CODE OF VIRGINIA

Title 59.1

Trade and Commerce

Title 59.1 - TRADE AND COMMERCE

Chapter 1 - FAIR TRADE ACT [Repealed]

§§ 59.1-1 through 59.1-9. Repealed

Repealed by Acts 1976, c. 10.

Chapter 1.1 - VIRGINIA ANTITRUST ACT

§ 59.1-9.1. Short title

This chapter may be known and cited as the "Virginia Antitrust Act."

1974, c. 545.

§ 59.1-9.2. Purpose of chapter

The purpose of this chapter is to promote the free market system in the economy of this Commonwealth by prohibiting restraints of trade and monopolistic practices that act or tend to act to decrease competition. This chapter shall be construed in accordance with the legislative purpose to implement fully the Commonwealth's police power to regulate commerce.

1974, c. 545.

§ 59.1-9.3. Definitions

When used in this chapter:

(a) The term "person" includes, unless the context otherwise requires, any natural person, any trust or association of persons, formal or otherwise, or any corporation, partnership, company, or other legal or commercial entity.

(b) The terms "trade or commerce," "trade," and "commerce," include all economic activity involving or relating to any commodity, service or business activity.

(c) The term "commodity" includes any kind of real or personal property.

(d) The term "service" includes any activity that is performed in whole or in part for the purpose of financial gain, including but not limited to personal service, rental, leasing or licensing for use.

1974, c. 545.

§ 59.1-9.4. Certain activities not prohibited

(a) No provision of this chapter shall be construed to make illegal:

(1) The activities of any labor or professional organization or of individual members thereof that are directed solely to labor or professional objectives legitimate under the laws of this Commonwealth or the United States.

(2) The activities of any agricultural or horticultural cooperative organization, or of individual members thereof, to the extent necessary to achieve the aims of the enacted laws of either this Commonwealth or the United States.

(3) The bona fide religious and charitable activities of any nonprofit corporation, trust or organization established exclusively for religious or charitable purposes.

(4) The activities of any nonprofit hospital, or of any officer, director or employee thereof, that are directed to a reduction in services or an improvement in the quality of services to the extent that any such reduction or improvement will reduce, stabilize or limit cost increases.

(b) Nothing contained in this chapter shall make unlawful conduct that is authorized, regulated or approved (1) by a statute of this Commonwealth, or (2) by an administrative or constitutionally established agency of this Commonwealth or of the United States having jurisdiction of the subject matter and having authority to consider the anticompetitive effect, if any, of such conduct. Nothing in this paragraph shall be construed to alter or terminate any other applicable limitation, exemption or exclusion.

1974, c. 545; 1979, c. 640.

§ 59.1-9.5. Contracts, etc., in restraint of trade unlawful

Every contract, combination or conspiracy in restraint of trade or commerce of this Commonwealth is unlawful.

1974, c. 545.

§ 59.1-9.6. Monopolies unlawful

Every conspiracy, combination, or attempt to monopolize, or monopolization of, trade or commerce of this Commonwealth is unlawful.

1974, c. 545.

§ 59.1-9.7. Discriminatory practices unlawful; proof; payment or acceptance of certain commissions, etc., unlawful

(a) It is unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities or services of like grade and quality, where either or any of the purchasers involved in such commerce are in competition, where such commodities or services are sold for use, consumption or resale within the Commonwealth and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them; provided, that nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the different methods or quantities in which such commodities or services are to such purchasers sold or delivered; and provided further, that nothing herein

contained shall prevent persons engaged in selling commodities or services in commerce from selecting their own customers in bona fide transactions and not in restraint of trade; and provided further, that nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Upon proof being made, at any suit on a complaint under this section, that there has been discrimination in price or services or facilities furnished or in payment for services or facilities to be rendered, the burden of rebutting the prima facie case thus made by showing justification shall be upon the person charged with a violation of this section; provided, however, that nothing herein contained shall prevent a seller rebutting the prima facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) It is unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of such services rendered in connection with the sale or purchase of goods, wares or merchandise.

(d) It is unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products, commodities or services manufactured, sold or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products, commodities or services.

(e) It is unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) It is unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price that is prohibited by this section.

1974, c. 545.

§ 59.1-9.8. Forum; restraining orders and injunctions; penalties

Actions and proceedings for violations of this chapter shall be brought in the circuit courts of this Commonwealth. Those courts may issue temporary restraining orders and injunctions to prevent and restrain violations of this chapter, and may award the damages and impose the civil penalties provided herein. They may also grant mandatory injunctions reasonably necessary to eliminate violations of this chapter.

1974, c. 545.

§ 59.1-9.9. Venue

The venue for all actions and proceedings for violations of this chapter shall be as specified below in this section.

The circuit court of the county or city wherein any defendant: (i) resides; or (ii) regularly or systematically conducts affairs or business activity; or (iii) has property that may be affected by the action or proceeding. Provided, however, that if said defendant does not, as specified in (i), (ii) and (iii) above, reside in, conduct affairs or business activity in, or have such property in the Commonwealth, then the action or proceeding may be brought in the circuit court of the county or city in which the registered office of said defendant is located or wherein the alleged violation occurred.

1974, c. 545; 1975, c. 289.

§ 59.1-9.10. Investigation by Attorney General of suspected violations; civil investigative demand to witnesses; access to business records, etc

A. Whenever it shall appear to the Attorney General, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice prohibited by this chapter, the Attorney General may in his discretion either require or permit such person to file with him a statement in writing or otherwise, under oath, as to all facts and circumstances concerning the subject matter. The Attorney General may also require such other data and information as he may deem relevant to the subject matter of an investigation of a possible violation of this chapter and may make such special and independent investigations as he may deem necessary in connection with such matter.

B. In connection with any such investigation, the Attorney General, or his designee, is empowered to issue a civil investigative demand to witnesses by which he may (i) compel the attendance of such witnesses; (ii) examine such witnesses under oath before himself or a court of record; (iii) subject to subsection C, require the production of any books or papers that he deems relevant or material to the inquiry; and (iv) issue written interrogatories to be answered by the witness served or, if the witness served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the witness. The above investigative powers shall not abate or terminate by reason of any action or proceeding brought by the Attorney General under this chapter. When documentary material is demanded by a civil investigative demand, said demand shall not: (1) contain any requirement

that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this Commonwealth; or (2) require the disclosure of any documentary material that would be privileged, or production of which for any other reason would not be required by a subpoena duces tecum issued by a court of the Commonwealth.

C. Where the information requested pursuant to a civil investigative demand may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based therein, and the burden of deriving or ascertaining the answer is substantially the same for the Attorney General as for the party from whom such information is requested, it is sufficient for that party to specify the records from which the answer may be derived or ascertained and to afford the Attorney General, or other individuals properly designated by the Attorney General, reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. Further, the Attorney General is hereby authorized, and may so elect, to require the production pursuant to this section, of documentary material before or after the taking of any testimony of the person summoned pursuant to a civil investigative demand, in which event, said documentary matter shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place, as may be agreed upon by the person served and the Attorney General.

D. Any civil investigative demand issued by the Attorney General shall contain the following information:

1. The statute and section hereof, the alleged violation of which is under investigation and the subject matter of the investigation.

2. The date and place at which time the person is required to appear to produce documentary material in his possession, custody or control in the office of the Attorney General located in Richmond, Virginia. Such date shall not be less than twenty days from the date of the civil investigative demand.

3. Where documentary material is required to be produced, the same shall be described by class so as to clearly indicate the material demanded.

E. Service of civil investigative demand of the Attorney General as provided herein may be made by:

1. Delivery of a duly executed copy thereof to the person served, or if a person is not a natural person, to the principal place of business of the person to be served, or

2. Mailing by certified mail, return receipt requested, a duly executed copy thereof addressed to the person to be served at his principal place of business in the Commonwealth, or if said person has no place of business in the Commonwealth, to his principal office.

F. Within twenty days after the service of any such demand upon any person or enterprise, or at any time before the return date specified in the demand, whichever period is shorter, such party may file, in the Circuit Court of the City of Richmond and serve upon the Attorney General a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this chapter or upon any constitutional or other legal right or privilege of such party. The provisions of this subsection shall be the exclusive means for a witness summoned pursuant to a civil investigative demand under this section to challenge a civil investigative demand issued pursuant to subsection B.

G. The examination of all witnesses under this section shall be conducted by the Attorney General, or his designee, before an officer authorized to administer oaths in this Commonwealth. The testimony shall be taken stenographically or by a sound recording device and shall be transcribed.

H. Any person required to testify or to submit documentary evidence shall be entitled, on payment of lawfully prescribed cost, to procure a copy of any document produced by such person and of his own testimony as stenographically reported or, in the case of depositions, as reduced to writing by or under the direction of a person taking the deposition. Any party compelled to testify or to produce documentary evidence may be accompanied and advised by counsel, but counsel may not, as a matter of right, otherwise participate in the investigation.

I. All persons served with a civil investigative demand by the Attorney General under this chapter, other than any person or persons whose conduct or practices are being investigated or any officer, director or person in the employ of such person under investigation, shall be paid the same fees and mileage as paid witnesses in the courts of this Commonwealth. No person shall be excused from attending such inquiry pursuant to the mandate of a civil investigative demand, or from producing a paper or from being examined or required to answer questions on the ground of failure to tender or pay a witness fee or mileage unless demand therefor is made at the time testimony is about to be taken and as a condition precedent to offering such production or testimony and unless payment thereof is not thereupon made.

J. Any natural person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce documentary evidence, if in his power to do so, in obedience of a civil investigative demand or lawful request of the Attorney General or those properly authorized by the Attorney General, pursuant to this section, shall be guilty of a misdemeanor and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than $5,000, or by imprisonment in jail for not more than one year, or both such fine and imprisonment.

Any natural person who commits perjury or false swearing or contempt in answering, or failing to answer, or in producing evidence or failing to do so in accordance with a civil investigative

demand or lawful request by the Attorney General, pursuant to this section, shall be guilty of a misdemeanor and upon conviction therefor by a court of competent jurisdiction shall be punished by a fine of not more than $5,000, or by imprisonment in jail for not more than one year, or both such fine and imprisonment.

K. In any investigation brought by the Attorney General pursuant to this chapter, no individual shall be excused from attending, testifying or producing documentary material, objects or intangible things in obedience to a civil investigative demand or under order of the court on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to any penalty, but no testimony or other information compelled either by the Attorney General or under order of the court, or any information directly or indirectly derived from such testimony or other information, may be used against the individual or witness in any criminal case. However, he may nevertheless be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing or contempt committed in answering, or failing to answer, or in producing evidence or failing to do so in accordance with the order of the Attorney General or the court. If an individual refuses to testify or produce evidence after being granted immunity from prosecution and after being ordered to testify or produce evidence as aforesaid, he may be adjudged in civil contempt by a court of competent jurisdiction and committed to the county jail until such time as he purges himself of contempt by testifying, producing evidence or presenting a written statement as ordered. The foregoing shall not prevent the Attorney General from instituting other appropriate contempt proceedings against any person who violates any of the above provisions.

L. It shall be the duty of all public officials, both state and local, their deputies, assistants, clerks, subordinates or employees, and all other persons to render and furnish to the Attorney General, his deputy or other designated representative, when so requested, all information and assistance in their possession or within their power. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any such person other than the Attorney General the name of any witness examined or any other information obtained upon such inquiry, except as so directed by the Attorney General, shall be guilty of a misdemeanor and subject to the sanctions prescribed in subsection J. Such inquiry may upon written authorization of the Attorney General be made public.

M. The Attorney General may promulgate rules and regulations to implement and carry out the provisions of this section.

N. It shall be the duty of the Attorney General, or his designees, to maintain the secrecy of all evidence, testimony, documents or other results of such investigations. Violation of this subsection shall be a misdemeanor. Nothing herein contained shall be construed to prevent (i) the disclosure of any such investigative evidence by the Attorney General in his discretion to any federal or state law-enforcement authority that has restrictions governing confidentiality similar to those contained in this subsection or (ii) the presentation and disclosure of any such investigative evidence

by the Attorney General, in his discretion, in any action or proceeding brought by the Attorney General under this chapter.

1974, c. 545; 1982, c. 285; 2000, c. 755.

§ 59.1-9.11. Penalty for flagrant violations

In any action or proceeding brought under § 59.1-9.15 (a) the court may assess for the benefit of the Commonwealth a civil penalty of not more than $100,000 for each willful or flagrant violation of this chapter. No civil penalty shall be imposed in connection with any violation for which any fine or penalty is imposed pursuant to federal law.

1974, c. 545.

§ 59.1-9.12. Personal suit for injunction or actual damages

(a) Any person threatened with injury or damage to his business or property by reason of a violation of this chapter may institute an action or proceeding for injunctive relief when and under the same conditions and principles as injunctive relief is granted in other cases.

(b) Any person injured in his business or property by reason of a violation of this chapter may recover the actual damages sustained, and, as determined by the court, the costs of suit and reasonable attorney's fees. If the trier of facts finds that the violation is willful or flagrant, it may increase damages to an amount not in excess of three times the actual damages sustained.

1974, c. 545.

§ 59.1-9.13. Effect of conviction in other proceedings

A final judgment or decree to the effect that a defendant has violated this chapter, other than a consent judgment or decree entered before any testimony has been taken, in an action or proceeding brought under § 59.1-9.15 (a) is prima facie evidence against that defendant in any other action or proceeding against him brought under § 59.1-9.12 or § 59.1-9.15 (b) as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto.

1974, c. 545.

§ 59.1-9.14. Limitation of actions

(a) An action under § 59.1-9.15 (a) to recover a civil penalty is barred if it is not commenced within four years after the cause of action accrues.

(b) An action under § 59.1-9.12 (b) or § 59.1-9.15 (b) to recover damages is barred if it is not commenced within four years after the cause of action accrues, or within one year after the conclusion of any action or proceeding under § 59.1-9.15 (a) commenced within or before that time based in whole or in part on any matter complained of in the action for damages, whichever is later.

1974, c. 545.

§ 59.1-9.15. Actions on behalf of Commonwealth or localities; injunctive relief; damages

(a) The Attorney General on behalf of the Commonwealth, or the attorney for the Commonwealth or county attorney on behalf of a county, or the city attorney on behalf of a city, or the town attorney on behalf of a town may institute actions and proceedings for injunctive relief and civil penalties for violations of this chapter. In any such action or proceeding in which the plaintiff substantially prevails, the court may award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

(b) The Commonwealth, a political subdivision thereof, or any public agency injured in its business or property by reason of a violation of this chapter, may recover the actual damages sustained, reasonable attorney's fees and the costs of suit. If the trier of facts finds that the violation is willful or flagrant, it may increase damages to an amount not in excess of three times the actual damages sustained.

(c) The Attorney General in acting under subsection (a) or (b) of this section may also bring such action on behalf of any political subdivision of the Commonwealth, provided that the Attorney General shall notify each such subdivision of the pendency of the action and give such subdivision the option of exclusion from the action.

(d) The Attorney General may bring a civil action to recover damages and secure other relief as provided by this chapter as parens patriae respecting injury to the general economy of the Commonwealth.

1974, c. 545; 1982, c. 60; 1988, c. 589.

§ 59.1-9.16. Remedies cumulative

The remedies in this chapter are cumulative.

1974, c. 545.

§ 59.1-9.17. Construction of chapter

This chapter shall be applied and construed to effectuate its general purposes in harmony with judicial interpretation of comparable federal statutory provisions.

1974, c. 545.

§ 59.1-9.18. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

Chapter 2 - UNFAIR SALES ACT [Repealed]

§§ 59.1-10 through 59.1-21. Repealed

Repealed by Acts 1984, c. 582.

Chapter 2.1 - VIRGINIA HOME SOLICITATION SALES ACT

§ 59.1-21.1. Citation of chapter

This chapter shall be known, and may be cited, as the "Virginia Home Solicitation Sales Act."

1970, c. 668.

§ 59.1-21.2. Definitions

A."Home solicitation sale" means:

1. A consumer sale or lease of goods or services in which the seller or a person acting for him engages (i) in a personal solicitation of the sale or lease or (ii) in a solicitation of the sale or lease by telephonic or other electronic means at any residence other than that of the seller; and

2. The buyer's agreement or offer to purchase or lease is there given to the seller or a person acting for him.

B. 1. "Home solicitation sale" shall not mean a consumer sale or lease of farm equipment.

2. It does not include cash sales of less than twenty-five dollars, a sale or lease made pursuant to a preexisting revolving charge account, or a sale or lease made pursuant to prior negotiations between the parties.

C. As used in this chapter, "goods" means tangible personal property and also includes a merchandise certificate whereby a writing is issued by the seller which is not redeemable in cash and is usable in lieu of cash in exchange for goods or services; "seller" means seller or lessor and "buyer" means buyer or lessee.

1970, c. 668; 1972, c. 448; 1975, c. 217; 1986, c. 577.

§ 59.1-21.3. Cancellation of sale

(1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with § 59.1-21.4.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(b) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer, and

(c) The buyer's emergency request is in a dated writing personally signed by the buyer and which expressly states that the buyer understands that he is waiving his right to cancel the sale under the provisions of this act.

(6) Except as provided in subsection (5), any waiver or modification of a buyer's right to cancel is void and of no effect. In the event the seller obtains from the buyer a waiver or modification of his right to cancel, the buyer's right to cancel shall commence on the first business day following his learning that the waiver or modification is void and of no effect.

1970, c. 668; 1972, c. 448.

§ 59.1-21.4. Receipt or written agreement

(1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer a fully completed receipt if it is a cash or credit card sale or obtain the buyer's signature to a written agreement or offer to purchase, in the case of a credit sale, which designates as the date of the transaction the date on which the buyer actually makes payment in whole or in part or signs, and which contains a statement of the buyer's rights and a notice of cancellation which comply with subsection (2). The seller shall also furnish the buyer with a copy of any contract pertaining to a home solicitation sale at the time of its execution.

(2) The statement shall

(a) Appear on the front side of the receipt or contract, or immediately above the buyer's signature, in bold face type of a minimum size of ten points under the conspicuous caption: "BUYER'S RIGHT TO CANCEL," and

(b) Read as either of the following: (i) "If this agreement was solicited at a residence and you do not want the goods or services, you, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

Notice of Cancellation

_____
(Date of Transaction)

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to _____ (name of seller), at _____ _____ (address of seller's place of business) not later than midnight of _____ ___ (Date).

I hereby cancel this transaction.

_____
(Date)

_____
(Buyer's signature)"; or

(ii) In the form and content of any similar notice requirement for home solicitation sales under federal law; provided that such requirement contains at least the information required in (i) of this subsection and, further provided, that nothing in such notice is in conflict with the provisions of this chapter. Any statement or notice form presented to a buyer prior to the effective date of an amendment to this section shall be deemed sufficient if it satisfied the requirements of this section in effect at the time the statement or notice was presented.

(3) Except as otherwise provided in this section until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

(4) A home solicitation sale shall be deemed to be in compliance with notice requirements of this section if (a) the buyer may at any time (i) cancel the order, or (ii) refuse to accept delivery of the goods without any obligation to pay for them, or (iii) return the goods to the seller and receive a full refund for any amount the buyer has paid; and (b) the buyer's right to cancel the order, refuse delivery or return the goods, together with the name and address of either the selling company or the salesperson, is clearly and conspicuously set forth on the face or reverse side of the sales receipt or contract in a size larger than that used in the body of the receipt or contract.

(5) Any statement or notice form satisfying the requirements of this section as in effect prior to July 1, 1975, may be used until January 1, 1977.

1970, c. 668; 1972, c. 448; 1973, c. 147; 1975, c. 217.

§ 59.1-21.5. Tender of payments to buyer

(1) Except as provided in this section, within ten days after a home solicitation sale has been canceled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

1970, c. 668; 1972, c. 448; 1973, c. 147.

§ 59.1-21.6. Tender of goods to seller

(1) Except as provided by the provisions of § 59.1-21.5 (3), within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand must

tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within twenty days after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them.

(2) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

1970, c. 668; 1973, c. 147.

§ 59.1-21.7. Cancellation of contract when seller has misrepresented nature or purpose of transaction

Notwithstanding any other provision of law, if at the time of a home solicitation a seller or his agent should fail to immediately identify himself as a seller or lessor, or should he represent or imply that his purpose at the time of solicitation is anything other than selling or leasing if that is not substantially true, the buyer shall have a total of thirty days to cancel any home solicitation sales contract there entered into in the same manner and to the same extent as otherwise provided by this chapter; provided that the goods or merchandise are made available for the seller's repossession and are tendered back to the seller in substantially as good condition as when received by the buyer.

1972, c. 448; 2001, c. 402.

§ 59.1-21.7:1. Enforcement; penalties

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act of 1977, Chapter 17 (§ 59.1-196 et seq.) of this title.

1987, cc. 462, 464.

Chapter 2.2 - VIRGINIA PETROLEUM PRODUCTS FRANCHISE ACT

§ 59.1-21.8. Short title

This chapter may be cited as the "Virginia Petroleum Products Franchise Act."

1973, c. 423.

§ 59.1-21.9. Findings of General Assembly

The General Assembly finds and declares that since the distribution and sales through franchise arrangements of petroleum products in the Commonwealth of Virginia vitally affect the economy of the Commonwealth, the public interest, welfare, and transportation, and since the preservation of the rights, responsibilities, and independence of the small businesses in the Commonwealth is

essential to economic vitality, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining thereto. Consistent with these findings and declarations, the provisions of § 59.1-21.15:2, which do not relate to the termination or nonrenewal of petroleum franchises governed by federal law, advance the interests of the Commonwealth, and its citizens, by facilitating the purchase of retail service stations by their occupying lessee-franchisees, thereby insuring the motoring public greater access to service stations and petroleum products and furthering a more dynamic and full-service-oriented retail marketplace, while also considering the interests of the franchisor and, if applicable, the property owner, with regard to such service station premises.

1973, c. 423; 1990, c. 907; 2014, c. 222.

§ 59.1-21.10. Definitions

As used in this chapter, the following terms shall have the following meanings unless the context requires otherwise:

"Dealer" means any person who purchases motor fuel for sale to the general public for ultimate consumption. "Dealer" shall not mean any person, including any affiliate of such person, who (i) purchases motor fuel for sale, consignment, or distribution to another; (ii) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier; or (iii) who is an employee of, or merely serves as a common carrier providing transportation service, for such person.

"Designated family member" means the adult spouse, adult child or stepchild, or adult brother or sister of the dealer who is designated in the franchise agreement as the successor to the dealer's interest under the agreement and who shall become the dealer upon the completion of the succession.

"Franchise" or "franchise agreement" means any agreement, express or implied, between a refiner and a dealer under which a refiner authorizes or permits a dealer to use, in connection with the sale, consignment, or distribution of motor fuel, a trademark which is owned or controlled by such refiner. "Franchise" or "franchise agreement" shall also mean any agreement, express or implied, under which a dealer is granted the right to occupy leased marketing premises, which premises are to be employed in connection with the sale, consignment, or distribution of motor fuel under a trademark which is owned or controlled by such refiner.

"Franchise fee" means any fee or charge that a dealer is required to pay or agrees to pay for the right to enter into a franchise agreement or to become a dealer at the premises to which the franchise agreement relates. The term "franchise fee" shall not include reasonable actual costs and expenses incurred by the refiner in effecting the assignment, transfer, or sale.

"Franchisor" means a refiner who authorizes or permits, under a franchise, a dealer to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

"Jobber/distributor" means any person, including any affiliate of such person, who (i) purchases motor fuel for sale, consignment, or distribution to another; or (ii) receives motor fuel on consignment for consignment or distribution to his own motor fuel accounts or to accounts of his supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

"Newly remodeled facility" means a retail outlet, marketing premises, or leased marketing premises which, within an 18-month period, has been rebuilt, renovated, or reconstructed at a cost of (i) for facilities remodeled before January 1, 2004, a minimum of $560,000; or (ii) for facilities remodeled on or after January 1, 2004, a minimum of $560,000 plus an amount reflecting the annual rate of inflation, such amount to be calculated on January 1 of each year by the Commissioner of the Department of Agriculture and Consumer Services by referring to the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics.

"Operation of a retail outlet" means the ownership or option to buy a properly zoned parcel of property for which a permit to build a retail outlet has been granted.

"Petroleum products" or "motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads, and highways.

"Profit" means the net gain, for income tax purposes, realized by the dealer upon the assignment, transfer, or sale of the franchise agreement.

"Refiner" means any person engaged in the refining of crude oil to produce motor fuel and includes any affiliate of such person.

"Retail" means the sale of petroleum products for purposes other than resale.

"Retail outlet," "marketing premises," or "leased marketing premises" means the premises at which petroleum products are sold to the general public.

"Trial franchise" means the same as provided in the Petroleum Marketing Practices Act (15 U.S.C. § 2803 et seq.).

1973, c. 423; 1979, c. 306; 1990, c. 907; 2003, c. 410; 2005, c. 839; 2012, c. 351.

§ 59.1-21.11. Required provisions pertaining to agreements between refiners and dealers

Every agreement between a refiner and a dealer shall be subject to the following provisions, whether or not expressly set forth therein:

1. The dealer shall not be required to keep his retail outlet open for business for more than sixteen consecutive hours per day, nor more than six days per week. This subdivision shall not be construed to prevent any retail outlet being open when required to be open to conform to any local, state or federal law or regulation, nor shall this subdivision be construed to prevent any retail outlet from being open for business for more than sixteen consecutive hours per day or more

than six days per week when the dealer determines that market conditions warrant such operation. This subdivision shall not apply to retail outlets which participate in the travel services signing program of the Virginia Department of Transportation.

2. The right of either party to trial by jury or to the interposition of counterclaims or cross claims shall not be waived.

3. In the absence of any express agreement, the dealer shall not be required to participate financially in the use of any premium, coupon, give-away, or rebate in the operation of a retail outlet. The refiner may require the dealer to distribute to customers premiums, coupons, or give-aways which are furnished to the dealer at the expense of the refiner.

4. No agreement or franchise subject to the provisions of this chapter shall limit, restrict, or impair the number of retail outlets which an individual dealer may operate for the same refiner, nor may any agreement or franchise establish working hours for the dealer. However, an agreement or franchise may require the dealer to be involved in the operation of the business of the dealer's retail outlet or retail outlets for not more than an average of sixty hours per month. Notwithstanding the provisions of this subdivision, a refiner may impose a requirement in a trial franchise only, that a dealer be on the marketing premises of the dealer's retail outlet or retail outlets for a reasonable number of hours per week not to exceed twenty hours per week.

5. No transfer or assignment of a franchise by a dealer to a qualified transferee or assignee shall be unreasonably disapproved by the refiner. A refiner shall have forty-five days, after the date of submission by a proposed transferee or assignee of all personal and financial information required by the refiner's reasonable and uniform standards, within which to notify a dealer in writing that a proposed transferee or assignee meets or fails to meet the refiner's reasonable and uniform qualifications. If the proposed transferee or assignee fails to meet the refiner's reasonable and normal qualifications, the notice to the dealer shall state with specificity the reasons for such failure.

6. The term of the initial agreement between the refiner and the dealer relating to specific marketing premises shall not be less than one year; the term of all subsequent agreements between the refiner and the dealer, relating to the same marketing premises, shall not be for less than three years. The rental provisions in any such agreement or franchise shall be based on commercially fair and reasonable standards, uniformly applied to all similarly situated dealers of the same refiner in the same geographic area.

7. A refiner may require a dealer to pay a fee or charge for the privilege of honoring a credit card issued by the refiner and used by customers of the dealer in purchasing at retail products and services at retail outlets which bear the brand name or trademark of the refiner only if such refiner has deducted the cost of extending retail credit from the tankwagon price charged dealers, has notified the dealer in writing of such deduction and such fee is a part of a program designed (i) to induce retail purchases for cash or (ii) to separate the cost of extending retail credit from the tankwagon price paid by the dealer. The amount of any such fee or charge shall be directly related to

the actual cost incurred by the refiner in the extension of retail credit. Notwithstanding the provisions of subsection A of § 59.1-21.12, any refiner who violates the provisions of this subdivision shall be civilly liable for damages in treble the amount of the damages sustained by the complaining party as a result of the violation.

8. A dealer shall have the right, effective upon his death, permanent and total disability, or retirement, to have his interests under a franchise agreement with a refiner assigned to a designated family member who has been approved by the refiner in accordance with the refiner's reasonable and uniform standards for personal and financial condition unless the refiner shows that the designated family member no longer meets the reasonable and uniform standards at the time of the previous approval. All franchise agreements shall contain a provision identifying the designated family member who is entitled to succeed to the interests of the dealer under the agreement upon his death, permanent and total disability, or retirement. The foregoing shall not prohibit a refiner from requiring that the designated family member accept a trial franchise within twenty-one days of the dealer's death, permanent and total disability, or retirement and that the designated family member attend a training program offered by the refiner.

A dealer and the refiner may mutually agree to change the designated family member entitled to succeed to the dealer's interests under a franchise agreement. The designated family member shall provide, upon the request of the refiner, personal and financial information that is reasonably necessary to determine whether the succession should be honored. The refiner shall not be obligated to accept a designated family member under this subdivision who does not meet the reasonable and uniform standards uniformly imposed by the refiner; however, any refusal to accept the designated family member as a successor dealer shall be given by the refiner in writing to the dealer, not later than ninety days after the date of the designation of the designated family member by the dealer, and shall state with specificity the reasons for such refusal.

9. a. No refiner shall condition approval of an assignment, transfer, sale, or renewal of a franchise agreement on the payment by the dealer, or the proposed successor dealer, of a franchise fee or penalty unless the assignment, transfer, or sale is of a franchise agreement covering a new or newly remodeled facility.

b. A refiner may require a dealer to pay a franchise fee or penalty, as hereinafter provided, upon the assignment, transfer, or sale of a franchise agreement covering a new facility within the first three years of the initial term of the franchise agreement, or upon the assignment, transfer or sale of a franchise agreement covering a newly remodeled facility within the first three years after the completion of the remodeling:

(1) An amount not to exceed sixty percent of the profit realized by the dealer if the assignment, transfer, or sale takes place within the first twelve-month period.

(2) An amount not to exceed twenty-five percent of the profit realized by the dealer if the assignment, transfer, or sale takes place within the second twelve-month period.

(3) An amount not to exceed ten percent of the profit realized by the dealer if the assignment, transfer, or sale takes place within the third twelve-month period.

c. Nothing in this section shall authorize a refiner to impose a franchise fee or penalty upon an assignment, transfer, or sale to a family member pursuant to subdivision 8 of this section.

d. In the case of a new facility, a franchise fee may be charged at the time the first franchise agreement is entered into.

10. Any provision in any agreement or franchise purporting to waive any right or remedy under this chapter or any applicable provisions of the Petroleum Marketing Practices Act (15 U.S.C. § 2802 et seq.) shall be null and void.

1973, c. 423; 1979, c. 306; 1982, c. 350; 1985, c. 498; 1987, c. 535; 1990, c. 907; 1991, c. 199 .

§ 59.1-21.11:1. Waiver of constitutional rights prohibited

Any provision in any agreement or franchise subject to the provisions of this chapter purporting to waive or to directly or indirectly limit the constitutional rights of a dealer (i) to petition any governmental authority or body or (ii) lawfully to seek or oppose any governmental or regulatory action with respect to any matter, notwithstanding any contrary position taken by the franchisor thereon, shall be null and void.

1994, c. 170.

§ 59.1-21.12. Civil action for violation of chapter

A. Any person who violates any provision of this chapter shall be civilly liable for liquidated damages of $10,000 and reasonable attorney's fees, plus provable damages caused as a result of such violation, and be subject to such other remedies, legal or equitable, including injunctive relief, as may be available to the party damaged by such violation. Such action shall be brought in the circuit court of the jurisdiction wherein the franchised premises are located. For the purposes of subdivisions 5 and 9 of § 59.1-21.11, a proposed transferee, assignee, or designated family member who is not approved as a dealer by a refiner shall have legal standing to challenge a refiner's compliance with the provisions of this section relating to assignment.

B. No action may be brought under the provisions of this chapter for a cause of action which arises more than two years prior to the date on which such action is brought.

1973, c. 423; 1990, c. 907; 2003, c. 410.

§ 59.1-21.13. Obligation of refiner to repurchase upon termination, etc., of agreement

In the event of any termination, cancellation, or failure to renew whether by mutual agreement or otherwise, a refiner shall make or cause to be made a good faith offer to repurchase from the dealer, his heirs, successors, and assigns, at the current wholesale prices any and all merchantable products purchased by such dealer from the refiner; provided, that in such event the refiner shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer;

and provided further, that such repurchase obligation is conditioned upon there being no other claims or liens against such products by or on behalf of other creditors of the dealer.

1973, c. 423; 1979, c. 306; 1990, c. 907 .

§ 59.1-21.14. Producer or refiner not to terminate, etc., agreement without notice and reasonable cause; nonrenewal by franchisor

A. A producer or refiner shall not terminate, cancel, or fail to renew a petroleum products franchise unless he furnishes prior written notification pursuant to this paragraph to each dealer affected thereby. Such notification shall contain a statement of intention to terminate, cancel, or not renew with the reasons therefor; the date on which such action shall take effect; and shall be sent to such dealer by certified mail not less than sixty days prior to the date on which such petroleum products franchise will be terminated, canceled, or not renewed. In circumstances where it would not be reasonable to provide advance notice of sixty days, the producer or refiner shall provide notice at the earliest date as is reasonably practicable. Termination, cancellation, or failure to renew shall be effective immediately upon notice given by certified mail to the dealer at his last known address in situations involving:

1. Failure of the dealer to open for business during reasonable business hours for five consecutive days, or

2. Criminal conduct or violations of law by the dealer involving moral turpitude, or

3. Bankruptcy, an assignment for the benefit of creditors by the dealer, or a petition for reorganization by the dealer, or

4. Condemnation or other taking of the premises, in whole or in part, pursuant to the power of eminent domain, or

5. Mutual agreement of the parties to terminate the franchise, or

6. Death, incapacity, or permanent and total disability of the dealer.

B. A producer or refiner shall not terminate, cancel, or fail to renew, a petroleum products franchise, except for reasonable cause.

C. Reasonable cause shall include, but not be limited to:

1. A failure of the dealer to comply substantially with the express provisions of such petroleum products franchise, or

2. A failure of the dealer to act in good faith in carrying out the terms of such petroleum products franchise, and federal and state laws, which shall include, but not be limited to:

(a) Adulteration of the producer's or refiner's products, or

(b) Misbranding of gasoline, or

(c) Misleading or deceiving consumers, or

(d) Trademark violations, or

(e) False or deceptive representations to the producer or refiner, or

3. Receipt and documentation by the supplier of repeated customer complaints uncorrected by the dealer within a reasonable time, or

4. A total withdrawal by the producer or refiner from the sale of motor fuels in commerce for sale in the county, city or standard statistical metropolitan area in which the franchise is situated, or

5. The occurrence of any of the situations set out in subsection A hereof, not requiring sixty days' notice.

D. A franchisor may elect not to renew a franchise which involves the lease by the franchisor to the franchisee of premises, in the event the franchisor:

1. Sells or leases such premises to other than a subsidiary or affiliate of the franchisor for any use; or

2. Sells or leases such premises to a subsidiary or affiliate of the franchisor, except such subsidiary or affiliate shall not use such premises for the retail sale of motor fuels; or

3. Converts such premises to a use other than the retail sale of motor fuels; or

4. Has leased such premises from a person not the franchisee and such lease is terminated, canceled or not renewed; or

5. Determines, in the case of any retail service station opened after July 1, 1979, under a franchise term of at least three years, in good faith and in the normal course of business that renewal of the petroleum products franchise is likely to be uneconomical to the producer or refiner despite any reasonable changes or reasonable additions to the provisions of the franchise which may be acceptable to the dealer.

E. The provisions of this section shall apply to any petroleum products franchise entered into or renewed on and after July 1, 1976.

1973, c. 423; 1976, c. 645; 1979, c. 306; 1997, c. 801.

§ 59.1-21.15. Disclosures to be made by refiner before conclusion of agreement

A refiner shall disclose to any prospective dealer the following information, before any franchise agreement is concluded:

1. The gallonage volume history, if any, of the location under negotiation for and during the three-year period immediately past or for the entire period which the location has been supplied by the refiner, whichever is shorter.

2. The name and last known address of the previous dealer or dealers for the last three years, or for and during the entire period which the location has been supplied by the refiner, whichever is shorter.

3. Any legally binding commitments for the sale, demolition, or other disposition of the location.

4. The training programs, if any, and the specific goods and services the refiner will provide for and to the dealer.

5. Full disclosure of any and all obligations which will be required of the dealer.

6. Full disclosure of all restrictions on the sale, transfer, and termination of the agreement.

1973, c. 423; 1979, c. 306; 1990, c. 907 .

§ 59.1-21.15:1. Continued rights of dealers upon sale or assignment of franchise agreement

Any franchise between a dealer and a refiner located in Planning District 8 in effect on or after January 1, 2008, which franchise is sold or assigned to a third party shall require such acquiring third party, and its successors, assigns, affiliates and subsidiaries, to comply with, provide, grant, and make available to the dealer and to any successor of the dealer any and all rights, privileges, or protections provided for in this chapter and required of or enforceable against the assigning refiner-franchisor except for such sale or assignment. With respect to the requirements of § 59.1-21.16:2, the one and one-half mile restriction shall only apply to a franchise location which is sold or assigned on or after January 1, 2008.

2008, c. 837.

§ 59.1-21.15:2. Franchisor's obligation to offer leased marketing premises to occupying dealer

A. As used in this section, unless the context requires otherwise:

"Bona fide offer" means an offer by the franchisor to the dealer that approximates the fair market value of the leased marketing premises under an objectively reasonable analysis, and:

1. In the case of the franchisor offering to the dealer a right of first refusal regarding an offer to purchase the marketing premises that has been made to the franchisor by a third party regarding the leased marketing premises, the offer made by such third party shall be a bona fide offer acceptable to the franchisor, and may not be an offer that has been unfairly or improperly established by either the franchisor or the third party offer; or

2. In the case of service station premises that the franchisor leases from a third party, and providing the lease allows the assignment of such lease by the franchisor, the franchisor's lease rights in the station premises shall be transferred or assigned to the dealer, with the franchisor making a bona fide offer with regard to the sale of structures located on the station's premises, including all pumps, dispensers, storage tanks, piping, and all other equipment located upon the premises necessary for the continued operation of a service station.

If the leased marketing premises occupied by a dealer are to be part of a sale of multiple properties owned or controlled by the franchisor, a bona fide offer shall reasonably allocate a portion of the total price for the multiple properties intended to be sold to the leased marketing premises occupied by the dealer in order to allow the dealer to exercise the dealer's right of first refusal

regarding the leased marketing premises occupied by the dealer. In making such allocation, the purpose shall be to determine the fair market value of the leased marketing premises under an objectively reasonable analysis.

A bona fide offer shall (i) include the sale of all structures located on the leased marketing premises, including all pumps, dispensers, storage tanks, piping, and all other equipment located upon the premises necessary for the continued operation of a service station if the dealer exercises the dealer's right to buy; (ii) not include a requirement that the dealer enter into a supply agreement with the selling franchisor or with any other party and, to the extent that a bona fide offer acceptable to the franchisor from a third party contains such a supply agreement, it shall not be applicable to the dealer; and (iii) not, unless freely negotiated by the dealer, release the continuing obligations of the franchisor with regard to any environmental obligations regarding the service station premises nor require the dealer to assume such obligations of the franchisor with regard to the dealer's purchase of the premises or acquisition of the franchisor's rights in the premises. In conjunction with the dealer's acquisition of the rights of the franchisor in the leased marketing premises, such environmental tests, surveys, and other due diligence investigations shall be conducted as are customary in such transactions.

"Leased marketing premises" means marketing premises owned, leased, or controlled by a franchisor and that the dealer is authorized or permitted, under the petroleum franchise, to employ, to occupy, or both in connection with the sale, consignment, or distribution of petroleum products.

"Supply agreement" means an agreement, oral or written, under which a party is to supply, and a dealer is required to buy, petroleum products.

B. In the case of leased marketing premises owned by a franchisor, or in which a franchisor owns a leasehold interest, which premises are occupied by a dealer, the franchisor shall not sell, transfer, or assign to another person the franchisor's interest in the premises unless the franchisor has first either made a bona fide offer to sell, transfer, or assign to the dealer the franchisor's interest in the premises, other than signs displaying the refiner's insignia and any other trademarked, service marked, copyrighted, or patented items of the franchisor, or, if applicable, offered to the dealer a right of first refusal of any bona fide offer acceptable to the franchisor made by another person to acquire the franchisor's interest in the premises.

C. Nothing in this section shall be deemed to require a franchisor to continue an existing franchise relationship, or to renew a franchise relationship, if not otherwise required by federal law.

D. Nothing in this section shall be deemed to require a franchisor to continue to supply petroleum products to a dealer if the dealer exercises its right to acquire the interests of the franchisor in the premises.

E. The bona fide offer required to be made to the dealer by the franchisor shall:

1. Be in writing;

2. Set forth fully and completely all terms and conditions of the offer being made by the franchisor;

3. In the case of a bona fide offer being made by a third party to acquire the interests of the franchisor in the property, which offer is acceptable to the franchisor, also contain a full copy of the proposal of the third party, or the contract or its equivalent between the franchisor and the third party if such a contract exists, to include all schedules, attachments, addenda, or their equivalent; and

4. In the case of leased marketing premises that the franchisor leases from a third party or parties, also contain a full copy of the underlying lease, including all schedules, attachments, addenda, or their equivalent.

F. After receipt of the bona fide offer from the franchisor, the dealer shall have a period of not less than 60 days within which to exercise the dealer's rights as established under this section, which exercise shall be effective upon delivering written notice of such exercise to the franchisor. After exercise of the dealer's rights, the closing on, and transfer of, the leased marketing premises shall occur (i) within 60 days after the dealer's exercise of such rights or (ii) on or before the closing date established within the bona fide offer regarding which the dealer has exercised the dealer's right of first refusal under this section, whichever date occurs later.

G. The provisions of this section shall apply only to the sale, assignment, or transfer of a franchisor's interest in or to any leased marketing premises located only in Planning District 8, and shall not apply to leased marketing premises owned or controlled by a jobber/distributor.

2014, c. 222.

§ 59.1-21.16. Authority of Attorney General under § 59.1-68.2 not limited

Nothing in this chapter shall be construed as limiting the authority of the Attorney General under the provisions of § 59.1-68.2.

1973, c. 423.

§ 59.1-21.16:1. Expired

Expired.

§ 59.1-21.16:2. Operation of retail outlet by refiner; apportionment of fuels during periods of shortage; rules and regulations

A. After July 1, 1979, no refiner of petroleum products shall operate any major brand, secondary brand, or unbranded retail outlet in the Commonwealth of Virginia with company personnel, a parent company, or under a contract with any person, firm, or corporation, managing a service station on a fee arrangement with the refiner; however, such refiner may operate such retail outlet with the aforesaid personnel, parent, person, firm, or corporation if such outlet is located not less than one and one-half miles from the nearest retail outlet operated by any dealer or jobber/distributor, as measured by the most direct surface transportation route from the gas pump at

the refiner's facility that is nearest a gas pump at the dealer's or jobber/distributor's facility; and provided, that once in operation, no refiner shall be required to change or cease operation of any retail outlet by the provisions of this section.

During the period July 1, 1990, through June 30, 1991, no refiner may construct and operate with company personnel as defined in this section any new major brand, secondary brand, or unbranded retail outlet in the Commonwealth of Virginia, except on any property purchased or under option to purchase by March 1, 1990.

B. Every refiner of petroleum products shall apportion all gasoline and diesel fuel among their purchasers during periods of shortages on an equitable basis.

C. No new lease, lease renewal, new supply contract, or new supply contract renewal under this chapter shall impose purchase or sales quotas.

D. The provisions of this section shall not be applicable to retail outlets operated by producers or refiners on July 1, 1979.

1979, c. 306; 1984, c. 720; 1990, c. 907; 1995, c. 664; 2003, c. 410; 2012, c. 351.

§ 59.1-21.17. Effective date of chapter

The provisions of this chapter shall be applicable to franchise agreements entered into on and after July 1, 1973.

1973, c. 423.

§ 59.1-21.18. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

§ 59.1-21.18:1. Exclusions

Franchise agreements subject to the provisions of this chapter shall not be subject to any requirement contained within Chapter 8 (§ 13.1-557 et seq.) of Title 13.1.

1978, c. 670.

Chapter 2.2:1 - EMERGENCY PETROLEUM PRODUCTS SUPPLY ACT

§ 59.1-21.18:2. Definitions

As used in this chapter, unless the context requires otherwise, the following terms and phrases shall have the following meanings:

1."Petroleum products" shall mean kerosene and number one and two heating oils;

2. "Supplier" shall mean any person, partnership, company, corporation or association engaged in the refining and subsequent sale of petroleum products to any distributor in the Commonwealth;

3. "Distributor" shall mean any distributor, wholesaler, jobber, consignee or commission agent who purchases or otherwise acquires possession of or an interest in petroleum products under a contract of supply in the Commonwealth from a supplier for redistribution or wholesale sale;

4. "Monthly allocation" shall mean the monthly amount of petroleum products sold or otherwise supplied to a distributor under applicable U.S. Department of Energy regulations and rules, or which the supplier may otherwise be allocating to its distributors;

5."To discontinue" shall mean the failure or refusal to sell a monthly allocation as defined herein to a distributor for a period of six consecutive months unless such failure or refusal is the direct and proximate result of force majeure;

6."To reduce" shall mean the failure or refusal of a supplier to deliver at least seventy-five per centum of a monthly allocation to a distributor for a period of two consecutive months unless such failure or refusal is the direct and proximate result of an allocation percentage factor applied by the supplier to all its distributors or force majeure;

7."Force majeure" means an act of God or any other cause not reasonably within the control of the supplier.

1980, c. 457.

§ 59.1-21.18:3. Prohibited acts

Except in the event of failure by any distributor in the Commonwealth to comply with the material requirements imposed upon him by a contract or agreement with the supplier, other than a failure caused by force majeure; or except as may be required by an agency of the federal or state government responsible for regulating allocations of petroleum products; or except as provided in § 59.1-21.18:4, it shall be unlawful for any supplier:

1. To discontinue monthly allocations of petroleum products to a distributor, his successors in interest or qualified assigns provided that such successors in interest or qualified assigns meet the supplier's usual contract acceptance criteria; or

2. To reduce monthly allocations of petroleum products to a Virginia distributor, his successors in interest or qualified assigns provided that such successors in interest or qualified assigns meet the supplier's usual contract acceptance criteria.

1980, c. 457.

§ 59.1-21.18:4. Exemptions under chapter

A supplier shall be authorized to reduce or discontinue monthly allocations of petroleum products with any Virginia distributor if the supplier:

1. Furnishes the distributor with an alternative source of monthly allocations of petroleum products of equal type, grade, quantity and equivalent delivery location; or

2. Agrees to supply the distributor with monthly allocations of petroleum products for a period of twelve months and furnishes the distributor and the Governor of the Commonwealth with written notice of its intention to discontinue or reduce such allocations at least twelve months in advance of such discontinuance or reduction.

1980, c. 457.

Chapter 2.3 - EQUAL CREDIT OPPORTUNITY ACT [Repealed]

§§ 59.1-21.19 through 59.1-21.28. Repealed

Repealed by Acts 2010, c. 794, cl. 11, effective October 1, 2010.

Chapter 3 - TRUSTS, COMBINATIONS AND MONOPOLIES [Repealed]

§ 59.1-41. Repealed

Repealed by Acts 1974, c. 545.

Chapter 3.1 - RECORDS, TAPES AND OTHER RECORDED DEVICES

§ 59.1-41.1. "Owner" defined

As used in this chapter, "owner" means the person who owns the sounds fixed in any master phonograph record, master disc, master tape, master film or other device used for reproducing recorded sounds on phonograph records, discs, tapes, films, videocassettes, or other articles now known or later developed on which sound is recorded and from which the transferred sounds are directly or indirectly derived, or the person who owns the rights to record or authorize the recording of a live performance.

1972, c. 618; 1989, c. 240 .

§ 59.1-41.2. Recording of live concerts or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances

It shall be unlawful for any person to:

1. Knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds at a live concert or any sounds recorded on a phonograph record, disc, wire, tape, film, videocassette, or other article now known or later developed on which sounds are recorded, with the intent to sell, rent or cause to be sold or rented, or to be used for profit through public performance, such article on which sounds are so transferred, without consent of the owner; or

2. For commercial advantage or private financial gain, manufacture, distribute, transport or wholesale, or cause to be manufactured, distributed, transported or sold as wholesale, or possess for such purposes any article with the knowledge that the sounds are so transferred, without consent of the owner.

This section shall not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds other than from the sound track of a motion picture intended for, or in connection with broadcast or telecast transmission or related uses, or for archival purposes.

1972, c. 618; 1989, c. 240 .

§ 59.1-41.3. Selling or renting, etc., of certain recorded devices unlawful

It shall be unlawful for any person to knowingly sell, rent, cause to be sold or rented, or possess for the purpose of selling or renting any recorded device that has been produced, manufactured, distributed, or acquired in violation of any provision of this chapter.

1972, c. 618; 1989, c. 240 .

§ 59.1-41.4. Recorded devices to show true name of manufacturer

Ninety days after July 1, 1972, every recorded device sold, rented or transferred or possessed for the purpose of sale, rental or transfer by any manufacturer, distributor, or wholesale or retail merchant shall contain on its packaging the true name and address of the manufacturer. The term "manufacturer" shall not include the manufacturer of the cartridge or casing itself. The term "recorded device" means the tangible medium upon which sounds or images are recorded or otherwise stored, and includes any phonograph record, disc, wire, tape, videocassette, film or other medium now known or later developed on which sounds or images are recorded or otherwise stored.

1972, c. 618; 1989, c. 240 .

§ 59.1-41.5. Confiscation of nonconforming recorded devices

Ninety days after July 1, 1972, it shall be the duty of all law-enforcement officers, upon discovery, to confiscate all recorded devices that do not conform to the provisions of § 59.1-41.4. The nonconforming recorded devices shall be delivered to the attorney for the Commonwealth of the county in which the confiscation was made. The attorney for the Commonwealth by court order may give the same to a charitable or educational organization. The provisions of this section shall apply to any nonconforming recorded device, regardless of the requirement in § 59.1-41.3 of knowledge or intent of a retail seller.

1972, c. 618.

§ 59.1-41.6. Penalties for violation of chapter

Violations of this chapter are punishable as follows:

1. Except as otherwise provided in this section, any person convicted of an offense under this chapter is guilty of a Class 1 misdemeanor.

2. Any person convicted of an offense involving at least 100 unlawful sound recordings or twenty unlawful audio visual recordings during any 180-day period is guilty of a felony punishable by a term of imprisonment of not less than one nor more than two years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than $5,000, either or both;

3. Any person convicted of an offense involving at least 1,000 unlawful sound recordings or 65 unlawful audio visual recordings during any 180-day period is guilty of a felony punishable by a term of imprisonment of not less than one nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than $100,000, either or both; and

4. Any second or subsequent felony offense under this chapter shall be punishable by a term of imprisonment of not less than one nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than $100,000, either or both.

5. Upon conviction of a person of any offense under this chapter, the court in its judgment of conviction may order the forfeiture and destruction or other disposition of all infringing recordings and of all implements, devices and equipment used by the person in the manufacture of the infringing recordings.

1972, c. 618; 1989, c. 240; 2007, c. 805.

Chapter 4 - MISREPRESENTATIONS AND OTHER OFFENSES CONNECTED WITH SALES [Repealed]

§§ 59.1-42 through 59.1-68.1. Repealed

Repealed by Acts 1975, c. 589.

Chapter 4.1 - REMEDIES FOR VIOLATIONS OF PRECEDING CHAPTERS AND CHAPTER 6, ARTICLE 8, OF TITLE 18.2

§ 59.1-68.2. Authority of Attorney General

Notwithstanding any other provisions of the law to the contrary, the Attorney General may investigate and bring an action in the name of the Commonwealth to enjoin any violation of Chapters 2.1 (§ 59.1-21.1 et seq.) through 3.1 (§ 59.1-41.1 et seq.) and of Article 8 (§ 18.2-214 et seq.), Chapter 6 of Title 18.2.

1970, c. 780; 1973, c. 537; 1975, c. 43; 1984, c. 582.

§ 59.1-68.3. Action for damages or penalty for violation of Article 8, Chapter 6 of Title 18.2 or Chapter 2.1 of Title 59.1; attorney's fees

Any person who suffers loss as the result of a violation of Article 8 (§ 18.2-214 et seq.), Chapter 6 of Title 18.2 or Chapter 2.1 (§ 59.1-21.1 et seq.) of Title 59.1 shall be entitled to bring an individual action to recover damages, or $100, whichever is greater. Certified copies of the transcript and exhibits in evidence in any final proceeding in which the Attorney General has obtained a permanent injunction for a violation of Article 8, Chapter 6 of Title 18.2 or Chapter 2.1 of Title 59.1 shall be admissible in evidence in any action brought pursuant to this section by any person claiming damage as a result of the enjoined conduct. Notwithstanding any other provision of law to the contrary, in addition to the damages recovered by the aggrieved party, such person may be awarded reasonable attorney's fees.

1973, c. 537; 1975, c. 43; 1976, c. 87.

§ 59.1-68.4. Suits by attorneys for the Commonwealth and city and county attorneys

Notwithstanding any other provisions of the law to the contrary, any attorney for the Commonwealth, or the attorney for any city or county, may investigate and cause to be brought suit in the name of the Commonwealth, or of the county or city, to enjoin any violation of Chapter 2.1 (§ 59.1-21.1 et seq.) of this title and of Article 8 (§ 18.2-214 et seq.), Chapter 6 of Title 18.2. The court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages be alleged or proved.

1974, c. 644; 1975, c. 43.

§ 59.1-68.5. Further provisions as to actions for violation of Article 8, Chapter 6 of Title 18.2
Any person who suffers loss as the result of a violation of Article 8 (§ 18.2-214 et seq.), Chapter 6 of Title 18.2 shall be entitled to bring an individual action to recover damages, or $100, whichever is greater. Certified copies of the transcript and exhibits in evidence in any final proceeding in which the Commonwealth, or a county or city has obtained a permanent injunction for a violation of Article 8, Chapter 6 of Title 18.2 shall be admissible in evidence in any action brought pursuant to this section by any person claiming damage as a result of the enjoined conduct. Notwithstanding any other provision of law to the contrary, in addition to the damages recovered by the aggrieved party, such person may be awarded reasonable attorney's fees.

1974, c. 644; 1975, c. 43.

Chapter 4.2 - CONSPIRACY TO RIG BIDS TO GOVERNMENT

§ 59.1-68.6. Definitions
As used in this chapter, unless the text indicates otherwise:

1."Person" means any individual, firm, partnership or corporation;

2. "Governmental units" means all state agencies and all political subdivisions or agencies thereof;

3. "Bid" means any submission of a price, whether written or oral, for any goods, services or construction to be provided.

1980, c. 471.

§ 59.1-68.7. Combinations to rig bids
A. Any combination, conspiracy or agreement to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated any bid submitted to the Commonwealth of Virginia or any governmental unit for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of the goods or services, or excluding other persons from dealing with the Commonwealth or any other governmental unit shall be unlawful.

B. Any person violating this section shall be guilty of a Class 6 felony.

1980, c. 471.

§ 59.1-68.8. Enforcement

The Attorney General of Virginia, with respect to state agencies only, shall have concurrent power and authority to investigate and prosecute any violation of § 59.1-68.7. In addition, the attorneys for the Commonwealth of the several counties and cities shall retain the power and authority to prosecute any and all violations of § 59.1-68.7 occurring within their jurisdiction.

1980, c. 471.

Chapter 5 - TRANSACTING BUSINESS UNDER ASSUMED NAME

§ 59.1-69. Certificate required of person, partnership, limited liability company or corporation transacting business under assumed name

A. No person, partnership, limited liability company or corporation shall conduct or transact business in this Commonwealth under any assumed or fictitious name unless such person, partnership, limited liability company or corporation shall sign and acknowledge a certificate setting forth the name under which such business is to be conducted or transacted, and the names of each person, partnership, limited liability company or corporation owning the same, with their respective post-office and residence addresses (and, (i) when the partnership or limited liability company is a foreign limited partnership or limited liability company, the date of the certificate of registration to transact business in this Commonwealth issued to it by the State Corporation Commission, or (ii) when the corporation is a foreign corporation, the date of the certificate of authority to transact business in this Commonwealth issued to it by the State Corporation Commission), and file the same in the office of the clerk of the court in which deeds are recorded in the county or city wherein the business is to be conducted.

B. No person, partnership, limited liability company or corporation shall use an assumed or fictitious name in the conduct of its business to intentionally misrepresent the geographic origin or location of any such person or entity.

Code 1950, § 59-169; 1968, c. 439; 1987, c. 702; 1995, c. 168; 1996, c. 904.

§ 59.1-70. Limited partnership, limited liability company or corporation to file copy of certificate with State Corporation Commission; fee; release certificate

A. When business is conducted in this Commonwealth under an assumed or fictitious name by a limited partnership filing a certificate under § 50-73.11, by a foreign limited partnership required to register with the Commission under § 50-73.54, or by a limited liability company or corporation, such domestic or foreign limited partnership, limited liability company or corporation shall file in the office of the clerk of the State Corporation Commission a copy of the certificate described in § 59.1-69, duly attested by the clerk of the court in which the original is on file. The State Corporation Commission shall charge a ten-dollar fee for the filing of a fictitious or an assumed name.

B. When business is no longer conducted in this Commonwealth under an assumed or fictitious name by a limited partnership filing a certificate under § 50-73.11, by a foreign limited

partnership required to register with the Commission under § 50-73.54, or by a limited liability company or corporation, the domestic or foreign limited partnership, limited liability company or corporation may file with the clerk of the State Corporation Commission a copy of a release certificate, duly attested by the clerk of the court in which the certificate is on file. The Commission shall charge a ten-dollar fee for the filing of such certificate.

Code 1950, § 59-170; 1968, c. 439; 1976, c. 79; 1981, c. 519; 1984, c. 771; 1987, c. 702; 1991, c. 439; 1995, c. 168.

§§ 59.1-71, 59.1-72. Repealed

Repealed by Acts 2002, c. 267, effective July 1, 2002.

§ 59.1-73. Repealed

Repealed by Acts 1994, c. 432.

§ 59.1-74. Recordation of certificate and registration of names

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

Code 1950, § 59-174; 1968, c. 439; 1975, c. 230; 1983, c. 103; 1992, c. 784; 2002, c. 267.

§ 59.1-75. Penalty for violation

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding $2,500 or by confinement in jail for not more than one year, or both.

Code 1950, § 59-175; 1968, c. 439; 1991, c. 710 .

§ 59.1-76. Effect of failure to file certificate on right of action

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

Code 1950, § 59-176; 1968, c. 439.

Chapter 6 - REGISTRATION AND PROTECTION OF TRADEMARKS, SERVICE MARKS, AND CASE MARKS [Repealed]

§§ 59.1-77 through 59.1-92. Repealed

Repealed by Acts 1998, c. 819.

Chapter 6.1 - REGISTRATION AND PROTECTION OF TRADEMARKS AND SERVICE MARKS

§ 59.1-92.1. Short title

This chapter shall be known as the "Virginia Trademark and Service Mark Act (1998)."

1998, c. 819.

§ 59.1-92.2. Definitions

As used in this chapter, the following words shall have the following meanings:

"Abandoned" means either (i) the discontinuance of use of a mark with intent not to resume such use (intent not to resume may be inferred from circumstances, i.e., nonuse for three consecutive years shall constitute prima facie evidence of abandonment) or (ii) any course of conduct of the owner, including acts of omission as well as commission, which causes the mark to lose its significance as a mark.

"Applicant" means any person filing an application for registration of a mark under this chapter, and the legal representatives, successors, or assigns of such person.

"Commission" means the State Corporation Commission.

"Mark" means any trademark or service mark registered in the Commonwealth or the United States Patent and Trademark Office, or entitled to registration under this chapter, whether registered or not.

"Registrant" means any person to whom the registration of a mark under this chapter or prior law is issued, and the legal representatives, successors, or assigns of such person.

"Service mark" means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the services of such person from the services of others.

"Trade name" means any name used by a person to identify a business or enterprise.

"Trademark" means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person from those manufactured or sold by others.

"Use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this chapter, a mark shall be deemed to be in use (i) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are possessed in the Commonwealth or sold or otherwise distributed in commerce in the Commonwealth, and (ii) in connection with services when it is used or displayed in the course of

selling or providing services in the Commonwealth, or advertising descriptive of services available within the Commonwealth that is communicated within or into the Commonwealth.

1998, c. 819; 2008, cc. 759, 800; 2011, c. 801.

§ 59.1-92.3. Registrability

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it consists of or comprises:

1. Any immoral, deceptive or scandalous matter;

2. Any matter which may falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

3. The flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;

4. The name, signature or portrait identifying a particular living individual, except by the individual's written consent;

5. A mark which (i) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them; (ii) when used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; or (iii) is primarily merely a surname; however, nothing in this subdivision shall prevent the registration of a mark used by the applicant which has become distinctive in this Commonwealth of the applicant's goods or services. The Commission may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this Commonwealth for the five years before the date of the application for registration; or

6. A mark which so resembles a mark registered in this Commonwealth or a trademark, service mark or trade name previously used in this Commonwealth by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake, or to deceive.

1998, c. 819.

§ 59.1-92.4. Application for registration

Subject to the limitations set forth in this chapter, any person who uses a mark may file with the Commission, in a manner complying with the requirements of the Commission, an application for registration of that mark setting forth, but not limited to, the following information:

1. The name and business address of the person applying for such registration; and, if a corporation, limited liability company, partnership, limited liability partnership, or any other legal entity, the state or other jurisdiction of incorporation, formation, or organization, as the case may be;

2. The goods or services on or in connection with which the mark is used and the manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

3. The date when the mark was first used anywhere and the date when it was first used in this Commonwealth by the applicant or a predecessor in interest; and

4. A statement that the applicant is the owner of the mark, that the mark is in use in this Commonwealth, and that, to the knowledge of the person verifying the application, no other person has registered the mark in this Commonwealth, or has the right to use such mark in this Commonwealth either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake, or to deceive.

The Commission may also require that a drawing of the mark, complying with such requirements as the Commission may specify, accompany the application.

The application shall be signed and verified (by oath, affirmation or declaration subject to perjury laws) by the applicant or by a person authorized by the applicant to make the application.

The application shall be accompanied by a specimen showing the mark as actually used.

The application shall be accompanied by a nonrefundable application fee.

1998, c. 819.

§ 59.1-92.5. Filing of applications

A. Upon the filing of an application for registration and payment of the application fee, the Commission shall cause the application to be examined for conformity with this chapter.

B. The applicant shall provide any additional relevant information requested by the Commission, including a description of a design mark, and may make, or authorize the Commission to make, such amendments to the application as may be reasonably requested by the Commission or deemed by the applicant to be advisable to respond to any rejection or objection.

C. The Commission may require the applicant to disclaim any unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim any component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's common law rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.

D. Amendments to the application may be made by the Commission with the applicant's consent.

E. If the applicant is found not to be entitled to registration, the Commission shall notify the applicant thereof in writing and of the reasons therefor. The applicant shall have ninety days from the date of the Commission's notice to make a bona fide reply, or to amend the application, in

which event the application shall then be reexamined. This procedure may be repeated until (i) the Commission finally refuses registration of the mark or (ii) the applicant fails to reply or amend within the specified period, whereupon the request for registration shall be deemed to have been finally refused.

1998, c. 819.

§ 59.1-92.6. Certificate of registration

Upon compliance by the applicant with the requirements of this chapter, the Commission shall cause a certificate of registration to be issued and delivered to the applicant. The certificate shall show (i) the name and business address of the registrant and, if a corporation, limited liability company, partnership, limited liability partnership, or any other legal entity, the state or other jurisdiction of incorporation, formation, or organization, as the case may be; (ii) the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this Commonwealth; (iii) the class of goods or services and a description of the goods or services on or in connection with which the mark is used; (iv) a reproduction of the mark; and (v) the registration date and the term of the registration.

Any certificate of registration issued by the Commission under the provisions hereof or a copy thereof duly certified by the clerk of the Commission shall be prima facie evidence of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark within the Commonwealth on or in connection with the goods or services specified in the certificate, and shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this Commonwealth.

1998, c. 819.

§ 59.1-92.7. Duration and renewal

A registration of a mark hereunder shall be effective for a term of five years from the date of registration and, upon application filed within six months prior to the expiration of such term, in a manner complying with the requirements of the Commission, the registration may be renewed for a like term from the end of the expiring term. A renewal fee shall accompany the application for renewal of the registration.

A registration may be renewed for successive periods of five years in like manner.

Any registration in force on the date on which this chapter becomes effective shall continue in full force and effect for the unexpired term thereof and may be renewed for five years by filing with the Commission, within six months prior to the expiration of the registration, an application for renewal complying with the requirements of the Commission and paying the aforementioned renewal fee therefor.

All applications for renewal under this chapter, whether of registrations made under this chapter or of registrations effected under any prior law, shall include a verified statement that the mark

has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

1998, c. 819.

§ 59.1-92.8. Assignments and changes of name

A. Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be filed with the Commission upon the payment of a fee. The Commission shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is filed with the Commission within three months after the date of the assignment or prior to such subsequent purchase.

B. Any applicant effecting a change of name may file a certificate of name change with the Commission upon the payment of a fee. The Commission shall prescribe the form and content of such certificate. If the Commission issues a registration based on such applicant's request for registration, the registration shall be issued in the new name of the applicant.

C. Any registrant effecting a change of name may file a certificate of name change with the Commission upon the payment of a fee. The Commission shall prescribe the form and content of such certificate. The Commission shall issue in the new name of the registrant a new certificate of registration for the remainder of the term of the registration or last renewal thereof.

D. A photocopy of any instrument referred to in this section shall be accepted for filing if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original.

1998, c. 819.

§ 59.1-92.9. Records

The Commission shall keep for public examination a record of all marks registered or renewed under this chapter, as well as a record of all documents filed pursuant to § 59.1-92.8.

1998, c. 819.

§ 59.1-92.10. Cancellation

A. The Commission shall cancel, in whole or in part:

1. Any registration concerning which the Commission receives a voluntary request for cancellation thereof from the registrant or the assignee of record;

2. Any registration granted under this chapter or prior law and not renewed in accordance with the provisions hereof; or

3. Any registration concerning which the Commission finds on its own motion, or on petition of any person who alleges that he is or will be damaged by such registration, that:

a. The registered mark has been abandoned;

b. The registrant is not the owner of the mark;

c. The registration was granted as a result of a clerical error;

d. The registration was obtained fraudulently;

e. The mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered; or

f. There is a substantial likelihood of confusion with a mark or trade name previously used in this Commonwealth by another and not abandoned.

B. The Commission may also cause a partial cancellation of a registration by requiring the registrant to amend the registration to adopt a narrower identification of goods or services than is identified in the original certificate.

C. Before the Commission cancels or partially cancels any registration under subdivision A 3, the Commission shall give reasonable notice and an opportunity to be heard to the registrant and to other persons known to have or claim an interest in the mark.

1998, c. 819.

§ 59.1-92.11. Classification

The Commission shall by regulation establish a classification of goods and services for convenience of the administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services in connection with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the Commission may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.

1998, c. 819.

§ 59.1-92.12. Infringement

Subject to the provisions of § 59.1-92.15, any person who (i) uses in a manner likely to cause a consumer confusion, mistake, or deception as to the source or origin of any goods or services, without the consent of the owner of a registered mark, any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of such goods or services or (ii) reproduces, counterfeits, copies or colorably imitates a registered mark and applies such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, advertisements, or any item intended to be used in

a manner likely to cause a consumer confusion, mistake, or deception as to the source or origin of any goods or services in connection with the sale, offering for sale, distribution, or advertising of such goods or services shall be liable in a civil action by the owner of a registered mark for any and all of the remedies provided in § 59.1-92.13, except that under this subdivision the owner shall not be entitled to recover profits, damages, or attorney fees unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive.

1998, c. 819; 2008, cc. 759, 800; 2011, c. 801.

§ 59.1-92.13. Remedies and penalties

A. Any owner of a registered mark in force and effect may proceed by suit in a court of competent jurisdiction to enjoin violations of § 59.1-92.12, seek such other remedies as are set forth herein, or both. Any court of competent jurisdiction may grant such injunctions as may by the court be deemed just and reasonable to restrain such violations, and may require any defendant to pay to such owner all profits derived from and/or all damages suffered by reason of such violations. The court shall also order that any material that violates § 59.1-92.12 that is in the possession or under the control of any defendant in such case be destroyed or delivered to an officer of the court or to the owner for destruction, or alternatively disposed of in another manner with the written consent of the owner of the registered mark. The court, in its discretion upon consideration of the circumstances of the case, may award reasonable attorney fees to the prevailing party.

B. Any person who:

1. Knowingly and intentionally violates the provisions of § 59.1-92.12 is guilty of a Class 1 misdemeanor and, upon a second or subsequent conviction, is guilty of a Class 6 felony.

2. Knowingly and intentionally violates the provisions of § 59.1-92.12 and possesses 100 or more identical counterfeit registered marks or possesses counterfeit items valued at $200 or more, is guilty of a Class 6 felony.

C. Property subject to lawful seizure by any officer charged with enforcing this chapter shall include any article bearing or consisting of a counterfeit mark used in violation of this chapter, any property used in the substantial connection with or intended for use in the course of a violation of this chapter, or any interest or profits substantially connected to a violation of this chapter. Forfeiture, seizure, and disposition of such property shall be in accordance with Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2.

D. In any proceeding under this chapter, any certificate of registration issued by the Commonwealth or the United States Patent and Trademark Office shall be prima facie evidence of the facts stated therein.

E. In any criminal proceeding under subsection B, upon motion of the Commonwealth the court shall order any material that violates § 59.1-92.12 that is in the possession or under the control of

any defendant or law-enforcement officer be destroyed or delivered to an officer of the court or to the owner of the registered mark for destruction, or alternatively disposed of in another manner with the written consent of the owner of the registered mark.

1998, c. 819; 2008, cc. 759, 800; 2011, c. 801.

§ 59.1-92.14. Service on out-of-state registrants

In any action brought against a nonresident registrant, service may be effected upon the clerk of the Commission as agent for service of the registrant in accordance with the procedures established in § 12.1-19.1.

1998, c. 819.

§ 59.1-92.15. Common law rights

Nothing herein shall adversely affect the rights or the enforcement of common-law rights in marks.

1998, c. 819.

§ 59.1-92.16. Fees

The Commission shall by regulation prescribe the fees payable for the various application and filing fees and for related services. Unless specified by the Commission, the fees payable herein are not refundable.

1998, c. 819.

§ 59.1-92.17. Commission may consider final judgments

In any proceeding before the Commission involving the right to registration, or the cancellation of registration, in whole or in part, the final judgment of a court of record involving the right to use the mark, in whole or in part, may be offered in evidence to the Commission or filed with the Commission by any party to the registration or cancellation proceeding before the Commission. The Commission may consider the judgment of the court in determining what action it should take with respect to the registration or cancellation involved.

1998, c. 819.

§ 59.1-92.18. Appeals from final action of Commission

From any final action of the Commission under the provisions of this chapter an appeal shall lie of right to the Supreme Court in accordance with the provisions of §§ 12.1-39, 12.1-40 and 12.1-41.

1998, c. 819.

§ 59.1-92.19. Regulations and forms

A. The Commission shall have authority from time to time to make, amend, and rescind such regulations as may be necessary to carry out the provisions of this chapter, including regulations and forms governing applications, registrations, assignments, renewals, and fees, and defining technical and trade terms used in this chapter insofar as such definitions are not inconsistent with the

provisions of this chapter. For the purpose of regulations and forms, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes.

B. All such regulations and forms shall be made available for distribution at the office of the Commission.

C. No provision of this chapter imposing any liability shall apply to any act done or omitted in conformity with any regulation of the Commission, notwithstanding that such regulation may, after such act or omission, be amended, rescinded, or found for any reason to be invalid.

1998, c. 819.

§ 59.1-92.20. Fees to cover expense of regulation

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the Commission to defray the costs of supervising, implementing, and administering the provisions of this chapter, Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) of Title 13.1, and Chapter 7 (§ 59.1-93 et seq.) of this title. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

1998, c. 819.

§ 59.1-92.21. Olympic symbols

A. Without the permission of the United States Olympic Committee, a person shall not, for the purpose of trade, to induce the sale of goods or services, or to promote a theatrical exhibition, athletic performance, or competition, use:

1. The symbol of the International Olympic Committee, consisting of five interlocking rings;

2. The emblem of the United States Olympic Committee, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with five interlocking rings displayed on the chief;

3. A trademark, trade name, sign, symbol, or insignia falsely representing association with or authorization by the International Olympic Committee or the United States Olympic Committee; or

4. The words "Olympic," "Olympiad," or "Citius Altius Fortius" or a combination or simulation of those words that tends to cause confusion or mistake, to deceive, or to suggest falsely a connection with the United States Olympic Committee or an Olympic activity.

B. Any person who actually used the emblem described in subdivision A 2, or the words, or any combination thereof, described in subdivision A 4, for any lawful purpose prior to September 21, 1950, shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services. In addition, any person who actually used, or whose assignor

actually used, any other trademark, trade name, sign, symbol, or insignia described in subdivisions A 3 and A 4 for any lawful purpose prior to September 21, 1950, shall not be prohibited by this section from continuing such lawful use for the same purpose and for the same goods or services.

C. On violation of subsection A, the United States Olympic Committee is entitled to the remedies available to a registrant on infringement of a mark registered under this chapter.

1998, c. 819.

§ 59.1-92.22. Use of name, logo, or symbol of a bank, trust company, savings institution, or credit union

Any bank, trust company, savings institution, or credit union whose name, logo, or symbol, or any combination thereof, or any name, logo, or symbol, or any combination thereof that is deceptively similar thereto, is used by a person in a manner prohibited by §§ 6.2-941, 6.2-1043, 6.2-1105, and 6.2-1307, is entitled to the remedies that are available to a registrant under subsection A of § 59.1-92.13.

2005, c. 240.

Chapter 7 - NAMES, MARKS AND DEVICES ON CERTAIN CONTAINERS AND OTHER ARTICLES

§ 59.1-93. "Person" defined

The word "person" as used in this chapter shall mean an individual, firm or corporation.

Code 1950, § 59-190; 1968, c. 439.

§ 59.1-94. Filing and publication of description of names, marks or devices

Any person engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, cider, ginger ale, milk, cream, ice cream, soft drinks or other beverages, or medicines, medical preparations, perfumery, oils, compounds or mixtures, in bottles, siphons, tins, crates or kegs, with his or its name or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such bottles, siphons, siphon heads, tins, crates, or kegs, or the boxes used by him, or any person engaged in the business of regularly supplying clean laundered garments, towels, table or bed linens or other such articles with his or its name or other marks or devices woven, impressed or produced thereon, and who periodically exchanges such clean articles for soiled articles, may file in the office of the clerk of the circuit court in which his principal office of business is situated, or if such person shall manufacture, supply or bottle out of this Commonwealth, then in any county or city in this Commonwealth, and also in the office of the State Corporation Commission, a description of the name or names or marks or devices so used by him and cause such description to be printed once in each week, for three weeks successively, in a newspaper published in the county or city in which such description may have been filed as aforesaid, and if there be no newspaper published in the county or city in which such description has

been filed, then in the newspaper published nearest to that county or city, and he shall thereupon be deemed the proprietor of such name, mark or device, and of every vessel or receptacle or clean laundered or soiled articles mentioned herein upon which it may be branded, stamped, engraved, etched, blown, impressed, woven or otherwise produced.

