an agricultural crop and the label clearly indicates "NOT FOR AGRICULTURAL PRODUCTION";

2. The word "mixture" or "mixed" shall appear conspicuously on the label if the guarantor is required to name more than one agricultural seed component;

3. The lot number or other lot identification;

4. The origin, if known; if not known, that fact shall be stated;

5. The percentage by weight of all weed seeds;

6. The name and number per ounce, pound, or metric equivalent of each kind of restricted noxious-weed seed present, subject to subdivision 1 e of § 3.2-4015;

7. The percentage by weight of agricultural and vegetable seeds other than the kind or kind and variety named on the label. Such information may be designated as "other crop seed," "other variety," or as both;

8. The percentage by weight of inert matter;

9. For each named agricultural seed:

a. The percentage of germination, exclusive of hard or dormant seed;

b. The percentage of any hard or dormant seed;

c. The month and year the test was completed to determine such percentages;

d. The "total germination and hard seed" may be stated following the information required by subdivisions a and b; and

e. The guarantor shall state separately on the label the percent of dormant seed.

10. The recognized hybrid designation for all hybrids;

11. The quantity statement; and

12. The code designation of the person who transports or delivers for transportation said seed in interstate commerce and the name and address of: (i) the person who sells, labels, or offers the seed for sale; or (ii) the person to whom the seed is sold or shipped for resale.

D. For vegetable seeds in containers of one half pound or less:

1. The name of kind and variety of seed;

2. The year 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 quantity statement, except as provided by appropriate regulations;

4. The name and address of the person who labels, sells, or offers to sell the seed; and

5. For the seeds that germinate less than the standard last established by regulations:

a. The percentage of germination, exclusive of hard or dormant seed;

b. The percentage of any hard or dormant seed;

c. The month and year the test was completed to determine the percentages in subdivisions a and b;

d. The "total germination and hard seed" may be stated following the information in subdivisions a and b;

e. The guarantor shall state separately on the label the percentage of dormant seed; and

f. The words "below standard" in not less than eight-point type.

E. For vegetable seeds in bulk or in containers of more than one half pound:

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 lot number or other lot identification;

3. For each named kind and variety:

a. The percentage of germination exclusive of hard or dormant seed;

b. The percentage of any hard or dormant seed;

c. The month and year the test was completed to determine the percentages in subdivisions a and b;

d. The "total germination and hard seed" may be stated; and

e. The guarantor shall state separately on the label the percent of dormant seed.

4. The quantity statement, except when in bulk;

5. The name and address of the person who labels, sells, or offers to sell the seed; and

6. The labeling requirements of subdivisions 1 through 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.

F. Seeds or screenings 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 and restricted noxious-weed seeds in excess of the amounts prescribed by regulations.

G. For seeds in preplanted containers, mats, tapes, or other planting devices:

1. For flower seeds:

a. The name of the kind and variety or a statement of type and performance characteristics, as prescribed in the regulations adopted pursuant to the provisions of this article;

b. The month and year seed was tested or the year the seed was packaged;

c. The quantity statement, except as provided by regulations;

d. The name and address of the person who labels, sells, or offers to sell seed; and

e. Other special labeling requirements as determined by the Board.

2. For seeds of those kinds with standard testing procedures that germinate less than the germination standard established by regulations:

a. The percentage of germination exclusive of hard seed; and

b. The words "below standard" in not less than eight-point type.

3. For seeds placed in a germination medium, mat, tape, or other device making it difficult to determine the quantity of seed without removal, a statement to indicate the minimum number of seeds in the container.

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:

1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in regulations;

2. The lot number or other lot identification;

3. The month and year that the seed was tested or the year the seed was packaged;

4. The quantity statement, except as provided by regulations;

5. The name and address of the person who labels, sells, or offers to sell the seed; and

6. For those kinds of seed for which standard testing procedures are prescribed:

a. The percentage of germination exclusive of hard seed; and

b. The percentage of any hard or dormant seed.

I. For tree and shrub seeds:

1. The accepted common and Latin name of species;

2. The variety (if applicable);

3. The quantity statement;

4. The number;

5. The year in which seed was collected;

6. The origin indicating the specific locality where the seed was collected;

7. The month and year of the date the seed was tested;

8. The percentage by weight of pure seed;

9. The percentage by weight of inert matter;

10. The percentage by weight of other crop seeds;

11. The percentage of germination exclusive of hard or dormant seed;

12. The percentage of any hard seeds;

13. The speed of germination expressed in terms of the number of days the seeds will take to reach 90 percent of total;

14. The pregermination treatment used in test;

15. The total number of seed per pound;

16. The moisture content; and

17. The name and address of the person who labels, sells, or offers to sell the seed.

J. For lawn or turf seed mixtures in prepacked containers of 100 pounds or less the information shall include:

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 registered name of the mixture;

3. The lot number or other lot identification;

4. The percentage by weight of all weed seeds;

5. The name and number per ounce or per pound of each kind of restricted noxious-weed seeds present, subject to subdivision 1 e of § 3.2-4015;

6. The percentage by weight of other agricultural seeds not claimed in the formula;

7. The percentage by weight of inert matter;

8. For each named agricultural seed:

a. The percentage of germination, exclusive of hard seed;

b. The percentage of any hard seed;

c. The month and year the test was completed to determine the percentages in subdivisions a and b; provided that the date of the first test of the components may be given for the entire mixture; and

d. For cool-season lawn and turf seeds and mixtures thereof, a "sell by" statement, which may provide a date no more than 15 months from the date of the germination test exclusive of the month of the germination test.

9. The quantity statement; and

10. The code designation of the person who transports or delivers for transportation the seed and the name and address of: (i) the person who sells, labels, or offers to sell the seed; or (ii) the person to whom the seed is sold or shipped for resale.

K. For transgenetic seed, in addition to any other requirements, the guarantor shall label all seed produced from transgenetic plant material pursuant to regulation.

Code 1950, § 3-219.3; 1958, c. 483; 1966, cc. 9, 702, § 3.1-264; 1994, c. 577, § 3.1-275.4; 2008, c. 860; 2012, c. 297.

§ 3.2-4009. Lawn and turf seed mixture; registration and labeling

A. Any person packing or distributing lawn and turf seed mixture bearing a distinguishing name or trademark in prepackaged containers of 100 pounds or less shall register the mixture annually with the Commissioner and provide the following information:

1. The brand name of the lawn and turf seed mixture;

2. A statement of the specifications of the lawn and turf seed mixture indicating within five percent the percentage by weight of each kind of lawn and turf seed in the mixture;

3. A complete copy of all labeling that is to appear on the container;

4. An example of the analysis statement that is to appear on each container of a mixture; and

5. The name and address of the registrant and the name and address of the person whose name will appear on the label.

B. Every registration shall expire on December 31. If the holder files a renewal application on or before December 31, his registration shall remain valid through January 31 or until issuance of the renewal registration, whichever event first occurs.

C. The Commissioner may permit a change in the labeling or specifications of a lawn or turf seed mixture within a 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. The registrant shall pay to the Commissioner an annual registration fee of $50 for each named lawn and turf seed mixture in prepacked containers of 100 pounds or less prior to its distribution.

E. The Commissioner 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 comply with the requirements of this article.

F. If the Commissioner finds that the lawn and turf seed mixture does not warrant the proposed claims made for it or if the mixture and its labeling do not comply with the provisions of this article, he shall notify the registrant of the manner of noncompliance to afford the registrant an opportunity to make the necessary corrections.

G. If the Commissioner identifies any unregistered lawn and turf seed mixture during the registration year, he shall notify the guarantor and grant a grace period of 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 15 working day 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 the lawn and turf seed mixture until its registration is complete.

Code 1950, § 3-219.14; 1966, c. 9, § 3.1-275.1; 1994, c. 577; 2008, c. 860.

§ 3.2-4010. Lawn and turf seed; inspection fee

A. Any person who introduces lawn and turf seed for sale shall pay the Commissioner an annual inspection fee by January 31 following the year in which the sale occurred. 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 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.

B. Any person who fails to pay the inspection fee by January 31 shall be given a grace period of 15 working days from issuance of notification to pay the inspection fee without penalty. Any person who fails to pay the inspection fee by the fifteenth day of the grace period shall also pay a late fee of 10 percent of the inspection fee due or $50, whichever is greater. The assessment of the late fee shall not prohibit the Commissioner from taking further action.

1994, c. 577, § 3.1-275.3; 2008, c. 860.

§ 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.

Code 1950, § 3-219.9; 1958, c. 483; 1966, cc. 9, 702, § 3.1-270; 1986, c. 615; 1994, c. 577; 2008, c. 860.

§ 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.

Code 1950, § 3-219.9; 1958, c. 483; 1966, cc. 9, 702, § 3.1-270; 1986, c. 615; 1994, c. 577; 2008, c. 860.

§ 3.2-4013. Seizure; disposition of seeds

Any lot of agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, mixtures of such seeds, or screenings sold, offered for sale, or held with intent to sell contrary to the provisions of this article shall be subject to seizure on complaint of the Commissioner to the appropriate court. If the court finds the seeds, mixtures of seeds, or screenings in violation of this article and orders condemnation, such seeds, mixtures of seeds, or screenings shall be denatured, processed, destroyed, relabeled, or otherwise disposed of; provided, that the court first allows the claimant an opportunity to apply for the release of the seeds, mixtures of such seeds, or screenings, or permission to condition or relabel to bring the material into compliance.

Code 1950, § 3-219.10; 1958, c. 483; 1966, cc. 9, 702, § 3.1-272; 1994, c. 577; 2008, c. 860.

§ 3.2-4014. Assessment for variance from guarantee

A. The Commissioner may make an assessment for variance from guarantee upon the guarantor if any person sells seed 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 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 found in violation, except as provided in subsection B. The Commissioner shall make the assessment for variance from guarantee only on the lot or portion sold after the Commissioner sampled the lot.

B. The Commissioner shall make an assessment for variance from guarantee upon the guarantor of three times the amount the Commissioner calculates pursuant to subsection A if the Commissioner finds that: (i) the seed contains prohibited noxious-weed seeds; (ii) 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 the seed does not have the records required in § 3.2-4006 available for inspection; or (v) the person who sold the seed does not have a laboratory analysis available for inspection.

C. The guarantor on whom the assessment for variance from guarantee is made shall pay the assessment to the Commissioner within 60 days from the date the Commissioner issues the assessment. Any person who fails to pay the assessment within 60 days shall pay a late fee of 10 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.

Code 1950, § 3-219.11; 1958, c. 483; 1966, c. 702, § 3.1-273; 1994, c. 577; 2008, c. 860.

§ 3.2-4015. Prohibitions

It is unlawful to:

1. Transport, offer for transportation, sell, or offer for sale seed or seed mixtures:

a. Unless the germination test to determine the percentage of germination required by § 3.2-4008 is completed within nine months prior to the month of transportation, sale, or offer for sale, except for the germination test for cool-season lawn and turf seeds or mixtures thereof, which must be completed within 15 months prior to the month of transportation, sale, or offer for sale;

b. Not labeled in compliance with this article, not registered or falsely stated to be registered under § 3.2-4009, or having a false or misleading labeling or claim;

c. If there has been a false or misleading advertisement with regards to the seed;

d. Consisting of, or containing prohibited noxious-weed seeds in any amount;

e. Containing restricted noxious-weed seeds, except as prescribed by regulations;

f. Containing weed seeds in excess of one percent by weight, except as prescribed by regulations;

g. That have been treated and not labeled as required;

h. 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;

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 regulations of an officially recognized certifying agency;

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 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 § 3.2-4008 on July 1, 1966 as determined by regulations adopted by the Board;

k. Hybrid seed from a crop 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;

l. Unless it conforms to the definition of a "lot"; and

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;

2. Transport, offer for transportation, sell, or offer for sale screenings unless labeled as provided in subsection F of § 3.2-4008.

3. Detach, alter, deface, or destroy any label required pursuant to this article or alter or substitute seed in any manner that may defeat the purpose of this article.

4. Disseminate false or misleading advertisement concerning agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings.

5. Hinder or obstruct the Commissioner in the performance of his duties.

6. Fail to comply with or supply inaccurate information in reply to a stop sale order; remove labels attached to or dispose of seed or screenings held under such order except as specified by the Commissioner.

7. Use the name of the Department or the results of tests and inspections made by the Department for advertising purposes.

8. Use the words "type" or "trace" in lieu of information required by this article.

9. Label and offer for sale seed without keeping complete records as specified in § 3.2-4006.

10. Fail to obtain a license in accordance with § 3.2-4005.

11. Fail to register a lawn and turf seed mixture in accordance with § 3.2-4009.

12. Fail to pay inspection fees in accordance with § 3.2-4010.

13. Sell, offer for sale, or advertise as noncertified a variety 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. 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.

Code 1950, § 3-219.4; 1958, c. 483; 1966, cc. 9, 702, § 3.1-265; 1994, c. 577; 2008, c. 860; 2012, c. 297.

§ 3.2-4016. Exemptions from certain provisions

A. The provisions of §§ 3.2-4008 and 3.2-4015 and subdivision 6 of § 3.2-4001 shall not apply to:

1. Seed or grain sold or represented to be sold for purposes other than for planting, except as required by subsection F of § 3.2-4008;

2. Seed for conditioning when: (i) consigned to, being transported to, or stored in a processing establishment; and (ii) the accompanying invoice or labeling bears the statement "Seed for conditioning";

3. Any carrier of seed or screenings in the ordinary course of business provided that the carrier does not also produce, condition, or market agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings; and

4. Untested seed sold on his own premises by a grower who collected gross receipts for selling seeds produced by him of $1,000 or less during the preceding year provided that the seed bears the statement "These seeds have not been tested" on each package or bag.

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;

2. Any agricultural, vegetable, flower, tree and shrub, lawn and turf seeds, or screenings that are incorrectly labeled or represented as to kind, variety, or origin and cannot be identified by official examination unless he fails to: (i) obtain an invoice or grower's declaration or other labeling information; or (ii) take other reasonable precautions to insure the identity is that stated; and

3. Any tree or shrub seeds that are incorrectly labeled or represented as to subspecies, locality of collection, or year of collection unless he fails to: (i) obtain an invoice, grower's declaration, or other labeling information; or (ii) take other reasonable precautions to insure the accuracy of these statements as presented on the label.

Code 1950, § 3-219.6; 1958, c. 483; 1966, cc. 9, 702, § 3.1-267; 1994, c. 577; 2008, c. 860.

§ 3.2-4017. Disclaimers, nonwarranties, and limited warranties

No disclaimer, nonwarranty, or limited warranty used in any invoice, advertising, labeling, nor any other written, printed or graphic matter pertaining to seed may deny or modify any information required by this article or regulations adopted hereunder.

Code 1950, § 3-219.7; 1958, c. 483; 1966, c. 702, § 3.1-268; 1994, c. 577; 2008, c. 860.

§ 3.2-4018. Notice of violations; warning

A. The Commissioner shall notify the custodian of any seed or screenings in violation of this article. The Commissioner shall forward a copy of notice to the guarantor.

B. Nothing in this article requires that the Commissioner report for prosecution or institute seizure proceedings if the Commissioner considers the violation of the law to be minor. In such cases, the Commissioner may provide a notice of warning in writing.

Code 1950, § 3-219.12; 1958, c. 483; 1966, cc. 9, 702, § 3.1-274; 1994, c. 577; 2008, c. 860.

§ 3.2-4019. Duty of attorney for Commonwealth

It shall be the duty of each attorney for the Commonwealth to whom any violation of this article is reported to commence proceedings in the appropriate court without delay.

1994, c. 577, § 3.1-275.6; 2008, c. 860.

§ 3.2-4020. Penalty

Any violation of this article is a Class 3 misdemeanor.

Code 1950, § 3-219.11; 1958, c. 483; 1966, c. 702, § 3.1-273; 1994, c. 577; 2008, c. 860.

Article 2 - 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.

Code 1950, § 3-220; 1958, c. 30; 1966, c. 702, § 3.1-276; 1980, c. 413; 1985, c. 448; 1992, c. 121; 2008, c. 860.

§ 3.2-4022. Membership; terms; quorum; meetings

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 and submitted at least 90 days before the expiration of the member's term for which the nominations are being provided. If said organizations fail to provide the nominations at least 90 days before the expiration date pursuant to this section, the Governor may appoint other nominees that meet the criteria provided by this section. 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.

Code 1950, §§ 3-220, 3-223; 1958, c. 30; 1966, c. 702, §§ 3.1-276, 3.1-279; 1980, c. 413; 1985, c. 448; 1992, c. 121; 2008, c. 860; 2011, cc. 691, 714.

§ 3.2-4023. Compensation and expenses

The members of the Board shall serve without compensation, but shall be reimbursed for 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.

Code 1950, § 3-222; 1966, c. 702, § 3.1-278; 2008, c. 860.

§ 3.2-4024. Powers and duties of the Certified Seed Board

The Certified Seed Board shall have the following powers and duties:

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, vegetable seed and of tubers used for planting purposes;

3. Provide for the certification and procurement of agricultural and vegetable seed, and of tubers used for planting purposes;

4. Adopt brands;

5. Select producers of certified seed by general regulation and systematic examination; and

6. Under the supervision of the Director of the Cooperative Extension Service of the Virginia Polytechnic Institute and State University 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.

Code 1950, §§ 3-221, 3-226; 1952, c. 579; 1958, c. 483; 1966, c. 702, §§ 3.1-277, 3.1-282; 1973, c. 401; 1980, c. 413; 2008, c. 860.

§ 3.2-4025. Regulations

The Certified Seed Board may adopt regulations after a public hearing and investigation. At least 15 days prior to the public hearing, the Certified Seed Board shall publish a notice of the general

object, time, and place in a newspaper of general circulation published in the City of Richmond, together with any other dissemination of notice as is deemed advisable.

Code 1950, § 3-224; 1966, c. 702, § 3.1-280; 2008, c. 860.

§ 3.2-4026. Illegal use of word "certified"; who may make certification; standards; penalty
A. It is unlawful for any person to use the term "certified" or imply certification relative to any agricultural seeds, vegetable seeds, tubers for planting purposes, or plants offered for sale unless such seeds, tubers, or plants have been certified as follows:

1. If the seeds, tubers, or plants were produced in another state or in a foreign country, certification by authorized inspection officials of the place of origin shall be sufficient if accepted by the Board.

2. If the seeds, tubers, or plants were produced in Virginia, certification shall be by the producers under authorization of the Board, its agents, or the Department.

B. Any person who violates this section is guilty of a Class 3 misdemeanor. Each violation shall be a separate offense.

Code 1950, § 3-227; 1966, c. 702, § 3.1-283; 1980, c. 413; 2008, c. 860.

§ 3.2-4027. Certification by Department, Commissioner, or Board not affected
Nothing contained in this chapter shall be construed to regulate, restrict, or affect the certification of seeds, plants, or other materials by the Department, the Commissioner, or the Board.

Code 1950, § 3-228; 1966, c. 702, § 3.1-284; 2008, c. 860.

Chapter 41 - SEED POTATOES [Repealed]

§§ 3.2-4100 through 3.2-4111. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 23.

Chapter 41.1 - INDUSTRIAL HEMP

§ 3.2-4112. Definitions
As used in this chapter:

"Grower" means any person licensed pursuant to § 3.2-4115 to grow industrial hemp as part of the industrial hemp research program.

"Hemp products" means all products made from industrial hemp, including cloth, cordage, fiber, food, fuel, paint, paper, particleboard, plastics, seed, seed meal and seed oil for consumption, and seed for cultivation.

"Industrial hemp" means all parts and varieties of the plant Cannabis sativa, cultivated or possessed by a licensed grower, whether growing or not, that contain a concentration of THC that is no greater than that allowed by federal law. Industrial hemp as defined and applied in this chapter is excluded from the definition of marijuana as found in § 54.1-3401.

"Industrial hemp research program" means the research program established pursuant to § 3.2-4120.

"Seed research" means research conducted to develop or re-create better varieties of industrial hemp, particularly for the purposes of seed production.

"Tetrahydrocannabinol" or "THC" means the natural or synthetic equivalents of the substances contained in the plant, or in the resinous extractives, of the genus Cannabis, or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity.

2015, cc. 158, 180.

§ 3.2-4113. Production of industrial hemp lawful

A. It is lawful for a person licensed pursuant to § 3.2-4115 or 3.2-4117 to cultivate, produce, or otherwise grow industrial hemp in the Commonwealth for any lawful purpose, including the manufacture of industrial hemp products or scientific, agricultural, or other research related to other lawful applications for industrial hemp. No person licensed pursuant to § 3.2-4115 or 3.2-4117 shall be prosecuted under § 18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-250, or 18.2-250.1 for the possession, cultivation, or manufacture of industrial hemp plant material and seeds or industrial hemp products. In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or the Drug Control Act (§ 54.1-3400 et seq.), it shall not be necessary to negate any exception, excuse, proviso, or exemption contained in this chapter or the Drug Control Act, and the burden of proof of any such exception, excuse, proviso, or exemption shall be on the defendant.

B. Nothing in this chapter shall be construed to authorize any person to violate any federal law or regulation. If any part of this chapter conflicts with a provision of federal law relating to industrial hemp that has been adopted in Virginia under this chapter, the federal provision shall control to the extent of the conflict.

C. No person shall be prosecuted under § 18.2-247, 18.2-248, 18.2-248.01, 18.2-248.1, 18.2-250, or 18.2-250.1 for the involuntary growth of industrial hemp through the inadvertent natural spread of seeds or pollen as a result of proximity to a licensed grower or a grower licensed pursuant to § 3.2-4117.

2015, cc. 158, 180; 2016, cc. 61, 170.

§ 3.2-4114. Regulations

The Board may adopt regulations pursuant to this chapter as necessary to (i) license persons to grow industrial hemp or (ii) administer the industrial hemp research program.

2015, cc. 158, 180.

§ 3.2-4115. Issuance of licenses

A. The Commissioner shall establish a program of licensure to allow a person to grow industrial hemp in the Commonwealth in a controlled fashion solely and exclusively as part of the industrial hemp research program. This form of licensure shall only be allowed subject to a grant of necessary permissions, waivers, or other form of valid legal status by the U.S. Drug Enforcement Administration or other appropriate federal agency pursuant to applicable federal laws relating to industrial hemp.

B. Any person seeking to grow industrial hemp as part of the industrial hemp research program shall apply to the Commissioner for a license on a form provided by the Commissioner. At a minimum, the application shall include:

1. The name and mailing address of the applicant;

2. The legal description and geographic data sufficient for locating the production fields to be used to grow industrial hemp. A license shall authorize industrial hemp propagation only on the land areas specified in the license;

3. A signed statement indicating whether the applicant has ever been convicted of a felony. A person with a prior felony drug conviction within 10 years of applying for a license under this section shall not be eligible for the license;

4. Written consent allowing the sheriff's office, police department, or Department of State Police, if a license is ultimately issued to the applicant, to enter the premises on which the industrial hemp is grown to conduct physical inspections of industrial hemp planted and grown by the applicant and to ensure compliance with the requirements of this chapter. No more than two physical inspections shall be conducted under this subdivision per year, unless a valid search warrant for an inspection has been issued by a court of competent jurisdiction. All testing for THC levels shall be performed as provided in subsection K;

5. Documentation of an agreement between a public institution of higher education and the applicant that states that the applicant, if licensed pursuant to this section, will be a participant in the industrial hemp research program managed by that public institution of higher education;

6. Any other information required by the Commissioner; and

7. The payment of a nonrefundable application fee, in an amount set by the Commissioner.

C. The Commissioner shall require a state and national fingerprint-based criminal history background check by the Department of State Police on any person applying for licensure. The Department of State Police may charge a fee, as established by the Department of State Police, to be paid by the applicant for the actual cost of processing the background check. A copy of the results of the background check shall be sent to the Commissioner.

D. All license applications shall be processed as follows:

1. Upon receipt of a license application, the Commissioner shall forward a copy of the application to the Department of State Police, which shall initiate its review thereof;

2. The Department of State Police shall, within 60 days, perform the required state and national criminal history background check of the applicant; approve the application, if it is determined that the requirements relating to prior criminal convictions have been met; and return all applications to the Commissioner together with its findings and a copy of the state and national criminal history background check; and

3. The Commissioner shall review all license applications returned from the Department of State Police. If the Commissioner determines that all requirements have been met and that a license should be granted to the applicant, taking into consideration any prior convictions of the applicant, the Commissioner shall approve the application for issuance of a license.

E. The Commissioner may approve licenses for only those selected growers whose demonstration plots will, in the discretion of the Commissioner, advance the goals of the industrial hemp research program to the furthest extent possible based on location, soil type, growing conditions, varieties of industrial hemp and their suitability for particular hemp products, and other relevant factors. The location and acreage of each demonstration plot to be grown by a license holder, as well as the total number of plots to be grown by a license holder, shall be determined at the discretion of the Commissioner.

F. An industrial hemp research program grower license shall not be subject to a minimum acreage.

G. Each license shall be valid for a period of one year from the date of issuance and may be renewed in successive years. Each annual renewal shall require the payment of a license renewal fee.

H. The Commissioner shall establish the fee amounts required for license applications and license renewals allowed under this section. All application and license renewal fees collected by the Commissioner shall be deposited in the State Treasury.

I. A copy or appropriate electronic record of each license issued by the Commissioner under this section shall be forwarded immediately to the chief law-enforcement officer of each county or city where the industrial hemp is licensed to be planted, grown, and harvested.

J. All records, data, and information filed in support of a license application shall be considered proprietary and excluded from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

K. The Commissioner shall be responsible for monitoring the industrial hemp grown by any license holder and shall provide for random testing of the industrial hemp for compliance with THC levels and for other appropriate purposes established pursuant to § 3.2-4114 at the cost of the license holder.

2015, cc. 158, 180.

§ 3.2-4116. Industrial hemp grower license conditions

A. A person shall obtain an industrial hemp grower license pursuant to § 3.2-4115 prior to planting or growing any industrial hemp in the Commonwealth.

B. A person granted an industrial hemp grower license pursuant to § 3.2-4115 shall:

1. Maintain records that reflect compliance with this chapter and with all other state laws regulating the planting and cultivation of industrial hemp;

2. Retain all industrial hemp production records for at least three years;

3. Allow industrial hemp crops, throughout sowing, growing, and harvesting, to be inspected by and at the discretion of the Commissioner or his designee, the Department of State Police, or the chief law-enforcement officer of the locality; and

4. Maintain a current written agreement with a public institution of higher education that states that the grower is a participant in the industrial hemp research program managed by that public institution of higher education.

2015, cc. 158, 180.

§ 3.2-4117. Additional industrial hemp licenses

A. The Board may adopt regulations as necessary to license persons to grow industrial hemp in the Commonwealth for any lawful purpose.

B. Notwithstanding the provisions of §§ 3.2-4115 and 3.2-4116, the Commissioner shall establish a program of licensure and renewal, including the establishment of any fees not to exceed $250, to allow a person to grow industrial hemp in the Commonwealth for any lawful purpose. Valid applications shall be granted licensure within 90 days of receipt of the application. The Commissioner shall accept license applications throughout the year. Licenses shall be valid for four years from the date of the issuance of the license.

2015, cc. 158, 180; 2016, cc. 61, 170.

§ 3.2-4118. Forfeiture of industrial hemp grower license

A. The Commissioner shall deny the application, or suspend or revoke the license, of any industrial hemp grower if the grower violates any provision of this chapter. The Commissioner shall provide reasonable notice of an informal fact-finding conference pursuant to § 2.2-4019 to any industrial hemp grower in connection with the denial, suspension, or revocation of the grower's license.

B. If a license is revoked as the result of an informal hearing, the decision may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The grower may appeal a final order to the circuit court in accordance with the Administrative Process Act.

C. The Commissioner may revoke any license of any person who has pled guilty to, or been convicted of, a felony.

2015, cc. 158, 180.

§ 3.2-4119. Eligibility to receive tobacco settlement funds

Industrial hemp growers licensed under this chapter may be eligible to receive funds from the Tobacco Indemnification and Community Revitalization Fund established pursuant to § 3.2-3106.

2015, cc. 158, 180.

§ 3.2-4120. Industrial hemp research program

A. To the extent that adequate funds are available for the program, the Commissioner shall undertake research of industrial hemp production through the establishment and oversight of an industrial hemp research program to be directly managed by public institutions of higher education. This research program shall consist primarily of demonstration plots planted and cultivated in Virginia by selected growers. The growers shall be licensed pursuant to subsection A of § 3.2-4115 prior to planting any industrial hemp.

B. As part of the industrial hemp research program directly managed by public institutions of higher education, the Commissioner may:

1. Oversee and analyze the growth of industrial hemp by licensed growers, for agronomy research and analysis of required soils, growing conditions, and harvest methods relating to the production of various varieties of industrial hemp that may be suitable for various commercial hemp products;

2. Conduct seed research on various types of industrial hemp that are best suited to be grown in Virginia, including seed availability, creation of Virginia hybrid types, and in-the-ground variety trials and seed production, and may establish a program to recognize certain industrial hemp seeds as being Virginia varieties of hemp seed;

3. Study the economic feasibility of developing an industrial hemp market in various types of industrial hemp that can be grown in the Commonwealth;

4. Report on the estimated value-added benefits, including environmental benefits, to Virginia businesses of an industrial hemp market of Virginia-grown industrial hemp varieties;

5. Study the agronomy research being conducted worldwide relating to industrial hemp varieties, production, and use;

6. Research and promote on the world market industrial hemp and hemp seed that can be grown on farms in the Commonwealth;

7. Promote research into the development of industrial hemp and commercial markets for Virginia industrial hemp and hemp products;

8. Study the feasibility of attracting federal or private funding for the Virginia industrial hemp research program; and

9. Study the use of industrial hemp in new energy technologies, including electricity generation, biofuels, or other forms of energy resources; the growth of industrial hemp on reclaimed mine sites; the use of hemp seed oil in the production of fuels; and the production costs, environmental issues, and costs and benefits involved with the use of industrial hemp for energy.

C. The research activities outlined in subsection B shall not:

1. Subject the industrial hemp research program to any criminal liability under the controlled substances laws of the Commonwealth. This exemption from criminal liability is a limited exemption that shall be strictly construed and that shall not apply to any activities of the industrial hemp research program that are not authorized; or

2. Alter, amend, or repeal by implication any provision of this Code relating to controlled substances.

D. The Commissioner shall pursue any permits or waivers from the U.S. Drug Enforcement Administration or appropriate federal agency that are necessary for the advancement of the industrial hemp research program.

E. The Commissioner shall notify the Superintendent of State Police and all local law-enforcement agencies of the duration, size, and location of all industrial hemp demonstration plots.

F. The Commissioner is permitted to cooperatively seek funds from public and private sources to implement the industrial hemp research program.

G. By November 1, 2015, and annually thereafter, the Commissioner shall report on the status and progress of the industrial hemp research program to the Governor and to the General Assembly.

2015, cc. 158, 180.

Chapter 42 - IMPLEMENTATION OF TOBACCO MASTER SETTLEMENT AGREEMENT

Article 1 - REQUIREMENTS FOR TOBACCO PRODUCT MANUFACTURERS

§ 3.2-4200. 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 10 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 § 3.2-4201.

"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 subsection 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.

1999, cc. 714, 754, § 3.1-336.1; 2008, c. 860.

§ 3.2-4201. 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):

YearAmount 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.

1999, cc. 714, 754, § 3.1-336.2; 2004, c. 1029; 2005, cc. 4, 870; 2008, c. 860.

Article 2 - ESCROW FUNDS CONTRIBUTED TO COMMONWEALTH

§ 3.2-4202. Assignment to the Commonwealth of rights to tobacco manufacturer escrow funds; contribution to the Commonwealth

Notwithstanding the provisions of subsection B of § 3.2-4201, a tobacco product manufacturer who elects to place funds into escrow pursuant to subdivision A 2 of § 3.2-4201 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. 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 § 3.2-4203. 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.

2005, cc. 899, 901, § 3.1-336.2:1; 2008, c. 860.

§ 3.2-4203. Withdrawal of escrow funds assigned and contributed to the Commonwealth

Notwithstanding the provisions of subsection B of § 3.2-4201, any escrow funds assigned and contributed to the Commonwealth pursuant to § 3.2-4202 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, 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 1 (§ 3.2-4200 et seq.) or 3 (§ 3.2-4204 et seq.).

2005, cc. 899, 901, § 3.1-336.2:2; 2008, c. 860; 2016, c. 305.

Article 3 - ENFORCEMENT OF REQUIREMENTS FOR TOBACCO PRODUCT MANUFACTURERS

§ 3.2-4204. 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 § 3.2-4200 shall have the same meaning when used in this article.

2003, c. 798, § 3.1-336.3; 2004, c. 1029; 2006, c. 674; 2008, c. 860.

§ 3.2-4205. 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, requesting such information as the Attorney General deems reasonably necessary to enable him to make the determinations required in § 3.2-4206, 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: (i) is a participating manufacturer and has made all payments calculated by the independent auditor to be due from it under the Master Settlement Agreement, except to the extent it is disputing any of such payments; or (ii) is in full compliance with Article 1 (§ 3.2-4200 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 § 3.2-4208;

2. That such nonparticipating manufacturer has (i) established and continues to maintain a qualified escrow fund as that term is defined in Article 1 (§ 3.2-4200 et seq.) of this chapter; and (ii) executed a qualified escrow agreement that conforms to the requirements in Article 1 of this chapter;

3. That such nonparticipating manufacturer is in full compliance with Article 1 (§ 3.2-4200 et seq.) of this chapter and this article, and any regulations promulgated pursuant thereto;

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 1 (§ 3.2-4200 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 1 of this chapter; and

5. In the case of a nonparticipating manufacturer located outside of the United States, that it has provided a declaration on a form prescribed by the Attorney General from each of its importers into the United States of any of its brand families to be sold in Virginia that such importer accepts joint and several liability with the nonparticipating manufacturer for all escrow deposits due in accordance with § 3.2-4201, for all penalties assessed in accordance with § 3.2-4201, and for

payment of all costs and attorney fees imposed in accordance with this article. Such declaration shall appoint for the declarant a resident agent for service of process in Virginia in accordance with subsection A of § 3.2-4208.

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 1 (§ 3.2-4200 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 1 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.

2003, c. 798, § 3.1-336.4; 2006, c. 31; 2008, cc. 758, 860.

§ 3.2-4206. 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 § 3.2-4205 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 (i) any participating manufacturer that fails to provide the required certification or to make a payment calculated by the independent auditor to be due from it under the Master Settlement Agreement except to the extent that it is disputing such payment, or (ii) any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subsections A through D of § 3.2-4205, 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 1 (§ 3.2-4200 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, (ii) any outstanding final judgments, including interest thereon, for violations of Article 1 of this chapter have not been fully satisfied for such brand

family and such manufacturer, (iii) in the case of a nonparticipating manufacturer or a tobacco product manufacturer that became a participating manufacturer after the Master Settlement Agreement execution date, as defined by section II (aa) of the Master Settlement Agreement, by reason of the business plan, business history, trade connections, or compliance and payment history under the Master Settlement Agreement or in Virginia or any other state, or the business history, trade connections or compliance and payment history under the Master Settlement Agreement or in Virginia or any other state of any of the principals thereof, the nonparticipating manufacturer or such tobacco product manufacturer fails to provide reasonable assurance that it will comply with the requirements of this article or of Article 1 (§ 3.2-4200 et seq.) of this chapter, or (iv) the manufacturer has knowingly failed to disclose any material information required or knowingly made any material false statement in the certification of any supporting information or documentation provided.

As used in this subdivision, reasonable assurances may include information and documentation establishing to the satisfaction of the Attorney General that a failure to pay in Virginia or elsewhere was the result of a good faith dispute over the payment obligation.

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 1 (§ 3.2-4200 et seq.) of this chapter that has been approved by the Attorney General, or in the case of any participating manufacturer, 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 § 3.2-4205. 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.

2003, c. 798, § 3.1-336.5; 2008, cc. 758, 860.

§ 3.2-4206.01. List of persons ineligible to be authorized holders

A. The Attorney General shall develop and publish on its website a list of individuals who are ineligible to be authorized holders as defined in § 58.1-1000. The Attorney General shall update

the list as necessary to add names of individuals who are no longer eligible to be authorized holders. Upon request, the Office of the Executive Secretary of the Supreme Court shall provide the Attorney General with assistance to ensure that the requirements of this section are met.

B. Any attorney for the Commonwealth, law-enforcement officer, or other person may submit a request to the Attorney General that a person be included on the list and shall submit a certified court order of the conviction that makes the person ineligible to be an authorized holder of cigarettes.

C. Nothing in this section shall impose an affirmative duty on the Attorney General to identify persons to be included on the list who are ineligible to be authorized holders of cigarettes due to a conviction in another state, in the absence of a request received from an attorney for the Commonwealth, law-enforcement officer, or other person.

D. No liability shall be imposed upon the Attorney General for any omissions or the incorrect inclusion of any individual on the listing required under subsection A. No liability shall be imposed upon any attorney for the Commonwealth or law-enforcement official who provides information to the Attorney General in accordance with subsection B. This provision shall not be construed to grant immunity for gross negligence or willful misconduct.