Code 1950, § 59-191; 1958, c. 579; 1968, c. 439; 2002, c. 858.

§ 59.1-95. Certified copy as evidence; fees of the State Corporation Commission

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

Code 1950, § 59-192; 1958, c. 579; 1968, c. 439.

§ 59.1-95.1. Fees to cover expense of regulation

The fees paid into the state treasury under this chapter, except for fees and funds collected for the Literary Fund, shall be deposited into a special fund and specifically accounted for and used by the State Corporation Commission to defray the costs of supervising, implementing, and administering the provisions of Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) of Title 13.1, and Chapters 6.1 (§ 59.1-92.1 et seq.) and 7 (§ 59.1-93 et seq.) of this title. Included in the Commission's costs shall be a reasonable margin in the nature of a reserve fund. All excesses of fees collected exceeding these costs shall revert to the general fund.

1987, c. 434.

§ 59.1-96. Offenses and punishments

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

sell, buy, give, take, receive or otherwise dispose of or traffic in the same without the written consent of, or unless the same shall have been purchased by an agreement in writing from, the person whose mark or device shall be or shall have been in or upon any such clean laundered or soiled article. Any person offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment for not less than ten days, nor more than one year, or by a fine of $5, and in addition thereto fifty cents for each and every such bottle, box, siphon, siphon head, crate, tin, or keg, sold, disposed of, received, bought or trafficked in, or by both such fine and imprisonment, and for each subsequent offense by imprisonment for not less than twenty days nor more than one year, or by a fine of not less than $50, and in addition thereto $1 for each and every bottle, box, siphon, crate, tin or keg filled, sold, used, disposed of, received, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the judge or jury before whom the offense shall be tried; provided that in the case of any person offending against the provisions of this section relating to clean laundered or soiled articles such fine for the first offense shall be not less than $25 nor more than $200 and for each subsequent offense, the fine shall be not less than $50 nor more than $400.

Code 1950, § 59-193; 1958, c. 579; 1968, c. 439.

§ 59.1-97. Presumptive evidence of unlawful use and trafficking in marked containers and other articles

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

Code 1950, § 59-194; 1958, c. 579; 1968, c. 439.

§ 59.1-98. Procedure when violation charged; awarding possession of property to owner

Whenever any person mentioned in § 59.1-94 or his agent shall make oath before any magistrate, or other officer empowered to issue criminal warrants, that he has reason to believe, and does believe, that within the city, town or county served by such magistrate or other officer, any of his bottles, boxes, siphons, siphon heads, crates, tins, kegs, or clean laundered or soiled articles mentioned in this chapter a description of the names, marks or devices whereon has been filed and published as aforesaid, are being unlawfully used or filled or had, by any person manufacturing or selling soda, mineral or aerated waters, cider, ginger ale, milk, cream, soft drinks or other beverages or medicines, medical preparations, perfumery, oils, compounds or mixtures, or that any junk dealer or dealer in secondhand articles, vendor of bottles, or any other person has any such bottles, boxes, siphons, siphon heads, crates, tins, kegs or clean laundered or soiled articles mentioned in this chapter in his possession or secreted in any place, the magistrate or other officer, before whom such oath is made must thereupon issue a search warrant to discover and obtain the same, and may also issue his warrant stating the offense charged, and cause to be brought before any general district court having jurisdiction the person in whose possession such bottles, boxes, siphons, siphon heads, crates, tins, kegs or clean laundered or soiled articles mentioned in this chapter may be found, and shall then inquire into the circumstances of such possession and if such general district court finds such person has been guilty of a violation of § 59.1-96, it must impose the punishment therein prescribed, and it shall award possession of the property taken upon such warrant to the owner thereof.

Code 1950, § 59-195; 1958, c. 579; 1968, c. 439; 2008, cc. 551, 691.

§ 59.1-99. Right of appeal; commitment to jail; return and filing of papers

Any person convicted under the provisions of § 59.1-98 shall have the right of appeal from the decision of such court not of record to the circuit, corporation or hustings court, and shall, unless let to bail, be committed to jail, until next term of such court of record, and the witnesses shall be recognized to appear at the same time. The judge of the court not of record shall return and file all of the papers in each case with the clerk of the court of record.

Code 1950, § 59-196; 1968, c. 439.

§ 59.1-100. Trial on appeal

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

Code 1950, § 59-197; 1968, c. 439.

§ 59.1-101. Requiring or accepting deposit upon property not deemed a sale thereof

The requiring, taking or accepting of any deposit, for any purpose, upon any bottle, siphon, siphon head, crate, tin, keg, freezer, can, spoon, block, mould, tray, pan, brick, pail, tub, refrigerator box, cutlery, glass, china, chair, table, sign or clean laundered or soiled article mentioned

in this chapter shall not be deemed or constitute a sale of such property, either optional or otherwise in any proceeding under this chapter.

Code 1950, § 59-198; 1958, c. 579; 1968, c. 439.

§ 59.1-102. Records; previous filing and publishing of names, marks, etc

The Secretary of the Commonwealth shall deliver the records of his office relating to names, marks and devices on such property as is mentioned in § 59.1-94 to the State Corporation Commission. No person who has filed prior to July 1, 1948, in the proper offices, a description of the name or names, marks or devices upon such property and has caused the same to be published according to the law existing at the time of such filing and publication, shall be required to again file and publish such description to be entitled to the benefits of this chapter.

Code 1950, § 59-199; 1968, c. 439.

Chapter 7.1 - SAFETY GLAZING [Repealed]

§§ 59.1-102.1 through 59.1-102.7. Repealed

Repealed by Acts 1974, c. 233.

Chapter 8 - TIMBER BRANDS

§ 59.1-103. Persons engaged in lumbering or rafting on certain waters may adopt mark of designation

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

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

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

Code 1950, § 59-200; 1968, c. 439.

§ 59.1-104. Repealed

Repealed by Acts 1994, c. 432.

§ 59.1-105. Certificate as evidence of right to use marks

Any certificate of such mark of designation shall be prima facie evidence of the right of the person filing the same to use the mark or marks mentioned therein.

Code 1950, § 59-202; 1968, c. 439.

§ 59.1-106. Sale of unclaimed timber, etc., found adrift; disposition of proceeds

Any person, except the owner thereof, taking up and securing any sawlog, pile, hewn timber or square timber detached from any raft and found adrift or aground on any of the waters or streams mentioned in § 59.1-103, shall promptly report such fact to the owner thereof, or shall lodge a list containing a description of the quantity, quality, and marks, if any, of such timber with a magistrate serving the jurisdiction where such timber was so found and secured, which magistrate shall promptly advertise the same for five consecutive days in a newspaper published in the City of Norfolk. If such timber shall not be claimed by the owner thereof within thirty days after such publication it shall be lawful for the magistrate to order the sale thereof at public auction by an officer after giving five days' notice of the time, place, and terms of such sale by not less than six handbills posted in the most public places in the vicinity where the same was found and within the county wherein the magistrate serves. Out of the proceeds of such sale the magistrate, after paying the expenses of the advertisement and handbills, together with all the other costs of such proceeding at law, shall pay to the person or persons who found and secured the timber ten cents for each piece thereof so taken and secured, and the residue of such proceeds of sale shall be paid into the state treasury for the benefit of the Commonwealth.

Code 1950, § 59-203; 1968, c. 439; 2008, cc. 551, 691.

§ 59.1-107. Fraudulent use of mark or claim of ownership; defacement of mark, etc.; destruction or conversion of timber, etc

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

Code 1950, § 59-204; 1968, c. 439.

§ 59.1-108. Who are timber dealers

Every person, firm or corporation dealing in logs or timber in any form to be floated on the streams of this Commonwealth shall be called and known as timber dealers, and as such may adopt a brand or trademark in the manner and with the effect hereinafter provided.

Code 1950, § 59-205; 1968, c. 439.

§ 59.1-109. Timber dealer may adopt brand or trademark; recordation

Every such dealer desiring to adopt a brand or trademark who has not heretofore adopted one may do so by the execution and acknowledgement, as deeds are required to be acknowledged, of a writing substantially in form and effect as follows:

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

"Given under my (or our or its) hand and seal this ..... day of ....., two thousand.....

.....(Seal.)"

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

Code 1950, § 59-206; 1968, c. 439.

§ 59.1-110. Using recorded brand or trademark without authority

Every brand or trademark so adopted shall, from the date of its recordation be the exclusive brand or trademark of the person, firm or corporation adopting it, and any other person, firm or corporation knowingly using or attempting to use the same, without authority in writing from the owner thereof, shall be guilty of a misdemeanor and fined for each offense in so using the same not less than $20 nor more than $200, and shall be liable to the owner of such brand or trademark for all the damages sustained by such owner by reason of such unauthorized use.

Code 1950, § 59-207; 1968, c. 439.

§ 59.1-111. Unauthorized use of dealer's branding iron, or defacing, etc., marks made by it

Every timber dealer may have a branding iron or hammer with which to impress such brand or trademark on a log, tree or other timber; and any person who shall use such branding iron or

hammer or have or use one of like form and making the same brand or trademark, or who shall intentionally and without authority in writing remove, deface, or obliterate or destroy such brand or trademark when once impressed or placed on a log, tree or other timber shall be guilty of a felony, and for each offense shall be confined in the penitentiary not less than one nor more than three years.

Code 1950, § 59-208; 1968, c. 439.

§ 59.1-112. Fraudulently impressing brand on timber

If any person shall knowingly or fraudulently impress or place such brand or trademark on any log, tree or other timber not his own he shall be guilty of a misdemeanor and fined for each offense not less than $10 nor more than $100 and confined in jail not less than ten nor more than twenty days.

Code 1950, § 59-209; 1968, c. 439.

§ 59.1-113. Effect of impressing brand on tree, etc

The placing or impressing such brand or trademark on a log, tree or other marketable timber shall be deemed to be a change of ownership and possession.

Code 1950, § 59-210; 1968, c. 439.

§ 59.1-114. Unlawful cutting down, possessing or converting branded timber

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

Code 1950, § 59-211; 1968, c. 439.

§ 59.1-115. Sheriff's sale of unbranded timber; recovery by owner; disposition of proceeds

Every person who shall take, catch, hold or have in his possession any log or other marketable timber, not branded as aforesaid, without the written consent of the owner thereof, shall within ten days after catching, taking up, or getting possession of the same, as aforesaid, report the same in writing to the county clerk of the county in which such person resides, and thirty days after such report is received the sheriff of such county shall sell the same publicly at the courthouse door on the first day of a circuit court in the county, of which notice shall be given by the sheriff for at least ten days by written or printed notices posted at the front door of such courthouse or near thereto and at one or more public places in the county. Any person owning such log or timber may, however, recover the same, by satisfying the sheriff that he is entitled to it, or by action of detinue, as provided by law. Such sale shall be made for cash, and the proceeds when collected, after paying the expenses of sale, including a fee of twenty-five cents for each log or piece of timber so sold, shall be paid to the treasurer of the county for the benefit of the public schools of the

district in which the party reporting the same shall at that time reside. Any person failing to report to such clerk, as aforesaid, or to turn over the log or other timber to the sheriff, or any sheriff failing or refusing to advertise and sell such log or timber, as aforesaid, shall be guilty of a misdemeanor, and fined not less than $10 nor more than $100 for each offense.

Code 1950, § 59-212; 1968, c. 439.

§ 59.1-116. Repealed
Repealed by Acts 1994, c. 432.

Chapter 9 - SECONDHAND ARTICLES

Article 1 - BUILDING FIXTURES

§ 59.1-116.1. Definitions
As used in this article, unless the context requires a different meaning:

"Authorized scrap metal purchaser" has the same meaning as provided for the term "scrap metal purchaser " in § 59.1-136.1.

"Authorized scrap seller" means any licensed plumber, electrical contractor, HVAC contractor, or building and construction contractor.

"Building material" means any secondhand heating or plumbing fixture or supplies, electric fixtures, or any wiring, gas fixtures or appliances, water faucets, pipes, locks, or any other secondhand fixtures of any kind or description used in the construction of a building.

"Junk dealer" means a person who regularly engages in the business of purchasing, acquiring, or canvassing secondhand building material, including all nonferrous scrap metal, proprietary articles, or both, for the purpose of resale and has conducted transactions involving, or has offered for sale, more than 600 pounds combined weight of secondhand building material or enters into more than 26 combined transactions annually. "Junk dealer" does not include a "scrap metal purchaser" as defined in § 59.1-136.1.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, or other private commercial entity.

"Regularly engaged" with respect to purchasing or acquiring secondhand building material means having conducted transactions involving, or having offered for sale, more than 600 pounds combined weight of secondhand building material or enters into more than 26 combined transactions annually.

2011, c. 836; 2013, c. 414.

§ 59.1-117. Permit required for trading in secondhand building fixtures
Except as otherwise provided in this chapter, no person shall offer for sale or acquire any secondhand heating or plumbing fixtures or supplies, electric fixtures or any wiring, gas fixtures or

appliances, water faucets, pipes, locks, bathtubs, gutters, downspouts, or other secondhand fixtures of whatever kind or description pertaining to a building or structure, without first obtaining a permit for the sale or acquisition of the same from the chief of police of the city or town or the sheriff of the county in which such property is offered for sale or acquisition.

Code 1950, § 59-145; 1968, c. 439; 2010, c. 805; 2011, c. 836; 2013, c. 414.

§ 59.1-118. Permit issued by chief of police or sheriff; revocation

The chief of police of a city or the sheriff of a county may issue, to persons regularly engaged in the business of collecting secondhand building materials for resale, a semiannual or annual permit covering all sales and acquisitions made by such persons. The chief of police or sheriff may refuse to issue a permit, and may revoke any permit issued, to any person convicted of a felony or crime of moral turpitude within the three years prior to the request for the permit. The applicant shall file with the chief of police or sheriff, or his designee, an application form that shall include the applicant's full name, address, age, sex, and fingerprints; the name, address, and telephone number of the applicant's employer, if any; and the location of the applicant's place of business. A permit shall be valid for one year from the date of issuance and may be renewed in the same manner as such permit was initially obtained. A fee of not more than $50 may be charged annually for the issuance of the permit.

Code 1950, § 59-146; 1968, c. 439; 2011, c. 836.

§ 59.1-119. Who deemed a dealer

Every person who is regularly engaged in the purchasing or acquiring of secondhand building material of the kind mentioned in § 59.1-117 for the purpose of resale or installation on the property of another shall be deemed a dealer within the meaning of the provisions of this article.

Code 1950, § 59-147; 1968, c. 439; 2011, c. 836.

§ 59.1-119.1. Dealer required to show permit and identification

Every dealer making a sale or purchase of a secondhand fixture pursuant to the provisions of this article shall first display the permit required by § 59.1-117 and also display positive photo identification to the purchaser or seller of such fixture.

1992, c. 25 .

§ 59.1-120. Recordkeeping requirements

A. At the time of purchasing, collecting, receiving, or acquiring a secondhand building fixture, the dealer shall be required to provide:

1. The date and time of the secondhand building fixture's acquisition; and

2. The address from which the property was acquired and, if available, a driver's license or other form of government identification to include the name and date of birth of the person from whom the material was collected.

B. Every dealer shall keep at his place of business a permanently bound book or ledger in which shall be legibly written with ink in English at the time of each transaction in the course of the dealer's transaction involving a secondhand building fixture that is collected, received, acquired, or purchased by the dealer. Such account shall set forth:

1. A complete and accurate description of the secondhand building fixture that is the subject of the transaction;

2. All information prescribed in subsection A regarding location and, if available, the name and date of birth of the person with whom the dealer conducts the transaction;

3. The license number of the automobile or other vehicle in which the secondhand building fixture was delivered or received; and

4. The number of the permit issued pursuant to § 59.1-118 by the chief of police of the city or town, or the sheriff of the county, in which the transaction involving a secondhand building fixture occurred.

C. Records required by subsection B shall be maintained by the dealer at its normal place of business or at another readily accessible and secure location for a period of 24 months.

Code 1950, § 59-148; 1968, c. 439; 2010, c. 805; 2011, c. 836.

§ 59.1-121. Reports to be made to chief of police or sheriff

Every junk dealer selling or acquiring secondhand building materials of the kind mentioned in § 59.1-117, including persons regularly engaged in the business of collecting or acquiring secondhand building materials for the purpose of resale to a scrap metal purchaser, shall deliver:

1. If the purchase, acquisition, or receipt of the secondhand building fixture occurred in a city or town, to the chief of police of the city or town in which such goods were bought, collected, or received, every day except Sunday before noon, on blank forms to be prescribed and furnished by the chief of police of such city or town:

a. A legible and accurate description of every secondhand building fixture purchased, acquired, or received by him during the next preceding business day;

b. The date and time of the secondhand building fixture's acquisition;

c. If the person is a dealer, the number of his permit issued pursuant to § 59.1-118;

d. The license number of any automobile or other vehicle in which the secondhand building fixture was collected or received;

e. If available, the name and date of birth of the person with whom the dealer conducted the transaction; and

f. If the person is a dealer, a reference to the volume and number of the page where the original entry required by subsection B of § 59.1-120 is made; or

2. If the purchase, acquisition, or receipt of the secondhand building fixture occurred in a county, the same information required by subdivision 1 shall be furnished to the sheriff of the county in which such goods were bought, collected, or received not later than midday of the Saturday following the purchase or receipt of such goods, but the sheriff shall not be required to prepare or furnish blank forms for such reports for use in the county, and the dealer may submit any report which fairly conforms to the requirements of subdivision 1.

Code 1950, § 59-149; 1968, c. 439; 1972, c. 598; 2010, c. 805; 2011, c. 836; 2013, c. 414.

§ 59.1-122. Books and places of business open to inspection

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

Code 1950, § 59-150; 1968, c. 439; 2011, c. 836.

§ 59.1-123. Exemptions from article

The provisions of this article shall not apply to:

1. The sale of secondhand material mentioned in § 59.1-117 taken from premises occupied by the owner, when sold by such owner on the premises, or the sale of such articles when purchased from a public utility corporation at its place of business or a governmental agency;

2. Scrap metal purchasers as provided in Article 4 (§ 59.1-136.1 et seq.);

3. Authorized scrap sellers;

4. Public utilities;

5. Public transportation companies;

6. Peddlers permitted under § 59.1-118;

7. Industrial and manufacturing companies;

8. Marine, automobile, and aircraft salvage and wrecking companies;

9. Governmental entities; or

10. The donation of secondhand material mentioned in § 59.1-117 by the material's owner or the owner's contractor or subcontractor to a nonprofit corporation as defined in § 501(c)(3) of the U.S. Internal Revenue Code or the sale of such donated material by such a nonprofit corporation.

Code 1950, § 59-151; 1968, c. 439; 2007, c. 917; 2011, c. 836; 2013, c. 414; 2015, c. 626.

§ 59.1-124. Penalty for violation

Any person who violates this article shall be guilty of a Class 3 misdemeanor. A person convicted of a second or subsequent offense under this article is guilty of a Class 1 misdemeanor.

Code 1950, § 59-152; 1968, c. 439; 1972, c. 598; 1988, c. 765; 2010, c. 805.

Article 2 - EQUIPMENT OF RAILROADS AND OTHER COMPANIES

§ 59.1-125. When unlawful to buy

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

Code 1950, § 59-153; 1958, c. 614; 1968, c. 439; 2011, c. 836.

§ 59.1-126. Receipt or bill of sale to be taken by buyer; sales procedures

Any person buying, at public or private sale, any such secondhand articles as are mentioned in § 59.1-125, except those excepted in said section, shall:

1. Take from the seller a properly dated written receipt or bill of sale signed by such seller which shall therein state specifically the seller's address, business, social security number, vehicle license number, and place of residence. If a seller of such articles be not personally known to the buyer or if the seller be unable to write his name, such seller shall produce an adult witness personally known to the buyer to identify the seller and also to sign such receipt or bill of sale as witness, the latter also stating therein his full name, occupation and place of residence. Such receipt or bill of sale shall specifically set forth, by accurate description giving the character, kind, quality, weight, length or size, and other detailed description sufficient to accurately identify the same, each of such articles so purchased and shall be retained by the buyer at his place of business for a period of six months after such purchase; and

2. Make any payment for such articles purchased of $1,000 or more in the form of a check.

Code 1950, § 59-154; 1958, c. 614; 1968, c. 439; 2011, c. 80.

§ 59.1-127. Violation of § 59.1-125 or § 59.1-126 a misdemeanor; revocation of dealer's license

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

Code 1950, § 59-155; 1958, c. 614; 1968, c. 439; 1972, c. 598; 1988, c. 765.

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

Code 1950, § 59-155.1; 1958, c. 614; 1968, c. 439.

§ 59.1-129. Requirements when articles mentioned in § 59.1-128 are bought, exchanged, etc
A. Any person, firm or corporation which shall barter, purchase, exchange, buy or accept any of the articles mentioned in § 59.1-128, shall comply with the provisions of § 59.1-126 and shall, in addition, tag each lot of said articles with the name of the seller and the date of receipt and shall retain each such lot in his possession so tagged for 30 days in such manner that its separate identity shall be preserved; provided that the requirements of this section for tagging said articles and retaining them in possession shall not be applicable if the receipt or bill of sale required by § 59.1-126 shall contain an authorization naming the agent who delivers the articles and signed by an officer, or by the proprietor, of the manufacturer, or coal mining, industrial, manufacturing, public utility company, governmental agency, licensed junk dealer, licensed scrap metal dealer, licensed electrical contractor or licensed merchant, giving such authorization.

B. Notwithstanding anything in subsection A to the contrary, the provisions of this article shall not apply to scrap metal processors as provided in Article 4 (§ 59.1-136.1 et seq.).

Code 1950, § 59-155.2; 1958, c. 614; 1968, c. 439; 2007, c. 917.

§ 59.1-130. Punishment for violation of § 59.1-128 or § 59.1-129
Any person violating any of the provisions of § 59.1-128 or § 59.1-129 shall be confined in the penitentiary not less than one year nor more than two years, or in the discretion of the court or the jury trying the case, shall be fined not less than $100 nor more than $1,000, or confined in jail for any term not exceeding twelve months, or both. Possession of secondhand articles in violation of the provisions of the above sections shall be prima facie evidence of guilt.

Code 1950, § 59-155.3; 1958, c. 614; 1968, c. 439; 1972, c. 598; 1988, c. 765.

Article 3 - WATCHES

§ 59.1-131. When watch deemed secondhand
A watch shall be deemed to be secondhand if

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

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

Code 1950, § 59-156; 1968, c. 439.

§ 59.1-132. Tag to be affixed to watch

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

Code 1950, § 59-157; 1968, c. 439.

§ 59.1-133. Invoice to be furnished to purchaser

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

Code 1950, § 59-158; 1968, c. 439.

§ 59.1-134. Advertisement or display

Any person, firm, partnership, association or corporation, or any agent or servant thereof, who advertises or displays in any manner a secondhand watch for sale or exchange shall state clearly in such advertisement or display that the watch is a secondhand watch.

Code 1950, § 59-159; 1968, c. 439.

§ 59.1-135. Penalty for violation

Any person, firm, partnership, association or corporation, or any agent or servant thereof, who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be

punished by a fine not to exceed the sum of $500 or by imprisonment not to exceed ninety days, or both.

Code 1950, § 59-160; 1968, c. 439.

§ 59.1-136. Pawnbrokers' auction sales exempted

The provisions of this article shall not apply to pawnbrokers' auction sales of unredeemed pledges when public notice of the fact that watches are rebuilt or are secondhand is given prior to the sale.

Code 1950, § 59-161; 1968, c. 439.

Article 4 - SCRAP METAL PURCHASERS

§ 59.1-136.1. Definitions

For the purpose of this article:

"Authorized scrap seller" means licensed plumbers, electricians, HVAC contractors, building and construction contractors, demolition contractors, construction and demolition debris contractors, public utilities, transportation companies, industrial and manufacturing companies, marine, automobile, and aircraft salvage and wrecking companies, and government entities.

"Broker" means any person or his authorized agent who negotiates, purchases, sells, or offers for sale any scrap metal either directly or through an authorized agent without obtaining title to or ownership of the scrap metal.

"Ferrous scrap" means any scrap metal consisting primarily of iron, steel, or both, but excluding any scrap metal consisting primarily of stainless steel. Ferrous scrap includes large manufactured articles such as automobile bodies that may contain other substances to be removed and sorted during normal operations of scrap metal processors.

"Metal article" means any manufactured item, consisting of metal, that is usable for its originally intended purpose without processing, repairs, or alteration and that is not otherwise excluded by the definitions in this section. Examples include, without limitation, railings, copper or aluminum wire, copper pipe and tubing, plumbing fixtures, copper and aluminum gutters, copper and aluminum downspouts, and cast-iron radiators.

"Nonferrous scrap" means any scrap metal consisting primarily of (i) stainless steel or (ii) any metal other than iron or steel. Nonferrous scrap does not include aluminum beverage cans; post-consumer household items such as pots, pans, barbecue grills, and lawn chairs; used flashing removed during building renovation or demolition; or small quantities of nonferrous metals contained in large manufactured articles, such as automobile bodies and appliances.

"Proprietary article" means (i) any metal article stamped, engraved, stenciled, or otherwise marked so as to identify it as being or having been the property of a governmental entity or public utility or transportation, shipbuilding, ship repair, mining, or manufacturing company; (ii) any hard drawn copper electrical conductor, cable, or wire that is three-eighths of one inch or greater in

diameter, stranded or solid; (iii) any aluminum conductor, cable, or wire three quarters of one inch or greater in diameter, stranded or solid; (iv) stainless steel beer kegs; (v) any catalytic converter from a motor vehicle exhaust system that has been detached from a motor vehicle; (vi) any telecommunications cable that is one-half of one inch or greater in diameter and that contains 50 or more individual strands of solid, insulated, color-coded copper wire, including such telecommunication cable that has been unsheathed or burned; (vii) any manhole cover; (viii) any bronze or copper cemetery plaque, urn, or marker; (ix) aluminum bleacher seats or guardrails; or (x) any mining cable that is one-half inch or greater in diameter and is composed of one or more stranded copper conductors and stamped, engraved, stenciled, or otherwise marked with "Mine Safety and Health Administration" or "MSHA."

"Scrap metal" means any manufactured item or article consisting of or containing metal; any metal removed from or obtained by cutting, demolishing, or disassembling any building, structure, manufactured item, or article; and any other metal that is no longer used for its original purpose and that can be processed for reuse in mills, foundries, and other manufacturing facilities.

"Scrap metal processor" means a business entity in good standing authorized to conduct business in the Commonwealth that regularly utilizes machinery and equipment at one or more established locations in the normal course of business for processing and manufacturing scrap metal into prepared grades for sale as raw material to mills, foundries, and other manufacturing facilities.

"Scrap metal purchaser" means any person or business, other than an authorized scrap seller or a broker buying or selling processed scrap metal, who purchases scrap metal either directly or through an authorized agent in excess of $20,000 during any 12-month period.

2007, c. 917; 2009, c. 657; 2010, c. 805; 2012, c. 449; 2013, c. 414.

§ 59.1-136.2. Purchases of ferrous scrap

Except as provided in § 59.1-136.4, scrap metal processors may purchase ferrous scrap directly from any person.

2007, c. 917.

§ 59.1-136.3. Purchases of nonferrous scrap, metal articles, and proprietary articles

A. Except as provided in § 59.1-136.4, scrap metal purchasers may purchase nonferrous scrap, metal articles, and proprietary articles from any person who is not an authorized scrap seller or the authorized agent and employee of an authorized scrap seller only in accordance with the following requirements and procedures:

1. At the time of sale, the seller of any nonferrous scrap, metal article, or proprietary article shall provide a driver's license or other government-issued current photographic identification including the seller's full name, current address, date of birth, and social security or other recognized identification number; and

2. The scrap metal purchaser shall record the seller's identification information, as well as the time and date of the transaction, the license number of the seller's vehicle, and a description of the items received from the seller, in a permanent ledger maintained at the scrap metal purchaser's place of business. The ledger shall be made available upon request to any law-enforcement official, conservator of the peace, or special conservator of the peace appointed pursuant to § 19.2-13, in the performance of his duties who presents his credentials at the scrap metal purchaser's normal business location during regular business hours. Records required by this subdivision shall be maintained by the scrap metal dealer at its normal place of business or at another readily accessible and secure location for at least five years.

B. Upon compliance with the other requirements of this section and § 59.1-136.4, a scrap metal purchaser may purchase proprietary articles from a person who is not an authorized scrap seller or the authorized agent and employee of an authorized scrap seller if the scrap metal purchaser complies with one of the following:

1. The scrap metal purchaser receives from the person seeking to sell the proprietary articles documentation, such as a bill of sale, receipt, letter of authorization, or similar evidence, establishing that the person lawfully possesses the proprietary articles to be sold; or

2. The scrap metal purchaser shall document a diligent inquiry into whether the person selling or delivering the same has a legal right to do so, and, after purchasing a proprietary article from a person without obtaining the documentation described in subdivision 1, shall submit a report to the local sheriff's department or the chief of police of the locality, by the close of the following business day, describing the proprietary article and including a copy of the seller's identifying information, and hold the proprietary article for not less than 15 days following purchase.

C. The scrap metal purchaser shall take a photographic or video image of all proprietary articles purchased from anyone other than an authorized scrap seller. Such image shall be of sufficient quality so as to reasonably identify the subject of the image and shall be maintained by the scrap metal purchaser no less than 30 days from the date the image is taken. Any image taken and maintained in accordance with this subdivision shall be made available upon the request of any law-enforcement officer conducting official law-enforcement business.

D. The scrap metal purchaser may purchase nonferrous scrap, metal articles, and proprietary articles directly from an authorized scrap seller and from the authorized agent or employee of an authorized scrap seller.

2007, c. 917; 2013, c. 414.

§ 59.1-136.4. Purchases of materials from minors

Scrap metal processors shall not purchase ferrous scrap, nonferrous scrap, metal articles, proprietary articles, or other scrap metal from any person under the age of 18 years.

2007, c. 917.

§ 59.1-136.5. Reports of purchases by scrap metal purchasers

If requested by the chief law-enforcement officer of the locality in which the scrap metal purchaser conducts business, every scrap metal purchaser conducting business in the locality shall furnish to the chief law-enforcement officer of the locality in which the scrap metal purchaser conducts business a report of all of the scrap metal purchaser's purchases of nonferrous scrap, metal articles, and proprietary articles, excluding aluminum cans and interior household items. Each report shall (i) be submitted on the next business day following the date of a purchase; (ii) include the seller's name, date of birth, identification number, address, height, and weight and the license number of any motor vehicle in which the goods or things were delivered; and (iii) be submitted in an electronic format if required by the locality in which the scrap metal purchaser conducts business. The form of the report shall be prescribed by the Virginia State Police.

2007, c. 917; 2013, c. 414.

§ 59.1-136.6. Penalties

A. Any scrap metal purchaser who negligently violates any provisions of this article may be assessed a civil penalty not to exceed $7,500 for each violation. Any attorney for the county, city, or town in which an alleged violation of this article occurred may bring a civil action to recover such a civil penalty. The civil penalty shall be paid into the local treasury.

B. Any scrap metal purchaser who knowingly violates any provisions of this article is guilty of a Class 1 misdemeanor.

2007, c. 917; 2013, c. 414.

§ 59.1-136.7. Exemption

Nothing in this article shall apply to the purchase, sale or disposal of any material that is used in the provision of health care by any professional who is licensed, certified or registered to practice by a board within the Department of Health Professions under Title 54.1.

2007, c. 917.

Chapter 10 - EXPLOSIVES

§ 59.1-137. Definition

Whenever used in this chapter:

"Explosives" means any chemical compound, mechanical mixture or device the primary or common purpose of which is to function by explosion. The term includes, but is not limited to dynamite and other high explosives, black blasting powder, pellet powder, initiating explosives, blasting caps, electric blasting caps, detonators, safety fuse, fuse igniters, fuse lighters, squibs, cordeau detonant fuse, instantaneous fuse, detonating cord, igniter cord, igniters and those materials included in the list published annually in the Federal Register by the Department of the Treasury pursuant to the Organized Crime Control Act of 1970 (18 U.S.C. § 841 et seq.).

Code 1950, § 59-222; 1960, c. 578; 1968, c. 439; 1976, c. 250.

§ 59.1-138. Record of sales required; signing by purchasers; sales to persons under eighteen prohibited

(a) Any person selling any explosives covered by this chapter shall keep a record of all such explosives sold, showing the kind and quantity sold, the name and address of the purchaser, and the date of each sale. The person selling such explosives shall also require any person purchasing such explosives to sign such record at the time of such purchase.

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

Code 1950, § 59-223; 1960, c. 578; 1968, c. 439; 1972, c. 824.

§ 59.1-139. Persons possessing explosives to give notice of theft

Any person having in his possession any explosives covered by this chapter shall immediately notify the sheriff of the county or the police officials of the city in which any such explosives are being stored or used in the event that any such explosives are stolen.

Code 1950, § 59-224; 1960, c. 578; 1968, c. 439.

§ 59.1-140. Effect of chapter upon municipal regulation

Nothing contained in this chapter shall:

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

Code 1950, § 59-225; 1960, c. 578; 1968, c. 439.

§ 59.1-141. Penalty

Any person who violates any provision of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, be punished accordingly.

Code 1950, § 59-226; 1960, c. 578; 1968, c. 439.

Chapter 11 - FIREWORKS [Repealed]

§§ 59.1-142 through 59.1-148. Repealed

Repealed by Acts 2002, c. 856, effective July 1, 2002.

Chapter 11.1 - FIREARMS

§§ 59.1-148.1, 59.1-148.2. Repealed

Repealed by Acts 2004, c. 929.

§ 59.1-148.3. (Effective until October 1, 2016) Purchase of handguns or other weapons of certain officers

A. The Department of State Police, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, the Virginia Lottery, the Marine Resources Commission, the Capitol Police, the Department of Conservation and Recreation, the Department of Forestry, any sheriff, any regional jail board or authority, and any local police department may allow any full-time sworn law-enforcement officer, deputy, or regional jail officer, a local fire department may allow any full-time sworn fire marshal, the Department of Motor Vehicles may allow any law-enforcement officer, any institution of higher learning named in § 23-14 may allow any campus police officer appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23, retiring on or after July 1, 1991, and the Department of Corrections may allow any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 who retires (i) after at least 10 years of service, (ii) at 70 years of age or older, or (iii) as a result of a service-incurred disability or who is receiving long-term disability payments for a service-incurred disability with no expectation of returning to the employment where he incurred the disability to purchase the service handgun issued or previously issued to him by the agency or institution at a price of $1. If the previously issued weapon is no longer available, a weapon of like kind may be substituted for that weapon. This privilege shall also extend to any former Superintendent of the Department of State Police who leaves service after a minimum of five years. This privilege shall also extend to any person listed in this subsection who is eligible for retirement with at least 10 years of service who resigns on or after July 1, 1991, in good standing from one of the agencies listed in this section to accept a position covered by the Virginia Retirement System. Other weapons issued by the agencies listed in this subsection for personal duty use of an officer may, with approval of the agency head, be sold to the officer subject to the qualifications of this section at a fair market price determined as in subsection B, so long as the weapon is a type and configuration that can be purchased at a regular hardware or sporting goods store by a private citizen without restrictions other than the instant background check.

B. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer who retires with five or more years of service, but less than 10, to purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Any full-time sworn law-enforcement officer employed by any of the agencies listed in subsection A who is retired for disability as a result of a nonservice-incurred disability may purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

C. The agencies listed in subsection A may allow the immediate survivor of any full-time sworn law-enforcement officer (i) who is killed in the line of duty or (ii) who dies in service and has at least 10 years of service to purchase the service handgun issued to the officer by the agency at a price of $1.

D. The governing board of any institution of higher learning named in § 23-14 may allow any campus police officer appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23 who retires on or after July 1, 1991, to purchase the service handgun issued to him at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

E. Any officer who at the time of his retirement is a full-time sworn law-enforcement officer with a state agency listed in subsection A, when the agency allows purchases of service handguns, and who retires after 10 years of state service, even if a portion of his service was with another state agency, may purchase the service handgun issued to him by the agency from which he retires at a price of $1.

F. The sheriff of Hanover County may allow any auxiliary or volunteer deputy sheriff with a minimum of 10 years of service, upon leaving office, to purchase for $1 the service handgun issued to him.

G. Any sheriff or local police department, in accordance with written authorization or approval from the local governing body, may allow any auxiliary law-enforcement officer with more than 10 years of service to purchase the service handgun issued to him by the agency at a price that is equivalent to or less than the weapon's fair market value on the date of purchase by the officer.

H. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer currently employed by the agency to purchase his service handgun, with the approval of the chief law-enforcement officer of the agency, at a fair market price. This subsection shall only apply when the agency has purchased new service handguns for its officers, and the handgun subject to the sale is no longer used by the agency or officer in the course of duty.

1989, c. 175; 1990, c. 359; 1991, c. 389; 1992, cc. 63, 83, 195; 1996, c. 50; 1998, c. 173; 1999, c. 312; 2000, c. 391; 2002, c. 25; 2003, c. 106; 2004, c. 136; 2005, c. 168; 2006, c. 185; 2007, c. 813; 2009, cc. 289, 412; 2010, cc. 590, 864; 2011, c. 628; 2012, c. 218; 2013, c. 62; 2014, c. 225; 2016, cc. 196, 210, 215.

§ 59.1-148.3. (Effective October 1, 2016, until July 1, 2018) Purchase of handguns or other weapons of certain officers

A. The Department of State Police, the Department of Game and Inland Fisheries, the Department of Alcoholic Beverage Control, the Virginia Lottery, the Marine Resources Commission, the Capitol Police, the Department of Conservation and Recreation, the Department of Forestry, any sheriff, any regional jail board or authority, and any local police department may allow any full-time sworn law-enforcement officer, deputy, or regional jail officer, a local fire department may allow any full-time sworn fire marshal, the Department of Motor Vehicles may allow any law-enforcement officer, any institution of higher learning named in § 23.1-1100 may allow any campus police officer appointed pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1, retiring on or after July 1, 1991, and the Department of Corrections may allow any employee with

internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 who retires (i) after at least 10 years of service, (ii) at 70 years of age or older, or (iii) as a result of a service-incurred disability or who is receiving long-term disability payments for a service-incurred disability with no expectation of returning to the employment where he incurred the disability to purchase the service handgun issued or previously issued to him by the agency or institution at a price of $1. If the previously issued weapon is no longer available, a weapon of like kind may be substituted for that weapon. This privilege shall also extend to any former Superintendent of the Department of State Police who leaves service after a minimum of five years. This privilege shall also extend to any person listed in this subsection who is eligible for retirement with at least 10 years of service who resigns on or after July 1, 1991, in good standing from one of the agencies listed in this section to accept a position covered by the Virginia Retirement System. Other weapons issued by the agencies listed in this subsection for personal duty use of an officer may, with approval of the agency head, be sold to the officer subject to the qualifications of this section at a fair market price determined as in subsection B, so long as the weapon is a type and configuration that can be purchased at a regular hardware or sporting goods store by a private citizen without restrictions other than the instant background check.

B. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer who retires with five or more years of service, but less than 10, to purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Any full-time sworn law-enforcement officer employed by any of the agencies listed in subsection A who is retired for disability as a result of a nonservice-incurred disability may purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

C. The agencies listed in subsection A may allow the immediate survivor of any full-time sworn law-enforcement officer (i) who is killed in the line of duty or (ii) who dies in service and has at least 10 years of service to purchase the service handgun issued to the officer by the agency at a price of $1.

D. The governing board of any institution of higher learning named in § 23.1-1100 may allow any campus police officer appointed pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 who retires on or after July 1, 1991, to purchase the service handgun issued to him at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

E. Any officer who at the time of his retirement is a full-time sworn law-enforcement officer with a state agency listed in subsection A, when the agency allows purchases of service handguns, and who retires after 10 years of state service, even if a portion of his service was with another state agency, may purchase the service handgun issued to him by the agency from which he retires at a price of $1.

F. The sheriff of Hanover County may allow any auxiliary or volunteer deputy sheriff with a minimum of 10 years of service, upon leaving office, to purchase for $1 the service handgun issued to him.

G. Any sheriff or local police department, in accordance with written authorization or approval from the local governing body, may allow any auxiliary law-enforcement officer with more than 10 years of service to purchase the service handgun issued to him by the agency at a price that is equivalent to or less than the weapon's fair market value on the date of purchase by the officer.

H. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer currently employed by the agency to purchase his service handgun, with the approval of the chief law-enforcement officer of the agency, at a fair market price. This subsection shall only apply when the agency has purchased new service handguns for its officers, and the handgun subject to the sale is no longer used by the agency or officer in the course of duty.

1989, c. 175; 1990, c. 359; 1991, c. 389; 1992, cc. 63, 83, 195; 1996, c. 50; 1998, c. 173; 1999, c. 312; 2000, c. 391; 2002, c. 25; 2003, c. 106; 2004, c. 136; 2005, c. 168; 2006, c. 185; 2007, c. 813; 2009, cc. 289, 412; 2010, cc. 590, 864; 2011, c. 628; 2012, c. 218; 2013, c. 62; 2014, c. 225; 2016, cc. 196, 210, 215.

§ 59.1-148.3. (Effective July 1, 2018) Purchase of handguns or other weapons of certain officers

A. The Department of State Police, the Department of Game and Inland Fisheries, the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Marine Resources Commission, the Capitol Police, the Department of Conservation and Recreation, the Department of Forestry, any sheriff, any regional jail board or authority, and any local police department may allow any full-time sworn law-enforcement officer, deputy, or regional jail officer, a local fire department may allow any full-time sworn fire marshal, the Department of Motor Vehicles may allow any law-enforcement officer, any institution of higher learning named in § 23.1-1100 may allow any campus police officer appointed pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1, retiring on or after July 1, 1991, and the Department of Corrections may allow any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10 who retires (i) after at least 10 years of service, (ii) at 70 years of age or older, or (iii) as a result of a service-incurred disability or who is receiving long-term disability payments for a service-incurred disability with no expectation of returning to the employment where he incurred the disability to purchase the service handgun issued or previously issued to him by the agency or institution at a price of $1. If the previously issued weapon is no longer available, a weapon of like kind may be substituted for that weapon. This privilege shall also extend to any former Superintendent of the Department of State Police who leaves service after a minimum of five years. This privilege shall also extend to any person listed in this subsection who is eligible for retirement with at least 10 years of service who resigns on or after July 1, 1991, in good standing from one of the agencies listed in this section to accept a position covered by the Virginia

Retirement System. Other weapons issued by the agencies listed in this subsection for personal duty use of an officer may, with approval of the agency head, be sold to the officer subject to the qualifications of this section at a fair market price determined as in subsection B, so long as the weapon is a type and configuration that can be purchased at a regular hardware or sporting goods store by a private citizen without restrictions other than the instant background check.

B. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer who retires with five or more years of service, but less than 10, to purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Any full-time sworn law-enforcement officer employed by any of the agencies listed in subsection A who is retired for disability as a result of a nonservice-incurred disability may purchase the service handgun issued to him by the agency at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

C. The agencies listed in subsection A may allow the immediate survivor of any full-time sworn law-enforcement officer (i) who is killed in the line of duty or (ii) who dies in service and has at least 10 years of service to purchase the service handgun issued to the officer by the agency at a price of $1.

D. The governing board of any institution of higher learning named in § 23.1-1100 may allow any campus police officer appointed pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1 who retires on or after July 1, 1991, to purchase the service handgun issued to him at a price equivalent to the weapon's fair market value on the date of the officer's retirement. Determinations of fair market value may be made by reference to a recognized pricing guide.

E. Any officer who at the time of his retirement is a full-time sworn law-enforcement officer with a state agency listed in subsection A, when the agency allows purchases of service handguns, and who retires after 10 years of state service, even if a portion of his service was with another state agency, may purchase the service handgun issued to him by the agency from which he retires at a price of $1.

F. The sheriff of Hanover County may allow any auxiliary or volunteer deputy sheriff with a minimum of 10 years of service, upon leaving office, to purchase for $1 the service handgun issued to him.

G. Any sheriff or local police department, in accordance with written authorization or approval from the local governing body, may allow any auxiliary law-enforcement officer with more than 10 years of service to purchase the service handgun issued to him by the agency at a price that is equivalent to or less than the weapon's fair market value on the date of purchase by the officer.

H. The agencies listed in subsection A may allow any full-time sworn law-enforcement officer currently employed by the agency to purchase his service handgun, with the approval of the chief law-enforcement officer of the agency, at a fair market price. This subsection shall only apply when the

agency has purchased new service handguns for its officers, and the handgun subject to the sale is no longer used by the agency or officer in the course of duty.

1989, c. 175; 1990, c. 359; 1991, c. 389; 1992, cc. 63, 83, 195; 1996, c. 50; 1998, c. 173; 1999, c. 312; 2000, c. 391; 2002, c. 25; 2003, c. 106; 2004, c. 136; 2005, c. 168; 2006, c. 185; 2007, c. 813; 2009, cc. 289, 412; 2010, cc. 590, 864; 2011, c. 628; 2012, c. 218; 2013, c. 62; 2014, c. 225; 2015, cc. 38, 730; 2016, cc. 196, 210, 215.

§ 59.1-148.4. Sale of firearms by law-enforcement agencies prohibited; exception

A law-enforcement agency of this Commonwealth shall not sell or trade any firearm owned and used or otherwise lawfully in its possession except (i) to another law-enforcement agency of the Commonwealth, (ii) to a licensed firearms dealer, (iii) to the persons as provided in § 59.1-148.3 or (iv) as authorized by a court in accordance with § 19.2-386.29.

1994, c. 467; 2004, c. 995.

Chapter 12 - MOTOR FUELS AND LUBRICATING OILS

§ 59.1-149. Definitions

As used in this chapter:

"Commissioner" means the Commissioner of Agriculture and Consumer Services or his designated representative.

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

"Lubricating oil" means lubricating oils used in internal combustion engines.

"Motor fuel" means any liquid or gaseous matter used for the generation of power in an internal combustion engine.

Code 1950, § 59-41; 1968, c. 439; 1992, c. 885; 2009, c. 650.

§ 59.1-150. Motor fuel subject to inspection and testing

All motor fuel used, intended to be used, sold or offered for sale or distribution in this Commonwealth, shall be subject to inspection and testing for (i) the purpose of preventing adulteration, misbranding, deception or fraud in the sale thereof or (ii) for any other purpose of assuring compliance with any requirement of this chapter or regulation adopted thereunder.

Code 1950, § 59-42; 1968, c. 439; 1992, c. 885 .

§ 59.1-151. Statements to be filed by manufacturers, wholesalers and jobbers

All manufacturers, wholesalers, and jobbers, before selling or offering for sale in this Commonwealth any motor fuel for the purposes above defined, shall file with the Commissioner a statement that they desire to do business in this Commonwealth, and furnish the brand name, trade name, or trademark of the motor fuel which they desire to sell.

Code 1950, § 59-43; 1968, c. 439; 1992, c. 885; 2009, c. 650.

§ 59.1-152. Collection and analysis of samples

The Commissioner shall have power at all times and at all places to have collected samples for inspection and testing of any motor fuel or lubricating oil for the purposes specified in § 59.1-150 and for the purpose of determining whether such motor fuel or lubricating oil is in violation of this chapter or regulation thereunder.

Code 1950, § 59-44; 1968, c. 439; 1992, c. 885 .

§ 59.1-153. Methods of making inspection

In making any inspection and test of a motor fuel or lubricating oil under this chapter, the Commissioner shall follow the specifications for the inspection and testing of that motor fuel or for the lubricating oil established by ASTM International, formerly the American Society for Testing and Materials, and incorporated into the ASTM specifications for motor fuels, which are adopted by the National Conference on Weights and Measures and published by the National Institute of Standards and Technology in Handbook 130, "Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality," as the same now are or may be hereafter amended. For purposes of this section, such specifications shall apply to methods of inspection and testing only, and shall not apply to methods of sale, including automatic temperature compensation. For cause after an informational proceeding under § 2.2-4007.01, such specifications may be amended by the Board of Agriculture and Consumer Services.

Code 1950, § 59-45; 1968, c. 439; 1992, c. 885; 2007, cc. 873, 916; 2009, c. 650.

§ 59.1-154. Inspection and testing under supervision of Commissioner

Inspection and testing of such motor fuel or lubricating oil shall be under the direction of the Commissioner.

Code 1950, § 59-46; 1968, c. 439; 1992, c. 885 .

§ 59.1-155. Prohibiting sale of defective motor fuel

The Commissioner may prohibit the sale of motor fuel that does not meet the specifications as provided in this chapter or regulations adopted thereunder.

Code 1950, § 59-47; 1968, c. 439; 1992, c. 885; 2009, c. 650.

§ 59.1-155.1. Engine coolant and antifreeze bittering agent; penalty

A. Any engine coolant or antifreeze manufactured after January 1, 2011, and sold within the Commonwealth that contains more than 10 percent ethylene glycol shall include not less than 30 parts per million and not more than 50 parts per million denatonium benzoate as a bittering agent in order to render the coolant or antifreeze unpalatable.

B. A manufacturer, processor, distributor, recycler or seller of an engine coolant or antifreeze that is required to contain an aversive agent under subsection A shall not be liable to any person for any personal injury, death, property damage, damage to the environment (including natural

resources), or economic loss that results from the inclusion of denatonium benzoate in any engine coolant or antifreeze, provided that the inclusion of denatonium benzoate is present in concentrations mandated by subsection A. The limitation on liability does not apply to a particular liability to the extent that the cause of such liability is unrelated to the inclusion of denatonium benzoate in any engine coolant or antifreeze.

C. The provisions of this section shall not apply to (i) the sale of a motor vehicle that contains engine coolant or antifreeze, (ii) a wholesale container of engine coolant or antifreeze designed to contain 55 gallons or more of engine coolant or antifreeze, or (iii) engine coolant or antifreeze reformulated through on site recycling.

D. Any person violating any provision of this section shall be assessed a civil penalty of up to $100 per violation. Each day of violation shall constitute a separate offense.

E. This section shall not apply to engine coolant or antifreeze that is purchased pursuant to military specifications.

2009, c. 681.

§ 59.1-156. Rules and regulations

A. The Board of Agriculture and Consumer Services may make all necessary rules and regulations for (i) the inspection and testing of motor fuel and lubricating oil; (ii) assuring that motor fuels dispensed in this Commonwealth comply with any oxygenation requirement specified by the federal Clean Air Act or any other federal environmental requirement pertaining to motor fuels; and (iii) the enforcement of this chapter.

B. Oxygenated gasoline regulations pursuant to clause (ii) of subsection A may be adopted, amended or repealed without observing the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) and shall, unless a later effective date is specified in the regulation, amendment or repeal, take effect upon adoption by the Board of Agriculture and Consumer Services and filing with the Registrar of Regulations.

C. No agency of the Commonwealth may enforce the provisions of "Regulations Governing the Oxygenation of Gasoline" (2VAC5-480-10 et seq.), or any successor regulation, requiring the use or sale of oxygenated gasoline, unless, and only to the extent, the regulation is required by federal law or regulation. For purposes of this subsection "oxygenated gasoline" shall have the same meaning as "Gasoline-Oxygenate Blend" as defined in Handbook 130 published by the National Institute of Standards and Technology.

Code 1950, § 59-48; 1968, c. 439; 1992, c. 885; 1996, cc. 638, 1012; 2009, c. 650.

§ 59.1-157. Complaints to Commissioner

The Commissioner shall investigate complaints made to him concerning alleged violations of the provisions of this chapter or regulation adopted thereunder, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable.

Code 1950, § 59-50; 1968, c. 439; 1992, c. 885 .

§§ 59.1-158 through 59.1-161. Repealed

Repealed by Acts 1992, c. 885 .

§ 59.1-162. Cooperation by state agencies

The Commonwealth Transportation Board and the Department of Motor Vehicles are authorized to cooperate, as directed by the Governor, with the Commissioner of Agriculture and Consumer Services in carrying out the provisions of this chapter.

Code 1950, § 59-55; 1968, c. 439.

§ 59.1-162.1. Direct fueling of commercial vehicles authorized; conditions

Notwithstanding any other provision of law, the dispensing of diesel fuel from a tank vehicle into the fuel tank of any highway vehicle on the premises of a commercial, industrial, governmental or manufacturing establishment is permitted, provided the following conditions are met:

1. The highway vehicle is used in connection with the business or function of the establishment;

2. The owner or operator of the tank vehicle complies with all requirements pertaining to the collection and payment of taxes on diesel fuel pursuant to Title 58.1 and fees pursuant to Title 62.1;

3. The owner or operator of the tank vehicle complies with all requirements pertaining to Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2;

4. Each delivery shall be metered and recorded and the customer shall be provided an invoice or delivery ticket plainly indicating the quantity of fuel dispensed, the price per gallon, the amount of tax and the total price of the fuel dispensed;

5. The tank vehicle is designed, equipped and operated to prevent spills during fueling operations and to minimize spillage in the event of operator error or equipment malfunction;

6. The owner of the tank vehicle has established and maintains in place a contingency plan for the cleanup of spills occurring during fueling operations, and the operator has been trained in the prevention of spills, and containment of spills should they occur, and in compliance with such spill plan; and

7. The owner is licensed in Virginia as a distributor.

2000, c. 943.

§ 59.1-163. Penalty for violation

Any person selling any motor fuel or lubricating oil which does not comply with the specifications provided in this chapter, or violating any of the provisions of the chapter, shall be guilty of a Class 1 misdemeanor. Any dealer in any motor fuel who receives motor fuel meeting the requirements of this chapter and who thereafter adulterates any such motor fuel or mixes it with inferior motor fuel, so that the resulting product does not meet the requirements of this chapter, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 59-56; 1968, c. 439; 1992, c. 885; 2009, c. 650.

§ 59.1-164. Duty of attorney for the Commonwealth

It shall be the duty of the attorney for the Commonwealth of the respective cities and counties to prosecute all violations of the provisions of this chapter, when certified to him by the Commissioner.

Code 1950, § 59-57; 1968, c. 439.

§ 59.1-165. Chemical analysis as evidence

A certificate of analysis of any motor fuel or lubricating oils shall be admitted into evidence in any case relating to such motor fuel or lubricating oil that involves an alleged violation of this chapter or regulation adopted thereunder, provided that the requirements of subsection A of § 19.2-187.1 have been satisfied and the accused has not objected to the admission of the certificate pursuant to subsection B of § 19.2-187.1.

Code 1950, § 59-58; 1968, c. 439; 1972, c. 741; 1992, c. 885; 2010, c. 152.

§ 59.1-166. Enforcement by Commissioner

It shall be the duty of the Commissioner to enforce the provisions of this chapter.

Code 1950, § 59-59; 1968, c. 439; 1992, c. 885 .

§ 59.1-167. Conflicting local laws and ordinances prohibited

Cities, towns, counties and other political subdivisions of this Commonwealth are prohibited from passing any laws or ordinances relating to the inspection and testing of motor fuel and lubricating oil as defined in § 59.1-149 inconsistent with the provisions of this chapter.

Code 1950, § 59-60; 1968, c. 439; 1992, c. 885 .

§ 59.1-167.1. Labeling of motor fuels; notification to reseller

A. Every dispensing device used in the retail sale of any motor fuel shall be plainly and conspicuously labeled with:

1. The brand name, trademark or trade name of the motor fuel it contains;

2. The grade, blend or mixture of the motor fuel it contains;

3. The octane or cetane rating of the motor fuel it contains; and

4. If the product contains one percent or more ethanol or methanol, information identifying the kind of alcohol and the percentage of each at the time of blending, in letters not less than one inch in height.

B. Every person delivering gasoline at wholesale to a reseller which contains one percent or more of ethanol or methanol shall provide a written manifest or invoice which conspicuously identifies the gasoline containing one percent or more of ethanol or methanol, and the percentage of ethanol or methanol contained therein. The Board of Agriculture and Consumer Services may, by regulation, establish what additional disclosure shall be made about a motor fuel by a person

delivering the motor fuel at wholesale to a retailer, so that the retailer may comply with the requirements of subsection A of this section.

1986, c. 197; 1992, c. 885 .

§ 59.1-167.2. Civil penalties

A. In addition to the penalties prescribed in § 59.1-163, any person violating any provision of this chapter or regulation adopted thereunder 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 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 or regulation adopted thereunder 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. 885 .

§ 59.1-167.3. Delegation of authority

The Board may delegate any authority vested in it under this chapter, except the adoption of regulations, to the Commissioner.

1992, c. 885 .

Chapter 13 - BOILERS AND PRESSURE VESSELS [Repealed]

§§ 59.1-168 through 59.1-176. Repealed

Repealed by Acts 1972, c. 237.

Chapter 14 - VIRGINIA PAINT LAW [Repealed]

§§ 59.1-177 through 59.1-188.1. Repealed

Repealed by Acts 1983, c. 209.

Chapter 15 - STORAGE BATTERIES

§ 59.1-189. Labels and stamps required

No storage batteries intended for use in connection in any manner with the operation of any machine, motor, radio or any mechanical device or in connection with the production of any

artificial light shall be sold or offered for sale in this Commonwealth unless there is affixed to such batteries a label or stamp showing, or the seller of such batteries has available for customer inspection documentation that shows the name and address of the manufacturer, date on which the manufacture of such battery was completed, the size of the container and whether the container is made of rubber or a composition, the number and thickness of plates in each cell, the name of the material used as a filler for the grids in the plate, and the kind of woods or other materials used as separators between the plates.

Code 1950, § 59-162; 1968, c. 439; 1990, c. 592 .

§ 59.1-190. Rebuilt batteries

To every storage battery which has been rebuilt and offered for sale in this Commonwealth, there shall be, in addition to the label or stamp required by § 59.1-189, permanently affixed to the container and above label or stamp required by § 59.1-189, the word "rebuilt," together with the name and address of the person, firm or corporation rebuilding such battery.

Code 1950, § 59-163; 1968, c. 439.

§ 59.1-191. Penalty for violation

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $250, or punished by imprisonment in jail for not more than six months or by both fine and imprisonment.

Code 1950, § 59-164; 1968, c. 439.

Chapter 16 - PURCHASE OF LIVESTOCK FROM UNKNOWN PERSON

§ 59.1-192. "Person" defined

As used in this chapter the term "person" shall mean any individual, partnership, corporation, or other firm or association.

Code 1950, § 59-165; 1968, c. 439.

§ 59.1-193. Record to be kept by purchaser of livestock delivered by motor vehicle

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

Code 1950, § 59-166; 1968, c. 439.

§ 59.1-194. Record available for inspection

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

Code 1950, § 59-167; 1968, c. 429.

§ 59.1-195. Penalty for violation

Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be punished, for each offense, by a fine of not less than $10 nor more than $100.

Code 1950, § 59-168; 1968, c. 439.

Chapter 17 - VIRGINIA CONSUMER PROTECTION ACT

§ 59.1-196. Title

This chapter may be cited as the Virginia Consumer Protection Act of 1977.

1977, c. 635.

§ 59.1-197. Intent

It is the intent of the General Assembly that this chapter shall be applied as remedial legislation to promote fair and ethical standards of dealings between suppliers and the consuming public.

1977, c. 635.

§ 59.1-198. Definitions

As used in this chapter:

"Business opportunity" means the sale of any products, equipment, supplies or services which are sold to an individual for the purpose of enabling such individual to start a business to be operated out of his residence, but does not include a business opportunity which is subject to the Business Opportunity Sales Act, Chapter 21 (§ 59.1-262 et seq.) of this title.

"Children's product" means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors shall be considered:

1. A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable;

2. Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;

3. Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and

4. The Age Determination Guidelines issued by the staff of the Consumer Products Safety Commission in September 2002, and any successor to such guidelines.

"Consumer transaction" means:

1. The advertisement, sale, lease, license or offering for sale, lease or license, of goods or services to be used primarily for personal, family or household purposes;

2. Transactions involving the advertisement, offer or sale to an individual of a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged;

3. Transactions involving the advertisement, offer or sale to an individual of goods or services relating to the individual's finding or obtaining employment;

4. A layaway agreement, whereby part or all of the price of goods is payable in one or more payments subsequent to the making of the layaway agreement and the supplier retains possession of the goods and bears the risk of their loss or damage until the goods are paid in full according to the layaway agreement; and

5. Transactions involving the advertisement, sale, lease, or license, or the offering for sale, lease or license, of goods or services to a church or other religious body.

"Cure offer" means a written offer of one or more things of value, including but not limited to the payment of money, that is made by a supplier and that is delivered to a person claiming to have suffered a loss as a result of a consumer transaction or to the attorney for such person. A cure offer shall be reasonably calculated to remedy a loss claimed by the person and it shall include a minimum additional amount equaling 10 percent of the value of the cure offer or $500, whichever is greater, as compensation for inconvenience, any attorney's or other fees, expenses, or other costs of any kind that such person may incur in relation to such loss; provided, however that the minimum additional amount need not exceed $4,000.

"Defective drywall" means drywall, or similar building material composed of dried gypsum-based plaster, that (i) as a result of containing the same or greater levels of strontium sulfide that has been found in drywall manufactured in the People's Republic of China and imported into the United States between 2004 and 2007 is capable, when exposed to heat, humidity, or both, of releasing sulfur dioxide, hydrogen sulfide, carbon disulfide, or other sulfur compounds into the air or (ii) has been designated by the U.S. Consumer Product Safety Commission as a product with a product defect that constitutes a substantial product hazard within the meaning of § 15(a)(2) of the Consumer Product Safety Act (15 U.S.C. § 2064 (a)(2)).

"Goods" means all real, personal or mixed property, tangible or intangible. For purposes of this chapter, intangible property includes but shall not be limited to "computer information" and "informational rights" in computer information as defined in § 59.1-501.2.

"Person" means any natural person, corporation, trust, partnership, association and any other legal entity.

"Services" includes but shall not be limited to (i) work performed in the business or occupation of the supplier, (ii) work performed for the supplier by an agent whose charges or costs for such work are transferred by the supplier to the consumer or purchaser as an element of the consumer transaction, or (iii) the subject of an "access contract" as defined in § 59.1-501.2.

"Supplier" means a seller, lessor or licensor who advertises, solicits or engages in consumer transactions, or a manufacturer, distributor or licensor who advertises and sells, leases or licenses goods or services to be resold, leased or sublicensed by other persons in consumer transactions.

1977, c. 635; 1981, c. 205; 1987, c. 464; 1988, c. 485; 1992, c. 278; 2001, cc. 741, 762; 2004, cc. 41, 90; 2009, cc. 359, 700; 2010, c. 143; 2011, c. 615.

§ 59.1-199. Exclusions

Nothing in this chapter shall apply to:

A. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of this Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official of this Commonwealth or the United States.

B. Acts done by the publisher, owner, agent or employee of a newspaper, periodical, or radio or television station, or other advertising media such as outdoor advertising and advertising agencies, in the publication or dissemination of an advertisement in violation of § 59.1-200, unless it be proved that such person knew that the advertisement was of a character prohibited by § 59.1-200.

C. Those aspects of a consumer transaction which are regulated by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

D. Banks, savings institutions, credit unions, small loan companies, public service corporations, mortgage lenders as defined in § 6.2-1600, broker-dealers as defined in § 13.1-501, gas suppliers as defined in subsection E of § 56-235.8, and insurance companies regulated and supervised by the State Corporation Commission or a comparable federal regulating body.

E. Any aspect of a consumer transaction which is subject to the Landlord and Tenant Act, Chapter 13 (§ 55-217 et seq.) of Title 55 or the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, unless the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § 59.1-200.

F. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

1977, c. 635; 1987, c. 464; 1994, c. 400; 1995, c. 703; 1996, cc. 61, 77, 179; 1999, c. 494; 2000, cc. 691, 706.

§ 59.1-200. Prohibited practices

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;

2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;

4. Misrepresenting geographic origin in connection with goods or services;

5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;

6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;

7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds, " irregulars, imperfects, or "not first class, " without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds, " irregulars, imperfects or "not first class";

8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale, " "wholesaler, " "factory, " or "manufacturer" in the supplier's name, or to describe the nature of the

supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction;

15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain animals by pet dealers which is described in such sections, is a violation of this chapter;

16. Failing to disclose all conditions, charges, or fees relating to:

a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase. In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser has requested the supplier to order merchandise of a specific or unusual size, color, or brand not ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in § 46.2-100;

b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches the agreement;

16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess of $5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of receiving overpayments. If the credit balance information is incorporated into statements of account furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;

17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in connection with a consumer transaction, failing to adhere to the terms and conditions of such an agreement;

18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.) of this title;

19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et seq.) of this title;

20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et seq.) of this title;

21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4 (§ 59.1-207.17 et seq.) of this title;

22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.) of this title;

23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32 (§ 59.1-424 et seq.) of this title;

24. Violating any provision of § 54.1-1505;

25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter 17.6 (§ 59.1-207.34 et seq.) of this title;

26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;

27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.) of this title;

28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.) of this title;

29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et seq.) of this title;

30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et seq.) of this title;

31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.) of this title;

32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;

33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;

34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;

35. Using the consumer's social security number as the consumer's account number with the supplier, if the consumer has requested in writing that the supplier use an alternate number not associated with the consumer's social security number;

36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;

37. Violating any provision of § 8.01-40.2;

38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;

39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.) of this title;

40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;

41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.) of this title;

42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.) of this title;

43. Violating any provision of § 59.1-443.2;

44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.) of this title;

45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;

46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;

47. Violating any provision of § 18.2-239;

48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);

49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";

50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.) of this title;

51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;

52. Violating any provision of § 8.2-317.1;

53. Violating subsection A of § 9.1-149.1; and

54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is

defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed.

B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.

1977, c. 635; 1979, c. 304; 1981, c. 205; 1983, c. 173; 1986, c. 432; 1987, cc. 462 to 464; 1988, cc. 24, 534; 1989, cc. 689, 703; 1990, c. 584; 1991, cc. 300, 605, 608, 630, 654; 1992, cc. 278, 545, 768; 1993, cc. 455, 760; 1994, cc. 261, 400, 655; 1995, c. 10; 1998, c. 848; 2000, cc. 880, 901; 2002, cc. 217, 897; 2003, cc. 800, 1003; 2004, cc. 784, 790, 798, 817; 2005, cc. 269, 303, 640, 861; 2006, c. 399; 2008, cc. 294, 791, 842; 2009, cc. 321, 359, 376, 699, 700; 2010, cc. 477, 713; 2011, c. 615; 2014, cc. 396, 459; 2016, c. 591.

§ 59.1-200.1. Prohibited practices; foreclosure rescue

A. In addition to the provisions of § 59.1-200, the following fraudulent acts or practices committed by a supplier, as defined in § 59.1-198, in a consumer transaction involving residential real property owned and occupied as the primary dwelling unit of the owner, are prohibited:

1. The supplier of service to avoid or prevent foreclosure charges or receives a fee (i) prior to the full and complete performance of the services it has agreed to perform, if the transaction does not involve the sale or transfer of residential real property, or (ii) prior to the settlement on the sale or transfer of residential real property, if the transaction involves the sale or transfer of such residential real property;

2. The supplier of such services (i) fails to make payments under the mortgage or deed of trust that is a lien on such residential real property as the payments become due, where the supplier has agreed to do so, regardless of whether the purchaser is obligated on the loan, and (ii) applies rents received from such dwellings for his own use;

3. The supplier of such services represents to the seller of such residential real property that the seller has an option to repurchase such residential real property, after the supplier of such services takes legal or equitable title to such residential real property, unless there is a written contract providing such option to repurchase on terms and at a price stated in such contract; or

4. The supplier advertises or offers such services as are prohibited by this section.

B. This section shall not apply to any mortgage lender or servicer regularly engaged in making or servicing mortgage loans that is subject to the supervisory authority of the State Corporation Commission, a comparable regulatory authority of another state, or a federal banking agency.

C. In connection with any consumer transaction covered by subsection A, any provision in an agreement between the supplier of such services and the owner of such residential real property

that requires the owner to submit to mandatory arbitration shall be null and void, and notwithstanding any such provisions, the owner of such residential real property shall have the rights and remedies under this chapter.

2008, c. 485; 2009, cc. 203, 272.

§ 59.1-201. Civil investigative orders

A. Whenever the attorney for the Commonwealth or the attorney for a county, city, or town has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of § 59.1-200 or 59.1-200.1, the attorney for the Commonwealth or the attorney for a county, city, or town if, after making a good faith effort to obtain such information, is unable to obtain the data and information necessary to determine whether such violation has occurred, or that it is impractical for him to do so, he may apply to the circuit court within whose jurisdiction the person having information resides, or has its principal place of business, for an investigative order requiring such person to furnish to the attorney for the Commonwealth or attorney for a county, city, or town such data and information as is relevant to the subject matter of the investigation.

B. The circuit courts are empowered to issue investigative orders, authorizing discovery by the same methods and procedures as set forth for civil actions in the Rules of the Supreme Court of Virginia, in connection with investigations of violations of § 59.1-200 or 59.1-200.1 by the attorney for the Commonwealth or the attorney for a county, city, or town. An application for an investigative order shall identify:

1. The specific act or practice alleged to be in violation of § 59.1-200 or 59.1-200.1;

2. The grounds which shall demonstrate reasonable cause to believe that a violation of § 59.1-200 or 59.1-200.1 may have occurred, may be occurring or may be about to occur;

3. The category or class of data or information requested in the investigative order; and

4. The reasons why the attorney for the Commonwealth or attorney for a county, city, or town is unable to obtain such data and information, or the reason why it is impractical to do so, without a court order.

C. Within 21 days after the service upon a person of an investigative order, or at any time before the return date specified in such order, whichever is later, such person may file a motion to modify or set aside such investigative order or to seek a protective order as provided by the Rules of the Supreme Court of Virginia. Such motion shall specify the grounds for modifying or setting aside the order, and may be based upon the failure of the application or the order to comply with the requirements of this section, or upon any constitutional or other legal basis or privilege of such person.

D. Where the information requested by an investigative order may be derived or ascertained from the business records of the person upon whom the order is served, or from an examination, audit

or inspection of such business records, or from a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the information is substantially the same for the attorney for the Commonwealth or attorney for a county, city, or town as for the person from whom such information is requested, it shall be sufficient for that person to specify the records from which the requested information may be derived or ascertained, and to afford the attorney for the Commonwealth or attorney for the county, city, or town reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries thereof.

E. It shall be the duty of the attorney for the Commonwealth or attorney for a county, city, or town, his assistants, employees and agents, to maintain the secrecy of all evidence, documents, data and information obtained through the use of investigative orders or obtained as a result of the voluntary act of the person under investigation and it shall be unlawful for any person participating in such investigations to disclose to any other person not participating in such investigation any information so obtained. Any person violating this subsection shall be guilty of a Class 2 misdemeanor and shall be punished in accordance with § 18.2-11. Notwithstanding the foregoing, this section shall not preclude the presentation and disclosure of any information obtained pursuant to this section in any suit or action in any court of this Commonwealth wherein it is alleged that a violation of § 59.1-200 or 59.1-200.1 has occurred, is occurring or may occur, nor shall this section prevent the disclosure of any such information by the attorney for the Commonwealth or attorney for a county, city, or town to any federal or state law-enforcement authority that has restrictions governing confidentiality and the use of such information similar to those contained in this subsection; however, such disclosures may only be made as to information obtained after July 1, 1979.

F. Upon the failure of a person without lawful excuse to obey an investigative order under this section, the attorney for the Commonwealth or attorney for the county, city, or town may initiate contempt proceedings in the circuit court that issued the order to hold such person in contempt.

G. No information, facts or data obtained through an investigative order shall be admissible in any civil or criminal proceeding other than for the enforcement of this chapter and the remedies provided herein.

1977, c. 635; 1979, c. 493; 1982, c. 13; 1987, c. 464; 1995, c. 703; 2008, c. 485.

§ 59.1-201.1. Attorney General empowered to issue civil investigative demands

Whenever the Attorney General has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

1995, c. 703.

§ 59.1-202. Assurances of voluntary compliance

A. The Attorney General, the attorney for the Commonwealth, or the attorney for a county, city, or town may accept an assurance of voluntary compliance with this chapter from any person subject to the provisions of this chapter. Any such assurance shall be in writing and be filed with and be subject on petition to the approval of the appropriate circuit court. Such assurance of voluntary compliance shall not be considered an admission of guilt or a violation for any purpose. Such assurance of voluntary compliance may at any time be reopened by the Attorney General, or the attorney for the Commonwealth, or attorney for the county, city, or town respectively, for additional orders or decrees to enforce the assurance of voluntary compliance.

B. When an assurance is presented to the circuit court for approval, the Attorney General, the attorney for the Commonwealth, or the attorney for the appropriate county, city, or town shall file, in the form of a motion for judgment or complaint, the allegations which form the basis for the entry of the assurance. The assurance may provide by its terms for any relief which an appropriate circuit court could grant, including but not limited to restitution, arbitration of disputes between the supplier and its customers, investigative expenses, civil penalties and costs; provided, however, that nothing in this chapter shall be construed to authorize or require the Commonwealth, the Attorney General, an attorney for the Commonwealth or the attorney for any county, city or town to participate in arbitration of violations under this section.

1977, c. 635; 1981, c. 423; 1982, c. 13; 1988, c. 850.

§ 59.1-203. Restraining prohibited acts

A. Notwithstanding any other provisions of law to the contrary, the Attorney General, any attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth, or of the county, city, or town to enjoin any violation of § 59.1-200 or 59.1-200.1. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages be proved.

B. Unless the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town determines that a person subject to the provisions of this chapter intends to depart from this Commonwealth or to remove his property herefrom, or to conceal himself or his property herein, or on a reasonable determination that irreparable harm may occur if immediate action is not taken, he shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated, and allow such person a reasonable opportunity to appear before said attorney and show that a violation did not occur or execute an assurance of voluntary compliance, as provided in § 59.1-202.

C. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of § 59.1-200 or 59.1-200.1.

D. The Commissioner of the Department of Agriculture and Consumer Services, or his duly authorized representative, shall have the power to inquire into possible violations of subdivisions A 18,

28, 29, 31, 39, and 41, as it relates to motor fuels, of § 59.1-200 and § 59.1-335.12, and, if necessary, to request, but not to require, an appropriate legal official to bring an action to enjoin such violation.

1977, c. 635; 1982, c. 13; 1988, c. 485; 2008, c. 485; 2012, cc. 803, 835.

§ 59.1-204. Individual action for damages or penalty

A. Any person who suffers loss as the result of a violation of this chapter shall be entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or $1,000, whichever is greater. Any person who accepts a cure offer under this chapter may not initiate or maintain any other or additional action based on any cause of action arising under any other statute or common law theory if such other action is substantially based on the same allegations of fact on which the action initiated under this chapter is based.

B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorneys' fees and court costs.

C. No cure offer shall be admissible in any proceeding initiated under this section, unless the cure offer is delivered by a supplier to the person claiming loss or to any attorney representing such person, prior to the filing of the supplier's initial responsive pleading in such proceeding. If the cure offer is timely delivered by the supplier, then the supplier may introduce the cure offer into evidence at trial. The supplier shall not be liable for such person's attorneys' fees and court costs incurred following delivery of the cure offer unless the actual damages found to have been sustained and awarded, without consideration of attorneys' fees and court costs, exceed the value of the cure offer.