2015, cc. 738, 754.

§ 3.2-4206.1. Bond requirement for newly qualified and elevated-risk nonparticipating manufacturers

A. Notwithstanding any other provision of law, if a newly qualified nonparticipating manufacturer is to be listed in the Virginia Tobacco Directory (the Directory), or if the Attorney General reasonably determines that any nonparticipating manufacturer who has filed a certification pursuant to § 3.2-4205 poses an elevated risk for noncompliance with this article or with Article 1 (§ 3.2-4200 et seq.), neither such nonparticipating manufacturer nor any of its brand families shall be included in the Directory unless and until such nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with § 3.2-4208.1, has posted a bond in accordance with this section.

B. The bond shall be posted by corporate surety located within the United States in an amount equal to the greater of $50,000 or the amount of escrow the manufacturer in either its current or predecessor form was required to deposit as a result of its highest calendar year's sales in Virginia. The bond shall be written in favor of the Commonwealth of Virginia and shall be conditioned on the performance by the nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with subsection A of § 3.2-4201, of all of its duties and obligations under this article and Article 1 (§ 3.2-4200 et seq.) during the year in which the certification is filed and the next succeeding calendar year.

C. A nonparticipating manufacturer may be deemed to pose an elevated risk for noncompliance with this article or Article 1 (§ 3.2-4200 et seq.) if:

1. The nonparticipating manufacturer or any affiliate thereof has underpaid an escrow obligation with respect to any state at any time during the calendar year or within the past three calendar years unless (i) the manufacturer did not make underpayment knowingly or recklessly and the manufacturer promptly cured the underpayment within 180 days of notice of it, or (ii) the underpayment or lack of payment is the subject of a good faith dispute as documented to the satisfaction of the Attorney General and the underpayment is cured within 180 days of entry of a final order establishing the amount of the required escrow payment;

2. Any state has removed the manufacturer or its brands or brand families or an affiliate or any of the affiliate's brands or brand families from the state's tobacco directory for noncompliance with the state law at any time during the calendar year or within the past three calendar years; or

3. Any state has litigation pending against, or an unsatisfied judgment against, the manufacturer or any affiliate thereof for escrow or for penalties, costs, or attorney fees related to noncompliance with state escrow laws.

D. As used in this section "newly qualified nonparticipating manufacturer" means a nonparticipating manufacturer that has not previously been listed in the Virginia Tobacco Directory. Such manufacturers may be required to post a bond in accordance with this section for the first three years of their listing, or longer if they have been determined to pose an elevated risk for noncompliance.

2008, c. 758, § 3.1-336.5:1; 2011, c. 297.

§ 3.2-4207. Prohibition against stamping or sale or import of cigarettes not in the Directory

A. 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 (a) 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 45 days of the date such manufacturer and brand families were removed from the Directory or (b) if, in the case of a retailer, the cigarettes are sold or delivered to consumers within 45 days after receipt of delivery of such cigarettes from a wholesaler, which cigarettes otherwise have been lawfully purchased from the same wholesaler. A tobacco product manufacturer that is otherwise in compliance with the requirements of this chapter may, for reasons satisfactory to the Attorney General, request removal of itself, or cigarettes in a brand family that it manufactures or has

manufactured, from the Directory. A person purchasing cigarettes for resale shall not be in violation of this section if (1) 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 60 days of the date such cigarettes were removed from the Directory or (2) in the case of a retailer, the cigarettes are sold or delivered to consumers within 60 days after receipt of delivery of such cigarettes from a wholesaler and the cigarettes have been lawfully purchased from the same wholesaler. The updates to the Directory required by subsection B of § 3.2-4206 shall contain a notation indicating such voluntary removal. For purposes of this subsection, "reasons satisfactory to the Attorney General" shall include cessation of the business operations of the tobacco products manufacturer and voluntary discontinuance of a product line or brand family.

B. 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 receive a refund from such 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. Any failure of such manufacturer, wholesaler or retail dealer to provide the purchaser with the refund required under this subsection shall (i) create a cause of action against such manufacturer, wholesaler or retail dealer in favor of the purchaser and (ii) subject such manufacturer, wholesaler or retail dealer to a civil penalty of $500 for each violation, which shall be assessed by the Commissioner and payable to the Literary Fund.

C. 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.

2003, c. 798, § 3.1-336.6; 2008, c. 860; 2011, c. 846.

§ 3.2-4208. 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 1 (§ 3.2-4200 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. Any nonparticipating manufacturer located outside of the United States shall, as an additional condition precedent to having its brand families listed or retained in the Directory, cause each of its importers into the United

States of any of its brand families to be sold in Virginia to appoint and continually engage without interruption the services of an agent in the Commonwealth in accordance with the provisions of this section. All obligations of a nonparticipating manufacturer imposed by this section with respect to appointment of its agent shall likewise apply to such importers with respect to appointment of their agents.

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. 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.

2003, c. 798, § 3.1-336.7; 2008, cc. 758, 860.

§ 3.2-4208.1. Joint and several liability

For each nonparticipating manufacturer located outside the United States, each importer into the United States of any such nonparticipating manufacturer's brand families that are sold in Virginia shall bear joint and several liability with such nonparticipating manufacturer for deposit of all escrow due under § 3.2-4201, payment of all penalties imposed in accordance with § 3.2-4201, and payment of all costs and attorney fees imposed in accordance with this article.

2008, c. 758, § 3.1-336.7:1.

§ 3.2-4209. 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. The Attorney General may allow such information to be filed electronically. 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 has complied, is in compliance, and will continue in compliance with this article and Article 1 (§ 3.2-4200 et seq.) of this chapter.

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 § 3.2-4206. A stamping agent receiving a request pursuant to this subsection shall provide the requested information within 30 days from receipt of the request.

2003, c. 798, § 3.1-336.8; 2006, cc. 31, 674, 768; 2008, cc. 758, 860; 2013, c. 381.

§ 3.2-4209.1. Additional information required

A. When used in this section, the term "applicable returns" means the following returns or reports relating to cigarettes that are filed or required to be filed with the Alcohol and Tobacco Tax and Trade Bureau, United States Department of Treasury, after the effective date of this section; Alcohol and Tobacco Tax and Trade Bureau Form 5000.24, Alcohol and Tobacco Tax and Trade Bureau Form 5210.5 and Alcohol and Tobacco Tax and Trade Bureau Form 5220.6 as well as any successor returns or reports intended to replace Forms 5000.24, 5210.5, or 5220.6.

B. As a condition of selling cigarettes in the Commonwealth, every tobacco product manufacturer, as defined in § 3.2-4200, whose cigarettes are to be sold in the Commonwealth whether directly or through a distributor, importer, retailer, or similar intermediary or intermediaries shall, at the election of such tobacco product manufacturer, either:

(1) submit to the Attorney General a true and correct copy of each and every applicable return of such tobacco product manufacturer; or

(2) submit to the United States Treasury a request or consent under Internal Revenue Code section 6103 (c) authorizing the Alcohol and Tobacco Tax and Trade Bureau to disclose the applicable returns of such manufacturer to the Attorney General.

A foreign tobacco product manufacturer whose cigarettes are imported into the United States by an importer or importers shall submit, or shall cause each of its importers to submit, to the

Attorney General each and every applicable return that includes any information about cigarettes of that foreign tobacco product manufacturer imported into the United States.

The Attorney General shall not disclose any applicable returns or any information contained therein, except as provided in subsection C, notwithstanding any statute of this state that otherwise authorizes or requires the disclosure of information by the Attorney General.

C. The Attorney General's Office shall compile data on cigarette shipments from the applicable returns and shall share such data with other states that are signatories to the Master Settlement Agreement, as defined in § 3.2-4200, provided that such states impose protections against disclosure of the applicable returns, or any information from applicable returns, that are equivalent to the protections provided under subsection B. No other disclosures of the applicable returns, or of information from the applicable returns, may be made by the Attorney General.

D. A tobacco product manufacturer who does not comply with the requirements of subsection B shall, after 30 days' notice by the Commonwealth to such tobacco product manufacturer of the compliance failure, lose its authority to sell cigarettes in the Commonwealth unless such tobacco product manufacturer has brought itself into compliance by the end of the 30-day period.

E. Any tobacco manufacturer or importer who intentionally provides any applicable return containing materially false information shall be guilty of a Class 6 felony. The provision of each applicable return containing one or more false statements shall constitute a separate offense.

F. The Attorney General may promulgate regulations to implement and carry out the provisions of this section.

2008, c. 176, § 3.1-336.8:1.

§ 3.2-4210. 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 1 (§ 3.2-4200 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.

2003, c. 798, § 3.1-336.9; 2008, c. 860.

§ 3.2-4211. Quarterly escrow payments by certain nonparticipating manufacturers

A. Notwithstanding the provisions of § 3.2-4201, on and after January 1, 2007, the Attorney General may require a nonparticipating manufacturer that is a new market entrant or that has been designated by the Attorney General as an elevated risk pursuant to subsection C of § 3.2-4206.1 to make the escrow payments required by § 3.2-4201 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 § 3.2-4205 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 § 3.2-4201 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 § 3.2-4201 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 § 3.2-4201.

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 § 3.2-4205 or at any time that the nonparticipating manufacturer is designated by the Attorney General as an elevated risk pursuant to subsection C of § 3.2-4206.1, 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 § 3.2-4201 and shall be subject to all enforcement actions available for a violation of § 3.2-4201.

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 1 (§ 3.2-4200 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 1 (§ 3.2-4200 et seq.) of this chapter and be relieved of further obligation to make quarterly payments.

2006, c. 674, § 3.1-336.9:1; 2008, c. 860; 2011, c. 297.

§ 3.2-4212. 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 § 3.2-4207 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 § 3.2-4207 shall

constitute a separate violation. Upon a determination of a violation of § 3.2-4207 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 § 3.2-4207, 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 Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, which shall apply mutatis mutandis; except that all such cigarettes so confiscated and forfeited shall be destroyed and not resold.

C. The Attorney General may seek an injunction to restrain a threatened or actual violation of § 3.2-4207, subsection A of § 3.2-4209, subsection B of § 3.2-4209, or subsection C of § 3.2-4209 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 attorney 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 § 3.2-4207. A violation of this section involving less than 3,000 packages of cigarettes is a Class 1 misdemeanor. A violation of this section involving 3,000 or more packages of cigarettes is a Class 1 misdemeanor, and, upon conviction, the sentence of such person shall include a mandatory minimum term of confinement of 90 days.

2003, c. 798, § 3.1-336.10; 2006, c. 674; 2008, cc. 758, 860; 2009, c. 847; 2012, cc. 283, 756.

§ 3.2-4213. 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.).

2003, c. 798, § 3.1-336.11; 2008, c. 860.

§ 3.2-4214. Promulgation of regulations

The Commissioner may promulgate regulations necessary to assist him in performing his duties prescribed by this article.

2003, c. 798, § 3.1-336.12; 2008, c. 860.

§ 3.2-4215. 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 1 (§ 3.2-4200 et seq.) of this chapter.

B. In any action brought by the Commonwealth to enforce the provisions of this article or Article 1 (§ 3.2-4200 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.

2003, c. 798, § 3.1-336.13; 2008, c. 860.

§ 3.2-4215.1. Authority of Attorney General; audit and investigation

The Attorney General or his authorized representative shall have the authority to:

1. Conduct audits and investigations of (i) a nonparticipating manufacturer and its importers or a tobacco product manufacturer as defined in § 3.2-4200 that became a participating manufacturer after the Master Settlement execution date, as defined at section II (aa) of the Master Settlement Agreement, and its importers, (ii) exclusive distributors, retail dealers, stamping agents, and wholesale dealers, as defined in § 58.1-1000, and (iii) persons or entities engaged in delivery sales as defined in § 18.2-246.6; and

2. Upon reasonable cause to believe that a violation of this article or of Article 1 (§ 3.2-4200 et seq.) of this chapter, or of Chapter 10 (§ 58.1-1000 et seq.) of Title 58.1, or Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2 has occurred or is reasonably likely to occur, issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the Commonwealth, as now provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents, and testimony relevant to such investigation. If a person refuses, without good cause, to be examined or to answer a legal and pertinent question, or to produce a document or other evidence when ordered to do so by the Attorney General or his authorized representative, the Attorney General or his authorized representative may apply to the judge of the circuit court of the jurisdiction where such person is in attendance or located, upon affidavit, for an order returnable in no less than two nor more than five days, directing such person to show cause why he should not be examined, answer a legal or pertinent question or produce a document, record or other evidence. Upon the hearing of such, if the court determines that such person, without good cause, has refused to be examined or to answer legal or pertinent questions, or to produce a document, record or other evidence, the court may order compliance with the subpoena and assess all costs and reasonable attorney fees against such person. If the motion for an order is granted and the person thereafter fails to comply with the order, the court may make such orders as are provided for in the Rules of the Supreme Court of Virginia. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the circuit courts of the Commonwealth.

2008, c. 758, § 3.1-336.13:1.

§ 3.2-4216. Recovery of costs and fees by Attorney General

In any action brought by the Commonwealth to enforce this article or Article 1 (§ 3.2-4200 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.

2003, c. 798, § 3.1-336.14; 2008, c. 860.

§ 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.

2003, c. 798, § 3.1-336.15; 2008, c. 860.

§ 3.2-4217.1. Presumption

In any action under subsection C of § 3.2-4201, reports of numbers of cigarettes stamped submitted to the Attorney General pursuant to subsection A of § 3.2-4209 shall be admissible in evidence and shall be presumed to accurately state the number of cigarettes stamped during the time period by the stamping agent that submitted the report absent a contrary showing by the nonparticipating manufacturer or importer. Nothing in this section shall be construed as limiting or otherwise affecting the Commonwealth's right to maintain that such reports are incorrect or do not accurately reflect a nonparticipating manufacturer's sales in the Commonwealth during the time period in question, and the presumption shall not apply in the event the Commonwealth does so maintain.

2008, c. 758, § 3.1-336.15:1.

§ 3.2-4218. Conflicts

If an appropriate court finds that the provisions of this article and of Article 1 (§ 3.2-4200 et seq.) of this chapter conflict and cannot be harmonized, then the provisions of Article 1 shall control. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article causes Article 1 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.

2003, c. 798, § 3.1-336.16; 2008, c. 860; 2015, c. 709.

§ 3.2-4219. Materially false statements

Any tobacco product manufacturer, stamping agent, or importer of cigarettes, or any officer, employee, or agent of any such entity, who knowingly and with the intent to defraud, mislead, or deceive makes any materially false statement in any record required by this chapter to be kept, or

in any document required by this chapter to be filed with the Attorney General is guilty of a violation of § 18.2-498.3. Each document filed containing one or more false statements shall constitute a separate offense.

2009, c. 847.

Chapter 43 - GRADES, MARKS, AND BRANDS

Article 1 - GENERAL PROVISIONS

§ 3.2-4300. Definitions

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

"Agricultural product" means any horticultural, viticulture, dairy, livestock, poultry, bee, or other farm or garden product.

"Director" means the Director of the Division of Marketing of the Department.

Code 1950, § 3-258; 1966, c. 702, § 3.1-337; 2008, c. 860.

§ 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.

Code 1950, § 3-266; 1966, c. 702, § 3.1-345; 2008, c. 860.

§ 3.2-4302. Establishment of grades, marks, and brands

The Director, with the approval of the Commissioner, 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, or other characteristics of such products; and (ii) marks identifying the party responsible for the grading and marking of such products.

Code 1950, § 3-259; 1966, c. 702, § 3.1-338; 2008, c. 860.

§ 3.2-4303. Grades recommended by U.S. Department of Agriculture

The Director, in carrying out the provisions of § 3.2-4302, shall adopt grades recommended or adopted by the U.S. Department of Agriculture if they are suitable for use in Virginia. If there is a demand for additional or different grades or standards by those persons in 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.

Code 1950, § 3-260; 1966, c. 702, § 3.1-339; 2008, c. 860.

§ 3.2-4304. When special grades, marks, and brands allowed; filing a certificate

Any person desiring to pack, mark, 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 adopted by the Director, may file with the Director a certificate describing the special grade, trademark, brand, or other markings. If, the Director, with the approval of the Commissioner: (i) approves of the completeness of definitions of such special grade, trademark, brand, or other markings described in the certificate; (ii) finds that such grade terminology, trademark, brand, other markings, or definitions are in no way deceptive; and (iii) determines that definitions used to describe grade, classifications, quality, condition, size, variety, or other characteristics of agricultural products clearly document 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.

Code 1950, § 3-261; 1966, c. 702, § 3.1-340; 2008, c. 860.

§ 3.2-4305. Unclassified products

This article shall not prevent the use of any trademark or brand not established and 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 is printed in letters not less than one-half inch in height the word "unclassified."

Code 1950, § 3-265; 1966, c. 702, § 3.1-344; 2008, c. 860.

§ 3.2-4306. Enforcement powers of Director

The Director, with the approval of the Commissioner, shall enforce the provisions of this article and is empowered to:

1. Enter and inspect every place 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 that indicate grade, classification, quality, condition, size, variety and quantity, and containers or equipment found at or in such places. It is unlawful for anyone to prevent, hinder or interfere with the Director or his agent in the exercise of any power under this subdivision;

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 provisions of this article; and to prescribe their duties and fix their compensation;

3. Prohibit the movement of any agricultural product found to be marked in violation of any of the provisions of this article, prior to the product being accepted by a common carrier for shipment in interstate transit. Such product shall be repacked or remarked. A lot of any agricultural product shall not be considered accepted by a common carrier until the common carrier is loaded, sealed, and the bill of lading issued; and

4. Cause to be instituted through the attorney for the Commonwealth prosecutions for violations of this article.

Code 1950, § 3-262; 1966, c. 702, § 3.1-341; 2008, c. 860.

§ 3.2-4307. When products considered as offered for sale

When any agricultural product is in transit, delivered to a common carrier for shipment, or delivered for storage, such transit or delivery shall be prima facie evidence that the product is offered for sale.

Code 1950, § 3-263; 1966, c. 702, § 3.1-342; 2008, c. 860.

§ 3.2-4308. Grades and brands shall be used in accordance with regulations

It is unlawful to use:

1. Any grade, trademark, brand, or other markings established and adopted by the Director on or in connection with marking any agricultural product that is not in accordance with regulations established and adopted by the Director.

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 adopted by the Director or are not in accordance with the provisions of § 3.2-4304.

Code 1950, § 3-264; 1966, c. 702, § 3.1-343; 2008, c. 860.

§ 3.2-4309. Unlawful removal of markings

It is unlawful, except with the consent of the original packer, or in compliance with the regulations, for any person to remove from any agricultural product any markings 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.

Code 1950, § 3-267; 1966, c. 702, § 3.1-346; 2008, c. 860.

§ 3.2-4310. Penalty for violation

Any person who violates any of the provisions of this article is guilty of a Class 3 misdemeanor.

Code 1950, § 3-268; 1966, c. 702, § 3.1-347; 2008, c. 860.

§ 3.2-4311. Defenses to prosecution

No person shall be convicted under the provisions of this article if:

1. The person is not a party to the packing, grading, or marking of such product; or

2. The agricultural product has passed inspection by an authorized inspector in the voluntary inspection service of the Department, or the U.S. Department of Agriculture, and found to be marked in accordance with the requirements of this article.

Code 1950, § 3-269; 1966, c. 702, § 3.1-348; 2008, c. 860.

Article 2 - VIRGINIA QUALITY LABEL

§ 3.2-4312. Definitions

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

"Agricultural and food product" means any horticultural, viticulture, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

"Continuous official inspection" means that an employee or a licensed representative of the Division of Marketing or of the U.S. Department of Agriculture, or employees of either, shall regularly and continuously examine the commodity as it is being packed.

"Director" means the Director of the Division of Marketing of the Department.

"Division" means the Division of Marketing of the Department of Agriculture and Consumer Services.

Code 1950, § 3-270; 1966, c. 702, § 3.1-349; 2008, c. 860.

§ 3.2-4313. Use of Virginia Quality Label to designate inspected products

The Director, with the approval of the Commissioner, may use an outline of Virginia impressed upon the labels, tags, seals, or containers of any agricultural or food product that has been subject to the continuous official inspection service indicating that the product is of such quality and description as shown on the label, tag, seal, or container. Such outline map when made use of pursuant to the provisions of this article shall be known as the "Virginia Quality Label."

Code 1950, § 3-271; 1966, c. 702, § 3.1-350; 2008, c. 860.

§ 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 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 label, tag, seal, or container, thus indicating continuous inspectional collaboration between the Division and a department, agency, or officer of the United States.

Code 1950, § 3-272; 1966, c. 702, § 3.1-351; 2008, c. 860.

§ 3.2-4315. Division may prepare and distribute labels, tags, and seals with Virginia Quality Label

The Division may prepare labels, tags and seals impressed with the Virginia Quality Label and the shield of the United States. The Division may furnish the labels, tags, and seals at reasonable prices to any producer, processor, packer, or dresser whose agricultural and food product has been subject to such continuous official state or federal-state inspection service.

Code 1950, § 3-274; 1966, c. 702, § 3.1-353; 2008, c. 860.

§ 3.2-4316. Preparation and use of Label by producer; design to be determined by Director

The Director may adopt regulations that permit any producer, processor, packer, or dresser to make or prepare, or to cause to be made or prepared, the labels, tags, or seals to be placed on his

own product, or to print, stamp, or otherwise place or cause to be placed the Virginia Quality Label and the shield of the United States upon such products or containers that have been subject to continuous state or federal-state inspection, so long as the Director, with the approval of the Commissioner, determines the design of the label, tag, seal, stamp, or other device.

Code 1950, § 3-275; 1966, c. 702, § 3.1-354; 2008, c. 860.

§ 3.2-4317. Virginia Quality Label Fund established

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 labels, tags, and seals, or from permitting the use of the Virginia Quality Label or the label with the shield of the United States 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 Division to defray the cost of preparing, furnishing, and publicizing the labels, tags, and seals.

Code 1950, § 3-277; 1966, c. 702, § 3.1-356; 2008, c. 860.

§ 3.2-4318. Jurisdiction to enjoin unlawful use of Label

A. Any circuit court in the Commonwealth shall have jurisdiction to enjoin the use of the Virginia Quality Label, a label with the shield of the United States, or any imitation or counterfeit likeness 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.

Code 1950, §§ 3-279, 3-280; 1966, c. 702, §§ 3.1-358, 3.1-359; 2005, c. 681; 2008, c. 860.

§ 3.2-4319. Certificate as evidence

Every certificate relating to the analysis, grade, classification, quality, or condition of agricultural products, either raw or processed, that is issued: (i) under this article; (ii) in cooperation between federal and state authorities, agencies, or organizations pursuant to a federal statute and this article; (iii) under a similar act of the legislature of any other state, and every certified copy; and (iv) every certificate issued pursuant to a federal statute, and every certified copy, shall be received in any court of the Commonwealth as prima facie evidence of the truth of the statements contained in the certificate.

Code 1950, § 3-280.1; 1966, c. 702, § 3.1-360; 2008, c. 860.

§ 3.2-4320. Restrictions as to use of Label

It is unlawful to use the Virginia Quality Label or a label with the shield of the United States, except in accordance with regulations prescribed by the Director with the approval of the Commissioner, and in no case shall it 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.

Code 1950, § 3-273; 1966, c. 702, § 3.1-352; 2008, c. 860.

§ 3.2-4321. Penalties for misuse or unauthorized use of Virginia Quality Label

A. It is unlawful for any person:

1. To use the Virginia Quality Label or a label with the shield of the United States in violation of any provisions of this article;

2. To use, with the intent to mislead or deceive, any imitation or counterfeit likeness of the Virginia Quality Label, or a label or shield of the United States: (i) on the label, tag, seal, container, or sign of any product that is sold or offered for sale; or (ii) in connection with any offer to sell or advertise for sale any product.

B. Any person who violates any provision of this article is guilty of a Class 3 misdemeanor.

C. Any corporation incorporated under the laws of the Commonwealth that has for 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, shall have the right to continue to use such outline map for such purpose.

Code 1950, § 3-278; 1966, c. 702, § 3.1-357; 2008, c. 860.

Article 3 - GRAIN HANDLERS

§ 3.2-4322. Definitions

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

"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.

Code 1950, § 3-269.1; 1966, c. 433, § 3.1-348.1; 2008, c. 860.

§ 3.2-4323. Commissioner authorized to require registration; forms

The Commissioner may require all handlers to register 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.

Code 1950, § 3-269.2; 1966, c. 433, § 3.1-348.2; 2008, c. 860.

§ 3.2-4324. Regulations

The Board may adopt regulations relating to the handling of grain in the Commonwealth, including:

1. The weighing devices, approved under the Virginia Weights and Measures Law (§ 3.2-5600 et seq.) and the procedures employed to give accurate weights.

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. Samples of lots graded by other than a Virginia licensed inspector and the lot discounted shall be identity preserved for 24 hours.

4. The keeping of records in accordance with good business practices.

Code 1950, § 3-269.3; 1966, c. 433, § 3.1-348.3; 2008, c. 860.

§ 3.2-4325. Grain handlers to register if required by Commissioner

All persons before operating as a handler in the Commonwealth shall register with the Commissioner.

Code 1950, § 3-269.4; 1966, c. 433, § 3.1-348.4; 2008, c. 860.

§ 3.2-4326. Grain to be purchased from registered handlers

It is unlawful to buy grain for resale as grain or grain products unless bought by a handler registered by the Commissioner.

Code 1950, § 3-269.5; 1966, c. 433, § 3.1-348.5; 2008, c. 860.

§ 3.2-4327. Violation of article

Any person who violates any of the provisions of this article or regulations established by the Board hereunder is guilty of a Class 1 misdemeanor.

Code 1950, § 3-269.6; 1966, c. 433, § 3.1-348.6; 2008, c. 860.

Chapter 44 - BEEKEEPING

§ 3.2-4400. Definitions

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

"Apiary" means any place where one or more colonies of bees are kept.

"Appliance" means any apparatus, tool, machine, or other device used in the handling and manipulating of bees, honey, wax, hives, and hive parts and shall include containers used in transporting, processing, storing, or merchandising bees and bee products.

"Bee" means the honeybee, Apis mellifera and genetic variations thereof, at any living stage; and may include other hymenopterous insects that depend on pollen and nectar for food.

"Bee diseases" means departures from a sound state of health of bees characterized by visible symptoms including American foulbrood and any other diseases, insects, mites, or bee pests.

"Bee equipment" means hives and hive parts including frames, supers, covers, bottom boards, and beekeeping apparel.

"Brood comb" means the assemblage of cells containing any living stage of bees at any time prior to their emergence as adults.

"Certificate of health" means a state-of-origin document prepared and signed by the State Apiarist or other authorized person declaring the bees, bee equipment, appliances, apiaries, and honey houses to be free of bee diseases.

"Colony" means a queenright assemblage of social bees capable of reproducing.

"Combless package" means a shipping container for transporting bees or queens.

"Entry permit" means a state-of-destination document prepared by the State Apiarist or other authorized person authorizing the entry of bee equipment, appliances, and bees on combs into the Commonwealth.

"Hive" means a box, skep, barrel, log gum, or other container used as a domicile for bees.

"Honey house" means any building where honey for commercial use is extracted, graded, processed, packed, or stored.

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

Code 1950, § 3-483; 1966, c. 702, § 3.1-588; 1972, c. 499, § 3.1-610.1; 1982, c. 100; 2008, c. 860.

§ 3.2-4401. Powers and duties of the Board

The Board may adopt regulations to:

1. Suppress bee diseases by regulating the movement of bees and controlling or destroying disease reservoirs;

2. Require apiary identification;

3. Adopt colony strength standards for pollination services;

4. Promote the sale and distribution of bees and their products; and

5. Effectively administer and enforce this chapter.

1972, c. 499, § 3.1-610.9; 2008, c. 860.

§ 3.2-4402. State Apiarist

The Commissioner may appoint a State Apiarist 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.

Code 1950, §§ 3-484, 3-485; 1966, c. 702, §§ 3.1-589, 3.1-590; 1972, c. 499, §§ 3.1-610.2, 3.1-610.3; 2008, c. 860.

§ 3.2-4403. Duties of beekeepers

Beekeepers 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; and

2. Securely and tightly close the entrance of any hive in apiaries not free from disease and make the hive tight so that robber bees cannot enter, leave, or obtain honey from the hives as long as the hives remain in a location accessible by honeybees.

Code 1950, § 3-497; 1966, c. 702, § 3.1-602; 1972, c. 499, § 3.1-610.10; 2008, c. 860.

§ 3.2-4404. Duty to notify the State Apiarist of diseased bees

Any person in the Commonwealth who is aware of diseased bees in his or other apiaries shall immediately notify the State Apiarist, giving the exact location of the diseased bees and other information as requested.

Code 1950, § 3-498; 1966, c. 702, § 3.1-603; 1972, c. 499, § 3.1-610.8; 2008, c. 860.

§ 3.2-4405. Entry permit required to bring bees and used bee equipment into Commonwealth; inspection

A. No person shall bring any bees on combs, empty used combs, used hives, or other used apiary appliances into the Commonwealth without first receiving an entry permit to do so from the State Apiarist. Entry permits shall be issued only upon receipt of satisfactory proof that the bees and other items are free from bee diseases. Specifically identifiable colonies must be brought into the Commonwealth within 60 days from the issuance of the entry permit.

B. Bees brought into the Commonwealth shall be subject to inspection at any time.

Code 1950, § 3-501; 1950, p. 227; 1966, c. 702, § 3.1-606; 1972, c. 499, § 3.1-610.15; 1982, c. 100; 2008, c. 860.

§ 3.2-4406. Certificate of health to accompany bees in combless packages brought into Commonwealth

All bees in combless packages transported into the Commonwealth shall be accompanied by a certificate of health issued by the proper official of the place of origin.

Code 1950, § 3-500; 1966, c. 702, § 3.1-605; 1972, c. 499, § 3.1-610.14; 2008, c. 860.

§ 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 offered for sale without a certificate of health prepared by the State Apiarist for each specifically identifiable item. The certificate of health must accompany each bill of sale.

Code 1950, § 3-502; 1966, c. 702, § 3.1-607; 1972, c. 499, § 3.1-610.17; 2008, c. 860.

§ 3.2-4408. Rearing package bees and queens for sale

A. No person shall 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 any bee diseases, the rearer or seller shall at once cease to ship bees from affected apiaries until the State Apiarist 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.

Code 1950, § 3-496; 1966, c. 702, § 3.1-601; 1972, c. 499, §§ 3.1-610.12, 3.1-610.13; 2008, c. 860.

§ 3.2-4409. Right of entry for inspection and enforcement

The Commissioner may enter any private or public premises during business hours, except private dwellings. The Commissioner shall have access to all apiaries and other places where bees, combs, beekeeping equipment, and appliances may be kept.

Code 1950, § 3-488; 1966, c. 702, § 3.1-593; 1972, c. 499, § 3.1-610.7; 2008, c. 860.

§ 3.2-4410. Measures to eradicate and control bee diseases; appeal

A. The State Apiarist shall examine or inspect the bees in the Commonwealth whenever they are suspected of being infected with bee diseases and, on request, shall inspect bees to be sold or to be transported interstate.

B. If bees are found to be infected with bee diseases, the State Apiarist shall take suitable measures to eradicate or control such diseases.

C. If the owner of such diseased bees fails 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 the bees, hives, and honey.

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.).

Code 1950, §§ 3-487, 3-490, 3-491, 3-493; 1966, c. 702, §§ 3.1-592, 3.1-595, 3.1-596, 3.1-598; 1972, c. 499, §§ 3.1-610.5, 3.1-610.6, 3.1-610.11; 2008, c. 860.

§ 3.2-4411. Abandoned apiaries

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 locality where the apiary is located. 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 60 days, the owner or landowner has not laid claim to the apiary, the treasurer may hold a sheriff's sale, issue a treasurer's deed to the successful bidder, and deposit any proceeds into the general fund of the locality. If disposition is not made within 90 days of the date of the declaration of abandonment, the State Apiarist may take possession of the apiary and destroy the related bees, hives, and equipment.

1972, c. 499, § 3.1-610.18; 2008, c. 860.

§ 3.2-4411.1. Apiaries; limitation on liability

A. Any person owning or operating an apiary that is not located on his own property shall post the name and address of the owner or operator in a conspicuous place in the apiary.

B. A person who operates an apiary in a reasonable manner, in compliance with local zoning restrictions, and in conformance with the written best management practices as provided by regulation of the Department of Agriculture and Consumer Services shall not be liable for any personal injury or property damage that occurs in connection with his keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries, or appliances. The limitation of liability established by this section does not apply to intentional tortious conduct or acts or omissions constituting gross negligence or negligence.

C. The limitation of liability in this section shall not take effect until regulations are adopted by the Board. The Board may adopt initial regulations under this section to implement the provisions of this section to be effective no later than November 1, 2016. Such initial regulations shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act; however, the Board shall publish proposed regulations in the Virginia Register of Regulations and allow at least 30 days for public comment, to include an online public comment forum on the Virginia Regulatory Town Hall, after publication. Any amendments to such initial regulations or any subsequent regulations adopted pursuant to this section shall comply with the requirements of Article 2 of the Administrative Process Act. Any regulations adopted shall include best management practices for the operation of apiaries.

2016, c. 564.

§ 3.2-4412. Reserved

Reserved.

§ 3.2-4413. Costs of administering chapter

Normal costs of administering this law shall be borne by the Commonwealth. 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 promptly credit reimbursements to the fund from which originally expended.

1972, c. 499, § 3.1-610.20; 2008, c. 860.

§ 3.2-4414. Violation of chapter

Any person violating any of the provisions of this chapter or any order or regulation issued hereunder, or interfering in any way with the Commissioner in the discharge of his duties is guilty of a Class 1 misdemeanor.

Code 1950, § 3-505; 1966, c. 702, § 3.1-610; 1972, c. 499, § 3.1-610.21; 2008, c. 860.

§ 3.2-4415. Beehive Grant Fund

From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is hereby created in the state treasury a special nonreverting, permanent fund to be known as the Beehive Grant Fund (the Fund), to be administered by the Department of Agriculture and Consumer Services. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants, shall be made by the State Treasurer on warrants issued by the Comptroller upon the written request signed by the Commissioner. Grants from the Fund shall only be made to applications to the Beehive Grant Program pursuant to § 3.2-4416.

2012, cc. 412, 473.

§ 3.2-4416. Beehive Grant Program

A. As used in this section, unless the context requires a different meaning:

"Fund" means the Beehive Grant Fund established pursuant to § 3.2-4415.

"Grant" means a grant issued pursuant to the Beehive Grant Program.

"Individual" means a beekeeper registered with the Department of Agriculture and Consumer Services.

B. Beginning January 1, 2013, any individual who either purchases a new hive or purchases materials or supplies to construct a new hive may apply for a grant from the Fund. Such grant shall be in an amount equal to $200 per new hive, not to exceed $2,400 per individual per year.

C. An individual shall apply to the Department for a grant for purchase or construction of new hives. Grants shall be issued in the order that each completed eligible application is received. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the Fund, such grants shall be paid in the next fiscal year in which funds are available.

D. The Department shall develop guidelines setting forth the general requirements of qualifying for a grant.

E. The Department shall compile, maintain, and distribute electronically a Virginia Beekeeping Guide to provide information to beekeepers on beekeeping.

2012, cc. 412, 473.

Chapter 45 - GRADING, PACKING, AND MARKING OF APPLES

§ 3.2-4500. Definitions

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

"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.

Code 1950, § 3-512.1; 1954, c. 697; 1966, c. 702, § 3.1-611; 1999, c. 793; 2008, c. 860.

§ 3.2-4501. Grades and standards

The Board shall establish and 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.

Code 1950, § 3-512.5; 1954, c. 697; 1966, c. 702, § 3.1-615; 1999, c. 793; 2008, c. 860.

§ 3.2-4502. Marking containers; contents to conform to markings

It is unlawful for apples, except apples delivered for processing or packing or delivered to storage for packing, 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 chapter, and the name and address of the producer's or packer's business; and

2. The apples in each container conform to the markings appearing on the container.

Code 1950, § 3-512.2; 1954, c. 697; 1966, c. 702, § 3.1-612; 1999, c. 793; 2008, c. 860.

§ 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 chapter shall be substituted.

Code 1950, § 3-512.3; 1954, c. 697; 1966, c. 702, § 3.1-613; 1999, c. 793; 2008, c. 860.

§ 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.

Code 1950, § 3-512.4; 1954, c. 697; 1966, c. 702, § 3.1-614; 1999, c. 793; 2008, c. 860.

§ 3.2-4505. Enforcement of chapter

The 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 all apples, containers and equipment found in any such places.

2. Institute injunction proceedings for violations of any provision of this chapter or regulation adopted hereunder in any circuit court in any county or city of the Commonwealth where apples may be found improperly marked in violation of any provision of this 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 chapter or regulation adopted here-under until such apples are properly marked and released in writing by the Commissioner.