D. In any action which the parties desire to settle all matters in dispute, the question of whether the plaintiff shall be awarded reasonable attorneys' fees and court costs in accordance with subsections B and C may be tendered to the court for consideration of the amount of such an award, if any.

1977, c. 635; 1995, cc. 703, 726; 2004, cc. 41, 90; 2005, c. 250; 2006, c. 453.

§ 59.1-204.1. Tolling of limitation

A. Any individual action pursuant to § 59.1-204 for which the right to bring such action first accrues on or after July 1, 1995, shall be commenced within two years after such accrual. The cause of action shall accrue as provided in § 8.01-230.

B. When any of the authorized government agencies files suit under this chapter, the time during which such governmental suit and all appeals therefrom is pending shall not be counted as any part of the period within which an action under § 59.1-204 shall be brought.

1988, c. 241; 1995, cc. 703, 726.

§ 59.1-205. Additional relief

The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice declared to be unlawful in § 59.1-200 or 59.1-200.1, provided, that such person shall be identified by order of the court within 180 days from the date of the order permanently enjoining the unlawful act or practice.

1977, c. 635; 2008, c. 485.

§ 59.1-206. Civil penalties; attorney's fees

A. In any action brought under this chapter, if the court finds that a person has willfully engaged in an act or practice in violation of § 59.1-200 or 59.1-200.1, the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than $2,500 per violation. For purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town notifies the alleged violator by certified mail that an act or practice is a violation of § 59.1-200 or 59.1-200.1, and the alleged violator, after receipt of said notice, continues to engage in the act or practice.

B. Any person who willfully violates the terms of an assurance of voluntary compliance or an injunction issued under § 59.1-203 shall forfeit and pay to the Literary Fund a civil penalty of not more than $5,000 per violation. For purposes of this section, the circuit court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may petition for recovery of civil penalties.

C. In any action pursuant to subsection A or B and in addition to any other amount awarded, the Attorney General, the attorney for the Commonwealth, or the attorney for the county, city, or town may recover any applicable civil penalty or penalties, costs, reasonable expenses incurred by the state or local agency in investigating and preparing the case not to exceed $1,000 per violation, and attorney's fees. Such civil penalty or penalties, costs, reasonable expenses, and attorney's fees shall be paid into the general fund of the Commonwealth or of the county, city, or town which such attorney represented.

D. Nothing in this section shall be construed as limiting the power of the court to punish as contempt the violation of any order issued by the court, or as limiting the power of the court to enter other orders under § 59.1-203 or 59.1-205.

E. The right of trial by jury as provided by law shall be preserved in actions brought under this section.

1977, c. 635; 1980, c. 171; 1982, c. 13; 1991, c. 156; 1995, c. 703; 2008, c. 485.

§ 59.1-207. Unintentional violations

In any case arising under this chapter, no liability shall be imposed upon a supplier who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of § 59.1-200 or 59.1-200.1 was an act or practice of the manufacturer or distributor to the supplier over which the supplier had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation; however, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to § 59.1-204 B to individuals aggrieved as a result of an unintentional violation of this chapter.

1977, c. 635; 1995, cc. 703, 726; 2008, c. 485.

Chapter 17.1 - AUTOMOBILE REPAIR FACILITIES ACT

§ 59.1-207.1. Title of chapter

This chapter may be cited as the Automobile Repair Facilities Act.

1979, c. 506.

§ 59.1-207.2. Definitions

As used in this chapter:

1."Motor vehicle" shall mean every vehicle which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle and includes every device in, upon or by which any property is or can be transported or drawn upon a highway, whether or not required to be licensed by the Commonwealth, but shall not include devices moved by human or animal power or devices used exclusively upon stationary rails or tracks. Nor shall it include those parts of a manufactured home which do not affect the ability of the manufactured home to be safely upon a highway.

2. "Person" shall include any natural person, firm, partnership, association or corporation.

3. "Automobile repair facility" shall mean any person who for profit diagnoses or corrects malfunctions of, or damage to, a motor vehicle.

1979, c. 506; 1999, c. 77.

§ 59.1-207.3. Written estimate for repair work required upon request; charge in excess of estimate; conditions; display of sign required; limitations on liability for delay; exception

A. Upon request by a customer, prior to the commencement of any repair work on a motor vehicle for which a customer may be charged more than $25, every automobile repair facility doing business in the Commonwealth shall provide the customer a written statement of (i) the estimated cost of labor necessary to complete the work, (ii) the estimated cost of parts necessary to complete work, (iii) a description of the problem or work as described or authorized by the customer, and (iv) the estimated completion time. An automobile repair facility shall have no obligation to provide such written statements prior to 10:00 a.m. or after 4:00 p.m. during a working day.

B. Where a written estimate is requested, no repair work on the motor vehicle may be undertaken, other than such diagnostic work as may be necessary for the preparation of an estimate, until the written estimate has been provided the customer and the customer has authorized the work, either in writing or orally, and no charge for repair work in excess of the written estimate by more than 10 percent or, in the case of any motor vehicle which is at least 25 model years old, 20 percent or extension of the time for the work may be made unless the additional work represented by such excess charge or the time extension has been authorized, in writing or orally, by the customer.

C. An automobile repair facility may impose reasonable conditions for its obligations to provide written estimates to a customer, including the imposition of a reasonable fee for the preparation of a written estimate and related diagnostic work; provided that any such conditions shall be disclosed to the customer at the time of his request by writing or by sign conspicuously posted at the entrance of the automobile repair facility.

Each automobile repair facility shall display in a conspicuous place at any point where vehicles are normally received for repairs, a sign which states that:

1. The customer may receive a written estimate on request;

2. No repair work charge may exceed the written estimate by more than 10 percent unless the additional work represented by the excess charge has been authorized by the customer;

3. Any conditions imposed by the automobile repair facility in providing written estimates, such as the limited hours when written estimates will be prepared or the amount of the reasonable fee charged for preparing a written estimate and for related diagnostic work;

4. The facility shall offer to return all replaced parts except warranty, core charge or trade-in parts required to be returned to a manufacturer or distributor; and

5. Any complaints can be made to the Division of Consumer Counsel of the Department of Law.

The sign heading "Customer Rights" shall be in letters at least one and one-half inches high and the remaining print shall be in letters at least one-fourth inch high with spacing between letters, words and lines so as to be clearly legible.

D. An automobile repair facility shall not be liable for breach of the written estimated completion date for a repair if the delay is occasioned by (i) an act of God or (ii) an unexpected shortage of labor or parts or (iii) other causes beyond the control of the automobile repair facility.

E. Nothing in this section shall require an automobile repair facility to give a written estimate if the facility is unwilling to perform the requested repair work.

F. The provisions of this section shall not apply to the repair of any motor vehicle which is any car listed in the Official Judging Manual of the Antique Automobile Club of America.

1979, c. 506; 1995, c. 110; 2012, cc. 803, 835.

§ 59.1-207.4. Offer to return replaced parts required; customer's right to inspect parts

An automobile repair facility shall offer at the time the repair work is authorized to return to the customer any parts which are removed from the motor vehicle and replaced during the process of repair; provided that any part which is required to be returned to a manufacturer or distributor under a warranty agreement, trade-in agreement or core charge agreement for a reconditioned part need not be returned to the customer. If the customer wishes the return of replaced parts subject to core charge or other trade-in agreements, customer agrees to pay the facility the additional core charge or other trade-in fee. The customer retains the right to inspect requested returned parts even if custody is refused.

1979, c. 506.

§ 59.1-207.5. Written invoice required upon completion of repair work

Upon completion of any repair work on a motor vehicle, including work performed pursuant to any warranty, an automobile repair facility shall provide the customer a written invoice which clearly indicates the work performed and the charges for parts and labor, separately stated, and which separately identifies those parts provided under warranty and not under warranty, and identifies those parts, if any, which are used, rebuilt or reconditioned. The provisions of this section shall not apply to work performed which was done on an advertised single price basis.

1979, c. 506.

§ 59.1-207.5:1. Sale or installation of motor vehicle glass; prohibited conduct

No person selling or engaged in the sale, installation, or replacement of motor vehicle glass shall advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a policy of motor vehicle insurance, as defined in § 38.2-124, unless such person charges no more than the prevailing market rate for such services.

2003, c. 707.

§ 59.1-207.6. Enforcement; penalties

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title.

1979, c. 506.

Chapter 17.2 - AGRICULTURAL EQUIPMENT WARRANTIES

§ 59.1-207.7. Definitions

As used in this chapter unless the context requires otherwise:

"Agricultural equipment" shall mean any self-propelled vehicle designed primarily for and used in the occupation or business of farming.

"Consumer" shall mean a purchaser, other than for purposes of resale, of new agricultural equipment or any subsequent purchaser, other than for purpose of resale, to whom such equipment is

transferred during the duration of a manufacturer's express written warranty applicable to such equipment.

1984, c. 503.

§ 59.1-207.8. Protection against defective agricultural equipment; applicability of chapter

A. If agricultural equipment does not conform to all applicable express written warranties, and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express written warranties or during the period of one year following the date of original delivery of the equipment to the first consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealers shall make such repairs as are necessary to conform the equipment to such express written warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

B. If the manufacturer or its authorized dealers do not conform the equipment to any applicable express written warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the equipment to the consumer after a reasonable number of attempts, the manufacturer or its authorized dealer shall replace the equipment with comparable equipment acceptable to the consumer, charging the consumer only a reasonable allowance for the consumer's prior use of the equipment, or accept the return of the equipment from the consumer and refund to the consumer the cash purchase price, including sales tax, license fees, registration fees and any similar governmental charges, less such a reasonable allowance for prior use. Refunds shall be made to the consumer and lien holder or holder of a security interest, if any, as their interests may appear.

The reasonable allowance for prior use, which shall be no less than the fair rental value of the equipment, shall be the sum of (i) that amount attributable to use by the consumer or others prior to the consumer's first report of the nonconformity to the manufacturer or its authorized dealers, (ii) that amount attributable to use by the consumer or others during any period subsequent to such report when the vehicle is not out of service by reason of repair of the reported nonconformity, and (iii) that amount attributable to use by the consumer of equipment provided by the manufacturer or its authorized dealers while the equipment is out of service by reason of repair of the reported nonconformity.

C. For purposes of this chapter, it shall be presumed that a reasonable number of attempts have been undertaken to conform equipment to the applicable express written warranties if, within the express written warranty term or during the period of one year following the date of the original delivery of the equipment to the first consumer, whichever is the earlier date, (i) the same nonconformity has been subject to repair four or more times by the manufacturer or its authorized dealers, but such nonconformity continues to exist or (ii) the equipment is out of service by reason of repair for a cumulative total of thirty or more calendar days. However, those days shall not be counted when the consumer has been provided by the manufacturer or its authorized

dealers with the use of other equipment which performs the same function or has been offered the use of such equipment.

The term of an express written warranty, such one-year period, and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood, or other natural disasters.

D. In no event shall the presumption provided in this section apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and been offered an opportunity to cure the alleged defect. If the address of the manufacturer is not readily available to the consumer, such written notification shall be mailed to an authorized dealer. The authorized dealer shall upon receipt forward such notification to the manufacturer.

E. It shall be an affirmative defense to any claim under this chapter that (i) an alleged nonconformity does not substantially impair such use and market value or (ii) a nonconformity is the result of abuse or neglect, or of modifications or alterations of the equipment not authorized by the manufacturer.

F. Any action brought under this chapter shall be commenced within six months following (i) expiration of the express written warranty term, or (ii) eighteen months following the date of the original delivery of the equipment to the consumer, whichever is the later date.

G. This chapter shall apply to agricultural equipment sold after January 1, 1985.

H. Nothing in this chapter shall in any way limit or impair the rights or remedies which are otherwise available to a consumer under any other law.

I. Any consumer who suffers a loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provision.

1984, c. 503.

Chapter 17.3 - MOTOR VEHICLE WARRANTY ENFORCEMENT ACT

§ 59.1-207.9. Short title

This chapter may be cited as the Virginia Motor Vehicle Warranty Enforcement Act.

1984, c. 773.

§ 59.1-207.10. Intent

The General Assembly recognizes that a motor vehicle is a major consumer purchase, and there is no doubt that a defective motor vehicle creates a hardship for the consumer. It is the intent of the General Assembly that a good faith motor vehicle warranty complaint by a consumer should be resolved by the manufacturer, or its agent, within a specified period of time. It is further the intent of the General Assembly to provide the statutory procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the express warranty issued by the manufacturer. However, nothing in this

chapter shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.

1984, c. 773.

§ 59.1-207.11. Definitions

As used in this chapter, the following terms shall have the following meanings:

"Collateral charges" means any sales-related or lease-related charges including but not limited to sales tax, license fees, registration fees, title fees, finance charges and interest, transportation charges, dealer preparation charges or any other charges for service contracts, undercoating, rust proofing or installed options, not recoverable from a third party. If a refund involves a lease, "collateral charges" means, in addition to any of the above, capitalized cost reductions, credits and allowances for any trade-in vehicles, fees to another to obtain the lease, and insurance or other costs expended by the lessor for the benefit of the lessee.

"Comparable motor vehicle" means a motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of purchase or lease with an offset from this value for a reasonable allowance for its use.

"Consumer" means the purchaser, other than for purposes of resale, or the lessee, of a motor vehicle used in substantial part for personal, family, or household purposes, and any person to whom such motor vehicle is transferred for the same purposes during the duration of any warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

"Incidental damages" shall have the same meaning as provided in § 8.2-715.

"Lemon law rights period" means the period ending eighteen months after the date of the original delivery to the consumer of a new motor vehicle. This shall be the period during which the consumer can report any nonconformity to the manufacturer and pursue any rights provided for under this chapter.

"Lien" means a security interest in a motor vehicle.

"Lienholder" means a person, partnership, association, corporation or entity with a security interest in a motor vehicle pursuant to a lien.

"Manufacturer" means a person, partnership, association, corporation or entity engaged in the business of manufacturing or assembling motor vehicles, or of distributing motor vehicles to motor vehicle dealers.

"Manufacturer's express warranty" means the written warranty, so labeled, of the manufacturer of a new automobile, including any terms or conditions precedent to the enforcement of obligations under that warranty.

"Motor vehicle" means only passenger cars, pickup or panel trucks, motorcycles, self-propelled motorized chassis of motor homes and mopeds as those terms are defined in § 46.2-100 and demonstrators or leased vehicles with which a warranty was issued.

"Motor vehicle dealer" shall have the same meaning as provided in § 46.2-1500.

"Nonconformity" means a failure to conform with a warranty, a defect or a condition, including those that do not affect the driveability of the vehicle, which significantly impairs the use, market value, or safety of a motor vehicle.

"Notify" or "notification" means that the manufacturer shall be deemed to have been notified under this chapter if a written complaint of the defect or defects has been mailed to it or it has responded to the consumer in writing regarding a complaint, or a factory representative has either inspected the vehicle or met with the consumer or an authorized dealer regarding the nonconformity.

"Reasonable allowance for use" shall not exceed one-half of the amount allowed per mile by the Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes, plus an amount to account for any loss to the fair market value of the vehicle resulting from damage beyond normal wear and tear, unless the damage resulted from nonconformity to any warranty.

"Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

"Significant impairment" means to render the new motor vehicle unfit, unreliable or unsafe for ordinary use or reasonable intended purposes.

"Warranty" means any implied warranty or any written warranty of the manufacturer, or any affirmations of fact or promise made by the manufacturer in connection with the sale or lease of a motor vehicle that become part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, and fitness of a motor vehicle for ordinary use or reasonable intended purposes throughout the duration of the lemon law rights period as defined under this section.

1984, c. 773; 1988, c. 603; 1990, c. 772; 1998, c. 671.

§ 59.1-207.12. Conformity to all warranties

If a new motor vehicle does not conform to all warranties, and the consumer reports the nonconformity to the manufacturer, its agents, or its authorized dealer during the manufacturer's warranty period, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such warranties, notwithstanding the fact that such repairs are made after the expiration of such manufacturer's warranty period.

1984, c. 773; 1988, c. 603.

§ 59.1-207.13. Nonconformity of motor vehicles

A. If the manufacturer, its agents or authorized dealers do not conform the motor vehicle to any applicable warranty by repairing or correcting any defect or condition, including those that do not affect the driveability of the vehicle, which significantly impairs the use, market value, or safety of the motor vehicle to the consumer after a reasonable number of attempts during the lemon law rights period, the manufacturer shall:

1. Replace the motor vehicle with a comparable motor vehicle acceptable to the consumer, or

2. Accept return of the motor vehicle and refund to the consumer, lessor, and any lienholder as their interest may appear the full contract price, including all collateral charges, incidental damages, less a reasonable allowance for the consumer's use of the vehicle up to the date of the first notice of nonconformity that is given to the manufacturer, its agents or authorized dealer. Refunds or replacements shall be made to the consumer, lessor or lienholder, if any, as their interests may appear. The consumer shall have the unconditional right to choose a refund rather than a replacement vehicle and to drive the motor vehicle until he receives either the replacement vehicle or the refund. The subtraction of a reasonable allowance for use shall apply to either a replacement or refund of the motor vehicle. Mileage, expenses, and reasonable loss of use necessitated by attempts to conform such motor vehicle to the express warranty may be recovered by the consumer.

A1. In the case of a replacement of or refund for a leased vehicle, in addition to any other damages provided in this chapter, the motor vehicle shall be returned to the manufacturer and the consumer's written lease shall be terminated by the lessor without penalty to the consumer. The lessor shall transfer title to the manufacturer as necessary to effectuate the consumer's rights pursuant to this chapter, whether the consumer chooses vehicle replacement or a refund.

B. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to any warranty and that the motor vehicle is significantly impaired if during the period of eighteen months following the date of original delivery of the motor vehicle to the consumer either:

1. The same nonconformity has been subject to repair three or more times by the manufacturer, its agents or its authorized dealers and the same nonconformity continues to exist;

2. The nonconformity is a serious safety defect and has been subject to repair one or more times by the manufacturer, its agent or its authorized dealer and the same nonconformity continues to exist; or

3. The motor vehicle is out of service due to repair for a cumulative total of thirty calendar days, unless such repairs could not be performed because of conditions beyond the control of the man-

ufacturer, its agents or authorized dealers, including war, invasion, strike, fire, flood or other natural disasters.

C. The lemon law rights period shall be extended if the manufacturer has been notified but the nonconformity has not been effectively repaired by the manufacturer, or its agent, by the expiration of the lemon law rights period.

D. The manufacturer shall clearly and conspicuously disclose to the consumer, in the warranty or owner's manual, that written notification of the nonconformity to the manufacturer is required before the consumer may be eligible for a refund or replacement of the vehicle under this chapter. The manufacturer shall include with the warranty or owner's manual the name and address to which the consumer shall send such written notification.

E. It shall be the responsibility of the consumer, or his representative, prior to availing himself of the provisions of this section, to notify the manufacturer of the need for the correction or repair of the nonconformity, unless the manufacturer has been notified as defined in § 59.1-207.11. If the manufacturer or factory representative has not been notified of the conditions set forth in subsection B of this section and any of the conditions set forth in subsection B of this section already exists, the manufacturer shall be given an additional opportunity, not to exceed fifteen days, to correct or repair the nonconformity. If notification shall be mailed to an authorized dealer, the authorized dealer shall upon receipt forward such notification to the manufacturer.

F. Nothing in this chapter shall be construed to limit or impair the rights and remedies of a consumer under any other law.

G. It is an affirmative defense to any claim under this chapter that:

1. An alleged nonconformity does not significantly impair the use, market value, or safety of the motor vehicle; or

2. A nonconformity is the result of abuse, neglect or unauthorized modification or alteration of a motor vehicle by a consumer.

1984, c. 773; 1987, c. 607; 1988, c. 603; 1990, c. 772; 1998, c. 671.

§ 59.1-207.14. Action to enforce provisions of chapter

Any consumer who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provision. Any consumer who is successful in such an action or any defendant in any frivolous action brought by a consumer shall recover reasonable attorney's fees, expert witness fees and court costs incurred by bringing such actions.

1984, c. 773; 1988, c. 603.

§ 59.1-207.15. Informal dispute settlement procedure

A. If a manufacturer provides an informal dispute settlement procedure, it shall be the consumer's choice whether or not to use it prior to availing himself of his rights under this chapter.

B. If a dispute settlement procedure is resorted to by the consumer and the decision is for a refund or a comparable motor vehicle, the manufacturer shall have forty days from its receipt of the consumer's acceptance of the decision or from the date of a court order to comply with the terms of the decision.

C. In any action brought because of the manufacturer's failure to comply with the decision, within the scope of the procedure's authority, rendered as a result of a dispute resolution proceeding or a court order, the court may triple the value of the award stipulated in the decision as provided for in this chapter, plus award other equitable relief the court deems appropriate, including additional attorney's fees.

1988, c. 603; 1990, c. 772 .

§ 59.1-207.16. Action to be brought within certain time

Any action brought under this chapter shall be commenced within eighteen months following the date of original delivery of the motor vehicle to the consumer. However, any consumer whose good faith attempts to settle the dispute pursuant to the informal dispute settlement provisions of § 59.1-207.15 have not resulted in the satisfactory resolution of the matter shall have (i) twelve months from the date of the final action taken by the manufacturer in its dispute settlement procedure, if such procedure was resorted to within eighteen months of delivery, or (ii) the original eighteen-month period, whichever is longer, to file an action in the proper court.

1988, c. 603; 1990, c. 772; 1999, c. 387.

§ 59.1-207.16:1. Disclosure of returned vehicles; penalty

A. If a motor vehicle that is returned to the manufacturer or distributor either under this chapter or by judgment, decree, or arbitration award in this or any other state and is then transferred by a manufacturer or distributor to a dealer, licensed under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2, in Virginia, the manufacturer or distributor shall disclose this information to the Virginia dealer.

B. If the returned vehicle is then made available for resale or for another lease, the manufacturer shall, prior to sale or lease, disclose in writing in a clear and conspicuous manner, on a separate piece of paper in ten-point capital type, to the Virginia dealer that this motor vehicle was returned to the manufacturer, distributor or factory branch, the nature of the defect which resulted in the return, and the condition of the motor vehicle at the time of transfer to the Virginia dealer. It shall be the responsibility of the dealer that receives this disclosure to give notice of its contents to any prospective purchaser or lessee prior to sale or lease, and to transfer the disclosure, or a copy thereof, to the next purchaser or lessee. A dealer's responsibility under this section shall cease upon the sale or lease of the affected motor vehicle to the first purchaser or lessee not for resale or lease.

C. Any manufacturer or distributor who violates this section of the Motor Vehicle Warranty Enforcement Act shall be guilty of a Class 3 misdemeanor.

1994, c. 578; 1998, c. 671.

Chapter 17.4 - VIRGINIA LEASE-PURCHASE AGREEMENT ACT

§ 59.1-207.17. Title

This chapter may be cited as the "Virginia Lease-Purchase Agreement Act."

1988, c. 24.

§ 59.1-207.18. Definitions

As used in this chapter:

"Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement.

"Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the lease-purchase agreement.

"Consumer" means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family or household purposes.

"Consummation" means the time a consumer becomes contractually obligated on a lease-purchase agreement.

"Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement.

"Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

1988, c. 24.

§ 59.1-207.19. Inapplicability of other laws; exempted transactions

A. Lease-purchase agreements that comply with this chapter are not governed by the laws relating to:

1. A home solicitation sale as defined in § 59.1-21.1;

2. A transaction described in § 6.2-311; or

3. A security interest as defined in subdivision (35) of § 8.1A-201.

B. This chapter does not apply to the following:

1. Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

2. A lease of a safe deposit box;

3. A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the consumer has no option to purchase the leased property; or

4. A lease of an automobile.

1988, c. 24; 2003, c. 353; 2010, c. 794.

§ 59.1-207.20. General requirements of disclosure

A. The lessor shall disclose to the consumer the information required by this chapter. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by such disclosures.

B. The disclosures shall be made at or before consummation of the lease-purchase agreement.

C. The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement provided to the consumer. The disclosures required under subsection A of § 59.1-207.19 shall be made on the face of the contract above the line for the consumer's signature.

D. If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of this chapter.

1988, c. 24.

§ 59.1-207.21. Disclosures

A. For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

1. The total number, total amount and timing of all payments necessary to acquire ownership of the property;

2. A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership;

3. A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;

4. A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this chapter;

5. A brief description of any damages to the leased property;

6. A statement of the cash price of the property. Where the agreement involves a lease of five or more items as a set, in one agreement, a statement of the aggregate cash price of all items shall satisfy this requirement;

7. The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later;

8. A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, which fees shall be separately disclosed in the contract;

9. A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula or method for determining the price at which the property may be so purchased;

10. A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

11. The date of the transaction and the identities of the lessor and consumer;

12. A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term along with any past due rental payments; and

13. Notice of the right to reinstate an agreement as herein provided.

B. With respect to matters specifically governed by the Federal Consumer Credit Protection Act, compliance with such Act satisfies the requirements of this section.

1988, c. 24.

§ 59.1-207.22. Prohibited practices

A lease-purchase agreement may not contain:

1. A confession of judgment;

2. A negotiable instrument;

3. A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;

4. A wage assignment;

5. A waiver by the consumer of claims or defenses; or

6. A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods.

1988, c. 24.

§ 59.1-207.23. Reinstatement

A. A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of (i) all past due

rental charges, (ii) if the property has been picked up, the reasonable costs of pickup and redelivery, and (iii) any applicable late fee, within five days of the renewal date if the consumer pays monthly, or within two days of the renewal date if the consumer pays more frequently than monthly.

B. In the case of a consumer who has paid less than two-thirds of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in subsection A of this section, the consumer may reinstate the agreement during a period of not less than twenty-one days after the date of the return of the property.

C. In the case of a consumer who has paid two-thirds or more of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in subsection A of this section, the consumer may reinstate the agreement during a period of not less than forty-five days after the date of the return of the property.

D. Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

1988, c. 24.

§ 59.1-207.24. Receipts and accounts

A lessor shall provide the consumer a written receipt for each payment made by cash or money order.

1988, c. 24.

§ 59.1-207.25. Renegotiations and extensions

A. A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

1. The addition or return of property in a multiple-item agreement or the substitution of the lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent;

2. A deferral or extension of one or more periodic payments, or portions of a periodic payment;

3. A reduction in charges in the lease or agreement; and

4. A lease or agreement involved in a court proceeding.

B. No disclosures are required for any extension of a lease-purchase agreement.

1988, c. 24.

§ 59.1-207.26. Advertising

A. If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

1. That the transaction advertised is a lease-purchase agreement;

2. The total of payments necessary to acquire ownership; and

3. That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

B. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

C. The provisions of subsection A of this section shall not apply to an advertisement which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business.

1988, c. 24.

§ 59.1-207.27. Enforcement; penalties

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title.

1988, c. 24.

Chapter 17.5 - COLLISION DAMAGE WAIVER ACT

§ 59.1-207.28. Title of chapter

This chapter shall be known and may be cited as the "Collision Damage Waiver Act."

1988, c. 349.

§ 59.1-207.29. Scope

This chapter shall apply to all persons in the business of leasing rental motor vehicles from locations in the Commonwealth under an agreement which imposes upon the lessee an obligation to pay for any damages caused to the leased vehicle. The provisions of this chapter apply solely to the collision damage waiver portion of the rental agreement.

1988, c. 349.

§ 59.1-207.30. Definitions

As used in this chapter, the following terms shall have the following meanings:

"Collision damage waiver" means any contract or contractual provision, whether separate from or a part of a motor vehicle rental agreement, whereby the lessor agrees, for a charge, to waive any

and all claims against the lessee for any damages to the rental motor vehicle during the term of the rental agreement.

"Lessor" means any person or organization in the business of providing rental motor vehicles to the public.

"Lessee" means any person or organization obtaining the use of a rental motor vehicle from a lessor under the terms of a rental agreement.

"Rental agreement" means any written agreement setting forth the terms and conditions governing the use of the rental motor vehicle by the lessee.

"Rental motor vehicle" means a private passenger type vehicle or commercial type vehicle which, upon execution of a rental agreement, is made available to a lessee for its use.

1988, c. 349.

§ 59.1-207.31. Required notice

A. No lessor shall sell or offer to sell to a lessee a collision damage waiver as a part of a rental agreement unless the lessor first provides the lessee the following written notice:

NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE VEHICLE. BEFORE DECIDING WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER IS NOT MANDATORY AND MAY BE WAIVED.

B. Such notice shall be made on the face of the rental agreement either by stamp, label, or as part of the written contract, shall be set apart in boldface type and in no smaller print than ten-point type, and shall include a space for the lessee to acknowledge his receipt of the notice.

1988, c. 349.

§ 59.1-207.32. Prohibited exclusion

No collision damage waiver subject to this chapter shall contain an exclusion from the waiver for damages caused by the ordinary negligence of the lessee. Any such exclusion in violation of this section shall be void. This section shall not be deemed to prohibit an exclusion from the waiver for damages caused intentionally by the lessee or as a result of his willful or wanton misconduct or gross negligence, driving while intoxicated or under the influence of any drug or alcohol, or damages caused while engaging in any speed contest.

1988, c. 349.

§ 59.1-207.33. Enforcement; penalties

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

1988, c. 349.

Chapter 17.6 - MOTOR VEHICLE MANUFACTURERS' WARRANTY ADJUSTMENT ACT

§ 59.1-207.34. Definitions

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

"Adjustment program" means any extended policy program under which a manufacturer undertakes to pay for all or any part of the cost of repairing, or to reimburse purchasers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability or performance, other than service provided under a safety or emission-related recall program. This term shall not include ad hoc adjustments made by a manufacturer on a case-by-case basis.

"Consumer" means the purchaser, other than for purposes of resale, or the lessee of a motor vehicle and shall also include any person to whom such motor vehicle is transferred and any other person entitled by the terms of adjustment program to enforce its obligations.

"Dealer" means any motor vehicle dealer as defined in § 46.2-1500.

"Division" means the Division of Consumer Counsel in the Department of Law.

"Manufacturer" means any person, whether resident or nonresident, who manufactures, assembles, or imports motor vehicles for sale or distribution in this Commonwealth.

"Motor vehicle" means any motor vehicle as defined in § 46.2-100, but shall not include any motorcycle or motor home.

1991, c. 300; 2012, cc. 803, 835.

§ 59.1-207.35. Requirements of manufacturers

Every manufacturer shall:

1. Inform a consumer of any adjustment program applicable to his motor vehicle and, upon request, furnish the consumer with any document issued by a manufacturer pertaining to any adjustment program or to any condition that may substantially affect vehicle durability, reliability or performance;

2. Notify, by first-class mail, all owners of motor vehicles eligible under any adjustment program of the condition giving rise to and the principal terms and conditions of such program within ninety days of the adoption of the program; and

3. Notify its dealers, in writing, of all the terms and conditions of any adjustment program within thirty days of its adoption.

1991, c. 300 .

§ 59.1-207.36. Required disclosures

A. Every manufacturer or distributor, either directly or through its authorized agent, shall cause a notice to be given to the consumer which outlines the provisions of this chapter and the rights and remedies thereunder. The written notice shall state at minimum: "Sometimes (insert manufacturer's name) offers a special adjustment program to pay all or part of the cost of certain repairs beyond the terms of the warranty. Check with your dealer to determine whether any adjustment program is applicable to your motor vehicle."

B. Every dealer shall disclose to a consumer seeking repairs for a particular condition, the principal terms and conditions of any manufacturer's adjustment program covering such condition provided the dealer has been notified of the adjustment program pursuant to § 59.1-207.35.

1991, c. 300 .

§ 59.1-207.37. Adjustment program reimbursement

A. Every manufacturer who establishes any adjustment program shall implement and follow procedures to ensure reimbursement for each consumer eligible under any such program who incurred expenses for repair of the condition subject to the program prior to acquiring knowledge thereof. Such reimbursement shall be consistent with the terms and conditions of the adjustment program.

B. Any claim for reimbursement pursuant to this section shall be made in writing to the manufacturer within two years of the date of the consumer's payment of repairs for the condition. The manufacturer shall notify the consumer in writing within twenty-one business days of receiving a claim for reimbursement whether the claim will be allowed or denied. If the claim is denied, the specific reasons for such denial shall be stated in writing.

1991, c. 300 .

§ 59.1-207.38. Enforcement; penalties

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title. Notwithstanding any other provision to the contrary, it shall not be a violation of this chapter if the manufacturer within thirty days after the conclusion of the notice period required by subdivision 2 of § 59.1-207.35, upon notice from a consumer of the consumer's eligibility under an adjustment program, repairs or causes to be repaired the consumer's motor vehicle in accordance with the terms and conditions of the adjustment program.

1991, c. 300; 1996, c. 63.

§ 59.1-207.39. Regulations

The Division is authorized to promulgate reasonable regulations in order to implement the provisions of this chapter. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

1991, c. 300; 2012, cc. 803, 835.

Chapter 17.7 - COMPARISON PRICE ADVERTISING ACT

§ 59.1-207.40. Definitions

In addition to the definitions listed in § 59.1-198, as used in this chapter, the following terms shall have the following meanings:

"Former price" or "comparison price" means the direct or indirect comparison in any advertisement whether or not expressed wholly or in part in dollars, cents, fractions, or percentages, and whether or not such price is actually stated in the advertisement.

"Substantial sales" means a substantial aggregate volume of sales of identical or comparable goods or services at or above the advertised comparison price in the supplier's trade area.

1992, c. 768 .

§ 59.1-207.41. Advertising former price of goods or services

No supplier shall in any manner knowingly advertise a former price of any goods or services unless:

1. Such former price is the price at or above which substantial sales were made in the recent regular course of business; or

2. Such former price was the price at which such goods or services or goods or services of substantially the same kind, quality, or quantity and with substantially the same service were openly and actively offered for sale for a reasonably substantial period of time in the recent regular course of business honestly, in good faith and not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based; or

3. Such former price is based on a markup that does not exceed the supplier's cost plus the usual and customary markup used by the supplier in the actual sale of such goods or services or goods or services of substantially the same kind, quality, or quantity and with substantially the same service, in the recent regular course of business; or

4. The date on which substantial sales were made, or the goods or services were openly and actively offered for sale for a reasonably substantial period of time at the former price is advertised in a clear and conspicuous manner.

1992, c. 768 .

§ 59.1-207.42. Advertising comparison price of goods or services

No supplier shall in any manner knowingly advertise a comparison price which is based on another supplier's price unless:

1. The supplier can substantiate that the comparison price is the price offered for sale by another supplier in the regular course of business for goods or services of substantially the same kind and quality, and with substantially the same service in the defined trade area;

2. The trade area to which the advertisement refers is clearly defined and disclosed; and

3. A clear and conspicuous disclosure is made in the advertisement that the price used as a basis of comparison is another supplier's price, and not the supplier's own price.

1992, c. 768 .

§ 59.1-207.43. Use of certain terms in advertising former or comparison prices

A. No supplier shall advertise a former or comparison price in terms of "market value," "valued at" or words of similar import unless such price is the price at which the goods or services, or goods or services of substantially the same kind, quality or quantity, are offered for sale by a reasonable number of suppliers in the supplier's trade area.

B. A supplier may advertise a former or comparison price in terms of "manufacturer's suggested price," "suggested retail price," "list price," or words of similar import provided that, with regard to such advertising, the use of the former or comparison price complies with 15 U.S.C. § 45 (a) (1) and the regulations of the Federal Trade Commission adopted thereunder.

1992, c. 768 .

§ 59.1-207.44. Enforcement; penalties

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.). It shall be the responsibility of any supplier who uses a comparison price to be able to substantiate the basis for any price comparisons made by the supplier. Upon the request of the Attorney General, any attorney for the Commonwealth, or the attorney of any county, city, or town, a supplier shall provide documentation to substantiate the basis for any comparison price utilized by the supplier in any advertisement governed by this chapter. No provision of this chapter shall be construed to apply to any supplier whose advertising practices are governed by § 46.2-1581.

1992, c. 768; 2012, cc. 803, 835.

Chapter 18 - REGULATION OF INVENTION DEVELOPMENT SERVICES

§ 59.1-208. Definitions

As used in this chapter, the following terms shall have the following meanings, unless a different meaning clearly appears from the context:

1."Contract for invention development services" means a contract by which an invention developer undertakes invention development services for a customer.

2. "Customer" means any person, firm, partnership, corporation, or other entity that enters into a contract for invention development services with an invention developer.

3. "Invention development" means the evaluation, perfection, marketing, brokering, or promotion of an invention by an invention developer, including a patent search, preparation of a patent application, or any other act done by an invention developer for consideration toward the end of procuring or attempting to procure a license, buyer or patent for an invention, but shall not include those acts undertaken by attorneys in the practice of their profession, other persons duly registered to practice before the U.S. Patent and Trademark Office, or persons rendering services to such attorneys or registered persons.

4. "Invention developer" means any person, firm, partnership, corporation, and any agent, employee, officer, partner or independent contractor thereof, that advertises invention development services in media of general circulation or that contracts with customers procured as a result of such advertisement.

5."Invention development service" means acts of invention development required or promised to be performed, or actually performed, or both, by an invention developer for a customer.

6."Invention" means a discovery, process, machine, design, formulation, product, concept or idea or any combination thereof.

1977, c. 649.

§ 59.1-209. Contracting requirements

A. Every contract for invention development services shall be in writing and shall be subject to the provisions of this chapter. A copy of the written contract shall be given to the customer at the time he signs the contract.

B. If it is the invention developer's normal practice to seek more than one contract in connection with an invention, or if the invention developer normally seeks to perform services in connection with an invention in more than one phase with the performance of each phase covered in one or more subsequent contracts, at the time the customer signs the first contract, the invention developer shall so state in writing and shall supply to the customer such writing together with a written summary of the developer's normal terms, if any, of such subsequent contracts, including the amount of the developer's normal fees or other consideration, if any, that may be required from the customer.

C. Notwithstanding any contractual provision to the contrary, no payment for invention development services shall be required, made or received until the expiration of a four-working-day period commencing on the date on which the customer receives a copy of the contract for invention development services signed by the invention developer. Delivery of a promissory note, check, bill of exchange or negotiable instrument of any kind to the invention developer or to a third party, irrespective of the date or dates appearing on such instrument, shall be deemed payment for the purpose of this section.

D. Until the payment specified in this section is made, the parties shall have the option to terminate the contract, which option may be exercised as follows: (i) the customer may exercise the option by refraining from making payment to the invention developer, (ii) the invention developer may exercise the option to terminate by giving to the customer a written notice of its exercise of the option, which written notice shall become effective upon receipt thereof by the customer.

1977, c. 649.

§ 59.1-210. Standard provisions for cover notice

Every contract for invention development services shall have a conspicuous and legible cover sheet attached with the following notice imprinted thereon in boldface type of not less than 10-point size:

1. "This contract between you and an invention developer is regulated by Chapter 18 (§ 59.1-208 et seq.) of Title 59.1. You are not permitted or required to make any payments under this contract until four working days after you sign this contract and receive a completed copy of it."

2. A statement that the contract is a fee-for-service contract and that the invention developer makes no guarantees as to the success of the invention.

3. Information as to how a customer who feels that his rights have been violated pursuant to this chapter may lodge a complaint with the Consumer Protection Division at the Office of the Attorney General, including the Division's telephone number and directions as to how to file an online consumer complaint.

Such cover sheet shall contain only the notice required by this section.

1977, c. 649; 2014, c. 759.

§ 59.1-211. Interest in inventions prohibited

No invention developer shall acquire any interest, partial or whole, in the title to the customer's invention or patent rights, unless the invention developer contracts to manufacture the invention and acquires such interest for such purpose at or about the time the contract for manufacture is executed. Nothing in this section shall be construed to prohibit an invention developer from receiving a portion of any proceeds accruing to the customer as a result of performance of invention development services by the invention developer.

1977, c. 649.

§ 59.1-212. Reports to customer required

With respect to every contract for invention development services, the invention developer shall deliver to the customer at the address specified in the contract at least at quarterly intervals throughout the term of the contract a written report which identifies the contract and which includes:

1. A full, clear and concise description of the services performed to the date of the report and of the services yet to be performed; and

2. A full accounting of the application of the proceeds of the fee referred to in § 59.1-213 (6) to the date of the report; and

3. The name and address of each and every person, firm or corporation to whom the subject matter of the contract has been disclosed, the reason for each and every disclosure, and copies of all responses received as a result of such disclosures.

1977, c. 649.

§ 59.1-213. Mandatory contract terms

Every contract for invention development services shall set forth in boldface type of not less than ten-point size all of the following:

1. The terms and conditions of payment required by § 59.1-209.

2. A full, clear and concise description of the specific acts or services that the invention developer undertakes to perform for the customer; and, to the extent that the description of the specific acts or services affords discretion in the invention developer as to what specific acts or services will be performed, the invention developer shall be deemed a fiduciary.

3. A statement as to whether the invention developer undertakes to construct, sell or distribute one or more prototypes, models or devices embodying the customer's invention.

4. The full name and principal place of business of the invention developer and the name and principal place of business of any parent, subsidiary or affiliated company that may engage in performing any of the invention development services.

5. The names and addresses of the persons and organizations, other than employees of the invention developer, that may perform any of the invention development services.

6. A statement of the fee charged, and the proposed specific application of the proceeds of such fee by the invention developer, including but not limited to the approximate portion that will be expended for services relating to patent matters, and all portions of the fee that represent sales commissions, incentive payments, finder's fees, or any amounts intended to compensate any agent, employee, salesman or other person for procuring the customer.

7. A statement as to whether the invention developer intends to expend more for the invention development services than the cash fee charged the customer.

8. If any oral or written representation of estimated or projected customer earnings is given by the invention developer, a statement of such projection or estimation and a description of the data upon which it is based.

9. A statement as to whether or not the invention developer or any officer thereof is licensed to practice law in any jurisdiction or is a registered patent agent with the United States Patent and Trademark Office.

10. The name and address of the custodian of all records and correspondence pertaining to the contracted for invention development services, and a statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for that customer for a period of not less than two years after expiration of the term of the contract for invention development services, which records and correspondence will be made available to the customer or his representative for review and copying at the customer's reasonable expense on the invention developer's premises during normal business hours upon seven days' written notice.

11. A statement setting forth a time schedule for performance of the invention development services, including an estimated date by which performance of the invention development services is expected to be completed.

1977, c. 649.

§ 59.1-214. Remedies

A. Any contract for invention development services which does not substantially comply with the applicable provisions of this chapter may be voidable at the option of the customer. Any contract for invention development services entered into in reliance upon any false, fraudulent or misleading information, representation, notice or advertisement of the invention developer may be voidable at the option of the customer. Any waiver by the customer of any of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

B. In addition, any customer who has been injured by a violation of this chapter by an invention developer or by any false or fraudulent statement, representation or omission of material fact by an invention developer, or by failure of an invention developer to make all the disclosures required by this chapter, may recover in a civil action against the invention developer, in addition to reasonable costs and attorneys' fees, the greater of: (i) $1,000, or (ii) the amount of actual damages, if any, sustained by the customer.

C. For the purpose of this section, substantial violation of any provision of this chapter by an invention developer or execution by the customer of a contract for invention development services in reliance on any such false or fraudulent statements, representations, or material omissions shall establish a rebuttable presumption of injury.

1977, c. 649.

§ 59.1-215. Enforcement; civil penalty; restraint of violations

A. For the purpose of enforcing this chapter, the Attorney General is hereby authorized to conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books and documents by the issuance of subpoenas.

B. The Attorney General shall enforce the provisions of this chapter, and shall have the right to recover a civil penalty not to exceed $10,000 for each and every violation of any provisions of this chapter, and to seek equitable relief to restrain any such violation.

1977, c. 649; 2014, c. 759.

Chapter 18.1 - BAD FAITH ASSERTIONS OF PATENT INFRINGEMENT

§ 59.1-215.1. Definitions

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

"Assertion of patent infringement" means (i) sending or delivering a demand letter to a target; (ii) threatening a target with litigation asserting, alleging, or claiming that the target has engaged in patent infringement; (iii) sending or delivering a demand letter to the customers of a target; or (iv) otherwise making claims or allegations, other than those made in litigation against a target, that a target has engaged in patent infringement or that a target should obtain a license to a patent in order to avoid litigation.

"Demand letter" means a letter, email, or other communication asserting, alleging, or claiming that the target has engaged in patent infringement, or that a target should obtain a license to a patent in order to avoid litigation, or any similar assertion.

"Patent infringement" means any conduct that constitutes infringement pursuant to applicable law, including 35 U.S.C. § 271, as amended.

"Target" means a person residing in, conducting substantial business in, or having its principal place of business in the Commonwealth and with respect to whom an assertion of patent infringement is made.

2014, cc. 810, 819.

§ 59.1-215.2. Bad faith assertions of patent infringement

A. A person shall not make, in bad faith, an assertion of patent infringement.

B. The following shall constitute indicia that a person's assertion of patent infringement was made in bad faith:

1. The demand letter does not contain:

a. The number of the patent that is asserted, alleged, or claimed to have been infringed; or

b. The name and address of the patent's owner or owners and assignee or assignees, if any.

2. The person sends a demand letter to a target without first making a reasonable effort under the circumstances to conduct an analysis comparing the claims in the patent to the target's products, services, and technology, or to identify specific areas in which the products, services, or technology are covered by the claims in the patent.

3. The demand letter does not identify specific areas in which the products, services, and technology are covered by the claims in the patent.

4. The person offers to license the patent for an amount that is not based on a reasonable estimation of the value of a license to the patent.

5. The person making an assertion of patent infringement acts in subjective bad faith, or a reasonable actor in the person's position would know or reasonably should know that such assertion is baseless.

6. The assertion of patent infringement is deceptive, or the person threatens legal action that cannot legally be taken or that is not intended to be taken.

7. The person or its subsidiaries or affiliates have previously filed or threatened to file one or more lawsuits based on the same or similar assertion of patent infringement, the person attempted to enforce the assertion of patent infringement in litigation, and a court found the assertion to be objectively baseless or imposed sanctions for the assertion.

8. The patent alleged to be infringed was not in force at the time the allegedly infringing conduct occurred, or the patent claims alleged to be infringed have previously been held to be invalid.

C. The following shall constitute indicia that a person's assertion of patent infringement was not made in bad faith, but the absence of such indicia shall not constitute evidence of bad faith:

1. The person engages in a reasonable effort under the circumstances to establish that the target has infringed the patent and to negotiate an appropriate remedy.

2. The person makes a substantial investment in the use of the patent or in the development, production, or sale of a product or item covered by the patent.

3. The person has:

a. Demonstrated good faith in previous efforts to enforce the patent or a substantially similar patent; or

b. Successfully enforced the patent, or a substantially similar patent, through litigation.

4. The person is an institution of higher education or a technology transfer office organization owned by or affiliated with an institution of higher education.

D. The lists of indicia in this section are non-exclusive, and all indicia need not be present for a finding of bad faith or good faith.

2014, cc. 810, 819.

§ 59.1-215.3. Enforcement; remedies; civil investigative demands; assurances of voluntary compliance; restraining prohibited acts

A. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, or is engaging in, or is about to engage in, any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

B. The Attorney General or any attorney for the Commonwealth may accept an assurance of voluntary compliance with this chapter from any person subject to the provisions of this chapter. Any

such assurance shall be in writing and be filed with and be subject on petition to the approval of the appropriate circuit court. Such assurance of voluntary compliance shall not be considered an admission of guilt or a violation for any purpose. Such assurance of voluntary compliance may at any time be reopened by the Attorney General or the attorney for the Commonwealth for additional orders or decrees to enforce the assurance of voluntary compliance. When an assurance is presented to the circuit court for approval, the Attorney General or the attorney for the Commonwealth shall file, in the form of a complaint, the allegations that form the basis for the entry of the assurance. The assurance may provide by its terms for any relief that an appropriate circuit court could grant, including but not limited to arbitration of disputes between a person subject to the provisions of this chapter and any targets, investigative expenses, civil penalties, and costs, provided, however, that nothing in this chapter shall be construed to authorize or require the Commonwealth, the Attorney General, or any attorney for the Commonwealth to participate in arbitration of violations under this section.

C. Notwithstanding any other provisions of law to the contrary, the Attorney General or any attorney for the Commonwealth may cause an action to be brought in the appropriate circuit court in the name of the Commonwealth to enjoin any violation of this chapter. The circuit court having jurisdiction may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action under this section, it shall not be necessary that damages be proved. Unless the Attorney General or the attorney for the Commonwealth determines that a person subject to the provisions of this chapter intends to depart from the Commonwealth or to remove his property from the Commonwealth, or to conceal himself or his property within the Commonwealth, or on a reasonable determination that irreparable harm may occur if immediate action is not taken, the Attorney General or the attorney for the Commonwealth shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated and allow such person a reasonable opportunity to show that a violation did not occur or execute an assurance of voluntary compliance as provided in subsection B. The circuit courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter. The circuit court also may award to the Commonwealth a civil penalty of not more than $2,500 for each violation, reasonable expenses incurred in investigating and preparing the case, and attorneys' fees.

D. Any person outside the Commonwealth asserting patent infringement to a target shall be deemed to be transacting business within the Commonwealth within the meaning of subdivision A 1 of § 8.01-328.1 and shall thereby be subject to the jurisdiction of the courts of the Commonwealth.

E. The enforcement provisions of this section shall be exercised solely by the Attorney General or an attorney for the Commonwealth. Nothing in this chapter shall create a private cause of action in favor of any person aggrieved by a violation of this chapter.

F. Nothing in this chapter authorizes the courts of the Commonwealth, the Attorney General, or any attorney for the Commonwealth to exercise jurisdiction over a claim for relief arising under an Act of Congress relating to patents.

2014, cc. 810, 819.

§ 59.1-215.4. Exemptions

A demand letter or assertion of patent infringement that includes a claim for relief arising under 35 U.S.C. § 271 (e)(2) or 42 U.S.C. § 262 shall not be subject to the provisions of this chapter.

2014, cc. 810, 819.

Chapter 19 - HORSE RACING AND PARI-MUTUEL BETTING [Repealed]

§§ 59.1-216 through 59.1-254. Defeated at referendum

Defeated at referendum.

Chapter 20 - VIRGINIA MOTION PICTURE FAIR COMPETITION ACT

§ 59.1-255. Short title

This chapter may be known and cited as the "Virginia Motion Picture Fair Competition Act."

1978, c. 764.

§ 59.1-256. Purpose of chapter

The purpose of this chapter is to establish fair and open procedures for the bidding and negotiation for the right to exhibit motion pictures within the Commonwealth in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution within the Commonwealth, to promote fair and effective competition in that business, and to ensure that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibiting it in their communities.

1978, c. 764.

§ 59.1-257. Definitions

As used in this chapter:

1. The term "person" means and includes one or more individuals, partnerships, associations, societies, trusts, organizations, or corporations;

2. The term "theater" means any establishment in which motion pictures are exhibited to the public regularly for a charge;

3. The term "distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sale or licensing;

4. The term "exhibitor" means any person engaged in the business of operating one or more theaters;

5. The term "exhibit" or "exhibition" means showing a motion picture to the public for a charge;

6. The term "invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid for the right to exhibit a motion picture;

7. The term "bid" means a written offer or proposal by an exhibitor to a distributor in response to an invitation to bid for the right to exhibit a motion picture, stating the terms under which the exhibitor will agree to exhibit a motion picture;

8. The term "license agreement" means any contract, agreement, understanding or condition between a distributor and an exhibitor relating to the licensing or exhibition of a motion picture by the exhibitor;

9. The term "trade screening" means the showing of a motion picture by a distributor at some location within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, which is open to any exhibitor from whom the distributor intends to solicit bids or with whom the distributor intends to negotiate for the right to exhibit the motion picture;

10. The term "blind bidding" means the bidding for, negotiating for, or offering or agreeing to terms for the licensing or exhibition of a motion picture at any time before such motion picture has either been trade screened within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, or before such motion picture, at the option of the distributor, otherwise has been made available for viewing within the Commonwealth, or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, by all exhibitors from whom the distributor is soliciting bids or with whom the distributor is negotiating for the right to exhibit such motion picture; and

11. The term "run" means the continuous exhibition of a motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of a picture in the designated area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is any run limited to a single theater in a defined geographic area and a "nonexclusive run" is any run in more than one theater in a defined geographic area.

1978, c. 764.

§ 59.1-258. "Blind bidding" prohibited

A. Blind bidding is hereby prohibited within the Commonwealth. No bids shall be returnable, no negotiations for the exhibition or licensing of a motion picture shall take place, and no license agreement or any of its terms shall be agreed to, for the exhibition of any motion picture within the Commonwealth before the motion picture has either been trade screened within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, or before such motion picture, at the option of the distributor, otherwise has been made available for viewing within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland, by all exhibitors from whom the distributor is soliciting bids or with whom the distributor is negotiating for the right to exhibit the motion picture.

B. A distributor shall provide reasonable and uniform notice of the trade screening of any motion picture to those exhibitors within the Commonwealth from whom he intends to solicit bids or with whom he intends to negotiate for the right to exhibit that motion picture.

C. Any purported waiver of the prohibition against blind bidding in this chapter shall be void and unenforceable.

1978, c. 764.

§ 59.1-259. Bidding procedures

If bids are solicited from exhibitors for the licensing of a motion picture within the Commonwealth, then:

1. The invitation to bid shall specify (i) whether the run for which the bid is being solicited is a first, second or subsequent run; (ii) whether the run is an exclusive or nonexclusive run; (iii) the geographic area for the run; (iv) the names of all exhibitors who are being solicited; (v) the date and hour the invitation to bid expires; and (vi) the time, date and the location, including the address, where the bids will be opened, which shall be within the Commonwealth or the District of Columbia or Prince Georges and Montgomery Counties, Maryland.

2. All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and are present at such time.

3. Immediately upon being opened, the bids shall be subject to examination by exhibitors, or their agents, who submitted bids, and who are present at the opening. Within ten business days after the bids are opened, the distributor shall notify each exhibitor who submitted a bid either the name of the winning bidder or the fact that none of the bids was acceptable.

4. Once bids are solicited, the distributor shall license the picture only by bidding and may solicit rebids if he does not accept any of the submitted bids.

1978, c. 764.

§ 59.1-260. Civil enforcement; injunction

Any person who suffers loss or pecuniary damage resulting from a violation of the provisions of this chapter shall be entitled to bring an individual action to recover damages and reasonable attorney's fees. The provisions of this chapter may be enforced by injunction or any other available equitable or legal remedy.

1978, c. 764.

§ 59.1-261. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

Chapter 21 - BUSINESS OPPORTUNITY SALES ACT

§ 59.1-262. Short title

This chapter shall be known and may be cited as the "Business Opportunity Sales Act."

1979, c. 523.

§ 59.1-263. Definitions

A. For purposes of this chapter, "business opportunity" means the sale of any products, equipment, supplies or services which are sold to a purchaser upon payment of an initial required consideration exceeding $500 for the purpose of enabling such purchaser to start a business, and in which the seller:

1. Represents that the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, or currency-operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller; or

2. Represents that it will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser using in whole or in part the supplies, services or chattels sold by the seller to the purchaser; or

3. Guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity, or that the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies or chattels supplied by the seller, if the purchaser is not satisfied with the business opportunity; or

4. Represents that the seller will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity.

B. Exclusions. -- Such definition of "business opportunity" shall not include the following:

1. A security as defined by § 13.1-501; or

2. A franchise as defined in subsection A of § 13.1-559 or § 59.1-21.10; or

3. A license granted by a general merchandise retailer which allows the licensee to sell goods, equipment, supplies, products or services to the general public under the retailer's trademark, trade name or service mark, provided that such general merchandise retailer has been doing business in the Commonwealth continuously for five years prior to the granting of such license and such general merchandise retailer also sells the same goods, equipment, supplies, products or services directly to the general public; or

4. A newspaper distribution system; or

5. The sale of an on-going business. An "on-going business" as used herein is one which for at least twelve months previous to the sale: (i) has been operated from a specific location, (ii) has been open for business to the general public and (iii) has had all equipment and supplies necessary for operating the business located at such specific location; or

6. The sale of sales demonstration equipment and materials furnished at cost for use in making sales and not for resale; or

7. A contract or agreement by which a retailer of goods or services is granted the right to sell goods or services within, or appurtenant to, a retail business establishment as a department or division thereof.

1979, c. 523; 1985, c. 242.

§ 59.1-264. Written disclosure statement required

A. At least forty-eight hours prior to the time the purchaser signs a business opportunity contract, or at least forty-eight hours prior to the receipt of any consideration therefor by the seller, whichever occurs first, the seller shall provide the prospective purchaser with a written document, the cover sheet of which is entitled in at least ten-point boldface capital letters "DISCLOSURES REQUIRED BY VIRGINIA LAW." Under this title shall appear the following statement in at least ten-point type: "The Commonwealth of Virginia has not reviewed and does not approve, recommend, endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the Commonwealth. If you have any questions about this investment, see an attorney before you sign a contract or agreement." Nothing except the title and required statement shall appear on the cover sheet. The disclosure document shall also contain the following:

1. The name of the seller; whether the seller is doing business as an individual, partnership, or corporation; the names under which the seller has done, is doing or intends to do business in Virginia; and the name of any parent or affiliated company which is legally obligated to engage in business transactions with purchasers.

2. The names, addresses and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other person charged with responsibility for the seller's business activities relating to the sale of business opportunities.

3. The length of time the seller has:

a. Sold business opportunities;

b. Sold business opportunities involving the product, products, equipment, supplies, or services currently being offered to the purchaser.

4. A full and detailed description of the actual services that the business opportunity seller agrees to perform for the purchaser.

5. A copy of a financial statement of the seller, which shall not be older than thirteen months, which shall be updated to reflect any material changes in the seller's financial condition.

6. The following statement:

"If the seller fails to deliver the product, products, equipment or supplies necessary to begin substantial operation of the business within forty-five days of the delivery date stated in your contract, you may notify the seller in writing of your termination of the contract."

B. If training of any type is promised by the seller, the disclosure statement shall set forth a complete description of the training and the length of the training.

C. If the seller promises services to be performed in connection with the placement of the equipment, product, products, or supplies at any location or at various locations, the disclosure statement must set forth the full nature of those services as well as the nature of the agreements to be made with the owners or managers of the location or locations where the purchaser's equipment, product, products or supplies will be placed.

D. If the business opportunity seller is required to secure a bond or establish a trust deposit pursuant to § 59.1-265, the document shall state in at least ten-point type, either:

1. "As required by Virginia law, the seller has secured a bond issued by

..... (name and address of surety company), a surety
company authorized to do business in this State. Before signing a contract to
purchase this business opportunity, you should check with the surety company
to determine the bond's current status," or

2. "As required by Virginia law, the seller has established a trust

account with ..... (name and address of bank
or savings institution). Before signing a contract to purchase this business
opportunity, you should check with the bank or savings institution to
determine the current status of the trust account."

E. If the seller makes any statement concerning sales or earnings or any range of sales or earnings that the purchaser may reasonably expect to be made through this business opportunity, the document shall disclose:

1. The total number of purchasers of business opportunities within the United States involving the product, products, equipment, supplies or services being offered who, to the seller's knowledge, have actually received earnings in the amount or range specified, within three years prior to the date of the disclosure statement, and

2. The total number of purchasers of business opportunities within the United States involving the product, products, equipment, supplies, or services being offered within three years prior to the date of the disclosure statement.

1979, c. 523.

§ 59.1-265. Seller required to obtain bond or establish escrow account; action for damages against bond or account; limitation on liability of surety or escrow agent

Before the business opportunity seller makes any of the representations set forth in § 59.1-263, the seller shall either have obtained a surety bond issued by a surety company authorized to do business in this Commonwealth or have established an escrow account with any credit union or any licensed and insured commercial bank or savings institution located in the Commonwealth of Virginia. The amount of the bond or escrow account shall be an amount not less than $50,000. Any person who is damaged by any violation of this chapter or by the business opportunity seller's breach of the contract for the business opportunity sale or of any obligation arising therefrom may bring an action against the bond or escrow account to recover damages suffered; provided, however, that the aggregate escrow liability of the surety or escrow agents under any such bond or escrow account shall be only for actual damages and in no event shall exceed the amount of the bond or escrow account.

1979, c. 523; 1996, c. 77.

§ 59.1-266. Prohibited acts

No business opportunity seller shall:

1. Represent that the business opportunity provides income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential and discloses such data to the prospective purchaser at the time such representations are made; or

2. Use the trademark, service mark, trade names, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or is not legally obligated for all representations made by the seller in regard to the business opportunity, unless it is clear from the circumstances that the owner of the commercial symbol is not involved in the sale of the business opportunity; or

3. Make or authorize the making of any reference to its compliance with this chapter in any advertisement or other contact with prospective purchasers.

1979, c. 523.

§ 59.1-267. Contracts required to be in writing; contents

A. Every business opportunity sales contract shall be in writing and a copy shall be given to the purchaser at the time he signs the contract.

B. Every contract for the sale of a business opportunity shall include the following:

1. The terms and conditions of payment;

2. A full and detailed description of the acts or services that the business opportunity seller undertakes to perform for the purchaser;

3. The seller's principal business address and the name and address of its agent in the Commonwealth of Virginia authorized to receive service of process;

4. A full and detailed description of any product, products, equipment or supplies the business opportunity seller is to deliver to the purchaser;

5. The approximate delivery date of any product, products, equipment, or supplies the business opportunity seller is to deliver to the purchaser.

1979, c. 523.

§ 59.1-268. Purchaser's remedies

If a business opportunity seller (i) uses any untrue or misleading statements in the sale of a business opportunity, (ii) fails to give the proper disclosures in the manner required by § 59.1-264, or (iii) fails to deliver the equipment, supplies, product or products necessary to begin substantial operation of the business within forty-five days of the delivery date stated in the business opportunity contract, or if the contract does not comply with the requirements of § 59.1-267, then, within one year of the date of the contract, upon written notice to seller, the purchaser may void the contract and shall be entitled to receive from the business opportunity seller all sums paid to the business opportunity seller. Upon receipt of such sums, the purchaser shall make available to the seller at the purchaser's address or at the places at which they are located at the time such notice is given, all product, products, equipment and supplies received by the purchaser. No purchaser shall be entitled to any unjust enrichment by exercise of the remedies provided in this subsection.

Any purchaser injured by (i) a violation of this chapter, (ii) the business opportunity seller's breach of a contract subject to this chapter, or (iii) by any obligation arising therefrom may bring a civil action for recovery of damages, including reasonable attorney's fees.

Upon complaint of any person that a business opportunity seller has violated the provisions of this chapter, the circuit court wherein the violation is alleged to have occurred shall have jurisdiction to enjoin such seller from further violations of this chapter.

The remedies provided herein shall be in addition to any other remedies provided for by law or in equity.

1979, c. 523.

§ 59.1-269. Penalty; limitation

A. Any person who shall knowingly and willfully make, or cause to be made, any false statement in any disclosure statement or contract subject to the provisions of this chapter, or who shall knowingly and willfully commit any act prohibited by § 59.1-266 with the intent to defraud or to deceive a purchaser as to any material fact shall be guilty of a Class 4 felony.

B. Any person who shall knowingly make or cause to be made any false statement in any disclosure statement or contract subject to the provisions of this chapter or who shall commit any act prohibited by § 59.1-266 shall be guilty of a Class 1 misdemeanor.

C. No prosecution under this section shall be begun more than three years from the date of the alleged offense.

1979, c. 523.

Chapter 22 - ENTERPRISE ZONE ACT

§§ 59.1-270, 59.1-271. Expired

Expired.

§§ 59.1-272 through 59.1-278. Repealed

Repealed by Acts 2005, cc. 863 and 884, cl. 2.

§ 59.1-279. Eligibility

A. Any business firm may be designated a "qualified business firm" for purposes of this chapter if:

1. (i) It establishes within an enterprise zone a trade or business not previously conducted in the Commonwealth by such taxpayer and (ii) 25 percent or more of the employees employed at the business firm's establishment or establishments located within the enterprise zone either have incomes below 80 percent of the median income for the jurisdiction prior to employment or are residents of an enterprise zone.

2. It (i) is actively engaged in the conduct of a trade or business in an area immediately prior to such an area being designated as an enterprise zone and (ii) increases the average number of full-time employees employed at the business firm's establishment or establishments located within the enterprise zone by at least 10 percent over the lower of the preceding two years' employment with no less than 25 percent of such increase being employees who either have incomes below 80 percent of the median income for the jurisdiction prior to employment or are residents of an enterprise zone. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees employed by the business firm within the enterprise zone.

3. It (i) is actively engaged in the conduct of a trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone and (ii) increases the average number of full-time employees employed at the business firm's establishment or establishments within the enterprise zone by at least ten percent over the lower of the preceding two years' employment of the business firm prior to relocation with no less than 25 percent of such increase being employees who either have incomes below eighty percent of the median income for the jurisdiction prior to employment or are residents of an enterprise zone. Current employees of the business firm that are transferred directly to the enterprise zone facility from another site within the state resulting in a net loss of employment at that site shall not be included in calculating the increase in the average number of full-time employees employed by the business firm within the enterprise zone.

4. For the purposes of this section, the term "full-time employee" means (i) an individual employed by a business firm and who works the normal number of hours a week as required by the firm or (ii) two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. For the purposes of this section, the term "jurisdiction" means the county, city or town which made the application under § 59.1-274 to have the enterprise zone. In the case of a joint application, jurisdiction means all parties making such application.

B. After designation as a qualified business firm pursuant to this section, each business firm in an enterprise zone shall submit annually to the Department a statement requesting one or more of the tax incentives provided in § 59.1-280 or 59.1-282. Such a statement shall be accompanied by an approved form supplied by the Department and completed by an independent certified public accountant licensed by the Commonwealth which states that the business firm met the definition of a "qualified business firm" and continues to meet the requirements for eligibility as a qualified business firm in effect at the time of its designation. A copy of the statement submitted by each business firm to the Department shall be forwarded to the zone administrator.

C. The form referred to in subsection B of this section, prepared by an independent certified public accountant licensed by the Commonwealth, shall be prima facie evidence of the eligibility of a business firm for the purposes of this section, but the evidence of eligibility shall be subject to rebuttal. The Department or the Department of Taxation or State Corporation Commission, as applicable, may at its discretion require any business firm to provide supplemental information regarding the firm's eligibility (i) as a qualified business firm or (ii) for a tax credit claimed pursuant to this chapter.

D. The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

1982, c. 275; 1983, c. 572; 1988, cc. 236, 374; 1995, c. 792; 1997, cc. 497, 517, 808; 2005, cc. 863, 884.

§ 59.1-279.1. Repealed

Repealed by Acts 2005, cc. 863 and 884, cl. 2.

§ 59.1-280. Enterprise zone business tax credit

A. As used in this section:

"Business tax credit" means a credit against any tax due under Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 due from a business firm.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of $15 million when such qualified zone investments result in the creation of at least 50 permanent full-time positions. "Qualified zone investment" and "permanent full-time position" shall have the meanings provided in subsection A of § 59.1-280.1.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm.

B. The Department shall certify annually to the Commissioner of the Department of Taxation, or in the case of business firms subject to tax under Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 to the Director of Public Service Taxation for the State Corporation Commission, the applicability of the business tax credit provided herein for a qualified business firm. Any certification by the Department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the qualified business firm is not entitled to such tax credit. The Department of Taxation or State Corporation Commission shall notify the Department in writing upon determining that a business firm is ineligible for such tax credit.

C. Small qualified business firms shall be allowed a business tax credit in an amount equal to 80 percent of the tax due to the Commonwealth for the first tax year and 60 percent of the tax due the Commonwealth for the second tax year through the tenth tax year.

D. Large qualified business firms shall be allowed a business tax credit in a percentage amount determined by agreement between the Department and the large qualified business firm, provided such percentage amounts shall not exceed the percentages provided for small qualified business firms as set forth in subsection C.

E. Any business tax credit not usable may not be applied to future tax years.

F. When a partnership or a small business corporation making an election pursuant to Subchapter S of the Internal Revenue Code is eligible for a tax credit under this section, each partner or shareholder shall be eligible for the tax credit provided for in this section on his individual income tax in proportion to the amount of income received by that partner from the partnership, or shareholder from his corporation, respectively.

G. Tax credits provided for in this section shall only apply to taxable income of a qualified business firm attributable to the conduct of business within the enterprise zone. Any qualified business firm having taxable income from business activity both within and without the enterprise

zone shall allocate and apportion its Virginia taxable income attributable to the conduct of business as follows:

1. The portion of a qualified business firm's Virginia taxable income allocated and apportioned to business activities within an enterprise zone shall be determined by multiplying its Virginia taxable income by a fraction, the numerator of which is the sum of the property factor and the payroll factor, and the denominator of which is two.

a. The property factor is a fraction. The numerator is the average value of real and tangible personal property of the business firm which is used in the enterprise zone. The denominator is the average value of real and tangible personal property of the business firm used everywhere in the Commonwealth.

b. The payroll factor is a fraction. The numerator is the total amount paid or accrued within the enterprise zone during the taxable period by the business firm for compensation. The denominator is the total compensation paid or accrued everywhere in the Commonwealth during the taxable period by the business firm for compensation.

2. The property factor and the payroll factor shall be determined in accordance with the procedures established in §§ 58.1-409 through 58.1-413 for determining the Virginia taxable income of a corporation having income from business activities which is taxable both within and without the Commonwealth, mutatis mutandis.

3. If a qualified business firm believes that the method of allocation and apportionment hereinbefore prescribed as administered has operated or will operate to allocate or apportion to an enterprise zone a lesser portion of its Virginia taxable income than is reasonably attributable to business conducted within the enterprise zone, it shall be entitled to file with the Department of Taxation a statement of its objections and of such alternative method of allocation or apportionment as it believes to be appropriate under the circumstances with such detail and proof and within such time as the Department of Taxation may reasonably prescribe. If the Department of Taxation concludes that the method of allocation or apportionment employed is in fact inequitable or inapplicable, it shall redetermine the taxable income by such other method of allocation or apportionment as best seems calculated to assign to an enterprise zone the portion of the qualified business firm's Virginia taxable income reasonably attributable to business conducted within the enterprise zone.

H. Tax credits awarded under this section and under § 59.1-280.1 shall not exceed $7.5 million annually until the end of fiscal year 2019.

I. The provisions of this section shall apply only as follows:

1. To those qualified business firms that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those small qualified business firms and large qualified business firms that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005; provided that in the case of small qualified business firms, the signed agreements must be based on proposals developed by the Commonwealth prior to November 1, 2004.

1982, c. 275; 1983, c. 572; 1988, c. 236; 1992, c. 301; 1995, c. 792; 1996, c. 77; 1997, c. 517; 1998, c. 759; 2003, c. 676; 2005, cc. 863, 884; 2009, cc. 207, 271; 2011, c. 850.

§ 59.1-280.1. Enterprise zone real property investment tax credit

A. As used in this section:

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of $100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions.

"Permanent full-time position" means a job of an indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone, and requiring either (i) a minimum of 35 hours of an employee's time a week for the entire normal year of the business firm's operations, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time a week for the portion of the taxable year in which the employee was initially hired for, or transferred to, the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Seasonal or temporary positions, or a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located within an enterprise zone shall not qualify as permanent full-time positions.

"Qualified zone improvements" means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) $50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate a building for commercial or industrial use and excavations, grading, paving, driveways, roads, sidewalks, landscaping, or other land improvements. Qualified zone improvements shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup.

Qualified zone improvements shall not include:

1. The cost of acquiring any real property or building; however, the cost of any newly constructed depreciable nonresidential real property (excluding land, land improvements, paving, grading,

driveways, and interest) shall be considered to be a qualified zone improvement eligible for the credit if the total amount of such expenditure is at least $250,000 with respect to a single facility.

2. (i) The cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; or (ix) the cost of any well or septic or sewer system.

3. The basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom acquired or Internal Revenue Code § 1014 (a).

"Qualified zone investments" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property within an enterprise zone. For purposes of this section, machinery, tools and equipment shall only be deemed to include the cost of such property which is placed in service in the enterprise zone on or after July 1, 1995. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit under this section was previously granted; (ii) which was previously placed in service in Virginia by the taxpayer, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iii) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or part by reference to the basis of such property in the hands of the person from whom acquired, or Internal Revenue Code § 1014 (a).

"Qualified zone resident" means an owner or tenant of real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business within the enterprise zone.

"Real property investment tax credit" means a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident.

B. For all taxable years beginning on and after July 1, 1995, but before July 1, 2005, a qualified zone resident shall be allowed a real property investment tax credit as set forth in this section.

C. For any small qualified zone resident, a real property investment tax credit shall be allowed in an amount equaling 30 percent of the qualified zone improvements. Any tax credit granted pursuant to this subsection is refundable; however, in no event shall the cumulative credit allowed to a small qualified zone resident pursuant to this subsection exceed $125,000 in any five-year period.

D. For any large qualified zone resident, a real property investment tax credit shall be allowed in an amount of up to five percent of such qualified zone investments. The percentage amount of the real property investment tax credit granted to a large qualified zone resident shall be determined by agreement between the Department and the large qualified zone resident, provided such percentage amount shall not exceed five percent. The real property investment tax credit provided by this subsection shall not exceed the tax imposed for such taxable year, but any credit not usable for the taxable year generated may be carried over until the full amount of such credit has been utilized.

E. The Department shall certify the nature and amount of qualified zone improvements and qualified zone investments eligible for a real property investment tax credit in any taxable year. Only qualified zone improvements and qualified zone investments that have been properly certified shall be eligible for the credit. Any form filed with the Department of Taxation or State Corporation Commission for the purpose of claiming the credit shall be accompanied by a copy of the certification furnished to the taxpayer by the Department. Any certification by the Department pursuant to this section shall not impair the authority of the Department of Taxation or State Corporation Commission to deny in whole or in part any claimed tax credit if the Department of Taxation or State Corporation Commission determines that the taxpayer is not entitled to such tax credit. The Department of Taxation or State Corporation Commission shall notify the Department in writing upon determining that a taxpayer is ineligible for such tax credit.

F. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" as used in this section means the partnership, limited liability company or S corporation. Credits granted to a partnership, limited liability company or S corporation shall be passed through to the partners, members or shareholders, respectively.

G. The Tax Commissioner shall have the authority to issue regulations relating to the computation and carryover of the credit provided under this section.

H. In the first taxable year only, the credit provided in this section shall be prorated equally against the taxpayer's estimated payments made in the third and fourth quarters and the final payment, if such taxpayer is required to make quarterly payments.

I. Tax credits awarded under this section and under § 59.1-280 shall not exceed $7.5 million annually until the end of fiscal year 2019.

J. The provisions of this section shall apply only as follows

1. To those large qualified zone residents that have initiated use of enterprise zone tax credits pursuant to this section on or before July 1, 2005;

2. To those large qualified zone residents that have signed agreements with the Commonwealth regarding the use of enterprise zone tax credits in accordance with this section on or before July 1, 2005.

1995, c. 792; 1997, cc. 517, 634, 669; 1998, c. 759; 2005, cc. 863, 884.

§ 59.1-280.2. Repealed
Repealed by Acts 2005, cc. 863 and 884, cl. 2.

§ 59.1-281. Repealed
Repealed by Acts 1983, c. 572.

§ 59.1-282. Repealed
Repealed by Acts 2005, cc. 863 and 884, cl. 2.

§§ 59.1-282.1, 59.1-282.2. Repealed
Repealed by Acts 2009, cc. 207 and 271, cl. 3.

§§ 59.1-282.3 through 59.1-284. Repealed
Repealed by Acts 2005, cc. 863 and 884, cl. 2.

§ 59.1-284.01. Expiration of chapter; exceptions
A. All provisions of this chapter except §§ 59.1-279, 59.1-280, 59.1-280.1, 59.1-282.1, 59.1-282.2 and this section shall expire on July 1, 2005, unless extended by an act of the General Assembly.

B. All enterprise zones designated pursuant to §§ 59.1-274, 59.1-274.1, and 59.1-274.2 as those were in effect prior to July 1, 2005 shall continue in effect until the end of their 20-year designation period. Such zones shall be governed by the provisions of Chapter 49 (§ 59.1-538 et seq.).

1995, c. 792; 2005, cc. 863, 884.

Chapter 22.1 - THE VIRGINIA ECONOMIC DEVELOPMENT REVOLVING FUND [Repealed]

§§ 59.1-284.1 through 59.1-284.6. Repealed
Repealed by Acts 2005, c. 624, cl. 2.

Chapter 22.2 - THE BLUE RIDGE ECONOMIC DEVELOPMENT REVOLVING FUND [Repealed]

§§ 59.1-284.7 through 59.1-284.12. Repealed
Repealed by Acts 2004, c. 872.

Chapter 22.3 - SEMICONDUCTOR MANUFACTURING PERFORMANCE GRANT PROGRAMS [Repealed]

§§ 59.1-284.13 through 59.1-284.15:1. Repealed

Repealed by Acts 2015, c. 761, cl. 3, effective July 1, 2016.

Chapter 22.4 - INFORMATION TECHNOLOGY EMPLOYMENT PERFORMANCE GRANT PROGRAM [Repealed]

§§ 59.1-284.16 through 59.1284.19. Repealed

Repealed by Acts 2004, c. 872, cl. 13, effective May 4, 2005.

Chapter 22.5 - AEROSPACE ENGINE MANUFACTURING PERFORMANCE GRANT PROGRAM

§ 59.1-284.20. Aerospace Engine Manufacturing Performance Grant Program; eligible county

A. As used in this section:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including "controlled by" and "under common control with") shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"Capital investment" means an investment in real property, tangible personal property, or both, within the Commonwealth that is capitalized.

"Eligible county" means Prince George County.

"Grant" means the aerospace engine manufacturing performance grant as described in this section.

"Manufacture of aerospace engines" means (i) the manufacture or assembly and test of aircraft engines and engine parts; (ii) the design or development of aircraft engines and engine parts; or (iii) the manufacturing activities of a private company described under 2007 index number 336412 of the North American Industry Classification System.

"Memorandum of understanding" means a performance agreement entered into accordance with a memorandum of understanding entered into on November 20, 2007, among a qualified manufacturer, the Commonwealth, and others setting forth the requirements for capital investment and the creation of new full-time jobs that will make the qualified manufacturer eligible for a grant under this section.

"New full-time job" means employment of an indefinite duration in an eligible county, created as the direct result of new capital investment, for which the average annual wage is at least equal to the prevailing average annual wage in an eligible county and for which the standard fringe

benefits are paid by the qualified manufacturer, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such manufacturer's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs under this section. Other positions, which may or may not be of indefinite duration, including supplemental employees of affiliates, subsidiaries, joint ventures, contractors, or subcontractors may be considered new full-time jobs, if so designated in the memorandum of understanding between such manufacturer, the Commonwealth, and others as such memorandum of understanding was in effect on November 20, 2007.

"Qualified manufacturer" means a manufacturer that (i) is expected to make a capital investment of at least $500 million by June 30, 2023, in an eligible county related to the manufacture of aerospace engines and (ii) is expected to create at least 540 jobs in an eligible county for the manufacture of aerospace engines or activities ancillary or supportive of such manufacture.

"Secretary" means the Secretary of Commerce and Trade or his designee.

B. Any qualified manufacturer that, after July 1, 2008, first begins operations in an eligible county shall be eligible to receive a grant each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2013, and ending with the Commonwealth's fiscal year starting on July 1, 2022, unless such time frame is extended in accordance with subsection E. The grants under this section (i) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Aerospace Engine Manufacturing Performance Grant Fund, which Fund is hereby established on the books of the Comptroller, (ii) shall not exceed $35 million in the aggregate, and (iii) shall be paid to the qualified manufacturer during each fiscal year contingent upon the qualified manufacturer meeting the requirements for the aggregate (a) number of new full-time jobs created and the substantial retention of the same and (b) amount of the capital investment made and substantially retained as set forth in the memorandum of understanding.

C. If grants to be paid to qualified manufacturers under this section in a fiscal year exceed the aggregate amount available in the Aerospace Engine Manufacturing Performance Grant Fund for that year, each qualified manufacturer's grants for the year shall equal the amount of grants to which the qualified manufacturer would otherwise be eligible multiplied by a fraction. The numerator of the fraction shall equal the aggregate amount available for payment from the Aerospace Engine Manufacturing Performance Grant Fund for that fiscal year, and the denominator shall equal the aggregate dollar amount of grants to which all qualified manufacturers otherwise would be eligible for such fiscal year.

The aggregate amount of the grants payable under this section shall be subject to the following requirements and limitations:

1. Grants shall be awarded after July 1, 2013, and before July 1, 2023, unless such time frame is extended in accordance with subsection E.

2. The amount of the grant to be paid in each fiscal year shall be conditional upon the qualified manufacturer meeting the requirements for the (i) aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the end of such fiscal year, and (ii) aggregate amount of the capital investment made and substantially retained as of the last day of the calendar year that immediately precedes the end of such fiscal year as set forth in the memorandum of understanding entered into on November 20, 2007. Grants shall be paid based upon such requirements as agreed to on November 20, 2007, regardless if such memorandum of understanding is later modified, amended, superseded, or otherwise changed.

3. The aggregate amount of grants that may be awarded in a particular fiscal year shall not exceed the following:

a. $5.5 million for the Commonwealth's fiscal year beginning July 1, 2013;

b. $11 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2014;

c. $14 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2015;

d. $17 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2016;

e. $20 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2017;

f. $23 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2018;

g. $26 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2019;

h. $29 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2020;

i. $32 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2021; and

j. $35 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2022.

4. Grants provided by this section shall not exceed $35 million in the aggregate.

D. Any qualified manufacturer applying for a grant under this section shall provide evidence, satisfactory to the Secretary, of (i) the aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the end of the fiscal year in which the grant is to be paid, and (ii) the aggregate amount of the capital investment made and substantially retained as of the last day of the calendar year that immediately precedes the end of the fiscal year in which the grant is to be paid. The application and evidence shall be filed with the Secretary in person or by mail no later than April 1 each year following the calendar year in which the qualified manufacturer meets such aggregate new full-time job requirements and aggregate capital investment. Failure to meet the filing deadline shall result in a deferral of a scheduled grant payment set forth in subsection C. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

E. The memorandum of understanding may provide that if a grant payment has been deferred for any reason, including the initial failure to meet the aggregate capital investment and the aggregate new full-time job requirements set forth in the memorandum of understanding or the occurrence of any substantial reduction in such new full-time job requirements or capital investment requirements after such requirements have been met but before the grant payment has been made, payment in a subsequent fiscal year for which such requirements have been met for the immediately preceding calendar year shall include both the deferred payment and the scheduled grant payment as provided in subsection C.

F. Within 30 days after the filing deadline in subsection D, the Secretary shall certify to (i) the Comptroller and (ii) each qualified manufacturer the amount of the grant to which such qualified manufacturer is entitled under this section for payment in the current fiscal year. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller by June 30 of such fiscal year.

G. As a condition of receipt of a grant, a qualified manufacturer shall make available to the Secretary or his designee for inspection upon his request all relevant and applicable documents to determine whether the qualified manufacturer has met the requirements for the receipt of grants as set forth in this section and subject to the memorandum of understanding. The Comptroller shall not draw any warrants to issue checks for the grant program under this section without a specific appropriation for the same. All such documents appropriately identified by the qualified manufacturer shall be considered confidential and proprietary.

2008, cc. 256, 630.

§ 59.1-284.21. Aerospace Engine Manufacturing Supplier Cluster Bonus Performance Grant Program; eligible county

A. As used in this section:

"Affiliate" means the same as such term is defined in § 59.1-284.20.

"Capital investment" means the same as such term is defined in § 59.1-284.20.

"Eligible county" means Prince George County.

"Grant" means the aerospace engine manufacturing supplier cluster bonus performance grant as described in this section.

"Memorandum of understanding" means a performance agreement entered into accordance with a memorandum of understanding entered into on November 20, 2007, among a qualified manufacturer, the Commonwealth, and others setting forth the requirements for capital investment and the creation of new full-time jobs by qualified suppliers that will make the qualified manufacturer eligible for a grant under this section.

"New full-time job" means employment of an indefinite duration in the Commonwealth, created as the direct result of new capital investment, for which the average annual wage is at least equal to the prevailing average annual wage in the applicable locality and for which the standard fringe benefits are paid by the qualified supplier, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such supplier's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs under this section.

"Qualified manufacturer" means the same as such term is defined in § 59.1-284.20.

"Qualified supplier" means a manufacturer, assembler, distributor, or service provider on a qualified supplier list that (i) first begins doing business at a location within the Commonwealth or (ii) expands its business at a location within the Commonwealth subsequent to a qualified manufacturer commencing construction of a manufacturing, assembly, and testing facility in an eligible county. A "qualified supplier" shall deliver or provide ancillary parts, tools, or other components used by the qualified manufacturer within the Commonwealth or provide ancillary services within the Commonwealth for such qualified manufacturer. A qualified supplier shall not be an affiliate of a qualified manufacturer.

"Qualified supplier cluster" means the aggregate of qualified suppliers.

"Qualified supplier list" means a list of prospective qualified suppliers submitted by a qualified manufacturer to the Secretary no less frequently than annually.

"Secretary" means the Secretary of Commerce and Trade or his designee.

B. 1. Any qualified manufacturer who attracted a qualified supplier on its qualified supplier list (i) first beginning to do business at a location within the Commonwealth subsequent to the qualified manufacturer commencing construction in an eligible county or (ii) expanding its business at a location within the Commonwealth subsequent to the qualified manufacturer commencing construction in an eligible county shall be eligible for a grant under this section. However, no grant shall be paid to the qualified manufacturer unless the qualified supplier cluster (all of which qualified suppliers are on the qualified supplier list) subsequent to the qualified manufacturer

commencing construction in an eligible county makes the aggregate capital investment and meets the new full-time job requirements as set forth in this section. The grants under this section (a) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Aerospace Engine Manufacturing Supplier Cluster Grant Fund, which Fund is hereby established on the books of the Comptroller, (b) shall not exceed $5 million in the aggregate, and (c) shall be paid, as provided in this section, to the qualified manufacturer subject to the conditions of this section being met.

2. If the qualified supplier cluster has, subsequent to the qualified manufacturer commencing construction in an eligible county, (i) created and substantially retained at least 150 new full-time jobs within the Commonwealth, (ii) made and substantially retained at least $25 million worth of capital investment within the Commonwealth, and (iii) made a written certification to the Secretary that its decision to create such new full-time jobs and make such capital investment was based in part by the location of the qualified manufacturer and was in part for a purpose of providing ancillary parts, tools, or other components used by the qualified manufacturer within the Commonwealth or for providing ancillary services within the Commonwealth for such qualified manufacturer, then a grant payment in the amount of $2.5 million shall be paid to the qualified manufacturer as provided in subsection E. If the qualified supplier cluster has, subsequent to the qualified manufacturer commencing construction in an eligible county, (a) created and substantially retained at least 300 new full-time jobs within the Commonwealth, (b) made and substantially retained at least $50 million worth of capital investment within the Commonwealth, and (c) made a written certification to the Secretary that its decision to create such new full-time jobs and make such capital investment was based in part by the location of the qualified manufacturer and was in part for a purpose of providing ancillary parts, tools, or other components used by the qualified manufacturer within the Commonwealth or for providing ancillary services within the Commonwealth for such qualified manufacturer, then an aggregate amount of $5 million in grants shall be paid to the qualified manufacturer as provided in subsection E. In no case, however, shall the aggregate amount of grants payable to all qualified manufacturers pursuant to this section exceed $5 million and in no case shall more than $2.5 million in grants pursuant to this section be paid in a fiscal year. Upon receipt of such written certification by the qualified supplier cluster, the Secretary shall promptly notify the qualified manufacturer of the same for purposes of applying for a grant under this section.

The memorandum of understanding may provide that a qualified manufacturer shall be eligible for a reduced grant payment if at least 100 new full-time jobs have been created and substantially retained and at least one-third of the full $50 million capital investment has been made and substantially retained by the qualified supplier cluster. As described in the memorandum of understanding, in such case the reduction in the grant payments shall be proportional to the reduction in the new full-time jobs created and substantially retained and the reduction in the capital investment. Further, the memorandum of understanding may provide for deferred grant payments if the

capital investment and the new full-time jobs have been met, but a substantial reduction occurs in the capital investment or new full-time job requirements between the date such requirements were met and the date the grant payment is to be made.

C. If grants to be paid to qualified manufacturers under this section exceed the aggregate amount of grants payable in a fiscal year, each eligible qualified manufacturer's grant for the year shall equal the amount of the grant to which the qualified manufacturer would otherwise be entitled multiplied by a fraction. The numerator of the fraction shall equal the amount of the grant payable in the fiscal year, and the denominator shall equal the aggregate dollar amount of requests for grants to which all qualified manufacturers otherwise would be eligible for such fiscal year.

D. Any qualified manufacturer applying for a grant under this section shall provide evidence, satisfactory to the Secretary, of (i) the number of new full-time jobs created and substantially retained by a qualified supplier on a qualified supplier list as described in subdivision B 2, and (ii) the aggregate capital investment made and substantially retained by a qualified supplier on a qualified supplier list as described in subdivision B 2. The application and evidence shall be filed with the Secretary in person or by mail by between July 1 and August 31.

E. Within 30 days after filing of the application described in subsection D, the Secretary shall certify to (i) the Comptroller and (ii) each qualified manufacturer the amount of the grant to which such qualified manufacturer is entitled under this section. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller, and such payment shall be made in the fiscal year that immediately follows the fiscal year in which the qualified manufacturer had applied for the grant.

F. As a condition of receipt of a grant, a qualified manufacturer shall make available to the Secretary or his designee for inspection upon his request all relevant and applicable documents to determine the aggregate number of new full-time jobs created by the qualified supplier cluster as described in subdivision B 2, the average wages paid for such jobs, the prevailing average wage in the localities in which such jobs are located, and the aggregate amount of capital investment made by the qualified supplier cluster as described in subdivision B 2.

The Comptroller shall not draw any warrants to issue checks for any grant under this section without a specific legislative appropriation. All such documents appropriately identified by the qualified manufacturer shall be considered confidential and proprietary.

2008, cc. 256, 630.

§ 59.1-284.22. Aerospace Engine Manufacturer Workforce Training Grant Fund; eligible county

A. As used in this section:

"Affiliate" means the same as that term is defined in § 59.1-284.20.

"Capital investment" means the same as that term is defined in § 59.1-284.20.

"Eligible county" means Prince George County.

"Full-time" means employment of an indefinite duration for which the standard fringe benefits are paid, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the employer's operations, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year. The term "full-time" shall not include seasonal or temporary positions or positions created when a job function is shifted from an existing location in the Commonwealth.

"Grant" means the special training grant or supplemental training grant as described in this section.

"Qualified employee" means an individual hired in the Commonwealth on or after November 20, 2007, by an entity that is a qualified manufacturer or by an affiliate thereof, who (i) is employed by the qualified manufacturer or by an affiliate for at least 90 days, and (ii) works on a full-time basis for the qualified manufacturer or for an affiliate for at least such 90-day period.

"Qualified manufacturer" means the same as such term is defined in § 59.1-284.20.

"Secretary" means the Secretary of Commerce and Trade or his designee.

"Special training grant" means a $9,000 allocation from the Aerospace Engine Manufacturer Workforce Training Grant Fund per new qualified employee, as described in this section. The aggregate amount of special training grants under this section shall not exceed $5,778,000.

"Supplemental training grant" means a one-time $3 million allocation from the Aerospace Engine Manufacturer Workforce Training Grant Fund, as described in this section.

B. Grants paid to the qualified manufacturer pursuant to this section are intended to be used for workforce development, instructional, or training purposes so as to enhance the skill sets of qualified employees.

C. Any qualified manufacturer that is eligible to receive a special training grant shall (i) report to the Secretary quarterly the number of new qualified employees hired and trained who have been employed for at least 90 days and for whom a special training grant has not been previously paid pursuant to this section, and (ii) provide evidence of the hiring and training of the new qualified employees described in clause (i). The application and evidence shall be filed with the Secretary in person or by mail. For filings by mail, the postmark cancellation shall govern the date of the filing determination. Within 30 days after such evidence has been provided by the qualified manufacturer, the Secretary shall certify to (a) the Comptroller and (b) each qualified manufacturer the amount of the special training grant to which such qualified manufacturer is entitled under this section for payment within 60 days after such certification. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.

The special training grants under this section (1) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Aerospace Engine Manufacturer Workforce Training Grant Fund, which Fund is hereby established on the books of the Comptroller, (2) shall not

exceed $5,778,000 in the aggregate, and (3) shall be paid to or for the benefit of the qualified manufacturer on a quarterly basis.

D. A supplemental training grant shall be paid to any qualified manufacturer that has made an aggregate capital investment of at least $153.9 million in the eligible county and has hired at least 176 new qualified employees, excluding any qualified employee who has been rehired by the qualified manufacturer or an affiliate thereof or who is employed in a different position with the qualified manufacturer or an affiliate thereof. On or before June 30, 2010, and on or before each June 30 thereafter until the supplemental training grant has been paid, the qualified manufacturer shall provide written notification to the Secretary whether it has met or expects to meet the aggregate capital investment and employee requirements by the end of the current calendar year. If it has met or expects to meet such requirements by the end of the calendar year, the qualified manufacturer shall provide evidence of the same, satisfactory to the Secretary, with the written notification. The written notification and evidence shall be filed with the Secretary in person or by mail. For filings by mail, the postmark cancellation shall govern the date of the filing determination. Within 10 days after such notification and evidence have been provided by the qualified manufacturer, the Secretary shall certify to (i) the Comptroller and (ii) each qualified manufacturer the amount of the supplemental training grant to which such qualified manufacturer is entitled under this section for payment in the current fiscal year. Payment of such grant shall be made by check issued by the Treasurer of Virginia on warrant of the Comptroller.

The supplemental training grant shall not be paid prior to July 1, 2010. The supplemental training grant (a) shall be paid, subject to appropriation by the General Assembly, from the Aerospace Engine Manufacturer Workforce Training Grant Fund, (b) shall be equal to $3 million, and (c) shall, subject to appropriation by the General Assembly, be paid to the qualified manufacturer by the end of the applicable fiscal year, as described herein. No more than $3 million in supplemental training grants shall be paid pursuant to this section.

E. If grants to be paid to qualified manufacturers under this section in a fiscal year exceed the aggregate amount available in the Aerospace Engine Manufacturer Workforce Training Grant Fund for that year, each qualified manufacturer's grants for the year shall equal the amount of grants to which the qualified manufacturer would otherwise be eligible multiplied by a fraction. The numerator of the fraction shall equal the aggregate amount available for payment from the Aerospace Engine Manufacturer Workforce Training Grant Fund for that fiscal year, and the denominator shall equal the aggregate dollar amount of grants to which all qualified manufacturers otherwise would be eligible for such fiscal year.

F. Notwithstanding any other provision of this section, in lieu of payment of special training grants by check to qualified manufacturers, the Secretary may determine that such special training grants shall be administered in a manner similar to existing training grant programs such as those permitted by § 2.2-2240.3.

G. As a condition of receipt of a grant, a qualified manufacturer shall make available to the Secretary or his designee for inspection upon his request all relevant and applicable documents to determine the aggregate number of new qualified employees hired and the aggregate amount of capital investment. The Comptroller shall not draw any warrants to issue checks for a special training grant or a supplemental training grant under this section without a specific appropriation for the same. All such documents appropriately identified by the qualified manufacturer shall be considered confidential and proprietary.

2008, cc. 256, 630; 2013, c. 482; 2014, cc. 41, 464.

Chapter 22.6 - ADVANCED SHIPBUILDING TRAINING FACILITY GRANT PROGRAM

§ 59.1-284.23. Advanced Shipbuilding Training Facility Grant Program; eligible city

A. As used in this section:

"Advanced shipbuilding" means (i) the manufacture, construction, assembly, overhaul, repair, and test of nuclear vessels and submarines for the U.S. Navy; (ii) the design or development of nuclear vessels and submarines for the U.S. Navy; or (iii) the manufacturing activities of a private company described under 2007 index number 336611 of the North American Industry Classification System.

"Base training expense" means the total expenditures made by a qualified shipbuilder in 2008 that directly and indirectly support training activities.

"Capital investment" means an investment in real property, tangible personal property, or both, within the Commonwealth.

"Eligible city" means the City of Newport News or its industrial development authority.

"Grant" means the advanced shipbuilding training facility grant as described in this section.

"Memorandum of understanding" means a performance agreement entered into on or before August 31, 2011, among a qualified shipbuilder, the Commonwealth, and others as appropriate, such as the eligible city, setting forth the requirements for capital investment, training costs, and the creation of new full-time jobs that will make the qualified shipbuilder eligible for a grant under this section.

"New full-time job" means employment of an indefinite duration in an eligible city, created as the direct result of capital investment, for which the average annual wage is at least equal to the prevailing average annual wage in an eligible city and for which the standard fringe benefits are paid by the qualified shipbuilder, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such qualified shipbuilder's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs under this section. Other positions, which may

or may not be of indefinite duration, including supplemental employees of affiliates, subsidiaries, joint ventures, contractors, or subcontractors of the qualified shipbuilder, may be considered new full-time jobs, if so designated as such in the memorandum of understanding between such qualified shipbuilder, the Commonwealth, and others.

"New training facility" means a facility that, pursuant to a Memorandum of Agreement with the Secretary, is to be operated by the qualified shipbuilder for use by the shipbuilding industry, primarily to provide education, training and retraining of workers in the shipbuilding industry. Such training facility may be owned by the qualified shipbuilder, or may be operated by the qualified shipbuilder through a lease agreement with the eligible city, a local industrial development authority, or a private developer.

"Qualified shipbuilder" means a shipbuilder located in an eligible city that (i) makes a new capital investment of at least $300 million from January 1, 2009 through December 31, 2011, related to advanced shipbuilding in an eligible city; (ii) creates at least 1,000 new full-time jobs in an eligible city for advanced shipbuilding or activities ancillary to or supportive of advanced shipbuilding; (iii) maintains an apprenticeship program accredited by the Council for Occupational Education with an average annual enrollment of at least 750 and articulation agreements with local community colleges that allow its graduates to qualify for accredited associate degrees from those institutions; and (iv) maintains a level of expenditures directly or indirectly supporting training activities, which level is at least equal to the base training expense.

"Secretary" means the Secretary of Commerce and Trade or his designee.

B. Any qualified shipbuilder located in an eligible city shall be eligible to receive a grant each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2012, and ending with the Commonwealth's fiscal year starting on July 1, 2016, unless such time frame is extended in accordance with subsection C or D. The grants under this section (i) shall be paid, subject to appropriation by the General Assembly, from a fund entitled the Advanced Shipbuilding Training Facility Fund, which Fund is hereby established on the books of the Comptroller; (ii) shall not exceed $25 million in the aggregate; (iii) shall be paid to a qualified shipbuilder during each fiscal year contingent upon the qualified shipbuilder meeting the requirements for the aggregate of (a) number of new full-time jobs created and the substantial retention of the same, (b) maintenance of base training expenses, and (c) amount of the capital investment made and substantially retained, as set forth in the memorandum of understanding; and (iv) shall be expended by the qualified shipbuilder on training costs or to pay the capital or lease cost of any new training facility to provide that training.

1. The amount of the grant to be paid in each fiscal year shall be conditional upon the qualified shipbuilder meeting the requirements for (i) the aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the beginning of such fiscal year; (ii) the aggregate amount of the capital investment made and

substantially retained as of the last day of the calendar year that immediately precedes the beginning of such fiscal year; and (iii) maintaining a level of expenditures directly or indirectly supporting training activities, which level is at least equal to the base training expense. If the qualified shipbuilder has not fully met the grant requirements by December 31, 2011, the period of eligibility may be extended for up to three years, provided that the grants in any given fiscal year shall not exceed $5 million, plus any amounts deferred in accordance with subsection C or D. Grants shall be paid based upon such requirements as agreed to on or before August 31, 2011, regardless if such memorandum of understanding is later modified, amended, superseded, or otherwise changed;

2. The aggregate amount of grants that may be awarded in a particular fiscal year shall not exceed the following:

a. $5 million for the Commonwealth's fiscal year beginning July 1, 2012;

b. $10 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2013;

c. $15 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2014;

d. $20 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2015; and

e. $25 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2016; and

3. Grants provided by this section shall not exceed $25 million in the aggregate or the aggregate total of training costs expended by a qualified shipbuilder during the period, whichever is less.

C. Any qualified shipbuilder applying for a grant under this section shall provide evidence, satisfactory to the Secretary, of (i) the aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the beginning of the fiscal year in which the grant is to be paid; (ii) the aggregate amount of the capital investment made and substantially retained as of the last day of the calendar year that immediately precedes the beginning of the fiscal year in which the grant is to be paid; and (iii) the aggregate amount of base training expenses as of the last day of the calendar year that immediately precedes the beginning of the fiscal year in which the grant is to be paid. The application and evidence shall be filed with the Secretary in person or by mail no later than April 1 each year following the calendar year in which the qualified shipbuilder meets such aggregate new full-time job requirements and aggregate capital investments. Failure to meet the filing deadline shall result in a deferral of a scheduled grant payment set forth in subsection B. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

D. The memorandum of understanding may provide that if a grant payment has been deferred for any reason, including the initial failure to meet the aggregate capital investment or the aggregate new full-time job requirements or the aggregate base training expenses set forth in the memorandum of understanding or the occurrence of any substantial reduction in such new full-time job requirements or capital investment requirements after such requirements have been met but before the grant payment has been made, payment in a subsequent fiscal year for which such requirements have been met for the immediately preceding calendar year shall include both the deferred payment and the scheduled grant payment as provided in subsection B or that a proportional payment, based on the proportional share of the required additional full-time jobs, be made.

E. As a condition of receipt of a grant, a qualified shipbuilder shall make available to the Secretary or his designee for inspection upon his request relevant and applicable documents to determine whether the qualified shipbuilder has met the requirements for the receipt of grants as set forth in this section and subject to the memorandum of understanding. The Comptroller shall not draw any warrants to issue checks for the grant program under this section without a specific appropriation for the same. All such documents appropriately identified by the qualified shipbuilder shall be considered confidential and proprietary.

F. An eligible city shall be eligible to receive a grant from the Advanced Shipbuilding Training Facility Fund established under subsection B each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2012. The grants under this subsection may be paid to the eligible city subject to a memorandum of understanding between the Secretary, the eligible city, and the qualified shipbuilder that provides that (i) the eligible city or a private developer will build a new training facility for use by the qualified shipbuilder and the qualified shipbuilder will use the new training facility during the grant period; (ii) the new training facility is part of a development plan approved by the eligible city and the qualified shipbuilder that includes additional private capital investment adjacent to the new training facility that is equal to or greater than the cost of the facility; and (iii) the qualified shipbuilder waives its right to apply for grants under subsection B. Grants to an eligible city may be used only for the construction, lease, or lease-purchase of the new training facility, including related debt service or repayment of any loans whose proceeds are used for such costs. The memorandum of understanding may provide for a total amount of grants under this subsection of not more than $42 million, subject to appropriation by the General Assembly, and for a period of eligibility of up to 10 years, unless such time frame is extended in accordance with subsection C or D, and may provide for a contractual agreement for payments by the Commonwealth. At the conclusion of the grant period, the qualified shipbuilder shall have the right to assume ownership of the new training facility.

2009, cc. 798, 850; 2011, c. 749.

Chapter 22.7 - SPECIALIZED BIOTECHNOLOGY RESEARCH PERFORMANCE GRANT PROGRAM

§ 59.1-284.24. Repealed

Repealed by Acts 2015, c. 761, cl. 4.

Chapter 22.8 - CLEAN ENERGY MANUFACTURING INCENTIVE GRANT PROGRAM

§§ 59.1-284.25 through 59.1-284.27. Repealed

Repealed by Acts 2015, c. 761, cl. 4.

Chapter 22.9 - PULP, PAPER, AND FERTILIZER ADVANCED MANUFACTURING PERFORMANCE GRANT PROGRAM

§ 59.1-284.28. Pulp, Paper, and Fertilizer Advanced Manufacturing Performance Grant Program and Fund

A. As used in this section:

"Capital investment" means an investment in real property, tangible personal property, or both, made or caused to be made by a qualified entity in a facility.

"Eligible county" means Chesterfield County.

"Facility" means any facility that, pursuant to a memorandum of understanding, is to be owned or leased by the qualified entity and operated by the qualified entity for the manipulation and manufacture of pulp, paper, and fertilizer products.

"Grant" means an installment of the pulp, paper, and fertilizer advanced manufacturing performance grant paid in a particular fiscal year as described in this section.

"Memorandum of understanding" means a performance agreement to be entered into by July 31, 2015, by a qualified entity and the Commonwealth setting forth the requirements for capital investment, the creation of new full-time jobs, and other criteria that will make the qualified entity eligible for grants under this section.

"New full-time job" means employment of an indefinite duration in a facility, for which the average annual wage is at least equal to the prevailing average annual wage in an eligible county and for which the standard fringe benefits are provided by the qualified entity, requiring a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of such qualified entity's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions and positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as new full-time jobs under this section. Other positions, which may or may not be of indefinite duration, including supplemental employ-

ees of affiliates, subsidiaries, joint ventures, contractors, or subcontractors of the qualified entity, may be considered new full-time jobs if designated as such in the memorandum of understanding.

"Qualified entity" means a for-profit corporation or other entity that is or will be engaged in the manipulation and manufacture of pulp, paper, and fertilizer products and that will commit itself in the memorandum of understanding to (i) make or cause to be made a new capital investment of at least $2 billion on or after July 1, 2014, at a facility; (ii) create or cause to be created, on or after July 1, 2014, at least 2,000 new full-time jobs related to the qualified entity's operations; and (iii) meet the other criteria set forth in the memorandum of understanding.

"Secretary" means the Secretary of Commerce and Trade or his designee.

B. 1. Any qualified entity shall be eligible to receive a grant each fiscal year beginning with the Commonwealth's fiscal year starting on July 1, 2016, and ending with the Commonwealth's fiscal year starting on July 1, 2022, unless such time frame is extended in accordance with this section. The grants under this section (i) shall be paid, subject to appropriation by the General Assembly, from a nonreverting fund entitled the Pulp, Paper, and Fertilizer Advanced Manufacturing Performance Grant Program Fund, which Fund is hereby established on the books of the Comptroller; (ii) shall not exceed $20 million in the aggregate; (iii) shall be paid to a qualified entity during each fiscal year contingent upon the qualified entity's meeting the requirements for the creation of new full-time jobs, new capital investment, and other criteria set forth in the memorandum of understanding; and (iv) shall be expended by or for the benefit of the qualified entity on the costs of developing a facility or establishing or maintaining the qualified entity's operations.

2. The amount of the grant to be paid in each fiscal year shall be conditioned upon the qualified entity's meeting the requirements for (i) the aggregate number of new full-time jobs created throughout the calendar year that immediately precedes the beginning of such fiscal year, (ii) the aggregate amount of the capital investment made throughout the calendar year that immediately precedes the beginning of such fiscal year, and (iii) other criteria described in the memorandum of understanding. If the qualified entity has not met the grant requirements set forth in the memorandum of understanding by December 31, 2020, the period of eligibility may be extended for up to three years, provided that the grants paid in any given fiscal year shall not exceed $3 million, plus any amounts deferred in accordance with subsection C or D. Grants shall be paid based upon such requirements as agreed to on or before July 31, 2015, regardless if such memorandum of understanding is later modified, amended, superseded, or otherwise changed.

3. The aggregate amount of grants that may be awarded in a particular fiscal year shall not exceed the following:

a. $2 million for the Commonwealth's fiscal year beginning July 1, 2016;

b. $5 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2017;

c. $8 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2018;

d. $11 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2019;

e. $14 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2020;

f. $17 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2021; and

g. $20 million, less the total amount of grants previously awarded pursuant to this subsection, for the Commonwealth's fiscal year beginning July 1, 2022.

C. Any qualified entity applying for a grant under this section shall provide evidence, satisfactory to the Secretary, of (i) the aggregate number of new full-time jobs created and the substantial retention of the same throughout the calendar year that immediately precedes the fiscal year in which the grant is to be paid, (ii) the aggregate amount of the capital investment made and substantially retained as of the last day of the calendar year that immediately precedes the fiscal year in which the grant is to be paid, and (iii) progress toward meeting all other requirements described in the memorandum of understanding. The application and evidence shall be filed with the Secretary in person or by mail no later than April 1 of each year following the calendar year in which the qualified entity meets such aggregate new full-time job requirements, aggregate capital investments, and other requirements described in the memorandum of understanding. Failure to meet the filing deadline shall result in a deferral of a scheduled grant payment set forth in subsection B. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

D. The memorandum of understanding may provide that if a grant payment has been deferred for any reason, including any failure to meet the aggregate capital investment or the aggregate new full-time job requirements or any other requirement set forth in the memorandum of understanding, payment in a subsequent fiscal year for which such requirements have been met for the immediately preceding calendar year (i) shall include both the deferred payment and the scheduled grant payment as provided in subsection B or (ii) that a proportional payment be made, based on the proportional share of the required capital investment, new additional full-time jobs, or other applicable criteria.

E. As a condition of receipt of a grant, a qualified entity shall make available to the Secretary for inspection upon his request relevant and applicable documents to determine whether the qualified entity has met the requirements for the receipt of grants as set forth in this section and the memorandum of understanding. The Comptroller shall not draw any warrants to issue checks for the grant program under this section without a specific appropriation for the same. All such documents appropriately identified by the qualified entity shall be considered confidential and proprietary.

2015, c. 207.

Chapter 23 - CIGARETTE SALES BELOW WHOLESALE COST ACT [Repealed]

§§ 59.1-285 through 59.1-293. Repealed
Repealed by Acts 1986, c. 424.

Chapter 23.1 - REDUCED CIGARETTE IGNITION PROPENSITY

§§ 59.1-293.1 through 59.1-293.9. Repealed
Repealed by Acts 2014, cc. 370 and 418, cl. 2.

Chapter 23.2 - LIQUID NICOTINE

§ 59.1-293.10. Definitions
As used in this chapter, unless the context requires another meaning:

"Child-resistant packaging" means packaging that is designed or constructed to meet the child-resistant effectiveness standards set forth in 16 C.F.R. § 1700.15(b)(1) when tested in accordance with the protocols described in 16 C.F.R. § 1700.20 as in effect on July 1, 2015.

"Liquid nicotine" means a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in a nicotine vapor product.

"Liquid nicotine container" means a bottle or other container holding liquid nicotine in any concentration but does not include a cartridge containing liquid nicotine if such cartridge is prefilled and sealed by the manufacturer of such cartridge and is not intended to be opened by the consumer.

"Nicotine vapor product" has the same meaning as in § 18.2-371.2.

2015, cc. 739, 756.

§ 59.1-293.11. Sale or distribution of liquid nicotine container; prohibition; penalty
A. No person shall sell or distribute at retail or offer for retail sale or distribution a liquid nicotine container in the Commonwealth on or after October 1, 2015, unless such liquid nicotine container meets child-resistant packaging standards.

B. The requirements of subsection A shall not prohibit a wholesaler or retailer from selling its existing inventory of liquid nicotine until January 1, 2016, if the wholesaler or retailer can establish that the inventory was purchased prior to October 1, 2015, in a quantity comparable to that of the inventory purchased during the same period of the prior year.

C. Any person who sells or distributes at retail or offers for retail sale or distribution a liquid nicotine container in the Commonwealth on or after October 1, 2015, that he knows or has reason to know does not satisfy the child-resistant packaging standards required by this section is guilty of a Class 4 misdemeanor. However, no person shall be guilty of a violation of this section who relies

in good faith on any information provided by the manufacturer of a liquid nicotine container that such container meets the requirements of this section.

D. The provisions of this chapter do not apply to any manufacturer or wholesaler of liquid nicotine containers who sells or distributes a liquid nicotine container, provided that any such liquid nicotine container sold or distributed is intended for use outside of the Commonwealth.

E. The provisions of subsection A shall be null, void, and of no force and effect upon the effective date of either enacted federal legislation or final regulations issued by the U.S. Food and Drug Administration or by any other federal agency where such legislation or regulations mandate child-resistant packaging for liquid nicotine containers.

2015, cc. 739, 756.

Chapter 24 - VIRGINIA HEALTH CLUB ACT

§ 59.1-294. Short title

This chapter shall be known and may be cited as the "Virginia Health Club Act."

1984, c. 738; 2014, c. 459.

§ 59.1-295. Statement of purpose

The purpose of this chapter is to safeguard the public interest against fraud, deceit, and financial hardship, and to foster and encourage competition, fair dealing and prosperity in the field of health club services by prohibiting false and misleading advertising, and dishonest, deceptive, and unscrupulous practices by which the public has been injured in connection with contracts for health club services.

1984, c. 738; 2014, c. 459.

§ 59.1-296. Definitions

As used in this chapter:

"Business day" means any day except a Sunday or a legal holiday.

"Buyer" means a natural person who enters into a health club contract.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Comparable alternate facility" means a health club facility that is reasonably of like kind, in nature and quality, to the health club facility originally contracted, whether such facility is in the same location but owned or operated by a different health club or is at another location of the same health club.

"Contract price" means the sum of the initiation fee, if any, and all monthly fees except interest required by the health club contract.

"Facility" means a location where health club services are offered as designated in a health club contract.

"Health club" means any person, firm, corporation, organization, club or association whose primary purpose is to engage in the sale of memberships in a program consisting primarily of physical exercise with exercise machines or devices, or whose primary purpose is to engage in the sale of the right or privilege to use exercise machines or devices. The term "health club" shall not include the following: (i) bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or similar organizations whose functions as health clubs are only incidental to their overall functions and purposes; (ii) any private club owned and operated by its members; (iii) any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate; (iv) any facility owned or operated by the United States; (v) any facility owned or operated by the Commonwealth of Virginia or any of its political subdivisions; (vi) any nonprofit public or private school, college or university; (vii) any club providing tennis or swimming facilities located in a residential planned community or subdivision, developed in conjunction with the development of such community or subdivision, and deriving at least 80 percent of its membership from residents of such community or subdivision; and (viii) any facility owned and operated by a private employer exclusively for the benefit of its employees, retirees, and family members and which facility is only incidental to the overall functions and purposes of the employer's business and is operated on a nonprofit basis.

"Health club contract" means an agreement whereby the buyer of health club services purchases, or becomes obligated to purchase, health club services.

"Health club services" means and includes services, privileges, or rights offered for sale or provided by a health club.

"Initiation fee" means a nonrecurring fee charged at or near the beginning of a health club membership, and includes all fees or charges not part of the monthly fee.

"Monthly fee" means the total consideration, including but not limited to, equipment or locker rental, credit check, finance, medical and dietary evaluation, class and training fees, and all other similar fees or charges and interest, but excluding any initiation fee, to be paid by a buyer, divided by the total number of months of health club service use allowed by the buyer's contract, including months or time periods called "free" or "bonus" months or time periods and such months or time periods that are described in any other terms suggesting that they are provided free of charge, which months or time periods are given or contemplated when the contract is initially executed.

"Out of business" means the status of a facility that is permanently closed and for which there is no comparable alternate facility.

"Prepayment" means payment of any consideration for services or the use of facilities made prior to the day on which the services or facilities of the health club are fully open and available for regular use by the members.

"Relocation" means the provision of health club services by the health club that entered into the membership contract at a location other than that designated in the member's contract.

1984, c. 738; 1985, c. 585; 1986, c. 187; 1990, cc. 392, 433; 1991, c. 149; 1992, c. 102; 2003, c. 344; 2007, c. 683; 2010, c. 439; 2014, c. 459.

§ 59.1-296.1. Registration; fees

A. It shall be unlawful for any health club to offer, advertise, or execute or cause to be executed by the buyer any health club contract in this Commonwealth unless each facility of the health club has been properly registered with the Commissioner at the time of the offer, advertisement, sale or execution of a health club contract. The registration shall (i) disclose the address, ownership, date of first sales and date of first opening of the facility and such other information as the Commissioner may require consistent with the purposes of this chapter, (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee per each annual registration in the amount indicated below:

Number of unexpired contracts originally written for more than one month	Registration fee
0 to 250	$200
251 to 500	$300
501 to 2000	$700
2001 or more	$800

Further, it shall be accompanied by a late fee of $50 if the registration renewal is neither postmarked nor received on or before July 1. In the event that a club operates multiple facilities, a $50 late fee for the first facility and $25 for each additional facility shall accompany the registrations. For each successive 30 days after August 1, an additional $25 shall be added for each facility. Each separate facility where health club services are offered shall be considered a separate facility and shall file a separate registration, even though the separate facilities are owned or operated by the same health club.

B. Any health club that sells a health club contract prior to registering pursuant to this section and, if required, submits the appropriate surety required by § 59.1-306 shall pay a late filing fee of $100 for each 30-day period the registration or surety is late. This fee shall be in addition to all other penalties allowed by law.

C. A registration shall be amended within 21 days if there is a change in the information included in the registration.

D. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

1985, c. 585; 1988, c. 13; 1990, cc. 392, 433; 2010, c. 439; 2014, c. 459.

§ 59.1-296.2. Contracts sold on prepayment basis

A. Each health club selling contracts or health club services on a prepayment basis shall notify the Commissioner of the proposed facility for which prepayments will be solicited and shall deposit all funds received from such prepayment contracts in an account established in a financial institution authorized to transact business in the Commonwealth until the health club has commenced operations in the facility and the facility has remained open for a period of 30 days. The account shall be established and maintained only in a financial institution that agrees in writing with the Commissioner to hold all funds deposited and not to release such funds until receipt of written authorization from the Commissioner. The prepayment funds deposited will be eligible for withdrawal by the health club after the facility has been open and providing services pursuant to its health club contracts for 30 days and the Commissioner gives written authorization for withdrawal.

B. The provisions of this section shall not apply to any facility duly registered pursuant to the provisions of § 59.1-296.1 for which a bond or letter of credit in the amount of $100,000 has been posted.

1985, c. 585; 1990, cc. 392, 433; 2010, c. 439; 2014, c. 459.

§ 59.1-296.2:1. Prepayment contracts; prohibited practices; relocation; refund

A. No health club shall sell a health club contract on a prepayment basis without disclosing in the contract the date on which the facility shall open. The opening date shall not be later than 12 months from the signing of the contract.

B. No health club shall close or relocate any facility without first giving notice to the Commissioner and conspicuously posting a notice both within and outside each entrance to the facility being closed or relocated of the closing or relocation date. Such notice shall be provided at least 30 days prior to the closing or relocation date. If a relocation is to occur, the Commissioner and the facility's members shall be provided with the address of the specific new facility at the time of this notice.

C. No health club shall knowingly and willfully make any false statement in any registration application, statement, report, or other disclosure required by this chapter.

D. No health club shall refuse or fail, after notice from the Commissioner, to produce for the Commissioner's review any of the health club's books or records required to be maintained by this chapter.

E. Unless it so discloses fully in 10-point bold-faced type or larger on the face of each health club contract, no health club shall sell any health club contract if any owner of the health club,

regardless of the extent of his ownership, previously owned in whole or in part a health club that closed for business any facility and failed to:

1. Refund all moneys due to holders of health club contracts; or

2. Provide comparable alternate facilities with another health club that agreed in writing to honor all provisions of the health club contracts or at another facility operated by the originally contracting health club.

F. No health club that has failed to provide the Commissioner the appropriate surety pursuant to § 59.1-306 shall sell a health club contract unless that contract contains a statement that reads as follows: "This club is not permitted, pursuant to the Virginia Health Club Act, to accept any initiation fee in excess of $125 or any payment for more than the prorated monthly fee for the month when the contract is initially executed plus one full month in advance."

Such disclosure shall be printed in 10-point bold-faced type or larger on the face of each contract.

1990, cc. 392, 433; 1993, c. 686; 2003, c. 344; 2004, c. 988; 2010, c. 439; 2014, c. 459.

§ 59.1-296.3. Initiation fees

Whenever a refund is due a buyer, any initiation fee charged by a health club shall be prorated over the life of the contract or 12 months, whichever is greater.

1985, c. 585; 1990, cc. 392, 433; 2014, c. 459.

§ 59.1-297. Right of cancellation

A. Every health club contract for the sale of health club services may be cancelled under the following circumstances:

1. A buyer may cancel the contract without penalty within three business days of its making and, upon notice to the health club of the buyer's intent to cancel, shall be entitled to receive a refund of all moneys paid under the contract.

2. A buyer may cancel the contract if the facility relocates or goes out of business and the health club fails to provide comparable alternate facilities within five driving miles of the location designated in the health club contract. Upon receipt of notice of the buyer's intent to cancel, the health club shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1.

3. The contract may be cancelled if the buyer dies or becomes physically unable to use a substantial portion of the services for 30 or more consecutive days. If the buyer becomes physically unable to use a substantial portion of the services for 30 or more consecutive days and wishes to cancel his contract, he must provide the health club with a signed statement from his doctor, physician assistant, or nurse practitioner verifying that he is physically unable to use a substantial portion of the health club services for 30 or more consecutive days. Upon receipt of notice of the buyer's intent to cancel, the health club shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1. In the case of

disability, the health club may require the buyer to submit to a physical examination by a doctor, physician assistant, or nurse practitioner agreeable to the buyer and the health club within 30 days of receipt of notice of the buyer's intent to cancel. The cost of the examination shall be borne by the health club.

B. The buyer shall notify the health club of cancellation in writing, by certified mail, return receipt requested, or personal delivery, to the address of the health club as specified in the health club contract.

C. If the customer has executed any credit or lien agreement with the health club or its representatives or agents to pay for all or part of health club services, any such negotiable instrument executed by the buyer shall be returned to the buyer within 30 days after such cancellation.

D. If the club agrees to allow a consumer to cancel for any other reason not outlined in this section, upon receipt of notice of cancellation by the buyer, the health club shall refund to the buyer funds paid or accepted in payment of the contract in an amount computed as prescribed in § 59.1-297.1.

1984, c. 738; 1990, cc. 392, 433; 2003, c. 344; 2004, c. 855; 2006, c. 396; 2010, c. 439; 2014, c. 459.

§ 59.1-297.1. Payment and calculation of refunds

A. All refunds for cancellation of membership shall be paid within 30 days of the health club's receipt of written notice of cancellation by the buyer and calculated by:

1. Dividing the contract price by the term of the contract in days;

2. Multiplying the number obtained in subdivision 1 by the number of days between the effective date of the contract and the date of cancellation; and

3. Subtracting the number obtained in subdivision 2 from the total price paid on the health club contract.

B. In the event of the health club going out of business, the date of cancellation shall be the date the health club ceased providing health club services at the facility.

C. A health club issuing a refund to a buyer under this chapter shall do so within 30 days of the health club receiving a notice of cancellation pursuant to § 59.1-297, or within 30 days of the permanent closing of the facility designated in the buyer's contract.

2003, c. 344; 2010, c. 439; 2014, c. 459.

§ 59.1-297.2. Automatic termination of a health club contract

A health club contract shall be considered terminated automatically if the designated facility closes permanently and the health club does not provide a comparable alternate facility. A facility closes temporarily if it closes for a reasonable period of time (i) for renovations to all or a portion of the facility, (ii) because the lease for the facility has been canceled, or (iii) because of a fire, or a

flood or other act of God, or other cause not within the reasonable control of the health club. If a facility closes temporarily, it shall within 14 days from the time of the temporary closing provide notice of the date it expects to reopen, which date shall be within a reasonable period of time from the time the facility temporarily closes, to the Commissioner and shall conspicuously post such notice both within and outside each entrance to the facility.

2003, c. 344; 2010, c. 439; 2014, c. 459.

§ 59.1-298. Notice to buyer

A copy of the executed health club contract shall be delivered to the buyer at the time the contract is executed. All health club contracts shall (i) be in writing, (ii) state the name and physical address of the health club, (iii) be signed by the buyer, (iv) designate the date on which the buyer actually signed the contract, (v) state the starting and expiration dates of the initial membership period, (vi) separately identify any initiation fee, (vii) either in the contract itself or in a separate notice provided to the buyer at the time the contract is executed, notify each buyer that the buyer should attempt to resolve with the health club any complaint the buyer has with the health club, and that the Virginia Department of Agriculture and Consumer Services regulates health clubs in the Commonwealth pursuant to the provisions of the Virginia Health Club Act, and (viii) contain the provisions set forth in § 59.1-297 under a conspicuous caption: "BUYER'S RIGHT TO CANCEL" that shall read substantially as follows:

If you wish to cancel this contract, you may cancel by making or delivering written notice to this health club. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be delivered or mailed to _____ (Health club shall insert its name and mailing address).

If canceled within three business days, you will be entitled to a refund of all moneys paid. You may also cancel this contract if this club goes out of business or relocates and fails to provide comparable alternate facilities within five driving miles of the facility designated in this contract. You may also cancel if you become physically unable to use a substantial portion of the health club services for 30 or more consecutive days, and your estate may cancel in the event of your death. You must prove you are unable to use a substantial portion of the health club services by a doctor's, physician assistant's, or nurse practitioner's certificate, and the health club may also require that you submit to a physical examination, within 30 days of the notice of cancellation, by a doctor, physician assistant, or nurse practitioner agreeable to you and the health club. If you cancel after the three business days, the health club may retain or collect a portion of the contract price equal to the proportionate value of the services or use of facilities you have already received. Any refund due to you shall be paid within 30 days of the effective date of cancellation.

1984, c. 738; 1990, cc. 392, 433; 2003, c. 344; 2004, c. 855; 2006, c. 396; 2010, c. 439; 2013, c. 24; 2014, c. 459.

§ 59.1-299. Duration of contract

No health club contract shall have a duration for a period longer than thirty-six months, including any renewal period; however, a health club contract may exceed 36 months provided that:

1. Any initiation fee does not exceed 10 times the initial monthly fee;

2. All payments for health club services, other than the initiation fee, are collected as monthly fees on a monthly basis;

3. After an initial term of not more than 12 months, either party may cancel the health club contract upon not more than 30 days' notice; and

4. The monthly fee is never reduced below 80 percent of the monthly fee at the time the contract is initially executed.

1984, c. 738; 1990, cc. 392, 433; 1992, c. 117; 2014, c. 459.

§ 59.1-300. Provisions of this chapter not exclusive

The provisions of this chapter are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with all other applicable provisions of law.

1984, c. 738.

§ 59.1-301. Noncomplying contract voidable

Any health club contract that does not comply with the applicable provisions of this chapter shall be voidable at the option of the buyer.

1984, c. 738; 2014, c. 459.

§ 59.1-302. Fraud rendering contract void

Any health club contract entered into by the buyer upon any false or misleading information, representation, notice, or advertisement of the health club or the health club's agents shall be void and unenforceable.

1984, c. 738; 2014, c. 459.

§ 59.1-303. Waiver of provisions void and unenforceable

Any waiver by the buyer of the provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

1984, c. 738.

§ 59.1-304. Notice of preservation of buyers' rights

All health club contracts and any promissory note executed by the buyer in connection therewith shall contain the following provision on the face thereof in at least 10-point, boldface type:

NOTICE

ANY HOLDER OF THIS CONTRACT OR NOTE IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES

OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

1984, c. 738; 2014, c. 459.

§ 59.1-305. Prohibition against assignment of health club contract cutting off buyer's right of action or defense against seller; conditions

Whether or not the health club has complied with the notice requirements of § 59.1-304, any right of action or defense arising out of a health club contract which the buyer has against the health club, and which would be cut off by assignment, shall not be cut off by assignment of the contract to any third party holder, whether or not the holder acquires the contract in good faith and for value.

1984, c. 738; 2003, c. 344; 2014, c. 459.

§ 59.1-306. Bond or letter of credit required; exception

A. Every health club, before it enters into a health club contract and accepts any moneys in excess of the prorated monthly fee for the month when the contract is initially executed plus one month's fees or accepts any initiation fee in excess of $125, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation in the amounts indicated below:

Number of applicable contracts	Amount of bond or letter of credit
0 to 250	$10,000
251 to 500	$20,000
501 to 750	$30,000
751 to 1000	$40,000
1001 to 1250	$50,000
1251 to 1500	$60,000
1501 to 1750	$70,000
1751 to 2000	$80,000
2001 or more	$100,000

For purposes of calculating the number of applicable unexpired health club contracts when determining the required amount of bond or letter of credit, health club contracts entered into on or after January 1, 2005, with a term that exceeds 13 months shall be counted as multiple health club contracts, such that the number of applicable contracts counted with respect thereto shall equal the total of the number of full years and any partial year in its term. However, this paragraph shall not apply (i) to health club contracts that are payable only on a monthly basis and for which the initiation fee is no more than $250 or (ii) if the number of the health club's contracts in effect with a term that exceeds 13 months is less than 10 percent of the total of its health club contracts.

The number of applicable unexpired contracts shall be separately calculated for each facility.

A health club shall file a separate bond or letter of credit with respect to each separate facility, even though the separate facilities are owned or operated by the same health club.

However, no health club shall be required to file with the Commissioner bonds or letters of credit in excess of $300,000. If the $300,000 limit is applicable, then the bonds or letters of credit filed by the health club shall apply to all facilities owned or operated by the same health club.

B. A health club may sell health club contracts of up to 36 months' duration for a facility for which a health club has not filed a bond or letter of credit so long as the amount of payment actually charged, due or received under the health club contracts each month by the health club or any holder thereunder does not exceed the monthly fee calculated pursuant to the definition thereof in § 59.1-296, with the exception that the payment actually charged may include a maximum initiation fee of $125 for health club contracts of 13 months or more in duration.

1984, c. 738; 1985, c. 585; 1990, cc. 392, 433; 1992, c. 117; 2004, c. 988; 2010, c. 439; 2014, c. 459.

§ 59.1-307. Bond or letter of credit; persons protected

A. The bond or letter of credit required by § 59.1-306 shall be in favor of the Commonwealth for the benefit of (i) any buyer injured by having paid money for health club services in a facility that fails to open by the date provided by the contract, which date shall not be in excess of 12 months from the signing of the contract; (ii) any buyer injured by having paid money for health club services in a facility which goes out of business prior to the expiration of the buyer's health club contract; or (iii) any buyer injured as a result of a violation of this chapter.

B. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the Commissioner.

1984, c. 738; 1987, c. 547; 2014, c. 459.

§ 59.1-308. Change in ownership of health club

For purposes of this chapter, a health club shall be considered a new health club and subject to the requirements of a bond or letter of credit at the time the health club changes ownership. Any health club that has more than 50 percent ownership by the same person or persons shall be considered as owned by the same owner. A change in ownership shall not release, cancel, or terminate liability under any bond or letter of credit previously filed unless the Commissioner agrees in writing to such release, cancellation, or termination because the new owner has filed a new bond or letter of credit for the benefit of the previous owner's members or because the former owner has refunded all unearned payments to its members. Every change in ownership shall be reported in writing to the Commissioner at least 10 days prior to the effective date of the change in ownership.

1984, c. 738; 1985, c. 585; 1990, cc. 392, 433; 2014, c. 459.

§ 59.1-308.1. Production of records

Every health club, upon the written request of the Commissioner, shall make available to the Commissioner its prepayment bank account records and all membership contracts for inspection and copying, to enable the Commissioner reasonably to determine compliance with this chapter. Every health club shall maintain a true copy of each health club contract executed between the health club and a buyer. Each contract shall be maintained for its term, including any renewal. Every health club shall maintain the executed health club contracts at a designated location where the contracts may be inspected by the Commissioner. If the location designated by the health club is outside Virginia, the health club shall pay the reasonable travel costs of an inspection by the Commissioner.

1985, c. 585; 1990, cc. 392, 433; 2014, c. 459.

§ 59.1-308.2. Investigations

A. The Commissioner may:

1. Make necessary public or private investigations within or without this Commonwealth to determine any violations of the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter; and

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation.

B. For the purpose of any investigation or proceeding under this chapter, the Commissioner may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

D. If any person fails to obey a subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

E. The Board may adopt reasonable regulations to implement the provisions of this chapter and such regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.

1990, cc. 392, 433 .

§ 59.1-309. Enforcement; penalties

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

1984, c. 738.

§ 59.1-310. Applicability

Sections 59.1-297, 59.1-298, 59.1-299, 59.1-304, and 59.1-305 shall not apply to health club contracts entered into before September 15, 2004.

1984, c. 738; 2014, c. 459.

Chapter 24.1 - TANNING FACILITIES

§ 59.1-310.1. Definitions

As used in this chapter unless the context requires otherwise:

"Fitzpatrick scale" means the following scale for classifying a skin type, based on the skin's reaction to the first 10 to 45 minutes of sun exposure after the winter season:

Skin Type:	Sunburning and Tanning History
1	Always burns easily; never tans
2	Always burns easily; tans minimally
3	Burns moderately; tans gradually
4	Burns minimally; always tans well
5	Rarely burns; tans profusely
6	Never burns; deeply pigmented

"Owner" means a person who owns or operates a tanning facility.

"Person" means an individual, partnership, corporation, limited liability company or association.

"Phototherapy device" means a piece of equipment that emits ultraviolet radiation and that is used by a health care provider in the treatment of a disease.

"Tanning device" means any equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and that is used for tanning of human skin, including a sunlamp, tanning booth, or tanning bed. The term also includes any accompanying equipment, including protective eyewear, timers, and handrails.

"Tanning facility" means a business that provides persons access to tanning devices.

1990, c. 776; 2007, c. 575.

§ 59.1-310.2. Federal law compliance; application of chapter

A tanning device utilized by a tanning facility shall comply with all applicable federal laws and regulations. This chapter shall not apply to a phototherapy device used by or under the supervision of a licensed physician trained in the use of phototherapy devices.

1990, c. 776 .

§ 59.1-310.3. Notice to customers; liability

A. A tanning facility shall give each customer a written statement warning that:

1. Failure to use the eye protection provided to the customer by the tanning facility may result in damage to the eyes;

2. Overexposure to ultraviolet light causes burns;

3. Repeated exposure may result in premature aging of the skin and skin cancer;

4. Abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain (i) foods; (ii) cosmetics; or (iii) medications, including tranquilizers, diuretics, antibiotics, high blood pressure medicines, or birth control pills; and

5. Any person taking a prescription or over-the-counter drug should consult a physician prior to using a tanning device.

B. Prior to allowing a prospective customer to use a tanning device, the owner or his designee shall obtain on the written statement the signature of each customer on a duplicate of the written statement provided to the customer under subsection A. In addition, the owner or his designee shall obtain, every six months, the signature of the parent or legal guardian of a prospective customer who is under the age of 15 and is not emancipated under Virginia law.

C. Compliance with the notice requirements does not affect the liability of a tanning facility owner or a manufacturer of a tanning device.

D. The signed duplicates of the written statements provided under subsection A may be retained at a location other than the tanning facility if an electronic or facsimile image of the original is readily available at each of an owner's tanning facilities.

1990, c. 776; 2007, c. 575.

§ 59.1-310.4. Warning signs

A. A tanning facility shall post a warning sign in a conspicuous location where it is readily readable by persons entering the establishment. The sign shall contain the following warning:

DANGER: ULTRAVIOLET RADIATION

Repeated exposure to ultraviolet radiation may cause chronic sun damage
to the skin characterized by wrinkling, dryness, fragility, and bruising of
the skin, and skin cancer.
Failure to use protective eyewear may result in severe burns or
permanent injury to the eyes.

Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician or nurse practitioner before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women taking oral contraceptives who use this product may develop discolored skin.

IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT TAN FROM USE OF AN ULTRAVIOLET SUNLAMP.

B. A tanning facility shall post a warning sign, one sign for each tanning device, in a conspicuous location that is readily readable to a person about to use the device. The sign shall contain the following:

DANGER: ULTRAVIOLET RADIATION

1. Follow the manufacturer's instructions for use of this device.

2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious eye and skin injuries and allergic reactions. Repeated exposure may cause skin cancer.

3. Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent damage to the eyes.

4. Do not sunbathe before or after exposure to ultraviolet radiation from sunlamps.

5. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician or nurse practitioner before using a sunlamp if you are using medication, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women using oral contraceptives who use this product may develop discolored skin.

IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT TAN FROM USE OF THIS DEVICE.

1990, c. 776; 2004, c. 855.

§ 59.1-310.5. Operational requirements

A. A tanning facility shall have an operator present during operating hours. The operator shall be sufficiently knowledgeable in the correct operation of the tanning devices used at the facility and shall inform and assist each customer in the proper use of the tanning device.

B. The owner or his designee shall identify the skin type of the customer based on the Fitzpatrick scale, document the skin type of the customer, and advise the customer of the customer's maximum time of recommended exposure in the tanning device.

C. Before each use of a tanning device, the operator shall provide the customer with properly sanitized protective eyewear that protects the eyes from ultraviolet radiation and allows adequate

vision to maintain balance. The operator shall not allow a person to use a tanning device if that person has not been provided protective eyewear. The operator shall also instruct each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer of the tanning device.

D. After each use of a tanning device, the owner or his designee shall clean the device with a cleaner or sanitizer capable of killing bacteria from any previous use.

E. The tanning facility shall use a timer with an accuracy of at least plus or minus ten percent of any selected time interval. The facility shall limit the exposure time of a customer on a tanning device to the maximum exposure time recommended by the manufacturer. The facility shall control the interior temperature of a tanning device so that it may not exceed 100 degrees Fahrenheit.

F. Either each time a customer uses a tanning facility or each time a person executes or renews a contract to use a tanning facility, the person shall sign a written statement acknowledging that the person has read and understood the required warnings before using the device and agrees to use the protective eyewear that the tanning facility provides.

G. The owner shall be responsible for ensuring that each customer using the tanning facility is of legal age to do so.

H. A tanning facility shall not claim, or distribute promotional material that claims that the use of a tanning device is safe, is without risk, or will result in medical or health benefits.

1990, c. 776; 2007, c. 575.

§ 59.1-310.6. Violations of chapter; penalty

Any person other than a customer, who knowingly and willfully violates any statute pertaining to the operation of tanning facilities shall be guilty of a Class 3 misdemeanor.

1990, c. 776 .

Chapter 24.2 - SEPTIC SYSTEM INSPECTORS

§ 59.1-310.7. Definitions

As used in this chapter unless the context requires otherwise:

"Accredited septic system inspector" means a person who possesses the qualifications required by the provisions of this chapter.

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

"Septic system" means an onsite method of disposing of sewage when sewers or sewerage facilities are not available and includes septic tanks, septic tank lines and drainage fields or other onsite, residential sewage systems.

2001, c. 52.

§ 59.1-310.8. Exceptions

This chapter shall not be construed to prohibit:

1. The work of an employee or a subordinate of an accredited septic system inspector;

2. The practice of any profession or occupation that is regulated by a regulatory board within the Department of Professional and Occupational Regulation or other state agency; or

3. The work of employees of the Department of Health in carrying out their regulatory duties under Chapter 6 (§ 32.1-163 et seq.) of Title 32.1.

2001, c. 52.

§ 59.1-310.9. Requirements for accredited septic system inspectors

In order to use the title of "accredited septic system inspector" in connection with any real estate transaction, including refinancings, an applicant shall be accredited by the National Sanitation Foundation or an equivalent national accrediting organization, which accreditation shall include the passage of both a written and practical examination on the principles and practice of septic system inspections. In addition, the applicant shall satisfy the following requirements:

1. Hold a high school diploma or equivalent; and

2. Have evidence of at least one year of active field experience conducting onsite septic systems inspections or completion of a nationally approved training course.

2001, c. 52.

§ 59.1-310.10. Penalty for violation

No person shall use the title "accredited septic system inspector" unless he meets the requirements of this chapter. Any person who violates the provisions of this chapter shall be guilty of a Class 3 misdemeanor.

2001, c. 52.

Chapter 25 - VIRGINIA MEMBERSHIP CAMPING ACT

Article 1 - GENERAL PROVISIONS

§ 59.1-311. Title

This chapter shall be known and may be cited as the "Virginia Membership Camping Act."

1985, c. 409.

§ 59.1-312. Applicability

This chapter shall apply to each membership camping contract executed at least in part in this Commonwealth after July 1, 1985, regardless of the whereabouts of the membership camping operator's principal office or his campground or recreational facilities.

1985, c. 409.

§ 59.1-313. Definitions

When used in this chapter, unless the context requires a different meaning, the following shall have the meanings respectively set forth:

"Advertisement" shall be synonymous with "offer to sell."

"Agreement" shall be synonymous with "membership camping contract."

"Blanket encumbrance" means any legal instrument, whether or not evidencing the obligation to pay money, which permits or requires the foreclosure, sale, conveyance or other disposition of the campground or any portion thereof.

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

"Business day" means any day except Sunday or a legal holiday.

"Camping site" means any parcel of real estate designed and promoted for the purpose of locating thereon a trailer, tent, tent trailer, pickup camper, recreational vehicle, house trailer, van, cabin or other similar device used for camping or for overnight lodging.

"Campground" means any single tract or parcel of real property on which there are at least ten camping sites.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services, or a member of his staff to whom he has delegated his duties under this chapter.

"Contract" shall be synonymous with "membership camping contract."

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

"Facility" means an amenity within a campground set aside or otherwise made available to purchasers in their use and enjoyment of the campground, and may include campsites, swimming pools, tennis courts, recreational buildings, boat docks, restrooms, showers, laundry rooms, and trading posts or grocery stores.

"Holder" means the membership camping operator who enters into a membership camping contract with a purchaser or the assignee of such contract who purchases the same for value.

"Managing entity" means a person who undertakes the duties, responsibilities and obligations of the management of a campground.

"Membership camping contract" or "membership camping agreement" means any written agreement of more than one year's duration, executed in whole or in part within this Commonwealth, which grants to a purchaser a nonexclusive right or license to use the campground of a membership camping operator or any portion thereof on a first come, first serve or reservation basis together with other purchasers. "Membership camping contract" or "membership camping agreement" also means any written agreement of more than one year's duration, executed in whole or in part within this Commonwealth, which obligates the membership camping operator to transfer or which does in fact transfer to the purchaser title to or an ownership interest in a campground

or any portion thereof, and which gives the purchaser a nonexclusive right or license to use the campground of a membership camping operator or any portion thereof, on a first come, first serve or reservation basis together with other purchasers.

"Membership camping operator" means any person who is in the business of soliciting, offering, advertising, or executing membership camping contracts. A membership camping operator shall not include:

1. Any enterprise that is tax-exempt under § 501(c) (3) of the Internal Revenue Code, as amended; or

2. Any enterprise that is tax-exempt under Chapter 36 of Title 58.1; or

3. Manufactured home parks wherein the residents occupy the premises as their primary homes.

"Membership fees, dues, and assessments" means payments required of the purchaser, or his successor in interest, by the agreement for the support and maintenance of facilities at the campground about which the agreement relates.

"Nondisturbance agreement" means any instrument executed by the owner of a blanket encumbrance which subordinates the rights of the owner of the blanket encumbrance to the rights of the purchasers of membership camping contracts. Unless the agreement specifically so provides, the owner of a blanket encumbrance does not by the fact of such ownership assume any of the obligations of the membership camping operator under membership camping contracts or under this chapter.

"Offer,""offer to sell,""offer to execute" or "offering" means any offer, solicitation, advertisement, or inducement, to execute a membership camping agreement.

"Person" means any individual, corporation, partnership, company, unincorporated association or any other legal entity other than a government or agency or a subdivision thereof.

"Purchase money" means any money, currency, note, security or other consideration paid by the purchaser for a membership camping agreement.

"Purchaser" means a person who enters into a membership camping contract with the membership camping operator.

"Ratio of membership camping contracts to camping sites" means the total number of membership camping contracts sold in relation to each available camping site.

"Reciprocal program" means any arrangement under which a purchaser is permitted to use camping sites or facilities at one or more campgrounds not owned or operated by the membership camping operator with whom the purchaser has entered into a membership camping contract.

"Salesperson" means an individual, other than a membership camping operator, who offers to sell a membership camping contract by means of a direct sales presentation, but does not include a

person who merely refers a prospective purchaser to a sales person without making any direct sales presentation.

1985, c. 409; 1989, c. 676; 1992, c. 545; 1999, c. 77.

§ 59.1-313.1. Certified mail; subsequent mail or notices may be sent by regular mail
Whenever in this chapter 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.

§ 59.1-314. Conflicts with other statutes
In the event that there is any conflict between this chapter and the Virginia Condominium Act (§ 55-79.39 et seq.), the Subdivided Land Sales Act (§ 55-336 et seq.), or the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), the provisions of this chapter shall prevail, but this chapter shall not invalidate or otherwise affect rights or obligations vested under the Condominium Act, the Subdivided Land Sales Act, or the Virginia Real Estate Time-Share Act, before July 1, 1985, or the manner of their enforcement.

1985, c. 409.

§ 59.1-315. Repealed
Repealed by Acts 2015, c. 709, cl. 2.

§ 59.1-316. Reserved
Reserved.

Article 2 - REGISTRATION

§ 59.1-317. Administration; unlawful offer or execution of membership camping contract
A. This chapter shall be administered by the Virginia Department of Agriculture and Consumer Services.

B. It shall be unlawful for any membership camping operator to offer to sell any membership camping contract in this Commonwealth unless he is registered with the Commissioner.

C. It shall be unlawful for any membership camping operator registered under this chapter to sell any membership camping contract which causes the total ratio of the outstanding and valid membership camping contracts to exceed a ratio of fifteen such contracts for each camping site.

1985, c. 409; 1989, c. 676 .

§ 59.1-318. Application for registration of membership camping operator
A. The application for registration shall be on a form prescribed by the Commissioner and shall include, to the extent applicable, the following:

1. The applicant's name, address, and the organizational form of his business, including the date, and jurisdiction under which the business was organized; the address of each of its offices in this Commonwealth; and the name and address of each campground located in this Commonwealth, which is owned or operated, in whole or in part, by the applicant;

2. The name, address, and principal occupation for the past five years of every officer of the applicant, including its principal managers, and the extent and nature of the interest of each such person at the time the application is filed;

3. A list of all owners of ten percent or more of the capital stock of the applicant, except that this list is not required if the applicant is a company required to report under the Securities and Exchange Act of 1934;

4. A brief description of and a certified copy of the instrument which creates the applicant's ownership of, or other right to use the campground and the facilities at the campground which are to be available for use by purchasers, together with a copy of any lease, license, franchise, reciprocal agreement or other agreement entitling the applicant to use such campground and facilities, and any material provision of the agreement which restricts a purchaser's use of such campground or facilities;

5. A sample copy of each instrument which will be delivered to a purchaser to evidence his membership in the campground and a sample copy of each agreement which a purchaser will be required to execute;

6. A statement of the zoning and other governmental regulations affecting the use of the campground including the site plans and building permits and their status;

7. A list of special taxes or assessments, whether current or proposed, which affect the campground;

8. Financial statements of the applicant prepared in accordance with generally accepted accounting principles, which shall include a financial statement for the most recent fiscal year audited by an independent certified public accountant and an unaudited financial statement for the most recent fiscal quarter;

9. A copy of the disclosure statement required by § 59.1-326;

10. An irrevocable appointment of the Commissioner or his designees to receive service of any lawful process in any proceeding arising under this chapter against the applicant or his agents, except one issued by the Commissioner. The Commissioner shall forward any such process by registered or certified mail addressed to any of the principals, officers, directors, partners, or trustees of the applicant who are listed on the application for registration pursuant to this chapter, or to any other person designated in the application to receive such process, and shall keep a record of it. Any process, notice, order, or demand issued by the Commissioner shall be served by registered mail addressed to any principal, officer, director, partner, or trustee of the applicant listed on the

application for registration pursuant to this chapter or to any person designated in the application to receive such process. Nothing in this section shall be construed to limit or prohibit the lawful service of process on individual principals as allowed by the laws of the Commonwealth. The names and addresses of the principals, officers, directors, partners, or trustees of the membership camping operator as last filed with the Commissioner pursuant to the provisions of this chapter shall be conclusive for the purposes of services of process;

11. A narrative description of the promotional plan for the sale of the membership camping contracts;

12. Any bonds required to be posted pursuant to the provisions of this chapter;

13. A copy of the agreement, if any, between the applicant and any person owning, controlling, or managing the campground and the applicant;

14. A complete list of locations and addresses of any and all sales offices located within the Commonwealth, together with a roster of all salespersons who are employed in this Commonwealth by the applicant whether as employees or as independent contractors;

15. The names of any other states or foreign countries in which an application for registration of the membership camping operator or the membership camping contract or any similar document has been filed; and

16. Complete information concerning any adverse order, judgment, or decree which has been entered by any court or administrative agency in connection with a campground or other project operated by the applicant or in which the applicant has or had an interest at the time.

B. The application shall be signed by the membership camping operator, an officer or general partner thereof or by another person holding a power of attorney for this purpose from the membership camping operator. If the application is signed pursuant to a power of attorney, a copy of the power of attorney shall be included with the application.

C. The application shall be submitted with a facing page as might be prescribed by the Commissioner if then in effect, along with the appropriate fees.

D. An application for registration shall be amended within twenty-five days if there is a material change in the information included in the application. A material change includes any change which significantly reduces or terminates either the applicant's or the purchaser's right to use the campground or any of the facilities described in the membership camping contract, but does not include minor changes covering the use of the campground, its facilities or the reciprocal program.

E. The review of the application for registration of the membership camping operator shall occur pursuant to the provisions of § 59.1-320.1.

F. Registration with the Commissioner shall not be deemed to be an approval or endorsement by the Commissioner of the membership camping operator, his membership camping contract, or his

campground, and any attempt by the membership camping operator to indicate that registration constitutes such approval or endorsement shall be unlawful.

1985, c. 409; 1992, c. 545 .

§ 59.1-319. Reserved

Reserved.

§ 59.1-320. Repealed

Repealed by Acts 1992, c. 545 .

§ 59.1-320.1. Review of registration application

A. Once the Commissioner receives an application for registration in proper form, accompanied by the proper fee, he shall, within a reasonable period of time not to exceed forty-five days after the receipt of such application:

1. Register the applicant if the applicant:

a. Has met the requirements of § 59.1-318;

b. Is not in violation of § 59.1-323; and

c. Has a reasonable ability to discharge the obligations imposed upon him by his membership camping contract; or

2. Issue a notice of opportunity for a hearing to consider whether the application should be denied, if it reasonably appears that the applicant fails to satisfy any provision of § 59.1-323 or any other requirement of this chapter.

B. Except as otherwise provided by order of the Commissioner, each registration shall be valid for the period from July 1 of one year until its expiration on June 30 of the following year.

1992, c. 545 .

§ 59.1-321. Exemption from registration under other acts

Any membership camping operator registered with the Commissioner under this chapter shall not be required to register or comply with the terms and requirements of the following:

1. The Virginia Condominium Act (§ 55-79.39 et seq.).

2. The Virginia Real Estate Time-Share Act (§ 55-360 et seq.).

3. The Virginia Securities Act (§ 13.1-501 et seq.).

1985, c. 409; 1996, c. 372.

§ 59.1-322. Other acts

Registration with the Commissioner by a membership camping operator shall not relieve such operator of the obligation of complying with the requirements of the Virginia Home Solicitation Sales Act (§ 59.1-21.1 et seq.), if applicable.