Code 1950, § 3-512.6; 1954, c. 697; 1966, c. 702, § 3.1-616; 1999, c. 793; 2008, c. 860.

§ 3.2-4506. Penalty for violation

A. Any person, except a contract or common carrier, who moves or causes to be moved any apples, the movement of which has been prohibited in writing as provided in § 3.2-4505, is guilty of a Class 1 misdemeanor.

B. Any person who violates any provision of this chapter is guilty of a Class 1 misdemeanor.

Code 1950, § 3-512.7; 1954, c. 697; 1966, c. 702, § 3.1-617; 1999, c. 793; 2008, c. 860.

Chapter 46 - CONTROLLED ATMOSPHERE STORAGE OF APPLES AND PEACHES

§ 3.2-4600. Definitions

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

"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.

"Fruit" means any apples and peaches.

Code 1950, § 3-710; 1964, c. 214; 1966, c. 702, § 3.1-991; 1997, c. 179; 2008, c. 860.

§ 3.2-4601. Regulations

The Board may adopt regulations, after consultation with the Board of Directors of the Virginia State Horticultural Society or the Virginia Apple Growers Association, that:

1. Prescribe components of the atmosphere required including the maximum amount of oxygen that may be retained in a sealed controlled atmosphere storage warehouse;

2. Determine the length of time, not 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 shall be classified as having been stored in controlled atmosphere storage; and

3. Prescribe grade and condition standards applicable to CA apples.

Code 1950, § 3-716; 1964, c. 214; 1966, c. 702, § 3.1-997; 1973, c. 199; 1997, c. 179; 2008, c. 860.

§ 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 may register with the Commissioner. Such registration shall expire on August 31 of each year.

Code 1950, § 3-713; 1964, c. 214; 1966, c. 702, § 3.1-994; 2008, c. 860.

§ 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. The full name of the person applying for registration;

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. The principal business address of the applicant;

4. The name of a person domiciled in the Commonwealth authorized to receive and accept service or legal notices of all kinds;

5. The storage capacity, by cubic capacity or volume, of each controlled atmosphere storage warehouse the applicant intends to operate;

6. The kind of fruits to be placed in controlled atmosphere storage; and

7. Any other information prescribed by the Commissioner necessary to carry out the provisions of this chapter.

B. The Commissioner shall register an applicant if he determines that the applicant has satisfied the requirements of this chapter 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."

Code 1950, §§ 3-714, 3-718; 1964, c. 214; 1966, c. 702, §§ 3.1-995, 3.1-999; 2008, c. 860.

§ 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 that such fruits meet the requirements provided for in this chapter or regulations adopted hereunder.

Code 1950, § 3-719; 1964, c. 214; 1966, c. 702, § 3.1-1000; 2008, c. 860.

§ 3.2-4605. Fees

The Board shall prescribe the 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 regulations adopted hereunder. In no case shall the fees exceed the fees charged for inspection of fruit not under CA storage. If the inspection fees payable under this chapter are not paid within 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. The Commissioner may demand and collect inspection and certification fees prior to inspecting and certifying any fruits for such person.

Code 1950, § 3-720; 1964, c. 214; 1966, c. 702, § 3.1-1001; 2008, c. 860.

§ 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 subsection B of § 3.2-3400, for the handling of inspection and certification fees derived from the inspection of any agricultural products.

Code 1950, § 3-722; 1964, c. 214; 1966, c. 702, § 3.1-1003; 2008, c. 860.

§ 3.2-4607. Fruit represented as exposed to controlled atmosphere storage to meet requirements of chapter

It 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 that complies with the requirements of this chapter or regulations adopted hereunder.

Code 1950, § 3-711; 1964, c. 214; 1966, c. 702, § 3.1-992; 2008, c. 860.

§ 3.2-4608. Inspection and certification of fruit by Commissioner

It is unlawful for any person to place or stamp the letters "CA" or a similar designation in conjunction with a number upon any container or subcontainer of any fruits, unless:

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 regulations adopted hereunder; and

2. A certificate number and certificate date is affixed to all shipping documents.

Code 1950, § 3-712; 1964, c. 214; 1966, c. 702, § 3.1-993; 2008, c. 860.

§ 3.2-4609. Denial, suspension or revocation of registration

The Commissioner may deny, suspend or revoke registration provided for in § 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 regulations adopted hereunder. All 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.

Code 1950, § 3-717; 1964, c. 214; 1966, c. 702, § 3.1-998; 2008, c. 860.

§ 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.

Code 1950, § 3-721; 1964, c. 214; 1966, c. 702, § 3.1-1002; 2008, c. 860.

§ 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.

Code 1950, § 3-723; 1964, c. 214; 1966, c. 702, § 3.1-1004; 2008, c. 860.

§ 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 regulation adopted hereunder in the circuit court having jurisdiction in the county or city where such violation occurs or is about to occur, notwithstanding the existence of any other remedies of law.

Code 1950, § 3-724; 1964, c. 214; 1966, c. 702, § 3.1-1005; 2008, c. 860.

§ 3.2-4613. Violations of chapter and regulations

Any person violating the provisions of this chapter or regulations adopted hereunder is guilty of a Class 1 misdemeanor.

Code 1950, § 3-726; 1964, c. 214; 1966, c. 702, § 3.1-1007; 2008, c. 860.

Chapter 47 - SALE OF FARM PRODUCE

Article 1 - 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.

Code 1950, § 3-526; 1966, c. 702, § 3.1-685; 1978, c. 396; 1993, c. 115; 2008, c. 860.

§ 3.2-4701. Division of Marketing; administration; appointment of Director and assistants; responsibilities

A. The Division is hereby established within the Department, and shall be administered under the supervision of the Commissioner by the Director, who shall be qualified for the performance of his duties by training and experience.

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.

Code 1950, § 3-526; 1966, c. 702, § 3.1-685; 1978, c. 396; 1993, c. 115; 2008, c. 860.

§ 3.2-4702. Powers and duties of Director

In the administration of the Division, the Director, under the supervision of the Commissioner:

1. Shall investigate: (i) the cost of food production and marketing; (ii) the market demand for the products of Virginia farms; (iii) the proximity of producers 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;

2. Shall conduct analyses to determine whether the agricultural products of the Commonwealth are being subjected to unfair competition from agricultural products or manufactured substitutes;

3. May assist in the organization of 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 such products, and in the purchase of their necessary supplies;

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.

Code 1950, §§ 3-527, 3-531; 1966, c. 702, §§ 3.1-686, 3.1-690; 1993, c. 115; 2008, c. 860.

§ 3.2-4703. Cooperation of 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 U.S. Department of Agriculture. It shall analyze: (i) the methods suggested by the U.S. Department of Agriculture for the promotion of economical and efficient marketing of agricultural products; and (ii) statistical information applicable to the marketing of Virginia agricultural products. When it is advisable and not inconsistent with the requirements of this chapter or of any other law of the Commonwealth, the Division shall endeavor to adopt any methods of marketing that may be suggested by the U.S. Department of Agriculture.

Code 1950, § 3-530; 1966, c. 702, § 3.1-689; 2008, c. 860.

§ 3.2-4704. Regulations

The Board may adopt any marketing agreement approved by federal officials under the federal Agricultural Adjustment Act (7 U.S.C. § 1281 et seq.) and similar acts of Congress.

1993, c. 115, § 3.1-690.1; 2008, c. 860.

§ 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 shall 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 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 advisable, provide information as to the available supplies of agricultural products the demand in several markets for such products. The Division may also prepare and distribute bulletins describing the most efficient and economical methods of standardization, storage, packing, transportation, and marketing of agricultural products. The Division shall determine the sources of supply of agricultural products and prepare and publish lists of the names and addresses of producers and consignors and supply this information to interested persons.

Code 1950, § 3-528; 1966, c. 702, § 3.1-687; 1993, c. 115; 2008, c. 860.

§ 3.2-4706. Finding markets for producers

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, the Division shall investigate and make suggestions to the producers, and may assist the producers in any practicable manner in finding a satisfactory market for the products in question.

Code 1950, § 3-529; 1966, c. 702, § 3.1-688; 1993, c. 115; 2008, c. 860.

§ 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.

Code 1950, § 3-529; 1966, c. 702, § 3.1-688; 1993, c. 115; 2008, c. 860.

§ 3.2-4708. Penalty

Any person violating any provision of this article, a regulation or marketing agreement adopted pursuant thereto, is guilty of a Class 3 misdemeanor.

1993, c. 115, § 3.1-690.2; 2008, c. 860.

Article 2 - COMMISSION MERCHANTS

§ 3.2-4709. Definitions

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

"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.

"Commission merchant" means any person, who: (i) operates an auction market; (ii) receives farm products for sale on commission or contracts with the producer for farm products sold on commission or for a fee; (iii) accepts in trust from the producer for the purpose of sale; (iv) sells or offers for sale on commission; (v) solicits consignments of any kind of farm products; or (vi) handles the account of or as an agent of the producer any kind of farm products. 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.

"Commission merchant" shall not include: (i) any cooperative corporation or association that is subject to the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1; (ii) any association or organization of farmers, including produce exchanges, not incorporated under or subject to the provisions of 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; (iii) any person buying vegetables, viticulture, or horticultural farm products for the purpose of reselling these products in dried, canned, or other preserved form; (iv) the sale of farm produce at public auction by a licensed auctioneer, acting as the agent of another to whom such farm produce is consigned; (v) the sale by sheriffs and other officers and fiduciaries and court officials; (vi) seed sold at retail; or (vii) persons licensed pursuant to the provisions of Article 3 (§ 3.2-4738 et seq.) of this chapter.

"Farm produce" or "farm products" means horticultural, viticulture, 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.

Code 1950, § 3-534; 1966, c. 702, § 3.1-692; 1975, c. 505; 1977, c. 21; 2008, c. 860.

§ 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.

Code 1950, § 3-534; 1966, c. 702, § 3.1-692; 1975, c. 505; 1977, c. 21; 2008, c. 860.

§ 3.2-4711. 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 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.

Code 1950, §§ 3-536, 3-537; 1966, c. 702, §§ 3.1-694, 3.1-695; 2008, c. 860.

§ 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 amount of $3,000 for all applications other than for livestock auction markets, in which case the application, together with the fee, shall be accompanied by a 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 that entitles the applicant to a license to expire on December 31.

Code 1950, § 3-538; 1952, c. 387; 1966, c. 702, § 3.1-696; 2008, c. 860.

§ 3.2-4713. Applications for renewal licenses

Each licensee shall renew his license. 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.

Code 1950, § 3-539; 1966, c. 702, § 3.1-697; 2008, c. 860.

§ 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.

Code 1950, § 3-540; 1966, c. 702, § 3.1-698; 2008, c. 860.

§ 3.2-4715. Certified copy of license; fee; posting of license during sale periods

A certified copy of an issued license may be obtained by the holder of the original upon payment of a fee of $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.

Code 1950, § 3-553; 1966, c. 702, § 3.1-711; 2008, c. 860.

§ 3.2-4716. Bond not required for certain auction sales of livestock

No bond shall be required of any person operating a livestock auction market or stockyard that has been posted by the U.S. Department of Agriculture and is being operated under and pursuant to the terms and provisions of the Packers and Stockyards Act of 1921 (42 Stat. 159), as amended.

Code 1950, § 3-541; 1960, c. 250; 1966, c. 702, § 3.1-699; 2008, c. 860.

§ 3.2-4717. Agreements with U.S. Department of Agriculture; powers and duties of Commissioner as to bonds filed with U.S. Department of Agriculture

The Commissioner may enter into agreements with the U.S. Department of Agriculture 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 U.S. Department of Agriculture, and in such capacity the Commissioner may: (i) settle, allow or reject claims arising against the bonds or other security; (ii) rely on the investigative reports and recommendations of the U.S. Department of Agriculture; and (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. The Commissioner may appeal a decision of any court that is contrary to any distribution recommended or authorized by him.

1976, c. 44, § 3.1-699.1; 1985, c. 354; 2008, c. 860.

§ 3.2-4718. Execution and terms of bond; action thereon

The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in the Commonwealth as surety or by such personal surety as may be approved by the circuit court of the locality where the applicant resides or has his principal office. The bond shall be conditioned upon compliance with the provisions of this article and upon the faithful and honest handling of farm products in accordance with the terms of this article. The bond shall be to the Commonwealth 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 upon the bond against either the principal, or the surety, or both in 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 the consignor.

Code 1950, § 3-542; 1966, c. 702, § 3.1-700; 2008, c. 860.

§ 3.2-4719. 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 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 received such notice and believes the claim is valid. If the Commissioner believes the claim to be invalid, he shall notify the claimant. The claimant shall then have his remedy pursuant to § 3.2-4718. The Commissioner may appeal a decision of any court that is contrary to any distribution recommended or authorized by him.

1985, c. 354, § 3.1-700.1; 2008, c. 860.

§ 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 commissions and charges shall not be changed for one year thereafter, except by a written contract between the commission merchant and the consignors of farm products. A person operating a livestock auction market or stockyard that has been posted by the U.S. Department of Agriculture and is being operated pursuant to the provisions of the Packers and Stockyards Act of 1921 (42 Stat. 159), as amended, may change his schedule of

maximum commissions and charges if such changes are filed with the U.S. Department of Agriculture and are approved. These changes shall be posted with the Commissioner.

Code 1950, § 3-543; 1966, c. 702, § 3.1-701; 1968, c. 306; 2008, c. 860.

§ 3.2-4721. Investigation of transactions by Commissioner

The Commissioner, upon the verified complaint of any interested party shall, or upon his own motion may, investigate:

1. Any transaction involving solicitation, receipt, sale, or attempted sale of farm products by any person acting 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 as required in this article;

3. Any transaction in which produce consigned to a commission merchant is disposed of to a person composed substantially of the same persons as stockholders, members, or others, who compose the commission merchant;

4. The intentional making of false statements by a commission merchant as to condition, grade, or quality of any farm products received or in storage;

5. The intentional making of false statements by a commission merchant as to market condition;

6. The failure of any commission merchant to make payment for farm products within the time required by this article; or

7. Any other injurious transaction arising out of the sale of farm produce on commission.

Code 1950, § 3-544; 1966, c. 702, § 3.1-702; 2008, c. 860.

§ 3.2-4722. Complaint to Commissioner by consignor; Commissioner's action

A. When a consignor of farm products to a commission merchant files a complaint with the commission merchant within 90 days after date of sale, and has failed to obtain a satisfactory settlement of the complaint within 10 days after the filing of the complaint, a complaint setting forth the facts may be filed with the Commissioner, who shall undertake a settlement of the matter.

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.

Code 1950, §§ 3-545, 3-546; 1966, c. 702, §§ 3.1-703, 3.1-704; 1976, c. 164; 2008, c. 860.

§ 3.2-4723. Right of entry; administration of oaths; testimony

The Commissioner may:

1. Conduct investigations relative to the complaint or matter being investigated, and he shall have at all times 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.

Code 1950, §§ 3-547, 3-548; 1966, c. 702, §§ 3.1-705, 3.1-706; 2008, c. 860.

§ 3.2-4724. Grounds for refusal or revocation of license

The Commissioner may refuse to grant a license, delay the issuance of a license, or revoke any license when he finds that:

1. A money judgment that has been entered against a commission merchant has not been satisfied;

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;

3. The licensee has failed to render a true account of sales, or to settle promptly and within the time and in the manner required by this article;

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;

5. The licensee has made false or misleading statements as to market conditions;

6. There has been a combination to fix prices;

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 by the consignor. This subdivision shall not apply to 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;

8. The licensee has made fictitious sales or has been guilty of collusion to defraud the consignor;

9. The licensee has reconsigned the farm products to another person 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 the shipment was reconsigned;

10. The licensee sells farm products consigned to him or it, to another person owned or controlled by the licensee, or in which the licensee may have a financial or other interest, either directly or

indirectly, and no notice 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 the licensee has a financial or other interest;

11. The licensee was intentionally guilty of fraud or deception in the procurement of the license;

12. The licensee has failed to file with the Commissioner a schedule of his maximum commissions and other charges for services 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;

13. The licensee has failed to obey and comply with any order of the Commissioner entered pursuant to the provisions of subsection B of § 3.2-4722 within the time specified in such order, or in the case of an appeal within 10 days of the time the Commissioner's order became final;

14. The licensee has failed to comply with any assurance the Commissioner has required pursuant to subsections C and D of § 3.2-4711; or

15. The licensee, his agents, contractors, or employees are guilty of violating any provision of this section.

Code 1950, § 3-551; 1966, c. 702, § 3.1-709; 1979, c. 389; 2008, c. 860.

§ 3.2-4725. Publication of revocation

When a license is revoked, 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 selected by 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.

Code 1950, § 3-552; 1966, c. 702, § 3.1-710; 2008, c. 860.

§ 3.2-4726. Failure to comply with orders of Commissioner constitutes contempt

All parties disobeying the orders or subpoenas of the Commissioner are guilty of contempt and shall be certified to an appropriate court for punishment.

Code 1950, § 3-549; 1966, c. 702, § 3.1-707; 2008, c. 860.

§ 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.

Code 1950, § 3-550; 1966, c. 702, § 3.1-708; 2008, c. 860.

§ 3.2-4728. Appeal from orders and actions of Commissioner

Any action of the Commissioner: (i) entering any order pursuant to subsection B of § 3.2-4722; (ii) refusing to grant a license; (iii) revoking a license already granted to a commission merchant; 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.).

Code 1950, § 3-554; 1966, c. 702, § 3.1-712; 1976, c. 164; 1986, c. 615; 2008, c. 860.

§ 3.2-4729. Records to be kept by commission merchant

Every commission merchant, having received any farm products for sale on commission, shall promptly maintain a complete and true record, showing in detail the following with reference to the handling, sale, or storage of such farm products:

1. The name and address of the consignor;

2. The date received;

3. The condition, grade, and quantity on arrival;

4. The date of such sale for the account of the consignor;

5. The sale price;

6. An itemized statement of the charges to be paid by the consignor in connection with the sale;

7. A lot number or other identifying mark that shall appear on all sales tags or tickets or on any other essential records needed to show the sale price of the products; and

8. Records of auction sales of farm produce or farm products, 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 that is altered shall bear the full signature of the person authorized to make, and who is responsible for, the alteration.

Code 1950, § 3-555; 1966, c. 702, § 3.1-713; 1979, c. 389; 2008, c. 860.

§ 3.2-4730. Detailed statements shall be kept of claims for overcharges or damages filed by commission merchant for consignor

A detailed statement shall be kept of the filing of any claim 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 farm products by the act, neglect, or failure of such person. Such records shall be open for inspection by the Commissioner and the consignor of farm products for whom such claim is made. The money returns, if any, collections, or damages received by the commission merchant for and on behalf of consignor of farm products by reason of the overcharges, damages or deterioration shall immediately be paid to the consignor of farm products less charges for collection, in accordance with the schedule of charges filed under § 3.2-4720.

Code 1950, § 3-556; 1966, c. 702, § 3.1-714; 2008, c. 860.

§ 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 completion of the sale. All moneys received by 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 10 days after receipt of the

moneys by the commission merchant, unless otherwise agreed in writing. The names and addresses of purchasers need not be given unless demanded in cases of complaint.

Code 1950, § 3-557; 1966, c. 702, § 3.1-715; 2008, c. 860.

§ 3.2-4732. Copies of records to be kept by commission merchant

Every commission merchant 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 of the transaction. The copy shall at all times be available for, and open to, confidential inspection by the Commissioner, and the interested consignor or his authorized representative.

Code 1950, § 3-558; 1966, c. 702, § 3.1-716; 1968, c. 306; 1979, c. 389; 2008, c. 860.

§ 3.2-4733. Certificate establishing condition, quality, and grade to be furnished by Commissioner in event of dispute

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, the Commissioner shall furnish, upon the payment by the requesting party of the necessary expenses, a certificate establishing the condition, quality, grade, pack, quantity or weight of such lot, shipment, or consignment. The certificate shall be prima facie evidence in all courts of the Commonwealth as 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 that may be questioned.

Code 1950, § 3-559; 1966, c. 702, § 3.1-717; 2008, c. 860.

§ 3.2-4734. Duty of attorney for the Commonwealth

It shall be the duty of the attorney for the Commonwealth to prosecute all violations of this article.

Code 1950, § 3-561; 1966, c. 702, § 3.1-719; 2008, c. 860.

§ 3.2-4735. Venue

Civil suits and criminal prosecutions arising by virtue of any provision of this article may be commenced and tried in: (i) the city or county where the products were received by the commission merchant; (ii) the city or county where the principal place of business of the commission merchant is located within the Commonwealth; or (iii) the city or county where the violation occurred.

Code 1950, § 3-562; 1966, c. 702, § 3.1-720; 2008, c. 860.

§ 3.2-4736. License required

A. It is unlawful for any person to act as, operate, or carry on the business of a commission merchant without first obtaining a license.

B. Any person who violates this section is guilty of a Class 1 misdemeanor.

Code 1950, § 3-535; 1966, c. 702, § 3.1-693; 2008, c. 860.

§ 3.2-4737. Offenses and punishment

Any person who commits any of the following acts is guilty of a Class 1 misdemeanor:

1. Imposes false charges for handling or for services in connection with farm products;

2. Fails to account promptly, correctly, fully and properly and to make settlement as provided in this article;

3. Makes false and misleading statements as to market conditions with the intent to deceive;

4. Makes fictitious sales or collusion to defraud the consignor, or enters into any combination to fix prices;

5. Directly or indirectly 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 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;

6. Intentionally makes false statements as to grade, condition, markings, quality, or quantity of farm products shipped or packed;

7. Reconsigns farm products as have been consigned to him to another person, unless consent of the consignor has been first obtained in writing, or notice given in writing to the consignor by the licensee that all or a part of such shipment was reconsigned;

8. Sells farm products consigned to him to another person owned or controlled by him, or in which the licensee may 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 the licensee has a financial or other interest;

9. Fraudulently or deceptively obtains a license;

10. Fails or neglects to give written notice immediately to the Commissioner and the surety on the bond of 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

11. Fails to comply with the provisions of this article.

Code 1950, § 3-560; 1966, c. 702, § 3.1-718; 1979, c. 389; 2008, c. 860.

Article 3 - DEALERS IN AGRICULTURAL PRODUCE

§ 3.2-4738. Definitions

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

"Agricultural produce" means fruits and vegetables.

"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 produce at the day's price for the agricultural 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 produce or contracts for the title, possession or control of any agricultural produce, and who buys any agricultural 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 produce, the agreed price of such agricultural produce in coin or currency, certified checks, cashier's checks or drafts issued by a bank.

"Consignment" means any transfer of agricultural 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 produce.

"Day's price" means the market price of any agricultural produce on a given day as determined by the U.S. Department of Agriculture and published by the Division.

"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 produce of a producer. The term shall exclude: (i) any person operating solely on a commission basis in Virginia as a licensed commission merchant under the provisions of Article 2 of this chapter; (ii) farmers or groups of farmers selling agricultural produce grown by them; (iii) any person who operates strictly as a cash buyer; (iv) any processor who processes agricultural produce within Virginia; and (v) any person who buys agricultural produce for wholesale or retail in Virginia.

"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 produce sells in relation to the price agreed upon between the dealer and grower.

"Processor" means any person operating any plant in the Commonwealth that freezes, dehydrates, cans, or otherwise changes the physical form or characteristics of agricultural produce.

"Producer" means any person who produces agricultural produce in Virginia.

1968, c. 598, § 3.1-722.1; 1970, c. 400; 1972, c. 646; 1994, c. 340. 2008, c. 860.

§ 3.2-4739. 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. 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

$50 per licensing year. Each license shall expire on April 30 of the licensing year for which the license was issued. The license shall be valid through May 31 of the next licensing year or until issuance of the renewal license, whichever occurs first, if the holder 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 issued the license Any dealer 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 pay a $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, if any, and the location of its principal place of business within the Commonwealth;

2. The kinds of agricultural 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.

1968, c. 598, §§ 3.1-722.2, 3.1-722.3; 1994, c. 340, § 3.1-722.6:1; 2008, c. 860.

§ 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.

1968, c. 598, § 3.1-722.4; 1972, c. 646; 1977, c. 21; 1994, c. 340; 2008, c. 860.

§ 3.2-4741. Execution, terms and form of bond; action on bond

A. The bond 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 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 15 working days for the applicant to file the bond without penalty. Any applicant who fails to file a

bond by the 15th day of the grace period, shall be subject to all applicable late fees and penalties as stated in §§ 3.2-4739 and 3.2-4751 before a license will be issued.

B. 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 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 upon the bond against the principal, or the surety, or both in an appropriate court.

1968, c. 598, § 3.1-722.5; 1994, c. 340; 2008, c. 860.

§ 3.2-4742. 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 received notice and believes the claim is valid. If the Commissioner believes the claim is invalid, he shall notify the claimant. The claimant shall then have his remedy pursuant to § 3.2-4741. The Commissioner may appeal a decision of any court that is contrary to any distribution recommended or authorized by him.

1985, c. 354, § 3.1-722.5:1; 2008, c. 860.

§ 3.2-4743. 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 moneys received by the Commissioner for license fees, license renewals, late fees, and penalties 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 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.

1968, c. 598, § 3.1-722.7; 1994, c. 340; 2008, c. 860.

§ 3.2-4744. Records to be kept by dealers

Every dealer that has received any agricultural produce from a producer shall keep a complete and true record and retain it for three years, showing in detail the following with reference to the handling or sale of such agricultural produce, along with 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 produce to another; and

5. The sale price.

1968, c. 598, § 3.1-722.8; 1994, c. 340; 2008, c. 860.

§ 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 produce shall be filed with the Commissioner within 10 days of the signing of such contract.

1972, c. 646, § 3.1-722.14; 2008, c. 860.

§ 3.2-4746. Commissioner's authority to inspect

A. Upon the complaint of any person, the Commissioner may inspect the books and records of any licensed dealer at any time during operating hours and shall have free access to the place where the business is operated.

B. Upon the complaint of any person or upon his own initiative, the Commissioner may inspect the books and records of any person, other than a licensed dealer, who solicits, or attempts to solicit, receipt, sale, or transfer of agricultural produce. The Commissioner shall conduct such inspections at any time during operating hours. The Commissioner t shall have the right of access to the place where the person's business is operated, or the place where his books and records are kept.

1968, c. 598, § 3.1-722.9; 1970, c. 400; 1972, c. 646; 1994, c. 340; 2008, c. 860.

§ 3.2-4747. Refusal or revocation of license

A. The Commissioner may refuse to grant a license, delay the issuance of a license, or revoke or suspend any license already granted when he finds that the dealer:

1. Has not satisfied a money judgment entered against him;

2. Has failed to promptly and properly account or to promptly and properly pay for agricultural produce;

3. Has made a false or misleading statement as to market conditions or the service rendered;

4. Has perpetrated a fraud or engaged in deceit in procuring the license;

5. Has engaged in any fraudulent or deceitful practices in his dealings with producers; or

6. Has failed to comply with any provisions of this article or any regulations adopted by the Board.

B. For the purposes of this section the terms:

"Promptly and properly account," except when otherwise specifically agreed upon in writing by the parties, means providing a complete and true accounting: (i) in connection with buying brokerage

transactions, within 24 hours after the date of delivery of the agricultural produce to their first destination; (ii) in connection with consignment or joint account transactions, within 10 days after the date of final sale 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; and (iii) in connection with a consignment or joint account transaction, within 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.

"Promptly and properly pay" means payment within 30 days of the receipt of the 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 produce sells at or for less than the agreed price, the dealer pays the agreed price to the grower. If the 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.

1968, c. 598, § 3.1-722.10; 1972, c. 646; 1980, c. 277; 1994, c. 340; 2008, c. 860.

§ 3.2-4748. Hearing before the Commissioner

Before the Commissioner refuses or 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.).

1970, c. 400, § 3.1-722.12; 1994, c. 340; 2008, c. 860.

§ 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.

1968, c. 598, § 3.1-722.11; 1994, c. 340; 2008, c. 860.

§ 3.2-4750. Operating without a license

It is unlawful for any dealer to operate and conduct a business without first having obtained a license.

1968, c. 598, § 3.1-722.2; 1994, c. 340; 2008, c. 860.

§ 3.2-4751. Penalty for violation of article

Any person who intentionally violates any provision of this article or regulations promulgated hereunder is guilty of a Class 1 misdemeanor.

1968, c. 598, § 3.1-722.11; 1994, c. 340; 2008, c. 860.

§ 3.2-4752. Reciprocal agreements with other states and federal government

The Commissioner 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 that have similar purposes as this article.

1972, c. 646, § 3.1-722.15; 2008, c. 860.

Article 4 - DEALERS IN GRAIN PRODUCTS

§ 3.2-4753. Definitions

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

"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.

"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 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.

"Loss" means any monetary loss to a producer as a result of doing business with a dealer that shall include bankruptcy, embezzlement, theft or fraud.

"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.

1972, c. 296, § 3.1-722.16; 1982, c. 187; 2008, c. 860.

§ 3.2-4754. License required; application for license or renewal

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 shall annually on or before January 1, 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:

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 the Commonwealth;

2. The kinds of grain the applicant proposes to handle; and

3. The type of grain business proposed to be conducted.

1972, c. 296, §§ 3.1-722.17, 3.1-722.18; 2008, c. 860.

§ 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 an amount of $2,000 or an amount equal to the maximum amount of gross business done in any month in the Commonwealth 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. A person, who upon written request shows proof satisfactory to the Commissioner that he is a cash buyer, shall be exempted from the bonding or irrevocable letter of credit requirements. The exemption shall be granted within 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.

1972, c. 296, §§ 3.1-722.19, 3.1-722.21; 1982, c. 187; 2008, c. 860.

§ 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 shall be executed by the applicant as principal and by a surety company authorized and qualified to do business in the Commonwealth as surety. An irrevocable letter of credit may be issued on such terms as the Commissioner 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. The bond shall be 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 upon the bond against the principal, or the surety, or both in 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 as to the culpability of the dealer, if any.

1972, c. 296, § 3.1-722.20; 1982, c. 187; 2008, c. 860.

§ 3.2-4757. 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 received such notice and believes the claim is valid. If the Commissioner believes the claim to be invalid, he shall notify the claimant. The claimant shall then have his remedy pursuant to § 3.2-4756. The Commissioner may appeal a decision of any court that is contrary to any distribution recommended or authorized by him.

1982, c. 187, § 3.1-722.20:1; 1985, c. 354; 2008, c. 860.

§ 3.2-4758. 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 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.

1972, c. 296, § 3.1-722.22; 1975, c. 531; 1982, c. 187; 2008, c. 860.

§ 3.2-4759. Records to be kept by dealers

A. Every grain dealer in the Commonwealth 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.

1972, c. 296, § 3.1-722.23; 1982, c. 187; 2008, c. 860.

§ 3.2-4760. Grounds for refusal or revocation of license

The Commissioner may refuse to grant or renew any license, or revoke any license if he finds that the grain dealer:

1. Has not satisfied a final money judgment entered against him;

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. 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;

3. Has failed to maintain business records of his grain transactions as required;

4. Has failed to post current discounts where they can readily be reviewed by the producer or his representative;

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;

6. Has failed to file annually with the Commissioner the discount schedules for each grain purchased, including the effective date of the purchase, or has failed to make available upon request of the Commissioner during normal business hours any changes in the discount schedules that have been filed;

7. Has engaged in fraudulent or deceptive practices in the transaction of his business as a dealer;

8. Has failed to state on producers receipts the type of grain transactions that shall include storage, grain bank, grain exchange, price later, deferred payment, and contract;

9. Has failed to maintain a bond or letter of credit as required; or

10. Has violated any regulation adopted by the Board.

1972, c. 296, § 3.1-722.24; 1975, c. 85; 1982, c. 187; 2008, c. 860.

§ 3.2-4761. Procedure for refusal or revocation of license; notice of hearing

Before the Commissioner refuses or revokes a license, he shall give 10 days' notice by registered mail to the applicant or licensee of the time and place of hearing. The applicant or licensee may appear at the hearing in person, or with counsel and produce witnesses. If the Commissioner finds the applicant or licensee in violation of any act provided in § 3.2-4760, he may refuse, suspend, or revoke the license and shall give immediate notice of his action to the applicant or licensee.

1972, c. 296, § 3.1-722.25; 2008, c. 860.

§ 3.2-4762. Commissioner's authority to investigate

The Commissioner may conduct investigations relative to the complaint or matter being investigated, and 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.

1972, c. 296, § 3.1-722.26; 2008, c. 860.

§ 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 violates any of the provisions of this article or the regulations adopted by the Board 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 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 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, without the permission of the producer or his agent is guilty of a Class 6 felony.

1972, c. 296, § 3.1-722.28; 1982, c. 187; 2008, c. 860.

Article 5 - COTTON HANDLERS

§ 3.2-4764. Definitions

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

"Cotton gin" means a facility where cotton seed and cotton lint are produced from raw cotton.

"Cotton handler" means any person 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. 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 48 hours.

2000, c. 584, § 3.1-722.29; 2008, c. 860.

§ 3.2-4765. 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.

B. Every person intending to do business as a cotton handler, shall make application to the Commissioner for a license on or before July 1 of each year on a form provided by the Commissioner. Any license granted by the Commissioner shall expire on June 30 following the date of issuance. The application shall specify:

1. An address where the applicant will receive correspondence by first-class mail;

2. Every address 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.

C. The applicant shall submit with the application a nonrefundable application fee of $50.

D. Every person 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 § 3.2-4767. Nothing in this subsection shall require a person doing business as a cotton gin to be separately licensed or bonded as a cotton merchant.

E. Except as otherwise provided in subsection 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 § 3.2-4767.

F. In lieu of satisfying the requirements of subsection 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 24 hours after being notified by the U.S. Department of Agriculture.

2000, c. 584, §§ 3.1-722.30 to 3.1-722.32; 2008, c. 860.

§ 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.

2000, c. 584, § 3.1-722.33; 2008, c. 860.

§ 3.2-4767. Execution and terms of bond; action

Bonds required by § 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 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 hereunder, or has failed to settle promptly and accurately with the consignor, may bring action upon the cotton handler's bond against either the principal, or the surety, or both, in an appropriate court.

2000, c. 584, § 3.1-722.35; 2008, c. 860.

§ 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 received notice and believes the claim is valid. If the Commissioner believes the claim is invalid, he shall notify the claimant. The Commissioner may appeal a decision of any court that is contrary to any distribution recommended or authorized by him.

2000, c. 584, § 3.1-722.36; 2008, c. 860.

§ 3.2-4769. Investigation by Commissioner; right of entry and inspection

A. The Commissioner, upon receiving a complaint or upon his own motion, may 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 is or has been kept, stored, transported, or otherwise handled. In conducting the inspection, the Commissioner may enter any premises, including any building, yard, warehouse, storage facility, or transportation facility, in

which cotton or any related record 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 in making any inspection.

2000, c. 584, § 3.1-722.37; 2008, c. 860.

§ 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 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 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 person making the addendum.

C. Every cotton warehouse, receiving any cotton for storage, shall promptly 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 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.

2000, c. 584, § 3.1-722.38; 2008, c. 860.

§ 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 § 3.2-4770; and

2. Unless the consignor agrees otherwise in writing, within 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 10 days after transferring or selling cotton on behalf of the consignor, deliver to the consignor a copy of the record required under § 3.2-4770 and an account of the consignor's cotton transferred or sold.

2000, c. 584, § 3.1-722.39; 2008, c. 860.

§ 3.2-4772. Certificate establishing condition, quality, grade 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 U.S. Department of Agriculture, the burden of proof shall be on the cotton gin to prove the accuracy of its accounting as to any transaction that may be questioned by the consignor or the Commissioner, relating to condition, quality or grade of ginned cotton.

2000, c. 584, § 3.1-722.40; 2008, c. 860.

§ 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; (ii) number sequentially all finished cotton bales; and (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.

2000, c. 584, § 3.1-722.41; 2008, c. 860.

§ 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 § 3.2-4772 or 3.2-4775. The Commissioner shall provide reasonable notice of an informal fact-finding conference pursuant to § 2.2-4019 to any cotton handler in connection with the denial, suspension, or revocation of the cotton handler's license.

2000, c. 584, § 3.1-722.42; 2008, c. 860.

§ 3.2-4775. Offenses and punishment

Any cotton handler 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. 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;

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;

6. Fails to 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 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 the right of entry authorized by this article;

9. Knowingly provides false information on an application for license;

10. Fails to give reasonable written notice of any change in the style, name, or personnel of the cotton handler to the Commissioner or to the surety on the bond required by this article; or

11. Violates any provision of this article or regulation adopted hereunder.

2000, c. 584, § 3.1-722.43; 2008, c. 860.

Chapter 48 - COMMERCIAL FEED

§ 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.

"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 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 § 3.2-4808 : 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.

"Contract feeder" means a person who is an independent contractor and who: (i) feeds commercial feed to animals pursuant to a contract; (ii) is provided such commercial feed by a licensed distributor; and (iii) receives remuneration as determined all or in part by the amount of feed consumption, mortality, profits, or amount or quality of production.

"Custom mix feed" means a feed for which the customer provides ingredients.