1985, c. 409.

§ 59.1-323. Denial, suspension, or revocation of registration; hearing; summary action

A. The Commissioner may deny an application for registration of a membership camping operator or may suspend, or revoke such registration if the Commissioner finds that such action is necessary for the protection of purchasers or prospective purchasers or that any one of the following is true:

1. The membership camping operator has failed to comply with any provision of this chapter that materially affects the rights of purchasers, prospective purchasers or owners of membership camping contracts.

2. The membership camping operator's offering or execution of membership camping contracts is fraudulent.

3. The membership camping operator's application for registration or any amendment thereto is incomplete in any respect.

4. The membership camping operator has failed to file timely amendments to the application for registration or meet any other requirement of § 59.1-318 of this chapter.

5. The membership camping operator has represented or is representing to purchasers in connection with the offer to sell membership camping contracts that a particular facility or facilities are planned without reasonable expectation that such facility will be completed within a reasonable time, or without the apparent means to ensure its completion.

6. The membership camping operator has permanently withdrawn from use all or any substantial portion of any campground and that (i) no adequate provision has been made to provide a substitute campground of comparable quality and attraction in the same general area within a reasonable time after such withdrawal, and (ii) the rights of all purchasers at the affected location have not expired, and (iii) the Commissioner has found that the withdrawal is consistent with the protection of purchasers. Notwithstanding the foregoing, a membership camping operator may reserve the right to withdraw permanently from use all or any portion of a campground devoted to membership camping if, after the membership camping operator first represents to purchasers that the campground is or will be available for camping, the specific date upon which the withdrawal becomes effective is disclosed in writing to all purchasers at or prior to the time the membership camping contract is executed.

7. The membership camping operator has made any representation in any document or information filed with the Commissioner which is false or misleading.

8. The membership camping operator has engaged or is engaging in any unlawful act or practice.

9. The membership camping operator has disseminated or caused to be disseminated, any false or misleading promotional materials in connection with a campground.

10. The membership camping operator does not have a reasonable ability to discharge the obligations imposed upon him by any membership camping contract.

B. Except as provided in subsection C of this section, before denying, suspending or revoking a registration, as provided in subsection A of this section, the Commissioner shall issue to the membership camping operator a notice of opportunity for a hearing to consider the denial, suspension, or revocation.

C. If the Commissioner finds that the public health, safety or welfare requires emergency action and incorporates this finding in his order, the Commissioner may summarily deny, suspend or revoke a registration. The membership camping operator shall be given an opportunity within ten days after entry of such an order to appear before the Commissioner and show cause why the summary order should not remain in effect. If good cause is shown, the Commissioner shall vacate the summary order. If good cause is not shown, the summary order shall remain in effect. The membership camping operator shall have fifteen days thereafter within which to request a hearing, or the Commissioner may within thirty days thereafter set the matter for a hearing.

1985, c. 409; 1992, c. 545 .

§ 59.1-324. Cease and desist orders; temporary order

A. If it appears to the Commissioner that any person has engaged or is engaging in any practice in violation of this chapter, he may issue an order directing the person to cease and desist provided that reasonable notice and an opportunity for a hearing shall be given to such person.

B. The Commissioner may issue a temporary order pending the hearing which is effective on delivery to the person named in the order. The temporary order shall remain in effect until five days after the hearing required in subsection A above is held. In the event no hearing is requested by the person named in the order, the order shall become final within fifteen days after it is delivered.

1985, c. 409.

§ 59.1-325. Fees

A. Each application for registration under § 59.1-318 shall be accompanied by a reasonable fee to be determined by the Board and published in the regulations adopted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Each application for registration or for amendment shall be accompanied by a reasonable fee to be determined by the Board and published in regulations adopted in accordance with the provisions of the Administrative Process Act.

C. Until such time as regulations covering fees are adopted by the Board, the registration fee shall be $2,500 and the fee for amendments shall be $100.

D. All fees shall be remitted to the State Treasurer and shall be credited to a special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

1985, c. 409; 1988, c. 58; 1992, c. 545 .

Article 3 - PROTECTION OF PURCHASERS

§ 59.1-326. Membership camping operator's disclosure statement

A. Every membership camping operator, salesperson, or other person who is in the business of offering for sale or transfer the rights under existing membership camping contracts for a fee shall deliver to his purchaser a current membership camping operator's disclosure statement before execution by the purchaser of the membership camping contract and no later than the date shown on such contract.

B. The membership camping operator's disclosure statement shall consist of the following items in the order as presented:

1. A cover page stating:

a. The words "Membership Camping Operator's Disclosure Statement" printed in boldfaced type of a minimum size of 10 points;

b. The name and principal business address of the membership camping operator;

c. A statement that the membership camping operator is in the business of offering for sale membership camping contracts;

d. The following statement printed in boldfaced type of a minimum size of 10 points:

THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A MEMBERSHIP CAMPING CONTRACT. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. YOU AS A PROSPECTIVE PURCHASER SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE MEMBERSHIP CAMPING OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT.

e. The following statement printed in boldfaced type of a minimum size of 10 points:

SHOULD YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL SUCH CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE 7TH CALENDAR DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED. TO CANCEL THE MEMBERSHIP CAMPING CONTRACT, YOU AS THE PURCHASER MUST MAIL NOTICE OF YOUR INTENT TO CANCEL BY CERTIFIED UNITED STATES MAIL TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS SHOWN IN THE MEMBERSHIP CAMPING CONTRACT, POSTAGE PREPAID. THE CAMPING OPERATOR IS REQUIRED BY LAW TO RETURN ALL MONEYS PAID BY YOU IN

CONNECTION WITH THE EXECUTION OF THE MEMBERSHIP CAMPING CONTRACT, UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT. IN ADDITION, AFTER THE INITIAL 7-CALENDAR-DAY CANCELLATION PERIOD, YOU THE PURCHASER OR YOUR SUCCESSOR IN INTEREST MAY TERMINATE YOUR LIABILITY UNDER THE MEMBERSHIP CAMPING CONTRACT INCLUDING PAYMENT OF ANY MEMBERSHIP FEES, DUES, AND ASSESSMENTS UPON YOUR GIVING PROPER AND EFFECTIVE NOTICE TO THE MEMBERSHIP CAMPING OPERATOR. TO BE EFFECTIVE, THE NOTICE MUST BE IN WRITING AND SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND IT MUST CONTAIN: (1) YOUR TRANSFER OF ANY AND ALL RIGHTS, TITLE, AND INTEREST YOU HAVE IN THE MEMBERSHIP CAMPING CONTRACT AND CAMPGROUND BACK TO THE MEMBERSHIP CAMPING OPERATOR; (2) A RECORDABLE DEED, DULY EXECUTED AND NOTARIZED, AND THE RECORDING FEE, IF YOU RECEIVED A RECORDED DEED FROM THE MEMBERSHIP CAMPING OPERATOR; (3) PAYMENTS OF (i) THE UNPAID BALANCE OF THE PURCHASE PRICE AND ANY ACCRUED UNPAID INTEREST THEREON AND (ii) ALL UNPAID MEMBERSHIP FEES, DUES, AND ASSESSMENTS WITH ACCRUED INTEREST THEREON PERMITTED BY THE MEMBERSHIP CAMPING CONTRACT; AND (4) PAYMENT OF ALL OTHER UNPAID FINANCIAL OBLIGATIONS OWED BY YOU THE PURCHASER PURSUANT TO THE MEMBERSHIP CAMPING CONTRACT.

f. The following statement:

"Registration of the membership camping operator with the Commissioner of the Virginia Department of Agriculture and Consumer Services does not constitute an approval or endorsement by the Commissioner of the membership camping operator, his membership camping contract, or his campground."

2. The name of the membership camping operator and the address of his principal place of business and the following information:

a. The name, principal occupation, and address of every director, partner, or trustee of the membership camping operator;

b. The name and address of each person owning or controlling an interest of 10 percent or more in the membership camping operator;

c. The particulars of any indictment, conviction, judgment, decree, or order of any court or administrative agency against the membership camping operator or its managing entity arising out of the violation or alleged violation of any federal, state, local, or foreign law or regulation in connection with activities relating to the sale of campground memberships, land sales, land investments, security sales, construction, or sale of homes or improvements or any similar or related activity; and

d. A statement of any unsatisfied judgments against the membership camping operator or its managing entity, the status of any pending suits involving the sale of membership camping contracts or the management of campgrounds to which the membership camping operator or its managing

entity is a party and the status of any pending suits, administrative proceedings, or indictments of significance to the campground;

3. A brief description of the nature of the purchaser's right or license to use the campground and the facilities that are to be available for use by purchasers;

4. A brief description of the membership camping operator's experience in the membership camping business, including the length of time the operator has been in the membership camping business;

5. The location of each of the campgrounds that is to be available for use by purchasers and a brief description of the facilities at each campground that are currently available for use by purchasers. Facilities that are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A brief description of any facilities that are or will be available to non-purchasers shall also be provided;

6. As to all memberships offered by the membership camping operator at each campground:

a. The form of membership offered;

b. The types and duration of memberships along with a summary of the major privileges, restrictions, and limitations applicable to each type; and

c. Provisions, if any, that have been made for public utilities at each campsite including water, electricity, telephone, and sewerage facilities;

7. A statement regarding any initial or special fee due from the purchaser together with a description of the purpose and method of calculating the fee;

8. A description of any liens, defects, or encumbrances affecting the campground;

9. A general description of any financing offered or available through the membership camping operator;

10. A statement that the purchaser has until midnight of the seventh calendar day following the signing of the membership campground contract to cancel the contract by proper notice to the membership camping operator;

11. A description of the insurance coverage that the membership camping operator provides for the benefit of purchasers, if any;

12. A statement regarding any fees or charges that purchasers are or may be required to pay for the use of the campground or any facilities;

13. The extent to which financial arrangements, if any, have been provided for the completion of facilities together with a statement of the membership camping operator's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the membership camping operator's obligation to begin or to complete such facilities;

14. The name of the managing entity, if there is one, and the significant terms of any management contract, including but not limited to the circumstances under which the membership camping operator may terminate the management contract;

15. A statement regarding any services that the membership camping operator currently provides or expenses he pays that are expected to become the responsibility of the purchasers, including the projected liability that each such service or expense may impose on each purchaser;

16. A brief description of the ownership in or other right to use the campground that is to be transferred to each purchaser, together with the duration of any lease, license, franchise, or reciprocal agreement entitling the membership camping operator or purchasers from him to use the campground, and any provisions in any such agreements that restrict or limit a purchaser's use of the campground;

17. a. A copy, whether by way of supplement or otherwise, of the rules, restrictions, or covenants regulating the purchaser's use of the campground in Virginia and its facilities that are to be available for use by the purchasers, including a statement of whether and how the rules, restrictions, or covenants may be changed;

b. A summary, whether by way of supplement or otherwise, of the rules, restrictions, or covenants regulating the purchaser's use of any other campgrounds, facilities, or any other amenities resulting from the purchase of, or used as an inducement to influence the purchase of, the membership camping contract;

18. A description of any restraints on the transfer of the membership camping contract;

19. A brief description of the policies covering the availability of camping sites, the availability of reservations and the conditions under which they are made;

20. A brief description of any grounds for forfeiture of a purchaser's membership camping contract;

21. A statement of whether the membership camping operator has the right to withdraw permanently from use all or any portion of any campground devoted to membership camping and, if so, the conditions under which such withdrawal is to be permitted;

22. A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser, including a statement concerning whether the purchaser's participation in any reciprocal program is dependent upon the continued affiliation of the membership camping operator with that reciprocal program and whether the membership camping operator reserves the right to terminate such affiliation;

23. The following statement printed in boldfaced type of a minimum size of 10 points:

"The purchase of this membership camping contract should not be based on any representations that it is an investment or that it can be resold. The resale of a membership may be difficult"; and

24. A statement that contains in boldfaced type the name, address, and telephone number of the Virginia Department of Agriculture and Consumer Services and that states that that agency is the regulatory agency that handles consumer complaints regarding membership campgrounds.

C. The membership camping operator shall promptly amend his membership camping operator's disclosure statement to reflect any material change in the campground or its facilities. He shall also promptly file any such amendments with the Commissioner.

1985, c. 409; 1992, c. 545; 2013, c. 24.

§ 59.1-327. Purchaser's rights

A. The purchaser shall have the following rights during the first seven calendar days following the execution of the membership camping contract:

1. A purchaser shall have the right to cancel a membership camping contract within seven calendar days following the date of its execution.

2. The right of cancellation shall not be waived and any attempt to obtain such a waiver shall be unlawful. Nothing in this section shall preclude the execution of documents in advance of closing for delivery after expiration of the cancellation period.

3. If the purchaser elects to cancel the membership camping contract, he may do so only by mailing notice thereof by certified United States mail to the membership camping operator at the address listed in the membership camping contract. The cancellation shall be deemed effective upon mailing.

4. Upon cancellation, the membership camping operator shall refund to the purchaser all payments made by such purchaser and collected by the membership camping operator pursuant to the canceled membership camping contract. The refund shall be made within sixty days after the effective date of the cancellation and may, where payment has been made by credit card, be made by an appropriate credit to the purchaser's account. Where payment is made by an exchange of real or personal property, the property may be returned to the purchaser.

5. The purchaser's right to cancel shall apply only to the initial membership camping contract executed by such purchaser and to no successor contract and shall not apply to a successor contract which replaces an existing contract executed by such purchaser, unless the successor contract is executed within seven calendar days of the original contract in which case the cancellation period shall renew itself.

B. In addition to the rights afforded the purchaser contained in subsection A of this section, the purchaser and any successor in interest shall not be held liable for any maintenance fees, dues, and assessments succeeding the effective date of notification pursuant to subdivision 2 of this subsection, if:

1. The purchaser or his successor in interest relinquishes any and all interest in the membership camping contract to the membership camping operator or his assigns; and

2. The purchaser or his successor in interest notifies the membership camping operator or his assigns, in writing, by certified mail, return receipt requested, of his relinquishment. The notice shall be deemed effective:

a. Eighteen months after the notice is mailed provided the membership camping contract is no less than fifty-four months old; and

b. If and only if the principal and interest payments, the membership fees, dues, and assessments and all other financial obligations owed by the purchaser, or his successor in interest, under the membership camping contract are paid in full as of the date of mailing; and

c. The relinquishment contained in subdivision B 1 shall be in the form of a recordable deed, duly executed and properly notarized, or other form found acceptable to the membership camping operator accompanied by a fee sufficient to record the deed.

C. If the notice complies with subsection B of this section concerning avoiding further payments of membership fees, dues, and assessments, the membership camping operator shall confirm, in writing, receipt of the notice within ten days after its receipt. If the notice does not comply with subsection B of this section, the membership camping operator or his assigns shall inform the purchaser or his successors in interest, in writing, within ten days after its receipt, of the specific reasons why the notice does not comply.

D. All moneys collected by the membership camping operator pursuant to the membership camping contract prior to notification by the purchaser or his successor in interest pursuant to subsection B of this section shall remain the property of the membership camping operator.

E. Upon satisfaction of all provisions of subsection B of this section, the purchaser or his successor in interest shall have no rights or obligations under the membership camping contract and the membership camping operator or his assigns shall make no claims against the purchaser or his successor in interest thereunder.

1985, c. 409; 1992, c. 545 .

§ 59.1-328. Membership camping contracts

The membership camping operator shall deliver to his purchaser a fully executed copy of the membership camping contract, which contract shall include at least the following information:

1. The actual date the membership camping contract is executed by the purchaser.

2. The name of the membership camping operator and the address of his principal place of business.

3. The total financial obligation imposed upon the purchaser by the contract, including the initial purchase price and any additional charges that the purchaser may be required to pay.

4. A description of the nature and duration of the membership being purchased, including any interest in real property.

5. A statement that the membership camping operator, salesperson, or any other person who is in the business of offering for sale or transfer the rights under existing membership camping contracts for a fee is required by the Virginia Membership Camping Act (§ 59.1-311 et seq.) to provide each purchaser with a copy of the membership camping operator's disclosure statement prior to execution of such contract and that a failure to do so is a violation of the Act.

6. The following statement under its own paragraph and conspicuously placed:

"PURCHASER'S NONWAIVABLE RIGHT TO CANCEL" shall appear at the beginning of such paragraph in boldfaced type of a minimum size of 10 points, immediately preceding the following statement, which shall appear in type no smaller than the other provisions of the contract:

YOU AS THE PURCHASER HAVE A NONWAIVABLE 7-CALENDAR-DAY RIGHT OF CANCELLATION. THIS RIGHT OF CANCELLATION IS FULLY EXPLAINED ON THE COVER SHEET OF THE MEMBERSHIP CAMPING OPERATOR'S DISCLOSURE STATEMENT. YOU ARE URGED TO REVIEW THE DISCLOSURE STATEMENT PRIOR TO THE EXECUTION OF THIS CONTRACT FOR A COMPLETE UNDERSTANDING OF YOUR RIGHT OF CANCELLATION. IN ADDITION, AFTER THE INITIAL 7-CALENDAR-DAY CANCELLATION PERIOD, YOU THE PURCHASER OR YOUR SUCCESSOR IN INTEREST MAY TERMINATE YOUR LIABILITY UNDER THE MEMBERSHIP CAMPING CONTRACT INCLUDING PAYMENT OF ANY MEMBERSHIP FEES, DUES, AND ASSESSMENTS UPON YOUR GIVING PROPER AND EFFECTIVE NOTICE TO THE MEMBERSHIP CAMPING OPERATOR. TO BE EFFECTIVE, THE NOTICE MUST BE IN WRITING AND SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND IT MUST CONTAIN: (1) YOUR TRANSFER OF ANY AND ALL RIGHTS, TITLE, AND INTEREST YOU HAVE IN THE MEMBERSHIP CAMPING CONTRACT AND CAMPGROUND BACK TO THE MEMBERSHIP CAMPING OPERATOR; (2) A RECORDABLE DEED, DULY EXECUTED AND NOTARIZED, AND THE RECORDING FEE, IF YOU RECEIVED A RECORDED DEED FROM THE MEMBERSHIP CAMPING OPERATOR; (3) PAYMENTS OF (i) THE UNPAID BALANCE OF THE PURCHASE PRICE AND ANY ACCRUED UNPAID INTEREST THEREON AND (ii) ALL UNPAID MEMBERSHIP FEES, DUES, AND ASSESSMENTS WITH ACCRUED INTEREST THEREON PERMITTED BY THE MEMBERSHIP CAMPING CONTRACT; AND (4) PAYMENT OF ALL OTHER UNPAID FINANCIAL OBLIGATIONS OWED BY YOU THE PURCHASER PURSUANT TO THE MEMBERSHIP CAMPING CONTRACT.

7. The full name of all salespersons involved in the execution of the membership camping contract.

8. A statement that contains, in boldfaced type, the name, address, and telephone number of the Virginia Department of Agriculture and Consumer Services, stating that that agency is the regulatory agency handling consumer complaints regarding membership campgrounds.

1985, c. 409; 1992, c. 545; 2013, c. 24.

§ 59.1-329. Escrow and bonding

A. All purchase money received from or on behalf of a purchaser in connection with the execution of a membership camping contract shall be deposited in an escrow or trust account designated solely for that purpose, which may be the membership camping operator's own escrow or trust account or that of his attorney's, until the expiration of the time for cancellation has expired unless a later time is provided in the membership camping contract. If the contract has not been canceled, any purchase money received from a purchaser may be released to the membership camping operator upon:

1. The conveying to the purchaser of the title to, interest in, or right or license to use the campground and facilities as required in the membership camping contract; or

2. The forfeiture of the purchase money by the purchaser under the terms of the membership camping contract.

B. In lieu of the obligations imposed by subsection A, the membership camping operator may file and maintain with the Commissioner a surety bond issued in favor of the Commissioner for the benefit of purchasers insuring the escrow of the purchase money until such time as it may be released as outlined in subsection A. Such bond may not be canceled until thirty days after written notice of cancellation is received by the Commissioner. In lieu of such bond, the membership camping operator may post with the Commissioner an irrevocable letter of credit in a form and content acceptable to the Commissioner. The penalty of the bond or letter of credit shall be adjusted from time to time in accordance with the following schedule:

TOTAL AMOUNT OF PURCHASE MONEY HELD	PENALTY OF BOND
1. $0 to $200,000	$50,000
2. $200,000 to $500,000	$75,000
3. Over $500,000	$100,000

C. The amount of purchase money paid by purchasers held at any one time by the membership camping operator shall not exceed the amount for which the operator is bonded or the letter of credit is issued in accordance with the schedule set forth in subsection B.

D. In addition to any bonding requirements contained in this section, the membership camping operator shall file and maintain with the Commissioner a payment and performance bond with surety issued in favor of the Commissioner for the benefit of the purchasers and which guarantees the completion of all incomplete or planned facilities constructed or to be constructed in this Commonwealth as outlined or listed in either the membership camping contract or the membership camping operator's disclosure statement. The bond may not be canceled until thirty days after written notice of cancellation is received by the Commissioner. In lieu of the bond the membership camping operator may post with the Commissioner an irrevocable letter of credit. The surety bond or letter of credit shall be in a form and content acceptable to the Commissioner. The penalty of the bond or letter of credit shall be in an amount equal to the cost of completing the incomplete

or planned facilities as of the date of its issuance or as of the membership camping operator's application for continued registration date as provided in § 59.1-320.1, whichever is later.

1985, c. 409; 1992, c. 545 .

§ 59.1-330. Repealed

Repealed by Acts 1992, c. 545 .

§ 59.1-330.1. Noncomplying contract voidable

Any membership camping contract which does not comply with the applicable provisions of this chapter shall be voidable at the option of the purchaser.

1992, c. 545 .

§ 59.1-330.2. Fraud rendering contract voidable

Any membership camping contract entered into by the purchaser upon any false, misleading, prohibited, or unlawful information, representation, notice, or advertisement of the membership camping operator or the operator's agent shall be voidable at the option of the purchaser.

1992, c. 545 .

§ 59.1-331. Resale of memberships

A. In the event of the resale of a membership by a purchaser who is neither a membership camping operator nor any other person who is in the business of offering for sale or transfer the rights under existing membership camping contracts for a fee, such purchaser (hereinafter in this section called "owner") shall furnish to the new purchaser before the execution of any instrument of conveyance a copy of the membership camping contract and a certificate containing:

1. A statement disclosing any right of first refusal or other restraint on transfer of the membership.

2. A statement setting forth the amount of the periodic payments which are required by the contract including any amounts currently due and payable.

3. That the membership camping operator may have a valid reason for not transferring the contract to the new purchaser.

4. That there may have been changes in the rules or regulations concerning the rights and obligations of the membership camping operator or purchasers, including changes with respect to membership fees, dues, and assessments, or that some campgrounds or facilities may have been withdrawn.

5. Any other material changes or risks to the purchaser known to the owner.

B. The membership camping operator within ten days after receipt of a written request by an owner, shall furnish the owner with a written certificate containing the information necessary to enable the owner to comply with subdivisions 1 and 2 of subsection A of this section. An owner providing such certificate pursuant to subsection A is not liable to the purchaser for any erroneous

information provided by the membership camping operator and included in the certificate. The membership camping operator is not liable to either the owner or the new purchaser for any information not provided by him.

1985, c. 409; 1992, c. 545 .

§ 59.1-332. Conditions on offering items as an inducement to execute

A. It is unlawful for any person by any means, as part of an advertising program, to offer any item of value as an inducement to the recipient to visit a membership camping operator's campground, attend a sales presentation or contact a salesperson, unless the person clearly discloses in writing in the offer in readily understandable language each of the following:

1. The name and campground address of the membership camping operator.

2. A general statement that the advertising program is being conducted by a membership camping operator and the purpose of any requested visit.

3. A statement of odds, in arabic numerals, of receiving each item offered.

4. The approximate retail value of each item offered.

5. The number of campgrounds that are participating in such advertising program.

6. The restrictions, qualifications and other conditions that must be satisfied before the recipient is entitled to receive the item, including:

a. Any deadline, if any, by which the recipient must visit the campground, attend the sales presentation or contact a salesperson in order to receive the item.

b. The approximate duration of any visit and sales presentation.

c. The date upon which the offer shall terminate and the final date upon which the gifts or prizes are to be awarded.

d. Any other conditions, such as minimum age qualification, a financial qualification or a requirement that if the recipient is married both husband and wife must be present in order to receive the item.

7. A statement that the membership camping operator reserves the right to provide a rain check or a substitute or like item, if these rights are reserved.

8. All other material rules, terms and conditions of the offer or program.

B. It is unlawful for any person making an offer subject to subsection A, or any employee or agent of the person, to offer any item if the person knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

C. It is unlawful for any person making an offer subject to subsection A, or any employee or agent of the person, to fail to provide any offered item which any recipient who has responded to the

offer in the manner specified in the offer, has performed the requirements disclosed in the offer and has met the qualifications described in the offer is entitled to receive, unless the offered item is not reasonably available and the offer discloses the reservation of a right to provide a rain check or a like or substitute item if the offered item is unavailable.

D. If the person making an offer subject to subsection A is unable to provide an offered item because of limitations of supply, quantity or quality not reasonably foreseeable or controllable by the person making the offer, the person making the offer shall inform the recipient of the recipient's right to receive a rain check for the item offered, unless the person making the offer knows or has a reasonable basis for knowing that the item will not be reasonably available at approximately the same price to the person making the offer, and shall inform the recipient of the recipient's right to at least one of the following additional options:

1. The person making the offer will provide a like item of equivalent or greater retail value or a rain check for the item. This option must be offered if the offered item is not reasonably available.

2. The person making the offer will provide a substitute item of equivalent or greater retail value.

3. The person making the offer will provide a rain check for a like or substitute item.

E. If a rain check is provided, the person making an offer subject to subsection A shall, within a reasonable time, and in any event not more than ninety days after the rain check is provided, deliver the agreed item to the recipient's address without additional cost or obligation to the recipient, unless the item for which the rain check is provided remains unavailable because of limitations of supply, quantity or quality not reasonably foreseeable or controllable by the person making the offer. If the item is unavailable for these reasons, the person shall, not more than thirty days after the expiration of the aforesaid ninety-day period, deliver a like item of equal or greater retail value or, if the item is not reasonably available to the person at approximately the same price, a substitute item of equal or greater retail value.

F. On the written request of a recipient who has received or claims a right to receive any offered item, the person making an offer subject to subsection A shall furnish to the recipient sufficient evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

G. It is unlawful for any person making an offer subject to subsection A, or any employee or agent of the person, to:

1. Misrepresent the size, quantity, identity or quality of any prize, gift, money or other item of value offered.

2. Misrepresent in any manner the odds of receiving any particular gift, prize, amount of money or other item of value.

3. Label any offer a "notice of termination" or "notice of cancellation."

4. Materially misrepresent, in any manner, the offer, or program.

H. If any provision of this section is in conflict with the provisions of the Prizes and Gifts Act (§ 59.1-415 et seq.), the provisions of the Prizes and Gifts Act shall control.

1985, c. 409; 1992, c. 545 .

§ 59.1-333. Nondisturbance provisions

With respect to any property in this Commonwealth acquired and put into operation by a membership camping operator after July 1, 1985, the membership camping operator shall neither offer nor execute a membership camping contract in this Commonwealth granting the right to use such property until:

1. Each person holding an interest in a blanket encumbrance shall have executed and delivered a nondisturbance agreement which includes the following provisions: (i) that the rights of the owner or owners of the blanket encumbrance in the affected campground are subordinate to the rights of purchasers, and (ii) that any person who acquires the affected campground or any portion thereof by the exercise of any right of sale or foreclosure contained in such agreement shall take the same subject to the rights of the purchasers, and (iii) that the owner or owners of the blanket encumbrance shall not use or cause the property to be used in any manner which interferes with the right of the purchasers to use the campground and its facilities in accordance with the terms and conditions of the membership camping contract. Such agreement shall be recorded in the clerk's office of the circuit court in which the property is located; and

2. Every financial institution providing a major hypothecation loan to the membership camping operator (the "hypothecation lender") which has a lien on, or security interest in the membership camping operator's ownership interest in the campground shall have executed and delivered a nondisturbance agreement and recorded such agreement in the clerk's office of the circuit court in which the campground is located. In addition, each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall have executed, delivered and recorded an instrument stating that such person shall give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before such person commences any foreclosure action affecting the campground. For the purposes of this provision, a major hypothecation loan to a membership camping operator is a loan or line of credit secured by substantially all of the contracts receivable arising from the membership camping operator's sale of membership camping contracts; or

3. There shall have been delivered to and accepted by the Commissioner a surety bond or letter of credit satisfying the following requirements: The surety bond or letter of credit shall be issued to the Commissioner for the benefit of purchasers and shall be in an amount which is not less than 105 percent of the remaining principal balance of every indebtedness secured by a blanket encumbrance affecting the campground. Such bond shall be issued by a surety authorized to do business in this Commonwealth and having sufficient net worth to satisfy the indebtedness. Such letter of credit shall be irrevocable and shall be drawn upon a bank, savings and loan, or financial

institution and shall be in form and content acceptable to the Commissioner. The bond or letter of credit shall provide for payment of all amounts secured by the blanket encumbrance, including costs, expenses, and legal fees of the lien holder, if for any reason the blanket encumbrance is enforced. The bond or letter of credit may be reduced at the option of the membership camping operator periodically in proportion to the reductions of the amounts secured by the blanket encumbrance.

4. The nondisturbance agreement may be amended provided the provisions of this section are not diminished or altered by the amendment.

1985, c. 409.

Article 4 - MISCELLANEOUS PROVISIONS

§ 59.1-334. Investigations

A. The Commissioner may:

1. Make necessary public or private investigations within or without this Commonwealth to determine whether any person has violated or is about to violate any provision of this chapter or any rule, regulation, or order issued hereunder, or to aid in the enforcement of this chapter in prescribing rules and form hereunder.

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter to be investigated.

B. For the purpose of any investigation or proceeding under this chapter, the Commissioner may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Commissioner under this chapter, where witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

D. Upon failure to obey a subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

E. The Board may prescribe reasonable rules and regulations in order to implement the terms of this chapter and such rules and regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

F. Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Process Act.

1985, c. 409.

§ 59.1-335. Penalties

A. Any person violating any of the provisions of §§ 59.1-317, 59.1-318, 59.1-326, 59.1-327, 59.1-328, and 59.1-329 or a cease and desist or temporary order issued pursuant to § 59.1-324 shall be guilty of a Class 1 misdemeanor and any person violating any of the provisions of § 59.1-332 shall be guilty of a Class 3 misdemeanor. Other than with reference to § 59.1-332 each violation shall be deemed a separate offense.

B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

1985, c. 409; 1992, c. 545 .

Chapter 25.1 - VIRGINIA CREDIT SERVICES BUSINESSES ACT

§ 59.1-335.1. Title

This chapter may be cited as the "Virginia Credit Services Businesses Act."

1989, cc. 651, 655 .

§ 59.1-335.2. Definitions

In this chapter the following words have the following meanings:

"Attorney General" means the Office of the Attorney General of Virginia.

"Commissioner" means the Commissioner of Agriculture and Consumer Services, or a member of his staff to whom he may delegate his duties under this chapter.

"Consumer" means any individual who is solicited to purchase or who purchases the services of a credit services business.

"Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which (i) is furnished or (ii) is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

1. Credit or insurance to be used primarily for personal, family, or household purposes; or

2. Employment purposes; or

3. Other purposes which shall be limited to the following circumstances:

a. In response to the order of a court having jurisdiction to issue the order.

b. In accordance with the written instructions of the consumer to whom the report relates.

c. To a person which the agency has reason to believe:

(i) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to or review or collection of an account of, the consumer; or

(ii) Intends to use the information for employment purposes; or

(iii) Intends to use the information in connection with the underwriting of insurance involving the consumer; or

(iv) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(v) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

The term "consumer report" does not include:

1. Any report containing information solely as to transactions or experiences between the consumer and the person making the report;

2. Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

3. Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer as to the exact nature of the request and the effect of the report on its decision to extend credit.

"Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of commerce for the purpose of preparing or furnishing consumer reports. "Consumer reporting agency" does not include a private detective or investigator licensed under the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1.

"Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

1. Improving a consumer's credit record, history, or rating;

2. Obtaining an extension of credit for a consumer; or

3. Providing advice or assistance to a consumer with regard to either subdivision 1 or 2 herein.

"Credit services business" does not include:

(i) The making, arranging, or negotiating for a loan or extension of credit under the laws of this Commonwealth or the United States;

(ii) Any bank, trust company, savings bank, or savings institution whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or other federal insurance agency, or any credit union organized and chartered under the laws of this Commonwealth or the United States;

(iii) Any nonprofit organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code (26 U.S.C. § 501(c) (3));

(iv) Any person licensed as a real estate broker by this Commonwealth where the person is acting within the course and scope of that license;

(v) Any person licensed to practice law in this Commonwealth where the person renders services within the course and scope of that person's practice as a lawyer;

(vi) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker-dealer is acting within the course and scope of that regulation;

(vii) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act (15 U.S.C. §§ 1681 -1681v); or

(viii) Any person selling personal, family, or household goods to a consumer who, in connection with the seller's sale of its goods to the consumer, assists the consumer in obtaining a loan or extension of credit or extends credit to the consumer.

"Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.

"File" when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

"Investigative consumer report" means a consumer report or portion of it in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

"Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.

1989, cc. 651, 655; 1990, c. 3; 2003, c. 359.

§ 59.1-335.3. Registration; fees

A. It shall be unlawful for any credit services business to offer, advertise, or execute or cause to be executed by a consumer any contract in this Commonwealth unless the credit services business at the time of the offer, advertisement, sale or execution of a contract has been properly registered with the Commissioner. The Commissioner may charge the credit services business a reasonable fee not exceeding $100 to cover the costs of filing.

B. The registration shall contain (i) the name and address of the credit services business, (ii) the name and address of the registered agent authorized to accept service of process on behalf of the credit services business, (iii) the name and address of any person who directly or indirectly owns or controls a ten percent or greater interest in the credit services business, and (iv) the name and address of the surety company that issued a bond pursuant to § 59.1-335.4 or the name and address of the bank that issued a letter of credit pursuant to § 59.1-335.4. The registration statement shall also contain either a full and complete disclosure of any litigation or unresolved complaint filed within the preceding five years with a governmental authority of the Commonwealth, any other state or the United States relating to the operation of the credit services business, or a notarized statement that there has been no litigation or unresolved complaint filed within the preceding five years with the governmental authority of the Commonwealth, any other state or the United States relating to the operation of the credit services business.

C. The credit services business shall attach to the registration statement a copy of (i) the information statement required under § 59.1-335.6, (ii) a copy of the contract which the credit services business intends to execute with its consumers, and (iii) evidence of the bond or trust account required under § 59.1-335.4.

D. The credit services business shall update the registration statement required under this section not later than ninety days after the date from which a change in the information required in the statement occurs.

E. Each credit services business registering under this section shall maintain a copy of the registration statement in its files. The credit services business shall allow a buyer to inspect the registration statement on request.

1989, c. 655 .

§ 59.1-335.4. Bond or letter of credit required

A. Every credit services business, before it enters into a contract with a consumer, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety from a company authorized to transact business in the Commonwealth, or a letter of

credit from a bank insured by the Federal Deposit Insurance Corporation in an amount equal to 100 times the standard fee charged by the credit services business but in no event shall the bond or letter of credit required under this section be less than $5,000 or greater than $50,000.

B. The required bond or letter of credit shall be in favor of the Commonwealth of Virginia for the benefit of any person who is damaged by any violation of this Act. The bond or letter of credit shall also be in favor of any person damaged by such practices. Any person claiming against the bond or letter of credit for a violation of this Act may maintain an action at law against the credit services business and against the surety or bank. The surety or bank shall be liable only for actual damages and attorneys fees and not for penalties permitted under §§ 59.1-206 and 59.1-335.12 or punitive damages permitted under § 59.1-335.10. The aggregate liability of the surety or bank to all persons damaged by a credit services business violation of this chapter shall in no event exceed the amount of the bond or letter of credit.

C. The bond or letter of credit shall be maintained for a period of two years after the date that the credit services business ceases operation.

1989, c. 655 .

§ 59.1-335.5. Prohibited practices

A credit services business, and its salespersons, agents and representatives, and independent contractors who sell or attempt to sell the services of a credit services business, shall not do any of the following:

1. Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, unless the consumer has agreed to pay for such services during the term of a written subscription agreement that provides for the consumer to make periodic payments during the agreement's term in consideration for the credit services business's ongoing performance of services for or on behalf of the consumer, provided that such subscription agreement may be cancelled at any time by the consumer;

2. Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;

3. Make, or counsel or advise any consumer to make, any statement that is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity; or

4. Make or use any untrue or misleading representations in the offer or sale of the services of a credit services business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services business.

1989, cc. 651, 655; 2010, c. 421.

§ 59.1-335.6. Information statement required

Before (i) the execution of a contract or agreement between a consumer and a credit services business or (ii) the receipt by the credit services business of any money or other valuable consideration, whichever occurs first, the credit services business shall provide the consumer with an information statement in writing containing all of the information required under § 59.1-335.7. The credit services business shall maintain on file or microfilm for a period of two years from the date of the consumer's acknowledgement an exact copy of the information statement personally signed by the consumer acknowledging receipt of a copy of the information statement.

1989, cc. 651, 655 .

§ 59.1-335.7. Contents of information statement

The information statement required under § 59.1-335.6 of this chapter shall include all of the following:

1. a. A complete and accurate statement of the consumer's right to review any file on the consumer maintained by any consumer reporting agency, and the right of the consumer to receive a copy of a consumer report containing all information in that file as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681g);

b. A statement that a copy of the consumer report containing all information in the consumer's file will be furnished free of charge by the consumer reporting agency if requested by the consumer within 30 days of receiving a notice of a denial of credit as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681j); and

c. A statement that a nominal charge may be imposed on the consumer by the consumer reporting agency for a copy of the consumer report containing all information in the consumer's file, if the consumer has not been denied credit within 30 days from receipt of the consumer's request;

2. A complete and accurate statement of the consumer's right to dispute the completeness or accuracy of any item contained in any file on the consumer that is maintained by any consumer reporting agency, as provided under the Federal Fair Credit Reporting Act (15 U.S.C. § 1681i);

3. A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay, or become obligated to pay, for the services. Such statement shall include the following notice in at least 10-point bold type:

IMPORTANT NOTICE:

YOU HAVE NO OBLIGATION TO PAY
ANY FEES OR CHARGES UNTIL ALL
SERVICES HAVE BEEN PERFORMED
COMPLETELY FOR YOU, UNLESS YOU
ENTER INTO A SUBSCRIPTION AGREEMENT
REQUIRING PERIODIC PAYMENTS IN
CONSIDERATION FOR ONGOING SERVICES.

; and

4. The notice prescribed by subdivision 3 of this section shall also be posted by means of a conspicuous sign so as to be readily noticeable and readable at the location within the premises of the credit services business where consumers are interviewed by personnel of the business.

1989, cc. 651, 655; 2010, c. 421.

§ 59.1-335.8. Contents of contracts

A. Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer, and shall include all of the following:

1. A conspicuous statement in size equal to at least ten-point bold type, in immediate proximity to the space reserved for the signature of the consumer as follows:

"You, the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";

2. The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

3. A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified;

4. The principal business address of the credit services business and the name and address of its agent in this Commonwealth authorized to receive service of process;

5. A statement asserting the buyer's right to proceed against the bond or letter of credit required under § 59.1-335.4; and

6. The name and address of the surety company which issued the bond, or the name and address of the bank which issued the letter of credit.

B. 1. The contract shall be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract and easily detachable, and which shall contain in at least ten-point bold type the following statement:

"NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time prior to midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to

_____ (Name of Seller)

At _____ (Address of Seller)

_____ (Place of Business)

Not later than midnight_____ (Date)

I HEREBY CANCEL THIS TRANSACTION.

_____ (Date)

_____ (Buyer's Signature)"

2. A copy of the fully completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

1989, cc. 651, 655.

§ 59.1-335.9. Breach; null and void contract

A. Any breach by a credit services business of a contract under this chapter, or of any obligation arising under it, shall constitute a violation of this chapter.

B. Any contract for services from a credit services business that does not comply with the applicable provisions of this chapter shall be void and unenforceable as contrary to the public policy of this Commonwealth.

C. Any waiver by a consumer of any of the provisions of this chapter shall be deemed void and unenforceable by a credit services business as contrary to public policy of this Commonwealth, and any attempt by a credit services business to have a consumer waive rights given by this chapter shall constitute a violation of this chapter.

D. In any proceeding involving this chapter the burden of proving an exemption or an exception from a definition is upon the person claiming it.

1989, cc. 651, 655 .

§ 59.1-335.10. Liability to consumer

A. Any credit services business which willfully fails to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Any actual damages sustained by the consumer as a result of the failure; and

2. Such amount of punitive damages as the court may allow.

B. Any credit services business which is negligent in failing to comply with any requirement imposed under this chapter with respect to any consumer is liable to that consumer in an amount equal to the sum of any actual damages sustained by the consumer as a result of the failure.

1989, cc. 651, 655 .

§ 59.1-335.11. Statute of limitations

An action to enforce any liability created under this chapter may be brought within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this chapter to be disclosed to a consumer and the information so misrepresented is material to the establishment of the defendant's liability to that consumer under this chapter, the action may be brought at any time within two years after discovery by the consumer of the misrepresentation.

1989, cc. 651, 655 .

§ 59.1-335.12. Violations of chapter; enforcement

A. Each sale of the services of a credit services business that violates any provision of this chapter is a prohibited practice under § 59.1-200.

B. If the Attorney General, any attorney for the Commonwealth, or any attorney for a county, city or town has reason to believe that any credit services business, or any salesperson, agent, representative, or independent contractor acting on behalf of a credit services business, has violated any provision of this chapter, the Attorney General, the attorney for the Commonwealth, or attorney for the county, city or town may institute a proceeding under Chapter 17 (§ 59.1-196 et seq.) of Title 59.1.

1989, cc. 651, 655 .

Chapter 26 - UNIFORM TRADE SECRETS ACT

§ 59.1-336. Short title and definitions

As used in this chapter, which may be cited as the Uniform Trade Secrets Act, unless the context requires otherwise:

"Improper means" includes theft, bribery, misrepresentation, use of a computer or computer network without authority, breach of a duty or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

"Misappropriation" means:

1. Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

2. Disclosure or use of a trade secret of another without express or implied consent by a person who

a. Used improper means to acquire knowledge of the trade secret; or

b. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was

(1) Derived from or through a person who had utilized improper means to acquire it;

(2) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;

(3) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(4) Acquired by accident or mistake.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

"Trade secret" means information, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

1986, c. 210; 2009, cc. 321, 376.

§ 59.1-337. Injunctive relief

A. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

B. In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

1986, c. 210.

§ 59.1-338. Damages

A. Except where the user of a misappropriated trade secret has made a material and prejudicial change in his position prior to having either knowledge or reason to know of the misappropriation and the court determines that a monetary recovery would be inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. If a complainant is unable to prove a greater amount of damages by other methods of measurement, the damages caused by misappropriation can be measured exclusively by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

B. If willful and malicious misappropriation exists, the court may award punitive damages in an amount not exceeding twice any award made under subsection A of this section, or $350,000 whichever amount is less.

1986, c. 210; 1990, c. 344 .

§ 59.1-338.1. Attorneys' fees

If the court determines that (i) a claim of misappropriation is made in bad faith, or (ii) willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party.

1990, c. 344 .

§ 59.1-339. Preservation of secrecy

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include:

1. Granting protective orders in connection with discovery proceedings;

2. Holding in-camera hearings;

3. Sealing the records of the action; and

4. Ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

1986, c. 210.

§ 59.1-340. Statute of limitations

An action for misappropriation shall be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

1986, c. 210.

§ 59.1-341. Effect on other law

A. Except as provided in subsection B of this section, this chapter displaces conflicting tort, restitutionary, and other law of this Commonwealth providing civil remedies for misappropriation of a trade secret.

B. This chapter does not affect:

1. Contractual remedies whether or not based upon misappropriation of a trade secret; or

2. Other civil remedies that are not based upon misappropriation of a trade secret; or

3. Criminal remedies, whether or not based upon misappropriation of a trade secret.

1986, c. 210.

§ 59.1-342. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

§ 59.1-343. Time of taking effect

This chapter shall become effective on July 1, 1986, and shall not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the chapter also shall not apply to misappropriation that occurs after the effective date.

1986, c. 210.

Chapter 27 - FARM MACHINERY DEALERSHIPS [Repealed]

§§ 59.1-344 through 59.1-352. Repealed

Repealed by Acts 2002, c. 898, effective July 1, 2002.

Chapter 27.1 - EQUIPMENT DEALERS PROTECTION ACT

§ 59.1-352.1. Definitions

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

"Agreement" means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor by which the dealer is granted one or more of the following rights:

1. To sell or distribute goods or services.

2. To use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

"Current model" means a model listed in the wholesaler's, manufacturer's, or distributor's current sales manual or any supplements.

"Current net price" means the price listed in the supplier's price list or catalog in effect at the time the agreement is terminated, less any applicable discounts allowed.

"Dealer" means a person engaged in the business of selling at retail farm, construction, utility or industrial equipment, implements, machinery, attachments, outdoor power equipment, or repair parts.

"Family member" means a spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, or a lineal descendant of the dealer or principal owner of the dealership.

"Good cause" means failure by a dealer to comply with requirements imposed upon the dealer by the agreement if the requirements are not different from those imposed on other dealers similarly situated in this Commonwealth. In addition, good cause exists in any of the following circumstances:

1. A petition under bankruptcy or receivership law has been filed against the dealer.

2. The dealer has made an intentional misrepresentation with the intent to defraud the supplier.

3. Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier or a revocation or discontinuance of a guarantee of a present or future obligation of the retailer to the supplier.

4. Closeout or sale of a substantial part of the dealer's business related to the handling of goods; the commencement or dissolution or liquidation of the dealer if the dealer is a partnership or corporation; or a change, without the prior written approval of the supplier, which shall not be unreasonably withheld, in the location of the dealer's principal place of business or additional locations set forth in the agreement.

5. Withdrawal of an individual proprietor, partner, major shareholder, or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier.

6. Revocation or discontinuance of any guarantee of the dealer's present or future obligations to the supplier.

7. The dealer has failed to operate in the normal course of business for seven consecutive business days or has otherwise abandoned the business.

8. The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the supplier.

9. The dealer transfers an interest in the dealership, or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership.

"Inventory" means farm implements and machinery, construction, utility and industrial equipment, consumer products, outdoor power equipment, attachments, or repair parts.

"Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location, plus reasonable cost of assembly or disassembly performed by the dealer.

"Superseded part" means any part that will provide the same function as a currently available part as of the date of cancellation.

"Supplier" means a wholesaler, manufacturer, distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler, or distributor who enters into an agreement with a dealer.

"Termination" of an agreement means the termination, cancellation, nonrenewal, or non-continuance of the agreement.

2002, c. 898.

§ 59.1-352.2. Usage of trade

The terms "utility" and "industrial," when used to refer to equipment, implements, machinery, attachments, or repair parts, shall have the meaning commonly used and understood among dealers and suppliers of farm equipment as a usage of trade in accordance with § 8.1A-303(c) .

2002, c. 898; 2003, c. 353.

§ 59.1-352.3. Notice of termination of agreements

A. No supplier, directly or through an officer, agent, or employee, may terminate, cancel, fail to renew, or substantially change the competitive circumstances of an agreement without good cause.

B. Notwithstanding any agreement to the contrary, a dealer who terminates an agreement with a supplier shall notify the supplier of the termination not less than 90 days prior to the effective date of the termination.

C. A supplier shall provide a dealer with at least 90 days' written notice of termination of the agreement and a 60-day right to cure the deficiency. If the deficiency is cured within the allotted time, the notice is void. In the case where cancellation of an agreement is based upon the dealer's failure to capture the share of the market required in the agreement, a minimum 12-month period of time shall have existed where the supplier has worked with the dealer to gain the desired market share. The notice shall state all reasons constituting good cause.

D. Notification under this section shall be in writing and shall be by certified mail or personally delivered to the recipient. It shall contain all of the following:

1. A statement of intention to terminate the dealership;

2. A statement of the reasons for the termination; and

3. The date on which the termination takes effect.

E. The notice and right to cure is not required if the reason for termination, cancellation or non-renewal is for good cause, as defined in § 59.1-352.1.

2002, c. 898; 2003, c. 797.

§ 59.1-352.4. Supplier's duty to repurchase

A. Whenever a dealer enters into an agreement evidenced by a written or oral contract in which the dealer agrees to maintain an inventory, and the agreement is terminated by either party, the supplier shall repurchase the dealer's inventory as provided in this chapter unless the dealer chooses to keep the inventory. If the dealer has any outstanding debts to the supplier, then the repurchase amount may be set off or credited to the retailer's account.

B. Whenever a dealer enters into an agreement in which the dealer agrees to maintain an inventory, and the dealer, or the majority stockholder of the dealer if the dealer is a corporation, dies or becomes incompetent, the supplier shall, at the option of the heir, personal representative, or guardian of the dealer, or the person who succeeds to the stock of the majority stockholder, repurchase the inventory as if the agreement had been terminated. The heir, personal representative, guardian, or succeeding stockholder has one year from the date of the death of the dealer or majority stockholder to exercise the option under this chapter.

2002, c. 898.

§ 59.1-352.5. Repurchase terms

A. The supplier shall repurchase from the dealer within ninety days after termination of the agreement all inventory previously purchased from the supplier that remains unsold on the date of termination of the agreement.

B. The supplier shall pay the dealer:

1. One hundred percent of the current net price of all new, unused, unsold, undamaged, and complete farm, construction, utility, and industrial equipment, implements, machinery, outdoor power equipment, and attachments.

2. Ninety percent of the current net price of all new, unused, and undamaged repair and superseded parts.

3. Seventy-five percent of the net cost of all specialized repair tools purchased in the previous three years and fifty percent of the net cost of all specialized repair tools purchased in the previous four through six years pursuant to the requirements of the supplier and held by the dealer on the date of termination. Such specialized repair tools shall be unique to the supplier's product line and shall be in complete and resalable condition. Farm implements, machinery, utility and industrial equipment, and outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration or lease, shall also be subject to repurchase under this section at its agreed depreciated value, provided the equipment is in new condition and has not been damaged.

4. At its amortized value, the price of any specific data processing hardware and software and telecommunications equipment that the supplier required the dealer to purchase within the past five years.

C. The supplier shall pay the cost of shipping the inventory from the dealer's location and shall pay the dealer ten percent of the current net price of all new, unused, undamaged repair parts returned, to cover the cost of handling, packing, and loading. The supplier may perform the handling, packing, and loading instead of paying the ten percent for the services. The dealer and the supplier may each furnish a representative to inspect all parts and certify their acceptability when packed for shipment.

D. The supplier shall pay the full repurchase amount to the dealer not later than thirty days after receipt of the inventory. If the dealer has any outstanding debts to the supplier, then the repurchase amount may be credited to the dealer's account.

E. Upon payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer to the supplier. Annually, at the end of each calendar year, or after termination or cancellation of the agreement, the dealer's reserve account for recourse, retail sale, or lease contracts shall not be debited by a supplier or lender for any deficiency unless the dealer or the heirs of the dealer have been given at least seven business days' notice by certified or registered United States mail, return receipt requested, of any proposed sale of the equipment financed and an opportunity to purchase the equipment. The former dealer or the heirs of the dealer shall be given quarterly status reports on any remaining outstanding recourse contracts. As the recourse contracts are reduced, any reserve account funds shall be returned to the dealer or the heirs of the dealer in direct proportion to the liabilities outstanding.

F. In the event of the death of the dealer or the majority stockholder of a corporation operating as a dealer, the supplier shall, at the option of the heir, repurchase the inventory from the heir of the dealer or majority stockholder as if the supplier had terminated the agreement. The heir shall have one year from the date of the death of the dealer or majority stockholder to exercise the heir's options under this section. Nothing in this section shall require the repurchase of any inventory if the heir and the supplier enter into a new agreement to operate the retail dealership.

G. A supplier shall have ninety days in which to consider and make a determination upon a request by a family member to enter into a new agreement to operate the dealership. In the event the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for nonacceptance. This section does not entitle an heir, personal representative, or family member to operate a dealership without the specific written consent of the supplier.

H. Notwithstanding the provisions of this section, in the event that a supplier and a dealer have executed an agreement concerning succession rights prior to the dealer's death, and if the agree-

ment has not been revoked, that agreement shall be enforced even if it designates someone other than the surviving spouse or heir of the decedent as the successor.

2002, c. 898.

§ 59.1-352.6. Exceptions to repurchase requirement

This chapter does not require the repurchase from a dealer of:

1. A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries, except for industrial "press on" or industrial pneumatic tires.

2. A single repair part that is priced as a set of two or more items.

3. A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning.

4. Any repair part that is not in new, unused, undamaged condition.

5. An item of inventory for which the dealer does not have title free of all claims, liens, and encumbrances other than those of the supplier.

6. Any inventory that the dealer chooses to keep.

7. Any inventory that was ordered by the dealer after either party's receipt of notice of termination of the franchise agreement.

8. Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that are not current models or that are not in new, unused, undamaged, complete condition, provided that the equipment used in demonstrations or leased, as provided in § 59.1-352.5, shall be considered new and unused.

9. Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that were purchased more than thirty-six months prior to notice of termination of the agreement.

10. Any inventory that was acquired by the dealer from a source other than the supplier.

2002, c. 898.

§ 59.1-352.7. Uniform commercial practice

A. This chapter does not affect a security interest of the supplier in the inventory of the dealer.

B. The dealer and supplier shall furnish representatives to inspect all parts and certify their acceptability when packed for shipment. Failure of the supplier to provide a representative within sixty days shall result in automatic acceptance by the supplier of all returned items.

2002, c. 898; 2011, c. 369.

§ 59.1-352.8. Warranty obligations

A. Whenever a supplier and a dealer enter into an agreement, the supplier shall pay any warranty claim made by the dealer for warranty parts or service within thirty days after its approval. The

supplier shall approve or disapprove a warranty claim within thirty days after its receipt. If a claim is disapproved, the manufacturer, wholesaler, or distributor shall notify the dealer within thirty days stating the specific grounds upon which the disapproval is based. If a claim is not specifically disapproved in writing within thirty days after its receipt, it is approved and payment must follow within thirty days.

B. Whenever a supplier and a dealer enter into an agreement, the supplier shall indemnify and hold harmless the dealer against any judgment for damages or any settlement agreed to by the supplier, including court costs and a reasonable attorney's fee, arising out of a complaint, claim, or lawsuit including negligence, strict liability, misrepresentation, breach of warranty, or rescission of the sale, to the extent the judgment or settlement relates to the manufacture, assembly, or design of inventory, or other conduct of the supplier beyond the dealer's control.

C. If, after termination of an agreement, the dealer submits a claim to the manufacturer, wholesaler, or distributor for warranty work performed prior to the effective date of the termination, the manufacturer, wholesaler, or distributor shall accept or reject the claim within thirty days of receipt.

D. If a claim is not paid within the time allowed under this section, interest shall accrue at the maximum lawful interest rate.

E. Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions thereof. The cost of the work shall be computed by multiplying the time required to complete the work by the dealer's established customer hourly retail labor rate. The dealer shall inform the manufacturer, wholesaler, or distributor for whom the dealer is performing warranty work of the dealer's established customer hourly retail labor rate before the dealer performs any work.

F. Expenses expressly excluded under the warranty of the manufacturer, wholesaler, or distributor to the customer shall neither be included nor required to be paid for warranty work performed, even if the dealer requests compensation for the work performed.

G. The dealer shall be paid for all parts used by the dealer in performing warranty work. Payment shall be in an amount equal to the dealer's net price for the parts, plus a minimum of fifteen percent.

H. The manufacturer, wholesaler, or distributor has a right to adjust compensation for errors discovered during an audit and, if necessary, to adjust claims paid in error.

I. The dealer shall have the right to accept the reimbursement terms and conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and conditions of this section.

2002, c. 898.

§ 59.1-352.9. Prohibited acts

No supplier shall do any of the following:

1. Coerce any dealer to accept delivery of equipment, parts, or accessories that the dealer has not ordered voluntarily, except as required by any applicable law, or unless the parts or accessories are safety parts or accessories required by the supplier.

2. Condition the sale of additional equipment to a dealer upon a requirement that the dealer also purchase other goods or services, except that a supplier may require the dealer to purchase those parts reasonably necessary to maintain the quality of operation in the field of the equipment used in the trade area.

3. Coerce a dealer into refusing to purchase equipment manufactured by another supplier.

4. Terminate, cancel, or fail to renew or substantially change the competitive circumstances of the retail agreement based on the results of any circumstance beyond the dealer's control, including a natural disaster such as a sustained drought, high unemployment in the dealership market area, or a labor dispute.

2002, c. 898.

§ 59.1-352.10. Failure to repurchase; civil remedy

A. If a supplier fails or refuses to repurchase any inventory covered under the provisions of this chapter within the time periods established in § 59.1-352.5, the supplier shall be civilly liable for one hundred percent of the current net price of the inventory, any freight charges paid by the dealer, the dealer's reasonable attorney's fee and court costs, and interest on the current net price of the inventory computed at the legal rate of interest from the ninety-first day after termination of the agreement.

B. Notwithstanding any agreement to the contrary, and in addition to any other legal remedies available, any person who suffers monetary loss due to a violation of this chapter or because he refuses to accede to a proposal for an arrangement that, if consummated, is in violation of this chapter, may bring a civil action to enjoin further violations and to recover damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.

C. The provisions of §§ 59.1-352.3 through 59.1-352.8 shall not be waivable in any contract or agreement, and any such attempted waiver shall be null and void.

D. A civil action commenced under the provisions of this chapter shall be brought within four years after the violation complained of is or reasonably should have been discovered, whichever occurs first.

2002, c. 898.

Chapter 28 - HEAVY EQUIPMENT DEALER ACT

§ 59.1-353. Chapter title; definitions

This chapter may be cited as the "Heavy Equipment Dealer Act." As used in this chapter unless the context requires otherwise:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a supplier and a dealer pursuant to which the dealer has been authorized to distribute one or more of the supplier's heavy equipment products, and attachments and repair parts therefor, and in connection therewith to use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

"Dealer" means a person in Virginia (i) engaged in the business of selling or leasing heavy equipment at retail, (ii) who customarily maintains a total inventory, valued at over $250,000, of new heavy equipment and attachments and repair parts therefor, and (iii) who provides repair services for the heavy equipment sold.

"Heavy equipment" means self-propelled, self-powered or pull-type equipment and machinery, including engines, weighing 5000 pounds or more, primarily employed for construction, industrial, maritime, mining and forestry uses, as such terms are commonly used and understood as a usage of trade in accordance with § 8.1A-303(c) . The term "heavy equipment" shall not include (i) motor vehicles requiring registration and certificates of title in accordance with § 46.2-600, (ii) farm machinery, equipment and implements sold or leased pursuant to dealer agreements with suppliers subject to the provisions of Chapter 27.1 (§ 59.1-352.1 et seq.) of this title, or (iii) equipment that is "consumer goods" within the meaning of § 8.9A-102.

"Person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives, guardians and conservators.

"Supplier" means every person, including any agent of such person, or any authorized broker acting on behalf of that person, that enters into an "agreement" with a dealer.

1988, c. 73; 1997, c. 801; 2002, c. 898; 2003, c. 353.

§ 59.1-354. Cancellation

A. Notwithstanding the terms, provisions or conditions of any agreement, no supplier shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a dealer to resign from an agreement, unless the supplier has first complied with the provisions of § 59.1-355, and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuance or causing a resignation. "Good cause" shall not include the sale or purchase of a supplier. "Good cause" shall be limited to withdrawal by the supplier, its successors and assigns, of the sale of its products in Virginia, or dealer performance deficiencies including, but not limited to, the following:

1. Bankruptcy or receivership of the dealer;

2. Assignment for the benefit of creditors or similar disposition of the assets of the dealer, other than the creation of a security interest in the assets of a dealer for the purpose of securing financing in the ordinary course of business; or

3. Failure by the dealer to substantially comply, without reasonable cause or justification, with any reasonable and material requirement imposed upon him in writing by the supplier including, but not limited to, a substantial failure by a dealer to (i) maintain a sales volume or trend of his supplier's product line or lines comparable to that of other similarly situated dealers of that product line, or (ii) render services comparable in quality, quantity or volume to the services rendered by other dealers of the same product or product line similarly situated.

In any determination as to whether a dealer has failed to substantially comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the supplier, consideration shall be given to the relative size, population, geographical location, number of retail outlets and demand for the products applicable to the market area of the dealer in question and to comparable market area.

B. No supplier shall be required to give notice or show good cause pursuant to subsection A of this section to unilaterally amend agreements with dealers to comply with federal or state law or, where not inconsistent with this chapter, to uniformly amend agreements as to all dealers of the supplier in question in all states in which the supplier is marketing its products.

C. In any dispute as to whether a supplier has acted with good cause as required by this section the supplier shall have the burden of proof to establish that good cause existed.

1988, c. 73.

§ 59.1-355. Notice of intent to terminate

A. Except as provided in subsection D of this section, a supplier shall provide a dealer at least 120 days' prior written notice of any intention to amend, terminate, cancel or not renew any agreement. The notice shall state all the reasons for the intended amendment, termination, cancellation or nonrenewal.

B. Where such reason or reasons relate to a condition or conditions which may be rectified by action of the dealer, he shall have seventy-five days in which to take such action and, within such seventy-five-day period, shall give written notice to the supplier if and when such action is taken. If such condition or conditions have been rectified by action of the dealer, then the proposed amendment, termination, cancellation or nonrenewal shall be void and without legal effect. However, where the supplier contends that action on the part of the dealer has not rectified one or more of such conditions, such supplier must give written notice thereof to the dealer within fifteen days after the dealer gave notice to the supplier of the action taken.

C. During the 120-day notice period provided for in subsection A the dealer shall have the right to contract for a transfer of his business to another person who meets the material and reasonable qualifications and standards required by the supplier of its dealers. The dealer shall give notice of any such transfer to the supplier at least forty-five days prior to the expiration of the 120-day notice period.

D. No notice shall be required and an agreement may be immediately terminated, amended, canceled or allowed to expire if the reason for the amendment, termination, cancellation or nonrenewal is:

1. The bankruptcy or receivership of the dealer;

2. An assignment for the benefit of the creditors or similar disposition of the assets of the business, other than the creation of a security interest in the assets of a dealer for the purpose of securing financing in the ordinary course of business;

3. Willful or intentional misrepresentation made by the dealer with the express intent to defraud the supplier;

4. Failure of the dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, unless such failure has resulted from acts of God, casualties, strikes, or other similar circumstances beyond the dealer's reasonable control;

5. Failure to pay any undisputed amount due the supplier continuing for thirty days after written notice thereof; or

6. A final conviction of the dealer of a felony.

1988, c. 73.

§ 59.1-356. Transfer of business

A. No supplier shall unreasonably withhold or delay consent to any transfer of the dealer's business or transfer of the stock or other interest in the dealership, whenever the dealer to be substituted meets the material and reasonable qualifications and standards required of its dealers. Should a supplier determine that a proposed transferee does not meet its qualifications and standards, it shall give the dealer written notice thereof, stating the specific reasons for withholding consent. No prospective transferee shall be disqualified to be a dealer because it is a publicly held corporation. A supplier shall have forty-five days to consider a dealer's request to make a transfer under this subsection.

B. Notwithstanding any provision in subsection A of this section, no supplier shall withhold consent to, or in any manner retain a right of prior approval of, the transfer of the dealer's business to a member or members of the family of the dealer or the principal owner of the dealer. As used in this subsection, "family" means and includes the spouse, parent, siblings, children, stepchildren and lineal descendants, including those by adoption of the dealer or principal owner of the dealer.

C. Whenever a transfer of a dealer's business occurs, the transferee shall assume all the obligations imposed on and succeed to all the rights held by the selling dealer by virtue of any agreement, consistent with this chapter, between the selling dealer and one or more suppliers entered into prior to the transfer.

D. In any dispute as to whether a supplier has denied consent in violation of this section, the supplier shall have the burden of proving a substantial and reasonable justification for the denial of consent.

1988, c. 73.

§ 59.1-357. Notices

Notices required by this chapter shall be sent by certified or registered mail, postage prepaid.

1988, c. 73.

§ 59.1-358. Remedies

A. Jurisdiction to hear and determine cases and controversies arising under provisions of this chapter shall be in the circuit court of the city or county wherein the dealer has its principal place of business in Virginia. The court may grant equitable relief as is necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief.

B. In addition to any other remedies available at law or in equity, if a supplier has attempted or accomplished an annulment, cancellation, termination or refused to continue or renew an agreement without good cause or withheld or delayed consent in violation of § 59.1-354 or § 59.1-356, then the dealer shall be entitled to recover losses and damages, both general and special, proximately resulting therefrom, together with the cost of the action and reasonable legal fees. Such damages shall include compensation for the value of the agreement and the good will of the dealer's business, if any, arising therefrom.

C. Nothing contained herein shall bar the right of an agreement to provide for binding arbitration of disputes. Any such arbitration shall be consistent with the provisions of this chapter and Chapter 21 (§ 8.01-577 et seq.) of Title 8.01, and the place of any such arbitration shall be in the city or county in which the dealer maintains his principal place of business in Virginia.

D. No supplier may cancel, terminate or refuse to continue to renew an agreement during the 120-day period set forth in § 59.1-355 or during the pendency of litigation or arbitration with respect thereto except under the conditions set forth in subsection D of § 59.1-355.

1988, c. 73.

§ 59.1-359. Management

No supplier shall require or prohibit any change in management or personnel of any dealer unless the current or potential management or personnel fails to meet reasonable qualifications and standards required by the supplier for its dealers.

1988, c. 73.

§ 59.1-360. Waiver of chapter void

The provisions of this chapter shall be deemed to be incorporated in every agreement subject hereto and shall supersede and control all other provisions of the agreement inconsistent

herewith. No supplier shall require any dealer to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance. Nothing in this chapter shall be construed to limit or prohibit good faith settlements of disputes voluntarily entered into between the parties.

1988, c. 73.

§ 59.1-361. Applicability

This chapter shall apply to agreements in effect as of January 1, 1988. In addition, the chapter shall apply to any agreements entered into after January 1, 1988. The provisions of this chapter are also applicable to any renewal or amendment of such agreements.

1988, cc. 73, 865.

§ 59.1-362. Reasonableness and good faith

A. Every agreement entered into under this chapter shall impose on the parties the obligation to act in good faith.

B. This chapter shall impose on every term and provision of any agreement a requirement of reasonableness. Every term or provision of any agreement shall be interpreted so that the requirements or obligations imposed therein are reasonable.

1988, c. 73.

§ 59.1-363. Exclusions

Agreements subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ 13.1-557 et seq.) of Title 13.1 or Chapter 27.1 (§ 59.1-352.1 et seq.) of this title.

1988, c. 73; 2002, c. 898.

Chapter 29 - HORSE RACING AND PARI-MUTUEL WAGERING

Article 1 - VIRGINIA RACING COMMISSION

§ 59.1-364. Control of racing with pari-mutuel wagering

A. Horse racing with pari-mutuel wagering as licensed herein shall be permitted in the Commonwealth for the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people. The Virginia Racing Commission is vested with control of all horse racing with pari-mutuel wagering in the Commonwealth, with plenary power to prescribe regulations and conditions under which such racing and wagering shall be conducted, so as to maintain horse racing in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices and to maintain in such racing complete honesty and integrity. The Virginia Racing Commission shall encourage participation by local individuals and businesses in those activities associated with horse racing.

B. The conduct of any horse racing with pari-mutuel wagering participation in such racing or wagering and entrance to any place where such racing or wagering is conducted is a privilege which may be granted or denied by the Commission or its duly authorized representatives in its discretion in order to effectuate the purposes set forth in this chapter.

C. The award of any prize money for any pari-mutuel wager placed at a racetrack or satellite facility licensed by the Commission shall not be deemed to be a part of any gaming contract within the purview of § 11-14.

1988, c. 855; 1992, c. 820; 1998, c. 619.

§ 59.1-365. Definitions

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

"Advance deposit account wagering" means a method of pari-mutuel wagering conducted in the Commonwealth that is permissible under the Interstate Horseracing Act, § 3001 et seq. of Chapter 57 of Title 15 of the United States Code, and in which an individual may establish an account with an entity, licensed by the Commission, to place pari-mutuel wagers in person or electronically.

"Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of $0.10.

"Commission" means the Virginia Racing Commission.

"Dependent" means a son, daughter, father, mother, brother, sister, or other person, whether or not related by blood or marriage, if such person receives from an officer or employee more than one-half of his financial support.

"Drug" shall have the meaning prescribed by § 54.1-3401. The Commission shall by regulation define and designate those drugs the use of which is prohibited or restricted.

"Enclosure" means all areas of the property of a track to which admission can be obtained only by payment of an admission fee or upon presentation of authorized credentials, and any additional areas designated by the Commission.

"Handle" means the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Horse racing" means a competition on a set course involving a race between horses on which pari-mutuel wagering is permitted.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as an officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Licensee" includes any person holding an owner's or operator's license under Article 2 (§ 59.1-375 et seq.).

"Member" includes any person designated a member of a nonstock corporation, and any person who by means of a pecuniary or other interest in such corporation exercises the power of a member.

"Pari-mutuel wagering" means the system of wagering on horse races in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, plus any amounts provided by a licensee, less deductions required or permitted by law and includes pari-mutuel wagering on simulcast horse racing originating within the Commonwealth or from any other jurisdiction.

"Participant" means any person who (i) has an ownership interest in any horse entered to race in the Commonwealth or who acts as the trainer, jockey, or driver of any horse entered to race in the Commonwealth or (ii) takes part in any horse racing subject to the jurisdiction of the Commission or in the conduct of a race meeting or pari-mutuel wagering there, including but not limited to a horse owner, trainer, jockey, or driver, groom, stable foreman, valet, veterinarian, agent, pari-mutuel employee, concessionaire or employee thereof, track employee, or other position the Commission deems necessary to regulate to ensure the integrity of horse racing in Virginia.

"Permit holder" includes any person holding a permit to participate in any horse racing subject to the jurisdiction of the Commission or in the conduct of a race meeting or pari-mutuel wagering thereon as provided in § 59.1-387.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Pool" means the amount wagered during a race meeting or during a specified period thereof.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members, beneficially owns or controls, directly or indirectly, five percent or more of the stock of any person which is a licensee, or who in concert with his spouse and immediate family members, has the power to vote or cause the vote of five percent or more of any such stock. However, "principal stockholder" shall not include a broker-dealer registered under the Securities Exchange Act of 1934, as amended, which holds in inventory shares for sale on the financial markets for a publicly traded corporation holding, directly or indirectly, a license from the Commission.

"Race meeting" means the whole consecutive period of time during which horse racing with pari-mutuel wagering is conducted by a licensee.

"Racetrack" means an outdoor course located in Virginia which is laid out for horse racing and is licensed by the Commission.

"Recognized majority horsemen's group" means the organization recognized by the Commission as the representative of the majority of owners and trainers racing at race meetings subject to the Commission's jurisdiction.

"Retainage" means the total amount deducted from the pari-mutuel wagering pool for (i) a license fee to the Commission and localities, (ii) the licensee, (iii) purse money for the participants, (iv) the Virginia Breeders Fund, and (v) certain enumerated organizations as required or permitted by law, regulation or contract approved by the Commission.

"Satellite facility" means all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering, and any additional areas designated by the Commission.

"Significant infrastructure facility" means a horse racing facility that has been approved by a local referendum pursuant to § 59.1-391 and has a minimum racing infrastructure consisting of (i) a one-mile dirt track for flat racing, (ii) a seven-eighths-mile turf course for flat or jump racing, (iii) covered seating for no fewer than 500 persons, and (iv) barns with no fewer than 400 permanent stalls.

"Significant infrastructure limited licensee" means a person who owns or operates a significant infrastructure facility and holds a limited license under § 59.1-376.

"Simulcast horse racing" means the simultaneous transmission of the audio or video portion, or both, of horse races from a licensed horse racetrack or satellite facility to another licensed horse racetrack or satellite facility, regardless of state of licensure, whether such races originate within the Commonwealth or any other jurisdiction, by satellite communication devices, television cables, telephone lines, or any other means for the purposes of conducting pari-mutuel wagering.

"Steward" means a racing official, duly appointed by the Commission, with powers and duties prescribed by Commission regulations.

"Stock" includes all classes of stock, partnership interest, membership interest, or similar ownership interest of an applicant or licensee, and any debt or other obligation of such person or an affiliated person if the Commission finds that the holder of such interest or stock derives therefrom such control of or voice in the operation of the applicant or licensee that he should be deemed an owner of stock.

"Virginia Breeders Fund" means the fund established to foster the industry of breeding race horses in the Commonwealth of Virginia.

1988, c. 855; 1991, c. 591; 1992, c. 820; 1996, c. 319; 1998, cc. 608, 619; 2005, c. 700; 2007, c. 757; 2015, cc. 731, 751.

§ 59.1-366. The Virginia Racing Commission created; members

A. The Virginia Racing Commission is hereby created. It shall consist of five members appointed by the Governor and confirmed by a majority of those elected to each house of the General Assembly at the next regular session following any such appointment. Each Commissioner shall have been a resident of the Commonwealth for a period of at least three years next preceding his appointment and his continued residency shall be a condition of his tenure in office. The initial appointments shall be as follows: one for a term of one year, one for a term of two years, one for

a term of three years, one for a term of four years, and one for a term of five years. Thereafter, all appointments shall be for terms of five years. Vacancies in the Commission shall be filled for the unexpired term in the manner provided for original appointments. Each Commissioner shall be eligible for reappointment for a second consecutive term at the discretion of the Governor. Persons who are first appointed to initial terms of less than five years shall thereafter be eligible for reappointment to two consecutive terms of five years each. The Commission shall elect its chairman. No member of the General Assembly while serving as a member shall be eligible for appointment to the Commission.

B. Each member of the Commission shall receive fifty dollars for each day or part thereof spent in the performance of his duties and in addition shall be reimbursed for his reasonable expenses incurred therein.

C. The members of the Commission shall serve at the pleasure of the Governor.

D. The Commission shall establish and maintain a general business office within the Commonwealth for the transaction of its business at a place to be determined by the Commission. The Commission shall meet at such times and places within the Commonwealth as it shall determine. A majority of the Commissioners shall constitute a quorum for the convening of a meeting, but the performance of any duty or the exercise of any power of the Commission shall require a majority of the entire Commission.

1988, c. 855.

§ 59.1-367. Legal representation

The Commission shall be represented in all legal matters by general counsel hired by the Commission; however, the employment of such counsel shall be subject to the approval of the Attorney General. The compensation for such general counsel shall be paid out of the funds appropriated for the administration of the Commission. No member of the General Assembly while serving as a member nor any person associated with such member's law practice shall be employed as general counsel.

1988, c. 855.

§ 59.1-368. Financial interests of Commission members, employees and family members prohibited

No member or employee of the Commission, and no spouse or immediate family member of any such member or employee shall have any financial interest, direct or indirect, in any horse racetrack, satellite facility or operation incident thereto subject to the provisions of this chapter, or in any entity which has submitted an application for a license under Article 2 (§ 59.1-375 et seq.) of this chapter, or in the operation of any such track or satellite facility within the Commonwealth, or in the operation of any wagering authorized under this chapter, or participate as owner of a horse or otherwise as a contestant in any race subject to the jurisdiction of the Commission, or have any pecuniary interest in the purse or prize contested for in any such race. No

member of the Commission and no spouse or immediate family member of a Commission member shall make any contribution to a candidate for office or office holders on the local or state level, or cause a contribution to be made on their behalf.

1988, c. 855; 1992, c. 820 .

§ 59.1-369. Powers and duties of the Commission

The Commission shall have all powers and duties necessary to carry out the provisions of this chapter and to exercise the control of horse racing as set forth in § 59.1-364. Such powers and duties shall include but not be limited to the following:

1. The Commission is vested with jurisdiction and supervision over all horse racing licensed under the provisions of this chapter including all persons conducting, participating in, or attending any race meeting. It shall employ such persons to be present at race meetings as are necessary to ensure that they are conducted with order and the highest degree of integrity. It may eject or exclude from the enclosure or from any part thereof any person, whether or not he possesses a license or permit, whose conduct or reputation is such that his presence may, in the opinion of the Commission, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing.

2. The Commission, its representatives, and employees shall visit, investigate, and have free access to the office, track, facilities, satellite facilities or other places of business of any license or permit holder, and may compel the production of any of the books, documents, records, or memoranda of any license or permit holder for the purpose of satisfying itself that this chapter and its regulations are strictly complied with. In addition, the Commission may require any person granted a permit by the Commission and shall require any person licensed by the Commission, the recognized majority horsemen's group, and the nonprofit industry stakeholder organization recognized by the Commission under this chapter to produce an annual balance sheet and operating statement prepared by a certified public accountant approved by the Commission. The Commission may require the production of any contract to which such person is or may be a party.

3. The Commission shall promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted in the Commonwealth, and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter, including a requirement that licensees post, in a conspicuous place in every place where pari-mutuel wagering is conducted, a sign which bears a toll-free telephone number for "Gamblers Anonymous" or other organization which provides assistance to compulsive gamblers. Such regulations shall include provisions for affirmative action to assure participation by minority persons in contracts granted by the Commission and its licensees. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any horse racetrack. Such regulations may include penalties for violations. The regulations shall be subject to the Administrative Process Act (§ 2.2-4000 et seq.).

4. The Commission shall promulgate regulations and conditions under which simulcast horse racing shall be conducted at a licensed horse racetrack or satellite facility in the Commonwealth and all such other regulations it deems necessary and appropriate to effect the purposes of this chapter. Such regulations shall include provisions that all simulcast horse racing shall comply with the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.) and shall require the holder of a license to schedule no more than 125 live racing days in the Commonwealth each calendar year; however, the Commission shall have the authority to alter the required number of live racing days based on what the Commission deems to be in the best interest of the Virginia horse industry. Such regulations shall authorize up to 10 satellite facilities and restrict majority ownership of satellite facilities to an entity licensed by the Commission that is a significant infrastructure limited licensee, or if by August 1, 2015, there is no such licensee or a pending application for such license, then the nonprofit industry stakeholder organization recognized by the Commission may be granted licenses to own or operate satellite facilities. If, however, after the issuance of a license to own or operate a satellite facility to such nonprofit industry stakeholder organization, the Commission grants a license to a significant infrastructure limited licensee pursuant to § 59.1-376, then such limited licensee may own or operate the remaining available satellite facilities authorized in accordance with this subdivision. In no event shall the Commission authorize any such entities to own or operate more than a combined total of 10 satellite facilities. Nothing in this subdivision shall be deemed to preclude private local ownership or participation in any satellite facility. Except as authorized pursuant to subdivision 5, wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility.

5. The Commission shall promulgate regulations and conditions regulating and controlling advance deposit account wagering. Such regulations shall include, but not be limited to, (i) standards, qualifications, and procedures for the issuance of a license to an entity for the operation of pari-mutuel wagering in the Commonwealth; except that the Commission shall not issue a license to, and shall revoke the license of, an entity that, either directly or through an entity under common control with it, withholds the sale at fair market value to a licensee of simulcast horse racing signals that such entity or an entity under common control with it sells to other racetracks, satellite facilities, or advance deposit account wagering providers located in or outside of the Commonwealth; (ii) provisions regarding access to books, records, and memoranda, and submission to investigations and audits, as authorized by subdivisions 2 and 10; and (iii) provisions regarding the collection of all revenues due to the Commonwealth from the placing of such wagers. No pari-mutuel wager may be made on or with any computer owned or leased by the Commonwealth, or any of its subdivisions, or at any public elementary or secondary school, or any public college or university. The Commission also shall ensure that, except for this method of pari-mutuel wagering, all wagering on simulcast horse racing shall take place only at a licensed horse racetrack or satellite facility.

Nothing in this subdivision shall be construed to limit the Commission's authority as set forth elsewhere in this section.

6. The Commission may issue subpoenas for the attendance of witnesses before it, administer oaths, and compel production of records or other documents and testimony of such witnesses whenever, in the judgment of the Commission, it is necessary to do so for the effectual discharge of its duties.

7. The Commission may compel any person holding a license or permit to file with the Commission such data as shall appear to the Commission to be necessary for the performance of its duties including but not limited to financial statements and information relative to stockholders and all others with any pecuniary interest in such person. It may prescribe the manner in which books and records of such persons shall be kept.

8. The Commission may enter into arrangements with any foreign or domestic government or governmental agency, for the purposes of exchanging information or performing any other act to better ensure the proper conduct of horse racing.

9. The Commission shall report annually on or before March 1 to the Governor and the General Assembly, which report shall include a financial statement of the operation of the Commission.

10. The Commission may order such audits, in addition to those required by § 59.1-394, as it deems necessary and desirable.

11. The Commission shall upon the receipt of a complaint of an alleged criminal violation of this chapter immediately report the complaint to the Attorney General of the Commonwealth and the State Police for appropriate action.

12. The Commission shall provide for the withholding of the applicable amount of state and federal income tax of persons claiming a prize or pay-off for a winning wager and shall establish the thresholds for such withholdings.

13. The Commission, its representatives and employees may, within the enclosure, stable, or other facility related to the conduct of racing, and during regular or usual business hours, subject any (i) permit holder to personal inspections, including alcohol and drug testing for illegal drugs, inspections of personal property, and inspections of other property or premises under the control of such permit holder and (ii) horse eligible to race at a race meeting licensed by the Commission to testing for substances foreign to the natural horse within the racetrack enclosure or other place where such horse is kept. Any item, document or record indicative of a violation of any provision of this chapter or Commission regulations may be seized as evidence of such violation. All permit holders consent to the searches and seizures authorized by this subdivision, including breath, blood and urine sampling for alcohol and illegal drugs, by accepting the permit issued by the Commission. The Commission may revoke or suspend the permit of any person who fails or refuses to comply with this subdivision or any rules of the Commission. Commission regulations in effect on

July 1, 1998, shall continue in full force and effect until modified by the Commission in accordance with law.

14. The Commission shall require the existence of a contract between each licensee and the recognized majority horsemen's group for that licensee. Such contract shall be subject to the approval of the Commission, which shall have the power to approve or disapprove any of its items, including but not limited to the provisions regarding purses and prizes. Such contracts shall provide that on pools generated by wagering on simulcast horse racing from outside the Commonwealth, (i) for the first $75 million of the total pari-mutuel handle for each breed, the licensee shall deposit funds at the minimum rate of five percent in the horsemen's purse account, (ii) for any amount in excess of $75 million but less than $150 million of the total pari-mutuel handle for each breed, the licensee shall deposit funds at the minimum rate of six percent in the horsemen's purse account, (iii) for amounts in excess of $150 million for each breed, the licensee shall deposit funds at the minimum rate of seven percent in the horsemen's purse account. Such deposits shall be made in the horsemen's purse accounts of the breed that generated the pools and such deposits shall be made within five days from the date on which the licensee receives wagers. In the absence of the required contract between the licensee and the recognized majority horsemen's group, the Commission may permit wagering to proceed on simulcast horse racing from outside of the Commonwealth, provided that the licensee deposits into the State Racing Operations Fund created pursuant to § 59.1-370.1 an amount equal to the minimum percentage of the total pari-mutuel handles as required in clauses (i), (ii), and (iii) or such lesser amount as the Commission may approve. The deposits shall be made within five days from the date on which the licensee receives wagers. Once a contract between the licensee and the recognized majority horsemen's group is executed and approved by the Commission, the Commission shall transfer these funds to the licensee and the horsemen's purse accounts.

15. Notwithstanding the provisions of § 59.1-391, the Commission may grant provisional limited licenses or provisional unlimited licenses to own or operate racetracks or satellite facilities to an applicant prior to the applicant securing the approval through the local referendum required by § 59.1-391. The provisional licenses issued by the Commission shall only become effective upon the approval of the racetrack or satellite wagering facilities in a referendum conducted pursuant to § 59.1-391 in the jurisdiction in which the racetrack or satellite wagering facility is to be located.

1988, c. 855; 1990, c. 271; 1991, c. 591; 1992, c. 820; 1993, c. 430; 1998, cc. 619, 845; 2000, cc. 99, 1031; 2003, c. 682; 2004, c. 774; 2005, cc. 633, 700; 2007, c. 757; 2009, c. 142; 2011, c. 732; 2015, cc. 731, 751.

§ 59.1-370. Commission; Executive Secretary; staff; stewards

A. The Commission shall appoint an Executive Secretary and such other employees as it deems essential to perform its duties under this chapter, who shall possess such authority and perform such duties as the Commission shall prescribe or delegate to them. Such employees may include stewards, chemists, veterinarians, inspectors, accountants, guards and such other employees

deemed by the Commission to be necessary for the supervision and the proper conduct of the highest standard of horse racing. Such employees shall be compensated as provided by the Commission.

The Executive Secretary, in addition to any other duties prescribed by the Commission, shall keep a true and full record of all proceedings of the Commission and preserve at the Commission's general office all books, documents and papers of the Commission. Neither the Executive Secretary nor the spouse or any member of the immediate family of the Executive Secretary shall make any contributions to a candidate for office or office holder at the local or state level, or cause such a contribution to be made on his behalf.

B. The stewards appointed by the Commission shall act as racing officials to oversee the conduct of (i) horse racing at licensed racetracks and (ii) simulcast horse racing at satellite facilities. The stewards shall enforce the Commission's regulations and the provisions of this chapter and shall have authority to interpret the Commission's regulations and to decide all questions of racing not specifically covered by the regulations of the Commission. Nothing in this subsection shall limit the authority of the Commission to carry out the provisions of this chapter and to exercise control of horse racing as set forth in § 59.1-364, including the power to review all decisions and rulings of the stewards.

1988, c. 855; 1998, c. 619; 2005, c. 700.

§ 59.1-370.1. State Racing Operations Fund

A. All moneys and revenues received by the Commission under this chapter shall be placed in a special fund known as the State Racing Operations Fund. Notwithstanding any other provision of law, interest earned from moneys in the State Racing Operations Fund shall accrue to the benefit of such fund.

B. The total costs for the operation and administration of the Virginia Racing Commission shall be funded from the State Racing Operations Fund and shall be in such amount as provided in the general appropriations act.

1990, c. 272 .

§ 59.1-371. Fingerprints and background investigations; investigations from other states

A. The Commission shall fingerprint and require a background investigation to include a criminal history record information check of the following persons to be conducted by a representative of a law-enforcement agency of the Commonwealth or federal government: (i) every person licensed to hold race meetings within the Commonwealth of Virginia; (ii) every person who is an officer or director or principal stockholder of a corporation which holds such a license, and every employee of the holder of any such license whose duties relate to the horse racing business in Virginia; (iii) all security personnel of any license holder; (iv) members and employees of the Virginia Racing Commission; (v) all permit holders, owners, trainers, jockeys, apprentices, stable employees, man-

agers, agents, blacksmiths, veterinarians, employees of any license or permit holder; and (vi) any person who actively participates in the racing activities of any license or permit holder.

B. Notwithstanding the provisions of subsection A, the Commission may, (i) by regulation, establish a procedure to recognize a license or permit issued by another state in which horse racing is authorized when the Commission in its discretion determines that the laws or requirements of the licensing authority for such state governing fingerprinting and background investigations are substantially the same as required under this chapter and Commission regulations, and that the applicant has not been convicted of a misdemeanor or felony as provided in subdivision B 6 of § 59.1-389 and (ii) waive the requirements for fingerprints and background investigations for permit holders participating in (a) horse racing in nonsecure areas or (b) nonracing activities.

1988, c. 855; 1990, c. 774; 1991, c. 591; 1995, c. 370; 1998, c. 619; 2000, c. 1011.

§ 59.1-372. Virginia Breeders Fund

There is hereby created within the State Treasury the Virginia Breeders Fund, which Fund, together with the interest thereon, shall be administered in whole or in part by the Commission or by an entity designated by the Commission. The cost of administering and promoting the Fund shall be deducted from the Fund, and the balance shall be disbursed by the Commission or designated entity to the breeders of Virginia-bred horses that win races at race meetings designated by the Commission, to the owners of Virginia sires of Virginia-bred horses that win races at race meetings designated by the Commission, to the owners of Virginia-bred horses that win or earn purse money in nonrestricted races at racetracks in Virginia licensed by the Commission, to the owners of Virginia-bred horses that win races at race meetings designated by the Commission and for purses for races restricted to Virginia-bred or Virginia-sired horses or both at race meetings designated by the Commission. To assist it in establishing this awards and incentive program to foster the industry of breeding racehorses in Virginia, the Commission shall appoint an advisory committee composed of two members from each of the registered breed associations representing each breed of horse participating in the Fund program, one member representing the owners and operators of racetracks and one member representing all of the meets sanctioned by the National Steeplechase Association.

1988, c. 855; 1993, c. 146; 1997, c. 798; 2002, c. 852.

§ 59.1-373. Hearing and appeal

Any person aggrieved by a refusal of the Commission to issue any license or permit, the suspension or revocation of a license or permit, the imposition of a fine, or any other action of the Commission, may seek review of such action in accordance with Article 5 of the Administrative Process Act in the Circuit Court of the City of Richmond. Further appeals shall also be in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

1988, c. 855; 1996, c. 573.

§ 59.1-374. Injunction

Whenever it appears to the Commission that any person has violated or may violate any provision of this chapter or any regulation or final decision of the Commission, it may apply to the appropriate circuit court for an injunction against such person. The order granting or refusing such injunction shall be subject to appeal as in other cases in equity.

1988, c. 855; 1998, c. 619.

Article 2 - LICENSES

§ 59.1-375. Owner's and operator's license required

No person shall construct, establish or own a horse racetrack or satellite facility where pari-mutuel wagering is permitted, unless he has obtained an owner's license issued by the Commission in accordance with the provisions of this chapter.

No person shall operate pari-mutuel wagering or conduct any race meeting at which wagering is permitted with his knowledge or acquiescence, unless he has obtained an operator's license issued by the Commission in accordance with the provisions of this chapter.

No person to whom an owner's or operator's license has been issued nor any officer, director, partner, or spouse or immediate family member thereof shall make any contribution to any candidate for public office or public office holder at the local or state level.

No license issued under the provisions of this chapter shall be transferable.

1988, c. 855; 1991, c. 591; 1992, c. 820 .

§ 59.1-376. Limited licenses; transfer of meet; taxation; authority to issue; limitations

A. Notwithstanding the provisions of § 59.1-375 or § 59.1-378 but subject to such regulations and criteria as it may prescribe, the Commission is authorized to issue limited licenses, provided such licenses shall permit any holder to conduct a race meeting or meetings for a period not to exceed 14 days in any calendar year, or in the case of a significant infrastructure limited licensee, 75 days in any calendar year.

B. The Commission may at any time, in its discretion, authorize any organization or association licensed under this section to transfer its race meeting or meetings from its own track or place for holding races, to the track or place for holding races of any other organization or association licensed under this chapter upon the payment of any and all appropriate license fees. No such authority to transfer shall be granted without the express consent of the organization or association owning or leasing the track to which such transfer is made.

C. For any such meeting the licensee shall retain and pay from the pool the tax as provided in § 59.1-392.

D. No person to whom a limited license has been issued nor any officer, director, partner, or spouse or immediate family member thereof shall make any contribution to any candidate for public office or public office holder at the local or state level.

1988, c. 855; 1991, c. 591; 2015, cc. 731, 751.

§ 59.1-376.1. Repealed

Repealed by Acts 2009, c. 142, cl. 2.

§ 59.1-377. Application for owner's license

A. Any person desiring to construct or own a horse racetrack or satellite facility where pari-mutuel wagering is permitted shall file with the Commission an application for an owner's license. Such application shall be filed at the time and place prescribed by the Commission, and shall be in such form and contain such information as prescribed by the Commission, including but not limited to the following:

1. The name and address of such person; if a corporation, the state of its incorporation, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this Commonwealth; if a partnership or joint venture, the name and address of each officer thereof;

2. The name and address of each stockholder or member of such corporation, or each partner of such partnership or joint venture, and of each person who has contracted for a pecuniary interest in the applicant or the enclosure where race meetings or pari-mutuel wagering will be conducted, whether such interest is an ownership or a security interest, and the nature and value of such interest, and the name and address of each person who has agreed to lend money to the applicant;

3. Such information as the Commission deems appropriate regarding the character, background and responsibility of the applicant and the members, partners, stockholders, officers and directors of the applicant;

4. The location and description of the racetrack, place or enclosure where such person proposes to hold such meetings or wagering, including the name of any county, city or town in which any property of such track or satellite facility is or will be located. The Commission shall require such information about the enclosure and location of such track as it deems necessary and appropriate to determine whether they comply with the minimum standards provided in this chapter, and whether the conduct of a race meeting or pari-mutuel wagering at such location would be in the best interests of the people of the Commonwealth;

5. Such information relating to the financial responsibility of the applicant as the Commission deems appropriate;

6. If any of the facilities necessary for the conduct of racing or pari-mutuel wagering are to be leased, the terms of such lease; and

7. Any other information which the Commission in its discretion deems appropriate.

B. Any application filed hereunder shall be verified by the oath or affirmation of an officer of the applicant, and shall be accompanied by a nonrefundable application fee as determined by the Commission.

C. Any person who knowingly makes a false statement to the Commission for the purposes of obtaining a license under this article shall be guilty of a Class 4 felony.

1988, c. 855; 1991, c. 591; 1992, c. 820 .

§ 59.1-378. Issuance of owner's license

A. The Commission shall consider all applications for an owner's license and may grant a valid owner's license to applicants who meet the criteria set forth in this chapter and established by the Commission. The Commission shall deny a license to any applicant unless it finds that the applicant's facilities are or will be appropriate for the finest quality of racing.

B. The Commission shall deny a license to an applicant if it finds that for any reason the issuance of a license to the applicant would not be in the interest of the people of the Commonwealth or the horse racing industry in the Commonwealth, or would reflect adversely on the honesty and integrity of the horse racing industry in the Commonwealth, or that the applicant, or any officer, partner, principal stockholder, or director of the applicant:

1. Has knowingly made a false statement of material fact or has deliberately failed to disclose any information requested;

2. Is or has been found guilty of any illegal, corrupt, or fraudulent act, practice, or conduct in connection with any horse racing in this or any other state, or has been convicted of a felony;

3. Has at any time knowingly failed to comply with the provisions of this chapter or of any regulations of the Commission;

4. Has had a license or permit to hold or conduct a horse race meeting denied for just cause, suspended, or revoked in any other state or country;

5. Has legally defaulted in the payment of any obligation or debt due to the Commonwealth;

6. Has constructed or caused to be constructed a racetrack or satellite facility for which a license was required under § 59.1-377 hereof without obtaining such license, or has deviated substantially, without the permission of the Commission, from the plans and specifications submitted to the Commission; or

7. Is not qualified to do business in Virginia or is not subject to the jurisdiction of the courts of this Commonwealth.

C. The Commission shall deny a license to any applicant unless it finds:

1. That, if the corporation is a stock corporation, that such stock is fully paid and nonassessable, has been subscribed and paid for only in cash or property to the exclusion of past services, and, if the corporation is a nonstock corporation, that there are at least twenty members;

2. That all principal stockholders or members have submitted to the jurisdiction of the Virginia courts, and all nonresident principal stockholders or members have designated the Executive Secretary of the Commission as their agent for receipt of process;

3. That the applicant's articles of incorporation provide that the corporation may, on vote of a majority of the stockholders or members, purchase at fair market value the entire membership interest of any stockholder or require the resignation of any member who is or becomes unqualified for such position under § 59.1-379; and

4. That the applicant meets the criteria established by the Commission for the granting of an owner's license.

1988, c. 855; 1990, c. 206; 1992, c. 820; 2015, cc. 731, 751.

§ 59.1-378.1. Licensing of owners or operators of certain pari-mutuel facilities

A. Notwithstanding the provisions of § 59.1-391, the Commission may grant a license, for a duration to be determined by the Commission, to the owner or operator of a facility for the purpose of conducting pari-mutuel wagering on (i) thoroughbred and standard bred race meetings and (ii) simulcast horse racing at that facility in conjunction with the race meetings for a period not to exceed 14 days in any calendar year, provided that, prior to making application for such license, (a) the facility has been approved by the Commission and (b) the owner or operator of such facility has been granted tax-exempt status under § 501(c)(3) or (4) of the Internal Revenue Code.

B. In deciding whether to grant any license pursuant to this section, the Commission shall consider (i) the results of, circumstances surrounding, and issues involved in any referendum conducted under the provisions of § 59.1-391 and (ii) whether the Commission had previously granted a license to such facility, owner, or operator.

C. In no event shall the Commission issue more than 12 licenses in a calendar year pursuant to this section.

1996, cc. 663, 750; 2000, c. 1002; 2014, cc. 564, 625; 2015, cc. 731, 751.

§ 59.1-379. Refusal of owner's license

No owner's license or renewal thereof shall be granted to any corporation if the Commission finds that any principal stockholder of such stock corporation, or any member of such nonstock corporation:

1. Is or has been guilty of any illegal, corrupt or fraudulent act, conduct or practice in connection with horse racing in this or any other state, or has knowingly failed to comply with the provisions of this chapter or Commission regulations;

2. Has had a license or permit to hold or conduct a race meeting denied for cause, suspended or revoked in any other state or country; or

3. Has at any time during the previous five years knowingly failed to comply with the provisions of this chapter or any Commission regulations.

1988, c. 855.

§ 59.1-380. Duration, form of owner's license; bond

A license issued under § 59.1-378 shall be for the period set by the Commission, not to be less than twenty years, but shall be reviewed annually. The Commission shall designate on the license the duration of such license, the location of such track or satellite facility or proposed track or satellite facility and such other information as it deems proper. The Commission shall establish criteria and procedures for license renewal.

The Commission shall require (i) a bond with surety or (ii) a letter of credit, acceptable to the Commission, and in an amount determined by it, to be sufficient to cover any indebtedness incurred by the licensee to the Commonwealth.

1988, c. 855; 1992, c. 820; 2000, c. 1011.

§ 59.1-381. Application for operator's license

A. Any person desiring to hold a race meeting or operate a satellite facility shall file with the Commission an application for an operator's license. Such application may be made in conjunction with an application for an owner's license, if appropriate. It shall be filed at the time and place prescribed by the Commission and contain such information as prescribed by the Commission, including all information prescribed for an owner's license under § 59.1-377 and, in addition, the date the applicant wishes to conduct a race meeting.

B. Any application filed hereunder shall be verified by the oath or affirmation of an officer of the applicant and shall be accompanied by a nonrefundable application fee as determined by the Commission.

1988, c. 855; 1992, c. 820 .

§ 59.1-382. Issuance of operator's license

The Commission shall promptly consider any application for an operator's license and grant a valid operator's license to applicants who meet the criteria set forth in this chapter and established by the Commission. The Commission shall deny a license to any applicant, unless it finds:

1. That such applicant is a corporation organized under Title 13.1 or comparable law of another state, and qualified to do business in Virginia;

2. That, if the corporation is a stock corporation, all principal stockholders have submitted to the jurisdiction of the Virginia courts and all nonresident principal stockholders have designated the Executive Secretary of the Commission as their agent for process, and further, that an application shall also contain information as required by § 59.1-377;

3. That the applicant's articles of incorporation provide that the corporation may, on vote of a majority of the stockholders or members, purchase at fair market value the entire membership interest of any stockholder, or require the resignation of any member, who is or becomes unqualified for such position under § 59.1-379;

4. That the applicant would be qualified for a license to own such horse racetrack or satellite facility under the provisions of §§ 59.1-378 and 59.1-379;

5. That the applicant has made provisions satisfactory to the Commission for the detection and prosecution of any illegal, corrupt or fraudulent act, practice or conduct in connection with any race meeting or pari-mutuel wagering, that the applicant has made provision for membership in the Thoroughbred Racing Association or other equivalent applicable association, and that the applicant shall utilize the services of the Thoroughbred Racing Protective Bureau or any other protective agency acceptable to the Virginia Racing Commission;

6. That the applicant has met the criteria established by the Commission for the granting of an operator's license.

1988, c. 855; 1991, c. 591; 1992, c. 820 .

§ 59.1-383. Duration, form of operator's license; bond

A license issued under § 59.1-382 shall be for a period of twenty years from the date of issuance, but shall be reviewed annually. The Commission may, as it deems appropriate, change at the beginning of any year the dates on which the licensee is authorized to conduct a race meeting or pari-mutuel wagering. An applicant for renewal of a license may omit any information which in the opinion of the Commission is already available to it. The Commission shall establish criteria and procedures for license renewal.

Any license issued under § 59.1-382 shall designate on its face the type or types of horse racing or pari-mutuel wagering for which it is issued, the location of the track or satellite facility where such meeting or wagering is to be conducted, the period during which such license is in effect and such other information as the Commission deems proper.

The Commission shall require a bond with surety acceptable to it, and in an amount determined by it to be sufficient to cover any indebtedness incurred by such licensee during the days allotted for racing.

1988, c. 855; 1991, c. 591; 1992, c. 820 .

§ 59.1-384. Denial of license final

The denial of an owner's or operator's license by the Commission shall be final unless appealed under § 59.1-373.

1988, c. 855.

§ 59.1-385. Suspension or revocation of license

A. After a hearing with fifteen days' notice the Commission may suspend or revoke any license, or fine the holder thereof a sum not to exceed $100,000, in any case where it has reason to believe that any provision of this chapter, or any regulation or condition of the Commission, has not been complied with or has been violated. The Commission may revoke a license if it finds that facts not known by it at the time it considered the application indicate that such license should not have been issued.

B. The Commission shall revoke any license issued under § 59.1-382 for the operation of a satellite facility if the licensee, within one year of issuance of the satellite facility license, fails to conduct live racing at a racetrack licensed pursuant to § 59.1-382 or fails to conduct, without the permission of the Commission, the live racing days assigned to the licensee by the Commission.

C. The Commission, at a meeting at which a quorum of the members is present, may summarily suspend any license for a period of not more than ninety days pending a hearing and final determination by the Commission if the Commission determines that emergency action is required to protect the public health, safety and welfare including, but not limited to, revenues due the Commonwealth, localities and the horsemen's purse account. The Commission shall (i) schedule a hearing within fourteen business days after the license is summarily suspended and (ii) notify the licensee not less than five business days before the hearing of the date, time, and place of the hearing.

D. Deliberations of the Commission hereunder shall be conducted pursuant to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). If any such license is suspended or revoked, the Commission shall state its reasons for doing so, which shall be entered of record. Such action shall be final unless appealed in accordance with § 59.1-373. Suspension or revocation of a license by the Commission for any violation shall not preclude criminal liability for such violation.

1988, c. 855; 1991, c. 591; 1995, cc. 212, 275; 2000, c. 1031.

§ 59.1-386. Acquisition of interest in licensee

A. The Commission shall require any person desiring to become a partner, member or principal stockholder of any licensee to apply to the Commission for approval thereof and may demand such information of the applicant as it finds necessary. The Commission shall consider such application forthwith and shall approve or deny the application within 60 days of receipt. The Commission shall approve an application that meets the criteria set forth in this chapter. The Commission shall deny an application if in its judgment the acquisition by the applicant would be detrimental to the public interest or to the honesty, integrity, and reputation of racing. The Commission shall approve an application to acquire actual control of a licensee only if it finds that the applicant meets the criteria set forth in subsection B.

B. If an applicant proposes to acquire actual control of a licensee, such person shall, pursuant to subsection A, submit to the Commission (i) its proposal for the future operation of any existing or planned racetrack, or satellite facility owned or operated by the licensee, (ii) such additional information as it desires, and (iii) such information as may be required by the Commission to assure the Commission that the licensee, under the actual control of such person, will have the experience, expertise, financial responsibility and commitment to comply with (a) the provisions of this chapter, (b) Commission regulations and orders, (c) the requirements for the continued operation of the licensee pursuant to the terms and conditions in effect on the date of the

application of all licenses held by the licensee, (d) any existing contract with a recognized majority horseman's group, and (e) any proposal submitted to the Commission by such person. The provisions of this subsection shall apply regardless of whether the control acquired is direct or indirect or whether its acquisition is accomplished individually or in concert with others.

C. Any such acquisition of control without prior approval of the Commission shall be voidable by the Commission and, in such instance, the Commission may revoke any license it has issued to such licensee, order compliance with this section, or take such other action as may be appropriate within the authority of the Commission.

1988, c. 855; 2003, c. 705.

Article 3 - PERMITS

§ 59.1-387. Permit required; exception

A. No participant shall engage in any horse racing subject to the jurisdiction of the Commission or in the conduct of a race meeting or pari-mutuel wagering thereon, including but not limited to as a horse owner, trainer, jockey, exercise rider, groom, stable foreman, valet, veterinarian, agent, pari-mutuel employee, concessionaire or employee thereof, track employee, or other positions the Commission deems necessary to regulate to ensure the integrity of horse racing in Virginia, unless such person possesses a permit therefor from the Commission, and complies with the provisions of this chapter and all Commission regulations. No permit issued under the provisions of this chapter shall be transferable.

B. The Commission may waive the permit requirement for any person who possesses a valid permit or license to participate in the conduct of horse racing in another racing jurisdiction and participates in horse racing in Virginia on nonconsecutive racing days.

C. Once a horse is entered to run in Virginia, all participants shall come under the jurisdiction of the Commission and its stewards and shall be subject to regulations of the Commission and sanctions it or its stewards may impose.

1988, c. 855; 1991, c. 591; 2000, c. 1011; 2005, c. 700.

§ 59.1-388. Application for permit

A. Any person desiring to obtain a permit as required by this chapter shall make application therefor on a form prescribed by the Commission. The application shall be accompanied by a fee prescribed by the Commission.

B. Any application filed hereunder shall be verified by the oath or affirmation of the applicant.

1988, c. 855.

§ 59.1-389. Consideration of application

A. The Commission shall promptly consider any application for a permit and issue or deny such permit based on the information in the application and all other information before it, including

any investigation it deems appropriate. If an application for a permit is approved, the Commission shall issue a permit, which shall contain such information as the Commission deems appropriate. Such permit shall be valid for one year; however, the permit of a licensee's employee shall expire automatically when such permit holder leaves the employment of the licensee or at the end of one year, whichever occurs first. The licensee shall promptly notify the Commission when a permit holder leaves the employment of the licensee. The Commission shall establish criteria and procedures for permit renewal.

B. The Commission shall deny the application and refuse to issue the permit, which denial shall be final unless an appeal is taken under § 59.1-373, if it finds that the issuance of such permit to such applicant would not be in the interests of the people of the Commonwealth, or the horse racing industry of the Commonwealth, or would reflect on the honesty and integrity of the horse racing industry in the Commonwealth, or that the applicant:

1. Has knowingly made a false statement of a material fact in the application, or has deliberately failed to disclose any information requested by the Commission;

2. Is or has been found guilty of any corrupt or fraudulent practice or conduct in connection with horse racing in this or any other state;

3. Has knowingly failed to comply with the provisions of this chapter or the regulations of the Commission;

4. Has had a permit to engage in activity related to horse racing denied for just cause, suspended or revoked in any other state, and such denial, suspension or revocation is still in effect; or

5. Is unqualified to perform the duties required for the permit sought.

C. The Commission shall deny the application and refuse to issue the permit if, within the five years immediately preceding the date of his application for the permit sought, the applicant has been convicted of a crime involving the unlawful conduct of wagering, fraudulent use of a credential, unlawful transmission of information, touting, bribery, or administration or possession of drugs or any felony considered by the Commission to be detrimental to horse racing in the Commonwealth; the denial shall be final unless an appeal is taken under § 59.1-373. Additionally, the Commission may deny the application and refuse to issue any permit, if the applicant has been convicted of any such crime committed prior to the five years immediately preceding the date of his application.

D. The Commission may refuse to issue the permit if for any reason it feels the granting of such permit is not consistent with the provisions of this chapter or its responsibilities hereunder.

1988, c. 855; 1991, c. 591; 1998, c. 619; 1999, c. 356.

§ 59.1-390. Suspension or revocation of permit; fine

A. The Commission, acting by and through its stewards or at a meeting at which a quorum is present, may suspend or revoke a permit issued under this chapter or fine the holder of such

permit a sum not to exceed $10,000, or suspend a permit issued by this chapter and fine the holder of such permit a sum not to exceed $10,000 after a hearing for which proper notice has been given to the permittee, in any case where it determines by a preponderance of the evidence that any provision of this chapter, or any regulation or condition of the Commission, has not been complied with, or has been violated. The Commission may revoke such permit, after such hearing, if it finds that facts not known by it at the time it was considering the application indicate that such permit should not have been issued. Deliberations of the Commission under this section shall be conducted pursuant to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). If any permit is suspended or revoked, the Commission shall state its reasons for doing so, which shall be entered of record. Such action shall be final unless an appeal is taken in accordance with § 59.1-373. Suspension or revocation of a permit by the Commission for any violation shall not preclude criminal liability for such violation.

B. The Commission, acting by and through its stewards, or at a meeting at which a quorum is present, may summarily suspend the permit of a person for a period of not more than 90 days pending a hearing and final determination by the Commission or its stewards, if the Commission or its stewards determine the protection of the integrity of horse racing requires emergency action. The Commission or its stewards shall (i) schedule a hearing within 14 business days after the permit is summarily suspended and (ii) notify the permit holder, not less than five business days before the hearing, of the date, time and place of the hearing.

1988, c. 855; 1990, c. 456; 1991, c. 591; 1998, c. 619; 2005, c. 700.

Article 4 - LOCAL REFERENDUM

§ 59.1-391. Local referendum required

The Commission shall not grant any initial license to construct, establish, operate or own a racetrack or satellite facility until a referendum approving the question is held in each county, city, or town in which such track or satellite facility is to be located, in the following manner:

1. A petition, signed by five percent of the qualified voters of such county, city, or town shall be filed with the circuit court of such county, city, or town asking that a referendum be held on the question, "Shall pari-mutuel wagering be permitted at a licensed racetrack in (name of such county, city, or town) on live horse racing at, and on simulcast horse racing transmitted from another jurisdiction to, the licensed racetrack on such days as may be approved by the Virginia Racing Commission in accordance with Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia?" In addition, or in the alternative, such petition may ask that a referendum be held on the question, "Shall pari-mutuel wagering be permitted in _____ (the name of such county, city, or town) at satellite facilities in accordance with Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia?"

2. Following the filing of such petition, the court shall, by order of record entered in accordance with § 24.2-684.1, require the regular election officers of such city, county, or town to cause a

special election to be held to take the sense of the qualified voters on the question. Such election shall be on a day designated by order of such court, but shall not be later than the next general election unless such general election is within 60 days of the date of the entry of such order, nor shall it be held on a date designated as a primary election.

3. The clerk of such court of record of such city, county, or town shall publish notice of such election in a newspaper of general circulation in such city, county, or town once a week for three consecutive weeks prior to such election.

4. The regular election officers of such city or county shall open the polls at the various voting places in such city or county on the date specified in such order and conduct such election in the manner provided by law. The election shall be by ballot which shall be prepared by the electoral board of the city, county, or town and on which shall be printed either or both of the following questions:

"Shall pari-mutuel wagering be permitted at a licensed racetrack in _____ on live horse racing at, and on simulcast horse racing transmitted from another jurisdiction to, the licensed racetrack on such days as may be approved by the Virginia Racing Commission in accordance with Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia?

[ ] Yes

[ ] No"

"Shall pari-mutuel wagering be permitted in _____ at satellite facilities in accordance with Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia?

[ ] Yes

[ ] No"

In the blank shall be inserted the name of the city, county, or town in which such election is held. Any voter desiring to vote "Yes" shall mark a check (✓) mark or a cross (✗ or +) mark or a line (-) in the square provided for such purpose immediately preceding the word "Yes," leaving the square immediately preceding the word "No" unmarked. Any voter desiring to vote "No" shall mark a check (✓) mark or a cross (✗ or +) mark or a line (-) in the square provided for such purpose immediately preceding the word "No," leaving the square immediately preceding the word "Yes" unmarked.

The ballots shall be counted, returns made and canvassed as in other elections, and the results certified by the electoral board to the court ordering such election. Thereupon, such court shall enter an order proclaiming the results of such election and a duly certified copy of such order shall be transmitted to the Commission and to the governing body of such city, county, or town.

No such referendum as described above shall be held more often than every three years in the same county, city, or town.

A subsequent local referendum shall be required if a license has not been granted by the Commission within five years of the court order proclaiming the results of the election. Town, for purposes of this section, means any town with a population of 5,000 or more.

1988, c. 855; 1989, c. 145; 1991, c. 591; 1992, c. 820; 1998, c. 619; 2001, c. 539; 2003, c. 682.

Article 5 - TAXATION AND AUDIT

§ 59.1-392. Percentage retained; tax

A. Any person holding an operator's license to operate a horse racetrack or satellite facility in the Commonwealth pursuant to this chapter shall be authorized to conduct pari-mutuel wagering on horse racing subject to the provisions of this chapter and the conditions and regulations of the Commission.

B. On pari-mutuel pools generated by wagering at the racetrack on live horse racing conducted within the Commonwealth, involving win, place and show wagering, the licensee shall retain a percentage amount approved by the Commission as jointly requested by a recognized majority horsemen's group and a licensee and the legitimate breakage, out of which shall be paid one and one-quarter percent to be distributed as follows: one percent to the Commonwealth as a license tax and one-quarter percent to the locality in which the racetrack is located. The remainder of the retainage shall be paid as provided in subsection D, provided, however, that if the percentage amount approved by the Commission is other than 18 percent, the amounts provided in subdivisions D 1, 2 and 3 shall be adjusted by the proportion that the approved percentage amount bears to 18 percent.

C. On pari-mutuel pools generated by wagering at each Virginia satellite facility on live horse racing conducted within the Commonwealth, involving win, place and show wagering, the licensee shall retain a percentage amount approved by the Commission as jointly requested by a recognized majority horsemen's group and a licensee and the legitimate breakage, out of which shall be paid one and one-quarter percent to be distributed as follows: three-quarters percent to the Commonwealth as a license tax, one-quarter percent to the locality in which the satellite facility is located, and one-quarter percent to the locality in which the racetrack is located. The remainder of the retainage shall be paid as provided in subsection D; provided, however, that if the percentage amount approved by the Commission is other than 18 percent, the amounts provided in subdivisions D 1, 2 and 3 shall be adjusted by the proportion that the approved percentage amount bears to 18 percent.

D. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on live horse racing conducted within the Commonwealth, involving win, place and show wagering, the licensee shall retain a percentage amount approved by the Commission as jointly requested by a recognized majority horsemen's group and a licensee and the legitimate breakage, out of which shall be paid:

1. Eight percent as purses or prizes to the participants in such race meeting;

2. Seven and one-half percent, and all of the breakage and the proceeds of pari-mutuel tickets unredeemed 180 days from the date on which the race was conducted, to the operator;

3. One percent to the Virginia Breeders Fund;

4. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;

5. Five one-hundredths percent to the Virginia Horse Center Foundation;

6. Five one-hundredths percent to the Virginia Horse Industry Board; and

7. The remainder of the retainage shall be paid as appropriate under subsection B or C.

E. On pari-mutuel pools generated by wagering at the racetrack on live horse racing conducted within the Commonwealth involving wagering other than win, place and show wagering, the licensee shall retain a percentage amount approved by the Commission as jointly requested by a recognized majority horsemen's group and a licensee and the legitimate breakage, out of which shall be paid two and three-quarters percent to be distributed as follows: two and one-quarter percent to the Commonwealth as a license tax, and one-half percent to the locality in which the racetrack is located. The remainder of the retainage shall be paid as provided in subsection G; provided, however, that if the percentage amount approved by the Commission is other than 22 percent, the amounts provided in subdivisions G 1, 2 and 3 shall be adjusted by the proportion that the approved percentage amount bears to 22 percent.

F. On pari-mutuel pools generated by wagering at each Virginia satellite facility on live horse racing conducted within the Commonwealth involving wagering other than win, place and show wagering, the licensee shall retain a percentage amount approved by the Commission as jointly requested by a recognized majority horsemen's group and a licensee and the legitimate breakage, out of which shall be paid two and three-quarters percent to be distributed as follows: one and three-quarters percent to the Commonwealth as a license tax, one-half percent to the locality in which the satellite facility is located, and one-half percent to the locality in which the racetrack is located. The remainder of the retainage shall be paid as provided in subsection G; provided, however, that if the percentage amount approved by the Commission is other than 22 percent, the amounts provided in subdivisions G 1, 2 and 3 shall be adjusted by the proportion that the approved percentage amount bears to 22 percent.

G. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on live horse racing conducted within the Commonwealth involving wagering other than win, place and show wagering, the licensee shall retain a percentage amount approved by the Commission as jointly requested by a recognized majority horsemen's group and a licensee and the legitimate breakage, out of which shall be paid:

1. Nine percent as purses or prizes to the participants in such race meeting;

2. Nine percent, and the proceeds of the pari-mutuel tickets unredeemed 180 days from the date on which the race was conducted, to the operator;

3. One percent to the Virginia Breeders Fund;

4. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;

5. Five one-hundredths percent to the Virginia Horse Center Foundation;

6. Five one-hundredths percent to the Virginia Horse Industry Board; and

7. The remainder of the retainage shall be paid as appropriate under subsection E or F.

H. On pari-mutuel wagering generated by simulcast horse racing transmitted from jurisdictions outside the Commonwealth, the licensee may, with the approval of the Commission, commingle pools with the racetrack where the transmission emanates or establish separate pools for wagering within the Commonwealth. All simulcast horse racing in this subsection must comply with the Interstate Horse Racing Act of 1978 (15 U.S.C. § 3001 et seq.).

I. On pari-mutuel pools generated by wagering at the racetrack on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving win, place and show wagering, the licensee shall retain one and one-quarter percent of such pool to be distributed as follows: three-quarters percent to the Commonwealth as a license tax, and one-half percent to the Virginia locality in which the racetrack is located.

J. On pari-mutuel pools generated by wagering at each Virginia satellite facility on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving win, place and show wagering, the licensee shall retain one and one-quarter percent of such pool to be distributed as follows: three-quarters percent to the Commonwealth as a license tax, one-quarter percent to the locality in which the satellite facility is located, and one-quarter percent to the Virginia locality in which the racetrack is located.

K. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving win, place and show wagering, the licensee shall retain one and thirty one-hundredths percent of such pool to be distributed as follows:

1. One percent of the pool to the Virginia Breeders Fund;

2. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;

3. Five one-hundredths percent to the Virginia Horse Center Foundation;

4. Five one-hundredths percent to the Virginia Horse Industry Board; and

5. Five one-hundredths percent to the Virginia Thoroughbred Association for the promotion of breeding in the Commonwealth.

L. On pari-mutuel pools generated by wagering at the racetrack on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving wagering other than win, place and show wagering, the licensee shall retain two and three-quarters percent of such pool to be distributed as follows: one and three-quarters percent to the Commonwealth as a license tax, and one percent to the Virginia locality in which the racetrack is located.

M. On pari-mutuel pools generated by wagering at each Virginia satellite facility on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving wagering other than win, place and show wagering, the licensee shall retain two and three-quarters percent of such pool to be distributed as follows: one and three-quarters percent to the Commonwealth as a license tax, one-half percent to the locality in which the satellite facility is located, and one-half percent to the Virginia locality in which the racetrack is located.

N. On pari-mutuel pools generated by wagering at the racetrack and each Virginia satellite facility on simulcast horse racing transmitted from jurisdictions outside the Commonwealth, involving wagering other than win, place and show wagering, the licensee shall retain one and thirty one-hundredths percent of such pool to be distributed as follows:

1. One percent of the pool to the Virginia Breeders Fund;

2. Fifteen one-hundredths percent to the Virginia-Maryland Regional College of Veterinary Medicine;

3. Five one-hundredths percent to the Virginia Horse Center Foundation;

4. Five one-hundredths percent to the Virginia Horse Industry Board; and

5. Five one-hundredths percent to the Virginia Thoroughbred Association for the promotion of breeding in the Commonwealth.

O. Moneys payable to the Commonwealth shall be deposited in the general fund. Gross receipts for license tax purposes under Chapter 37 (§ 58.1-3700 et seq.) of Title 58.1 shall not include pari-mutuel wagering pools and license taxes authorized by this section.

P. All payments by the licensee to the Commonwealth or any locality shall be made within five days from the date on which such wagers are received by the licensee. All payments by the licensee to the Virginia Breeders Fund shall be made to the Commission within five days from the date on which such wagers are received by the licensee. All payments by the licensee to the Virginia-Maryland Regional College of Veterinary Medicine, the Virginia Horse Center Foundation, the Virginia Horse Industry Board, and the Virginia Thoroughbred Association shall be made by the first day of each quarter of the calendar year. All payments made under this section shall be used in support of the policy of the Commonwealth to sustain and promote the growth of a native industry.

Q. If a satellite facility is located in more than one locality, any amount a licensee is required to pay under this section to the locality in which the satellite facility is located shall be prorated in equal shares among those localities.

R. Any contractual agreement between a licensee and other entities concerning the distribution of the remaining portion of the retainage under subsections I through N shall be subject to the approval of the Commission.

S. The recognized majority horsemen's group racing at a licensed race meeting may, subject to the approval of the Commission, withdraw for administrative costs associated with serving the interests of the horsemen an amount not to exceed two percent of the amount in the horsemen's account.

T. The legitimate breakage from each pari-mutuel pool for both live racing and simulcast horse racing shall be distributed as follows:

1. Seventy percent to be retained by the licensee to be used for capital improvements that are subject to approval of the Commission; and

2. Thirty percent to be deposited in the Racing Benevolence Fund, administered jointly by the licensee and the recognized majority horsemen's group racing at a licensed race meeting, to be disbursed with the approval of the Commission for gambling addiction and substance abuse counseling, recreational, educational or other related programs.

1988, c. 855; 1991, c. 591; 1992, c. 820; 1995, c. 217; 1998, cc. 608, 619; 2000, c. 1031; 2007, c. 61; 2011, c. 732; 2015, cc. 731, 751.

§ 59.1-392.1. Advance deposit account wagering revenues; distribution

A. Notwithstanding the provisions of § 59.1-392, the allocation of revenue from advance deposit account wagering shall include (i) a licensee fee of 1.5 percent paid to the Commission; (ii) an additional fee equal to one percent of all wagers made within the Commonwealth placed through an advance deposit account wagering licensee, which shall be paid to the Virginia Breeders Fund, and (iii) an additional fee equal to nine percent of all wagers made within the Commonwealth placed through an advance deposit account wagering licensee, out of which shall be paid:

1. Four percent to a nonprofit industry stakeholder organization recognized by, and with oversight from, the Commission to include the recognized majority horsemen's group, a breeder's organization, and a licensed track operator for the purpose of promoting, sustaining, and advancing horse racing within the Commonwealth; and

2. Five percent to representatives of the recognized majority horsemen's group by breed to be used for purse funds at races conducted in the Commonwealth, unless otherwise authorized by the Commission.

Notwithstanding the foregoing, if the advance deposit account wagering licensee is a significant infrastructure limited licensee, the additional fee equal to nine percent of the wagers placed

through such advance deposit account wagering licensee since November 1, 2014, shall instead be retained by such licensee for operational expenses, including defraying the costs of live racing.

B. The Commission-recognized nonprofit industry stakeholder organization shall make distributions from fees received from advance deposit wagering to organizations within the Commonwealth providing care for retired race horses, the Virginia-Maryland Regional College of Veterinary Medicine, the Virginia Horse Center Foundation, the Virginia Horse Industry Board, and the Virginia Thoroughbred Association in the percentages of wagering handles set forth in subsections K and N of § 59.1-392, and shall make a distribution of thirty-five one-hundredths of one percent of all wagers made within the Commonwealth placed through such advance deposit account wagering licensee to the locality where live racing licensed by the Commission occurred prior to January 1, 2012, and beginning January 1, 2020, to the locality or localities where such live racing occurs to be shared in a ratio of the number of such annual live races in a locality to the total number of such annual lives races in the Commonwealth. Distributions under this section from the Commission-recognized nonprofit stakeholder organization to the foregoing entities and locality or localities, when added to the distributions to such entities and locality or localities under § 59-1.392, shall be capped at the sum necessary to equal distributions made in the 2013 calendar year to each entity under § 59-1.392, and shall be capped at the sum necessary to equal $400,000 for a locality or localities.

C. Any additional distribution of fees received from advance deposit account licensees by the Commission-recognized nonprofit industry stakeholder organization shall be approved by the Commission.

2015, cc. 731, 751.

§ 59.1-393. Admissions tax

The governing body of any county or city may by ordinance impose a tax on any licensee hereunder to conduct a race meeting at a track located solely in such county or city of twenty-five cents on the admission of each person on each day except those holding a valid permit under this chapter and actually employed at such track in the capacity for which such permit was issued. The licensee may collect such amount from the ticket holder in addition to the amount charged for the ticket of admission.

If such track or its enclosure is located in two or in three localities, each locality may impose a tax hereunder of twelve and one-half cents or eight and one-third cents per person, respectively.

Gross receipts for license tax purposes under Chapter 37 of Title 58.1 shall not include the admissions tax imposed under this section.

1988, c. 855; 1991, c. 591 .

§ 59.1-394. Audit required

A regular post-audit shall be conducted of all accounts and transactions of the Commission. An annual audit of a fiscal and compliance nature of the accounts and transactions of the

Commission shall be conducted by the Auditor of Public Accounts on or before September 30 of each year. The cost of the annual audit and post-audit examinations shall be borne by the Commission.

1988, c. 855.

Article 5.1 - LIVE HORSERACING COMPACT

§ 59.1-394.1. Live Horseracing Compact; form of compact

The Live Horseracing Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Purposes.

§ 1. Purposes.

The purposes of this compact are to:

1. Establish uniform requirements among the party states for the licensing of participants in live horse racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to this compact meet a uniform minimum standard of honesty and integrity.

2. Facilitate the growth of the horse racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live horse racing with pari-mutuel wagering.

3. Authorize the Virginia Racing Commission to participate in this compact.

4. Provide for participation in this compact by officials of the party states, and permit those officials, through the compact committee established by this compact, to enter into contracts with governmental agencies and nongovernmental persons to carry out the purposes of this compact.

5. Establish the compact committee created by this compact as an interstate governmental entity duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation and other state and local law-enforcement agencies.

ARTICLE II. Definitions.

§ 2. Definitions.

"Compact committee" means the organization of officials from the party states that is authorized and empowered by this compact to carry out the purposes of this compact.

"Official" means the appointed, elected, designated or otherwise duly selected representative of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

"Participants in live racing" means participants in live horse racing with pari-mutuel wagering in the party states.

"Party state" means each state that has enacted this compact.

"State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and each territory or possession of the United States.

ARTICLE III. Entry into Force, Eligible Parties and Withdrawal.

§ 3. Entry into force.

This compact shall come into force when enacted by any four states. Thereafter, this compact shall become effective as to any other state upon (i) that state's enactment of this compact and (ii) the affirmative vote of a majority of the officials on the compact committee as provided in § 8.

§ 4. States eligible to join compact.

Any state that has adopted or authorized horse racing with pari-mutuel wagering shall be eligible to become party to this compact.

§ 5. Withdrawal from compact and impact thereof on force and effect of compact.

Any party state may withdraw from this compact by enacting a statute repealing this compact, but no such withdrawal shall become effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If as a result of withdrawals participation in this compact decreases to less than three party states, this compact no longer shall be in force and effect unless and until there are at least three or more party states again participating in this compact.

ARTICLE IV. Compact Committee.

§ 6. Compact committee established.

There is hereby created an interstate governmental entity to be known as the "compact committee," which shall be comprised of one official from the racing commission or its equivalent in each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the party state he represents. Pursuant to the laws of his party state, each official shall have the assistance of his state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his responsibilities as the representative from his state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent thereof from his state shall designate an alternate who shall serve in his place and represent the party state as its official on the compact committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his duties as that party state's representative official on the compact committee. The des-

ignation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the compact committee as the committee's bylaws may provide.

§ 7. Powers and duties of compact committee.

In order to carry out the purposes of this compact, the compact committee is hereby granted the power and duty to:

1. Determine which categories of participants in live racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, and which categories of equivalent participants in live racing with pari-mutuel wagering authorized in two or more of the party states, should be licensed by the committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. Provided, however, that with regard to requests for criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements.

2. Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the Federal Bureau of Investigation and relevant state and local law-enforcement agencies, and, where appropriate, from the Royal Canadian Mounted Police and law-enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the committee as provided in paragraph 1 of this section. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only for the purposes of this compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and, pursuant to Public Law 92-544 or Public Law 100-413, shall be forwarded to a state identification bureau, or an association of state officials regulating pari-mutuel wagering designated by the Attorney General of the United States, for submission to the Federal Bureau of Investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the Federal Bureau of Investigation or other receiving law-enforcement agency.

3. Issue licenses to, and renew the licenses of, participants in live racing listed in paragraph 1 of this section who are found by the committee to have met the licensure and renewal requirements established by the committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of

a compact committee license, the compact committee shall notify the applicant that it will not be able to process his application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant shall have the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the compact committee using the requirements established pursuant to paragraph 1 of this section.

4. Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to effectuate the purposes of this compact.

5. Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of this compact, prescribe their powers, duties and qualifications, hire persons to fill those offices, employments and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits and other conditions of employment of its officers, employees and other positions.

6. Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation or other entity.

7. Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the purposes of this compact.

8. Charge a fee to each applicant for an initial license or renewal of a license.

9. Receive other funds through gifts, grants and appropriations.

§ 8. Voting requirements.

A. Each official shall be entitled to one vote on the compact committee.

B. All action taken by the compact committee with regard to the addition of party states as provided in § 3, the licensure of participants in live racing, and the receipt and disbursement of funds shall require a majority vote of the total number of officials (or their alternates) on the committee. All other action by the compact committee shall require a majority vote of those officials (or their alternates) present and voting.

C. No action of the compact committee may be taken unless a quorum is present. A majority of the officials (or their alternates) on the compact committee shall constitute a quorum.

§ 9. Administration and management.

A. The compact committee shall elect annually from among its members a chairman, a vice-chairman, and a secretary/treasurer.

B. The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials (or their alternates) on the committee at that time and shall have the power by the same vote to amend and rescind such bylaws. The committee shall publish its

bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the secretary of state or equivalent agency of each of the party states.

C. The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and his support staff.

D. Employees of the compact committee shall be considered governmental employees.

§ 10. Immunity from liability for performance of official responsibilities and duties.

No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his responsibilities and duties under this compact.

ARTICLE V. Rights and Responsibilities of Each Party State.

§ 11. Rights and responsibilities of each party state.

A. By enacting this compact, each party state:

1. Agrees (i) to accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing pursuant to the committee's licensure requirements and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his alternate.

2. Agrees not to treat a notification to an applicant by the compact committee under paragraph 3 of § 7 that the compact committee will not be able to process his application further as the denial of a license, or to penalize such an applicant in any other way based solely on such a decision by the compact committee.

3. Reserves the right (i) to charge a fee for the use of a compact committee license in that state, (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked, (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee, and (iv) to establish its own licensure standards for the licensure of nonracing employees at horse racetracks and employees at separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.

B. No party state shall be held liable for the debts or other financial obligations incurred by the compact committee.

ARTICLE VI. Construction and Severability.

§ 12. Construction and severability.

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

2000, c. 992; 2003, c. 722.

§ 59.1-394.2. Compact Committee members

The Governor shall appoint one official to represent the Commonwealth on the Compact Committee for a term of four years. No official shall serve more than three consecutive terms. A vacancy shall be filled by the Governor for the unexpired term.

2000, c. 992.

§ 59.1-394.3. 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 Compact Committee in furtherance of any of its activities pursuant to the Compact.

2000, c. 992.

§ 59.1-394.4. Racing Commission powers preserved

Nothing in this article shall be construed to diminish or limit the powers and responsibilities of the Racing Commission established by Article 1 of this chapter or to invalidate any action of the Racing Commission previously taken, including without limitation any regulation promulgated thereby.

2000, c. 992.

Article 6 - CRIMINAL PENALTIES

§ 59.1-395. Unlawful conduct of wagering

Any person not licensed under subdivision 5 of § 59.1-369 or under Article 2 (§ 59.1-375 et seq.) of this chapter who conducts pari-mutuel wagering, or horse racing on which wagering is conducted with his knowledge or consent, shall be guilty of a Class 4 felony.

1988, c. 855; 2003, c. 682.

§ 59.1-396. Fraudulent use of credential

Any person other than the lawful holder thereof who has in his possession any credential, license or permit issued by the Commission, or a forged or simulated credential, license or permit of the

Commission, and who uses such credential, license or permit for the purpose of misrepresentation, fraud or touting is guilty of a Class 4 felony.

Any credential, license or permit issued by the Commission, if used by the holder thereof for a purpose other than identification and in the performance of legitimate duties on a racetrack or within a satellite facility, shall be automatically revoked whether so used on or off a racetrack or satellite facility.

1988, c. 855; 1992, c. 820 .

§ 59.1-397. Unlawful transmission of information

Any person who knowingly transmits information as to the progress or results of a horse race, or information as to wagers, betting odds, post or off times, or jockey changes in any race by any means whatsoever for the purposes of carrying on illegal gambling operations as defined in § 18.2-325, or to a person engaged in illegal gambling operations shall be guilty of a Class 4 felony.

This section shall not be construed to prohibit a newspaper from printing such results or information as news, or any television or radio station from telecasting or broadcasting such results or information as news. This section shall not be so construed as to place in jeopardy any common carrier or its agents performing operations within the scope of a public franchise, or any gambling operation authorized by law.

1988, c. 855.

§ 59.1-398. Touting

Any person, who knowingly and designedly by false representation attempts to, or does persuade, procure or cause another person to wager on a horse in a race to be run in this Commonwealth or elsewhere, and upon which money is wagered in this Commonwealth, and who asks or demands compensation as a reward for information or purported information given in such case, shall be guilty of a Class 1 misdemeanor.

1988, c. 855.

§ 59.1-399. Bribing of a jockey, driver or other participant

Any person who gives, promises or offers to any jockey, driver, groom or any person participating in any race meeting, including owners of racetracks and their employees, stewards, trainers, judges, starters and special policemen, any valuable thing with intent to influence him to attempt to lose or cause to be lost a horse race in which such person is taking part or expects to take part, or has any duty or connection, or who, being either jockey, driver, or groom or participant in a race meeting, solicits or accepts any valuable thing to influence him to lose or cause to be lost a horse race in which he is taking part, or expects to take part, or has any duty or connection, shall be guilty of a Class 4 felony.

1988, c. 855.

§ 59.1-400. Prohibited acts, administration of drugs, etc.; penalty

Any person who, with the intent to defraud, acts to alter the outcome of a race by (i) the administration of any substance foreign to the natural horse, except those substances specifically permitted by the regulations of the Virginia Racing Commission, or (ii) the use of any device, electrical or otherwise, except those specifically permitted by the regulations of the Virginia Racing Commission, shall be guilty of a Class 4 felony.

Any person who, with the intent to defraud, influences or conspires with another to alter the outcome of a race by (i) the administration of any substance foreign to the natural horse, except those substances specifically permitted by the regulations of the Virginia Racing Commission, or (ii) the use of any device, electrical or otherwise, except those specifically permitted by the regulations of the Virginia Racing Commission, shall be guilty of a Class 4 felony.

Any person who (i) administers any substance foreign to the natural horse, except those substances specifically permitted by the regulations of the Virginia Racing Commission, when the horse is entered to start, or (ii) at any time, exposes any substance foreign to the natural horse with the intent of impeding or increasing the speed, endurance, health, or condition of a horse, shall be guilty of a Class 4 felony.

1988, c. 855; 1990, c. 366 .

§ 59.1-401. Possessing drugs

The possession or transportation of any drug except those permitted by regulations of the Commission within the racing enclosure is prohibited except upon a bona fide veterinarian's prescription with complete statement of uses and purposes on the container. A copy of such prescription shall be filed with the stewards. Any person knowingly violating the provisions of this section relating to the legal possession of drugs shall be guilty of a Class 1 misdemeanor. The provisions of the Drug Control Act (§ 54.1-3400 et seq.) shall apply in situations where drugs regulated by that Act are within the racing enclosure.

1988, c. 855.

§ 59.1-402. Racing under false name; penalty

Any person who knowingly enters or races any horse in any running or harness race under any name or designation other than the name or designation assigned to such horse by and registered with the Jockey Club, the United States Trotting Association, the American Quarter Horse Association, or other applicable association or who knowingly instigates, engages in, or in any way furthers any act by which any horse is entered or raced in any running or trotting race under any name or designation other than the name or designation duly assigned by and registered with the Jockey Club, the United States Trotting Association, the American Quarter Horse Association, or other applicable association, is guilty of a Class 4 felony.

1988, c. 855; 1990, c. 351 .

§ 59.1-403. Minors prohibited

No person shall wager on or conduct any wagering on the outcome of a horse race pursuant to the provisions of this chapter unless such person is eighteen years of age or older. No person shall accept any wager from a minor. No person shall be admitted into a satellite facility if such person is under eighteen years of age unless accompanied by one of his parents or his legal guardian. Violation of this section shall be a Class 1 misdemeanor.

1988, c. 855; 1996, cc. 915, 1025.

§ 59.1-404. Repealed

Repealed by Acts 1991, c. 591 .

§ 59.1-405. Conspiracies and attempts to commit violations

A. Any person who conspires, confederates or combines with another, either within or without this Commonwealth, to commit a felony prohibited by this chapter shall be guilty of a Class 4 felony.

B. Any person who attempts to commit any act prohibited by this article shall be guilty of a criminal offense and punished as provided in either §§ 18.2-26, 18.2-27 or § 18.2-28, as appropriate.

1988, c. 855; 1991, c. 591 .

Chapter 29.1 - GREYHOUND RACING

§ 59.1-405.1. Greyhound racing and simulcasting prohibited; penalty

A. No person shall hold, conduct or operate any greyhound races for public exhibition in the Commonwealth for monetary remuneration.

B. No person shall transmit or receive interstate or intrastate simulcasting of greyhound races for commercial purposes in the Commonwealth.

C. Any person who violates the provisions of this chapter shall be guilty of a Class 4 felony.

1995, c. 19.

Chapter 30 - OVERHEAD HIGH VOLTAGE LINE SAFETY ACT

§ 59.1-406. Scope

This chapter (§ 59.1-406 et seq.) is enacted to promote the safety and protection of persons engaged in work or activity in the vicinity of overhead high voltage lines. The chapter defines the conditions under which work may be carried on safely and provides for the safety arrangements to be taken when any person engages in work or other activity in proximity to overhead high voltage lines.

1989, c. 341 .

§ 59.1-407. Definitions

As used in this chapter:

"Covered equipment" means any mechanical equipment or hoisting equipment, any part of which is capable of vertical, lateral or swinging motion that could cause the equipment to be operated within ten feet of an overhead high voltage line, including but not limited to cranes, derricks, power shovels, drilling rigs, excavating equipment, hay loaders, hay stackers, combines, grain augers and mechanical cotton pickers.

"Notice" means actual notification in the manner prescribed in § 59.1-411.

"Overhead high voltage line" means all above ground bare or insulated electrical conductors of voltage in excess of 600 volts measured between conductors or measured between a conductor and the ground, except those conductors that are de-energized and grounded or that are enclosed in rigid metallic conduit or flexible armored conduit.

"Person" means natural person, firm, business association, company, partnership, corporation or other legal entity.

"Person responsible for the work" means the person performing or controlling the work.

"Warning sign" means a weather-resistant sign of not less than five inches by seven inches with a yellow background and black lettering reading as follows: "WARNING -- UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN 10 FEET OF OVERHEAD HIGH VOLTAGE LINES" or such other equally effective warning signs as may be approved for use by the Virginia Safety and Health Codes Board or the Commissioner of Labor and Industry.

"Work" means the physical act of performing or preparing to perform any activity under, over, by, or near overhead high voltage lines, including, but not limited to, the operation, erection, handling, storage, or transportation of any tools, machinery, ladders, antennas, equipment, covered equipment, supplies, materials, or apparatus, or the moving of any house or other structure, whenever such activity is done by a person or entity in pursuit of his trade or business.

"Working day" means every day except Saturdays, Sundays, and legal state and federal holidays.

1989, c. 341; 2003, c. 364.

§ 59.1-408. Prohibited activities

Unless danger of contact with overhead high voltage lines has been guarded against as provided by § 59.1-410 :

1. No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work, as defined in § 59.1-407, that will cause any person or tools, machinery, ladders, antennas, equipment, covered equipment, supplies, materials, or apparatus to be placed within 10 feet (3.1 meters) of any overhead high voltage line.

2. A clearance greater than 10 feet (3.1 meters) may be required under the circumstances by the occupational safety and health regulations adopted by the Safety and Health Codes Board pursuant

to Chapter 3 (§ 40.1-22 et seq.) of Title 40.1 and enforced by the Commissioner of Labor and Industry.

3. The prohibited activities as described in this section shall not apply to covered equipment as defined herein when lawfully driven or transported on public streets and highways in compliance with the height restriction imposed by § 46.2-1110, nor shall they apply to covered equipment, when used in agricultural or silvicultural activities, that is in compliance with the height restrictions imposed by § 46.2-1110 when driven or transported on land used for agricultural or silvicultural activities.

1989, c. 341; 1995, c. 298; 2003, c. 364.

§ 59.1-409. Warning signs

A. No person shall, individually or through an agent or employee, or as an agent or employee, operate any covered equipment in the proximity of an overhead high voltage line unless there is posted and maintained a warning sign placed as follows:

1. Within the equipment and readily visible and legible to the operator of such equipment when at the controls of such equipment; and

2. On the outside of equipment in such numbers and locations as to be readily visible and legible at 12 feet to other persons engaged in the work operations.

B. It shall be the duty and responsibility of the owner, lessee, or employer of any covered equipment to acquaint themselves, and their employees who will be operating the equipment or will be engaged in work, with the provisions of this chapter and the regulations prescribed and promulgated pursuant to it.

1989, c. 341; 2003, c. 364.

§ 59.1-410. Temporary safety arrangements

A. When any person desires to carry on any work in closer proximity to any overhead high voltage line than permitted by this chapter, the person responsible for the work shall promptly notify the owner or operator of the high voltage line on a working day, or in emergency situations as soon as possible under the circumstances, in the manner prescribed in § 59.1-411. The work shall be performed only after satisfactory mutual arrangements have been negotiated between the owner or the operator of the lines or both and the person responsible for the work. The negotiations shall proceed promptly and in good faith with the goal of accommodating the requested work consistent with the owner's or operator's service needs and the duty to protect the public from the danger of overhead high voltage lines. The owner or operator of the lines shall initiate the agreed upon safety arrangements within five working days from the date of the request of the person responsible for the work. The owner and operator of the lines shall complete the work promptly and without interruption, consistent with the owner's or operator's service needs. Arrangements may include (i) placement of temporary mechanical barriers separating and preventing contact between material, equipment, or persons and overhead high voltage lines, (ii) temporary de-energization

and grounding, (iii) temporary relocation or raising of the lines, or (iv) other such measures found to be appropriate in the judgment of the owner or operator of the lines. The person responsible for the work shall ensure that the temporary safety arrangements described in this subsection are completed prior to the commencement of any such work.

B. The actual expense incurred by any owner or operator of overhead high voltage lines in taking precautionary measures as set out in subsection A of this section, including the wages of its workers involved in making safety arrangements, shall be paid by the person responsible for the work or a person subject to the following exceptions:

1. In the case of property used for residential purposes, such actual expenses shall be limited to those in excess of $1,000;

2. Whenever any owner or operator of an overhead high voltage line has located its facilities within a public highway or street right-of-way and the work is performed by or for the Department of Transportation or a city, county or town, the actual expenses shall be the responsibility of the owner or operator of the overhead high voltage lines, unless the owner or operator can provide evidence of prior rights or there is a prior written agreement specifying cost responsibility; and

3. Whenever it is determined by the Department of Transportation or a city, county or town that the temporary safety arrangements are for the sole convenience of its contractor, the actual expense shall be the responsibility of the contractor.

C. When requested by a person, an owner or operator of a high voltage line shall provide within a reasonable period of time an estimate of the scope and cost of any required safety arrangements.

1989, c. 341; 1993, c. 284; 1995, c. 298; 1996, c. 267; 2003, c. 364.

§ 59.1-411. Notification

A. Every notice served by any person on an owner or operator of an overhead high voltage line pursuant to § 59.1-410 shall contain the following information:

1. The name of the individual serving such notice;

2. The location or address of the tract or parcel of land upon which the work is to take place with sufficient particularity to enable the owner or operator of the overhead high voltage lines to ascertain the precise tract or parcel of land involved;

3. The name, address and work day telephone number of the person responsible for the work;

4. The field telephone number at the site of such work, if one is available;

5. The type and extent of the proposed work;

6. The name of the person for whom the proposed work is being performed;

7. The time and date of the notice; and

8. The dates upon which the work is scheduled to commence and be completed.

B. If the notification required by this chapter is made by telephone, a record of such notification shall be maintained by the owner or operator notified and the person giving the notice to document compliance with the requirements of this chapter.

C. To facilitate notification required by this chapter, every operator of overhead high voltage lines shall publish a phone number or numbers that, when called, will serve to provide initial notification of the need to arrange for the temporary safety arrangements pursuant to this chapter.

D. If, after the arrangements required by § 59.1-410 are made, a delay in commencing the work is encountered, then the person responsible for the work shall be required to give a new notice as specified in this section.

E. The provisions of this section shall not apply to the owner or leaseholder of real estate devoted to agricultural or silvicultural activities beneath a high voltage line, unless otherwise required by state or federal law.

1989, c. 341; 1995, c. 298; 1996, c. 267; 2003, c. 364.

§ 59.1-412. Enforcement of chapter

The provisions of this chapter shall be considered as safety and health standards of the Commonwealth and enforced as to employers pursuant to § 40.1-49.4 by the Commissioner of Labor and Industry.

In the case of violations of this chapter over which the Commissioner of Labor and Industry does not have enforcement powers pursuant to § 40.1-49.4, a civil penalty of up to $1,000 may be imposed at the discretion of the general district court for the jurisdiction in which the offense occurred.

1989, c. 341 .

§ 59.1-413. Exemptions

This chapter shall not apply to the construction, reconstruction, operation, and maintenance of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment of (i) rail transportation systems, (ii) electrical generating, transmission or distribution systems, (iii) communication systems, including cable television, or (iv) any other publicly or privately owned system provided that such work on any of the foregoing systems is performed by the employees of the owner or operator of the systems or independent contractors engaged on behalf of the owner or operator of the system to perform the work.

This chapter also shall not apply to electrical or communications circuits or conductors on the premises of coal or other mines which are subject to the provisions of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. § 801 et seq.) and regulations adopted pursuant to that Act by the Mine Safety and Health Administration.

1989, c. 341 .

§ 59.1-414. Application

A. The owner or operator of overhead high voltage lines shall not be liable for damage or loss to any person or property caused by work within 10 feet of overhead high voltage lines, unless notice has been given as required by § 59.1-411 and the owner or operator of the overhead high voltage line has failed to comply with the provisions of § 59.1-410.

B. Any person responsible for the work who violates the requirements of § 59.1-408 and whose subsequent activities within the vicinity of overhead high voltage lines cause damage to utility facilities or cause injury or damage to any person or property shall indemnify the owner or operator of such overhead high voltage lines against all claims arising from personal injury or death, property damage, or service interruptions, together with attorneys' fees and other costs incurred in defending any such claims directly resulting from work in violation of § 59.1-408.

C. Except as provided in subsection A, nothing in this chapter shall be construed or applied so as to alter the duty or degree of care applicable to owners or operators of overhead high voltage lines with respect to damage to property, personal injury or death.

D. Except for the rights provided to the owner or operator of the overhead high voltage line in subsection B, nothing contained in this chapter shall be construed to alter, amend, restrict, or limit the exclusive remedy provisions of § 65.2-307.

1989, c. 341; 2003, c. 364.

Chapter 31 - PRIZES AND GIFTS ACT

§ 59.1-415. Definitions

As used in this chapter, which shall be known and may be cited as the "Prizes and Gifts Act":

"Anything of value," "item of value" or "item" means any item or service with monetary value.

"Handling charge" means any charge, fee or sum of money which is paid by a consumer to receive a prize, gift or any item of value including, but not limited to, promotional fees, redemption fees, registration fees or delivery costs.

"Pay-per-call service" means any passive, interactive, polling, conference, or other similar audiotext service that is accessed through a 900 number exchange or otherwise, and generates a service-related fee billed to a telephone customer.

"Person" means any natural person, corporation, trust, partnership, association and any other legal entity.

1989, c. 689; 1991, c. 154 .

§ 59.1-416. Representation of having won a prize, gift or any item of value

A. No person shall, in connection with the sale or lease or solicitation for the sale or lease of goods, property, or service, represent that another person has won anything of value or is the winner of a contest, unless all of the following conditions are met:

1. The recipient of the prize, gift or item of value shall be given the prize, gift or item of value without obligation; and

2. The prize, gift or item of value shall be delivered to the recipient at no expense to him, within ten days of the representation.

B. The use of language that may lead a reasonable person to believe he has won a contest or anything of value, including, but not limited to, "Congratulations," or "You have won," or "You are the winner of," shall be considered a representation of the type governed by this section.

1989, c. 689 .

§ 59.1-417. Representation of eligibility to win or to receive a prize, gift or item of value

A. No person shall, in connection with the sale or lease or solicitation for sale or lease of goods, property or service, represent that another person has a chance to win or to receive a prize, gift or item of value without clearly and conspicuously disclosing on whose behalf the contest or promotion is conducted, as well as all material conditions which a participant must satisfy. In an oral solicitation all material conditions shall be disclosed prior to requesting the consumer to enter into the sale or lease. Additionally, in any written material covered by this section, each of the following shall be clearly and prominently disclosed (i) immediately adjacent to the first identification of the prize, gift or item of value to which it relates or (ii) in a separate section entitled "Consumer Disclosure" which title shall be printed in no less than ten-point bold face type and which section shall contain only a description of the prize, gift or item of value and the disclosures outlined in subdivisions 1, 2 and 3 of this subsection:

1. The actual retail value of each item or prize, which for purposes of this section shall be (i) the price at which substantial sales of the item were made in the area in which the offer was received within the last ninety days or (ii) the actual cost of the item of value, gift or prize to the person on whose behalf the contest or promotion is conducted plus no more than 700 percent, but in no case shall it exceed such person's good faith estimate of the appraised retail value;

2. The actual number of each item, gift or prize to be awarded; and

3. The odds of receiving each item, gift or prize.

B. All disclosures required by this chapter to be in writing shall comply with the following:

1. All dollar values shall be stated in arabic numerals and be preceded by a dollar sign ($).

2. The number of each item, gift or prize to be awarded and the odds of receiving each item, gift or prize shall be stated in arabic numerals and shall be written in a manner which is clear and understandable.