"Customer-formula feed" means commercial feed 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.

"Distribute" means to: (i) offer or expose for sale, sell, warehouse, exchange, or barter commercial feed; or (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 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.

"Official sample" means a sample of feed taken by the Commissioner 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 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 10 pounds or less.

"Specialty pet" means any domesticated animal usually maintained in a cage or tank, including 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 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 an appropriate court, gives written permission to sell, relocate, use, or dispose of the lot of commercial feed or portion thereof.

"Ton" means a unit of 2,000 pounds avoirdupois weight.

1994, c. 743, § 3.1-828.2; 2008, c. 860.

§ 3.2-4801. Authority of the Board and the Commissioner to adopt regulations

A. The Board may adopt regulations for commercial feeds as are necessary to carry out the provisions of this chapter.

B. The Commissioner may adopt as a regulation:

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;

2. Any federal regulation that pertains to this chapter, amending it as necessary for intrastate applicability;

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; 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 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 subsections B, C, and D.

1994, c. 743, § 3.1-828.4; 2008, c. 860.

§ 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.

1994, c. 743, § 3.1-828.16; 2008, c. 860.

§ 3.2-4803. Licensing of manufacturers and guarantors of commercial feed

A. Any person who manufactures a commercial feed or 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 $50. Any person with multiple manufacturing facilities shall obtain a license and pay a license fee to the Commissioner for each manufacturing facility 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. Any license shall be valid through January 31 of the next ensuing year or until the issuance of the renewal license, whichever event occurs first, if the holder 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 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 $50 late fee to the Commissioner in addition to the license fee. The Commissioner 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 not issue a license 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.

1994, c. 743, § 3.1-828.6; 2008, c. 860.

§ 3.2-4804. Product registration required of commercial feed distributors

A. Any person who distributes: (i) medicated feed; (ii) small package commercial feed; or (iii) specialty pet food shall register those commercial feeds with the Commissioner and pay to the Commissioner the registration fees specified in this section. 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.

B. 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. Any registration shall be valid through January 31 of the next ensuing year or until the issuance of the renewal registration, whichever event occurs first, if the holder 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 $50 late fee to the Commissioner in addition to the registration fee. The Commissioner may issue a stop sale, use, removal, or seizure order on any nonregistered commercial feed until such registration is issued.

C. 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; (ii) pay a registration fee of $50 per medicated feed to the Commissioner by January 1; and (iii) submit a copy of the proposed label for such medicated feed for approval with the registration form. The manufacturer or guarantor is not required to register additional package sizes of the same medicated feed.

D. Every manufacturer or guarantor of small package commercial feed shall: (i) apply for registration for each small package commercial feed on forms furnished or approved by the

Commissioner; (ii) pay a registration fee of $50 to the Commissioner by January 1 per small package commercial feed, in lieu of an inspection fee for this size package; 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.

E. Every manufacturer or guarantor of a specialty pet food distributed in the Commonwealth in individual packages of one pound or less 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; (ii) pay a registration fee of $35 to the Commissioner by January 1 per specialty pet food to a maximum of $700 for this size package, in lieu of the inspection fee; and (iii) submit a copy of any label, used or proposed to be used with the specialty pet food, for approval with the registration form.

F. If the Commissioner, 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. The granting of registration does not constitute the Commissioner's recommendation or endorsement of the product.

G. If the Commissioner 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 15 working days from issuance of notification of nonregistration to the guarantor or manufacturer within which to register the product. Any guarantor or manufacturer who fails to register the product within the grace period shall pay a $50 late fee to the Commissioner in addition to the registration fee. The Commissioner may issue a stop sale, use, removal, or seizure order upon any commercial feed until the registration is issued.

1994, c. 743, §3.1-828.7; 2008, c. 860.

§ 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 ($0.07) 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 ($0.07) 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.

1994, c. 743, § 3.1-828.7; 2008, c. 860.

§ 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 shall be determinable by laboratory methods of sampling and analysis, as specified in § 3.2-4801;

4. The common or usual name of each ingredient used in the manufacture of the commercial feed. The Board may, by regulation: (i) permit the use of a collective term for a group of ingredients that perform a similar function; or (ii) exempt such commercial feeds, or any group 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. 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 A 3 with the ingredients as provided in subdivision A 4; (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, provided that the manufacturer or guarantor makes available a copy of the list of ingredients to the Commissioner at the location where the Commissioner 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; 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.

1994, c. 743, § 3.1-828.5; 2008, c. 860.

§ 3.2-4807. Misbranding

A. It is unlawful for any person who is a manufacturer or guarantor of commercial feed 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 § 3.2-4806;

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.

1994, c. 743, § 3.1-828.9; 2008, c. 860.

§ 3.2-4808. Adulteration

A. It is unlawful for any person who is a manufacturer or guarantor of a commercial feed to distribute a commercial feed if the commercial feed:

1. Contains any poisonous or deleterious substance 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;

2. Contains any added poisonous, added deleterious, or added nonnutritive substance 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, then subdivisions A 3 and A 4 shall govern;

3. Is, bears, or contains any food additive that is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;

4. Is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act. 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 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, 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, and that pesticide residue is unsafe within the meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act;

5. Is, bears or contains any color additive that is unsafe within the meaning of Section 721 of the Federal Food, Drug, and Cosmetic Act;

6. Is, bears, or contains any new animal drug that is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act;

7. 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;

8. 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;

9. 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 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 that it purports or is represented to possess. In 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 that exist in the Commonwealth; or

10. 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.

1994, c. 743, § 3.1-828.10; 2008, c. 860.

§ 3.2-4809. Inspection, sampling, and analysis

A. The Commissioner may enter and inspect 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.

B. The Commissioner may obtain samples from any premises during operating hours or any vehicle enumerated in subsection A, 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 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 § 3.2-4801.

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.

1994, c. 743, § 3.1-828.8; 2008, c. 860.

§ 3.2-4810. Assessments for variance from guaranteed analysis, misbranding, and adulteration

A. If the Commissioner determines that a commercial feed fails to meet the label guarantee within the analytical variations specified in § 3.2-4801, the Commissioner shall make an assessment against the guarantor on each pound of the lot of commercial feed represented by the sample and 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, 10 percent of the sales invoice price of the feed.

B. If the Commissioner determines that any commercial feed is misbranded as provided in § 3.2-4807 or adulterated as provided in § 3.2-4808, the Commissioner shall assess 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 that any person sold.

C. If the Commissioner finds a commercial feed in violation of subsection A or § 3.2-4807 or 3.2-4808, the Commissioner shall:

1. Assess the manufacturer or guarantor based on the violations that occur in a 90-day period, such period to begin on the date when the Commissioner sends notification of the violation to the manufacturer or guarantor. The 90-day period restarts upon each notification of violation to the manufacturer;

2. Assess the manufacturer or guarantor on violative commercial feeds that bear the same label and are from the same manufacturing location;

3. 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. Not assess the manufacturer or guarantor in excess of $5,000 per occurrence;

5. Assess a minimum of $200 for the first violation;

6. Assess a minimum of $400 for the second violation;

7. Assess a minimum of $800 for the third violation;

8. Assess a minimum of $1,600 for the fourth violation;

9. Assess a minimum of $3,200 for the fifth violation;

10. Assess a minimum of $5,000 for the sixth violation, and for each ensuing violation, without limitation;

11. Waive the initial $200 minimum assessment if the Commissioner finds that the violation of the commercial feed variance provision has not occurred within the 90-day period; and

12. Have the discretion not to make an assessment if the value of the deficiency of the initial violation is $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 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 § 3.2-4811. The Commissioner shall revoke the license of such person who fails to pay the assessment.

E. The Commissioner 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 collected a sample. The Commissioner 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.

1994, c. 743, § 3.1-828.11; 2008, c. 860.

§ 3.2-4811. Fee for late payment of assessments

Any manufacturer or guarantor who does not pay an assessment for variance from label guarantee within 60 days shall pay to the Commissioner a late payment fee of 10 percent of the assessment or $50, whichever is greater, in addition to the assessment for variance from label guarantee.

1994, c. 743, § 3.1-828.13; 2008, c. 860.

§ 3.2-4812. Prohibited acts

A. It is unlawful for a manufacturer or guarantor of commercial feed 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 § 3.2-4813;

4. Fail to obtain a license in accordance with § 3.2-4803;

5. Fail to register medicated feed, small package commercial feed, or specialty pet food in accordance with § 3.2-4804;

6. Obstruct or hinder the Commissioner in the performance of his duties under this chapter or otherwise attempt to prevent the Commissioner from performing these duties; or

7. Use metal of any kind, including 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. It shall be unlawful for any person to distribute agricultural commodities within the Commonwealth including whole seeds, hay, straw, stover, silage, cobs, husks, and hulls that, if such commodities were commercial feed, are adulterated within the meaning of § 3.2-4808.

1994, c. 743, § 3.1-828.12; 2008, c. 860.

§ 3.2-4813. Detained commercial feeds

A. The Commissioner 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 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 determines that the commercial feed cannot be brought into compliance with this chapter, the Commissioner shall release the commercial feed to be: (i) remanufactured, if possible; (ii) returned to the manufacturer; or (iii) destroyed.

B. The Commissioner may seize any lot of commercial feed not in compliance with this chapter. The Commissioner may make application for seizure to an appropriate court in the city or county 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 that, in the opinion of the Commissioner, is consistent with the quality of the commercial feed, and 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.

1994, c. 743, § 3.1-828.14; 2008, c. 860.

§ 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 the Feed, Lime, Fertilizer, and Animal Remedies Fund, established in § 3.2-3617. 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 ($0.07) 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 § 3.2-2905.

1994, c. 743, § 3.1-828.17; 2008, c. 860.

§ 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 many 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.

1994, c. 743, § 3.1-828.13; 2008, c. 860.

§ 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 § 3.2-4805.

1994, c. 743, § 3.1-828.7; 2008, c. 860.

§ 3.2-4817. Violation of chapter; penalty

Any person convicted of violating any provision of this chapter is guilty of a Class 3 misdemeanor.

1994, c. 743, § 3.1-828.13; 2008, c. 860.

Chapter 49 - ANIMAL REMEDIES

§ 3.2-4900. Definitions

As used in this chapter, 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 that are prepared or compounded for animal use; except those exempted by the Commissioner.

"Dosage form" means any animal remedy prepared in tablets, pills, capsules, ampules, or other units suitable for administration as an animal remedy.

"Drug" means 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) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals; (iii) other than food or cosmetics, intended to affect the structure or any function of the body of animals; or (iv) 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.

"Labeling" means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers or accompanying such article.

"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 that prohibits the distributor from selling, relocating, using, or disposing of an animal remedy in any manner, until the Commissioner or an appropriate gives written permission to sell, relocate, use or dispose of the animal remedy.

Code 1950, § 3-646.1; 1956, c. 517; 1966, c. 702, § 3.1-829; 1994, c. 910; 2008, c. 860.

§ 3.2-4901. Exemptions from chapter

The provisions of this chapter shall not apply to 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 provisions apply to any animal remedy sold exclusively to or used exclusively by licensed veterinarians.

Code 1950, § 3-646.11; 1956, c. 517; 1966, c. 702, § 3.1-841; 2008, c. 860.

§ 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 for the animal remedy before placing such remedy on the market, except for medicated feeds registered under 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 that includes:

1. The name and principal address of the manufacturer or person responsible for placing such animal remedy on the market 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, 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 that differ from the label submitted shall be filed with the Commissioner prior to use.

E. If the Commissioner after examination and investigation, finds that the application and labeling comply with the provisions of this chapter, a certificate of registration shall be issued to the applicant on payment of a registration fee as provided in § 3.2-4904.

F. 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."

G. 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.

H. The manufacturer or person responsible for placing on the market an animal remedy that is offered for sale, sold or otherwise distributed in the Commonwealth before it has been properly registered shall be subject to a late registration fee of $50 payable to the Commissioner in addition to the registration fee. The registrant shall pay the late registration fee before the registration is issued.

Code 1950, § 3-646.5; 1956, c. 517; 1966, c. 702, § 3.1-834; 1994, c. 910; 2008, c. 860.

§ 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 in correcting, alleviating, or mitigating animal injuries or diseases for which it is intended. The Commissioner may suspend or revoke any registration for violation of any provision of this chapter.

Code 1950, § 3-646.7; 1956, c. 517; 1966, c. 702, § 3.1-836; 2008, c. 860.

§ 3.2-4904. 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 a registration fee of $25 for each separate animal remedy registered. When an animal remedy has been registered and the registration fee paid by the manufacturer or distributor, no other person shall be required to pay such fee.

B. The registrant shall pay 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 occurs first, so long as the holder 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 registration fee to the Commissioner. The granting of registration does not constitute the Commissioner's recommendation or endorsement of the animal remedy.

C. If the Commissioner identifies any unregistered animal remedy in commerce in the Commonwealth during the registration year, the Commissioner shall give the person who is required to register the animal remedy, a grace period of 15 working days from issuance of notification 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 $50 late fee in addition to the registration fee. The Commissioner may issue a stop sale, use, removal, or seizure order upon any animal remedy until the registration is issued.

Code 1950, § 3-646.12; 1956, c. 517; 1966, c. 702, § 3.1-842; 1994, c. 910; 2008, c. 860.

§ 3.2-4905. Disposition of funds collected

All fees and assessments received by the Commissioner under this chapter shall be paid into the Feed, Lime, Fertilizer and Animal Remedies Fund, established in § 3.2-3617, to be used in carrying out the provisions of this chapter.

Code 1950, § 3-646.13; 1956, c. 517; 1966, c. 702, § 3.1-843; 1994, c. 910; 2008, c. 860.

§ 3.2-4906. Adulterated remedy

An animal remedy is adulterated if:

1. It was prepared or held under unsanitary conditions and as a result it: (i) may have become contaminated with filth; or (ii) may have been rendered injurious to animal health.

2. Its composition, purity, strength, or quality falls below or differs from what it is purported or is represented to possess by its labeling. The Commissioner shall allow a reasonable tolerance from such representation, 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 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 that may render it injurious to health.

Code 1950, § 3-646.2; 1956, c. 517; 1966, c. 702, § 3.1-831; 1994, c. 910; 2008, c. 860.

§ 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 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.

6. If any word, statement, or other information required to appear on the label 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, 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 U.S. Department of Agriculture, and in compliance with the regulations of such department complies with this section.

Code 1950, §§ 3-646.1, 3-646.3; 1956, c. 517; 1966, c. 702, §§ 3.1-829, 3.1-832; 1994, c. 910; 2008, c. 860.

§ 3.2-4908. Withholding noncomplying remedies from sale; tagging, condemnation, destruction, and correction of adulterated or misbranded remedies

A. The Commissioner shall require those animal remedies that are found or believed not to comply with the provisions of this chapter to be withheld from sale until he determines that the remedies are in compliance with such provisions.

B. Whenever the Commissioner 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 an appropriate court. Any such article may be removed from display by the manufacturer or vendor, but shall remain on the premises.

C. 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 in whose jurisdiction the article is detained for condemnation. If the Commissioner finds that such detained article is not adulterated or misbranded, he shall remove the tag or other marking.

D. 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. All court costs and fees, and storage and other proper expenses, shall be paid by the defendant or his agent.

E. If the adulteration or misbranding can be corrected by proper processing or labeling of the article, 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. 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 any of the provisions of this chapter and that expenses incident to such proceeding were paid.

Code 1950, § 3-646.4; 1956, c. 517; 1966, c. 702, § 3.1-833; 1994, c. 910; 2008, c. 860.

§ 3.2-4909. Investigations by Commissioner; right of access; securing and examining samples; obstructing Commissioner; penalty

The Commissioner shall make all necessary investigations pertinent to the enforcement of this chapter.

The Commissioner 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 the provisions of this chapter are being violated.

The Commissioner 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 the provisions of this chapter are being violated. Any person who hinders or obstructs in any way the Commissioner in the performance of his official duties is guilty of a Class 3 misdemeanor.

Code 1950, § 3-646.6; 1956, c. 517; 1966, c. 702, § 3.1-835; 1972, c. 741; 1994, c. 910; 2008, c. 860.

§ 3.2-4910. Use of information acquired by Commissioner or employees of Department

The Commissioner or any employee of the Department shall not use or reveal information acquired under §§ 3.2-4902 and 3.2-4909 except in the enforcement of this chapter, or to the courts, when relevant in any judicial proceeding.

Code 1950, § 3-646.8:1; 1956, c. 517; 1966, c. 702, § 3.1-838; 2008, c. 860.

§ 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 data on their production and use, 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. The information concerning production and use of animal remedies shall not disclose the operations of any person.

Code 1950, § 3-646.10; 1956, c. 517; 1966, c. 702, § 3.1-840; 2008, c. 860.

§ 3.2-4912. Prohibitions

A. It is unlawful for any person to:

1. Sell, deliver, hold, or offer for sale any animal remedy that has not been registered with the Commissioner as provided in § 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 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 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 that is false or misleading. 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 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 that caused him to disseminate such advertisement.

5. Dispose of a detained article in violation of § 3.2-4908.

6. Give a guaranty that is false, except a person who relied on the guaranty 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 the animal remedy being misbranded, or do any other act, while the animal remedy is being held for sale 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 § 3.2-4907.

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 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 regulations of the Board.

B. The Commissioner shall assess any person who commits a prohibited act under this chapter 10 percent of the retail price of the animal remedy at the time of sampling on the product found in violation, or $50, whichever is greater, not to exceed $5,000 per occurrence. The person assessed shall pay the assessment to the Commissioner within 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 $50 to the Commissioner in addition to the assessment. The Commissioner shall revoke the registration of any person who fails to pay the assessment.

Code 1950, § 3-646.8; 1956, c. 517; 1966, c. 702, § 3.1-837; 1994, c. 910; 2008, c. 860.

§ 3.2-4913. Report of violations; duty of attorney for the Commonwealth

The Commissioner shall report violations of this chapter to the 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 commence proceedings and prosecute without delay. This section shall not require the Commissioner 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.

Code 1950, § 3-646.14; 1956, c. 517; 1966, c. 702, § 3.1-844; 1972, c. 741; 1994, c. 910; 2008, c. 860.

§ 3.2-4914. Violation of chapter or regulations a misdemeanor

Any person convicted of violating any provisions of this chapter and the regulations issued hereunder is guilty of a Class 1 misdemeanor, except as otherwise provided.

Code 1950, § 3-646.15; 1956, c. 517; 1966, c. 702, § 3.1-845; 1994, c. 910; 2008, c. 860.

Chapter 50 - FARM MACHINERY AND EQUIPMENT

§ 3.2-5000. Sale of farm machinery or equipment where serial number has been removed, defaced or obliterated; penalty

A. It is unlawful for any person to sell or offer for sale in the Commonwealth any new agricultural implement, farm tractor, or other type of farm machinery or equipment, knowing that the manufacturer's original serial number has been removed, defaced, or in any way obliterated. 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 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.

Code 1950, § 3-707; 1952, c. 672; 1966, c. 702, § 13.1-918; 2008, c. 860.

Subtitle IV - FOOD AND DRINK; WEIGHTS AND MEASURES

Chapter 51 - FOOD AND DRINK

Article 1 - GENERAL PROVISIONS

§ 3.2-5100. Duties of Commissioner

A. It shall be the duty of the Commissioner to inquire into the dairy and food and drink products, and the articles that are food or drinks, or the necessary constituents of the food or drinks, that are manufactured, sold, exposed, or offered for sale in 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.

Code 1950, §§ 3-323 to 3-325; 1966, c. 702, §§ 3.1-402 to 3.1-404; 1972, c. 741; 2008, c. 860.

§ 3.2-5101. Board authorized to adopt regulations; exception

A. Whenever in the judgment of the Commissioner action will promote honesty and fair dealing in the interest of consumers, the Board shall 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. 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 that shall be named on the label. The definitions and standards so 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.

Code 1950, § 3-314; 1966, c. 702, § 3.1-394; 1996, c. 728; 2002, c. 218; 2008, c. 860.

§ 3.2-5102. Commissioner to have access to factories, warehouses, and other places; examination of samples

The Commissioner 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. Inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

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 chapter is being violated.

This section shall not apply to nonprofit organizations holding one-day food sales.

Code 1950, § 3-319; 1966, c. 702, § 3.1-399; 2003, c. 420; 2008, c. 860.

§ 3.2-5103. Standards of variability permissible to any article of food

The Commissioner with the approval of the Board shall establish and publish standards or limits of variability permissible in any article of food, and these standards shall be the standards before

all courts. When standards have been or may be established by the U.S. Department of Health and Human Services, they shall be accepted by the Department and published as standards for 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 adopt uniform regulations for carrying out the provisions of this section.

Code 1950, § 3-283; 1966, c. 702, § 3.1-364; 2008, c. 860.

§ 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.

Code 1950, § 3-282; 1966, c. 702, § 3.1-363; 1972, c. 741; 2008, c. 860.

Article 2 - SANITARY REQUIREMENTS

§ 3.2-5105. 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.

Code 1950, § 3-285; 1966, c. 702, § 3.1-365; 2008, c. 860.

§ 3.2-5106. Sanitary conditions of food establishments

A. Every place used for the preparation for sale, manufacture, packing, storage, sale, or distribution of any food shall be properly lighted, drained, plumbed, and ventilated, and shall be operated with strict regard for the purity and wholesomeness of the food produced, and with strict regard to the influence of such conditions upon the health of any worker or 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.

Code 1950, §§ 3-286, 3-287, 3-289; 1966, c. 702, §§ 3.1-366, 3.1-367, 3.1-369; 2008, c. 860.

§ 3.2-5107. Plastering and painting sidewalls and ceilings; interior woodwork; floors

A. Any place where food is manufactured, produced, prepared, processed, packed, or exposed shall: (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.

Code 1950, §§ 3-292 to 3-294; 1966, c. 702, §§ 3.1-372 to 3.1-374; 2008, c. 860.

§ 3.2-5108. Sleeping arrangements

The sleeping places for persons employed in 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 any manufactured products thereof are manufactured or stored.

Code 1950, § 3-296; 1966, c. 702, § 3.1-375; 2008, c. 860.

§ 3.2-5109. Washrooms and toilets

Any place where food is manufactured, prepared, exposed, or offered for sale shall 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.

Code 1950, § 3-301; 1966, c. 702, § 3.1-380; 2008, c. 860.

§ 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 any other process, shall be thoroughly cleaned daily.

Code 1950, § 3-290; 1966, c. 702, § 3.1-370; 2008, c. 860.

§ 3.2-5111. Food protected from flies, dust, and dirt

Food in the process of manufacture, preparation, packing, storing, sale, or distribution, shall be protected from flies, dust, dirt, and all other foreign or injurious contamination.

Code 1950, § 3-288; 1966, c. 702, § 3.1-368; 2008, c. 860.

§ 3.2-5112. Clothing of employees

The clothing of any worker or employee shall be clean.

Code 1950, § 3-291; 1966, c. 702, § 3.1-371; 2008, c. 860.

§ 3.2-5113. Employees with contagious or infectious disease

No employer shall knowingly permit or require any person to work in 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.

Code 1950, § 3-298; 1966, c. 702, § 3.1-377; 2008, c. 860.

§ 3.2-5114. Smoking

Smoking is prohibited in workrooms of food-producing establishments.

Code 1950, § 3-300; 1966, c. 702, § 3.1-379; 2008, c. 860.

§ 3.2-5115. Animals

No animal shall be permitted in any 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.

Code 1950, § 3-297; 1966, c. 702, § 3.1-376; 1997, c. 122; 2008, c. 860.

§ 3.2-5116. Metal beverage containers with detachable metal pull tabs

It is unlawful for any person 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. 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.

1976, c. 774, § 3.1-382.1; 1979, c. 358; 2008, c. 860.

§ 3.2-5117. Penalty for violation; misdemeanor

Any person violating any of the provisions of §§ 3.2-5106 through 3.2-5116 is guilty of a Class 3 misdemeanor.

Code 1950, § 3-301.1; 1966, c. 702, § 3.1-381; 2008, c. 860.

§ 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 shall be sterilized by one of the following methods before using:

1. By sterilization with boiling water or live steam; or

2. By soaking in a hot caustic solution that shall contain not less than three percent alkali, of which not less than 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 other equally efficient methods of sterilization are developed, the Commissioner may approve those methods of sterilization.

B. Any violation of this section is a Class 1 misdemeanor.

Code 1950, § 3-302; 1966, c. 702, § 3.1-382; 2008, c. 860.

§ 3.2-5119. Transportation or storage under unsanitary conditions; penalty

A. It shall be unlawful for any person or any common carrier to permit unsanitary conditions to exist in the transportation or storage of an article of food intended for introduction into commerce, if the unsanitary conditions may contaminate the article of food.

B. Any person who violates any of the provisions of this section is guilty of a Class 2 misdemeanor.

C. The Commissioner is empowered to enter and inspect all stores, warehouses, and any and all means or places of transportation or storage of articles of food. Any person who hinders or obstructs the Commissioner in the discharge of the authority or duty imposed upon him by the provisions of this section, is guilty of a Class 2 misdemeanor.

D. Whenever any article of food is transported or stored under unsanitary conditions, the proceedings for the enforcement 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 unsanitary conditions.

Code 1950, § 3-305; 1966, c. 702, § 3.1-385; 2008, c. 860.

Article 3 - ADULTERATION, MISBRANDING, AND FALSE ADVERTISING

§ 3.2-5120. Definitions

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

"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" means all articles used for food, drink, confectionery, or condiment, for humans or other animals, whether simple, mixed, or compound, and all substances or ingredients used in the preparation thereof.

"Immediate container" does not mean package liners.

"Label" means a display of written, printed, or graphic matter upon the immediate container of any article.

"Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

"Selling of food" 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.

Code 1950, § 3-307; 1966, c. 702, § 3.1-387; 2008, c. 860.

§ 3.2-5121. Authority to adopt regulations; conformity with federal regulations; hearings; enforcement of article; review of regulations

A. The Board is authorized to adopt regulations for the efficient enforcement of this article, unless that authority is specifically granted to the Commissioner. The Board may make the regulations adopted under this article conform, insofar as practicable with those 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 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 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. The Commissioner 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. The Board or Commissioner shall from time to time for good cause shown to review the regulations and enforcement guidelines adopted pursuant to this article. If the Commissioner finds that any federal regulation or enforcement guideline that includes any tolerance or action level that does not protect the health and welfare of the citizens of the Commonwealth, he shall petition the appropriate federal agency 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 does not protect the health and welfare of the citizens of the Commonwealth, it shall adopt a new regulation or enforcement guideline. 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 protect the health and welfare of the citizens of the Commonwealth.

Code 1950, § 3-318; 1966, c. 702, § 3.1-398; 1977, c. 440; 2003, c. 695; 2004, c. 802; 2007, cc. 873, 916; 2008, c. 860.

§ 3.2-5122. Adulterated food

A food shall be deemed to be adulterated if:

1. It bears or contains any poisonous or deleterious substance that may render it injurious to health; but if the substance is not an added substance the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health;

2. It bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of § 3.2-5125;

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. It has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;

5. It is the product of a diseased animal, an animal that has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse;

6. Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;

7. Any valuable constituent has been, in whole or in part, omitted or abstracted;

8. Any substance has been substituted in whole or in part for a valuable constituent;

9. Damage or inferiority has been concealed in any manner;

10. Any substance has been added or mixed or packed 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;

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. In addition, any confectionery that: (i) contains five percent or less by volume of alcohol or; (ii) any chewing gum that contains harmless non-nutritive masticatory substances, shall not be deemed adulterated; or

12. It bears or contains a coal-tar color other than one from a batch that has been certified by the U.S. Department of Health and Human Services.

Code 1950, § 3-315; 1966, c. 702, § 3.1-395; 1988, c. 110; 2008, c. 860.

§ 3.2-5123. Misbranded food

A. A food shall be deemed to be misbranded:

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.

5. If it is offered for sale under the name of another food.

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.

7. If its container is made, formed, or filled as to be misleading.

8. If in package form, unless it bears a label containing: (i) the name and place of business of the manufacturer, packer, or distributor; (ii) the name of the article; (iii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (iii) of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board.

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 § 3.2-5101 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.

10. If it purports to be or is represented as:

a. A food for which a standard of quality has been prescribed by regulations as provided by § 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

b. A food for which a standard or standards of fill of container have been prescribed by regulations as provided by § 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.

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 requires through regulation to fully inform purchasers as to its value for such uses.

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 4 and 9 with respect to artificial colorings shall not apply in the case of butter, cheese or ice cream.

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.

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.

Code 1950, §§ 3-307, 3-316; 1966, c. 702, §§ 3.1-387, 3.1-396; 1996, c. 728; 2008, c. 860.

§ 3.2-5124. Labeling as kosher and halal; penalty

It is 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 knowingly violates any provision of this section is guilty of a Class 3 misdemeanor.

2006, cc. 392, 485, § 3.1-396.1; 2008, c. 860.

§ 3.2-5125. Poisonous or deleterious substance added to food

Any poisonous or deleterious substance added to any food, except if it is required in the production of the food or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of subdivision 2 of § 3.2-5122; but when any poisonous or deleterious substance is required or cannot be avoided, the Board shall adopt regulations limiting the quantity to such extent as it finds necessary for the protection of public health. Any quantity exceeding the limits established by the Board shall also be deemed to be unsafe for purposes of the application of subdivision 2 of § 3.2-5122. While such regulation is in effect limiting the quantity of any poisonous or deleterious substance in 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 subdivision 1 of § 3.2-5122 if the added amount is not in excess of the limits established by the Board. In determining the quantity of 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 article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

Code 1950, §§ 3-317, 3-343; 1966, c. 702, §§ 3.1-397, 3.1-422; 2008, c. 860.

§ 3.2-5126. Prohibited acts; exceptions; Commissioner may seek injunction; penalties

A. The following acts and causing the following acts within the Commonwealth are unlawful:

1. The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded.

2. The adulteration or misbranding of any food.

3. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

4. The dissemination of any false advertisement.

5. The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by § 3.2-5102.

6. The giving of a guaranty or undertaking concerning a food, which guaranty or undertaking is false.

7. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the performing of any other act with respect to a food, if such act is done while an article is held for sale and results in the article being misbranded.

8. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other means of identification authorized or required by regulations adopted under the provisions of this article.

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.

Code 1950, §§ 3-308 to 3-310, 3-344; 1956, c. 529; 1966, c. 702, §§ 3.1-388, 3.1-389, 3.1-390, 3.1-423; 1986, c. 200; 2005, c. 681; 2008, c. 860.

§ 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, 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 is guilty of a Class 3 misdemeanor.

This section shall not apply to meat, poultry, or seafood that is canned or cured.

1993, c. 106, § 3.1-388.1; 2008, c. 860.

§ 3.2-5128. Duty of attorney for the Commonwealth when violation reported; 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 appropriate courts without delay and to be prosecuted in the manner required by law.

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.

Code 1950, §§ 3-312, 3-313; 1966, c. 702, §§ 3.1-392, 3.1-393; 2008, c. 860.

Article 4 - SEIZURES, PROSECUTIONS, PENALTIES, AND ENFORCEMENT

§ 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.

Code 1950, § 3-285; 1966, c. 702, § 3.1-365; 2008, c. 860.

§ 3.2-5130. Inspections required to operate food establishment

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:

1. Food manufacturing plants operating under a grant of inspection from the Office of Meat and Poultry Services or a permit from the Office of Dairy and Foods in the Department; and Grade A fluid milk manufacturing plants and shellfish and crustacea processing plants operating under a permit from the Virginia Department of Health;

2. Nonprofit organizations holding one-day food sales;

3. Private homes where the resident processes and prepares candies, jams, and jellies not considered to be low-acid or acidified low-acid food products, dried fruits, dry herbs, dry seasonings, dry mixtures, coated and uncoated nuts, vinegars and flavored vinegars, popcorn, popcorn balls, cotton candy, dried pasta, dry baking mixes, roasted coffee, dried tea, cereals, trail mixes, granola, and baked goods that do not require time or temperature control after preparation if such products are: (i) sold to an individual for his own consumption and not for resale; (ii) sold at the private home or at farmers markets; (iii) not offered for sale to be used in or offered for consumption in retail food establishments; (iv) not offered for sale over the Internet or in interstate commerce; and (v) affixed with a label displaying the name, physical address, and telephone number of the person preparing the food product, the date the food product was processed, and the statement "NOT FOR RESALE -- PROCESSED AND PREPARED WITHOUT STATE INSPECTION" shall be placed on the principal display panel. Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102;

4. Private homes where the resident processes and prepares pickles and other acidified vegetables that have an equilibrium pH value of 4.6 or lower if such products are (i) sold to an individual for his own consumption and not for resale; (ii) sold at the private home or at farmers markets; (iii) not offered for sale to be used in or offered for consumption in retail food establishments; (iv) not offered for sale over the Internet or in interstate commerce; (v) affixed with a label displaying the name, physical address, and telephone number of the person preparing the food product, the date the food product was processed, and the statement "NOT FOR RESALE -- PROCESSED AND PREPARED WITHOUT STATE INSPECTION" shall be placed on the principal display panel; and (vi) not exceeding $3,000 in gross sales in a calendar year. Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102;

5. Private homes where the resident processes and prepares honey produced by his own hives, if: (i) the resident sells less than 250 gallons of honey annually; (ii) the resident does not process and sell other food products in addition to honey, except as allowed by subdivisions 3 and 4; (iii) the product complies with the other provisions of this chapter; and (iv) the product is labeled "PROCESSED AND PREPARED WITHOUT STATE INSPECTION. WARNING: Do Not Feed Honey to Infants Under One Year Old." Nothing in this subdivision shall increase or diminish the authority of the Commissioner under § 3.2-5102; and

6. Retail establishments that (i) do not prepare or serve food; (ii) sell only food or beverages that are sealed in packaging by the manufacturer and have been officially inspected in the manufacturing process; (iii) do not sell infant formulas; (iv) do not sell salvaged foods; and (v) certify to the Department that they meet the provisions of this subdivision.

B. Nonprofit organizations, private homes, and retail establishments that qualify for an exception under subsection A shall be exempt from inspection and the inspection fees. Nothing in this section shall prevent the Department from inspecting any nonprofit organization, private home, or retail establishment if a consumer complaint is received.

C. Any person who violates any provision of this section is guilty of a Class 1 misdemeanor.

1993, c. 936, § 3.1-398.1; 2003, c. 420; 2004, c. 953; 2008, cc. 459, 860; 2011, c. 316; 2013, c. 285.

§ 3.2-5131. Right to enter and take samples

The Commissioner is empowered, in the performance of his duties, to enter into any 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, and take samples for analysis. The person making such inspection shall take samples of the article or produce in the presence of at least one witness, and shall, in the presence of the witness, mark or seal the sample. The inspector shall tender at the time of taking to the manufacturer or vendor of the product, or to the person having the custody of the product, the value thereof, and the statement in writing for the taking of the sample.

Code 1950, § 3-326; 1966, c. 702, § 3.1-405; 2008, c. 860.

§ 3.2-5132. Notice and warning to place premises in sanitary condition

Whenever it is determined by the Commissioner that filthy or unsanitary conditions exist or are permitted to exist in the operation of any place where any food or drink products are manufactured, stored, deposited, or sold for any purpose, the proprietor or owner of the place, or any person owning or operating any place where any food or drink products are manufactured, stored, deposited, or sold, shall first be notified and warned by the Commissioner to establish in a sanitary condition within a reasonable length of time such place. After the first notice and warning of a violation has been issued no notice and warning of the same violation occurring within 90 days after the first notice and warning has been given as provided under § 3.2-5133 shall be required; provided that notice and warning shall be required as to any violation occurring more than 90 days after notice and warning has been given as to a violation.

Code 1950, § 3-327; 1956, c. 528; 1966, c. 702, § 3.1-406; 2008, c. 860.

§ 3.2-5133. Failure to obey such notice and warning a misdemeanor

Any person owning or operating 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 90 days after notice and warning has been issued, is guilty of a Class 1 misdemeanor.

Code 1950, § 3-328; 1956, c. 528; 1966, c. 702, § 3.1-407; 2008, c. 860.

§ 3.2-5134. Condemnation of unsafe food by Commissioner

If the Commissioner 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 articles of food shall be declared to be a nuisance, and the Commissioner shall condemn or destroy the unsafe articles of food or render the unsafe articles of food to be unsalable as human food.

Code 1950, § 3-311; 1966, c. 702, § 3.1-391; 2008, c. 860.

§ 3.2-5135. Authority to seize food and dairy products; analysis; disposition of remainder

A. The Commissioner is authorized at all times to seize and take possession of any and all food and dairy products, substitutes, or imitations kept for sale, exposed for sale, or held in possession or under the control of any person that in the opinion of the Commissioner are believed to be in violation of any provision of law.

B. When the Commissioner seizes any goods pursuant to subsection A, he may take a sample from the goods for the purpose of analysis and shall 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 any sample taken pursuant to subsection B that in the determination of the Commissioner requires laboratory analysis to the Division of Consolidated Laboratory Services of the Department of General Services (the Division). The Division shall turn over the sample to a qualified analyst who shall analyze the sample and certify the results of the analysis. Where the qualified analyst is an employee of the Division, the analyst's certificate shall be prima facie evidence of the facts certified to in any appropriate court where the sample may be offered in evidence.