C. It shall be unlawful to notify a person that he will receive a gift, prize or item of value that has as a condition of receiving the gift, prize or item of value the requirement that he pay any money, or purchase, lease or rent any goods or services, unless there shall have been clearly and

conspicuously disclosed the nature of the charges to be incurred, including, but not limited to, any shipping charge and handling charges. Such disclosure shall be given (i) on the face of any written materials or (ii) prior to requesting or inviting the person to enter into the sale or lease in any oral notification.

D. The provisions of this section shall not apply where to be eligible:

1. Participants are asked only to complete and mail, or deposit at a local retail commercial establishment, an entry blank obtainable locally or by mail, or to call in their entry by telephone; or

2. Participants are never required to listen to a sales presentation and never requested or required to pay any sum of money for any merchandise, service or item of value.

E. Nothing in this section shall create any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section.

F. Every solicitation that seeks to induce its recipient to call a pay-per-call service telephone number to receive any information about a prize, gift, or item of value shall (i) conform to the provisions of this section, and (ii) disclose the total cost of the pay-per-call service immediately adjacent to the pay-per-call service telephone number. In written materials, this disclosure shall be in ten-point bold-faced type. All solicitations delivered through the electronic media shall contain the disclosures in such size, duration, or volume so as to be clearly readable or audible to the recipient.

1989, c. 689; 1991, c. 154 .

§ 59.1-418. Representation of being specially selected

A. No person shall represent that another person has been specially selected in connection with the sale or lease or solicitation for sale or lease of goods, property, or service, unless the selection process is designed to reach a particular type or types of persons.

B. The use of any language that may lead a reasonable person to believe he has been specially selected, including but not limited to "carefully selected," or "You have been selected to receive," or "You have been chosen," shall be considered a representation of the type governed by this section.

1989, c. 689 .

§ 59.1-419. Simulation of checks and invoices

In connection with a consumer transaction, no person shall issue any writing which simulates or resembles (i) a check unless the writing clearly and conspicuously discloses its true value and purpose, and the writing would not mislead a reasonable person or (ii) an invoice unless the intended

recipient of the invoice has actually contracted for goods, property, or services for which the issuer seeks proper payment.

1989, c. 689 .

§ 59.1-420. Conditions for handling charges and shipping charges

A. It shall be unlawful to notify a person that he will receive a gift, prize or item of value and that as a condition of receiving the gift, prize or item of value he will be required to pay any money, or purchase or lease (including rent) any goods or services, if any one or more of the following conditions exist:

1. The shipping charge exceeds:

a. The cost of postage or the charge of a delivery service in the business of delivering goods of like size, weight, and kind for shipping the gift, prize or item of value from the geographic area in which the gift, prize or item of value is being distributed; or

b. The exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift, prize or item of value; or

2. The handling charge exceeds the lesser of five dollars or the actual cost of handling.

B. This section shall apply to all offers of prizes, gifts or items of value covered by this chapter.

1989, c. 689 .

§ 59.1-421. Action to enforce the provisions of chapter

Any consumer who suffers loss by reason of a violation of any provision of this chapter may bring a civil action to enforce such provisions. Any consumer who is successful in such an action shall recover reasonable attorney's fees, and court costs incurred by bringing such action.

1989, c. 689 .

§ 59.1-422. Enforcement; penalties

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any of the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title.

1989, c. 689 .

§ 59.1-423. Exemptions

The provisions of §§ 59.1-417 through 59.1-420 shall not apply to the sale or purchase, or solicitation or representation in connection therewith, of goods from a catalog or of books, recordings, videocassettes, periodicals and similar goods through a membership group or club which is regulated by the Federal Trade Commission trade regulation rule concerning use of negative option plans by sellers in commerce or through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under

which the seller ships goods to a consumer who has consented in advance to receive such goods and the recipient of such goods is given the opportunity, after examination of the goods, to receive a full refund of charges for the goods, or unused portion thereof, upon return of the goods, or unused portion thereof, undamaged.

1989, c. 689 .

Chapter 32 - VIRGINIA PUBLIC TELEPHONE INFORMATION ACT

§ 59.1-424. Short title

This chapter may be cited as the "Virginia Public Telephone Information Act."

1989, c. 703 .

§ 59.1-425. Definitions

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

"Alternate operator services provider" means a telecommunications company, other than a local exchange company or interexchange company certificated by the State Corporation Commission or an affiliate or agent of such a company, which provides intrastate long distance operator assisted services where human or automated call intervention is necessary for obtaining billing information from the end-user. However, this exception for local exchange companies and interexchange companies applies only where the rates charged are those of the local exchange company or interexchange company on file with the State Corporation Commission.

"Person" means individual and entity.

"Public telephone equipment provider" means any person who makes available for public use telephone equipment with access to the public switched network where a charge is made to the user for such use and intrastate local or long distance service is provided through such equipment by an alternate operator services provider. This includes but is not limited to hotels, motels, airports, universities, hospitals, and coin-operated telephone equipment either privately owned or furnished by local exchange and interstate long distance telephone companies.

1989, c. 703 .

§ 59.1-426. Notice requirements of article

A. Any public telephone equipment provider shall conspicuously display the identity of the company which will normally make the charge for any intrastate long distance calls or local operator-assisted calls not handled by the local exchange telephone company placed from such equipment.

B. 1. Public telephone equipment providers shall disclose on the telephone equipment the method to gain access to other intrastate long distance or local services. The notice shall also explain how to reach the local exchange telephone company operator unless the local exchange company operator can be reached by dialing "0."

2. A notice shall be conspicuously posted on or near the equipment stating "For long distance rates, dial ....." All alternate operator service companies shall provide a toll free number to provide rate information and shall be able to quote a specific rate for each call upon inquiry. The posting of this notice shall be the responsibility of the subscriber to the alternate operator service.

C. The alternate operator service shall preannounce to the person placing the call the identity of the provider handling the intrastate toll or operator-assisted local call and the rate for the operator-assisted local call before a cost is incurred by the person placing the call.

D. No alternate operator service provider may bill for a call placed using a credit card issued by a local exchange telephone company or interexchange carrier without the express consent of the person placing the call.

E. No provider of operator services, whether or not certificated by the State Corporation Commission, shall enter into any contract or agreement with a customer which provides or permits call blocking of (i) the local exchange operator, (ii) other operator service providers' 950 or 800 numbers used to gain access to such carriers' networks, (iii) other operator service providers' 1-0-XXX-0+ numbers used to gain access to such carriers' networks, unless a waiver is first obtained from the State Corporation Commission, or (iv) emergency telephone numbers, such as 911.

F. Any person who adds a charge for use of telephone equipment in placing local or long distance calls shall conspicuously disclose the amount of the charge.

G. Every public telephone equipment provider, other than a telephone company certificated by the State Corporation Commission, owning coin-operated telephones shall conspicuously post on its coin-operated telephones a notice stating the local emergency telephone number and the complete address of the telephone. The letter size of the emergency number and address shall be at least one-quarter of an inch in height.

1989, c. 703; 1990, cc. 346, 357 .

§ 59.1-427. Enforcement; penalties

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act, Chapter 17 (§ 59.1-196 et seq.) of this title.

1989, c. 703 .

§ 59.1-428. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

Chapter 33 - PAY-PER-CALL SERVICES ACT

§ 59.1-429. Definitions

As used in this chapter:

"Division" means the Division of Consumer Counsel in the Department of Law.

"Information provider" means any person providing pay-per-call services.

"Long distance carrier" means any interexchange telephone company providing services within the Commonwealth.

"Pay-per-call service" means any passive, interactive, polling, conference, or other similar audiotext service that is accessed by telephone, through a 900 number exchange or otherwise, and generates a service-related fee billed to a telephone customer.

"Telephone company" means a certificated local exchange telephone company which owns, manages, or controls any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages, either directly or indirectly.

1991, cc. 608, 630; 2012, cc. 803, 835.

§ 59.1-430. Required disclosures

A. Every pay-per-call service advertisement or solicitation shall disclose (i) that a fee in excess of applicable telephone company or long distance carrier charges, if any, is charged for calls to the telephone number provided; (ii) the per-minute or flat-rate charges for the calls; (iii) the average length of call, measured in minutes, required to receive the service; (iv) whether additional calls to other pay-per-call services are required to obtain the full benefit of the service; and (v) the information provider's name, business address, and business telephone number.

In television advertisements, the price disclosure shall be preceded by a dollar sign, stated in arabic numerals, positioned in the lower portion of the television screen in letters large enough to be easily read by viewers and displayed during the entire time the telephone number is displayed. In written materials, the cost of the call shall be printed in ten-point bold-faced type immediately adjacent to the pay-per-call service telephone number.

B. The disclosures required by subsection A of this section shall be conspicuously displayed in a manner reasonably intended to furnish advance notice of the pay-per-call service's total cost.

C. Every information provider shall disclose to the customer at the beginning of each call for which pay-per-call charges are incurred the per-minute or flat-rate charges for the pay-per-call service if (i) the per-minute rate charged is two dollars or more; (ii) the flat-rate charge is five dollars or more; or (iii) the pay-per-call service is intended for children under the age of twelve, regardless of the amount charged. In addition, pay-per-call services intended for children under the age of twelve shall also include an introductory statement that children should obtain prior parental approval before calling the service. The information provider shall also provide a delayed timing of information charges.

D. Every information provider shall provide a period of a minimum of twelve seconds for a delayed timing of information charges and price disclosure message. If the delayed timing period is exceeded, a consumer shall be billed from the time of the initial connection, and transport charges shall be billed to the information provider from the time of the initial connection. If the consumer

disconnects the call within the delayed timing period, no information charge shall be billed to the caller.

During the delayed timing period, the information provider shall inform the consumer of any information required by subsection C of this section and of all of the following: (i) the name of the programs; (ii) the date the information was recorded, if the information is a recorded message; and (iii) that if the caller disconnects the call within the delayed timing period, the consumer will not be charged for the call.

1991, cc. 608, 630; 1992, c. 284 .

§ 59.1-431. Telephone company and long distance carrier duties

Every telephone company and long distance carrier shall furnish the following information on any telephone customer's bill that contains charges for pay-per-call services: (i) the pay-per-call number called; (ii) the date, time, and length of the call; and (iii) the amount charged.

1991, cc. 608, 630 .

§ 59.1-432. Regulations

The Division is authorized to prescribe reasonable regulations in order to implement provisions in this chapter relating to pay-per-call service advertising or solicitation. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

1991, cc. 608, 630; 2012, cc. 803, 835.

§ 59.1-433. Investigations

A. The Division may, with respect to pay-per-call service advertising or solicitation:

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated the provisions of this chapter, or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Division determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Division pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey a subpoena or to answer questions propounded by the Division and upon reasonable notice to all persons affected thereby, the Division may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

1991, cc. 608, 630 .

§ 59.1-434. Enforcement; penalties

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

1991, cc. 608, 630 .

Chapter 34 - EXTENDED SERVICE CONTRACT ACT

§ 59.1-435. Definitions

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

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

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

"Consumer product" means tangible personal property primarily used for personal, family, or household purposes.

"Extended service contract" or "contract" means a written contract or agreement for a specific duration in return for the payment of a segregated charge by the purchaser to perform the repair or replacement of any consumer product, including a motor vehicle, or indemnification for repair or replacement, for the operational or structural failure of any consumer product, including a motor vehicle, due to a defect in materials, workmanship, inherent defect, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, and emergency road service and road hazard protection. Extended service contracts may provide for any one or more of the following:

1. The repair or replacement of any consumer product for damage resulting from power surges or interruption or accidental damage from handling;

2. The repair or replacement of tires or wheels, or both, on a motor vehicle damaged as the result of coming into contact with a road hazard;

3. The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

4. The repair of chips or cracks in, or the replacement of, a motor vehicle windshield as a result of damage caused by a road hazard;

5. The replacement of a motor vehicle key or key fob in the event that the key or key fob becomes inoperable or is lost or stolen;

6. The installation on or application to a motor vehicle of a protective chemical, substance, device, or system that (i) is designed to prevent loss or damage to the motor vehicle from a specific cause and (ii) includes, within or as an accompaniment to the extended service contract, an agreement that provides for payment to or on behalf of the purchaser of incidental costs in the event that the protective chemical, substance, device, or system fails to prevent loss or damage as specified, provided that the reimbursement of incidental costs under such agreement is tied to the purchase of a protective chemical, substance, device, or system that is formulated or designed to make the specified loss or damage less likely to occur; or

7. Any other service that may be designated by the Board as provided in subsection B of § 59.1-438.

"Extended service contract" does not include a contract or agreement that provides (i) for the application of fuel additives, oil additives, or other chemical products to the engine, transmission, or fuel system of a motor vehicle or (ii) coverage for (a) the repair of damage to the interior surfaces of a motor vehicle or the replacement of the interior surfaces of a motor vehicle, or both, or (b) the repair of damage to the exterior paint finish of a motor vehicle or the replacement of the exterior paint finish of a motor vehicle, or both, unless the coverage is provided under a product warranty included in connection with the sale of a protective chemical, substance, device, or system described in subdivision 6.

"Extended service contract provider" or "provider" means any person or entity other than a public service corporation supervised by the State Corporation Commission, who is the original manufacturer or seller and who solicits, offers, advertises, or executes extended service contracts. Such definition includes the obligor of the contract sold, solicited, offered, advertised or executed by the original manufacturer, seller or obligor.

"Obligor" means the person who is contractually obligated to the purchaser to provide services under the extended service contract and who is (i) the original manufacturer or seller of the merchandise covered by the extended service contract, (ii) acting through or with the written consent of the original manufacturer, seller or purchaser of the merchandise covered by the extended service contract, or (iii) acting through or with the written consent of a manufacturer or seller of merchandise similar to the merchandise covered by the extended service contract.

"Purchaser" means a person who enters into an extended service contract with an extended service contract provider.

"Road hazard" means a hazard that is encountered while driving a motor vehicle, including potholes, rocks, wood debris, metal parts, glass, plastic, curbs, and composite scraps.

1991, c. 654; 1996, c. 966; 2008, c. 524; 2014, c. 193.

§ 59.1-436. Registration; fees; exemptions

A. It shall be unlawful for any extended service contract provider to offer, advertise, or execute or cause to be executed by the purchaser any extended service contract for a consumer product in this Commonwealth unless the obligor at the time of the solicitation, offer, advertisement, sale, or execution of a contract has been properly registered with the Commissioner. The registration shall (i) disclose the address, ownership, and nature of business of the obligor; (ii) be renewed annually on July 1; and (iii) be accompanied by a fee of $300 per registration and annual renewal. A registration application or registration renewal will not be considered filed until all required information and fees are received by the Commissioner. Any obligor who fails to register prior to the sale of an extended service contract shall pay a late filing fee of $100 for each 30-day period, or portion thereof, that the registration is late. An obligor who fails to timely renew its registration shall pay a late fee of $50 for each 30-day period, or portion thereof, that the annual renewal filing is late. The late fees authorized by this subsection shall be in addition to all other penalties authorized by law.

B. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

C. Any matter subject to the insurance regulatory authority of the State Corporation Commission pursuant to Title 38.2 shall not be subject to the provisions of this chapter.

D. Licensed or registered motor vehicle dealers, as defined in § 46.2-1500, shall not be subject to the provisions of this chapter.

E. Extended service contract providers who comply with this section and the employees of such providers who market, sell or offer to sell extended service contracts on behalf of the provider shall not be subject to the provisions of Title 38.2.

1991, c. 654; 1996, c. 966; 1997, c. 30; 2005, c. 407.

§ 59.1-437. Bond or letter of credit required

A. Every extended service contract obligor, before it is registered, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation, in the amount of $10,000. Additional bond or letter of credit amounts shall be similarly filed with the Commissioner and shall be adjusted from time to time, in accordance with the following schedule:

Total Amount of Unexpired Extended Service Contracts	Amount of Bond or Letter of Credit
$50,001 to $300,000	$40,000
$300,001 to $750,000	$65,000
$750,001 or more	$90,000

The total amount of unexpired extended service contracts shall be the total consideration paid by all purchasers to the extended service obligor for all extended service contracts currently in effect.

B. The bond or letter of credit required by subsection A of this section shall be in favor of the Commonwealth for the benefit of purchasers of extended service contracts for consumer products in the event that the extended service contract obligor does not fulfill its obligations under such contracts for any reason, including insolvency or bankruptcy.

C. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the Commissioner.

D. In order to ensure the faithful performance of a third party obligor's obligations to its contract holders, each third party obligor shall furnish proof of its financial stability by complying with either of the following:

1. The third party obligor shall show that it has a net worth of at least $100 million by providing the Commissioner with a copy of the third party obligor's most recent annual audited financial statement; or

2. The third party obligor shall show a net worth of the third party obligor or its parent company of at least $100 million by providing the Commissioner with a copy of the third party obligor's, or if the third party obligor's financial statements are consolidated with those of its parent company, the third party obligor's parent company's, most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission, provided the Form 10-K or Form 20-F was filed with the Securities and Exchange Commission within the last calendar year. If the third party obligor's parent company's Form 10-K or Form 20-F is filed to meet the third party obligor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the third party obligor relating to service contracts sold by the third party obligor in this Commonwealth.

E. In lieu of compliance with subsection D, a third party obligor may demonstrate financial responsibility by filing with the Commissioner a copy of a liability insurance policy issued by an insurer authorized to transact business in this Commonwealth and which covers 100 percent of the obligor's service contract liabilities, including the administration of claims and the cost for such administration. Reimbursement insurance policies filed pursuant to this section may not be cancelled by either the third party obligor or the issuing insurer without providing 60 days' notice to the Commissioner.

1991, c. 654; 1996, c. 966; 2003, c. 411.

§ 59.1-438. Regulations

A. The Board is authorized to adopt reasonable regulations in order to implement provisions in this chapter relating to extended service contracts. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

B. Without limiting the authority of the Board under subsection A, the Board is authorized to adopt reasonable regulations that designate services, in addition to those enumerated in the definition of extended service contract in § 59.1-435, that may be provided under an extended service contract, provided that the designation of the additional services is not inconsistent with the provisions of this chapter.

1991, c. 654; 2014, c. 193.

§ 59.1-439. Investigations

A. The Commissioner may, with respect to extended service contracts:

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

1991, c. 654 .

§ 59.1-440. Production of records

Every extended service contract obligor, upon written request of the Commissioner, shall make available to the Commissioner its extended service contract records for inspection and copying to enable the Commissioner to reasonably determine compliance with this chapter. Every obligor shall maintain a true copy of each contract executed between the obligor and a purchaser, and each contract shall be maintained for its term.

1991, c. 654; 1996, c. 966.

§ 59.1-440.1. Extended service contracts not insurance

Extended service contracts are (i) not contracts of insurance in the Commonwealth and (ii) not subject to regulation under Title 38.2.

2014, c. 193.

§ 59.1-441. Violations of chapter; penalty

A. Any extended service provider who knowingly and willfully violates any provision of this chapter shall be guilty of a Class 3 misdemeanor.

B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) of this title.

1991, c. 654 .

Chapter 34.1 - LEGAL SERVICES CONTRACTS

§ 59.1-441.1. Definitions

In addition to the definitions in § 59.1-435, the following terms in this chapter shall have the following meanings, unless a different meaning clearly appears from the context:

"Contract holder" means a person entering into a subscription contract with an organization;

"Department" means the Virginia Department of Agriculture and Consumer Services;

"Legal services organization" or "organization" means a person subject to regulation and licensing under Chapter 44 (§ 38.2-4400 et seq.) of Title 38.2 who operates, conducts, or administers a legal services plan;

"Legal services plan" or "plan" means a contractual obligation or an arrangement whereby legal services are provided in consideration of a specified payment consisting in whole or in part of prepaid or periodic charges, regardless of whether the payment is made by the subscribers individually or by a third person for them;

"Legal services plan seller" means a person subject to registration and regulation under this chapter who offers to a subscriber the opportunity to enter into a subscription contract. Home office salaried officers whose principal duties and responsibilities do not include the negotiation or solicitation of subscription contracts shall not be required to register under this chapter;

"Subscriber" means any person entitled to benefits under the terms and conditions of a subscription contract; and

"Subscription contract" means a written contract that is issued to a subscriber by an organization and that provides legal services or benefits for legal services.

2004, c. 784.

§ 59.1-441.2. Registration; fees

A. It shall be unlawful for any legal services plan seller to offer, advertise, or execute, or cause to be executed by the subscriber, any subscription contract in the Commonwealth unless the legal services plan seller at the time of the offer, advertisement, sale, or execution of a subscription contract has been properly registered with the Commissioner. The registration shall (i) disclose the address, ownership, and affiliation with the legal services organization and such other information as the Commissioner may require consistent with the purposes of this chapter, (ii) be renewed annually on July 1, and (iii) be accompanied by the appropriate registration fee of $50 per each annual registration. Further, the registration shall be accompanied by a late fee of $25 if the registration renewal is neither postmarked nor received on or before July 1.

B. Any legal services plan seller that sells a subscription contract prior to registering pursuant to this section shall pay a late filing fee of $100 for each 30-day period the registration is late. This fee shall be in addition to all other penalties allowed by law.

C. A registration shall be amended within 21 days if there is a change in the information included in the registration.

D. Any matter subject to the insurance regulatory authority of the State Corporation Commission pursuant to Title 38.2 shall not be subject to the provisions of this chapter.

E. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

F. All insurance agent licenses issued by the State Corporation Commission including authority to sell legal services plan subscription contracts shall continue in effect for a period of 90 days following the effective date of this chapter, during which time those holding such authority from the State Corporation Commission shall apply for registration with the Department. At the end of the 90-day period, no insurance agent license shall include the authority to sell legal services plan subscription contracts.

2004, c. 784.

§ 59.1-441.3. Regulations

The Board is authorized to prescribe reasonable regulations in order to implement provisions in this chapter relating to legal services plan sellers. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

2004, c. 784.

§ 59.1-441.4. Investigations

A. The Commissioner may, with respect to the offering of subscription contracts:

1. Make necessary public and private investigations within or without the Commonwealth to determine whether any person has violated the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath, or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

2004, c. 784.

§ 59.1-441.5. Production of records

Every legal services plan seller shall, upon written request of the Commissioner, make available to the Commissioner its legal services plan contract records for inspection and copying to enable the Commissioner to reasonably determine compliance with this chapter. Every legal services plan seller shall maintain a true copy of each subscription contract executed between the subscriber and the legal services plan, and each contract shall be maintained for its term.

2004, c. 784.

§ 59.1-441.6. Violations of chapter; penalty

A. Any legal services plan seller who knowingly and willfully violates any provision of this chapter is guilty of a Class 3 misdemeanor.

B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

2004, c. 784.

Chapter 35 - PERSONAL INFORMATION PRIVACY ACT

§ 59.1-442. Sale of purchaser information; notice required

A. No merchant, without giving notice to the purchaser, shall sell to any third person information which concerns the purchaser and which is gathered in connection with the sale, rental or exchange of tangible personal property to the purchaser at the merchant's place of business. Notice required by this section may be by the posting of a sign or any other reasonable method. If requested by a purchaser not to sell such information, the merchant shall not do so. No merchant shall sell any information gathered solely as the result of any customer payment by personal check, credit card, or where the merchant records the customer's driver's license number. This subsection shall not be construed as authorizing a merchant to sell to a third person any information concerning a purchaser if the sale or dissemination of the information is prohibited pursuant to § 59.1-443.3.

B. For the purposes of this section and § 59.1-443.3, "merchant" means any person or entity engaged in the sale of goods from a fixed retail location in Virginia.

1992, c. 807; 2014, cc. 789, 795.

§ 59.1-443. Exceptions

Section 59.1-442 shall not apply to: (i) information gathered for purposes of extending credit or the recording and sale, rental, exchange or disclosure to others of information obtained from any public body as defined in the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); (ii) the sale of information concerning a check or credit card transaction when it is incidental to the sale or other disposition of accounts receivable; (iii) the furnishing by a merchant of information on check writing activity of its customers in conjunction with check validation transactions; or (iv) information sold in connection with any sale by a business of the business's retail operations at one or more locations, provided that the information is sold only to the purchasers thereof.

1992, c. 807; 1993, c. 453; 2004, c. 241.

§ 59.1-443.1. Recording date of birth as condition of accepting checks prohibited

A. As used in this section:

"Check" shall have the same meaning as defined in § 8.3A-104.

B. Except as provided in subsection C, no person who accepts checks for the transaction of business shall, as a condition of accepting the check, record, or request or require a person to record, his or her date of birth upon the check or otherwise.

C. This section does not require a person to accept checks for the transaction of business. Nothing in this section shall apply to (i) the collection or use of a date of birth that is unrelated to accepting payment by check or (ii) a requirement that the person paying by check provide the year of his birth.

2004, c. 241; 2005, c. 839.

§ 59.1-443.2. Restricted use of social security numbers

A. Except as otherwise specifically provided by law, a person shall not:

1. Intentionally communicate another individual's social security number to the general public;

2. Print an individual's social security number on any card required for the individual to access or receive products or services provided by the person;

3. Require an individual to use his social security number to access an Internet website, unless a password, unique personal identification number or other authentication device is also required to access the site; or

4. Send or cause to be sent or delivered any letter, envelope, or package that displays a social security number on the face of the mailing envelope or package, or from which a social security number is visible, whether on the outside or inside of the mailing envelope or package.

B. This section does not prohibit the collection, use, or release of a social security number as permitted by the laws of the Commonwealth or the United States, or the use of a social security number for internal verification or administrative purposes unless such use is prohibited by a state or federal statute, rule, or regulation.

C. In the case of any (i) health care provider as defined in § 8.01-581.1, (ii) manager of a pharmacy benefit plan, (iii) insurer as defined in § 38.2-100, (iv) corporation providing a health services plan, (v) health maintenance organization providing a health care plan for health care services, or (vi) contractor of any such person, the prohibition contained in subdivision 2 of subsection A shall become effective on January 1, 2006.

D. This section shall not apply to public bodies as defined in § 2.2-3701.

E. No person shall embed an encrypted or unencrypted social security number in or on a card or document, including, but not limited to, using a bar code, chip, magnetic strip, or other technology, in place of removing the social security number as required by this section.

2005, c. 640; 2008, cc. 562, 820.

§ 59.1-443.3. Scanning information from driver's license or identification card; retention, sale, or dissemination of information

A. No merchant may scan the machine-readable zone of a Department of Motor Vehicles-issued identification card or driver's license, except for the following purposes:

1. To verify authenticity of the identification card or driver's license or to verify the identity of the individual if the individual pays for goods or services with a method other than cash, returns an item, or requests a refund or an exchange;

2. To verify the individual's age when providing age-restricted goods or services to the individual if there is a reasonable doubt of the individual having reached 18 years of age or older;

3. To prevent fraud or other criminal activity if the individual returns an item or requests a refund or an exchange and the merchant uses a fraud prevention service company or system. Information collected by scanning an individual's identification card or driver's license pursuant to this

subdivision shall be limited to the individual's name, address, date of birth, and driver's license number or identification card number;

4. To comply with a requirement imposed on the merchant by state or federal law;

5. To provide to a check services company regulated by the federal Fair Credit Reporting Act, (15 U.S.C. § 1681 et seq.), that receives information obtained from an individual's identification card or driver's license to administer or enforce a transaction or to prevent fraud or other criminal activity; or

6. To complete a transaction permitted under the Gramm-Leach-Bliley Act, (15 U.S.C. § 6801 et seq.), or the federal Fair Credit Reporting Act, (15 U.S.C. § 1681 et seq.).

B. No merchant shall retain any information obtained from a scan of the machine-readable zone of an individual's identification card or driver's license except as permitted in subdivision A 3, 4, 5, or 6.

C. No merchant shall sell or disseminate to a third party any information obtained from a scan of the machine-readable zone of an individual's identification card or driver's license for any marketing, advertising, or promotional purpose. This subsection shall not prohibit a merchant from disseminating to a third party any such information for a purpose described in subdivision A 3, 4, 5, or 6.

D. Any waiver of a provision of this section is contrary to public policy and is void and unenforceable.

2014, cc. 789, 795.

§ 59.1-444. Damages

A person aggrieved by a violation of any provision of this chapter, except § 59.1-443.2, shall be entitled to institute an action to recover damages in the amount of $100 per violation. In addition, if the aggrieved party prevails, he may be awarded reasonable attorney's fees and court costs. Actions under this section shall be brought in the general district court for the city or county in which the transaction or other violation that gave rise to the action occurred. A violation of the provisions of § 59.1-443.2 is a prohibited practice under the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

1992, c. 807; 1993, c. 453; 2004, c. 241; 2005, c. 640.

Chapter 35.1 - SECURITY FREEZES

§ 59.1-444.1. Definitions

As used in this chapter:

"Consumer" means an individual who is also a resident of this state.

"Consumer reporting agency" has the same meaning as in § 603(f) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(f)).

"Credit report" means a "consumer report," as defined in § 603(d) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(d)); provided, however, that for purposes of this chapter, a credit report is limited to information that a consumer reporting agency furnishes to a person that it has reason to believe intends to use the information as a factor in establishing the consumer's eligibility for credit to be used primarily for personal, family or household purposes.

"Proper identification" means proper identification as defined in 15 U.S.C. § 1681h(a)(1).

2008, cc. 480, 496; 2014, c. 570.

§ 59.1-444.2. Security freezes

A. As used in this section, "security freeze" means a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing the consumer's credit report or score relating to the extension of credit.

B. A consumer may request that a security freeze be placed on his or her credit report by sending a request in writing by certified mail, or such other secure method authorized by a consumer reporting agency, to a consumer reporting agency at an address designated by the consumer reporting agency to receive such requests. This subsection does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

C. A consumer reporting agency shall place a security freeze on a consumer's credit report no later than three business days after receiving from the consumer:

1. A written request described in subsection B;

2. Proper identification; and

3. Payment of a fee not to exceed $10, if applicable.

A consumer reporting agency shall place a security freeze on a consumer's credit report no later than one business day after receiving such a request, if such request is made electronically at an address designated by the consumer reporting agency to receive such requests.

D. The consumer reporting agency shall send a written confirmation of the placement of the security freeze to the consumer within 10 business days. Upon placing the security freeze on the consumer's credit report, the consumer reporting agency shall provide the consumer with a unique personal identification number or password, or similar device to be used by the consumer when providing authorization for the release of his credit report for a specific period of time or for a specific party.

E. If the consumer wishes to allow his credit report to be accessed for a specific period of time or for a specific party while a freeze is in place, he shall contact the consumer reporting agency using a point of contact designated by the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

1. Proper identification;

2. The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection D; and

3. The proper information regarding the time period or the specific party for which the report shall be available to users of the credit report.

F. A consumer reporting agency:

1. Shall comply with a request made under subsection E:

a. Within three business days after receiving the request if the request is made at a postal address designated by the agency to receive such requests; or

b. Within 15 minutes after the consumer's request is received by the consumer reporting agency through the electronic contact method chosen by the consumer reporting agency in accordance with this section;

2. Is not required to temporarily lift a security freeze within the time provided in subdivision 1 b if:

a. The consumer fails to meet the requirements of subsection E; or

b. The consumer reporting agency's ability to temporarily lift the security freeze within 15 minutes is prevented by:

(1) An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena;

(2) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;

(3) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;

(4) Governmental action, including emergency orders or regulations, judicial or law-enforcement action, or similar directives;

(5) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems; or

(6) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; and

3. May develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection E in an expedited manner.

G. A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

1. Upon a consumer request, pursuant to subsection E or subsection J; or

2. If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

H. If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that period of time, the third party may treat the application as incomplete.

I. If a consumer requests a security freeze, the consumer reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a period of time while the freeze is in place.

J. A security freeze shall remain in place until the consumer requests, using a point of contact designated by the consumer reporting agency, that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides:

1. Proper identification; and

2. The unique personal identification number or password or similar device provided by the consumer reporting agency pursuant to subsection D.

K. A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

L. The provisions of this section do not apply to the use of a consumer credit report by any of the following:

1. A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

2. A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;

3. Any state or local agency, law-enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena;

4. A child support agency acting pursuant to Title IV-D of the Social Security Act (42 U.S.C. § 654 et seq.);

5. The Commonwealth or its agents or assigns acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities provided such responsibilities are consistent with a permissible purpose under 15 U.S.C. § 1681b;

6. The use of credit information for the purposes of prescreening or postscreening as provided for by the federal Fair Credit Reporting Act;

7. Any person or entity administering a credit file monitoring subscription or similar service to which the consumer has subscribed;

8. Any person or entity for the purpose of providing a consumer with a copy of his credit report or score upon the consumer's request;

9. Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes; or

10. Any employer in connection with any application for employment with the employer.

M. This section does not prevent a consumer reporting agency from charging a fee of no more than $10 to a consumer to place each freeze, except that a consumer reporting agency may not charge a fee to a victim of identity theft who has submitted a valid police report to the consumer reporting agency.

N. If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

O. The following entities are not required to place a security freeze on a credit report:

1. A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent database of credit information from which new consumer credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency;

2. A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;

3. A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; and

4. A consumer reporting agency's database or file that consists of information concerning, and used for, one or more of the following: criminal record information, fraud prevention or detection, personal loss history information, and employment, tenant, or background screening.

P. At any time a consumer is required to receive a summary of rights required under 15 U.S.C. § 1681g (d), the following notice shall be included:

"Virginia Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a period of time or for a specific party after the freeze is in place. To provide that authorization you must contact the consumer reporting agency and provide all of the following:

1. The personal identification number or password;

2. Proper identification to verify your identity; and

3. The proper information regarding the period of time or the specific party for which the report shall be available.

A consumer reporting agency must authorize the release of your credit report no later than three business days after receiving the above information. A consumer credit reporting agency must authorize the release of your credit report no later than 15 minutes after receiving the request.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests

information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring civil action against anyone, including a consumer reporting agency, who improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct inaccurate file data.

Unless you are a victim of identity theft with a police report to verify the crimes, a consumer reporting agency has the right to charge you up to $10 to place a freeze on your credit report."

Q. Any person who willfully fails to comply with any requirement imposed under this section or § 59.1-444.3 with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000;

2. Such amount of punitive damages as the court may allow; and

3. In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney fees as determined by the court.

R. Any person who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

S. Any person who is negligent in failing to comply with any requirement imposed under this section with respect to any consumer is liable to that consumer in an amount equal to the sum of:

1. Any actual damages sustained by the consumer as a result of the failure; and

2. In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney fees as determined by the court.

T. Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

U. Notwithstanding any other provision of law:

1. The exclusive authority to bring an action for any violation of subdivision F 1 b shall be with the Attorney General. In any action brought under this subsection, the Attorney General may cause an action to be brought in the name of the Commonwealth to enjoin the violation and to

recover damages for aggrieved consumers consistent with the limits stated in subsections Q and S for such violations.

2. In any action brought under this subsection, if the court finds a willful violation, the court may, in its discretion, also award a civil penalty of not more than $1,000 per violation, to be deposited in the Literary Fund of the Commonwealth.

3. In any action brought under this subsection, the Attorney General may recover any costs, the reasonable expenses incurred in investigating and preparing the case, and attorney fees.

2008, cc. 480, 496; 2009, c. 406; 2014, c. 570.

§ 59.1-444.3. Security freezes for protected consumers

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

"Protected consumer" means a consumer who is either:

1. Under the age of 16 years at the time a request for the placement of a security freeze is made; or

2. An incapacitated person for whom a guardian or conservator has been appointed in accordance with Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2.

"Record" means a compilation of information regarding a specific identified protected consumer, which compilation is created by a consumer reporting agency solely for the purpose of complying with the requirement for a record's establishment set forth in subsection D.

"Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

"Security freeze" means:

1. If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that (i) is placed on the protected consumer's record in accordance with this section and (ii) prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in this section; or

2. If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that (i) is placed on the protected consumer's credit report in accordance with this section and (ii) prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report except as provided in this section.

"Sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected consumer. "Sufficient proof of authority" includes (i) an order issued by a court of law and (ii) a lawfully executed and valid power of attorney.

"Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protected consumer. "Sufficient proof of identification" includes

(i) a social security number or a copy of a social security card issued by the U.S. Social Security Administration; (ii) a certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate; (iii) a copy of a driver's license, an identification card issued by the Department of Motor Vehicles, or any other government-issued identification; or (iv) a copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

B. This section does not apply to the use of a protected consumer's credit report or record by:

1. A person administering a credit file monitoring subscription service to which the protected consumer has subscribed or the representative of the protected consumer has subscribed on behalf of the protected consumer;

2. A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's credit report on request of the protected consumer or the protected consumer's representative; or

3. An entity listed in subsection O of § 59.1-444.2.

C. A consumer reporting agency shall place a security freeze for a protected consumer if:

1. The consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

2. The protected consumer's representative:

a. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

b. Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

c. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

d. Pays to the consumer reporting agency a fee as provided in subsection J.

D. If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request under subsection C from the protected consumer's representative for the placement of a security freeze, the consumer reporting agency shall create a record for the protected consumer. A record may not be created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for the purpose of serving as a factor in establishing the consumer's eligibility for (i) credit or insurance to be used primarily for personal, family, or household purposes or (ii) employment.

E. Within 30 days after receiving a request that meets the requirements of subsection C, a consumer reporting agency shall place a security freeze for the protected consumer.

F. Unless a security freeze for a protected consumer is removed in accordance with subsection H or K, a consumer reporting agency may not release the protected consumer's credit report, any information derived from the protected consumer's credit report, or any record created for the protected consumer.

G. A security freeze for a protected consumer placed under subsection E shall remain in effect until:

1. The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the security freeze in accordance with subsection H; or

2. The security freeze is removed in accordance with subsection K.

H. If a protected consumer or a protected consumer's representative wishes to remove a security freeze for the protected consumer, the protected consumer or the protected consumer's representative shall:

1. Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

2. Provide to the consumer reporting agency:

a. In the case of a request by the protected consumer:

(1) Proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; and

(2) Sufficient proof of identification of the protected consumer; or

b. In the case of a request by the representative of a protected consumer:

(1) Sufficient proof of identification of the protected consumer and the representative; and

(2) Sufficient proof of authority to act on behalf of the protected consumer; and

3. Pay to the consumer reporting agency a fee as provided in subsection J.

I. Within 30 days after receiving a request that meets the requirements of subsection H, the consumer reporting agency shall remove the security freeze for the protected consumer.

J. A consumer reporting agency may not charge a fee for any service performed under this section, except for a reasonable fee, not exceeding $10, for each placement or removal of a security freeze for a protected consumer. Notwithstanding the foregoing, a consumer reporting agency shall not charge any fee for the placement or removal of a security freeze for a protected consumer if:

1. The protected consumer's representative has obtained, and provides to the consumer reporting agency, a report of alleged identity fraud against the protected consumer under § 18.2-186.3:1 or an Identity Theft Passport issued for the protected consumer under § 18.2-186.5; or

2. A request for the placement or removal of a security freeze is for a protected consumer who is under the age of 16 years at the time of the request, and the consumer reporting agency has a credit report pertaining to the protected consumer.

K. A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

L. Any person who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or requests the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for damages sustained by the consumer reporting agency as provided in subsection R of § 59.1-444.2.

M. Notwithstanding any other provision of law:

1. The exclusive authority to bring an action for any violation of subsection E shall be with the Attorney General. In any action brought under this subsection, the Attorney General may cause an action to be brought in the name of the Commonwealth to enjoin the violation and to recover damages for aggrieved protected consumers.

2. In any action brought under this subsection, if the court finds a willful violation, the court may, in its discretion, also award a civil penalty of not more than $1,000 per violation, to be deposited in the Literary Fund.

3. In any action brought under this subsection, the Attorney General may recover any costs, the reasonable expenses incurred in investigating and preparing the case, and attorney fees.

2014, c. 570.

Chapter 36 - THE VIRGINIA TRAVEL CLUB ACT

§ 59.1-445. Definitions

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

"Accommodations" means any real property improvement provided by the travel club to its members for lodging purposes, including, without limitation, condominiums, hotels, motels or motor courts.

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

"Carrier" means any person engaged in the business of transporting persons for hire.

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

"Contract" shall be synonymous with "travel services agreement."

"Offer," or "offering" means any act to sell, solicit, induce, advertise, or execute a travel services agreement.

"Purchaser" means any person who enters into an agreement in whole or in part within this Commonwealth with a travel club for travel services.

"Travel club" means a for-profit organization that provides, in return for either an advance fee for membership or an annual charge for membership of more than $100, the privilege for its members or participants to arrange or obtain future travel services through or from the organization. Travel club shall exclude credit card issuers whose cards are honored at any one time by 100 or more merchants, other than the issuer.

"Travel services" means transportation by carrier; accommodations; rental of motor vehicles; or any other service related to travel. For purposes of this chapter, "travel services" shall not include investments in time shares.

"Travel services agreement" means the agreement executed in whole or in part in this Commonwealth between the travel club and the purchaser of the membership in such club and does not include arrangements or agreements for specific travel transportation, accommodation or other specific services.

1993, c. 760; 1994, c. 482.

§ 59.1-446. Registration; fees

A. It shall be unlawful for any travel club to offer or cause to be executed in this Commonwealth by the purchaser any travel services agreement unless such travel club at the time of such offering, or execution thereof has been properly registered with the Commissioner. Such registration shall (i) disclose the address, ownership, and nature of business of the travel club and (ii) be accompanied by an annual fee of $350 per registration and annual renewal.

B. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Virginia Department of Agriculture and Consumer Services to be used in the administration of this chapter.

1993, c. 760; 1994, c. 482.

§ 59.1-447. Bond or letter of credit required

A. Every travel club, before entering into a travel services agreement with a purchaser of travel services, shall file and maintain with the Commissioner, in a form and substance satisfactory to him, a bond with corporate surety from a company authorized to transact business in the Commonwealth, or a letter of credit from a bank insured by the Federal Insurance Deposit Corporation, or cash in the amounts indicated below:

Number of Contracts	Amount of Cash, Bond, or Letter of Credit
0 to 1500	$60,000

1501 to 1750	$70,000
1751 to 2000	$80,000
2001 or more	$100,000

B. The bond or letter of credit required by subsection A of this section shall be in favor of the Commonwealth of Virginia for the benefit of any purchaser who is damaged by any violation of this chapter.

C. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be canceled or terminated except with the consent of the Commissioner. Bonds may be withdrawn by giving sixty-day advance written notice to the Commissioner, thereby releasing the surety from accruing future liability beyond the effective date of withdrawal. Such withdrawal shall not release the surety or otherwise cancel or terminate any liability existing at the time of the effective date of the withdrawal.

1993, c. 760; 1994, c. 482.

§ 59.1-447.1. Escrow of deposits

A. Any deposit made in connection with the execution of a travel services agreement shall be held in escrow. All cash deposits shall be held in a separate bank account labeled and designated solely for that purpose.

Such escrow account shall be insured by an instrumentality of the federal government and located in Virginia. All deposits shall be held in escrow until (i) delivered to the travel club upon expiration of the purchaser's cancellation period, provided the purchaser's right of cancellation has not been exercised, or (ii) delivered to the travel club because of purchaser's default under the travel services agreement or (iii) refunded to the purchaser. Failure to establish escrow accounts or to make the deposits as required by this section is prima facie evidence of willful violation of this section.

B. The travel club shall disclose in the travel services agreement that the deposit may not be held in escrow after expiration of the cancellation period and that such deposit is not protected as an escrow after expiration of the cancellation period. This disclosure shall include a statement of whether or not the travel club reserves the option to sell or assign any promissory note given by a purchaser to another entity, whether or not such entity is affiliated with the travel club. Both disclosures shall appear in boldface type of a minimum size of ten points.

C. There shall be posted a fidelity bond, written so as to protect all deposits escrowed pursuant to subsection A, in favor of all purchasers. The bond shall be in an amount equal to the total of the deposits in escrow at any given time or $25,000, whichever is greater. Such bond shall be filed with the Commissioner and shall be maintained for so long as the travel club offers travel services in Virginia. The bond shall be with a surety company authorized to do business in Virginia. The travel club may post cash in lieu of the bond.

1994, c. 482.

§ 59.1-448. Travel services agreement; disclosure

A. The travel services agreement shall contain a written disclosure of all limitations on and terms of the membership and shall be provided to the purchaser at the time the agreement is executed. The disclosure shall clearly and conspicuously include:

1. The name, business address and telephone number of the travel club;

2. The amount due, the date of payment, the purpose of the payment and an itemized statement of the balance due, if any;

3. A detailed description of any other service provided in conjunction with the agreement;

4. The conditions, if any, upon which the travel services agreement or membership in the travel club may be canceled and the rights and obligations of all parties in the event of such cancellation; and

5. A description of all contingencies, limitations or conditions of the agreement.

B. The purchaser may cancel the travel service agreement until midnight of the seventh calendar day after execution of the contract by use of the form prescribed in subsection C of this section; however, notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the purchaser not to be bound. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox, properly addressed and postage prepaid. If the seventh calendar day falls on a Sunday or legal holiday, then the right to cancel the travel service agreement shall expire on the day immediately following that Sunday or legal holiday.

C. The written disclosure shall include, in addition to the requirements of subsections A and B of this section, the following statement which shall appear immediately above the buyer's signature under the conspicuous caption, "BUYER'S NONWAIVABLE RIGHT TO CANCEL," which caption shall be printed in no less than ten-point, bold-faced type:

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN SEVEN CALENDAR DAYS FROM YOUR EXECUTION OF THIS CONTRACT UNLESS YOU HAVE ALREADY USED THE TRAVEL SERVICES PROVIDED IN CONNECTION WITH THIS TRAVEL SERVICES AGREEMENT. IF YOU HAVE ALREADY USED THE TRAVEL SERVICES PROVIDED IN CONNECTION WITH THIS TRAVEL SERVICES AGREEMENT, YOU MAY STILL CANCEL THIS TRANSACTION WITHIN SEVEN CALENDAR DAYS FROM YOUR EXECUTION HEREOF, BUT YOU ARE NOT ENTITLED TO A REFUND OF ANY PRIOR PAYMENTS MADE FOR THE SPECIFIC TRAVEL SERVICES UTILIZED.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE OR SEND A TELEGRAM TO:

_____ (Name of Seller)

AT

_____ (Address of Seller)

_____ Place of Business

NOT LATER THAN MIDNIGHT OF THE SEVENTH DAY AFTER RECEIPT OF THIS DISCLOSURE

I HEREBY CANCEL THIS TRANSACTION

_____ (Date)

_____ (Purchaser's Signature)

D. Within forty-five days after notice of cancellation is received, the travel club shall refund to the purchaser any payments made by the purchaser pursuant to the travel services agreement. However, the travel club may retain payments made for specific travel services utilized. The refund may be made by crediting the purchaser's credit card account if a credit card was used to make a payment and if the travel club informs the purchaser in writing that the credit card account has been credited.

E. The right of cancellation afforded the purchaser by this chapter is nonwaivable and any provision in any instrument to the contrary shall be null and void.

1993, c. 760; 1994, c. 482.

§ 59.1-448.1. Public offering statement

A. The travel club shall prepare and distribute to any prospective purchaser, before execution thereby of a travel services agreement, a public offering statement which discloses fully and accurately the characteristics of the travel club and its travel services, the membership offered and shall make known to prospective purchasers all material circumstances affecting the travel club and its travel services. The proposed public offering statement shall be filed with the Commissioner, shall be in a form prescribed by his rules and shall include the following to the extent applicable:

1. The name and principal address of the travel club, including:

a. The name, principal occupation and address of every director, partner, or trustee of the travel club;

b. The name and address of each person owning or controlling an interest of twenty percent or more in the travel club;

c. The particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the travel club for violation of a federal, state, local or foreign country law or regulation in connection with activities relating to the rendition of travel services;

d. A statement of any unsatisfied judgments against the travel club, the status of any pending suits involving the rendition of travel services to which the travel club or any general partner, executive officer, director, or majority stockholder thereof is a defending party, and the status of any pending suits of significance to the travel club; and

e. The name and address of the travel club's agent for service of process.

2. A general description of the travel services offered by the travel club which are made available to purchasers.

3. A general description of the travel club and its more significant features including without limitation the duration of membership, the types of membership offered, all fees, costs, and charges imposed on the purchaser thereby, and any provision for its cancellation by the purchaser other than by default.

4. Provisions, if any, that have been made by the travel club for fulfilling the demand of the purchaser for accommodations in lodgings.

5. If the travel club's net worth is less than $500,000, a copy of the travel club's current audited balance sheet; if such club's net worth exceeds said amount, a statement by such travel club that its equity exceeds $500,000.

6. Any initial or special fee due from the purchaser for membership in the travel club together with a description of the purpose and method of calculating the fee.

7. A general description of any financing offered by or available through the travel club.

8. A statement that the purchaser has a right to cancel the travel service agreement directing the purchaser to see such travel services agreement for the particulars of such right of cancellation.

9. Any restraints on alienation of the travel club membership by the purchaser.

10. A description of any insurance coverage provided for the benefit of the purchaser.

11. Any services which the travel club provides or expense it pays and which it expects may become at any subsequent time an expense of the purchaser and which is to be paid thereby.

12. A description of the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.

13. Any other information required by the Commissioner to assure full and fair disclosure to prospective purchasers.

14. A statement, expressed in terms of a percentage, of the number of purchasers who applied for accommodations from the travel club during the preceding year in contrast to the total number of purchasers who actually received such accommodations for the same preceding year. For purposes of calculation, an application shall be treated as only one application notwithstanding that the purchaser contemporaneously requests accommodations at a number of different real property improvements. Such statement shall be prepared by an independent certified public accounting firm and may take the form of an exhibit to the public offering statement.

B. If any prospective purchaser of a travel club membership is offered the opportunity to subscribe to or participate in any exchange program registered under the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), the public offering statement shall include as an exhibit or supplement, the

disclosure document prepared by the exchange company in accordance with § 55-374.2 and a brief narrative description of the exchange program which shall include the following:

1. A statement of whether membership or participation in the program is voluntary or mandatory;

2. The name and address of the exchange company together with the names of the principal officers and all directors of the exchange company;

3. A statement of whether the exchange company or any of its officers or directors are holders of a ten percent or greater interest in the travel club;

4. A statement of whether the travel club or any of its officers or directors are holders of a ten percent or greater interest in an exchange company;

5. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the travel club; and

6. A brief narrative description of the procedure whereby exchanges are conducted.

C. The travel club shall amend the public offering statement to reflect any material change in the travel club membership. The travel club shall file with the Commissioner the public offering statement amended to reflect any material change. The Commissioner may at any time require the travel club to alter or supplement the form or substance of the public offering statement to assure full and fair disclosure to prospective purchasers.

The following events shall not be deemed to be a material change necessitating an amendment to the public offering statement:

1. A change correcting spelling, grammar, omissions, or other similar errors not affecting the substance of the public offering statement;

2. A change in the fees, dues, or assessments of the purchasers or other similar recurring expense items;

3. A change which is an aspect or result of the orderly development, operation, or management of the travel club in accordance with the travel services agreement, including, without limitation, the addition or deletion of accommodations, transportation or other service related to travel;

4. A change resulting from the adoption of a new budget;

5. A change occurring in the issuance of an exchange company's updated annual report or disclosure documents provided upon its receipt by the travel club it shall commence distribution of same in lieu of all others; and

6. A change in the ownership of the travel club, provided the change affects less than an ownership interest of twenty percent.

1994, c. 482.

§ 59.1-449. Prohibited practices by travel club

It shall be unlawful for any travel club to engage in any or all of the following practices:

1. Offer any other type of promotional inducement where the cost of the package equals or exceeds the cost which would have been incurred without the travel club membership;

2. Misrepresent the type or size of aircraft, vehicle, ship or train; time of departure or arrival; points served; route to be traveled; stops to be made; total trip-time from point of departure to destination; type or size of lodging or other accommodation; availability of lodging or other accommodation; or other services available, reserved or contracted for in connection with any trip, tour or other travel services, unless such misrepresentation resulted from a reasonable belief as to the services available based upon representations made by the person offering such services;

3. Misrepresent the fares and charges for transportation or services in connection therewith, unless the misrepresentation resulted from a reasonable belief as to the fares and charges applicable based upon representations made by the person offering such services;

4. Misrepresent that special priorities for reservations are available when such special considerations are in fact granted to members of the public generally;

5. Sell transportation to any person on a reservation or charter basis for specified space, flight or time or represent that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with a carrier for the furnishing of such definite reservation or charter as represented or sold;

6. Sell or issue tickets or other documents to be exchanged or used for transportation if the tickets or other documents will not be or cannot be legally honored by carriers for transportation;

7. Misrepresent the requirements that must be met by a person in order to qualify for charter or group fare rates, unless such misrepresentation resulted from a reasonable belief as to the requirements applicable based upon representations made by the person offering the charter or group fare;

8. Offer accommodations in lodgings when the travel club has no written evidence of its legal right to possession of such lodgings; or

9. Use in any offering, advertisement, or promotion of any type or description the following terms: "time-share," "vacation ownership," "interval ownership," "time-share benefit" or "incidental benefit."

1993, c. 760; 1994, c. 482.

§ 59.1-450. Regulations

The Board is authorized to prescribe reasonable regulations in order to implement the provisions of this chapter. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

1993, c. 760 .

§ 59.1-451. Investigations

A. The Commissioner may, with respect to a travel club or travel services agreements:

1. Make necessary public and private investigations within or without this Commonwealth to determine whether any person has violated, or is about to violate, the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation; and

3. Administer oaths or affirmations and, upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things; the identity and location of persons having knowledge of relevant facts; or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

1993, c. 760 .

§ 59.1-452. Production of records

Every travel club, upon written request of the Commissioner, shall make available to the Commissioner its travel-services records for inspection and copying to enable the Commissioner to reasonably determine compliance with this chapter. Every club promoter shall maintain a true copy of each agreement between the travel club and a purchaser, and such agreement shall be maintained for its term plus two years.

1993, c. 760 .

§ 59.1-453. Exemptions

This chapter shall not apply to:

1. Any agreement which meets the definition of "contract" under, and is subject to, the provisions of the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) or the Virginia Membership Camping Act (§ 59.1-311 et seq.); or

2. An "exchange program" as defined by the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) and offered by an exchange company registered under the Virginia Real Estate Time-Share Act; or

3. [Expired.]

4. A "product" as defined in the Virginia Real Estate Time-Share Act which is registered in accordance with its provisions.

1993, c. 760; 1994, c. 482.

§ 59.1-454. Violations of chapter; penalty

Any violation of the provisions of this chapter or any travel services agreement executed therewith shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

1993, c. 760 .

Chapter 37 - CONTRACTS; INDEPENDENT SALES REPRESENTATIVES

§ 59.1-455. Definitions

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

"Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the total dollar amount of orders or sales or as a specified amount per order or per sale.

"Principal" means a person who manufactures, produces, imports or distributes a product for wholesale and who contracts with a sales representative to solicit orders or sales for such product and compensates the sales representative, in whole or in part, by commission.

"Sales representative" means a person other than an employee who contracts with a principal to solicit wholesale orders or sales and who is compensated, in whole or in part, by commission, but shall not include a person who purchases exclusively for his own account for resale.

1993, c. 736 .

§ 59.1-456. Contracts between principals and sales representatives

When a principal contracts with a sales representative to solicit wholesale orders within this Commonwealth, such contract shall (i) be in writing, (ii) disclose the method by which the commission is to be computed and paid, (iii) disclose the territory of the sales representative and whether such territory is exclusive, (iv) be signed by the principal and the sales representative, and (v) be provided to the sales representative.

1993, c. 736 .

§ 59.1-457. Payment of sales commission

A. Every sales representative shall be paid the earned commission and all other compensation earned or payable in accordance with the terms of the contract.

B. When a contract between a principal and a sales representative is terminated, for any reason, except by mutual agreement, all earned commissions shall be paid within a period specified in the contract, but in no event shall such period exceed thirty days from the date of termination or, in

the case of orders processed subsequent to termination, thirty days from shipment. Such commission and other compensation shall be paid to the sales representative at the usual place of payment unless the sales representative requests that the commission be sent to him through regular mail. If the commission is sent through regular mail, it is deemed to have been paid for purposes of this subsection on the date that it is postmarked.

1993, c. 736 .

§ 59.1-458. Waiver prohibited

Any provision of any agreement intending to waive the rights of any party to any provision of this chapter shall be void.

1993, c. 736 .

§ 59.1-459. Absence of contract not affirmative defense

The failure to execute a contract as required by § 59.1-456 shall not constitute an affirmative defense in any action relating to the provisions of this chapter.

1993, c. 736 .

Chapter 38 - VIRGINIA MUSIC LICENSING FEES ACT

§ 59.1-460. Definitions

As used in this chapter:

"Copyright owner" means the owner of a copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code, P.L. 94-553 (17 U.S.C. § 101 et seq.).

"Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

"Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility or any other similar place of business or professional office located in the Commonwealth in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted for the enjoyment of members of the public there assembled.

"Royalty" or "royalties" means the fees payable to a copyright owner or performing rights society for the public performance of nondramatic musical or other similar works.

1995, c. 648.

§ 59.1-461. Notice and schedule to be provided

No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than

seventy-two hours prior to the execution of that contract, it provides to the proprietor, in writing, notice that such performing rights society:

1. Has filed for public inspection, within the previous twelve months, with the State Corporation Commission (i) a certified copy of each form of performing rights contract or license agreement providing for the payment of royalties made available from such performing rights society to any Virginia proprietor; (ii) the most current available list of such performing rights society's members or affiliates; and (iii) the most current available listing of the copyrighted musical works in such performing rights society's repertory;

2. Will make available, upon request, to any proprietor, by electronic means or otherwise, information as to whether specific copyrighted musical works are in its repertory;

3. Will make available, upon written request of any proprietor, any of the information referred to in subdivision 1 of this section, at the sole expense of the proprietor, provided that such notice shall specify the means by which such information can be secured; and

4. Complies with federal law and orders of courts having appropriate jurisdiction regarding the rates and terms of royalties and the circumstances under which licenses for rights of public performance are offered to any proprietor.

1995, c. 648.

§ 59.1-462. Royalty contract requirements

Every contract for the payment of royalties between a proprietor and a performing rights society executed, issued or renewed in the Commonwealth on or after July 1, 1995, shall be:

1. In writing;

2. Signed by the parties;

3. Written to include, at a minimum, the following information:

a. The proprietor's name and business address and the name and location of each place of business to which the contract applies;

b. The name of the performing rights society;

c. The duration of the contract; and

d. The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of such rates for the duration of the contract.

1995, c. 648.

§ 59.1-463. Prohibited conduct

A. No performing rights society or any agent or employee thereof shall:

1. Enter onto the premises of a proprietor's business for the purpose of discussing or inquiring about a contract for the payment of royalties with the proprietor or his employees, without first identifying himself to the proprietor or his employees and making known to them the purpose of the discussion or inquiry;

2. Engage in any coercive conduct, act or practice that is substantially disruptive of a proprietor's business;

3. Use or attempt to use any unfair or deceptive act or practice in negotiating with a proprietor; or

4. Fail to comply with or fulfill the obligations imposed by §§ 59.1-461 and 59.1-462.

B. However, nothing in this chapter shall be construed to prohibit a performing rights society from conducting investigations to determine the existence of music use by a proprietor or informing a proprietor of the proprietor's obligation under the U.S. Copyright Law, Title 17 of the United States Code.

1995, c. 648.

§ 59.1-464. Remedies; injunction

Any person who suffers a violation of this chapter may bring an action to recover actual damages and reasonable attorney's fees and seek an injunction or any other remedy available at law or in equity.

1995, c. 648.

§ 59.1-465. Remedies cumulative

The rights, remedies and prohibitions contained in this chapter shall be in addition to and cumulative of any other right, remedy or prohibition accorded by common law, federal law or the statutes of the Commonwealth, and nothing contained herein shall be construed to deny, abrogate or impair any such common law or statutory right, remedy or prohibition.

1995, c. 648.

§ 59.1-466. Exceptions

This chapter shall not apply to contracts between copyright owners or performing rights societies and broadcasters licensed by the Federal Communications Commission, or to contracts with cable operators, programmers or other transmission services. Nor shall this chapter apply to musical works performed in synchronization with an audio/visual film or tape, or to the gathering of information for determination of compliance with or activities related to the enforcement of Chapter 3.1 (§ 59.1-41.1 et seq.) of Title 59.1.

1995, c. 648.

Chapter 38.1 - TRUTH IN MUSIC ADVERTISING ACT

§ 59.1-466.1. Definitions

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

"Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

"Recording group" means a vocal or instrumental group at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

"Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phono-record, in which the sounds are embodied.

2007, c. 261.

§ 59.1-466.2. Production

It shall be unlawful for any performer or performing group, or its agent, to advertise or conduct a live musical performance or production in the Commonwealth through the use of an affiliation, connection, or association, known to be false, deceptive or misleading, with the intent to defraud the public, between a performing group and a recording group. The provisions of this chapter shall not apply if:

1. The performing group is the authorized registrant and owner of a federal service mark for that group registered in the United States Patent and Trademark Office;

2. At least one member of the performing group was a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group;

3. The live musical performance or production is identified in all advertising and promotion as a salute or tribute, or the name of the vocal or instrumental group performing is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public;

4. The advertising does not relate to a live musical performance or production taking place in the Commonwealth; or

5. The performance or production is expressly authorized by the recording group.

2007, c. 261.

§ 59.1-466.3. Restraining prohibited acts

Whenever an attorney for the Commonwealth has reason to believe that any performer or performing group, or its agent, is advertising or conducting, or is about to advertise or conduct, a live musical performance or production in violation of § 59.1-466.2 and that proceedings would be in the public interest, the attorney for the Commonwealth may bring an action in the name of the Commonwealth against the person to restrain by temporary or permanent injunction that practice.

2007, c. 261.

§ 59.1-466.4. Penalty

Any performer or performing group, or its agent, who violates § 59.1-466.2 shall be liable to the Commonwealth for a civil penalty of not less than $5,000 nor more than $15,000 per violation, which civil penalty shall be in addition to any other relief that may be granted under § 59.1-466.3. The civil penalty collected pursuant to this section shall be payable to the State Treasurer for deposit to the general fund. Each performance or production declared unlawful by § 59.1-466.2 shall constitute a separate violation. Nothing in this section shall be construed as affecting any private cause of action that may exist under Virginia law.

2007, c. 261.

Chapter 39 - ELECTRONIC SIGNATURES [Repealed]

§§ 59.1-467 through 59.1-469. Repealed

Repealed by Acts 2000, c. 995, cl. 2.

Chapter 40 - VIRGINIA ASSISTIVE TECHNOLOGY DEVICE WARRANTIES ACT

§ 59.1-470. Definitions

As used in this chapter:

"Assistive device dealer" means a person or company that is in the business of selling assistive devices, including a manufacturer who sells assistive technology devices directly to consumers.

"Assistive device lessor" means a person or company that leases an assistive device to a consumer, or who holds the lessor's rights, under a written lease.

"Assistive technology device," "assistive device," or "device" means any new device, including a demonstrator, that a consumer purchases or accepts transfer of in this Commonwealth which is used for a major life activity or any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver. These devices include (i) manual wheelchairs, motorized wheelchairs, motorized scooters, and other aids that enhance the mobility of an individual; (ii) hearing aids, telephone communication devices for the deaf (TTD/TTY), assistive listening devices, visual and audible signal systems, and other aides that enhance an individual's ability to hear; and (iii) voice-synthesized computer modules, optical scanners, talking software, Braille printers, and other devices that enhance a sight-impaired individual's ability to communicate.

"Authorized dealer" means any seller of an assistive device that (i) has, within a specified geographic area, an exclusive distribution arrangement with any person or entity that manufacturers or assembles such device or (ii) is designated by the person or company that manufactures or assembles such device to repair or accept for repair such device.

"Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the reasonable costs of obtaining an alternative assistive device.

"Consumer" means:

1. A person with a disability as defined in the Americans With Disabilities Act, 42 U.S.C. § 12102 (2), or his legal representative, (i) who has purchased an assistive device from an assistive device dealer or manufacturer for purposes other than resale; (ii) to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of any warranty established by this chapter; or (iii) who leases a new assistive device from an assistive device lessor under a written lease;

2. An entity which purchases or leases an assistive device using state or federal funds for the use of a person with a disability; or

3. An insurer or self-insurer which purchases or leases an assistive device for the use of a person with a disability.

"Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.

"Manufacturer" means a person or company that manufactures or assembles assistive devices and agents of that person or company, including an authorized dealer, an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's assistive device, but does not include a professional who fabricates, without charge, a device for use in the course of treatment.

"Nonconformity" means a condition or defect that significantly impairs the use, value, function or safety of an assistive device or any of its components, but does not include a condition or defect of the device that is the result of (i) abuse, misuse or neglect by a consumer, (ii) modifications or alterations not authorized by the manufacturer, (iii) normal wear, (iv) normal use which may be resolved through a fitting adjustment, routine maintenance, preventative maintenance or proper care, or (v) a consumer's failure to follow any manufacturer's written service and maintenance guidelines furnished to the customer at the time of purchase.

"Reasonable attempt to repair" means that within one year after the date of first delivery of the assistive device:

1. The same nonconformity has been subject to repair three or more times by the manufacturer, assistive device lessor or any assistive device dealer authorized by the manufacturer to repair such device, and the nonconformity continues to exist and interfere with the device's operation; or

2. The assistive device is out of service, with no fungible loaner available, for a cumulative total of at least thirty days, exclusive of any necessary time in shipment, due to repair by the manufacturer, assistive device lessor or any assistive device dealer authorized by the manufacturer to repair such device, all of which is due to warranty nonconformities. The provisions of this subdivision shall not be applicable if the repairs could not be performed because of conditions beyond the control of the manufacturer, its agents or authorized dealers, including war, invasion, strike, fire, flood or other natural disasters.

1998, cc. 67, 242.

§ 59.1-471. Implied warranty; responsibility for repair, return, or replacement

A. Notwithstanding any other provision of law, in addition to any express warranty furnished by the manufacturer of an assistive device, such manufacturer shall also be deemed to have warranted to any consumer purchasing or leasing such device within this Commonwealth, that for a period of one year from date of first delivery to the consumer (i) the device, when used as intended, will be free from any nonconformity and (ii) any nonconformity will be repaired (parts and labor) by the manufacturer or its agent, without charge to the consumer.

B. If, after reasonable attempt to repair, any nonconformity is not repaired, the manufacturer shall either:

1. Accept return of the nonconforming assistive technology device and refund to the consumer or consumers, to the extent of each consumer's participation in the initial purchase or lease of the device or collateral costs, within fourteen days thereof, (i) the manufacturer's suggested retail price, if available, (ii) the full purchase price of the device, excluding the cost of services associated with the device's initial purchase, together with reasonable collateral costs, or (iii) if the device was leased, all lease payments made through the date of return together with a proportional share of any required deposit; or

2. Accept return of the nonconforming assistive technology device and replace such non-conforming device with one of comparable market value, function and usefulness within thirty days of such request.

1998, cc. 67, 242.

§ 59.1-472. Returned devices; subsequent sale or lease; disclosure

No assistive device returned due to a nonconformity under the provisions of § 59.1-471 by a consumer or assistive device lessor in this Commonwealth or any other state, may be sold or leased again in this Commonwealth unless full disclosure of the reason for such return is made to any prospective buyer or lessee.

1998, cc. 67, 242.

§ 59.1-473. Legal action or arbitration

A. The remedies afforded by this chapter are cumulative and not exclusive and shall be in addition to any other legal or equitable remedies otherwise available to the consumer.

B. In addition to any other remedies otherwise available to him, any consumer who suffers loss as a result of any violation of this chapter may bring an action to recover damages. Such damages may also be recovered through the arbitration mechanism described in subsection C.

C. All persons subject to this chapter shall have the option of submitting any disputes arising under the provisions of this chapter to the arbitration mechanism established and administered by

the Division of Consumer Counsel of the Department of Law, pursuant to subdivision C 2 of § 2.2-517. Such mechanism shall ensure that the arbitration is conducted by a neutral third party.

1998, cc. 67, 242; 2012, cc. 803, 835.

§ 59.1-474. Certain actions deemed void

A. Any manufacturer's exclusion or limitation of the implied warranties or consumer remedies prescribed by this chapter shall be deemed void.

B. Any purported waiver of rights to legal action or arbitration by a consumer within an assistive device purchase agreement shall be deemed void.

1998, cc. 67, 242.

Chapter 41 - STRUCTURED SETTLEMENT PROTECTION ACT

§ 59.1-475. Definitions

For purposes of this chapter:

"Annuity issuer" means an insurer that has issued a contract to fund periodic payments under a structured settlement.

"Applicable federal rate" means the most recently published applicable federal rate for determining the present value of an annuity, as prescribed by the U.S. Internal Revenue Service pursuant to 26 U.S.C. § 7520, as amended.

"Assignee" means a party acquiring or proposing to acquire structured settlement payment rights directly or indirectly from a transferee of such rights.

"Dependents" include a payee's spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

"Discounted present value" means the present value of future payments determined by discounting such payments to the present using the most recently published Applicable Federal Rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

"Gross advance amount" means the sum payable to the payee or for the payee's account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

"Independent professional advice" means advice of an attorney, certified public accountant, actuary or other licensed professional adviser.

"Interested parties" means, with respect to any structured settlement:

1. The payee;

2. Any beneficiary irrevocably designated under the annuity contract to receive payments following the payee's death or, if such beneficiary is a minor, the designated beneficiary's parent or guardian;

3. The annuity issuer;

4. The structured settlement obligor; and

5. Any other party to such structured settlement that has continuing rights or obligations to receive or make payments under such structured settlement.

"Net advance amount" means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under subdivision 5 of § 59.1-475.1.

"Payee" means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of payment rights thereunder.

"Periodic payments" includes both recurring payments and scheduled future lump sum payments.

"Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of § 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

"Settled claim" means the original tort claim resolved by a structured settlement.

"Structured settlement" means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

"Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

"Structured settlement obligor" means, with respect to any structured settlement, a party that has a continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

"Structured settlement payment rights" means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where the payee is domiciled in the Commonwealth or the structured settlement agreement was approved by a court in the Commonwealth.

"Terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of any court or other government authority that authorized or approved such structured settlement.

"Transfer" means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; however, the term "transfer" shall not include the creation or perfection of a security interest in structured

settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

"Transfer agreement" means the agreement providing for transfer of structured settlement payment rights.

"Transfer expenses" means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys' fees, escrow fees, lien recordation fees, judgment and lien search fees, finders' fees, commissions, and other payments to a broker or other intermediary; however, "transfer expenses" shall not include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

"Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

1999, c. 993; 2001, c. 537; 2006, c. 786; 2016, cc. 273, 739.

§ 59.1-475.1. Required disclosures to payee

Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen points, setting forth:

1. The amounts and due dates of the structured settlement payments to be transferred;

2. The aggregate amount of such payments;

3. The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities, " and the amount of the Applicable Federal Rate used in calculating such discounted present value;

4. The gross advance amount;

5. An itemized listing of all applicable transfer expenses, other than attorney fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any such fees and disbursements;

6. The effective annual interest rate, which shall be disclosed in a statement in the following form: "On the basis of the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, you will in effect be paying interest to us at a rate of _____ percent per year";

7. The net advance amount;

8. The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and

9. A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

2001, c. 537; 2016, cc. 273, 739.

§ 59.1-476. Approval of transfers of structured settlement payment rights

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee or assignee of structured settlement payment rights unless the transfer has been authorized in advance in a final court order based on express findings by such court that:

1. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;

2. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived in writing the opportunity to seek and receive such advice; and

3. The transfer does not contravene any applicable statute or the order of any court or other government authority.

1999, c. 993; 2001, c. 537; 2016, cc. 273, 739.

§ 59.1-476.1. Effects of transfer of structured settlement payment rights

Following issuance of a court order approving a transfer of structured settlement payment rights under this chapter:

1. The structured settlement obligor and the annuity issuer may rely on the court order in redirecting periodic payments to an assignee or transferee in accordance with the order and shall, as to all parties except the transferee or an assignee designated by the transferee, be discharged and released from any and all liability for the redirected payments, and such discharge and release shall not be affected by the failure of any party to the transfer to comply with this chapter or with the order of the court approving the transfer;

2. The transferee shall be liable to the structured settlement obligor and the annuity issuer:

a. If the transfer contravenes the terms of the structured settlement, for any taxes incurred by such parties as a consequence of the transfer; and

b. For any other liabilities or costs, including reasonable costs and attorney fees, arising from compliance by the structured settlement obligor or annuity issuer with the order of the court or from the failure of any party to the transfer to comply with this chapter;

3. Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and

4. Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

2001, c. 537; 2016, cc. 273, 739.

§ 59.1-477. Procedure for approval of transfers

A. An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in the circuit court for the county or city in which the payee is domiciled in the Commonwealth, except that if the payee is not domiciled in the Commonwealth, the application may be brought in the court in the Commonwealth that approved the structured settlement agreement. The circuit court may refer the matter to a commissioner of accounts for a report to such court and a recommendation on the findings required by § 59.1-476. Such report and recommendation shall be filed with the court and mailed to all interested parties served under subsection B of this section, and such report and recommendation and any exceptions thereto shall be examined by the court and confirmed or corrected as provided in § 64.2-1212.

B. A timely hearing shall be held on an application for approval of a transfer of structured settlement payment rights. The payee shall appear in person at the hearing unless the court determines that good cause exists to excuse the payee from appearing in person. Not less than 20 days prior to the scheduled hearing on an application for approval of a transfer of structured settlement payment rights under § 59.1-476, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the application for its approval. In addition to complying with the other requirements of this chapter, the application shall include:

1. A copy of the transfer agreement;

2. A copy of the disclosure statement required under § 59.1-475.1;

3. The payee's name, age, and county or city of domicile and the number and ages of each of the payee's dependents;

4. A summary of:

a. Any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the four years preceding the date of the transfer agreement and any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate, applications for approval of which were denied within the two years preceding the date of the transfer agreement; and

b. Any prior transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of the transferee or an affiliate within the three years preceding the date of the

transfer agreement and any prior proposed transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval of which were denied within the one year preceding the date of the current transfer agreement, to the extent that the transfers or proposed transfers have been disclosed to the transferee by the payee in writing or otherwise are actually known by the transferee;

5. Notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and

6. Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed, which shall be not less than five days prior to the hearing, in order to be considered by the court.

1999, c. 993; 2001, c. 537; 2016, cc. 273, 739.

§ 59.1-477.1. General provisions, construction

A. Compliance with the provisions of this chapter may not be waived by any payee.

B. Any transfer agreement entered into on or after the effective date of the act of the General Assembly enacting this section by a payee who resides in the Commonwealth shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of the Commonwealth. No such transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

C. No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for periodically confirming the payee's survival, and giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

D. No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of such transfer to satisfy the conditions of this chapter.

E. Nothing contained in this chapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law. A court shall not be precluded from hearing an application for approval of a transfer of payment rights under a structured settlement where the terms of the structured settlement prohibit the sale, assignment, or encumbrance of such payment rights, nor shall the interested parties be precluded from waiving or asserting their rights under those terms. The provisions of this chapter shall not be applicable to transfers of workers'

compensation claims, awards, benefits, settlements or payments made or payable pursuant to Title 65.2.

F. Compliance with the requirements set forth in § 59.1-475.1 and fulfillment of the conditions set forth in §§ 59.1-476 and 59.1-477 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any other liability arising from, non-compliance with such requirements or failure to fulfill such conditions.