Code 1950, §§ 3-329 to 3-331; 1966, c. 702, §§ 3.1-408 to 3.1-410; 1978, c. 702; 2008, c. 860; 2015, c. 91.

§ 3.2-5136. Purchase of samples for analysis

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 the Commissioner, and who shall apply to such manufacturer or vendor or person delivering such food to a purchaser for a sample in sufficient quantity for the analysis of the article 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 chapter, and the other shall be held under seal by the Commissioner.

Code 1950, § 3-338; 1966, c. 702, § 3.1-417; 2008, c. 860.

§ 3.2-5137. Proceeding for forfeiture

If upon laboratory analysis it appears that the food or dairy products are adulterated, substituted, misbranded, or imitated within the meaning of this chapter, the Commissioner may make complaint before a magistrate, or other officer authorized to issue summons, having jurisdiction where the goods were seized. The magistrate or other officer shall issue his summons to the person from whom the goods were seized, directing him to appear before 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 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.

Code 1950, § 3-332; 1966, c. 702, § 3.1-411; 2005, c. 839; 2008, c. 860.

§ 3.2-5138. Judgment as to goods seized; procedure before an appropriate court; appeal

Unless otherwise shown, or if the goods are found upon trial to be in violation of any of the provisions of this chapter or other laws, 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.

Code 1950, § 3-333; 1966, c. 702, § 3.1-412; 2005, c. 839; 2008, c. 860.

§ 3.2-5139. Disposition of proceeds from sale of such goods

The proceeds arising from any sale of seized property or goods shall be disposed of in accordance with § 19.2-386.14. If the owner or party claiming the property or goods can produce and prove a written guaranty of purity, signed by the wholesaler, jobber, manufacturers, or other party residing within the Commonwealth from whom the articles were purchased, then the proceeds of the sale, over and above the costs of seizure, forfeiture and sale, shall be paid to the owner or claimant to reimburse him, to the extent of such surplus, for his actual loss resulting from the seizure and forfeiture as shown by the invoice.

Code 1950, § 3-334; 1966, c. 702, § 3.1-413; 2008, c. 860; 2012, cc. 283, 756.

§ 3.2-5140. Attorney for the Commonwealth to render legal assistance

It shall be the duty of the attorney for the Commonwealth when called upon by the Commissioner to render any legal assistance in his power in proceeding under the provisions of this chapter.

Code 1950, § 3-335; 1966, c. 702, § 3.1-414; 2008, c. 860.

§ 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 commence proceedings and prosecute without delay for the fines and penalties in cases prescribed and upon the termination of such proceedings to report in detail to the Commissioner, the results.

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 to the Commissioner, shall be entitled to a fee of $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 making such sale or delivery, may be prosecuted either in the county or city where the sale or delivery originated, or in the county or city where the illegal goods were found by the Commissioner.

Code 1950, §§ 3-321, 3-336; 1966, c. 702, §§ 3.1-401, 3.1-415; 1972, c. 741; 2008, c. 860.

§ 3.2-5142. Punishment for hindering Commissioner

Any person who shall willfully hinder or obstruct the Commissioner in the exercise of the powers conferred upon him by this chapter is guilty of a Class 2 misdemeanor.

Code 1950, § 3-337; 1966, c. 702, § 3.1-416; 2008, c. 860.

§ 3.2-5143. Enforcement against companies

When construing and enforcing the provisions of this chapter and Chapters 52 (§ 3.2-5200 et seq.) and 54 (§ 3.2-5400 et seq.), 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.

Code 1950, § 3-340; 1966, c. 702, § 3.1-419; 2002, c. 185; 2008, c. 860.

§ 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 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 that is exempt from taxation under 26 U.S.C. § 501(c) (3), which maintains a food storage facility certified by the Department and, where required by 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. 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 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. 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.

1980, c. 516, § 3.1-418.1; 1987, c. 322; 1990, cc. 211, 255, 303; 1998, c. 641; 2008, c. 860.

§ 3.2-5145. Punishment for failure to comply with requirements of certain chapters

Any person who refuses to comply upon demand with the requirements of this chapter and Chapters 52 (§ 3.2-5200 et seq.) and 54 (§ 3.2-5400 et seq.) who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any inspector or other person in the performance of his duty in connection with such chapters, is guilty of a Class 2 misdemeanor, unless otherwise specified, and such fines, less the legal costs, shall be paid into the state treasury.

Code 1950, § 3-339; 1966, c. 702, § 3.1-418; 2002, c. 185; 2008, c. 860.

Chapter 52 - MILK, MILK PRODUCTS, AND DAIRIES

Article 1 - GENERAL PROVISIONS

§ 3.2-5200. Duty of Commissioner to foster dairy industry

It shall be the duty of the Commissioner 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 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. Should it become necessary in the judgment of the Commissioner, he may cause instruction to be given in any facility or in any locality of the Commonwealth, in order to 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 the Commonwealth.

Code 1950, § 3-341; 1966, c. 702, § 3.1-420; 2008, c. 860.

§ 3.2-5201. Conformity with regulations of 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 by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. The definitions and standards so adopted may conform, so far as practical, to the definitions and standards adopted or recommended by the Secretary of the U.S. Department of Health and Human Services or the U.S. Department of Agriculture. The regulations authorized by §§ 3.2-5212, 3.2-5213, and by this section shall be adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

1970, c. 48, § 3.1-562.2; 2008, c. 860.

§ 3.2-5202. Sale of products not subject to local supervision

Products produced, processed, or manufactured under the regulations adopted under this chapter may be sold in all localities in 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.

1970, c. 48, § 3.1-562.4; 1970, c. 49, § 3.1-530.5; 2008, c. 860.

§ 3.2-5203. Importing of products

A. No regulation adopted under this chapter shall be construed to prohibit the sale within the Commonwealth of any product that is produced outside of the Commonwealth under laws or regulations of the exporting state or political subdivision that are substantially equivalent to regulations adopted under this article and that are enforced with equal effectiveness.

B. No Grade A raw milk shall be imported into the Commonwealth by any person who does not possess a permit issued under conditions prescribed by the Board. The Board shall adopt regulations for the importation of raw bulk milk from points beyond routine inspection of the Commonwealth to insure the quality of milk and milk products, to determine volume of product shipped into the Commonwealth, to be assured of the original source of production, and to provide for the best interest of the Commonwealth, and for the protection of the consuming public.

1970, c. 48, § 3.1-562.5; 1970, c. 49, § 3.1-530.6; 2008, c. 860.

§ 3.2-5204. Warning and punishment of persons using or furnishing impure milk

Whenever it is determined by the Commissioner that any person is using, selling, or furnishing to any 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 not to use, sell, or furnish such milk or cream to any facility, milk dealers, the retail trade, or to any consumer of milk. Any person who fails to obey such notice and warning and 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 impure or unwholesome milk or cream, is guilty of a Class 2 misdemeanor.

Code 1950, § 3-342; 1966, c. 702, § 3.1-421; 2008, c. 860.

§ 3.2-5205. Injunctions

If any person violates any provision of this article or the regulations adopted hereunder, then either the Commissioner or the State Health Commissioner may petition any appropriate circuit court for relief by injunction, without being compelled to allege or prove that an adequate remedy at law does not exist.

1970, c. 49, § 3.1-530.8; 2008, c. 860.

Article 2 - STANDARDS OF QUALITY, GRADING, AND SANITARY STANDARDS

§ 3.2-5206. Board authorized to establish standards and adopt regulations; guidance of State Health Commissioner

A. The Board 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 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. The Board shall adopt regulations for the issuance of the permits referred to in § 3.2-5208. The Board may require permits in addition to those prescribed by the terms of this article, and shall adopt regulations concerning the conditions under which 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 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 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 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 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 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 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.

Code 1950, § 3-345; 1966, c. 702, § 3.1-424; 1970, c. 49, § 3.1-530.1; 2001, c. 523; 2008, c. 860.

§ 3.2-5207. Powers and duties of Commissioner; obstruction unlawful

The Commissioner shall administer and enforce the regulations adopted pursuant to § 3.2-5206 except as provided in § 3.2-5208. He is empowered, in the performance of 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 in the performance of his duties under this article or under the regulations adopted pursuant to this article.

1970, c. 49, § 3.1-530.3; 2008, c. 860.

§ 3.2-5208. Powers and duties of State Health Commissioner; obstruction unlawful

The State Health Commissioner, pursuant to the regulations adopted pursuant to § 3.2-5206, shall issue permits to all plants that process and distribute Grade A market milk and Grade A market milk products. The State Health Commissioner shall also enforce the regulations adopted under § 3.2-5206 in all plants from the point of delivery at the plant to the consumer. He is empowered,

in the performance of 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 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 in the performance of his duties under this article or under the regulations adopted hereunder.

1970, c. 49, § 3.1-530.4; 2008, c. 860.

§ 3.2-5209. Penalties

Any violation of the provisions of this article, or the regulations adopted hereunder, or failure to comply with such provisions or regulations, 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.

1970, c. 49, § 3.1-530.9; 2008, c. 860.

§ 3.2-5210. Civil penalties

A. In addition to the penalties prescribed in § 3.2-5209, any person violating any provision of this article or regulation adopted 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 § 3.2-5206. 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 hereunder after notification of the violation. Any civil penalty shall be in addition to any payment that may be required for the wholesale value of all milk and milk products 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 that is warranted, incorporating, when appropriate, an order 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 hereunder with respect to excessive drug residue. The penalty for any such violation shall be as provided in § 3.2-5211.

2000, c. 993, § 3.1-530.10; 2001, c. 523; 2008, c. 860.

§ 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 U.S. Food and Drug Administration; (ii) equal to or greater than the value specified as the minimum actionable level by the 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 U.S. Food and Drug Administration; (ii) performed in a laboratory operated by the Commonwealth; 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 § 3.2-5206. 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 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 § 3.2-5206 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.

2001, c. 523, § 3.1-530.11; 2008, c. 860.

Article 3 - ICE CREAM AND SIMILAR PRODUCTS

§ 3.2-5212. Authority of Board to establish standards, adopt regulations

The Board 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, related foods, other similar products, and those products manufactured or sold in semblance to or as substitutes.

1970, c. 48, § 3.1-562.1; 2008, c. 860.

§ 3.2-5213. Commissioner to enforce article; right of entry

The Commissioner shall administer and enforce the regulations adopted pursuant to this article. He is empowered, in the performance of 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.

1970, c. 48, § 3.1-562.3; 2008, c. 860.

§ 3.2-5214. Permits; delegation of enforcement of article to State Health Commissioner for restaurants

Any person engaged in the manufacture in the Commonwealth of any of the foods listed in § 3.2-5212 shall apply to the Commissioner on 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. 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 that does not meet the requirements of this article or of any regulation adopted for its administration and enforcement. Permits shall be renewable on July 1 of each year.

1970, c. 48, § 3.1-562.6; 1978, c. 722; 1996, c. 722; 2008, c. 860.

§ 3.2-5215. Detention of adulterated, misbranded products

Whenever any product subject to this article is found by the Commissioner upon any premises where it is held and there is reason to believe that 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 regulations, the product may be detained for a period not to exceed 20 days, pending action under § 3.2-5216 of this article, and shall not be moved by any person from the place at which it is located when detained, until released by the Commissioner.

1970, c. 48, § 3.1-562.8; 2008, c. 860.

§ 3.2-5216. Condemnation of adulterated, misbranded products

Any product referred to by § 3.2-5215 shall be liable to be proceeded against and condemned.

At any time prior to the expiration of the 20-day detention period provided by § 3.2-5215, the Commissioner shall notify the attorney for the Commonwealth for the city or county where such detention was made in writing. Upon receiving 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 city where the detention was made. Upon the filing of such information, the clerk of court shall forthwith issue a warrant directing the sheriff to seize the detained product and see to its transportation to a suitable place of storage that, if necessary, may be outside of the county or city served by the sheriff. 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 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 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 the hearing 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 provided for, in the manner provided by law for serving a notice, at least 10 days before the day specified for the hearing on the information, if they are residents of the Commonwealth; and if they are unknown or nonresidents, or cannot with reasonable diligence be found in 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 the county or city, or if there be none published therein, then in some newspaper having general circulation, 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 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 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, if any, intervening as claimant of the product.

If a claimant 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. If the jury finds in favor of the claimant, or if the court, trying such issue

without a jury, so finds, the judgment of the court shall be to entirely relieve the product from forfeiture, and no costs shall be taxed against such claimant.

1970, c. 48, § 3.1-562.9; 2008, c. 860.

§ 3.2-5217. Penalties

Any violation of the provisions of this article or the regulations adopted hereunder, or failure to comply with such provisions or regulations, 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.

1970, c. 48, § 3.1-562.10; 2008, c. 860.

Article 4 - BABCOCK AND OTHER MACHINE TESTS

§ 3.2-5218. Definitions

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

"Holder" means a corporation, association, partnership or two or more persons having a joint or common interest.

Code 1950, § 3-415; 1966, c. 702, § 3.1-545; 2008, c. 860.

§ 3.2-5219. No test or apparatus other than Babcock or other centrifugal machines to be used unless approved by Board

No test or 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 apparatus has been approved for such use by regulation of the Board. In the event that the Board approves such other test or apparatus for such use, then the provisions of this article shall apply, mutatis mutandis, to such approved test or apparatus.

1970, c. 176, § 3.1-531.1; 2008, c. 860.

§ 3.2-5220. Inspection of centrifugal machines and scales; condemnation

Every Babcock or other centrifugal machine, or cream test or butterfat test scale, used in 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. The Commissioner may condemn any Babcock or other centrifugal scale that is, in his opinion, not giving accurate results. No Babcock or other centrifugal machine or scale that has been condemned by the Commissioner shall be used in the Commonwealth by any person for determining the composition or value of milk or cream, unless the machine or scale has been changed and approved by the Commissioner.

Code 1950, § 3-402; 1966, c. 702, § 3.1-532; 2008, c. 860.

§ 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 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 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 to correct his use of a Babcock or other centrifugal machine, or his method of sampling or weighing, and the person or holder of a certificate 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 § 3.2-5233. 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 the Commonwealth any centrifugal machine or sample or weigh milk or cream for the purposes herein specified until his certificate has been renewed.

Code 1950, § 3-403; 1966, c. 702, § 3.1-533; 1996, c. 723; 2000, c. 993; 2008, c. 860.

§ 3.2-5222. To whom certificates issued

The Commissioner is authorized to issue certificates of competency to persons desiring to manipulate the Babcock or other centrifugal machine or to sample or weigh milk or cream who may present certificates of 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 other persons as, in the opinion of the Commissioner, are competent to manipulate the machines, and to sample or weigh milk or cream.

Code 1950, § 3-404; 1966, c. 702, § 3.1-534; 2008, c. 860.

§ 3.2-5223. Regulations governing applications for certificates; revocation by Board; standards and regulations

The Board is authorized to adopt and enforce regulations governing applications for certificates and the granting of certificates. 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 or is using dirty or otherwise unsatisfactory glassware or utensils. The Board is authorized to fix such standards and to adopt such regulations as may be deemed necessary to carry out the provisions of this article.

Code 1950, § 3-405; 1966, c. 702, § 3.1-535; 2008, c. 860.

§ 3.2-5224. Regulations governing equipment, standards and procedures

The Board shall have authority to adopt and enforce 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.

1970, c. 176, § 3.1-535.1; 2008, c. 860.

§ 3.2-5225. Capacity of standard measurers

In the use of the Babcock or any other centrifugal machine, the standard milk measurer or pipettes shall have a capacity of 17.6 cubic centimeters and the standard test tubes or bottles for milk shall have a capacity of two cubic centimeters for each 10 percent marked on the necks.

Code 1950, § 3-406; 1966, c. 702, § 3.1-536; 2008, c. 860.

§ 3.2-5226. Units for testing cream

Cream shall be tested by weight and the standard units for testing shall be 18 grams, and nine grams. It is 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 percent of butterfat contained by the Babcock or other centrifugal test or cream test or butterfat test scales.

Code 1950, § 3-407; 1966, c. 702, § 3.1-537; 2008, c. 860.

§ 3.2-5227. Sampling to determine butterfat by composite tests

In sampling milk or cream for composite tests to determine the percent of butterfat contained, no such sample or sampling shall be lawful unless a sample is taken from each weighing, and the quantity used shall be proportioned to the total weight of the milk or cream tested.

Code 1950, § 3-408; 1966, c. 702, § 3.1-538; 2008, c. 860.

§ 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 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 is further authorized to enter upon any premises in the Commonwealth where any centrifugal machine or cream test and but-

terfat test scales are used to inspect the devices and to ascertain if the provisions of law are complied with.

Code 1950, § 3-409; 1966, c. 702, § 3.1-539; 1996, c. 723; 2008, c. 860.

§ 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 falsely manipulate, underread, or overread the Babcock test or any other 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 apparatus used for the purpose of determining the amount of milk fat in any dairy products, is guilty of a Class 1 misdemeanor.

Code 1950, § 3-410; 1966, c. 702, § 3.1-540; 2008, c. 860.

§ 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.

Code 1950, § 3-411; 1966, c. 702, § 3.1-541; 2008, c. 860.

§ 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 any person violating any of its provisions. But the provisions of this article shall not be construed to affect 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 that person only and not for purposes of inspection, or as a basis for payment in buying or selling.

Code 1950, § 3-412; 1966, c. 702, § 3.1-542; 2008, c. 860.

§ 3.2-5232. Obstructing Commissioner; violations of article

Any person who shall hinder or obstruct the Commissioner in the discharge of the authority or duty imposed upon him by this article, and any person violating any of its provisions is guilty of a Class 2 misdemeanor.

Code 1950, § 3-414; 1966, c. 702, § 3.1-544; 2008, c. 860.

§ 3.2-5233. Civil penalties

A. In addition to the penalties prescribed in § 3.2-5229 or 3.2-5232, any person violating any provision of this article or regulation adopted 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 the regulations adopted hereunder after notification of the violation. Any civil penalty shall be in addition to any

payment that may be required for the wholesale value of all milk and milk products that must be destroyed as a consequence of such violation.

B. A civil penalty may be assessed by the Commissioner only after 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 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.

2000, c. 993, § 3.1-545.1; 2008, c. 860.

Chapter 53 - EGGS AND HATCHERY PRODUCTS

§ 3.2-5300. Application of chapter

This chapter shall apply to the marketing of eggs to consumers, institutional consumers, and retailers.

1968, c. 142, § 3.1-763.14; 2008, c. 860.

§ 3.2-5301. Definitions

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

"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.

"Institutional consumer" means a restaurant, hotel, boardinghouse, or any other business, facility, or place in which eggs are prepared or offered as food to patrons, residents, inmates, or patients.

"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.

"Standard" means specifications of the physical characteristics or any or all of the component parts of individual eggs.

1968, c. 142, § 3.1-763.15; 1972, c. 120; 2008, c. 860.

§ 3.2-5302. Standards, grades, and size-weight classes; cracked or checked eggs; sale of inedible eggs

A. The Board shall adopt standards, grades, and size-weight classes including standards for the term "ungraded" for eggs marketed in the Commonwealth. In administering this chapter, the Department 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. 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.

Code 1950, § 3-602; 1952, c. 308; 1956, c. 284; 1966, c. 702, § 3.1-767; 1968, c. 142, § 3.1-763.16; 2008, c. 860.

§ 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 Board for fresh eggs.

Code 1950, § 3-599; 1966, c. 702, § 3.1-764; 1968, c. 142; 2008, c. 860.

§ 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.

1968, c. 142, § 3.1-763.17; 2008, c. 860.

§ 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.

Code 1950, § 3-600; 1956, c. 284; 1966, c. 702, § 3.1-765; 1968, c. 142; 2008, c. 860.

§ 3.2-5306. Enforcement of chapter; how eggs marked and quality determined; requirements

A. This chapter shall be enforced by the Commissioner and all eggs sold or offered for sale except those exempted in § 3.2-5305 shall be marked according to the grades, sizes, quality, ungraded or cracked and other required terms adopted by the Commissioner with the approval of the Board 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 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.

Code 1950, §§ 3-601, 3-603; 1952, c. 308; 1956, c. 284; 1966, c. 702, §§ 3.1-766, 3.1-768; 1968, c. 142; 2008, c. 860.

§ 3.2-5307. Seller invoice; requirements

Any person selling or delivering eggs to restaurants, hotels, retail stores, bakeries or other institution purchasing eggs for serving to guests, patrons, employees or inmates 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 30 days.

Code 1950, § 3-603.1; 1956, c. 284; 1966, c. 702, § 3.1-769; 1968, c. 142; 2008, c. 860.

§ 3.2-5308. Sanitation and related matters

A. Any person assembling, transporting, processing, holding, or offering for sale eggs destined for a consumer or an institutional consumer shall provide and maintain 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. The Board shall by regulations, provide for the keeping, processing, transporting, and the sale of eggs under sanitary conditions.

C. Nothing in this chapter or in any regulations of the Board shall be construed to exempt any persons or premises from the application 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.

1968, c. 142, § 3.1-769.1; 2008, c. 860.

§ 3.2-5309. Stop-sale order and seizure

A. If after inspection, the Department determines that any eggs are being offered, displayed, stored, processed, or transported in violation of this chapter, the Department 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 Department shall withdraw a stop-sale order only upon its determination that the conditions leading to the issuance of the order have been corrected.

B. Whenever the public interest requires, the Department 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.

1968, c. 142, § 3.1-769.2; 2008, c. 860.

§ 3.2-5310. Right of entry

The Commissioner 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 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 chapter or regulations implementing the same, or to ascertain the state of compliance with any order issued by the Department pursuant to this chapter.

1968, c. 142, § 3.1-769.3; 2008, c. 860.

§ 3.2-5311. Adopting regulations

The Board may adopt regulations to administer this chapter.

1968, c. 142, § 3.1-769.4; 2008, c. 860.

§ 3.2-5312. Violation a misdemeanor

Any person that violates any provision of this chapter is guilty of a Class 1 misdemeanor.

Code 1950, § 3-604; 1952, c. 308; 1966, c. 702, § 3.1-770; 2008, c. 860.

§ 3.2-5313. Injunction

The Department acting by the Attorney General or local prosecutor may enforce any provision of this chapter or any regulation issued pursuant thereto by injunction.

1968, c. 142, § 3.1-770.1; 2008, c. 860.

§ 3.2-5314. Remedies not exclusive

The institution of proceedings for the application of any remedy, or the issuance of any order on account thereof, or the imposition of any fine or penalty pursuant to this chapter shall not operate as a bar or limitation to the application of any other remedy available pursuant to this chapter or any other applicable law.

1968, c. 142, § 3.1-770.2; 2008, c. 860.

§ 3.2-5315. Judicial review

Any determination of final actions of the Department taken pursuant to this chapter shall be reviewable in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1968, c. 142, § 3.1-770.3; 1986, c. 615; 2008, c. 860.

Chapter 54 - SLAUGHTERHOUSES, MEAT, AND DRESSED POULTRY

Article 1 - GENERAL PROVISIONS

§ 3.2-5400. Definitions

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

"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.

"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.

"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.

"Livestock" means any cattle, sheep, swine, goats, horses, mules, or other equines, whether live or dead.

"Livestock product" means any carcass, part thereof, meat, or meat food product of any livestock.

"Meat food product" means any product capable of use as human food that is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats. 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 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.

"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.

"Poultry" means any domesticated bird, whether live or dead.

"Poultry product" means any poultry carcass or part thereof; or any product that is made wholly or in part from any poultry carcass or part thereof, excepting products 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 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.

"Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

"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.

"Shipping container" means any container used or intended for use in packaging the product packed in an immediate container.

1970, c. 290, § 3.1-884.18; 2008, c. 860.

§ 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.

1970, c. 290, § 3.1-884.18; 2008, c. 860.

§ 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 subdivision 7, 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.

1970, c. 290, § 3.1-884.18; 2008, c. 860.

§ 3.2-5403. Department to cooperate with U.S. Department of Agriculture

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. 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 chapter so as to accomplish this purpose.

1970, c. 290, § 3.1-884.19; 2008, c. 860.

§ 3.2-5404. Duties of the Board

In order to accomplish the objective stated in § 3.2-5403, 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 the Commonwealth, except those exempted by the Commissioner pursuant to subdivision 9 of § 3.2-5405, 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 § 3.2-5402; 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 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) 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; and

12. Shall promulgate rules of practice providing opportunity for hearing in connection with issuance of orders under subdivision 5 of this section or subdivision A 1, A 2, or A 3 of § 3.2-5405 pending issuance of a final order in any such proceeding.

1970, c. 290, § 3.1-884.20; 1991, c. 344; 2008, c. 860.

§ 3.2-5405. Powers of Commissioner

A. The Commissioner may:

1. Order removal of inspectors from any establishment that fails to destroy condemned products as required under subdivision 2 of § 3.2-5404;

2. Order cessation of inspection service under this 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. 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. Require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared;

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 chapter;

6. Cooperate with the U.S. Department of Agriculture in administration of this chapter to effectuate the purposes stated in § 3.2-5403; accept federal assistance for that purpose and spend public funds of the Commonwealth appropriated for administration of this chapter to pay 50 percent of the estimated total cost of the cooperative program;

7. Recommend to the U.S. Department of Agriculture for appointment to the advisory committees provided for in the federal acts, such officials or employees of the Department as the Commissioner shall designate;

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. 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.).

1970, c. 290, §§ 3.1-884.21, 3.1-884.30; 1986, c. 615; 2008, c. 860.

Article 2 - INSPECTION, SLAUGHTER, AND OFFICIAL MARKS

§ 3.2-5406. Meat inspection regulations

A. The Commissioner may adopt: (i) by reference any regulation under the federal acts as it pertains to this 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.

1991, c. 344, § 3.1-884.21:1; 2008, c. 860.

§ 3.2-5407. Prohibitions in general

A. No person shall, with respect to any livestock or poultry or any livestock products or poultry products:

1. Slaughter any such animals or prepare any such articles 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 chapter;

2. Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any such articles that: (i) are capable of use as human food, and (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 chapter unless they have been so inspected and passed; or

3. Perform any act, with respect to any articles that are capable of use as human food, while they are being transported in intrastate commerce or held for sale after such transportation, that is intended to cause or has the effect of causing such articles to be adulterated or misbranded.

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.

C. No person shall violate any provision of the regulations of the Board under subdivisions 7, 8, 9, or 10 of § 3.2-5404 or orders of the Commissioner under subdivisions A 3 and A 4 of § 3.2-5405.

1970, c. 290, § 3.1-884.22; 2008, c. 860.

§ 3.2-5408. Prohibitions against unauthorized use of any official marks

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.

B. No person shall:

1. Forge any official device, mark, or certificate;

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;

3. Contrary to the regulations prescribed by the Board, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

4. Knowingly possess, without promptly notifying the Commissioner 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;

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

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.

1970, c. 290, § 3.1-884.23; 2008, c. 860.

§ 3.2-5409. Prohibition against intrastate distribution of equine, livestock and poultry products

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.

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 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.

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.

1970, c. 290, § 3.1-884.24; 2008, c. 860.

Article 3 - ENFORCEMENT AND PENALTIES

§ 3.2-5410. Prohibitions of bribery or gifts to state employees; assaults or interference with such employees

A. Any person that shall give, pay, or offer, directly or indirectly, to any officer or employee of the Commonwealth authorized to perform any of the duties prescribed by this 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, is guilty of a Class 6 felony. Any officer or employee of 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, is guilty of a Class 6 felony and shall, upon conviction, be summarily discharged from office.

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 chapter with the intent to hinder, delay, or prevent the performance of such duties is guilty of a Class 6 felony.

1970, c. 290, § 3.1-884.25; 2008, c. 860.

§ 3.2-5411. Limitation of inspection to plants preparing products for human food

Inspection shall not be provided under this chapter at any establishment for the slaughter of livestock or poultry or the preparation of any livestock products or poultry products 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.

1970, c. 290, § 3.1-884.26; 2008, c. 860.

§ 3.2-5412. Inspection of products placed in container; right of access to plants at any time

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.

B. For purpose of any inspection of products required by this 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 chapter, whether the establishment is operated or not.

1970, c. 290, § 3.1-884.27; 2008, c. 860.

§ 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 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 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 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 for a period not to exceed 20 days, pending action under § 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 where it is located when so detained, until released. All official marks may be required 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.

1970, c. 290, § 3.1-884.28; 2008, c. 860.

§ 3.2-5414. Seizure and condemnation provisions

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 chapter, or is held for sale in the Commonwealth after such transportation, and that: (i) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter; (ii) is capable of use as human food and is adulterated or misbranded; or (iii) in any other way is in violation of this chapter, shall be liable to be proceeded against and seized and condemned.

At any time prior to the expiration of the 20-day detention period provided by § 3.2-5413, the Commissioner shall notify the attorney for the Commonwealth for the city or county 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 city where detention was made. Upon the filing of such information, the clerk of court shall forthwith issue a warrant directing the sheriff to seize the detained property and see to its transportation to a suitable place of storage that, if necessary, may be outside of the county or city served by the sheriff. 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 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 property, and shall 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 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 the Commonwealth; and if they be unknown or nonresidents, or cannot with reasonable diligence be found in 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 10 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 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 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 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 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, 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.

B. The provisions of this section shall in no way derogate from authority for condemnation or seizure conferred by other provisions of this chapter, or other laws.

1970, c. 290, § 3.1-884.29; 2008, c. 860.

§ 3.2-5415. General criminal penalties; warning letter

A. Any person that violates any provisions of this chapter for which no other criminal penalty is provided 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 11 of § 3.2-5401) knowing the article to be adulterated, such person is guilty of a Class 6 felony.

B. Nothing in this 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 chapter whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

1970, c. 290, § 3.1-884.31; 2008, c. 860.

§ 3.2-5416. Authority of Commissioner

The Commissioner shall have power:

1. To gather and compile information concerning and, to investigate the organization, business, conduct, practices, and management of any person engaged in intrastate commerce, and the relation thereof to other persons; and

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. For the purpose of this 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 may sign subpoenas and may administer oaths and affirmations, examine witnesses, and receive evidence.

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 to require the attendance and testimony of witnesses and the production of documentary evidence.

c. Any circuit court within the jurisdiction 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. The Commissioner may order testimony to be taken by deposition in any proceeding or investigation pending under this chapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commissioner 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 as hereinbefore provided.

e. Witnesses summoned before the Commissioner shall be paid the same fees and mileage that are paid witnesses in the courts of 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. 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 in obedience to the subpoena of the Commissioner, 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 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. 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 is guilty of a Class 1 misdemeanor.

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 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 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 the Commonwealth, or willfully mutilate, alter or by any other means falsify any documentary evidence of any person subject to this chapter or that shall willfully refuse to submit to the Commissioner, for the purpose of inspection and taking copies, any documentary evidence of any person subject to this chapter in his possession or within his control, is guilty of a Class 6 felony.

i. If any person required by this 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 30 days after notice of such default, such person shall forfeit to 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 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 principal office or in any city or county where he 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.

j. Any officer or employee of the Commonwealth who shall make public any information obtained by the Commissioner, without his authority, unless directed by a court, is guilty of a Class 1 misdemeanor.

1970, c. 290, § 3.1-884.32; 2008, c. 860.

§ 3.2-5417. Power of injunction

The Commissioner is authorized to apply to any appropriate court 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, when the court determines that the testimony and evidence presented warrants such action, without reference to adequacy of any remedy existing at law.

1970, c. 290, § 3.1-884.33; 2008, c. 860.

§ 3.2-5418. Limitation on applicability of chapter to matters regulated under federal acts

The requirements of this 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.

1970, c. 290, § 3.1-884.34; 2008, c. 860.

Article 4 - SMITHFIELD HAMS

§ 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.

Code 1950, § 3-667; 1966, c. 702, § 3.1-867; 1968, c. 140; 2008, c. 860.

§ 3.2-5420. Only genuine Smithfield hams to be labeled or advertised as such

No person 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 § 3.2-5419.

Code 1950, § 3-668; 1966, c. 702, § 3.1-868; 1968, c. 140; 2008, c. 860.

§ 3.2-5421. Penalty for violation

Any person violating any of the provisions of this article is guilty of a Class 4 misdemeanor.

Code 1950, § 3-671; 1966, c. 702, § 3.1-871; 1968, c. 140; 2008, c. 860.

Chapter 55 - VINEGAR

§ 3.2-5500. Definitions

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

"Apple vinegar," "cider vinegar," and similar 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.

"Grape vinegar," "wine vinegar," and similar words mean the product made by the alcoholic and subsequent acetous fermentations of the expressed juice of fresh whole grapes or portions thereof.

"Malt vinegar" and similar 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.

"Sugar vinegar" and similar words mean the product made by the alcoholic and subsequent acetous fermentations, without distillation, of solutions of sugar, syrup, molasses, or refiners' syrup.

Code 1950, § 3-691; 1964, c. 554; 1966, c. 702, § 3.1-900; 2008, c. 860.

§ 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 § 3.2-5500.

Code 1950, § 3-690; 1966, c. 702, § 3.1-899; 2008, c. 860.

§ 3.2-5502. When deemed adulterated; exception

Vinegar that fails to comply with the definitions contained in § 3.2-5500 or that contains any substance or ingredient not derived exclusively from the fruit, grain, sugar, or syrup from which it is made, or 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 that contains less than four grams of acetic acid in 100 cubic centimeters of the vinegar at 20 degrees centigrade, shall be deemed adulterated.

Code 1950, § 3-692; 1964, c. 554; 1966, c. 702, § 3.1-901; 2008, c. 860.

§ 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.

Code 1950, § 3-693; 1966, c. 702, § 3.1-902; 2008, c. 860.

§ 3.2-5504. Marking packages containing vinegar reduced with water; sale of certain reduced vinegar prohibited

Packages containing vinegar 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 percent acid strength is prohibited.

Code 1950, § 3-694; 1964, c. 554; 1966, c. 702, § 3.1-903; 2008, c. 860.

§ 3.2-5505. Marking casks, barrels or other containers

Each cask, barrel, or other container of 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 definitions contained in § 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 descriptions that are false or deceptive in any particular whatever.

Code 1950, § 3-695; 1966, c. 702, § 3.1-904; 2008, c. 860.

§ 3.2-5506. Sales of certain vinegar prohibited

No person shall sell, offer to sell, or have in possession for sale in the Commonwealth:

1. Any vinegar defined in § 3.2-5500 that does not comply with such definitions.

2. Any adulterated or misbranded vinegar.

3. Any vinegar or product in imitation of any vinegar so defined.

4. Any vinegar to which any artificial coloring matter has been added of any kind whatever, or that contains any substance or ingredient not derived exclusively from the fruit, grain, sugar or syrup from which it purports to have been derived.

Code 1950, § 3-696; 1964, c. 554; 1966, c. 702, § 3.1-905; 2008, c. 860.

§ 3.2-5507. Penalty

Violation of this chapter is a Class 3 misdemeanor.

Code 1950, § 3-697; 1966, c. 702, § 3.1-906; 2008, c. 860.

Chapter 55.1 - WASTE KITCHEN GREASE

§ 3.2-5508. Definitions

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

"Food establishment" means those operations subject to regulation by the Virginia Department of Health as food establishments under the authority granted by § 35.1-14.

"Registrant" means any person who has registered with the Department as a transporter of waste kitchen grease.

"Renderer" means any person who commercially cooks carcasses, or parts or products of carcasses, of cattle, swine, poultry, and other animals and other waste animal by-products and waste kitchen grease into usable products.

"Transport" or "transportation" means the movement of waste kitchen grease in a motor vehicle on public roads.

"Trap grease" means waste kitchen grease that is removed from a grease trap and is principally derived from food preparation and processing.

"Usable products" means a product resulting from the processing of waste kitchen grease and shall include biofuels, lubricants, and animal feed, provided that such animal feed uses are allowed by the U.S. Food and Drug Administration.

"Waste kitchen grease" means animal fats or vegetable oils that have been used, and will not be reused, for cooking in a food establishment, including trap grease.

2010, c. 868.

§ 3.2-5509. Application; registration term; fees

A. Except as provided in § 3.2-5510, on and after September 1, 2010, any person who transports waste kitchen grease shall submit an application for registration to the Department not less than 30 days before such transportation. Registration shall be for a term no longer than one year. The application shall be submitted in accordance with a procedure established by the Department for this purpose. The application shall include:

1. The applicant's name and address;

2. A description of the operations to be performed by the applicant;

3. The make, model, license number, and vehicle identification number of any vehicle to be used for the transportation of waste kitchen grease;

4. A nonrefundable application fee of $100;

5. A fee of $100 per vehicle used to transport waste kitchen grease; and

6. Proof of personal injury and property damage liability insurance in an amount not less than $1 million.

B. The Department shall issue each registrant a unique registration number and a registration certificate.

2010, c. 868.

§ 3.2-5510. Individual use; limitations and additional requirements

A. An individual who transports waste kitchen grease for his own conversion to biofuel shall not be required to register pursuant to § 3.2-5509 provided that he:

1. Transports waste kitchen grease in a container or containers with a total capacity of no more than 275 gallons on any one vehicle at any time;

2. Possesses or controls no more than 1,320 gallons of waste kitchen grease, biofuel feedstock derived from waste kitchen grease, or biofuel at any time, excluding biofuel contained in vehicle fuel tanks used to power the vehicle's movement; and

3. Does not obtain waste kitchen grease from (i) a container owned by a registered transporter of waste kitchen grease, (ii) a food establishment under contract with a registered transporter of waste kitchen grease, or (iii) a container owned by a renderer or collection center.

B. An individual who transports waste kitchen grease to a facility for the purpose of conversion to biofuel shall not be required to register pursuant to § 3.2-5509 provided that:

1. He meets all the requirements of subsection A;

2. He transports waste kitchen grease to no more than one facility, other than on his own property, during a one-day period;

3. Such facility has a capacity to produce no more than 500 gallons per day of biofuel; and

4. Such facility does not possess or control more than 1,320 gallons of waste kitchen grease, biofuel feedstock derived from waste kitchen grease, or biofuel at any time, excluding biofuel contained in vehicle fuel tanks to power the vehicle's movement.

2010, c. 868.

§ 3.2-5511. Recordkeeping

Every registrant shall record, maintain for two years, and make available for inspection by the Department the following information:

1. The name and address of each location or person from which the registrant obtained the waste kitchen grease for transportation;

2. The quantity of material received from each location or person;

3. The date on which the waste kitchen grease was obtained from each location or person; and

4. The renderer or other processor to which the waste kitchen grease was delivered.

2010, c. 868.

§ 3.2-5512. Possession of certificate; display of decal on motor vehicle

No person required to register under this chapter shall transport waste kitchen grease without (i) having in his possession a registration certificate and (ii) conspicuously displaying a decal issued by the Commissioner on the exterior of any vehicle used for the transportation of waste kitchen grease.

2010, c. 868; 2014, cc. 114, 241.

§ 3.2-5513. Suspension or revocation

A. The Commissioner may suspend or revoke a registration at any time if, in his discretion, the registrant has:

1. Sold or offered for sale to an unregistered person any waste kitchen grease knowing such unregistered person would transport such waste kitchen grease in violation of this chapter;

2. Stolen, misappropriated, contaminated, or damaged any waste kitchen grease container or grease therein; or

3. Taken possession of waste kitchen grease from an unregistered transporter other than as allowed in subsection A of § 3.2-5515, or has knowingly taken possession of waste kitchen grease that has been stolen.

B. For purposes of this section, the term "registrant" also includes any person who holds more than a five percent equity, ownership, or debt liability in the person registered to engage in the transportation of waste kitchen grease.

2010, c. 868.

§ 3.2-5514. Waste Kitchen Grease Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Waste Kitchen Grease Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All funds 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 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.

2010, c. 868.

§ 3.2-5515. Penalty

A. Except for waste kitchen grease transported and delivered pursuant to § 3.2-5510, on and after September 1, 2010, no person shall take possession of more than 55 gallons of waste kitchen grease from an unregistered transporter unless the recipient maintains documentation for two years, which shall be made available for inspection by the Department, of the (i) name and address of the person delivering the waste kitchen grease, (ii) date of receipt of the waste kitchen grease, (iii) delivering vehicle's license plate number and state of registration, and (iv) quantity delivered.

B. The Commissioner may assess a civil penalty of not more than $5,000 for any violation of a provision of this chapter.

C. Any person required to register with the Department pursuant to § 3.2-5509 who fails to so register is guilty of a Class 3 misdemeanor.

2010, c. 868.

§ 3.2-5516. Appeals

The Commissioner's suspension or revocation of a registration, or the imposition of a civil penalty, may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2010, c. 868.

Chapter 56 - WEIGHTS AND MEASURES

§ 3.2-5600. Definitions generally

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

"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.

"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.

"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.

Code 1950, §§ 3-708.1, 59-71; 1962, c. 298; 1966, c. 702, § 3.1-919; 1991, c. 605; 1993, c. 604; 2008, c. 860.

§ 3.2-5601. Powers and duties of Commissioner

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.

Code 1950, §§ 3-708.6, 59-77, 59-99, 59-100; 1962, c. 298; 1966, c. 702, § 3.1-924; 1993, c. 604; 2008, c. 860.

§ 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.

1991, c. 605, § 3.1-924.1; 2008, c. 860.

§ 3.2-5603. Two systems of weights and measures recognized; definitions and tables 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.

Code 1950, § 3-708.2; 1962, c. 298; 1966, c. 702, § 3.1-920; 1993, c. 604; 2008, c. 860.

§ 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.

Code 1950, §§ 3-708.4, 59-95, 59-98, 59-99; 1962, c. 298; 1966, c. 702, § 3.1-922; 1993, c. 604; 2008, c. 860.

§ 3.2-5605. Office standards and field standards

In addition to the state standards provided for in § 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.

Code 1950, §§ 3-708.5, 59-96, 59-97; 1962, c. 298; 1966, c. 702, § 3.1-923; 1993, c. 604; 2008, c. 860.

§ 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 § 3.2-5611 (relating to the Institute's publication Handbook 133), § 3.2-5620 (relating to the Institute's publication, Handbook 44), and § 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.

Code 1950, §§ 3-708.7, 59-79; 1962, c. 298; 1966, c. 702, § 3.1-925; 1993, c. 604; 2008, c. 860.

§ 3.2-5607. The Board may adopt regulations

A. The Board may 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. 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 § 3.2-5613 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 § 3.2-5609 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 § 3.2-5609, 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.

Code 1950, §§ 3-708.8, 59-82; 1962, c. 298; 1966, c. 702, § 3.1-926; 1993, c. 604; 2008, c. 860.

§ 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.

Code 1950, § 3-708.9; 1962, c. 298; 1966, c. 702, § 3.1-927; 1993, c. 604; 2008, c. 860.

§ 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. 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 any devices made by means of a mold or die, and not susceptible to individual adjustment.

B. The Commissioner 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 weights and measures program including the number and frequency of inspections for the weights and measures devices.

Code 1950, § 3-708.10; 1962, c. 298; 1966, c. 702, § 3.1-928; 1993, c. 604; 2005, c. 850; 2008, c. 860.

§ 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.

Code 1950, § 3-708.11; 1962, c. 298; 1966, c. 702, § 3.1-929; 2008, c. 860.

§ 3.2-5611. Commissioner to weigh or measure packages and commodities; packages and commodities ordered off sale

The Commissioner shall, 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.

Code 1950, § 3-708.14; 1962, c. 298; 1966, c. 702, § 3.1-932; 1993, c. 604; 2008, c. 860.

§ 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 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, is 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.).

Code 1950, § 3-708.15; 1962, c. 298; 1966, c. 702, § 3.1-933; 1986, c. 615; 1993, c. 604; 2008, c. 860.

§ 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 § 3.2-5620, 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 § 3.2-5620, but that in his best judgment are susceptible to satisfactory repair. Sealing or marking shall not be required for weights and measures exempted by a Board regulation issued under the authority of §§ 3.2-5607 and 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 § 3.2-5621 of this chapter, and may be confiscated and destroyed if used or disposed of contrary to the requirements of that section.

Code 1950, § 3-708.16; 1962, c. 298; 1966, c. 702, § 3.1-934; 1993, c. 604; 2008, c. 860.

§ 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 that the Commissioner may specify.

Code 1950, §§ 3-708.17, 59-83; 1962, c. 298; 1966, c. 702, § 3.1-935; 2008, c. 860.

§ 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 a sealer of weights and measures. However, two or more counties may appoint jointly 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 12 months' written notice of its intent to do so.

Code 1950, §§ 3-708.19, 59-85; 1962, c. 298; 1966, c. 702, § 3.1-937; 1987, c. 46; 2008, c. 860.

§ 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.

Code 1950, §§ 3-708.20, 59-88; 1962, c. 298; 1966, c. 702, § 3.1-938; 2008, c. 860.

§ 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 §§ 3.2-5609, 3.2-5610, 3.2-5611, 3.2-5612, 3.2-5613, 3.2-5614, and 3.2-5619.

Code 1950, §§ 3-708.21, 59-90; 1962, c. 298; 1966, c. 702, § 3.1-939; 2008, c. 860.

§ 3.2-5618. Standards, equipment, and office space for sealers

The governing body of each city and county for which a sealer has been appointed as provided for by § 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 or to the Commonwealth, in order to maintain such field standards in accurate condition.

Code 1950, §§ 3-708.22, 59-89; 1962, c. 298; 1966, c. 702, § 3.1-940; 2008, c. 860.

§ 3.2-5619. Commissioner to have concurrent authority with sealers; ordinances in conflict with chapter

In cities and counties 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.

Code 1950, § 3-708.23; 1962, c. 298; 1966, c. 702, § 3.1-941; 2008, c. 860.

§ 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 the Commonwealth, except insofar as specifically modified, amended, or rejected by 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 regulation 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.

1993, c. 604, § 3.1-941.1; 2008, c. 860.

§ 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.

Code 1950, §§ 3-708.24, 59-93; 1962, c. 298; 1966, c. 702, § 3.1-942; 1993, c. 604; 2008, c. 860.

§ 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. 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 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 regulation issued by the Board.

Code 1950, §§ 3-708.25, 59-73; 1962, c. 298; 1966, c. 702, § 3.1-943; 1993, c. 604; 2008, c. 860.

§ 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 "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.

Code 1950, §§ 3-708.26, 59-103; 1962, c. 298; 1966, c. 702, § 3.1-944; 1993, c. 604; 2008, c. 860.

§ 3.2-5624. Certain packages to show price per single unit of weight, measure, or count

In addition to the declarations required by § 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.

Code 1950, § 3-708.27; 1962, c. 298; 1966, c. 702, § 3.1-945; 2008, c. 860.

§ 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.

Code 1950, § 3-708.28; 1962, c. 298; 1966, c. 702, § 3.1-946; 2008, c. 860.

§ 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.

Code 1950, § 3-708.29; 1962, c. 298; 1966, c. 702, § 3.1-947; 1993, c. 604; 2008, c. 860.

§ 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 that have a code price, readable and understandable by visual inspection, on the back of the card; or (ii) mer-

chandise ordered as a gift by a consumer 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 is guilty of a Class 4 misdemeanor.

1991, c. 605, § 3.1-949.1; 1993, c. 604; 2008, c. 860.

§ 3.2-5628. Weights and Measures Fund established; purpose

There is hereby established in the state treasury a special nonreverting fund to be known as the Weights and Measures Fund, hereinafter referred to as "the Fund." This Fund shall 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 57 (§ 3.2-5700 et seq.) of this title.

1991, c. 605, § 3.1-949.2; 1992, c. 242; 2008, c. 860.

§ 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 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 the Weights and Measures Fund (§ 3.2-5628) for the administration and carrying out of the provisions of this chapter.

Code 1950, § 3-708.13; 1962, c. 298; 1966, c. 702, § 3.1-931; 2008, c. 860.

§ 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 § 3.2-5627.

1991, c. 605, § 3.1-949.3; 2008, c. 860.

§ 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.

Code 1950, § 3-708.31; 1962, c. 298; 1966, c. 702, § 3.1-949; 1993, c. 604; 2008, c. 860.

§ 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 to pay to the customer the full cash discount as offered shall constitute a violation of this chapter.

1991, c. 303, § 3.1-949.01; 2008, c. 860.

§ 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 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.

1993, c. 604, § 3.1-949.4; 2008, c. 860.

§ 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. 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 § 3.2-5623 of this chapter.

Code 1950, § 3-708.32; 1962, c. 298; 1966, c. 702, § 3.1-950; 1993, c. 604; 2008, c. 860.

§ 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.

1993, c. 604, § 3.1-954.1; 2008, c. 860.

§ 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."

Code 1950, §§ 3-708.40, 59-106.1; 1954, c. 93; 1958, c. 629; 1962, c. 298; 1966, c. 702, § 3.1-958; 1993, c. 604; 2008, c. 860.

§ 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.

Code 1950, §§ 3-708.41, 59-114.1; 1952, c. 387; 1954, c. 93; 1962, c. 298; 1966, c. 702, § 3.1-959; 2008, c. 860.

§ 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.

Code 1950, §§ 3-708.42, 59-114.2; 1952, c. 387; 1962, c. 298; 1966, c. 702, § 3.1-960; 2008, c. 860.

§ 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 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.

Code 1950, §§ 3-708.43, 59-114.3; 1952, c. 387; 1962, c. 298; 1966, c. 702, § 3.1-961; 2008, c. 860.

§ 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. The scale shall be accurate and maintained in good working order.

1972, c. 497; 1993, c. 604, § 3.1-962.1; 2008, c. 860.

§ 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 § 3.2-5600 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.

Code 1950, §§ 3-708.38, 59-101.1; 1950, p. 480; 1962, c. 298; 1966, c. 702, § 3.1-956; 1993, c. 604; 2008, c. 860.

§ 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 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.

Code 1950, §§ 3-109.39, 59-101.2; 1960, c. 242; 1962, c. 298; 1966, c. 702, § 3.1-957; 1993, c. 604; 2008, c. 860.

§ 3.2-5643. Obstructing Commissioner or sealers; 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 is guilty of a Class 1 misdemeanor.

Code 1950, §§ 3-708.45, 59-136; 1962, c. 298; 1966, c. 702, § 3.1-963; 2008, c. 860.

§ 3.2-5644. Impersonating Commissioner or sealer

Any person who shall impersonate in any way the Commissioner, his 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, is guilty of a Class 1 misdemeanor.

Code 1950, §§ 3-708.46, 59-137; 1962, c. 298; 1966, c. 702, § 3.1-964; 2008, c. 860.

§ 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 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 § 3.2-5609 a weight or measure that does not bear a seal or mark such as is specified in § 3.2-5613, unless such weight or measure has been: (i) placed into service by a certified service technician pursuant to § 3.2-5711; (ii) exempted from testing by the provisions of § 3.2-5609; or (iii) exempted by a regulation of the Board issued under the authority of § 3.2-5607 or 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 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.

Code 1950, §§ 3-708.47, 59-138, 59-139; 1962, c. 298; 1966, c. 702, § 3.1-965; 1993, c. 604; 2008, cc. 255, 860.

§ 3.2-5646. Civil penalties; suit to enjoin violation; compromise

A. The Commissioner may bring 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 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 take action under this section, when appropriate.

B. Any person violating a provision of this chapter or regulations adopted 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 § 3.2-5628. 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.

Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. The orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1991, c. 605, § 3.1-966.1; 2008, c. 860.

§ 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.

1991, c. 605, § 3.1-966.2; 2008, c. 860.

§ 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.

Code 1950, § 3-708.49; 1962, c. 298; 1966, c. 702, § 3.1-967; 1993, c. 604; 2008, c. 860.

Chapter 57 - WEIGHTS AND MEASURES SERVICE AGENCIES AND TECHNICIANS

§ 3.2-5700. Definitions

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

"Certificate of Conformance" means a document issued by the National Type Evaluation Program of the National Institute of Standards and Technology (NIST) of the 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.

"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 § 3.2-5609.

"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 (§ 3.2-5600 et seq.) or any regulation adopted 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 U.S. Department of Commerce.

"Weight or measure" means the terms as defined in § 3.2-5600 and shall also include the term "system" as defined in this chapter.

1992, c. 242, § 3.1-969.1; 2008, c. 860.

§ 3.2-5701. Powers of the Board

The Board may adopt regulations establishing (i) fees for the registration of service agencies and the certification of service technicians; (ii) categories of registration of service agencies and additional requirements for such registration; (iii) categories of certification of service technicians and additional requirements for such certification; (iv) curricula of training courses for certification and renewal thereof for service technicians; and (v) any other provision for the enforcement and implementation of this chapter, or otherwise necessary or convenient to carry out the purposes of this chapter.

1992, c. 242, § 3.1-969.2; 2008, c. 860; 2013, c. 125.

§ 3.2-5701.1. Powers of the Commissioner

The Commissioner may establish schedules for the verification of weights or measures standards and calibrating equipment used by service agencies and service technicians.

2013, c. 125.

§ 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 § 3.2-5646 relating to the assessment of civil penalties.

1992, c. 242, § 3.1-969.3; 2008, c. 860.

§ 3.2-5703. Registration of service agency

A. A service agency shall not operate in 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 approved by the Commissioner.

B. 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 the Commonwealth who is in the employ of the service agency;

4. Documentation of verification pursuant to § 3.2-5706 of the weights or measures standards and calibrating equipment used or to be used by the service agency;

5. The fee required by § 3.2-5704; and

6. Proof of a uniquely identifiable security seal for the service agency.

C. 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.

1992, c. 242, § 3.1-969.4; 2008, c. 860; 2016, c. 168.

§ 3.2-5704. Registration fee

Except as otherwise provided by § 3.2-5705, each service agency shall pay annually a registration fee of $100. All fees collected pursuant to this section shall be deposited in the state treasury and credited to the Weights and Measures Fund, established by § 3.2-5628.

1992, c. 242, § 3.1-969.5; 2008, c. 860.

§ 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.

1992, c. 242, § 3.1-969.6; 2008, c. 860.

§ 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 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.

1992, c. 242, § 3.1-969.7; 2007, c. 671; 2008, c. 860.

§ 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 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 approved by the Commissioner.

B. 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 valid 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, proof of completion of a course of training shall be valid for a period of three years. The Commissioner shall not require each application for renewal of a service technician certification to contain a valid proof of completion of a course of training related to weights and measures unless such course is offered by the Commissioner in an electronic format that is available to the applicant online. The Commissioner shall not charge a fee to enroll in the Commissioner's course of training related to weights and measures required for renewal of a service technician certification;

5. The fee required by § 3.2-5708; and

6. A declaration by the applicant that the applicant has the authority to be lawfully employed in the United States.

C. 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.

1992, c. 242, § 3.1-969.8; 2008, c. 860; 2016, c. 168.

§ 3.2-5708. Certification fee

Each service technician applying for a certification or renewal of certification shall pay annually a certification fee of $25. All fees collected pursuant to this section shall be deposited in the state treasury and credited to the Weights and Measures Fund established by § 3.2-5628.

1992, c. 242, § 3.1-969.9; 2008, c. 860.

§ 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.

1992, c. 242, § 3.1-969.10; 2005, c. 850; 2007, c. 671; 2008, c. 860.

§ 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.

1992, c. 242, § 3.1-969.11; 2008, c. 860.

§ 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 § 3.2-5609.

1992, c. 242, § 3.1-969.12; 2005, c. 850; 2007, c. 671; 2008, c. 860.

§ 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 if he determines that: (i) the service agency has violated any provision of this chapter, any provision of Chapter 56 (§ 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 violating any provision of this chapter, any provision of 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 violating any provision of this chapter, any provision of 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; 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.

1992, c. 242, § 3.1-969.13; 2008, c. 860.

§ 3.2-5713. Penalties

A. Any person violating any provision of this chapter is guilty of a Class 1 misdemeanor, and may, in addition to or in lieu thereof, be assessed a civil penalty, as provided in § 3.2-5714.

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.

1992, c. 242, § 3.1-969.14; 2008, c. 860.

§ 3.2-5714. Civil penalties

A. Any person violating any provision of this chapter or regulations 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 § 3.2-5628. 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.).

1992, c. 242, § 3.1-969.14; 2008, c. 860.

Chapter 58 - PUBLIC WEIGHMASTERS

§ 3.2-5800. Definitions

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

"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" means any device in, upon, or by which any property, produce, commodity, or article is or may be transported or drawn.

Code 1950, §§ 3-709.1, 3-709.17; 1962, c. 126; 1966, c. 702, § 3.1-970, 3.1-986; 2008, c. 860.

§ 3.2-5801. Commissioner to adopt regulations

The Commissioner may adopt regulations he deems necessary to carry out the provisions of this chapter.

Code 1950, § 3-709.2; 1962, c. 126; 1966, c. 702, § 3.1-971; 2008, c. 860.

§ 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 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 authorized to act as a licensed public weighmaster.

Code 1950, § 3-709.3; 1962, c. 126; 1966, c. 702, § 3.1-972; 1972, c. 824; 1985, c. 24; 2008, c. 860.

§ 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 § 3.2-5802.

Code 1950, § 3-709.4; 1962, c. 126; 1966, c. 702, § 3.1-973; 2008, c. 860.

§ 3.2-5804. Determining qualifications of applicant; granting of license; record of applications and licenses

The Commissioner may adopt 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 § 3.2-5802 of this chapter. The Commissioner shall keep a record of all such applications and of all licenses issued thereon.

Code 1950, § 3-709.5; 1962, c. 126; 1966, c. 702, § 3.1-974; 2008, c. 860.

§ 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 $10. 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.

Code 1950, § 3-709.6; 1962, c. 126; 1966, c. 702, § 3.1-975; 2008, c. 860.

§ 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 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.

Code 1950, § 3-709.7; 1962, c. 126; 1966, c. 702, § 3.1-976; 2008, c. 860.

§ 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. 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. Renewal applications shall be in such form as the Commissioner shall prescribe.

Code 1950, § 3-709.8; 1962, c. 126; 1966, c. 702, § 3.1-977; 2008, c. 860.

§ 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.

Code 1950, § 3-709.9; 1962, c. 126; 1966, c. 702, § 3.1-978; 2008, c. 860.

§ 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.

Code 1950, § 3-709.10; 1962, c. 126; 1966, c. 702, § 3.1-979; 2008, c. 860.

§ 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 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 weight and the date of each determination.

Code 1950, § 3-709.11; 1962, c. 126; 1966, c. 702, § 3.1-980; 2008, c. 860.

§ 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 that is of a type suitable for the weighing of the amount and kind of material to be weighed, and that has been tested and approved for use by a weights and measures officer of the Commonwealth within a period of 12 months immediately preceding the date of the weighing.

Code 1950, § 3-709.12; 1962, c. 126; 1966, c. 702, § 3.1-981; 2008, c. 860.

§ 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.

Code 1950, § 3-709.13; 1962, c. 126; 1966, c. 702, § 3.1-982; 2008, c. 860.

§ 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 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 the Commonwealth.

Code 1950, § 3-709.14; 1962, c. 126; 1966, c. 702, § 3.1-983; 2008, c. 860.

§ 3.2-5814. Weight certificates issued by weighmasters in other states

Whenever in any other state that licenses public weighmasters, there is statutory authority for the recognition and acceptance of the weight certificates issued by licensed weighmasters of the Commonwealth, the Commissioner is authorized to recognize and accept the weight certificates of the other state.

Code 1950, § 3-709.15; 1962, c. 126; 1966, c. 702, § 3.1-984; 2008, c. 860.

§ 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; (ii) a person weighing property, produce, commodities, or articles that he or his employers, if any, is either buying or selling; and (iii) 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.

Code 1950, § 3-709.16; 1962, c. 126; 1966, c. 702, § 3.1-985; 2008, c. 860.

§ 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.

Code 1950, § 3-709.17; 1962, c. 126; 1966, c. 702, § 3.1-986; 2008, c. 860.

§ 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 10 days' notice to the licensee, that the said licensee has violated any provision of this chapter or of any regulation of the Commissioner affecting licensed public weighmasters; or (ii) when a licensed public weighmaster has been convicted in any appropriate court of violating any provision of this chapter or of any regulation issued under authority of this chapter.

Code 1950, § 3-709.18; 1962, c. 126; 1966, c. 702, § 3.1-987; 2008, c. 860.

§ 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, is guilty of a Class 4 misdemeanor; and upon a second or subsequent conviction such person is guilty of a Class 2 misdemeanor.

Code 1950, § 3-709.19; 1962, c. 126; 1966, c. 702, § 3.1-988; 2008, c. 860.

§ 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, is guilty of a Class 2 misdemeanor.

Code 1950, § 3-709.20; 1962, c. 126; 1966, c. 702, § 3.1-989; 2008, c. 860.

§ 3.2-5820. Penalty for violation of chapter

Any person who violates any provision of this chapter or any regulation adopted pursuant thereto for which no specific penalty has been provided is guilty of a Class 4 misdemeanor.

Code 1950, § 3-709.21; 1962, c. 126; 1966, c. 702, § 3.1-990; 2008, c. 860.

Subtitle V - DOMESTIC ANIMALS

Chapter 59 - GENERAL PROVISIONS

§ 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 C.F.R. Part 161, 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.

Code 1950, §§ 3-4, 3-13; 1966, c. 702, §§ 3.1-4, 3.1-14; 1972, c. 531; 1975, c. 260; 1977, c. 186; 1978, cc. 219, 540; 1982, c. 150; 1984, c. 492, § 29-213.36; 1987, c. 488, § 3.1-796.66; 1988, c. 538; 1991, c. 348; 1993, cc. 174, 455, 959; 1994, cc. 261, 370; 1995, cc. 10, 610; 1996, c. 996; 1998, c. 817; 2002, cc. 351, 500, 787; 2003, cc. 544, 551, § 3.1-741.3; 2003, c. 1007; 2005, c. 633; 2008, c. 860.

§ 3.2-5901. State Veterinarian and representatives

The Commissioner shall employ and direct a veterinarian who shall be known as the State Veterinarian, whose duties shall be to carry out the laws of the Commonwealth and the regulations of the Board and the Commissioner. The State Veterinarian and 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, for a specific period of time, licensed veterinarians, veterinarians employed by the Virginia-Maryland Regional College of Veterinary Medicine, and veterinarians in the employment of the U.S. Department of Agriculture.

Code 1950, § 3-565; 1966, c. 702, § 3.1-723; 1978, c. 396; 2008, c. 860.

§ 3.2-5902. Certificate of veterinary inspection required for importation of certain pet animals; examination; exceptions; penalty

A. It shall be unlawful for any person to import into the Commonwealth from another state any pet animal, including dogs, cats, monkeys, or other animals, ferae naturae, wild or tame under domestication or in custody, or any poultry not intended for commercial use that by its nature is

fit for use only as a pet, unless such animal is accompanied by a certificate of veterinary inspection issued by an accredited veterinarian. Such certificate shall be on an official interstate certificate of veterinary inspection issued by the state of origin, shall be dated no more than 10 days before shipment, and shall contain such evidence of proof of the health of the animal as the Board, by regulation, may require.

B. Any animal imported into the Commonwealth without a certificate may be examined immediately by the State Veterinarian, his representative, or a licensed veterinarian designated by him, and the examination cost may be charged to the owner or the person in possession of the animal. If, in the opinion of the State Veterinarian or his representative, there is danger from contagion or infection, the animal may be placed in quarantine at the expense of the owner until all danger of infection or contagion has passed, whereupon the animal shall be released upon the order of 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 as herein defined passing directly through the Commonwealth to another state in interstate commerce, or when such animal is kept properly under control by its owner or custodian when passing through the Commonwealth to another state; (ii) any animal brought into the Commonwealth by a resident or by a resident of another state who intends to make his residence in 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 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.

Code 1950, § 3-576.1; 1964, c. 153; 1966, c. 702, § 3.1-735; 1993, c. 174; 2001, cc. 311, 333; 2008, c. 860.

§ 3.2-5903. Laboratory for diagnosis of diseases

The Commissioner shall maintain and operate 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 Commissioner.

Code 1950, § 3-567; 1966, c. 702, § 3.1-725; 2008, c. 860.

§ 3.2-5904. Authority of the Commissioner; coyotes; black vultures

The Commissioner may enter into agreements with local and state agencies, or other persons for the control of coyotes, black vultures (Coragyps atratus), and other wildlife that pose a danger to agricultural animals. The Commissioner shall enter into an agreement with the federal government to establish and maintain the Virginia Cooperative Wildlife Damage Management Program.

1990, c. 682, § 3.1-796.67:1; 2008, c. 860; 2010, c. 761; 2016, c. 59.

§ 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 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.

2006, c. 443, § 3.1-741.7; 2008, c. 860.

Chapter 60 - LIVESTOCK AND POULTRY

Article 1 - CONTAGIOUS AND INFECTIOUS DISEASES

§ 3.2-6000. Right of entry

The State Veterinarian and his representatives are authorized to enter upon any premises for the purpose of performing the duties imposed upon them by this chapter.

Code 1950, § 3-573; 1966, c. 702, § 3.1-731; 1981, c. 130; 2008, c. 860.

§ 3.2-6001. Protection of livestock and poultry

The Commissioner, the Board, the State Veterinarian, and all other veterinarians within the Commonwealth shall use their best efforts to protect 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 and poultry disease control officials of other states and with the U.S. Department of Agriculture in establishing interstate quarantine lines and regulations so as to best protect the livestock and poultry of the Commonwealth against all contagious and infectious diseases.

Code 1950, § 3-566; 1966, c. 702, § 3.1-724; 2008, c. 860.

§ 3.2-6002. Contagious and infectious diseases; prevention and eradication; presence of biological residues

A. The State Veterinarian shall take such measures as may be necessary to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases. The Board may adopt 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, 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, the Board may amend the regulation only as authorized by the Administrative Process Act.

D. The Commissioner and the Board 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 that are determined by the Commissioner and the Board to be or to have the potential for being injurious to the health of humans or animals.

Code 1950, § 3-568; 1966, c. 702, § 3.1-726; 1977, c. 299; 1981, c. 130; 1991, c. 294; 2008, c. 860.

§ 3.2-6003. Duty of State Veterinarian when animals are suspected of having a contagious or infectious disease

A. The State Veterinarian, upon receipt of reliable information of the existence of any contagious or infectious disease among animals of the Commonwealth with potential impact on livestock or poultry, shall immediately make an evaluation that may include going to the place where such disease has been reported. The evaluation may include conducting tests of the animals 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 animal 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 his representative, may adopt and enforce quarantine lines and regulations and shall enforce such cleaning and disinfection as may be deemed necessary to prevent the spread of such disease. Quarantine lines and regulations, when adopted, shall supersede any similar provisions made by

the governing body of any county under the provisions of Chapter 12 (§ 15.2-1200 et seq.) of Title 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.

Code 1950, § 3-569; 1966, c. 702, § 3.1-727; 2008, c. 860.

§ 3.2-6004. Regulation for the separation and caring for diseased animals

The Board may adopt regulations and the State Veterinarian may give and enforce directions and orders as to separating, feeding, and caring for diseased or exposed animals as necessary to prevent the animals affected with disease, or capable of communicating disease, from coming in contact with livestock or poultry not so affected.

Code 1950, § 3-572; 1966, c. 702, § 3.1-730; 2008, c. 860.

§ 3.2-6005. Notice of quarantine

The State Veterinarian, or his representative, may give such notice as may be necessary to make a quarantine effective.

Code 1950, § 3-574; 1966, c. 702, § 3.1-732; 2008, c. 860.

§ 3.2-6006. Quarantine of individuals

Any individual exposed to contagious or infectious animal diseases that, in the reasonable opinion of the State Veterinarian, may be transmitted by such individual to animals, 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.

Code 1950, § 3-571; 1966, c. 702, §3.1-729; 2008, c. 860.

§ 3.2-6007. Domestic animals not permitted to enter or leave quarantine

Any domestic animal with any contagious or infectious disease, any domestic animal exposed to such a disease, or any domestic animal that is otherwise capable of communicating such a disease to livestock or poultry shall not be permitted to enter or leave any quarantined district, premises, or grounds, except by authority of the State Veterinarian.

Code 1950, § 3-570; 1966, c. 702, § 3.1-728; 2008, c. 860.

§ 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.

Code 1950, §§ 3-576, 3-584, 3-586, 3-598.8; 1956, c. 376; 1966, cc. 5, 702, §§ 3.1-734, 3.1-749, 3.1-751, 3.1-763.2; 2008, c. 860.

§ 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.

Code 1950, § 3-586; 1966, c. 702, § 3.1-751; 2008, c. 860.

§ 3.2-6010. Proclamation prohibiting animal importation; required tests

A. When the Commissioner or the State Veterinarian shall have a reasonable belief of the existence of contagious or infectious diseases of animals in localities in other states, territories, or countries, or that conditions exist that, in the judgment of the Commissioner or of the State Veterinarian, render the importation of animals from such localities a menace to the health of the livestock or poultry of the Commonwealth, the Commissioner or the State Veterinarian shall, by proclamation, prohibit the importation of any or all kinds of animals from any locality of other states, territories or countries, into the Commonwealth, 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.

Code 1950, § 3-576; 1966, c. 702, § 3.1-734; 2008, c. 860.

§ 3.2-6011. Bringing animals infected with disease into the Commonwealth, or in violation of order or regulation; disinfecting transport vehicles

It shall be unlawful for any person to: (i) transport from outside the Commonwealth into the Commonwealth any animal, knowing the same to be infected with a contagious or infectious disease, or any animal known by the importer to have been exposed to a contagious or infectious disease, or known to bear upon its body ticks or other disease vectors or known to be a carrier of contagious or infectious disease; (ii) import any animal in violation of any legally adopted quarantine or other order or regulation adopted under this article; or (iii) violate any order or regulation adopted under this article to clean and disinfect vehicles used by them for transporting 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.

Code 1950, § 3-577; 1966, c. 702, § 3.1-736; 1977, c. 395; 2008, c. 860.

§ 3.2-6012. Duty of operators of stockyards and poultry slaughter facilities

Any person who operates a stockyard, poultry slaughter facility, or any other premises where livestock or poultry are repeatedly assembled: (i) shall maintain such premises in a sanitary condition as directed by the State Veterinarian; (ii) shall obey all orders or regulations 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 premises or vehicles used in connection therewith, or any part thereof, when ordered to do so by the State Veterinarian or his representative.

Code 1950, § 3-578; 1966, c. 702, § 3.1-737; 1977, c. 395; 2008, c. 860.

§ 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. Such officers shall obey the orders of the Commissioner, the Board, or the State Veterinarian.

Code 1950, § 3-579; 1966, c. 702, § 3.1-738; 1977, c. 395; 2008, c. 860.

§ 3.2-6014. Circuit court judges may enforce orders of Commissioner, Board, or State Veterinarian

Upon petition by the Commissioner, the Board, or the State Veterinarian, a circuit court judge may issue orders as are necessary to enforce the orders of the Commissioner, the Board, or State Veterinarian.

1977, c. 395, § 3.1-738.1; 2008, c. 860.

§ 3.2-6015. Cooperation with U.S. Department of Agriculture to prevent contagious or infectious diseases

The Governor is authorized to accept, on behalf of the state, the rules and regulations prepared by the U.S. Department of Agriculture under and in pursuance of section three of an act of Congress approved May 29, 1884, entitled "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 U.S. Department of Agriculture shall have the right of inspection, quarantine, and condemnation of animals affected with any contagious or infectious diseases, or suspected to be so affected, or that have been exposed to any such disease, and for these purposes are 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 the Commonwealth be liable for any damages or expenses of any kind under the provisions of this section.

Code 1950, § 3-16; 1966, c. 702, § 3.1-739.1; 2008, c. 860.

§ 3.2-6016. Altering disease control identification of livestock or poultry

It shall be unlawful for any person to, unless in accordance with regulations adopted 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, the Commissioner, the Board, the U.S. Department of Agriculture, or any other state for the identification of any animal in the Commonwealth or shipped into the Commonwealth for the purpose of controlling or eradicating disease.

Code 1950, § 3-591; 1966, c. 702, § 3.1-755; 2008, c. 860.

§ 3.2-6017. Unlawful to possess anthrax or non-inactivated classical swine fever virus without permission; report; testing of biologicals for use in livestock or poultry; rules for biologicals

A. No person shall buy, sell or have in possession, or administer to livestock, or permit any other to administer to livestock, any product or biological preparation, commonly called vaccine, containing anthrax killed, live, or as a spore, or non-inactivated classical swine fever virus, without permission in writing from the State Veterinarian for each such purchase, sale, or administration. Any person permitted to administer any such product or biological preparation shall remit to the State Veterinarian a report within 10 days of such administration showing the kind, 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 to examine and test any biological, commonly called vaccine, intended for use in livestock or poultry to determine if it is safe, pure, potent, or effective. The Board is authorized to adopt regulations providing for the limitation, prohibition, or use of any biological intended for use in livestock or poultry.

Code 1950, § 3-592; 1962, c. 11; 1966, c. 702, § 3.1-756; 1968, c. 49; 2008, c. 860.

§ 3.2-6018. Repealed

Repealed by Acts 2016, c. 563, cl. 2.

§ 3.2-6019. Liability for damages

Any person who knowingly disregards, violates, or evades any provision of any section of this article, or of Article 2 (§ 3.2-6024 et seq.), or any regulation or order of the Commissioner, Board, State Veterinarian, or 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, regulations, or orders.

Code 1950, § 3-582; 1966, c. 702, § 3.1-740; 2002, c. 185; 2008, c. 860.

§ 3.2-6020. Appraisement 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 his representative, one by the owner, and the third by the two thus selected. Their appraisement shall be made in writing and shall be returned to the Board.

Code 1950, § 3-585; 1966, c. 702, § 3.1-750; 2008, c. 860.

§ 3.2-6021. Additional compensation to owners of euthanized or slaughtered animals; liability of purchaser of condemned animal

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 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.

Code 1950, § 3-590; 1954, c. 437; 1966, c. 702, § 3.1-754; 1968, c. 49; 1982, c. 284; 2008, c. 860.

§ 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 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 U.S. Department of Agriculture, and in no event shall the total indemnity paid by the Commissioner and the 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.

Code 1950, § 3-598.9; 1966, c. 5, § 3.1-763.3; 2008, c. 860.

§ 3.2-6023. 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 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 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 the Livestock and Poultry Disease Fund established in § 3.2-6045. 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.

2006, c. 442, § 3.1-741.6; 2008, c. 860; 2016, c. 563.

Article 2 - DISPOSAL OF DEAD POULTRY

§ 3.2-6024. Definitions

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

"Composting" means the natural process in which beneficial microbes reduce dead poultry into a biologically safe by-product.

"Dead poultry" means poultry, exclusive of those intentionally slaughtered, 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 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 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 who engages in the raising or keeping of poultry for profit in 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 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 C.F.R. § 82.1 .

1992, c. 101, § 3.1-742.1; 2008, c. 860.

§ 3.2-6025. Proper disposal of dead poultry required of 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, 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; (iv) composting; or (v) rendering.

Code 1950, § 3-583.2; 1962, c. 157; 1966, c. 702, § 3.1-743; 1992, c. 101; 2008, c. 860.

§ 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, landfill, incinerator, or by composting or rendering.

Code 1950, § 3-583.4; 1962, c. 157; 1966, c. 702, § 3.1-745; 1992, c. 101; 2008, c. 860.

§ 3.2-6027. Transportation of dead poultry

The State Veterinarian may specify requirements governing the transportation of dead poultry.

1992, c. 101, § 3.1-745.1; 2008, c. 860.

§ 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 § 3.2-6025 or 3.2-6026 if he determines that the alternative method meets standards for disposal of dead poultry.

Code 1950, § 3-583.5; 1962, c. 157; 1966, c. 702, § 3.1-746; 1972, c. 90; 1992, c. 101; 2008, c. 860.

§ 3.2-6029. Regulations

The Board 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.

Code 1950, § 3-583.6; 1962, c. 157; 1966, c. 702, § 3.1-747; 1992, c. 101; 2008, c. 860.

§ 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 § 3.2-6002.

1992, c. 101, § 3.1-748.1; 2008, c. 860.

Article 3 - PROHIBITIONS ON FEEDING GARBAGE TO SWINE

§ 3.2-6031. Definitions

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

"Garbage" means animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of foods containing animal carcasses or parts thereof. The Commissioner 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 10 percent moisture, and that he has determined to be nonputrescible. Such treated nonputrescible wastes shall be "commercial feed" as the term is defined in § 3.2-4800, and shall be subject to the provisions of Chapter 48 (§ 3.2-4800 et seq.).

Code 1950, § 3-598.1; 1954, c. 506; 1956, c. 308; 1966, c. 702, § 3.1-758; 1970, c. 619; 1994, c. 743; 2008, c. 860.

§ 3.2-6032. Unlawful to feed garbage to swine

No person shall feed or knowingly allow any other person to feed any garbage to swine on his premises or any premises over which he has any control.

Code 1950, § 3-598.2; 1954, c. 506; 1966, c. 702, § 3.1-759; 1970, c. 619; 2008, c. 860.

§ 3.2-6033. Ordinances prohibiting feeding of certain putrescible wastes

The governing body of any 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 carcasses or parts thereof.

1970, c. 619, § 3.1-762.1; 2008, c. 860.

§ 3.2-6034. Commissioner to enjoin violations

The Commissioner may bring an action to enjoin the violation of any provision of this article in the circuit court of the county or city where such violation occurs.

Code 1950, § 3-598.6; 1954, c. 506; 1956, c. 308; 1966, c. 702, § 3.1-763; 1970, c. 619; 2008, c. 860; 2016, c. 563.

Article 4 - SHOOTING ENCLOSURES

§ 3.2-6035. Definitions

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

"Shooting enclosure" or "enclosure" means any fenced area open commercially to the public or any private facility where animals are held for the purpose of being shot.

"Wildlife" means any native or exotic wild animal or bird.

1995, c. 822, § 3.1-763.5:1; 2007, c. 298; 2008, c. 860.

§ 3.2-6036. Department may issue, deny, and revoke licenses

A. The Department shall issue a license for shooting enclosures only to those enclosures that were in operation on or before January 1, 1995. These enclosures shall hold only those animals described in § 3.2-6040 and as specified in regulations. The Department shall issue a license to a shooting enclosure only if it meets the requirements of this article and regulations adopted

hereunder. 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 § 3.2-6040, 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 § 3.2-6040, to an unlicensed shooting enclosure.

1995, c. 822, § 3.1-763.5:2; 2007, c. 298; 2008, c. 860.

§ 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.

1995, c. 822, § 3.1-763.5:3; 2008, c. 860.

§ 3.2-6038. Application and license fees; other costs

A. Any person 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 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.

1995, c. 822, § 3.1-763.5:4; 2008, c. 860.

§ 3.2-6039. Board to adopt regulations

A. The Board shall adopt regulations to carry out the provisions of this article including the requirements for licensing and operating shooting enclosures located within the Commonwealth. In addition, the Board may adopt regulations governing the veterinary care to be provided to animals held in shooting enclosures.

B. In 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.

1995, c. 822, § 3.1-763.5:5; 2008, c. 860.

§ 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 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.

1995, c. 822, § 3.1-763.5:6; 2008, c. 860.

§ 3.2-6041. Exemption from article

Nothing in this article or any regulation adopted hereunder shall apply to shooting preserves licensed under Chapter 6 (§ 29.1-600 et seq.) of Title 29.1.

1995, c. 822, § 3.1-763.5:7; 2008, c. 860.

§ 3.2-6042. Repealed

Repealed by Acts 2016, c. 563, cl. 2.

Article 5 - VIOLATIONS AND PENALTIES

§ 3.2-6043. Violations; criminal penalties

A. It is unlawful for any person to violate any of the (i) provisions of this chapter or (ii) regulations adopted or quarantines established under this chapter. Any person who violates such provisions or regulations is guilty of a Class 1 misdemeanor.

B. It is unlawful for any person to fail to allow the State Veterinarian or his representative to perform any duty required of him pursuant to this chapter. Any person who fails to allow the State Veterinarian or his representative to perform any duty required of him pursuant this chapter is guilty of a Class 1 misdemeanor.

C. In addition to the penalties provided in subsections A and B, each day of violation of any provision of Article 3 (§ 3.2-6031 et seq.) shall constitute a separate offense.

2016, c. 563.

§ 3.2-6044. Civil penalty

Except as provided in § 3.2-6023, in lieu of any criminal penalty established pursuant to § 3.2-6043, the Board may assess a civil penalty 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 the (i) history of the person's previous violations, (ii) seriousness of the violation, and (iii) demonstrated good faith of the person charged in attempting to achieve compliance with this chapter after notification of the violation. Such civil penalties shall be deposited into the Livestock and Poultry Disease Fund established in § 3.2-6045. The provisions of this section shall not apply to § 3.2-6023.

2016, c. 563.

§ 3.2-6045. Livestock and Poultry Disease Fund

There is hereby created in the state treasury a special nonreverting fund to be known as the Livestock and Poultry Disease Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All civil penalties assessed 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. Moneys in the Fund shall be used to carry 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.

2016, c. 563.

Chapter 61 - CATTLE BRANDING AND REGISTRATION

§ 3.2-6100. Definitions

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

"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.

"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 to operate such market.

1974, c. 642, § 3.1-796.29; 1975, c. 283; 2008, c. 860.

§ 3.2-6101. Authority to adopt regulations

The Commissioner, with the approval of the Board, may adopt regulations reasonably necessary to carry out the intent and purposes of this chapter and that facilitate the tracing and identification of cattle and afford protection against stealing and unlawful dealing in cattle.

1974, c. 642, § 3.1-796.36; 2008, c. 860.

§ 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 $10 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 $10 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 $3, the Department shall note such transfer in the register of brands, and such brand shall not be used by the new owner until permission has been given by the Department.

1974, c. 642, § 3.1-796.30; 1975, c. 283; 2008, c. 860.

§ 3.2-6103. Renewal of brand

There shall be a renewal period for recording brands that shall be once every five years. At least 90 days prior to the renewal date for a brand, the Department shall notify all persons having a

registered brand of the date on which such brands must be renewed. On or before the renewal date the registered owner of a brand shall pay to the Department a renewal fee of $10 per registered brand and shall furnish any additional information 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.

1974, c. 642, § 3.1-796.32; 2008, c. 860.

§ 3.2-6104. Forms

The Department shall prescribe and furnish forms on which applications for registration, renewal and transfer of brands shall be made.

1974, c. 642, § 3.1-796.33; 2008, c. 860.

§ 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 the regulations adopted pursuant to this chapter.

1974, c. 642, § 3.1-796.34; 2008, c. 860.

§ 3.2-6106. Livestock market to keep copy of register and records on cattle sold

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) keep a record, for at least two years, of all cattle received and the name and address of the owner.

1974, c. 642, § 3.1-796.35; 2008, c. 860.

§ 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.

1974, c. 642, § 3.1-796.31; 2008, c. 860.

§ 3.2-6108. Prohibited acts

It shall be unlawful for:

1. Any person to use any brand for branding cattle unless the brand is registered with the Department;

2. Any person to obliterate, alter or deface the brand of any animals;

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

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.

1974, c. 642, § 3.1-796.37; 2008, c. 860.

§ 3.2-6109. Penalties

Any person who violates any of the provisions of this chapter 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.

1974, c. 642, § 3.1-796.38; 2008, c. 860.

Chapter 62 - EQUINE ACTIVITY LIABILITY

§ 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 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 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 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 stables, clubhouses, ponyride strings, fairs, and arenas 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: (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.

1991, c. 358, § 3.1-796.130; 2003, c. 876; 2008, c. 860.

§ 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.

1991, c. 358, § 3.1-796.131; 2008, c. 860.

§ 3.2-6202. Liability limited; liability actions prohibited

A. Except as provided in § 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 § 3.2-6203, 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 § 3.2-6203, 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.

1991, c. 358, § 3.1-796.132; 2003, c. 876; 2008, c. 860.

§ 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 § 3.2-6202; 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.

1991, c. 358, § 3.1-796.133; 2003, c. 876; 2008, c. 860.

Chapter 63 - OX ACTIVITY LIABILITY

§ 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 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 stables, fairs, and arenas 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.

1994, c. 404, § 3.1-796.134; 2008, c. 860.

§ 3.2-6301. Liability limited; liability actions prohibited

A. Except as provided in § 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 § 3.2-6302, 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 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 12-month period unless earlier expressly revoked in writing.

1994, c. 404, § 3.1-796.135; 2008, c. 860.

§ 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 § 3.2-6301; or

3. Knowingly provides faulty equipment or tack and such equipment or tack causes the injury or death of the participant.

1994, c. 404, § 3.1-796.136; 2008, c. 860.

Chapter 64 - AGRITOURISM ACTIVITY LIABILITY

§ 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, viticulture, 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.

2006, c. 710, § 3.1-796.137; 2008, c. 860.

§ 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 § 3.2-6402 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.

2006, c. 710, § 3.1-796.138; 2008, c. 860.

§ 3.2-6402. Notice required

A. Every agritourism professional shall post and maintain signs that contain the 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 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 notice specified in subsection B.

B. The signs and contracts described in subsection A shall contain the following notice: "WARNING" or "ATTENTION" followed by "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 signs and notices provided in this section shall prevent an agritourism professional from invoking the privileges of immunity provided by this chapter.

2006, c. 710, § 3.1-796.139; 2008, c. 860; 2016, c. 166.

Chapter 65 - COMPREHENSIVE ANIMAL CARE

Article 1 - GENERAL PROVISIONS

§ 3.2-6500. Definitions

As used in this chapter 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 § 3.2-6503 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 appropriate for the weather and temperature, 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 § 3.2-6522, animal means any species susceptible to rabies. For the purposes of § 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 § 3.2-6555.

"Boarding establishment" means a place or establishment other than a public or private 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.

"Commercial dog breeder" means any person who, during any 12-month period, maintains 30 or more adult female dogs for the primary purpose of the sale of their offspring as companion animals.

"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 barters 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 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 U.S. Department of Agriculture.

"Facility" means a building or portion thereof as designated by the State Veterinarian, 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.

"Farming activity" means, consistent with standard animal husbandry practices, the raising, management, and use of agricultural animals to provide food, fiber, or transportation and the breeding, exhibition, lawful recreational use, marketing, transportation, and slaughter of agricultural animals pursuant to such purposes.

"Foster care provider" means a person who provides care or rehabilitation for companion animals through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization.

"Foster home" means a private residential dwelling and its surrounding grounds, or any facility other than a public or private animal shelter, at which site through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization 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 an animal welfare organization that takes custody of companion animals for the purpose of facilitating adoption and houses such companion animals in a foster home or a system of 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 § 3.2-6558.

"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.

"Incorporated" means organized and maintained as a legal entity in the Commonwealth.

"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 § 3.2-2600; 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.

"New owner" means an individual who is legally competent to enter into a binding agreement pursuant to subdivision B 2 of § 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 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.

"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.

"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.

"Private animal shelter" means a facility operated for the purpose of finding permanent adoptive homes for animals that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other similar organization.

"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.

"Public animal shelter" means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or sheltering seized, stray, homeless, abandoned, unwanted, or surrendered animals or a facility operated for the same purpose under a contract with any locality.

"Releasing agency" means (i) a public animal shelter or (ii) a private 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.

"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.

1984, c. 492, § 29-213.36; 1987, c. 488, § 3.1-796.66; 1988, c. 538; 1991, c. 348; 1993, cc. 174, 959; 1995, c. 610; 1998, c. 817; 2002, cc. 351, 500, 787; 2003, c. 1007; 2008, cc. 9, 127, 852, 860; 2011, cc. 754, 886; 2014, c. 148; 2015, c. 492.

§ 3.2-6501. Regulations and guidelines

The Board may adopt regulations and guidelines consistent with the objectives and intent of this chapter concerning the care and transportation of animals.

1984, c. 492, § 29-213.37; 1987, c. 488, § 3.1-796.67; 2008, c. 860.

§ 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 public and private animal shelters, and inspect any business premises where animals are housed or kept, including any boarding establishment, kennel, pet shop, 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 § 3.2-6564. Provisions for obtaining a warrant and the power of search for violations of animal cruelty laws are provided in § 3.2-6568.

1993, c. 601, § 3.1-796.67:2; 1998, c. 817; 2002, c. 787; 2003, c. 1007; 2008, c. 860; 2014, c. 148.

Article 2 - ANIMAL WELFARE

§ 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 to prevent suffering or disease transmission.

The provisions of this section shall also apply to every public or private 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. Violation of this section is a Class 4 misdemeanor. A second or subsequent violation of subdivision A 1, 2, 3, or 7 is a Class 2 misdemeanor and a second or subsequent violation of subdivision A 4, 5, or 6 is a Class 3 misdemeanor.

1984, c. 492, § 29-213.38; 1987, c. 488, § 3.1-796.68; 1991, c. 348; 1993, c. 174; 1996, c. 249; 1998, c. 817; 2002, c. 787; 2003, c. 1007; 2008, c. 860; 2010, c. 875; 2014, c. 148.

§ 3.2-6503.1. Care of agricultural animals by owner; penalty

A. Each owner shall provide for each of his agricultural animals:

1. Feed to prevent malnourishment;

2. Water to prevent dehydration; and

3. Veterinary treatment as needed to address impairment of health or bodily function when such impairment cannot be otherwise addressed through animal husbandry, including humane destruction.

B. The provisions of this section shall not require an owner to provide feed or water when such is customarily withheld, restricted, or apportioned pursuant to a farming activity or if otherwise prescribed by a veterinarian.

C. There shall be a rebuttable presumption that there has been no violation of this section if an owner is unable to provide feed, water, or veterinary treatment due to an act of God.

D. The provisions of this section shall not apply to agricultural animals used for bona fide medical or scientific experimentation.

E. A violation of this section is a Class 4 misdemeanor.

2011, cc. 754, 886.

§ 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 public or private animal shelter or other releasing agency.

1984, c. 492, § 29-213.43; 1987, c. 488, § 3.1-796.73; 1993, c. 174; 2002, cc. 351, 787; 2003, c. 1007; 2008, c. 860; 2014, c. 148.

§ 3.2-6504.1. Civil immunity; forcible entry of motor vehicle to remove unattended companion animal

No law-enforcement officer as defined in § 9.1-101, firefighter as defined in § 65.2-102, emergency medical services personnel as defined in § 32.1-111.1, or animal control officer who in good faith forcibly enters a motor vehicle in order to remove an unattended companion animal that is at risk of serious bodily injury or death shall be liable for any property damage to the vehicle entered or injury to the animal resulting from such forcible entry and removal of the animal, unless such property damage or injury results from gross negligence or willful or wanton misconduct.

2016, c. 679.

§ 3.2-6505. Disposal of animals by means of decompression chamber and use of gas chamber for companion animals prohibited

A. No animal shall be euthanized pursuant to the provisions of this chapter by means of a high altitude decompression chamber.

B. No companion animal shall be euthanized pursuant to the provisions of this chapter by means of a gas chamber.

1984, c. 492, § 29-213.47; 1987, c. 488, § 3.1-796.77; 2008, cc. 8, 860.

§ 3.2-6506. Exceptions regarding veterinarians

Sections 3.2-6503, 3.2-6504, 3.2-6508 through 3.2-6519, 3.2-6557, 3.2-6559, 3.2-6561, 3.2-6564, 3.2-6565, and 3.2-6574 through 3.2-6580 shall not apply to: (i) a place or establishment 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.

1984, c. 492, § 29-213.44; 1987, c. 488, § 3.1-796.74; 1993, cc. 174, 959; 2008, c. 860.

§ 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 § 3.2-6557.

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.

1984, c. 492, § 29-213.46; 1987, c. 488, § 3.1-796.76; 1999, c. 620; 2008, c. 860.

Article 2.1 - COMMERCIAL DOG BREEDING OPERATIONS

§ 3.2-6507.1. Business license required

No commercial dog breeder shall breed dogs in the Commonwealth without a valid business license issued by any locality, as applicable, where he maintains dogs for the purpose of commercial dog breeding.

2008, c. 852, § 3.1-796.77:1.

§ 3.2-6507.2. Commercial dog breeding; requirements

Commercial dog breeders shall:

1. Maintain no more than 50 dogs over the age of one year at any time for breeding purposes. However, a higher number of dogs may be allowed if approved by local ordinance after a public hearing. Any such ordinance may include additional requirements for commercial breeding operations;

2. Breed female dogs only: (i) after annual certification by a licensed veterinarian that the dog is in suitable health for breeding; (ii) after the dog has reached the age of 18 months; and (iii) if the dog has not yet reached the age of 8 years;

3. Dispose of dogs only by gift, sale, transfer, barter, or euthanasia by a licensed veterinarian;

4. Dispose of deceased dogs in accordance with § 3.2-6554;

5. Dispose of dog waste in accordance with state and federal laws and regulations; and

6. Maintain accurate records for at least five years including:

a. The date on which a dog enters the operation;

b. The person from whom the animal was purchased or obtained, including the address and phone number of such person;

c. A description of the animal, including the species, color, breed, sex, and approximate age and weight;

d. Any tattoo, microchip number, or other identification number carried by or appearing on the animal;

e. Each date that puppies were born to such animal and the number of puppies;

f. All medical care and vaccinations provided to the animal, including certifications required by a licensed veterinarian under this chapter; and

g. The disposition of each animal and the date.

2008, c. 852, § 3.1-796.77:2.

§ 3.2-6507.3. Right of entry

A. The Commissioner, the State Veterinarian or his assistant, any animal control officer, and any public health or safety official employed by the locality where a commercial dog breeder resides or maintains breeding operations may, upon receiving a complaint or upon his own motion, investigate any violation of the provisions of this chapter. Such investigation may include (i) the inspection of the books and records of any commercial dog breeder, (ii) the inspection of any companion animal owned by the commercial dog breeder, and (iii) the inspection of any place where animals are bred or maintained. In conducting the inspection, the Commissioner or animal control officer may enter any premises where animals may be bred or maintained during daytime hours.

B. Any commercial dog breeder who is the subject of an investigation by the Commissioner, the State Veterinarian, or an animal control officer shall, upon request, provide assistance to the Commissioner, the State Veterinarian, or the animal control officer in making any inspection authorized by this section.

2008, c. 852, § 3.1-796.77:3.

§ 3.2-6507.4. Concurrent operation of releasing agency prohibited

It is unlawful for a commercial dog breeder to operate or maintain a controlling interest in any releasing agency.

2008, c. 852, § 3.1-796.77:4.

§ 3.2-6507.5. Penalty

Any commercial dog breeder violating any provision of this article is guilty of a Class 1 misdemeanor.

2008, c. 852, § 3.1-796.77:5.

§ 3.2-6507.6. Duty of attorneys for the Commonwealth
It shall be the duty of each attorney for the Commonwealth to enforce this article.

2008, c. 852, § 3.1-796.77:6.

Article 3 - TRANSPORTATION AND SALE OF ANIMALS

§ 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 24 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 is a Class 1 misdemeanor.

1984, c. 492, § 29-213.39; 1987, c. 488, § 3.1-796.69; 1993, c. 174; 2008, c. 860.

§ 3.2-6508.1. Sale of dogs or cats prohibited in certain places
A. It is unlawful for any person to sell, exchange, trade, barter, lease, or display for a commercial purpose any dog or cat on or in any roadside, public right-of-way, parkway, median, park, or recreation area; flea market or other outdoor market; or commercial parking lot, regardless of whether such act is authorized by the landowner.

B. This section shall not apply to:

1. The display of dogs or cats by or the adoption of dogs or cats from a humane society or private or public animal shelter as those terms are defined in § 3.2-6500;

2. The display of dogs or cats as part of a state or county fair exhibition, 4-H program, or similar exhibition or educational program;

3. The sale, exchange, or trade of dogs that are sold primarily for use in commonly-accepted hunting or livestock farming activities; or

4. A prearranged sale between a dog breeder and a specific individual purchaser. Such prearranged sale shall not take place at a regularly-occurring event such as a flea market or other organized trade venue.

2015, c. 679.

§ 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. 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 is a Class 3 misdemeanor.

1984, c. 492, § 29-213.42; 1987, c. 488, § 3.1-796.72; 1998, c. 817; 2008, c. 860.

§ 3.2-6510. Sale 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 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, a public or private 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 a Class 3 misdemeanor.

1984, c. 492, § 29-213.40; 1987, c. 488, § 3.1-796.70; 1993, c. 174; 1995, c. 625; 2006, c. 503; 2008, c. 860; 2014, c. 148.

§ 3.2-6511. Failure of dealer or pet shop to provide adequate care; 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 is 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 § 3.2-6546 for licensed, tagged, or tattooed animals. Such failure is also 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.

1984, c. 492, § 29-213.41; 1987, c. 488, § 3.1-796.71; 1993, c. 174; 2008, c. 860.

§ 3.2-6511.1. Pet shops; procurement of dogs; penalty

A. A pet shop shall sell or offer for adoption a dog procured only from a humane society or private or public animal shelter as those terms are defined in § 3.2-6500 or from a person who has not received from the U.S. Department of Agriculture, pursuant to enforcement of the federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) or regulations adopted thereunder, (i) a citation for a direct violation or citations for three or more indirect violations for at least two years prior to the procurement of the dog or (ii) two consecutive citations for no access to the facility prior to the procurement of the dog.

B. It shall be unlawful for any commercial dog breeder who is not licensed by the U.S. Department of Agriculture pursuant to the federal Animal Welfare Act (7 U.S.C. § 2131 et seq.) or regulations adopted thereunder to sell any dog to a pet shop.

C. A pet shop shall retain records verifying compliance with this section for a minimum of two years after the disposition of any dog.

D. Any person violating any provision of this section is guilty of a Class 1 misdemeanor for each dog sold or offered for sale.

2008, c. 852, § 3.1-796.71:1; 2015, c. 679.

§ 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 or 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 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.

A pet shop operating in the Commonwealth shall post in a conspicuous place on or near the cage of any dog or cat available for sale the breeder's name, city, state, and USDA license number. A pet shop or a USDA licensed dealer who advertises any dog or cat for sale in the Commonwealth, including by Internet advertisement, shall provide prior to the time of sale the breeder's name, city, state, and USDA license number.

1984, c. 492, § 29-213.48; 1987, c. 488, § 3.1-796.78; 2008, c. 860; 2014, c. 448.

§ 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 § 3.2-6512 any false or misleading statement regarding the information to be contained therein.

1984, c. 492, § 29-213.49; 1987, c. 488, § 3.1-796.79; 2008, c. 860.

§ 3.2-6514. Consumer remedies for receipt of diseased animal upon certification by veterinarian

A. If, at any time within 10 days following receipt of an animal, 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 other than parvovirus, or if at any time within 14 days following the receipt of an animal a licensed veterinarian certifies such animal to be unfit for purchase due to being infected with parvovirus, the pet dealer shall afford the consumer the right to choose one of the following options:

1. The right to return the animal or, in the case of an animal that has died, to present the veterinary certification, within three business days of certification and receive a refund of the purchase price including sales tax; or

2. The right to return the animal or, in the case of an animal that has died, to present the veterinary certification, within three business days of certification and to receive an exchange animal of equivalent value from the dealer, subject to the choice of the consumer; or

3. In the case of an animal purchased from a pet shop or a USDA licensed dealer, the right to retain the animal and to receive the reimbursement of veterinary fees in an amount up to the purchase price of the animal, including sales tax and the cost of the veterinary certification, incurred up to the time the consumer notifies the pet dealer of the intent to keep the animal. Such notification shall occur within three business days of certification. Veterinary costs incurred by the consumer after such notification shall be the responsibility of the consumer.

B. The refund or reimbursement required by subsection A shall be made by the pet dealer not later than 10 business days following receipt of a signed veterinary certification as provided in § 3.2-6515.

1984, c. 492, § 29-213.50; 1987, c. 488, § 3.1-796.80; 2008, c. 860; 2014, c. 448.

§ 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 a written contract, the pet dealer's animal history certificate, or a separate document and shall state in ten-point boldface type the following:

"NOTICE

The sale of dogs and cats 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 10 days following receipt of your animal, or within 14 days following receipt if the animal is infected with parvovirus, you may choose: (i) to return your animal, or in the case of an animal that has died, the veterinary certification, and receive a refund of the purchase price including sales tax; or (ii) to return the animal and receive an exchange animal of your choice of equivalent value. In the case of an animal purchased from a pet shop or a USDA licensed dealer, you also may choose to retain the animal and receive reimbursement of the cost of veterinary certification and veterinary fees in an amount up to the purchase price of the animal.

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 50 percent of the purchase price."

1984, c. 492, § 29-213.51; 1987, c. 488, § 3.1-796.81; 2008, c. 860; 2014, c. 448.

§ 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 50 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.

1984, c. 492, § 29-213.52; 1987, c. 488, § 3.1-796.82; 2008, c. 860.

§ 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.

1984, c. 492, § 29-213.53; 1987, c. 488, § 3.1-796.83; 2008, c. 860.

Article 4 - BOARDING ESTABLISHMENTS AND GROOMERS

§ 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 § 3.2-6503.

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 § 3.2-6503, or if the injury is a result of the actions of the boarding establishment or groomer. 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 § 3.2-6500 and required by § 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 § 3.2-6569.

D. Violation of this section by a boarding establishment or groomer is a Class 1 misdemeanor.

1993, c. 174, § 3.1-796.83:1; 1996, c. 249; 2008, c. 860.

§ 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 boldfaced type the following:

NOTICE

The boarding of animals is subject to Article 4 (§ 3.2-6518 et seq.) of Chapter 65 of Title 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 § 3.2-6503.

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 4 (§ 3.2-6518 et seq.) OF CHAPTER 65 OF TITLE 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 a Class 3 misdemeanor.

1993, c. 174, § 3.1-796.83:2; 1998, c. 817; 2008, c. 860.

§ 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 14 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 30 days, the balance shall be paid to the Literary Fund. If no purchaser is found, the animal may be offered for adoption or euthanized.

1984, c. 492, § 29-213.45; 1987, c. 488, § 3.1-796.75; 1993, c. 174; 2008, c. 860.

Article 5 - RABIES CONTROL AND LICENSING OF DOGS AND CATS

§ 3.2-6521. Rabies inoculation of companion animals; availability of certificate; rabies clinics

A. The owner or custodian of all dogs and cats four months of age and older shall have such animal 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 unless otherwise provided by regulations. The supervising veterinarian on the premises shall

provide the owner or custodian of the dog or the cat with a rabies vaccination certificate or herd rabies vaccination certificate and shall keep a copy in his own files. The owner or custodian of the dog or the 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 U.S. Department of Agriculture for use in that species. At the discretion of the local health director, a medical record from a licensed veterinary establishment reflecting a currently vaccinated status may serve as proof of vaccination.

B. All rabies clinics require the approval by the appropriate local health department and governing body. The licensed veterinarian who administers rabies vaccinations at the clinic shall (i) provide the owner or custodian a rabies vaccination certificate for each vaccinated animal and (ii) ensure that a licensed veterinary facility retains a copy of the rabies vaccination certificate. The sponsoring organization of a rabies clinic shall, upon the request of the owner or custodian, an animal control officer, a humane investigator, a law-enforcement officer, a State Veterinarian's representative, a licensed veterinarian, or an official of the Department of Health, provide the name and contact information of the licensed veterinary facility where a copy of the rabies vaccination certificate is retained. However, the county or city shall ensure that a clinic is conducted to serve its jurisdiction at least once every two years.

C. Vaccination subsequent to a summons to appear before a court for failure to do so shall not operate to relieve such owner from the penalties or court costs provided under § 16.1-69.48:1 or 17.1-275.7.

D. The Board of Health shall, by regulation, provide an exemption to the requirements of subsection A if an animal suffers from an underlying medical condition that is likely to result in a life-threatening condition in response to vaccination and such exemption would not risk public health and safety. For the purposes of § 3.2-6522, such exemption shall mean that the animal is considered not currently vaccinated for rabies. For the purposes of §§ 3.2-5902, 3.2-6526, and 3.2-6527, such exemption shall be considered in place of a current certificate of vaccination.

1984, c. 492, § 29-213.67; 1987, c. 488, § 3.1-796.97; 1988, c. 538, § 3.1-796.97:1; 1992, c. 294; 1993, c. 817; 1994, c. 636; 1996, c. 351; 1998, c. 817; 2006, c. 836; 2008, c. 860; 2009, c. 756; 2010, cc. 182, 834; 2013, c. 286.

§ 3.2-6522. Rabid animals

A. When there is sufficient reason to believe that the risk of exposure to rabies is elevated, the governing body of any locality may enact, and the local health director may recommend, 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 a 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 locality in consultation with the local health director. The governing body of any locality shall also have the power and authority to pass ordinances restricting the running at large in their respective jurisdiction of dogs and cats that have not been inoculated or vaccinated against rabies and to provide penalties for the violation thereof.

B. Any dog or cat showing active signs of rabies or suspected of having rabies that is not known to have exposed a person, companion animal, or livestock to rabies shall be confined under competent observation for such a time as may be necessary to determine a diagnosis. If, in the discretion of the local health director, 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 § 3.2-6546. The disposition of other animals showing active signs of rabies shall be determined by the local health director and may include euthanasia and testing.

C. Every person having knowledge of the existence of an animal that is suspected to be rabid and that may have exposed a person, companion animal, or livestock to 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 signs suggesting rabies.

D. Any dog or cat for which no proof of current rabies vaccination is available and that may have been 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 suspected to be rabid shall be isolated in a public animal shelter, kennel, or enclosure approved by the local health department for a period not to exceed six months at the expense of the owner or custodian in a manner and by a date certain as determined by the local health director. A rabies vaccination shall be administered by a licensed veterinarian prior to release. Inactivated rabies vaccine may be administered at the beginning of isolation. 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 current vaccination, shall be revaccinated by a licensed veterinarian immediately following the exposure and shall be confined to the premises of the owner or custodian, or other site as may be approved by the local health department at the expense of the owner or custodian, for a period of 45 days. If the local health director determines that isolation is not feasible or maintained, such dog or cat shall be euthanized by one of the methods approved by the State Veterinarian as provided in § 3.2-6546. The disposition of such dogs or cats not so confined shall be at the discretion of the local health director.

E. At the discretion of the local health director, any animal that may have exposed a person shall be confined under competent observation for 10 days at the expense of the owner or custodian, unless the animal develops active signs of rabies, expires, or is euthanized before that time. A seriously injured or sick animal may be euthanized as provided in § 3.2-6546.

F. When any suspected 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, decisions regarding the disposition of that animal shall be at the discretion of a local health director and may include euthanasia as provided in § 3.2-6546, or as directed by the state agency with jurisdiction over that species. When any animal, other than a dog or cat, is exposed or may have been 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 suspected to be rabid, decisions regarding the disposition of that newly exposed animal shall be at the discretion of a local health director.

G. When any animal may have exposed a person to rabies and subsequently expires due to illness or euthanasia, either within an observation period, where applicable, or as part of a public health investigation, its head or brain shall be sent to the Division of Consolidated Laboratory Services of the Department of General Services or be tested as directed by the local health department.

1984, cc. 492, 527, § 29-213.68; 1987, c. 488, § 3.1-796.98; 1988, c. 538; 1991, c. 380; 2003, c. 479; 2008, c. 860; 2010, c. 834; 2014, c. 148.

§ 3.2-6523. Inoculation for rabies at public or private animal shelters

Dogs and cats being adopted from a public or private animal shelter during the period an emergency ordinance is in force, as provided for in § 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.

1984, c. 384, § 29-213.68:1; 1987, c. 488, § 3.1-796.99; 2008, c. 860; 2014, c. 148.

§ 3.2-6524. Unlicensed dogs prohibited; 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 the Commonwealth unless such dog is licensed, as required by the provisions of this article.

B. The governing body of any locality may, by 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.

1984, c. 492, § 29-213.55; 1987, c. 488, § 3.1-796.85; 1988, c. 538; 1993, c. 817; 2007, c. 640; 2008, c. 860.

§ 3.2-6525. Regulations to prevent spread of rabies

A. The governing body of any 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. 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 locality 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 on or after July 1, 2010, shall be developed in consultation with the Department of Health and with written authorization from the Department of Game and Inland Fisheries in accordance with § 29.1-508.1 and 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.

1984, c. 492, § 29-213.69; 1987, c. 488, § 3.1-796.100; 2001, c. 674; 2008, c. 860; 2010, c. 834.

§ 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.

1984, c. 492, §§ 29-213.60, 29-213.67; 1987, c. 488, §§ 3.1-796.90, 3.1-796.97; 1993, c. 817; 1996, c. 351; 1998, c. 394; 2006, c. 836; 2008, c. 860.

§ 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 § 3.2-6524, by making oral or written application to the treasurer of the 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.

1984, c. 492, § 29-213.56; 1987, c. 488, § 3.1-796.86; 1991, c. 77; 1993, c. 817; 2006, c. 836; 2008, c. 860.

§ 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 locality that has adopted an ordinance pursuant to subsection B of § 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 $1 and not more than $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 10, 20, 30, 40, or 50 dogs or cats not to exceed $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 or otherwise disabled person.

As used in this section, "hearing dog," "mobility-impaired person," "otherwise disabled person," and "service dog" have the same meanings as assigned in § 51.5-40.1.

1984, cc. 248, 492, § 29-213.57; 1986, c. 169; 1987, c. 488, § 3.1-796.87; 1993, c. 817; 1994, c. 108; 2006, c. 836; 2008, c. 860; 2014, c. 616.

§ 3.2-6529. 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 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 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 retain only the information that is required to be collected and open to public inspection pursuant to the provisions of this Chapter and shall forthwith destroy any rabies vaccination certificate or other similar record transmitted by a veterinarian to a treasurer pursuant to this section.

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 spay or neuter programs.

2006, c. 836, § 3.1-796.87:1; 2007, c. 270; 2008, cc. 16, 860.

§ 3.2-6530. When license tax payable

A. The license tax as prescribed in § 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 § 3.2-6528 shall be due on January 1 and not later than January 31 of each year.

1984, cc. 248, 492, § 29-213.58; 1986, c. 169; 1987, c. 488, § 3.1-796.88; 1990, c. 365; 1993, c. 817; 2006, c. 836; 2008, c. 860.

§ 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 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.

1984, c. 492, § 29-213.62; 1987, c. 488, § 3.1-796.92; 1990, c. 365; 1993, c. 817; 1998, c. 817; 2008, c. 860.

§ 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 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 $1.

1984, c. 492, § 29-213.61; 1987, c. 488, § 3.1-796.91; 1993, c. 817; 2008, c. 860.

§ 3.2-6533. Effect of dog or cat not wearing 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.

1984, c. 492, § 29-213.59; 1987, c. 488, § 3.1-796.89; 1993, c. 817; 2006, c. 836; 2008, c. 860.

§ 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 public animal shelter;

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 § 3.2-6553; 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.

1984, c. 492, § 29-213.70; 1987, c. 488, § 3.1-796.101; 1993, c. 959; 1998, c. 817; 2008, c. 860; 2014, c. 148.

§ 3.2-6535. Supplemental funds

Localities may supplement the dog and cat license tax fund with other funds as they consider appropriate. 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 public animal shelter as provided in subdivisions 1 and 2 of § 3.2-6534.

1984, c. 492, § 29-213.71; 1987, c. 488, § 3.1-796.102; 1998, c. 817; 2008, c. 860; 2014, c. 148.

§ 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 or court costs provided under § 16.1-69.48:1 or 17.1-275.7.

1984, c. 492, § 29-213.72; 1987, c. 488, § 3.1-796.103; 2008, c. 860; 2009, c. 756.

Article 6 - AUTHORITY OF LOCAL GOVERNING BODIES

§ 3.2-6537. Ordinances; penalties

The governing body of any locality may, by 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 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 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 § 3.2-6534.

1984, c. 492, § 29-213.54; 1987, c. 488, § 3.1-796.84; 2005, c. 307; 2008, c. 860.

§ 3.2-6538. Governing body of any locality may prohibit dogs from running at large

The governing body of any locality may prohibit the running at large of all or any category of dogs in all or any designated portion of such 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.

1984, c. 492, § 29-213.63; 1987, c. 488, § 3.1-796.93; 2008, c. 860.

§ 3.2-6539. Ordinance requiring dogs to be kept on leash

The governing body of any locality may adopt ordinances requiring that dogs within any such locality be kept on a leash or otherwise restrained and may, by resolution directed to the circuit court, request the court to order a referendum as to whether any such ordinance so adopted shall become effective. 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 the locality but may be used in ascertaining the sense of the voters.

1984, c. 492, § 29-213.65; 1987, c. 488, § 3.1-796.95; 2008, c. 860.

§ 3.2-6540. Control of dangerous 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. 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. No dog that has bitten, attacked, or inflicted injury on a person shall be found to be a dangerous dog if the court determines, based on the totality of the evidence before it, that the dog is not dangerous or a threat to the community.

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 shall apply to a magistrate serving 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. 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 harborer 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. The court, upon finding the animal to be a dangerous dog, may order the owner, custodian, or harborer thereof to pay restitution for actual damages to any person injured by the animal or whose companion animal was injured or killed by the animal. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time as the animal is disposed of or returned to the owner. 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 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 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. 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.

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 45 days of such finding, obtain a dangerous dog registration certificate from the local animal control officer or treasurer for a fee of $150, 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. By January 31 of each year, until such time as the dangerous dog is deceased, all certificates obtained pursuant to this subsection shall be updated and

renewed for a fee of $85 and in the same manner as the initial certificate was obtained. The animal control officer shall post registration information on the Virginia Dangerous Dog Registry.

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 (a) 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 (b) the animal has been permanently identified by means of 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. While so confined within the structure, the animal shall be provided for according to § 3.2-6503. 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 shall 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) chip identification information; (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; (ii) bites a person or attacks another animal; or (iii) is sold, is 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.

Whenever an owner or custodian of an animal found to be a dangerous dog is charged with a violation of this section, the animal control officer shall confine the dangerous dog until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian, or harborer of the animal to produce the animal.

Upon conviction, the court may (i) order the dangerous dog to be disposed of by a local governing body pursuant to § 3.2-6562 or (ii) grant the owner up to 45 days to comply with the requirements of this section, during which time the dangerous dog shall remain in the custody of the animal control officer until compliance has been verified. If the owner fails to achieve compliance within the time specified by the court, the court shall order the dangerous dog to be disposed of by a local governing body pursuant to § 3.2-6562. The court, in its discretion, may order the owner to pay all reasonable expenses incurred in caring and providing for such dangerous dog from the time the animal is taken into custody until such time that the animal is disposed of or returned to the owner.

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 and fees due to the State Veterinarian for maintenance of the Virginia Dangerous Dog Registry, 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 § 3.2-6556.

M. The governing body of any locality may enact an ordinance parallel to this statute regulating dangerous dogs. No locality may impose a felony penalty for violation of such ordinances.

1993, c. 977, § 3.1-796.93:1; 1994, c. 115; 1997, cc. 582, 892; 1998, c. 817; 2000, cc. 11, 727; 2003, cc. 785, 841; 2006, cc. 837, 864, 898; 2008, cc. 360, 551, 691, 860; 2009, c. 377; 2012, cc. 107, 236; 2013, cc. 58, 732.

§ 3.2-6540.1. Vicious dogs; penalties

A. As used in this section:

"Serious injury" means an injury having a reasonable potential to cause death or any injury other than a sprain or strain, including serious disfigurement, serious impairment of health, or serious impairment of bodily function and requiring significant medical attention.

"Vicious dog" means a canine or canine crossbreed that has (i) killed a person, (ii) inflicted serious injury to a person, 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 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 vicious dog shall apply to a magistrate serving 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 vicious. The animal control officer shall 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 harborer of the animal to produce the animal. 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 § 3.2-6562. The court, upon finding the animal to be a vicious dog, may order the owner, custodian, or harborer thereof to pay restitution for actual damages to any person injured by the animal or to the estate of any person killed by the animal. The court, in its discretion, may also order the owner to pay all reasonable expenses incurred in caring and providing for such vicious dog from the time the animal is taken into custody until such time as the animal is disposed of. 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 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 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 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 vicious dog.

D. Any owner or custodian of a canine or canine crossbreed or other animal 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 injury to any person is guilty of a Class 6 felony. 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.

E. The governing body of any locality may enact an ordinance parallel to this statute regulating vicious dogs. No locality may impose a felony penalty for violation of such ordinances.

2013, cc. 58, 732.

§ 3.2-6541. Authority to prohibit training of attack dogs

Fairfax County may enact an ordinance 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.

1999, c. 848, § 3.1-796.93:2; 2008, c. 860.

§ 3.2-6542. Establishment of Dangerous Dog Registry

The Commissioner shall establish the Virginia Dangerous Dog Registry to be maintained by the Department, Office of Animal Care and Health Policy. The State Veterinarian shall maintain information provided and posted by animal control officers or 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 information 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 to an animal control officer or other designated local official of

the county or city in which he currently resides 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 animal control officer or other such official shall post any updates on the website. 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 to an animal control officer or other such official for the new location. There shall be no charge for any updated information provided between renewals. Each county and city shall submit to the State Veterinarian by January 31 of each year $90 for each dangerous dog it initially registered and $25 for each dangerous dog for which it renewed registration within the previous calendar year. 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 Virginia Dangerous Dog Registry under this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Copies of all records, documents, and other papers pertaining to the Dangerous Dog Registry that are duly certified and authenticated in writing on the face of such documents to be true copies by the State Veterinarian or the Dangerous Dog Registry administrator shall be received as evidence with like effect as the original records, documents, or other papers in all courts of the Commonwealth.

2006, cc. 837, 864, 898, § 3.1-796.93:3; 2008, c. 860; 2009, c. 354; 2012, cc. 107, 236.

§ 3.2-6543. Governing body of any locality may adopt certain ordinances

A. The governing body of any locality of the Commonwealth may adopt, and make more stringent, ordinances that parallel §§ 3.2-6521 through 3.2-6539, 3.2-6546 through 3.2-6555, 3.2-6562, 3.2-6569, 3.2-6570, 3.2-6574 through 3.2-6580, and 3.2-6585 through 3.2-6590. Any town may choose to adopt by reference any ordinance of the surrounding county adopted under this section to be applied within its town limits, in lieu of adopting an ordinance of its own.

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.

B. Any locality may, by ordinance, establish uniform schedules of civil penalties for violations of specific provisions of ordinances adopted pursuant to this section. Civil penalties may not be imposed for violations of ordinances that parallel § 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 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.

1976, c. 182, § 15.1-29.1:1; 1984, c. 492, § 29-213.64; 1987, c. 488, § 3.1-796.94; 1993, c. 959; 1994, cc. 115, 630; 1995, c. 832; 1997, c. 587; 1998, c. 817; 2005, c. 304; 2008, c. 860; 2009, c. 107.

§ 3.2-6544. Regulation of keeping of animals and fowl

A. Any locality may, 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 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.

Code 1950 §§ 15-20.1, 15-20.2; 1952, c. 694; 1954, c. 94; 1962, c. 623, §§ 15.1-517, 15.1-870; 1997, cc. 411, 587, § 3.1-796.94:1; 1999, c. 663; 2008, c. 860.

§ 3.2-6545. Regulation of sale of animals procured from animal shelters

Any locality that maintains or supports, in whole or in part, a public or private animal shelter may by ordinance provide that no person who acquires an animal from such shelter shall be able to sell the animal within a period of six months from the time the animal is acquired from the shelter. Violation of the ordinance is a Class 1 misdemeanor.

1972, c. 347, § 15.1-517.1; 1997, c. 587, § 3.1-796.94:2; 2008, c. 860; 2014, c. 148.

§ 3.2-6546. County or city public animal shelters; 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.

B. The governing body of each county or city shall maintain or cause to be maintained a public animal shelter and shall require dogs running at large without the tag required by § 3.2-6531 or in

violation of an ordinance passed pursuant to § 3.2-6538 to be confined therein. Nothing in this section shall be construed to prohibit confinement of other companion animals in such a shelter. 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 public animal shelter shall be accessible to the public at reasonable hours during the week;

2. The public 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 shelter shall update such statement as changes occur;

3. If a person contacts the public animal shelter inquiring about a lost companion animal, the shelter shall advise the person if the companion animal is confined at the shelter or if a companion animal of similar description is confined at the shelter;

4. The public animal shelter shall maintain a written record of the information on each companion animal submitted to the shelter by a private animal shelter in accordance with subsection D of § 3.2-6548 for a period of 30 days from the date the information is received by the shelter. If a person contacts the shelter inquiring about a lost companion animal, the shelter shall check its records and make available to such person any information submitted by a private animal shelter or allow such person inquiring about a lost animal to view the written records;

5. The public animal shelter shall maintain a written record of the information on each companion animal submitted to the shelter by a releasing agency other than a public or private animal shelter in accordance with subdivision F 2 of § 3.2-6549 for a period of 30 days from the date the information is received by the shelter. If a person contacts the shelter inquiring about a lost companion animal, the shelter 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 public animal shelter shall maintain a written record of the information on each companion animal submitted to the shelter by an individual in accordance with subdivision A 2 of § 3.2-6551 for a period of 30 days from the date the information is received by the shelter. If a person contacts the shelter inquiring about a lost companion animal, the shelter 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.

C. 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 public animal shelter 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 shelter 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. In addition to this and any other fees that might be levied, the locality may, after a public hearing, adopt an ordinance to charge the owner of an animal a fee for impoundment and increased fees for subsequent impoundments of the same animal.

D. If an animal confined pursuant to this section has not been claimed upon expiration of the appropriate holding period as provided by subsection C, it shall be deemed abandoned and become the property of the public animal shelter.

Such animal may be euthanized in accordance with the methods approved by the State Veterinarian or disposed of by the methods set forth in subdivisions 1 through 5. No shelter 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, public or private 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 where the shelter 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, 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 dog or cat may be adopted by any person who is not a resident of the county or city where the shelter is operated, or of an adjacent political subdivision, unless the dog or cat is first sterilized, and the shelter may require that the sterilization be done at the expense of the person adopting the 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 § 3.2-6557; (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 public or private 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 public animal shelter to a public or private 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 a public or private 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.

E. 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.

F. Nothing in this section shall prohibit the immediate euthanasia or disposal by the methods listed in subdivisions 1 through 5 of subsection D of an animal that has been released to a public or private 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 D.

G. Nothing in this section shall prohibit any feral dog or feral cat not bearing a collar, tag, tattoo, or other form of identification 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 § 3.2-6557. For purposes of this subsection, a disinterested person shall not include a person releasing or reporting the animal.

H. No public 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 each shelter shall update such statement as changes occur. The 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 shelter has an affiliation with the foster care provider.

I. A public 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 § 3.2-6503.

J. If a public 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.

K. The governing body shall require that the public animal shelter 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 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 shelter; (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 public 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 public animal shelters, in the circuit court where the shelter is located. The Commissioner may request the Attorney General to bring such an action, when appropriate.

1984, c. 492, §§ 29-213.36, 29-213.66; 1985, c. 21; 1987, c. 488, §§ 3.1-796.66, 3.1-796.96; 1988, c. 538; 1989, c. 344; 1991, c. 348; 1993, cc. 174, 817, 959; 1994, c. 936; 1995, c. 496; 1997, c. 159; 1998, c. 817; 1999, cc. 627, 672; 2000, c. 1010; 2002, cc. 53, 208, 787; 2003, c. 1007; 2008, cc. 345, 860; 2014, c. 148.

§ 3.2-6547. 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, unless the individual who owns such animal consents thereto in writing.

1990, c. 904, § 3.1-796.96:1; 2008, c. 860.

§ 3.2-6548. Private animal shelters; confinement and disposition of animals; affiliation with foster care providers; penalties; injunctive relief

A. A private animal shelter may confine and dispose of animals in accordance with the provisions of subsections B through G of § 3.2-6546.

B. Each private 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 shelter shall update such statement as changes occur.

C. The State Veterinarian or his representative shall inspect a private animal shelter prior to the shelter confining or disposing of animals pursuant to this section. The shelter shall meet the requirements of all laws with regard to confinement and disposition of animals before the 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. A private 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 public animal shelter in the county or city where the animal was found within 48 hours of the shelter receiving the animal. A 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 public animal shelter in the locality where the shelter is located.

E. For purposes of recordkeeping, release of an animal by a private shelter to a public or private 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 private 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 shelter shall update the statement as changes occur. The 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 shelter has an affiliation with the foster care provider.

G. A private 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 § 3.2-6503.

H. If a private 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 private animal shelter shall be operated in violation of any local zoning ordinance.

J. A private 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 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 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 shelter; (ii) whether the violation has caused injury to, death or suffering of, an animal; and (iii) the demonstrated good faith of the 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 private 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 private animal shelters, in the circuit court where the shelter is located. The Commissioner may request the Attorney General to bring such an action, when appropriate.

2001, c. 727, § 3.1-796.96:2; 2002, cc. 53, 208, 787; 2003, cc. 770, 1007; 2008, c. 860; 2014, c. 148.

§ 3.2-6549. Releasing agencies other than public or private animal shelters; confinement and disposition of companion animals; recordkeeping; affiliation with foster care providers; penalties

A. A releasing agency other than a public or private animal shelter:

1. May confine and dispose of companion animals in accordance with subsections B through G of § 3.2-6546 if incorporated and not operated for profit;

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, and 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 public or private animal shelter shall annually submit a summary of such records to the State Veterinarian in a format prescribed by him, wherein a post office box may be substituted for a home address; and

3. Shall annually file with the State Veterinarian a copy of its intake policy.

For purposes of recordkeeping, release of a companion animal by a releasing agency to a public or private animal shelter or other releasing agency shall be considered a transfer and not an adop-

tion. 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 public or private 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 public or private 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 public or private 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 public or private 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 § 3.2-6503.

E. If a releasing agency other than a public or private 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 public or private 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 public animal shelter that serves the locality where the companion animal was found and provide to the shelter 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 public or private animal shelter shall comply with the provisions of § 3.2-6503.

H. No releasing agency other than a public or private animal shelter shall be operated in violation of any local zoning ordinance.

I. A releasing agency other than a public or private animal shelter that violates any provision of this section, other than subsection G, may be subject to a civil penalty not to exceed $250.

2002, c. 787, § 3.1-796.96:5; 2003, cc. 770, 1007; 2008, c. 860; 2014, c. 148; 2016, c. 678.

§ 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 private residential dwelling and its surrounding grounds that serves as a 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.

2003, c. 1007, § 3.1-796.96:6; 2008, c. 860; 2014, c. 148.

§ 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 the 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 public animal shelter that serves the locality where the companion animal was found and provide to the shelter 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 the companion animal in such a manner as to control its activities, the individual shall comply with the provisions of § 3.2-6503.

C. Any individual who violates this section may be subject to a civil penalty not to exceed $50 per companion animal.

2003, c. 1007, § 3.1-796.96:7; 2008, c. 860; 2014, c. 148.

§ 3.2-6552. Dogs killing, injuring, or chasing livestock or poultry

A. 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 seize or 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 harborer of the dog to produce the dog.

B. 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 serving the locality wherein 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 or euthanized immediately by the animal control officer or other officer designated by the court or (ii) removed to another state that does not border on the Commonwealth and prohibited from returning to the Commonwealth. Any dog ordered removed from the Commonwealth that is later found in the Commonwealth shall be ordered by a court to be killed or euthanized immediately.

C. Notwithstanding the provisions of subsection B, if it is determined that the dog has killed or injured only poultry, the district court may, instead of ordering killing, euthanasia, or removal to another state pursuant to this section, order either (a) that the dog be transferred to another owner whom the court deems appropriate and permanently fitted with an identifying microchip registered to that owner or (b) that the dog be fitted with an identifying microchip registered to the owner and confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent the dog's escape; direct contact with the dog by minors, adults, or other animals; or entry by minors, adults, or other animals. The structure shall be designed to provide the dog with shelter from the elements of nature. When off its owner's property, any dog found to be a poultry killer shall be kept on a leash and muzzled in such a manner as not to cause injury to the dog or interfere with its vision or respiration, but so as to prevent it from biting a person or another animal.

1984, c. 492, § 29-213.85; 1985, c. 385; 1987, c. 488, § 3.1-796.116; 1990, c. 222; 1993, c. 977; 1998, c. 817; 2008, cc. 551, 691, 860; 2014, c. 137; 2016, c. 757.

§ 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 $750 per animal or $10 per fowl if (i) the claimant has furnished evidence within 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 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 clause (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.

1984, c. 492, § 29-213.87; 1986, c. 108; 1987, c. 488, § 3.1-796.118; 1992, c. 461; 1998, c. 817; 2008, c. 860; 2014, cc. 116, 160.

§ 3.2-6554. Disposal of dead companion animals

The owner of any companion animal shall forthwith cremate, bury, or sanitarily dispose of the 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.

1984, c. 492, § 29-213.90; 1987, c. 488, § 3.1-796.121; 1993, c. 174; 1998, c. 817; 2008, c. 860.

Article 7 - ANIMAL CONTROL OFFICERS AND HUMANE INVESTIGATORS

§ 3.2-6555. Position of animal control officer created

The governing body of each county or city shall, or each town may, 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 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 knowledge of the animal control and protection laws of 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 where the animal control officer or deputy animal control officer is employed. Commercial dog breeding locations shall be subject to inspection by animal control at least twice annually and additionally upon receipt of a complaint or their own motion to ensure compliance with state animal care laws and regulations. The animal control officer and the deputy animal control officers shall be paid as the governing body of each locality shall prescribe.

Any locality where an animal control officer or deputy animal control officers have been 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.

1984, cc. 254, 492, § 29-213.73; 1987, c. 488, § 3.1-796.104; 1998, c. 817; 2003, c. 804; 2004, c. 181; 2008, cc. 852, 860.

§ 3.2-6556. Training of animal control officers

A. Every locality employing animal control officers shall require that every animal control officer and deputy animal control officer completes the following training:

1. A basic animal control course that has been approved by the State Veterinarian. 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. Any animal control officer hired on or after July 1, 1998, and before July 1, 2017, shall complete the basic animal control course within two years from the date of hire. Any animal control officer hired on or after July 1, 2017, shall complete the basic animal control course within one year from the date of hire or within two years if the officer is attending a law-enforcement academy; 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 hired before July 1, 1998. The State Veterinarian may grant exemptions from the requirements of subdivision 1 to animal control officers 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 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.

1998, c. 817, § 3.1-796.104:1; 2002, c. 418; 2004, c. 181; 2008, c. 860; 2016, cc. 60, 172.

§ 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 public or private 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 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 public or private animal shelter shall be granted a dealer's license. Violation of this subsection 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 § 3.2-6569.

B. An animal control officer, law-enforcement officer, humane investigator, or custodian of any public or private 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, law-enforcement officer, humane investigator, or custodian of any public or private animal shelter who takes custody of animals in the course of his official duties or representative of a humane society who takes custody of animals on behalf of the society shall annually file with the State Veterinarian a copy of his intake policy.

D. Any animal control officer or custodian of any public animal shelter who violates any provision of this chapter 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.

E. Custodians and animal control officers engaged in the operation of a public animal shelter shall be required to have knowledge of the laws of the Commonwealth governing animals, including this chapter, as well as basic animal care.

1984, c. 492, § 29-213.74; 1986, c. 315; 1987, c. 488, § 3.1-796.105; 1991, c. 65; 1993, c. 601; 1997, c. 286; 1998, c. 817; 2008, c. 860; 2014, c. 148; 2016, c. 678.

§ 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 § 3.2-6556.

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 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.

1984, c. 492, § 29-213.75; 1987, c. 488, § 3.1-796.106; 1998, c. 817; 2003, c. 858; 2004, c. 181; 2008, c. 860.

§ 3.2-6559. Powers and duties of humane investigators

A. Any humane investigator may, within the locality 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 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 § 3.2-6561 if he fails to file such report.

1998, c. 817, § 3.1-796.106:2; 2003, c. 858; 2008, c. 860.

§ 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.

1984, c. 492, § 29-213.79; 1986, c. 362; 1987, c. 488, § 3.1-796.110; 1998, c. 817; 2008, c. 860.

§ 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.

1998, c. 817, § 3.1-796.106:1; 1999, c. 376; 2003, c. 858; 2008, c. 860.

§ 3.2-6562. Capturing, confining, and euthanizing companion animals by animal control officers; approval of drugs 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 § 3.2-6546, 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 § 3.2-6546 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.

1984, c. 492, § 29-213.88; 1987, c. 488, § 3.1-796.119; 1991, c. 348; 1997, c. 159; 1998, c. 817; 2008, c. 860.

§ 3.2-6562.1. Rabies exposure; local authority and responsibility plan

The local health director, in conjunction with the governing body of the locality, shall adopt a plan to control and respond to the risk of rabies exposure to persons and companion animals. Such plan shall set forth a procedure that promptly ensures the capture, confinement, isolation, or euthanasia of any animal that has exposed, or poses a risk of exposing, a person or companion animal to rabies. The plan shall identify the authority and responsibility of the local health department, law-enforcement officers, animal control officers, and any other persons with a duty to control or respond to a risk of rabies exposure. The plan shall provide for law-enforcement officers, animal control officers, and other persons to report to and be directed by the local health director for such purposes.

2010, c. 834.

§ 3.2-6563. When animals to be euthanized; procedure

Any humane investigator may lawfully cause to be 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 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 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 48 hours after such humane investigator first decides the animal should be 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.

1984, c. 492, § 29-213.83; 1986, c. 362; 1987, c. 488, § 3.1-796.114; 1998, c. 817; 2008, c. 860.

Article 8 - SEARCH, SEIZURE, IMPOUNDING, AND ENFORCEMENT

§ 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 § 3.2-6568, 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 § 3.2-6503 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.

1984, c. 492, § 29-213.76; 1987, c. 488, § 3.1-796.107; 1991, c. 451; 1993, c. 174; 1998, c. 817; 2008, c. 860.

§ 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 that the owner or custodian has failed to remedy, such animal control officer, humane investigator, law-enforcement officer or State Veterinarian's representative may impound the animal pursuant to § 3.2-6569 in a facility that will provide the elements of good care as set forth in § 3.2-6503 and shall then proceed to take such steps as are required to dispose of the animal pursuant to § 3.2-6569.

1984, c. 492, § 29-213.77; 1987, c. 488, § 3.1-796.108; 1994, c. 387; 1998, c. 817; 2008, c. 860.

§ 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 humane investigator or State Veterinarian's representative in the discharge of his rights, powers, and duties as authorized and prescribed by law is guilty of a Class 4 misdemeanor.

1984, c. 492, § 29-213.80; 1986, c. 362; 1987, c. 488, § 3.1-796.111; 1998, c. 817; 2008, c. 860; 2010, c. 240.

§ 3.2-6567. Enforcement authority

All law-enforcement officers in the Commonwealth and State Veterinarian's representatives shall enforce the provisions of this chapter to the same extent other laws in the Commonwealth are enforced.

1984, c. 492, § 29-213.81; 1987, c. 488, § 3.1-796.112; 1991, c. 121; 1998, c. 817; 2008, c. 860.

§ 3.2-6568. Power of search for violations of statutes against cruelty to animals

When an affidavit is made under oath before a magistrate or court of competent jurisdiction 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 magistrate or judge, 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. After issuing a warrant under this section, the magistrate or judge shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the animal control officer, humane investigator, law-enforcement officer, or State Veterinarian's representative shall return the warrant to the clerk of the circuit court of the city or county wherein the search was made.

1984, c. 492, § 29-213.82; 1986, c. 362; 1987, c. 488, § 3.1-796.113; 1994, c. 168; 1998, c. 817; 2008, cc. 543, 707, 860; 2014, c. 354.

§ 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. The seizure or impoundment of an equine resulting from a violation of clause (iii) of subsection A or clause (ii) of subsection B of § 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 as required by 9 C.F.R. Part 11.7.

B. Before seizing or impounding any agricultural animal, the humane investigator, law-enforcement officer or animal control officer shall contact the State Veterinarian or State Veterinarian's representative, who shall recommend to the person the most appropriate action for effecting the seizure and impoundment. 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 location of impoundment, and any other information required by the State Veterinarian.

C. 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 where the animal is seized for a hearing. The hearing shall be not more than 10 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.

D. 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.

E. 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.

F. 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 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 by ordinance, not to exceed nine months.

In any locality that has not adopted such an ordinance, a court may order the owner of an animal held pursuant to this subsection for more than 30 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 not to exceed nine months. The bond shall not be forfeited if the owner is found to be not guilty of the violation.

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 (i) abandoned or cruelly treated, (ii) deprived of adequate care, as that term is defined in § 3.2-6500, or (iii) raised as a dog that has been, is, or is intended to be used in dogfighting in violation of § 3.2-6571, then the court shall order that the animal may be: (a) sold by a local governing body, if not a companion animal; (b) disposed of by a local governing body pursuant to subsection D of § 3.2-6546, whether such animal is a companion animal or an agricultural animal; or (c) delivered to the person with a right of property in the animal as provided in subsection G.

G. 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. 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.

H. 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.

I. 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.

J. 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 § 3.2-6504 or 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.

K. Any person who is prohibited from owning or possessing animals pursuant to subsection I or J 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.

L. 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.

M. 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.

1984, c. 492, § 29-213.84; 1986, c. 362; 1987, c. 488, § 3.1-796.115; 1990, c. 322; 1992, c. 123; 1993, c. 119; 1994, c. 387; 1998, c. 817; 1999, c. 113; 2002, c. 500; 2008, cc. 510, 860; 2011, cc. 754, 886.

Article 9 - CRUELTY TO ANIMALS

§ 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 soring 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) ropes, lassoes, or otherwise obstructs or interferes with one or more legs of an equine in order to intentionally cause it to trip or fall for the purpose of engagement in a rodeo, contest, exhibition, entertainment, or sport unless such actions are in the practice of accepted animal husbandry or for the purpose of allowing veterinary care; (v) willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; (vi) carries or causes to be carried by any vehicle, vessel or otherwise any animal in a cruel, brutal, or inhumane manner, so as to produce torture or unnecessary suffering; or (vii) causes any of the above things, or being the owner of such animal permits such acts to be done by another 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 soring 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) ropes, lassoes, or otherwise obstructs or interferes with one or more legs of an equine in order to intentionally cause it to trip or fall for the purpose of engagement in a rodeo, contest, exhibition, entertainment, or sport unless such actions are in the practice of accepted animal husbandry or for the purpose of allowing veterinary care; (iv) maliciously deprives any companion animal of necessary food, drink, shelter or emergency veterinary treatment; (v) instigates, engages in, or in any way furthers any act of cruelty to any animal set forth in clauses (i) through (iv) or (vi) causes any of the actions described in clauses (i) through (v), 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, 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. 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 Title 29.1, or to farming activities as provided under this title or regulations adopted hereunder.

E. 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 is a Class 1 misdemeanor. A second or subsequent violation of this subsection is a Class 6 felony.

F. 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, is 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 § 3.2-6540, 3.2-6540.1, or 3.2-6552.

G. Any person convicted of violating this section may be prohibited by the court from possession or ownership of companion animals.

1984, c. 492, § 29-213.91; 1987, c. 488, § 3.1-796.122; 1992, c. 177; 1998, c. 817; 1999, cc. 209, 620, 645; 2002, cc. 351, 500, 583, 613; 2003, cc. 787, 788; 2004, c. 217; 2007, c. 743; 2008, c. 860; 2013, cc. 58, 732; 2015, c. 491.

§ 3.2-6570.1. Sale of animals after cruelty or neglect conviction; penalty

Any person who has been convicted of a violation of any law concerning abuse, neglect, or cruelty to animals that sells, offers for sale, or trades any companion animal is guilty of a Class 1 misdemeanor. However, a person may dispose of animals under the provisions of a court order.

2008, c. 852, § 3.1-796.122:1.

§ 3.2-6571. Animal fighting; penalty

A. No person shall knowingly:

1. Promote, prepare for, engage in, or be employed in, the fighting of animals for amusement, sport or gain;

2. Attend an exhibition of the fighting of animals;

3. Authorize or allow any person to undertake any act described in this section on any premises under his charge or control; or

4. Aid or abet any such acts.

Except as provided in subsection B, any person who violates any provision of this subsection is guilty of a Class 1 misdemeanor.

B. Any person who violates any provision of subsection A in combination with one or more of the following is guilty of a Class 6 felony:

1. When a dog is one of the animals;

2. When any device or substance intended to enhance an animal's ability to fight or to inflict injury upon another animal is used, or possessed with intent to use it for such purpose;

3. When money or anything of value is wagered on the result of such fighting;

4. When money or anything of value is paid or received for the admission of a person to a place for animal fighting;

5. When any animal is possessed, owned, trained, transported, or sold with the intent that the animal engage in an exhibition of fighting with another animal; or

6. When he permits or causes a minor to (i) attend an exhibition of the fighting of any animals or (ii) undertake or be involved in any act described in this subsection.

C.1. Any animal control officer, as defined in § 3.2-6500, shall confiscate any animal that he determines has been, is, or is intended to be used in animal fighting and any equipment used in training such animal or used in animal fighting.

2. Upon confiscation of an animal, the animal control officer shall petition the appropriate court for a hearing for a determination of whether the animal has been, is, or is intended to be used in animal fighting. The hearing shall be not more than 10 business days from the date of the confiscation of the animal. If the court finds that the animal has not been used, is not used and is not intended to be used in animal fighting, it shall order the animal released to its owner. However, if the court finds probable cause to believe that the animal has been, is, or is intended to be used in animal fighting, the court shall order the animal forfeited to the locality unless the owner posts bond in surety with the locality in an amount sufficient to compensate the locality for its cost of caring for the animal for a period of nine months. He shall post additional bond for each successive nine-month period until a final determination by the trial court on any criminal charges brought pursuant to subsections A or B.

3. Upon a final determination of guilt by the trial court on criminal charges brought pursuant to subsections A or B, the court shall order that the animal be forfeited to the locality. Upon a final determination of not guilty by the trial court on the underlying criminal charges, a confiscated animal shall be returned to its owner and any bond shall be refunded to him.

D. Any person convicted of violating any provision of subsection A or B shall be prohibited by the court from possession or ownership of companion animals or cocks.

E. In addition to fines and costs, the court shall order any person who is convicted of a violation of this section to pay all reasonable costs incurred in housing, caring for, or euthanizing any confiscated animal. If the court finds that the actual costs are reasonable, it may order payment of actual costs.

F. The provisions of this section shall not apply to any law-enforcement officer in the performance of his duties. This section shall not prohibit (i) authorized wildlife management activities or hunting, fishing, or trapping authorized under any title of the Code of Virginia or regulations promulgated thereto or (ii) farming activities authorized under Title 3.2 of the Code of Virginia or regulations promulgated thereto.

1985, c. 408, § 29-213.92:1; 1987, c. 488, § 3.1-796.124; 1998, c. 817; 1999, c. 113; 2003, c. 857; 2008, cc. 543, 707, 860.

§ 3.2-6572. Reserved
Reserved.

§ 3.2-6573. Shooting 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 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 is guilty of a Class 4 misdemeanor.

Nothing contained herein shall apply to the shooting of wild game.

1984, c. 492, § 29-213.94; 1987, c. 488, § 3.1-796.126; 2008, c. 860.

Article 10 - MANDATORY STERILIZATION OF DOGS AND CATS ADOPTED FROM RELEASING AGENCIES

§ 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 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 30 days of the adoption, if the animal is sexually mature; or (ii) within 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 30 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 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 $250.

1993, c. 959, § 3.1-796.126:1; 1998, c. 817; 2008, c. 860; 2010, c. 875.

§ 3.2-6575. Sterilization agreement

Any agreement used by a releasing agency pursuant to subsection B of § 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.

1993, c. 959, § 3.1-796.126:2; 2008, c. 860.

§ 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.

1993, c. 959, § 3.1-796.126:3; 1999, cc. 627, 672; 2008, c. 860.

§ 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 $25.

1993, c. 959, § 3.1-796.126:4; 2008, c. 860.

§ 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 within a locality that has adopted a more stringent mandatory sterilization ordinance; and

3. A local governing body 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.

1993, c. 959, § 3.1-796.126:5; 2008, c. 860.

§ 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.

1993, c. 959, § 3.1-796.126:6; 2008, c. 860.

§ 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 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.

1993, c. 959, § 3.1-796.126:7; 1998, c. 817; 2002, c. 787; 2008, c. 860.

Article 11 - HYBRID CANINES

§ 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 § 3.2-6540, 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 that is or can be demonstrated to be a hybrid of the domestic dog and any other species of the Canidae family; that at any time has been permitted, registered, licensed, or advertised as such; or that at any time has been described, represented, or reported as such 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.

1997, c. 918, § 3.1-796.126:8; 1998, c. 817; 2008, c. 860; 2014, c. 461.

§ 3.2-6582. Hybrid canine ordinance; penalty

A. Any 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 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 subsection A is a Class 3 misdemeanor for the first violation and a Class 1 misdemeanor for any subsequent violation. The ordinance may require a violator to surrender the hybrid canine for euthanasia in accordance with § 3.2-6562.

C. The provisions of subsections A and B shall not affect any ordinance adopted prior to July 1, 1997.

D. Any locality may, by ordinance, prohibit the keeping of hybrid canines.

1997, c. 918, § 3.1-796.126:9; 2008, c. 860; 2014, c. 461.

§ 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 may kill such hybrid canine on sight as 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 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 that kills poultry for a third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian, or harborer 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 serving the 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 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 that does not border on the Commonwealth and prohibited from returning to the Commonwealth. Any hybrid canine ordered removed from the Commonwealth that is later found in the Commonwealth shall be ordered by a court to be killed immediately.

1997, c. 918, § 3.1-796.126:10; 1998, c. 817; 2008, cc. 551, 691, 860.

§ 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 $750 per animal or $10 per fowl if (i) the claimant has furnished evidence within 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 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 clause (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.

1997, c. 918, § 3.1-796.126:11; 1998, c. 817; 2008, c. 860; 2014, cc. 116, 160.

Article 12 - MISCELLANEOUS PROVISIONS

§ 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 § 3.2-6500, 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 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 and notify its legal owner. 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.

1984, c. 492, § 29-213.95; 1987, c. 488, § 3.1-796.127; 1988, c. 537; 1998, c. 817; 2008, c. 860.

§ 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 § 3.2-6585 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.

2003, c. 841, § 3.1-796.127:1; 2008, c. 860.

§ 3.2-6587. Unlawful acts; penalties

A. The following shall be unlawful acts and are Class 4 misdemeanors:

1. For any person to make a false statement in order to secure a dog or cat license to which he is not entitled.

2. 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. For any dog owner to allow a dog to run at large in violation of an ordinance passed pursuant to § 3.2-6539.

4. For any person to fail to obey an ordinance passed pursuant to §§ 3.2-6522 and 3.2-6525.

5. For any owner to fail to dispose of the body of his companion animals in accordance with § 3.2-6554.

6. 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. For any person to conceal or harbor any dog or cat on which any required license tax has not been paid.

8. 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. Any other violation of this chapter for which a specific penalty is not provided.

B. It 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 § 3.2-6553; or

2. Impersonate a humane investigator.

1984, c. 492, § 29-213.99; 1987, c. 488, § 3.1-796.128; 1993, cc. 174, 775, 817; 1998, c. 817; 2008, c. 860.

§ 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 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 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.

1995, c. 209, § 3.1-796.128:1; 2008, c. 860.

§ 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 that he knows to be that of a domestic dog or cat. A violation of this section is punishable by a fine of not more than $10,000.

1999, cc. 646, 678, § 3.1-796.128:2; 2008, c. 860.

§ 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.

1984, c. 492, § 29-213.100; 1987, c. 488, § 3.1-796.129; 2008, c. 860.