2001, c. 537; 2006, c. 786; 2016, cc. 273, 739.

Chapter 42 - FINGERPRINTING IN CONNECTION WITH BUSINESS TRANSACTION

§ 59.1-478. Fingerprinting in connection with business, commercial or financial transaction
Whenever any person requires another to furnish a fingerprint or fingerprints in conjunction with any business, commercial or financial transaction, unless the parties otherwise agree, within twenty-one days of the transaction's completion or termination the original record of such prints and all copies of such prints, including electronic or facsimile copies shall be (i) returned to the person providing such prints or (ii) destroyed by the person requiring and obtaining such prints.

The provisions of this section shall not apply in the case of fingerprints affixed to instruments governed by Titles 8.3A and 8.4.

1999, c. 715.

Chapter 42.1 - UNIFORM ELECTRONIC TRANSACTIONS ACT

§ 59.1-479. Title
This chapter may be cited as the "Uniform Electronic Transactions Act."

2000, c. 995.

§ 59.1-480. Definitions
As used in this chapter:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(10) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public body, public corporation, or any other legal or commercial entity.

(12) "Public body" shall have the same meaning as defined in § 2.2-3701 and shall also include locally elected constitutional officers, and anyone performing the duties of locally elected constitutional officers.

(13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or an Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(16) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

2000, c. 995; 2005, c. 417.

§ 59.1-481. Scope

(a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts; and

(2) Title 8.1A except § 8.1A-306, Title 8.3A, Title 8.4, Title 8.4A, Title 8.5A, Title 8.7, Title 8.8A, Title 8.9A, Title 8.10, and Title 8.11.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) to the extent it is governed by law other than those specified in subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

2000, c. 995; 2001, c. 86; 2003, c. 353; 2011, c. 369.

§ 59.1-482. Prospective application

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this chapter.

2000, c. 995.

§ 59.1-483. Use of electronic records and electronic signatures; variation by agreement

(a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction electronically may not be contained in a standard form contract unless that term is conspicuously displayed and separately consented to. An agreement to conduct a transaction electronically may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase warranty. This subsection may not be varied by agreement.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of the provisions of this chapter may be varied by agreement. The presence in this chapter of the words "unless otherwise agreed,"

or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

2000, c. 995.

§ 59.1-484. Construction and application

This chapter shall be construed and applied to:

(1) Facilitate electronic transactions consistent with other applicable law;

(2) Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) Effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

2000, c. 995.

§ 59.1-485. Legal recognition of electronic records, electronic signatures, and electronic contracts

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, or provides for certain consequences in the absence of a signature, an electronic signature satisfies the law.

2000, c. 995.

§ 59.1-486. Provision of information in writing; presentation of records

(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) The record shall be posted or displayed in the manner specified in the other law.

(2) Except as otherwise provided in subsection (d) (2), the record shall be sent, communicated, or transmitted by the method specified in the other law.

(3) The record shall contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, except:

(1) To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this chapter to send, communicate, or transmit a record by United States mail, may be varied by agreement to the extent permitted by the other law.

(e) Notwithstanding subsections (b) and (d), a governmental agency may by regulation alter requirements governing (i) the method of posting or display, (ii) the manner of communication or transmittal, including First Class or other United States mail requirements, or (iii) formatting requirements, with respect to the matters over which that agency has jurisdiction and with respect to transactions that the parties have agreed to conduct by electronic means.

2000, c. 995.

§ 59.1-487. Attribution and effect of electronic record and electronic signature

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

2000, c. 995.

§ 59.1-488. Effect of change or error

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) Has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither paragraph (1) nor paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Paragraphs (2) and (3) may not be varied by agreement.

2000, c. 995.

§ 59.1-489. Notarization and acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

2000, c. 995.

§ 59.1-490. Retention of electronic record

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record at the time and after it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a).

(f) A record retained as an electronic record in accordance with subsection A satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this chapter specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a public body of the Commonwealth from specifying additional requirements for the retention of a record subject to such public body's jurisdiction.

2000, c. 995.

§ 59.1-491. Admissibility of evidence

(a) In any proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

(b) In determining the evidentiary weight to be given a particular electronic signature, the trier of fact shall consider whether the electronic signature is: (i) unique to the signer, (ii) capable of verification, (iii) under the signer's sole control, (iv) linked to the record in such a manner that it can be determined if any data contained in the record was changed subsequent to the electronic signature being affixed to the record, and (v) created by a method appropriately reliable for the purpose for which the electronic signature was used. The trier of fact may consider any other relevant and probative evidence affecting the authenticity and/or validity of the electronic signature.

2000, c. 995.

§ 59.1-492. Automated transactions

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to the contract.

2000, c. 995.

§ 59.1-493. Time and place of sending and receipt

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a), or purportedly received under subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

2000, c. 995.

§ 59.1-494. Transferable records

(a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under Title 8.3A or a document under Title 8.7 if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in § 8.1A-201 (21), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Titles 8.1A through 8.11, including, if the applicable statutory requirements under §§ 8.3A-302 (a), 8.7-501, or § 8.9A-330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under Titles 8.1A through 8.11.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related

business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

2000, c. 995; 2001, c. 86; 2003, c. 353.

§ 59.1-495. Creation and retention of electronic records and conversion of written records by public bodies of the Commonwealth

Upon providing protection to preserve security and confidentiality, every public body of the Commonwealth may create and retain electronic records and convert written records to electronic records.

2000, c. 995.

§ 59.1-496. Acceptance and distribution of electronic records by public bodies; electronic filing of information permitted

(a) Except as otherwise provided in subsection (f) of § 59.1-490, and upon providing protection to preserve security and confidentiality, public bodies of the Commonwealth may (i) accept the electronic filing of any information required or permitted to be filed with such public body and (ii) prescribe the methods of executing, recording, reproducing, and certifying electronically filed information pursuant to subsection (b). Unless otherwise provided for in the Code of Virginia, electronic filing in the courts of this Commonwealth shall be governed by the Rules adopted by the Supreme Court of Virginia.

(b) To the extent that public bodies of the Commonwealth use electronic records and electronic signatures and accept electronic filings under subsection (a), the following rules apply:

(1) Public bodies of the Commonwealth may specify the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) Public bodies of the Commonwealth may specify the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) Public bodies of the Commonwealth may specify control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) Public bodies of the Commonwealth may establish other criteria to ensure the authenticity and validity of electronic signatures.

(c) Except as otherwise provided in § 59.1-490 (f), this chapter does not require public bodies of the Commonwealth to use or permit the use of electronic records or signatures.

2000, c. 995.

§ 59.1-497. Interoperability

A public body of the Commonwealth which adopts standards pursuant to § 59.1-496 and the Secretary of Technology may encourage and promote consistency and interoperability with similar requirements adopted by other public bodies of the Commonwealth, other states and the federal government and nongovernmental persons interacting with public bodies of the Commonwealth. If appropriate, those standards may specify differing levels of standards from which public bodies of the Commonwealth may choose in implementing the most appropriate standard for a particular application.

2000, c. 995.

§§ 59.1-498 through 59.1-501. Reserved
Reserved.

Chapter 43 - UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT

Part 1 - GENERAL PROVISIONS

§ 59.1-501.1. Title
This chapter may be cited as the Uniform Computer Information Transactions Act.

2000, cc. 101, 996.

§ 59.1-501.2. Definitions
(a) As used in this chapter:

(1) "Access contract" means a contract to obtain by electronic means access to, or information from, an information processing system of another person, or the equivalent of such access.

(2) "Access material" means any information or material, such as a document, address, or access code, that is necessary to obtain authorized access to information or control or possession of a copy.

(3) "Aggrieved party" means a party entitled to a remedy for breach of contract.

(4) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of performance, course of dealing, and usage of trade as provided in this chapter.

(5) "Attribution procedure" means a procedure to verify that an electronic authentication, display, message, record, or performance is that of a particular person or to detect changes or errors in information. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment.

(6) "Authenticate" means (i) to sign or (ii) with the intent to sign a record, to execute or adopt an electronic symbol, sound, message, or process referring to, attached to, included in, or logically associated or linked with, that record.

(7) "Automated transaction" means a transaction in which a contract is formed in whole or part by electronic actions of one or both parties that are not previously reviewed by an individual in the ordinary course.

(8) "Cancellation" means the ending of a contract by a party because of breach of contract by another party.

(9) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(10) "Computer information" means information in electronic form that is obtained from or through the use of a computer or that is in a form capable of being processed by a computer. The term includes a copy of the information and any documentation or packaging associated with the copy.

(11) "Computer information transaction" means an agreement or the performance of it to create, modify, transfer, or license computer information or informational rights in computer information. The term includes a support contract under § 59.1-506.12. The term does not include a transaction merely because the parties' agreement provides that their communications about the transaction will be in the form of computer information.

(12) "Computer program" means a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result. The term does not include separately identifiable informational content.

(13) "Consequential damages" resulting from breach of contract includes (i) any loss resulting from general or particular requirements and needs of which the breaching party at the time of contracting had reason to know and which could not reasonably be prevented, and (ii) any injury to an individual or damage to property other than the subject matter of the transaction proximately resulting from breach of warranty. The term does not include direct damages or incidental damages.

(14) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. With respect to a person, conspicuous terms include (i) a heading in capitals in a size equal to or greater than, or in contrasting type, font, or color to, the surrounding text, (ii) language in the body of a record or display in larger or other contrasting type, font, or color or set off from the surrounding text by symbols or other marks that draw attention to the language, and (iii) a term prominently referenced in an electronic record or display which is readily accessible or reviewable from the record or display. With respect to a person or an electronic agent, conspicuous terms include a term, or reference to a term, that is so

placed in a record or display that the person or electronic agent cannot proceed without taking action with respect to the particular term or reference.

(15) "Consumer" means an individual who is a licensee of information or informational rights that the individual at the time of contracting intended to be used primarily for personal, family, or household purposes. The term does not include an individual who is a licensee primarily for professional or commercial purposes, including agriculture, business management, and investment management other than management of the individual's personal or family investments.

(16) "Consumer contract" means a contract between a merchant licensor and a consumer.

(17) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(18) "Contract fee" means the price, fee, rent, or royalty payable in a contract under this chapter or any part of the amount payable.

(19) "Contractual use term" means an enforceable term that defines or limits the use, disclosure of, or access to licensed information or informational rights, including a term that defines the scope of a license.

(20) "Copy" means the medium on which information is fixed on a temporary or permanent basis and from which it can be perceived, reproduced, used, or communicated, either directly or with the aid of a machine or device.

(21) "Course of dealing" means a sequence of previous conduct between the parties to a particular transaction which establishes a common basis of understanding for interpreting their expressions and other conduct.

(22) "Course of performance" means repeated performances, under a contract that involves repeated occasions for performance, which are accepted or acquiesced in without objection by a party having knowledge of the nature of the performance and an opportunity to object to it.

(23) "Court" includes an arbitration or other dispute-resolution forum if the parties have agreed to use of that forum or its use is required by law.

(24) "Delivery," with respect to a copy, means the voluntary physical or electronic transfer of possession or control.

(25) "Direct damages" means compensation for losses measured by § 59.1-508.8 (b) (1) or § 59.1-508.9 (a) (1). The term does not include consequential damages or incidental damages.

(26) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(27) "Electronic agent" means a computer program, or electronic or other automated means, used independently to initiate an action, or to respond to electronic messages or performances, on the

person's behalf without review or action by an individual at the time of the action or response to the message or performance.

(28) "Electronic message" means a record or display that is stored, generated, or transmitted by electronic means for the purpose of communication to another person or electronic agent.

(29) "Financial accommodation contract" means an agreement under which a person extends a financial accommodation to a licensee and which does not create a security interest governed by Title 8.9A. The agreement may be in any form, including a license or lease.

(30) "Financial services transaction" means an agreement that provides for, or a transaction that is, or entails access to, use, transfer, clearance, settlement, or processing of:

(A) a deposit, loan, funds, or monetary value represented in electronic form and stored or capable of storage by electronic means and retrievable and transferable by electronic means, or other right to payment to or from a person;

(B) an instrument or other item;

(C) a payment order, credit card transaction, debit card transaction, funds transfer, automated clearing house transfer, or similar wholesale or retail transfer of funds;

(D) a letter of credit, document of title, financial asset, investment property, or similar asset held in a fiduciary or agency capacity; or

(E) related identifying, verifying, access-enabling, authorizing, or monitoring information.

(31) "Financier" means a person that provides a financial accommodation to a licensee under a financial accommodation contract and either (i) becomes a licensee for the purpose of transferring or sublicensing the license to the party to which the financial accommodation is provided or (ii) obtains a contractual right under the financial accommodation contract to preclude the licensee's use of the information or informational rights under a license in the event of breach of the financial accommodation contract. The term does not include a person that selects, creates, or supplies the information that is the subject of the license, owns the informational rights in the information, or provides support for, modifications to, or maintenance of the information.

(32) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(33) "Goods" means all things that are movable at the time relevant to the computer information transaction. The term includes the unborn young of animals, growing crops, and other identified things to be severed from realty which are covered by § 8.2-107. The term does not include computer information, money, the subject matter of foreign exchange transactions, documents, letters of credit, letter-of-credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, or general intangibles.

(34) "Incidental damages" resulting from breach of contract:

(A) means compensation for any commercially reasonable charges, expenses, or commissions reasonably incurred by an aggrieved party with respect to (i) inspection, receipt, transmission, transportation, care, or custody of identified copies or information that is the subject of the breach; (ii) stopping delivery, shipment, or transmission; (iii) effecting cover or retransfer of copies or information after the breach; (iv) other efforts after the breach to minimize or avoid loss resulting from the breach; and (v) matters otherwise incident to the breach; and

(B) does not include consequential damages or direct damages.

(35) "Information" means data, text, images, sounds, mask works, or computer programs, including collections and compilations of them.

(36) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(37) "Informational content" means information that is intended to be communicated to or perceived by an individual in the ordinary use of the information, or the equivalent of that information.

(38) "Informational rights" include all rights in information created under laws governing patents, copyrights, mask works, trade secrets, trademarks, publicity rights, or any other law that gives a person, independently of contract, a right to control or preclude another person's use of or access to the information on the basis of the rights holder's interest in the information.

(39) "Insurance services transaction" means an agreement between an insurer and an insured that provides for, or a transaction that is or entails access to, use, transfer, clearance, settlement, or processing of:

(A) an insurance policy, contract, or certificate; or

(B) a right to payment under an insurance policy, contract or certificate.

(40) "Knowledge," with respect to a fact, means actual knowledge of the fact.

(41) "License" means a contract that authorizes access to, or use, distribution, performance, modification, or reproduction of, information or informational rights, but expressly limits the access or uses authorized or expressly grants fewer than all rights in the information, whether or not the transferee has title to a licensed copy. The term includes an access contract, a lease of a computer program, and a consignment of a copy. The term does not include a reservation or creation of a security interest to the extent the interest is governed by Title 8.9A.

(42) "Licensee" means a person entitled by agreement to acquire or exercise rights in, or to have access to or use of, computer information under an agreement to which this chapter applies. A licensor is not a licensee with respect to rights reserved to it under the agreement.

(43) "Licensor" means a person obligated by agreement to transfer or create rights in, or to give access to or use of, computer information or informational rights in it under an agreement to

which this chapter applies. Between the provider of access and a provider of the informational content to be accessed, the provider of content is the licensor. In an exchange of information or informational rights, each party is a licensor with respect to the information, informational rights, or access it gives.

(44) "Mass-market license" means a standard form used in a mass-market transaction.

(45) "Mass-market transaction" means a transaction that is:

(A) a consumer contract; or

(B) any other transaction with an end-user licensee if:

(i) the transaction is for information or informational rights directed to the general public as a whole, including consumers, under substantially the same terms for the same information;

(ii) the licensee acquires the information or informational rights in a retail transaction under terms consistent with an ordinary transaction in a retail market; and

(iii) the transaction is not (a) a contract for redistribution or for public performance or public display of a copyrighted work; (b) a transaction in which the information is customized or otherwise specially prepared by the licensor for the licensee, other than minor customization using a capability of the information intended for that purpose; (c) a site license; or (d) an access contract.

(46) "Merchant" means a person:

(A) who deals in information or informational rights of the kind involved in the transaction;

(B) who by the person's occupation holds himself out as having knowledge or skill peculiar to the relevant aspect of the business practices or information involved in the transaction; or

(C) to whom the knowledge or skill peculiar to the practices or information involved in the transaction may be attributed by the person's employment of an agent or broker or other intermediary who by his occupation holds himself out as having the knowledge or skill.

(47) "Nonexclusive license" means a license that does not preclude the licensor from transferring to other licensees the same information, informational rights, or contractual rights within the same scope. The term includes a consignment of a copy.

(48) "Notice" of a fact means knowledge of the fact, receipt of notification of the fact, or reason to know the fact exists.

(49) "Notify" or "give notice" means to take such steps as may be reasonably required to inform the other person in the ordinary course, whether or not the other person actually comes to know of it.

(50) "Party" means a person that engages in a transaction or makes an agreement under this chapter.

(51) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, instrumentality, or agency, public corporation, or any other legal or commercial entity.

(52) "Published informational content" means informational content prepared for or made available to recipients generally, or to a class of recipients, in substantially the same form. The term does not include informational content that is (i) customized for a particular recipient by one or more individuals acting as or on behalf of the licensor, using judgment or expertise or (ii) provided in a special relationship of reliance between the provider and the recipient.

(53) "Receipt" means:

(A) with respect to a copy, taking delivery; or

(B) with respect to a notice:

(i) coming to a person's attention; or

(ii) being delivered to and available at a location or system designated by agreement for that purpose or, in the absence of an agreed location or system: (a) being delivered at the person's residence, or the person's place of business through which the contract was made, or at any other place held out by the person as a place for receipt of communications of the kind; or (b) in the case of an electronic notice, coming into existence in an information processing system or at an address in that system in a form capable of being processed by or perceived from a system of that type by a recipient, if the recipient uses, or otherwise has designated or holds out, that place or system for receipt of notices of the kind to be given and the sender does not know that the notice cannot be accessed from that place.

(54) "Receive" means to take receipt.

(55) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(56) "Release" means an agreement by a party not to object to, or exercise any rights or pursue any remedies to limit, the use of information or informational rights which agreement does not require an affirmative act by the party to enable or support the other party's use of the information or informational rights. The term includes a waiver of informational rights.

(57) "Return," with respect to a record containing contractual terms that were rejected, refers only to the computer information and means:

(A) in the case of a licensee that rejects a record regarding a single information product transferred for a single contract fee, a right to reimbursement of the contract fee paid from the person to which it was paid or from another person that offers to reimburse that fee, on (i) submission of proof of purchase and (ii) proper redelivery of the computer information and all copies within a reasonable time after initial delivery of the information to the licensee;

(B) in the case of a licensee that rejects a record regarding an information product provided as part of multiple information products integrated into and transferred as a bundled whole but retaining their separate identity:

1. a right to reimbursement of any portion of the aggregate contract fee identified by the licensor in the initial transaction as charged to the licensee for all bundled information products which was actually paid, on (i) rejection of the record before or during the initial use of the bundled product; (ii) proper redelivery of all computer information products in the bundled whole and all copies of them within a reasonable time after initial delivery of the information to the licensee; and (iii) submission of proof of purchase; or

2. a right to reimbursement of any separate contract fee identified by the licensor in the initial transaction as charged to the licensee for the separate information product to which the rejected record applies, on (i) submission of proof of purchase and (ii) proper redelivery of that computer information product and all copies within a reasonable time after initial delivery of the information to the licensee; or

(C) in the case of a licensor that rejects a record proposed by the licensee, a right to proper redelivery of the computer information and all copies from the licensee, to stop delivery or access to the information by the licensee, and to reimbursement from the licensee of amounts paid by the licensor with respect to the rejected record, on reimbursement to the licensee of contract fees that it paid with respect to the rejected record, subject to recoupment and setoff.

(58) "Scope," with respect to terms of a license, means:

(A) the licensed copies, information, or informational rights involved;

(B) the use or access authorized, prohibited, or controlled;

(C) the geographic area, market, or location; or

(D) the duration of the license.

(59) "Seasonable," with respect to an act, means taken within the time agreed or, if no time is agreed, within a reasonable time.

(60) "Send" means, with any costs provided for and properly addressed or directed as reasonable under the circumstances or as otherwise agreed, to deposit a record in the mail or with a commercially reasonable carrier, to deliver a record for transmission to or re-creation in another location or information processing system, or to take the steps necessary to initiate transmission to or re-creation of a record in another location or information processing system. In addition, with respect to an electronic message, the message must be in a form capable of being processed by or perceived from a system of the type the recipient uses or otherwise has designated or held out as a place for the receipt of communications of the kind sent. Receipt within the time in which it would have arrived if properly sent, has the effect of a proper sending.

(61) "Standard form" means a record or a group of related records containing terms prepared for repeated use in transactions and so used in a transaction in which there was no negotiated change of terms by individuals except to set the price, quantity, method of payment, selection among standard options, or time or method of delivery.

(62) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(63) "Term," with respect to an agreement, means that portion of the agreement that relates to a particular matter.

(64) "Termination" means the ending of a contract by a party pursuant to a power created by agreement or law otherwise than because of breach of contract.

(65) "Transfer":

(A) with respect to a contractual interest, includes an assignment of the contract, but does not include an agreement merely to perform a contractual obligation or to exercise contractual rights through a delegate or sublicensee; and

(B) with respect to computer information, includes a sale, license, or lease of a copy of the computer information and a license or assignment of informational rights in computer information.

(66) "Usage of trade" means any practice or method of dealing that has such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.

(b) The following definitions in other titles apply to this chapter:

(1) "Burden of establishing" § 8.1A-201.

(2) "Document of title" § 8.1A-201.

(3) "Financial asset" § 8.8A-102.

(4) "Funds transfer" § 8.4A-104.

(5) "Identification" to the contract § 8.2-501.

(6) "Instrument" § 8.9A-102.

(7) "Investment property" § 8.9A-102.

(8) "Item" § 8.4-104.

(9) "Letter of credit" § 8.5A-102.

(10) "Payment order" § 8.4A-103.

(11) "Sale" § 8.2-106.

2000, cc. 101, 996; 2001, c. 763; 2003, c. 353; 2004, c. 794.

§ 59.1-501.3. Scope; exclusions

(a) This chapter applies to computer information transactions.

(b) Except for subject matter excluded in subsection (d), if a computer information transaction includes subject matter other than computer information or subject matter excluded under subsection (d), the following rules apply:

(1) If a transaction includes computer information and goods, this chapter applies to the part of the transaction involving computer information, informational rights in it, and creation or modification of it. However, if a copy of a computer program is contained in and sold or leased as part of goods, this chapter applies to the copy and the computer program only if:

(A) the goods are a computer or computer peripheral; or

(B) giving the buyer or lessee of the goods access to or use of the program is ordinarily a material purpose of transactions in goods of the type sold or leased.

(2) Subject to subsection (d)(2)(A), if a transaction includes an agreement for creating or for obtaining rights to create computer information and a motion picture, this chapter does not apply to the agreement if the dominant character of the agreement is for creating or obtaining rights to create a motion picture. In all other such agreements, this chapter does not apply to the part of the agreement that involves a motion picture excluded under subsection (d)(2), but does apply to the computer information.

(3) In all other cases, this chapter applies to the entire transaction if the computer information and informational rights, or access to them, is the primary subject matter, but otherwise applies only to the part of the transaction involving computer information, informational rights in it, and creation or modification of it.

(c) To the extent of a conflict between this chapter and Title 8.9A, Title 8.9A governs.

(d) This chapter does not apply to:

(1) a financial services transaction;

(2) an insurance services transaction;

(3) an agreement to create, perform or perform in, include information in, acquire, use, distribute, modify, reproduce, have access to, adapt, make available, transmit, license, or display:

(A) a motion picture or audio or visual programming other than in (i) a mass-market transaction or (ii) a submission of an idea or information or release of informational rights that may result in making a motion picture or a similar information product; or

(B) sound recording, musical work, or phonorecord as defined or used in Title 17 of the United States Code as of July 1, 1999, or an enhanced sound recording, other than in the submission of an idea or information or release of informational rights that may result in the creation of such material or a similar information product.

(4) a compulsory license;

(5) a contract of employment of an individual, other than an individual hired as an independent contractor, unless such independent contractor is a freelancer in the news reporting industry as that term is commonly understood in that industry;

(6) a contract that does not require that information be furnished as computer information or in which under the agreement the form of the information as computer information is otherwise insignificant with respect to the primary subject matter of the part of the transaction pertaining to the information;

(7) unless otherwise agreed in a record between the parties:

(A) telecommunications products or services provided pursuant to federal or state tariffs; or

(B) telecommunications products or services provided pursuant to agreements required or permitted to be filed by the service provider with a federal or state authority regulating these services or under pricing subject to approval by a federal or state regulatory authority; or

(8) subject matter within the scope of Titles 8.3, 8.4, 8.4A, 8.5A, 8.7, or 8.8A.

(e) As used in subsection (d)(2)(B), "enhanced sound recording" means a separately identifiable product or service the dominant character of which consists of recorded sounds but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of those sounds or (ii) other information so long as recorded sounds constitute the dominant character of the product or service despite the inclusion of the other information.

(f) As used in this section, "motion picture" means:

(1) "motion picture" as defined in Title 17 of the United States Code as of July 1, 1999; or

(2) a separately identifiable product or service the dominant character of which consists of a linear motion picture, but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of the motion picture or (ii) other information so long as the motion picture constitutes the dominant character of the product or service despite the inclusion of the other information.

(g) As used in this section, "audio or visual programming" means audio or visual programming that is provided by broadcast, satellite, or cable as defined or used in the federal Communications Act of 1934 (47 U.S.C. § 151 et seq.) and related regulations as they existed on July 1, 1999, or by similar methods of delivery.

2000, cc. 101, 996; 2001, c. 763; 2004, c. 794; 2011, c. 369.

§ 59.1-501.4. Repealed

Repealed by Acts 2004, c. 794.

§ 59.1-501.4:1. Consumer protection law governs

(a) In this section, "consumer protection law" means a consumer protection statute, rule, or regulation, or other state executive or legislative action that has the effect of law and any applicable judicial or administrative decisions interpreting those statutes, rules, regulations or actions.

(b) Except as otherwise provided in this section, this chapter does not limit, modify or supersede a consumer protection statute, administrative rule, regulation or procedure.

(c) If a consumer protection law requires a term to be conspicuous, the standard of conspicuousness under the consumer protection law applies. However, a provision in the consumer protection law requiring a term to be conspicuous does not preclude that term from being presented electronically.

(d) If a consumer protection law requires a writing or a signature, a record or authentication suffices.

(e) If a consumer protection law addresses assent, consent, or manifestation of assent, the standard of assent, consent, or manifestation of assent under the consumer protection law applies and may be accomplished electronically.

(f) The applicability of a consumer protection law is determined by that law as it would have applied in the absence of this chapter.

2004, c. 794.

§ 59.1-501.5. Relation to federal law; fundamental public policy; transactions subject to other state law

(a) A provision of this chapter that is preempted by federal law is unenforceable to the extent of the preemption.

(b) If a term of a contract violates a fundamental public policy, the court may refuse to enforce the contract, enforce the remainder of the contract without the impermissible term, or limit the application of the impermissible term so as to avoid a result contrary to public policy, in each case to the extent that the interest in enforcement is clearly outweighed by a public policy against enforcement of the term.

(c) In a transaction in which a copy of computer information in its final form is made generally available, a term of a contract is unenforceable to the extent that the term prohibits an end-user licensee from engaging in otherwise lawful public discussion relating to the computer information. However, this subsection does not preclude enforcement of a term that establishes or enforces rights under trade secret, trademark, defamation, commercial disparagement, or other laws. This subsection does not alter the applicability of subsection (b) to any term not rendered unenforceable under this subsection.

(d) This chapter does not apply to an intellectual property notice that is based solely on intellectual property rights and is not part of a contract. The effect of such a notice is determined by law other than this chapter.

(e) If a law of the Commonwealth in effect on the effective date of this chapter applies to a transaction governed by this chapter, the following rules apply:

(1) A requirement that a term, waiver, notice, or disclaimer be in a writing is satisfied by a record.

(2) A requirement that a record, writing, or term be signed is satisfied by an authentication.

(3) A requirement that a term be conspicuous, or the like, is satisfied by a term that is conspicuous under this chapter.

(4) A requirement of consent or agreement to a term is satisfied by a manifestation of assent to the term in accordance with this chapter.

2000, cc. 101, 996; 2001, cc. 762, 763; 2004, c. 794.

§ 59.1-501.6. Rule of construction

(a) This chapter must be liberally construed and applied to promote its underlying purposes and policies to:

(1) support and facilitate the realization of the full potential of computer information transactions;

(2) clarify the law governing computer information transactions;

(3) enable expanding commercial practice in computer information transactions by commercial usage and agreement of the parties;

(4) promote uniformity of the law with respect to the subject matter of this chapter among States that enact it; and

(5) permit the continued expansion of commercial practices in the excluded transactions through custom, usage and agreement of the parties.

(b) Except as otherwise provided in § 59.1-501.15, the use of mandatory language or the absence of a phrase such as "unless otherwise agreed" in a provision of this chapter does not preclude the parties from varying the effect of the provision by agreement.

(c) The fact that a provision of this chapter imposes a condition for a result does not by itself mean that the absence of that condition yields a different result.

(d) To be enforceable, a term need not be conspicuous, negotiated, or expressly assented or agreed to, unless this chapter expressly so requires.

2000, cc. 101, 996; 2004, c. 794.

§ 59.1-501.7. Legal recognition of electronic record and authentication; use of electronic agents

(a) A record or authentication may not be denied legal effect or enforceability solely because it is in electronic form.

(b) This chapter does not require that a record or authentication be generated, stored, sent, received, or otherwise processed by electronic means or in electronic form.

(c) In any transaction, a person may establish requirements regarding the type of authentication or record acceptable to that person.

(d) A person using an electronic agent that he has selected for making an authentication, performance, or agreement, including manifestation of assent, is bound by the operations of the electronic agent, even if no individual was aware of or reviewed the agent's operations or the results of the operations.

2000, cc. 101, 996.

§ 59.1-501.8. Proof and effect of authentication

(a) Authentication may be proven in any manner, including a showing that a party made use of information or access that could have been available only if it engaged in conduct or operations that authenticated the record or term.

(b) Compliance with a commercially reasonable attribution procedure agreed to or adopted by the parties or established by law for authenticating a record authenticates the record as a matter of law.

2000, cc. 101, 996.

§ 59.1-501.9. Choice of law

(a) The parties in their agreement may choose the applicable law. However, the choice is not enforceable in a consumer contract to the extent it would vary a statute, administrative rule, or regulation that may not be varied by agreement under the law of Virginia.

(b) In the absence of an enforceable agreement on choice of law, the contract is governed by the law of Virginia.

2000, cc. 101, 996; 2001, cc. 762, 763.

§ 59.1-501.10. Contractual choice of forum

(a) The parties in their agreement may choose an exclusive judicial forum unless the choice is unreasonable or unjust.

(b) A judicial forum specified in an agreement is not exclusive unless the agreement expressly so provides and, in a mass-market transaction, expressly and conspicuously so provides.

2000, cc. 101, 996; 2001, c. 763.

§ 59.1-501.11. Unconscionable contract or term

(a) If a court as a matter of law finds a contract or a term thereof to have been unconscionable at the time it was made, the court may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable term, or limit the application of the unconscionable term so as to avoid an unconscionable result.

(b) If a court as a matter of law finds a contract or a term thereof has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from the contract, the court may grant appropriate relief.

(c) If it is claimed or appears to the court that a contract or term thereof may be unconscionable, the parties must be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

2000, cc. 101, 996.

§ 59.1-501.12. Manifesting assent

(a) A person manifests assent to a record or term if the person, acting with knowledge of, or after having an opportunity to review the record or term or a copy of it:

(1) authenticates the record or term with intent to adopt or accept it; or

(2) intentionally engages in conduct or makes statements with reason to know that the other party or its electronic agent may infer from the conduct or statement that the person assents to the record or term.

(b) An electronic agent manifests assent to a record or term if, after having an opportunity to review it, the electronic agent:

(1) authenticates the record or term; or

(2) engages in operations that in the circumstances indicate acceptance of the record or term.

(c) If this chapter or other law requires assent to a specific term, a manifestation of assent must relate specifically to the term.

(d) Conduct or operations manifesting assent may be proved in any manner, including showing that a person or an electronic agent obtained or used the information or informational rights and that a procedure existed by which a person or an electronic agent must have engaged in the conduct or operations in order to do so. Proof of compliance with subsection (a) (2) is sufficient if there is conduct that assents and subsequent conduct that reaffirms assent by electronic means.

(e) The effect of provisions of this section may be modified by an agreement setting out standards applicable to future transactions between the parties.

(f) Providers of online services, network access, and telecommunications services, or the operators of facilities thereof, do not manifest assent to a contractual relationship simply by their provision of these services to other parties, including but not limited to transmission, routing, or providing connections, linking, caching, hosting, information location tools, or storage of materials at the request or initiation of a person other than the service provider.

2000, cc. 101, 996; 2001, c. 763; 2004, c. 794.

§ 59.1-501.13. Repealed

Repealed by Acts 2004, c. 794.

§ 59.1-501.13:1. Opportunity to review

(a) A person has an opportunity to review a record or term only if it is made available in a manner that ought to call it to the attention of a reasonable person and permit review.

(b) An electronic agent has an opportunity to review a record or term only if it is made available in a manner that would enable a reasonably configured electronic agent to react to the record or term.

(c) If a record or term is available for review only after a person becomes obligated to pay or begins its performance, the person has an opportunity to review only if he has a right to a return if he rejects the record. However, a right to a return is not required if:

(1) the record proposes a modification of contract or provides particulars of performance under § 59.1-503.5; or

(2) the primary performance is other than delivery or acceptance of a copy, the agreement is not a mass-market transaction, and the parties at the time of contracting had reason to know that a record or term would be presented after performance, use, or access to the information began.

(d) The right to a return under this section may arise by law or by agreement.

(e) The effect of this section may be modified by an agreement setting out standards applicable to future transactions between the parties.

2004, c. 794.

§ 59.1-501.14. Repealed

Repealed by Acts 2004, c. 794.

§ 59.1-501.14:1. Pretransaction disclosures in Internet-type transactions

This section applies to a licensor that makes its computer information available to a licensee by electronic means from its Internet or similar electronic site. In such a case, the licensor affords an opportunity to review the terms of a standard form license, which opportunity satisfies § 59.1-501.13:1 with respect to a licensee that acquires the information from that site, if the licensor:

(1) makes the standard terms of the license readily available for review by the licensee before the information is delivered or the licensee becomes obligated to pay, whichever occurs first, by:

(A) displaying prominently and in close proximity to a description of the computer information, or to instructions or steps for acquiring it, the standard terms or a reference to an electronic location from which they can be readily obtained; or

(B) disclosing the availability of the standard terms in a prominent place on the site from which the computer information is offered and promptly furnishing a copy of the standard terms on request before the transfer of the computer information; and

(2) does not take affirmative acts to prevent printing or storage of the standard terms for archival or review purposes by the licensee.

Failure to provide an opportunity to review under this section does not preclude a person from providing a person an opportunity to review by other means pursuant to § 59.1-501.13:1 or law other than this chapter.

2004, c. 794.

§ 59.1-501.15. Variation by agreement; commercial practice

(a) The effect of any provision of this chapter, including an allocation of risk or imposition of a burden, may be varied by agreement of the parties.

(b) The following rules are not variable by agreement:

(1) Obligations of good faith, diligence, reasonableness, and care imposed by this chapter may not be disclaimed by agreement, but the parties by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(2) The limitations on enforceability imposed by unconscionability under § 59.1-501.11 and fundamental public policy under § 59.1-501.5 (b) may not be varied by agreement; and

(3) Limitations on enforceability of, or agreement to, a contract, term, or right expressly stated in the sections listed in the following subsections may not be varied by agreement except to the extent provided in each section:

(A) the limitations on agreed choice of law in § 59.1-501.9 (a);

(B) the limitations on agreed choice of forum in § 59.1-501.10;

(C) the requirements for manifesting assent in § 59.1-501.12 and opportunity for review in § 59.1-501.13:1;

(D) the limitations on enforceability in § 59.1-502.1;

(E) the limitations on a mass-market license in § 59.1-502.9;

(F) the consumer defense arising from an electronic error in § 59.1-502.14;

(G) the requirements for an enforceable term in §§ 59.1-503.3 (b), 59.1-503.7 (f), 59.1-504.6 (b) and (c), and 59.1-508.4 (a);

(H) the requirements of § 59.1-503.4 (b) (2);

(I) the limitations on a financier in §§ 59.1-505.7 through 59.1-505.11;

(J) the restrictions on altering the period of limitations in § 59.1-508.5 (a) and (b); and

(K) the limitations on self-help repossession in §§ 59.1-508.15 (b) and 59.1-508.16.

2004, c. 794.

§ 59.1-501.16. Supplemental principles; good faith; commercial practice

(a) Unless displaced by this chapter, principles of law and equity, including the merchant law and the common law of the Commonwealth relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and other validating or invalidating cause, supplement this chapter. Among the laws supplementing and not displaced by this chapter are trade secret laws and unfair competition laws, including application of such laws as they may deal with failure to disclose defects.

(b) Every contract or duty within the scope of this chapter imposes an obligation of good faith in its performance or enforcement.

(c) Any usage of trade in the vocation or trade in which the parties are engaged or of which the parties are or should be aware and any course of dealing or course of performance between the parties are relevant to determining the existence or meaning of an agreement.

2004, c. 794.

§ 59.1-501.17. Decision for court; legal consequences; reasonable time; reason to know
(a) Whether a term is conspicuous or is unenforceable under §§ 59.1-501.5 (a) or (b), 59.1-501.11, or § 59.1-502.9 (a) and whether an attribution procedure is commercially reasonable or effective under §§ 59.1-501.8, 59.1-502.12, or § 59.1-502.13 are questions to be determined by the court.

(b) Whether an agreement has legal consequences is determined by this chapter.

(c) Whenever this chapter requires any action to be taken within a reasonable time, what is a reasonable time for taking the action depends on the nature, purpose, and circumstances of the action. Any time that is not manifestly unreasonable may be fixed by agreement.

(d) A person has reason to know a fact if the person has knowledge of the fact or, from all the facts and circumstances known to the person without investigation, the person should be aware that the fact exists.

2004, c. 794.

§§ 59.1-501.18 through 59.1-502. Reserved
Reserved.

Part 2 - FORMATION AND TERMS

§ 59.1-502.1. Formal requirements
(a) Except as otherwise provided in this section, a contract requiring payment of a contract fee of $5,000 or more is not enforceable by way of action or defense unless:

(1) the party against which enforcement is sought authenticated a record sufficient to indicate that a contract has been formed and which reasonably identifies the copy or subject matter to which the contract refers; or

(2) the agreement is a license for an agreed duration of one year or less or which may be terminated at will by the party against which the contract is asserted.

(b) A record is sufficient under subsection (a) even if it omits or incorrectly states a term, but the contract is not enforceable under that subsection beyond the number of copies or subject matter shown in the record.

(c) A contract that does not satisfy the requirements of subsection (a) is nevertheless enforceable under that subsection if:

(1) a performance was tendered or the information was made available by one party and the tender was accepted or the information accessed by the other; or

(2) the party against which enforcement is sought admits in court, by pleading or by testimony or otherwise under oath, facts sufficient to indicate a contract has been made, but the agreement is not enforceable under this paragraph beyond the number of copies or the subject matter admitted.

(d) Between merchants, if, within a reasonable time, a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, the record satisfies subsection (a) against the party receiving it unless notice of objection to its contents is given in a record within a reasonable time after the confirming record is received.

(e) An agreement that the requirements of this section need not be satisfied as to future transactions is effective if evidenced in a record authenticated by the person against which enforcement is sought.

(f) A transaction within the scope of this chapter is not subject to a statute of frauds contained in another law of this Commonwealth.

2000, cc. 101, 996.

§ 59.1-502.2. Formation in general

(a) A contract may be formed in any manner sufficient to show agreement, including offer and acceptance or conduct of both parties or operations of electronic agents which recognize the existence of a contract.

(b) If the parties so intend, an agreement sufficient to constitute a contract may be found even if the time of its making is undetermined, one or more terms are left open or to be agreed upon, the records of the parties do not otherwise establish a contract, or one party reserves the right to modify terms.

(c) Even if one or more terms are left open or to be agreed upon, a contract does not fail for indefiniteness if the parties intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

(d) In the absence of conduct or performance by both parties to the contrary, a contract is not formed if there is a material disagreement about a material term, including a term concerning scope.

(e) If a term is to be adopted by later agreement and the parties intend not to be bound unless the term is so adopted, a contract is not formed if the parties do not agree to the term. In that case, each party shall deliver to the other party, or with the consent of the other party destroy, all copies of information, access materials, and other materials received or made, and each party is entitled to a return with respect to any contract fee paid for which performance has not been received, has not been accepted, or has been redelivered without any benefit being retained. The parties remain bound by any contractual use term only with respect to information or copies received or made from copies received pursuant to the agreement, but the contractual use term does not apply to information or copies properly received or obtained from another source.

2000, cc. 101, 996.

§ 59.1-502.3. Offer and acceptance in general

Unless otherwise unambiguously indicated by the language or the circumstances:

(1) An offer to make a contract invites acceptance in any manner and by any medium reasonable under the circumstances.

(2) An order or other offer to acquire a copy for prompt or current delivery invites acceptance by either a prompt promise to ship or a prompt or current shipment of a conforming or nonconforming copy. However, a shipment of a nonconforming copy is not an acceptance if the licensor seasonably notifies the licensee that the shipment is offered only as an accommodation to the licensee.

(3) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror that is not notified of acceptance or performance within a reasonable time may treat the offer as having lapsed before acceptance.

(4) If an offer in an electronic message evokes an electronic message accepting the offer, a contract is formed:

(A) when an electronic acceptance is received; or

(B) if the response consists of beginning performance, full performance, or giving access to information, when the performance is received or the access is enabled and necessary access materials are received.

2000, cc. 101, 996.

§ 59.1-502.4. Acceptance with varying terms

(a) In this section, an acceptance materially alters an offer if it contains a term that materially conflicts with or varies a term of the offer or that adds a material term not contained in the offer.

(b) Except as otherwise provided in § 59.1-502.5, a definite and seasonable expression of acceptance operates as an acceptance, even if the acceptance contains terms that vary from the terms of the offer, unless the acceptance materially alters the offer.

(c) If an acceptance materially alters the offer, the following rules apply:

(1) A contract is not formed unless (A) a party agrees, such as by manifesting assent, to the other party's offer or acceptance or (B) all the other circumstances, including the conduct of the parties, establish a contract.

(2) If a contract is formed by the conduct of both parties, the terms of the contract are determined under § 59.1-502.10.

(d) If an acceptance varies from but does not materially alter the offer, a contract is formed based on the terms of the offer. In addition, the following rules apply:

(1) Terms in the acceptance which conflict with terms in the offer are not part of the contract.

(2) An additional nonmaterial term in the acceptance is a proposal for an additional term. Between merchants, the proposed additional term becomes part of the contract unless the offeror gives notice of objection before, or within a reasonable time after, it receives the proposed terms.

2000, cc. 101, 996.

§ 59.1-502.5. Conditional offer or acceptance

(a) In this section, an offer or acceptance is conditional if it is conditioned on agreement by the other party to all the terms of the offer or acceptance.

(b) Except as otherwise provided in subsection (c), a conditional offer or acceptance precludes formation of a contract unless the other party agrees to its terms, such as by manifesting assent.

(c) If an offer and acceptance are in standard forms and at least one form is conditional, the following rules apply:

(1) Conditional language in a standard term precludes formation of a contract only if the actions of the party proposing the form are consistent with the conditional language, such as by refusing to perform, refusing to permit performance, or refusing to accept the benefits of the agreement, until its proposed terms are accepted.

(2) A party that agrees, such as by manifesting assent, to a conditional offer that is effective under paragraph (1) adopts the terms of the offer under § 59.1-502.8 or § 59.1-502.9, except a term that conflicts with an expressly agreed term regarding price or quantity.

2000, cc. 101, 996.

§ 59.1-502.6. Offer and acceptance; electronic agents

(a) A contract may be formed by the interaction of electronic agents. If the interaction results in the electronic agents' engaging in operations that under the circumstances indicate acceptance of an offer, a contract is formed, but a court may grant appropriate relief if the operations resulted from fraud, electronic mistake, or the like.

(b) A contract may be formed by the interaction of an electronic agent and an individual acting on the individual's own behalf or for another person. A contract is formed if the individual takes an

action or makes a statement that the individual can refuse to take or say and that the individual has reason to know will:

(1) cause the electronic agent to perform, provide benefits, or allow the use or access that is the subject of the contract, or send instructions to do so; or

(2) indicate acceptance, regardless of other expressions or actions by the individual to which the individual has reason to know the electronic agent cannot react.

(c) The terms of a contract formed under subsection (b) are determined under § 59.1-502.8 or § 59.1-502.9 but do not include a term provided by the individual if the individual had reason to know that the electronic agent could not react to the term.

2000, cc. 101, 996.

§ 59.1-502.7. Formation; releases of informational rights

(a) A release is effective without consideration if it is:

(1) in a record to which the releasing party agrees, such as by manifesting assent, and which identifies the informational rights released; or

(2) enforceable under estoppel, implied license, or other law.

(b) A release continues for the duration of the informational rights released if the release does not specify its duration and does not require affirmative performance after the grant of the release by:

(1) the party granting the release; or

(2) the party receiving the release, except for relatively insignificant acts.

2000, cc. 101, 996; 2004, c. 794.

§ 59.1-502.8. Adopting terms of records

Except as otherwise provided in § 59.1-502.9, the following rules apply:

(1) A party adopts the terms of a record, including a standard form, as the terms of the contract if the party agrees to the record, such as by manifesting assent.

(2) The terms of a record may be adopted pursuant to paragraph (1) after beginning performance or use if the parties had reason to know that their agreement would be represented in whole or part by a later record to be agreed on and there would not be an opportunity to review the record or a copy of it before performance or use begins. If the parties fail to agree to the later terms and did not intend to form a contract unless they so agreed, § 59.1-502.2 (e) applies.

(3) If a party adopts the terms of a record, the terms become part of the contract without regard to the party's knowledge or understanding of individual terms in the record, except for a term that is unenforceable because it fails to satisfy another requirement of this chapter.

2000, cc. 101, 996.

§ 59.1-502.9. Mass-market license

(a) A party adopts the terms of a mass-market license for purposes of § 59.1-502.8 only if the party agrees to the license, such as by manifesting assent, before or during the party's initial performance or use of or access to the information. A term is not part of the license if:

(1) the term is unconscionable or is unenforceable under § 59.1-501.5 (a) or (b);

(2) subject to § 59.1-503.1, the term conflicts with a term to which the parties to the license have expressly agreed;

(3) under § 59.1-501.13:1, the licensee does not have an opportunity to review the term before agreeing to it; or

(4) the term is not available for viewing before and after assent:

(A) in a printed license; or

(B) in electronic form that (i) can be printed or stored for archival and review purposes by the licensee or (ii) is made available by a licensor to a licensee, at no cost to the licensee, in a printed form on the request of a licensee who is unable to print or store the license for archival and review purposes.

(b) If a mass-market license or a copy of the license is not available in a manner permitting an opportunity to review by the licensee before the licensee becomes obligated to pay and the licensee does not agree, such as by manifesting assent, to the license after having an opportunity to review, the licensee is entitled to a return under § 59.1-501.12 or § 59.1-501.13:1 and, in addition, to:

(1) reimbursement of any reasonable expenses incurred in complying with the licensor's instructions for returning or destroying the computer information or, in the absence of instructions, expenses incurred for return postage or similar reasonable expense in returning the computer information; and

(2) compensation for any reasonable and foreseeable costs of restoring the licensee's information processing system to reverse changes in the system caused by the installation, if:

(A) the installation occurs because information must be installed to enable review of the license; and

(B) the installation alters the system or information in it but does not restore the system or information after removal of the installed information because the licensee rejected the license.

(c) In a mass-market transaction, if the licensor does not have an opportunity to review a record containing proposed terms from the licensee before the licensor delivers or becomes obligated to deliver the information, and if the licensor does not agree, such as by manifesting assent, to those terms after having that opportunity, the licensor is entitled to a return.

2000, cc. 101, 996; 2001, c. 763; 2004, c. 794.

§ 59.1-502.10. Terms of contract formed by conduct

(a) Except as otherwise provided in subsection (b) and subject to § 59.1-503.1, if a contract is formed by conduct of the parties, the terms of the contract are determined by consideration of the terms and conditions to which the parties expressly agreed, course of performance, course of dealing, usage of trade, the nature of the parties' conduct, the records exchanged, the information or informational rights involved, and all other relevant circumstances. If a court cannot determine the terms of the contract from the foregoing factors, the supplementary principles of this chapter apply.

(b) This section does not apply if the parties authenticate a record of the contract or a party agrees, such as by manifesting assent, to the record containing the terms of the other party.

2000, cc. 101, 996.

§ 59.1-502.11. Repealed

Repealed by Acts 2004, c. 794.

§ 59.1-502.12. Efficacy and commercial reasonableness of attribution procedure

The efficacy, including the commercial reasonableness, of an attribution procedure is determined by the court. In making this determination, the following rules apply:

(1) An attribution procedure established by law is effective for transactions within the coverage of the statute, administrative rule, or regulation.

(2) Except as otherwise provided in paragraph (1), commercial reasonableness and effectiveness is determined in light of the purposes of the procedure and the commercial circumstances at the time the parties agreed to or adopted the procedure.

(3) An attribution procedure may use any security device or method that is commercially reasonable under the circumstances.

2000, cc. 101, 996; 2001, cc. 762, 763.

§ 59.1-502.13. Determining attribution

(a) An electronic authentication, display, message, record, or performance is attributed to a person if it was the act of the person or its electronic agent, or if the person is bound by it under agency or other law. The party relying on attribution of an electronic authentication, display, message, record, or performance to another person has the burden of establishing attribution.

(b) The act of a person may be shown in any manner, including a showing of the efficacy of an attribution procedure that was agreed to or adopted by the parties or established by law.

(c) The effect of an electronic act attributed to a person under subsection (a) is determined from the context at the time of its creation, execution, or adoption, including the parties' agreement, if any, or otherwise as provided by law.

(d) If an attribution procedure exists to detect errors or changes in an electronic authentication, display, message, record, or performance, and was agreed to or adopted by the parties or

established by law, and one party conformed to the procedure but the other party did not, and the nonconforming party would have detected the change or error had that party also conformed, the effect of noncompliance is determined by the agreement but, in the absence of agreement, the conforming party may avoid the effect of the error or change.

2000, cc. 101, 996.

§ 59.1-502.14. Electronic error; consumer defenses

(a) In this section, "electronic error" means an error in an electronic message created by a consumer using an information processing system if a reasonable method to detect and correct or avoid the error was not provided.

(b) In an automated transaction, a consumer is not bound by an electronic message that the consumer did not intend and which was caused by an electronic error, if the consumer:

(1) promptly on learning of the error:

(A) notifies the other party of the error; and

(B) causes delivery to the other party or, pursuant to reasonable instructions received from the other party, delivers to another person or destroys all copies of the information; and

(2) has not used, or received any benefit or value from, the information or caused the information or benefit to be made available to a third party.

(c) If subsection (b) does not apply, the effect of an electronic error is determined by other law.

2000, cc. 101, 996.

§ 59.1-502.15. Electronic message; when effective; effect of acknowledgment

(a) Receipt of an electronic message is effective when properly addressed and received.

(b) Receipt of an electronic acknowledgment of an electronic message establishes that the message was received but by itself does not establish that the content sent corresponds to the content received.

2000, cc. 101, 996.

§ 59.1-502.16. Idea or information submission

(a) The following rules apply to a submission of an idea or information for the creation, development, or enhancement of computer information which is not made pursuant to an existing agreement requiring the submission:

(1) A contract is not formed and is not implied from the mere receipt of an unsolicited submission.

(2) Engaging in a business, trade, or industry that by custom or practice regularly acquires ideas is not in itself an express or implied solicitation of the information.

(3) If the recipient seasonably notifies the person making the submission that the recipient maintains a procedure to receive and review submissions, a contract is formed only if:

(A) the submission is made and accepted pursuant to that procedure; or

(B) the recipient expressly agrees to terms concerning the submission.

(b) An agreement to disclose an idea creates a contract enforceable against the receiving party only if the idea as disclosed is confidential, concrete, and novel to the business, trade, or industry or the party receiving the disclosure otherwise expressly agreed.

2000, cc. 101, 996.

§§ 59.1-502.17 through 59.1-503. Reserved
Reserved.

Part 3 - CONSTRUCTION

§ 59.1-503.1. Parol or extrinsic evidence
Terms with respect to which confirmatory records of the parties agree or which are otherwise set forth in a record intended by the parties as a final expression of their agreement with respect to terms included therein may not be contradicted by evidence of any previous agreement or of a contemporaneous oral agreement but may be explained or supplemented by:

(1) course of performance, course of dealing, or usage of trade; and

(2) evidence of consistent additional terms, unless the court finds the record to have been intended as a complete and exclusive statement of the terms of the agreement.

2000, cc. 101, 996.

§ 59.1-503.2. Practical construction
(a) The express terms of an agreement and any course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. However, if that construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(b) An applicable usage of trade in the place where any part of performance is to occur must be used in interpreting the agreement as to that part of the performance.

(c) Evidence of a relevant course of performance, course of dealing, or usage of trade offered by one party in a proceeding is not admissible unless and until the party offering the evidence has given the other party notice that the court finds sufficient to prevent unfair surprise.

(d) The existence and scope of a usage of trade must be proved as facts.

2000, cc. 101, 996.

§ 59.1-503.3. Modification and rescission

(a) An agreement modifying a contract subject to this chapter needs no consideration to be binding.

(b) An authenticated record that precludes modification or rescission except by an authenticated record may not otherwise be modified or rescinded. In a standard form supplied by a merchant to a consumer, a term requiring an authenticated record for modification of the contract is not enforceable unless the consumer manifests assent to the term.

(c) A modification of a contract and the contract as modified must satisfy the requirements of §§ 59.1-502.1 (a) and 59.1-503.7 (f) if the contract as modified is within those provisions.

(d) An attempt at modification or rescission which does not satisfy subsection (b) or (c) may operate as a waiver if § 59.1-507.2 is satisfied.

2000, cc. 101, 996.

§ 59.1-503.4. Continuing contractual terms

(a) Terms of an agreement involving successive performances apply to all performances, even if the terms are not displayed or otherwise brought to the attention of a party with respect to each successive performance, unless the terms are modified in accordance with this chapter or the contract.

(b) If a contract provides that terms may be changed as to future performances by compliance with a described procedure, a change proposed in good faith pursuant to that procedure becomes part of the contract if the procedure:

(1) reasonably notifies the other party of the change; and

(2) in a mass-market transaction, permits the other party to terminate the contract as to future performance if the change alters a material term and the party in good faith determines that the modification is unacceptable.

(c) The parties by agreement may determine the standards for reasonable notice unless the agreed standards are manifestly unreasonable in light of the commercial circumstances.

(d) The enforceability of changes made pursuant to a procedure that does not comply with subsection (b) is determined by the other provisions of this chapter or other law.

2000, cc. 101, 996.

§ 59.1-503.5. Terms to be specified

An agreement that is otherwise sufficiently definite to be a contract is not invalid because it leaves particulars of performance to be specified by one of the parties. If particulars of performance are to be specified by a party, the following rules apply:

(1) Specification must be made in good faith and within limits set by commercial reasonableness.

(2) If a specification materially affects the other party's performance but is not seasonably made, the other party:

(A) is excused for any resulting delay in its performance; and

(B) may perform, suspend performance, or treat the failure to specify as a breach of contract.

2000, cc. 101, 996.

§ 59.1-503.6. Performance under open terms

A performance obligation of a party that cannot be determined from the agreement or from other provisions of this chapter requires the party to perform in a manner and in a time that is reasonable in light of the commercial circumstances existing at the time of agreement.

2000, cc. 101, 996.

§ 59.1-503.7. Interpretation and requirements for grant

(a) A license grants:

(1) the contractual rights that are expressly described; and

(2) a contractual right to use any informational rights within the licensor's control at the time of contracting which are necessary in the ordinary course to exercise the expressly described rights.

(b) If a license expressly limits use of the information or informational rights, use in any other manner is a breach of contract. In all other cases, a license contains an implied limitation that the licensee will not use the information or informational rights otherwise than as described in subsection (a). However, use inconsistent with this implied limitation is not a breach if it is permitted under applicable law in the absence of the implied limitation.

(c) A party is not entitled to any rights in new versions of, or improvements or modifications to, information made by the other party. A licensor's agreement to provide new versions, improvements, or modifications requires that the licensor provide them as developed and made generally commercially available from time to time by the licensor.

(d) Neither party is entitled to receive copies of source code, schematics, master copy, design material, or other information used by the other party in creating, developing, or implementing the information.

(e) Terms concerning scope must be construed under ordinary principles of contract interpretation in light of the informational rights and the commercial context. In addition, the following rules apply:

(1) A grant of "all possible rights and for all media" or "all rights and for all media now known or later developed," or a grant in similar terms, includes all rights then existing or later created by law and all uses, media, and methods of distribution or exhibition, whether then existing or developed in the future and whether or not anticipated at the time of the grant.

(2) A grant of an "exclusive license," or a grant in similar terms, means that:

(A) for the duration of the license, the licensor will not exercise, and will not grant to any other person, rights in the same information or informational rights within the scope of the exclusive grant; and

(B) the licensor affirms that it has not previously granted those rights in a contract in effect when the licensee's rights may be exercised.

(f) The rules in this section may be varied only by a record that is sufficient to indicate that a contract has been made and that is:

(1) authenticated by the party against whom enforcement is sought; or

(2) prepared and delivered by one party and adopted by the other under § 59.1-502.8 or § 59.1-502.9.

2000, cc. 101, 996; 2004, c. 794.

§ 59.1-503.8. Repealed

Repealed by Acts 2004, c. 794.

§ 59.1-503.9. Agreement for performance to party's satisfaction

(a) Except as otherwise provided in subsection (b), an agreement that provides that the performance of one party is to be to the satisfaction or approval of the other party requires performance sufficient to satisfy a reasonable person in the position of the party that must be satisfied.

(b) Performance must be to the subjective satisfaction of the other party if:

(1) the agreement expressly so provides, such as by stating that approval is in the "sole discretion" of the party, or words of similar import; or

(2) the agreement is for informational content to be evaluated in reference to subjective characteristics such as aesthetics, appeal, suitability to taste, or subjective quality.

2000, cc. 101, 996.

§ 59.1-503.10. Licenses to nonprofit libraries, archives or educational institutions

(a) To the extent that the conduct is not otherwise unlawful or restricted under the Copyright Act, 17 U.S.C. § 101 et seq., or other law, in a standard form contract for the use of a tangible copy of informational content to a licensee that is a nonprofit library or archive or a nonprofit educational institution, the licensee may, without any purpose of direct or indirect commercial advantage:

(1) make the tangible copy available to library or archive users, including but not limited to reserving the copy for a course and lending that copy to users in accordance with ordinary practices of nonprofit libraries or archives;

(2) make a copy of the tangible copy for archival or preservation purposes;

(3) engage in inter-library lending of tangible copies of the copy; and

(4) make classroom and instructional use of the tangible copy.

(b) The provisions of subsection (a) may be varied by a term in a standard form contract only if:

(1) the term varying the provision is conspicuous;

(2) the nonprofit library, archive or educational institution specifically manifests assent to the term pursuant to subsection (c) of § 59.1-501.12; and

(3) where the term is not made available to the nonprofit library, archive or educational institution before it orders the tangible copy of the computer information:

(i) the nonprofit library, archive or educational institution knew or had reason to know that terms would follow when it ordered the copy; and

(ii) the nonprofit library, archive or educational institution is given the right to return the copy in the event that it refuses the contract and the right to be reimbursed for any reasonable expenses incurred in complying with the licensor's instructions for returning or destroying the computer information, or in the absence of such instructions, the reimbursement of expenses incurred for return postage or similar reasonable expense in returning the computer information.

(c) Nothing in this section shall be construed to:

(1) alter the burden of proof in an infringement, contract or other action;

(2) authorize making the informational content available on a computer network server or other system for simultaneous access and use by multiple users; or

(3) limit any defense that a term of a contract violates a fundamental public policy pursuant to § 59.1-501.5 including any such policy under the federal copyright law.

(d) For purposes of this section, the terms "nonprofit library, archive or educational institution" have the same meaning as used in sections 108, 109 and 110 of the Copyright Act, 17 U.S.C. §§ 108, 109, and 110.

2001, c. 763.

§§ 59.1-503.11 through 59.1-504. Reserved
Reserved.

Part 4 - WARRANTIES

§ 59.1-504.1. Warranty and obligations concerning noninterference and noninfringement
(a) A licensor of information that is a merchant regularly dealing in information of the kind warrants that the information will be delivered free of the rightful claim of any third person by way of infringement or misappropriation, but a licensee that furnishes detailed specifications to the licensor and the method required for meeting the specifications holds the licensor harmless against any such claim that arises out of compliance with either the required specification or the

required method except for a claim that results from the failure of the licensor to adopt, or notify the licensee of, a noninfringing alternative of which the licensor had reason to know.

(b) A licensor warrants:

(1) for the duration of the license, that no person holds a rightful claim to, or interest in, the information which arose from an act or omission of the licensor, other than a claim by way of infringement or misappropriation, which will interfere with the licensee's enjoyment of its interest; and

(2) as to rights granted exclusively to the licensee, that within the scope of the license:

(A) to the knowledge of the licensor, any licensed patent rights are valid and exclusive to the extent exclusivity and validity are recognized by the law under which the patent rights were created; and

(B) in all other cases, the licensed informational rights are valid and exclusive for the information as a whole to the extent exclusivity and validity are recognized by the law applicable to the licensed rights in a jurisdiction to which the license applies.

(c) The warranties in this section are subject to the following rules:

(1) If the licensed informational rights are subject to a right of privileged use, collective administration, or compulsory licensing, the warranty is not made with respect to those rights.

(2) The obligations under subsections (a) and (b) (2) apply solely to informational rights arising under the laws of the United States or a state, unless the contract expressly provides that the warranty obligations extend to rights under the laws of other countries. Language is sufficient for this purpose if it states, "The licensor warrants exclusivity, noninfringement, in specified countries, worldwide," or words of similar import. In that case, the warranty extends to the specified country or, in the case of a reference to "worldwide" or the like, to all countries within the description, but only to the extent the rights are recognized under a treaty or international convention to which the country and the United States are signatories.

(3) The warranties under subsections (a) and (b) (2) are not made by a license that merely permits use, or covenants not to claim infringement because of the use, of rights under a licensed patent.

(d) Except as otherwise provided in subsection (e), a warranty under this section may be disclaimed or modified only by specific language or by circumstances that give the licensee reason to know that the licensor does not warrant that competing claims do not exist or that the licensor purports to grant only the rights it may have. An obligation to hold harmless under subsection (a) may be disclaimed or modified only by specific language or by circumstances giving the licensor reason to know that the licensee does not provide a hold-harmless obligation to the licensor. In an automated transaction, language is sufficient if it is conspicuous. Otherwise, language in a record is sufficient if it states:

(1) as to the licensor's obligation, "There is no warranty against interference with your enjoyment of the information or against infringement," or words of similar import; or

(2) as to the licensee's obligation, "There is no obligation to hold you harmless from any actions taken in compliance with the specifications or methods furnished to me under this contract," or words of similar import.

(e) Between merchants, a grant of a "quitclaim," or a grant in similar terms, grants the information or informational rights without an implied warranty as to infringement or misappropriation or as to the rights actually possessed or transferred by the licensor.

2000, cc. 101, 996; 2004, c. 794.

§ 59.1-504.2. Express warranty

(a) Subject to subsection (c), an express warranty by a licensor is created as follows:

(1) An affirmation of fact or promise made by the licensor to its licensee, including by advertising, which relates to the information and becomes part of the basis of the bargain creates an express warranty that the information to be furnished under the agreement will conform to the affirmation or promise.

(2) Any description of the information which is made part of the basis of the bargain creates an express warranty that the information will conform to the description.

(3) Any sample, model, or demonstration of a final product which is made part of the basis of the bargain creates an express warranty that the performance of the information will reasonably conform to the performance of the sample, model, or demonstration, taking into account differences that would appear to a reasonable person in the position of the licensee between the sample, model, or demonstration and the information as it will be used.

(b) It is not necessary to the creation of an express warranty that the licensor use formal words, such as "warranty" or "guaranty", or state a specific intention to make a warranty. However, an express warranty is not created by:

(1) an affirmation or prediction merely of the value of the information or informational rights;

(2) a display or description of a portion of the information to illustrate the aesthetics, appeal, suitability to taste, subjective quality, or the like of informational content; or

(3) a statement purporting to be merely opinion or commendation of the information or informational rights.

(c) An express warranty or similar express contractual obligation, if any, exists with respect to published informational content covered by this chapter to the same extent that it would exist if the published informational content had been published in a form that placed it outside this chapter. However, if the warranty or similar express contractual obligation is breached, the remedies of the aggrieved party are those under this chapter and the agreement.

2000, cc. 101, 996.

§ 59.1-504.3. Implied warranty; merchantability of computer program

(a) Unless the warranty is disclaimed or modified, a licensor that is a merchant with respect to computer programs of the kind warrants:

(1) to the end user that the computer program is fit for the ordinary purposes for which such computer programs are used;

(2) to the distributor that:

(A) the program is adequately packaged and labeled as the agreement requires; and

(B) in the case of multiple copies, the copies are within the variations permitted by the agreement, of even kind, quality, and quantity within each unit and among all units involved; and

(3) that the program conforms to any promises or affirmations of fact made on the container or label.

(b) Unless disclaimed or modified, other implied warranties with respect to computer programs may arise from course of dealing or usage of trade.

(c) No warranty is created under this section with respect to informational content, but an implied warranty may arise under § 59.1-504.4.

2000, cc. 101, 996.

§ 59.1-504.4. Implied warranty; informational content

(a) Unless the warranty is disclaimed or modified, a merchant that, in a special relationship of reliance with a licensee, collects, compiles, processes, provides, or transmits informational content warrants to that licensee that there is no inaccuracy in the informational content caused by the merchant's failure to perform with reasonable care.

(b) A warranty does not arise under subsection (a) with respect to:

(1) subjective characteristics of the informational content, such as the aesthetics, appeal, and suitability to taste;

(2) published informational content; or

(3) a person that acts as a conduit or provides no more than editorial services in collecting, compiling, distributing, processing, providing, or transmitting informational content that under the circumstances can be identified as that of a third person.

(c) The warranty under this section is not subject to the preclusion in § 59.1-501.15 (b) (1) on disclaiming obligations of diligence, reasonableness, or care.

2000, cc. 101, 996; 2004, c. 794.

§ 59.1-504.5. Implied warranty; licensee's purpose; system integration

(a) Unless the warranty is disclaimed or modified, if a licensor at the time of contracting has reason to know any particular purpose for which the computer information is required and that the licensee is relying on the licensor's skill or judgment to select, develop, or furnish suitable information, the following rules apply:

(1) Except as otherwise provided in paragraph (2), there is an implied warranty that the information is fit for that purpose.

(2) If from all the circumstances it appears that the licensor was to be paid for the amount of its time or effort regardless of the fitness of the resulting information, the warranty under paragraph (1) is that the information will not fail to achieve the licensee's particular purpose as a result of the licensor's lack of reasonable effort.

(b) There is no warranty under subsection (a) with regard to:

(1) the aesthetics, appeal, suitability to taste, or subjective quality of informational content; or

(2) published informational content, but there may be a warranty with regard to the licensor's selection among published informational content from different providers if the selection is made by an individual acting as or on behalf of the licensor.

(c) If an agreement requires a licensor to provide or select a system consisting of computer programs and goods, and the licensor has reason to know that the licensee is relying on the skill or judgment of the licensor to select the components of the system, there is an implied warranty that the components provided or selected will function together as a system.

(d) The warranty under this section is not subject to the preclusion in § 59.1-501.15 (b) (1) on disclaiming diligence, reasonableness, or care.

2000, cc. 101, 996; 2004, c. 794.

§ 59.1-504.6. Disclaimer or modification of warranty

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to disclaim or modify an express warranty must be construed wherever reasonable as consistent with each other. Subject to § 59.1-503.1 with regard to parol or extrinsic evidence, the disclaimer or modification is inoperative to the extent that such construction is unreasonable.

(b) Except as otherwise provided in subsections (c), (d), and (e), to disclaim or modify an implied warranty or any part of it, but not the warranty in § 59.1-504.1, the following rules apply:

(1) Except as otherwise provided in this subsection:

(A) To disclaim or modify the implied warranty arising under § 59.1-504.3, language must mention "merchantability" or "quality" or use words of similar import and, if in a record, must be conspicuous.

(B) To disclaim or modify the implied warranty arising under § 59.1-504.4, language in a record must mention "accuracy" or use words of similar import.

(2) Language to disclaim or modify the implied warranty arising under § 59.1-504.5 must be in a record and be conspicuous. It is sufficient to state, "There is no warranty that this information, our efforts, or the system will fulfill any of your particular purposes or needs," or words of similar import.

(3) Language in a record is sufficient to disclaim all implied warranties if it individually disclaims each implied warranty or, except for the warranty in § 59.1-504.1, if it is conspicuous and states, "Except for express warranties stated in this contract, if any, this information, computer program is provided with all faults, and the entire risk as to satisfactory quality, performance, accuracy, and effort is with the user," or words of similar import.

(4) A disclaimer or modification sufficient under Title 8.2 or 8.2A to disclaim or modify an implied warranty of merchantability is sufficient to disclaim or modify the warranties under §§ 59.1-504.3 and 59.1-504.4. A disclaimer or modification sufficient under Title 8.2 or 8.2A to disclaim or modify an implied warranty of fitness for a particular purpose is sufficient to disclaim or modify the warranties under § 59.1-504.5.

(c) Unless the circumstances indicate otherwise, all implied warranties, but not the warranty under § 59.1-504.1, are disclaimed by expressions like "as is" or "with all faults" or other language that in common understanding calls the licensee's attention to the disclaimer of warranties and makes plain that there are no implied warranties.

(d) If a licensee before entering into a contract has examined the information or the sample or model as fully as he desired or has refused to examine the information, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed to the licensee.

(e) An implied warranty may also be disclaimed or modified by course of performance, course of dealing, or usage of trade.

(f) If a contract requires ongoing performance or a series of performances by the licensor, language of disclaimer or modification which complies with this section is effective with respect to all performances under the contract.

(g) Remedies for breach of warranty may be limited in accordance with this chapter with respect to liquidation or limitation of damages and contractual modification of remedy.

2000, cc. 101, 996.

§ 59.1-504.7. Modification of computer program

A licensee that modifies a computer program, other than by using a capability of the program intended for that purpose in the ordinary course, does not invalidate any warranty regarding performance of an unmodified copy but does invalidate any warranties, express or implied, regarding performance of the modified copy. A modification occurs if a licensee alters code in, deletes code from, or adds code to the computer program.

2000, cc. 101, 996.

§ 59.1-504.8. Cumulation and conflict of warranties

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention, the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty under § 59.1-504.5 (a) .

2000, cc. 101, 996.

§ 59.1-504.9. Third-party beneficiaries of warranty

(a) Except for published informational content, a warranty to a licensee extends to persons for whose benefit the licensor intends to supply the information or informational rights and which rightfully use the information in a transaction or application of a kind in which the licensor intends the information to be used.

(b) A warranty to a consumer extends to each individual consumer in the licensee's immediate family or household if the individual's use would have been reasonably expected by the licensor.

(c) A contractual term that excludes or limits the persons to which a warranty extends is effective except as to individuals described in subsection (b).

(d) A disclaimer or modification of a warranty or remedy which is effective against the licensee is also effective against third persons to which a warranty extends under this section.

2000, cc. 101, 996.

§ 59.1-504.10. No implied warranties for free software

(a) In this section, "free software" means a computer program with respect to which the licensor does not intend to make a profit from the distribution of the copy of the program and does not act generally for commercial gain derived from controlling use of the program or making, modifying, or redistributing copies of the program.

(b) The warranties under §§ 59.1-504.1 and 59.1-504.3 do not apply to free software.

2004, c. 794.

§§ 59.1-504.11 through 59.1-505. Reserved

Reserved.

Part 5 - TRANSFER OF INTERESTS AND RIGHTS

§ 59.1-505.1. Ownership of informational rights

(a) If an agreement provides for conveyance of ownership of informational rights in a computer program, ownership passes at the time and place specified by the agreement but does not pass until the program is in existence and identified to the contract. If the agreement does not specify a different time, ownership passes when the program and the informational rights are in existence and identified to the contract.

(b) Transfer of a copy does not transfer ownership of informational rights.

2000, cc. 101, 996.

§ 59.1-505.2. Title to copy

(a) In a license:

(1) title to a copy is determined by the license;

(2) a licensee's right under the license to possession or control of a copy is governed by the license and does not depend solely on title to the copy; and

(3) if a licensor reserves title to a copy, the licensor retains title to that copy and any copies made of it, unless the license grants the licensee a right to make and sell copies to others, in which case the reservation of title applies only to copies delivered to the licensee by the licensor.

(b) If an agreement provides for transfer of title to a copy, title passes:

(1) at the time and place specified in the agreement; or

(2) if the agreement does not specify a time and place:

(A) with respect to delivery of a copy on a tangible medium, at the time and place the licensor completed its obligations with respect to tender of the copy; or

(B) with respect to electronic delivery of a copy, if a first sale occurs under federal copyright law, at the time and place at which the licensor completed its obligations with respect to tender of the copy.

(c) If the party to which title passes under the contract refuses delivery of the copy or rejects the terms of the agreement, title revests in the licensor.

2000, cc. 101, 996.

§ 59.1-505.3. Transfer of contractual interest

The following rules apply to a transfer of a contractual interest:

(1) A party's contractual interest may be transferred unless the transfer:

(A) is prohibited by other law; or

(B) except as otherwise provided in paragraph (3), would materially change the duty of the other party, materially increase the burden or risk imposed on the other party, or materially impair the other party's property or its likelihood or expectation of obtaining return performance.

(2) Except as otherwise provided in paragraph (3) and § 59.1-505.8 (a) (1) (B), a term prohibiting transfer of a party's contractual interest is enforceable, and a transfer made in violation of that term is a breach of contract and is ineffective to create contractual rights in the transferee against the nontransferring party, except to the extent that:

(A) the contract is a license for incorporation or use of the licensed information or informational rights with information or informational rights from other sources in a combined work for public distribution or public performance and the transfer is of the completed, combined work;

(B) the transfer is of a right to payment arising out of the transferor's due performance of less than its entire obligation and the transfer would be enforceable under paragraph (1) in the absence of the term prohibiting transfer; or

(C) the term is in a mass-market license, the transfer is made along with a computer, and the transfer is a gift or a donation (i) to a public elementary or secondary school, (ii) to a public library, (iii) to an organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code, or (iv) from a consumer to another consumer.

(D) [Repealed.]

(3) A right to damages for breach of the whole contract or a right to payment arising out of the transferor's due performance of its entire obligation may be transferred notwithstanding an agreement otherwise.

(4) A term that prohibits transfer of a contractual interest under a mass-market license by the licensee must be conspicuous.

2000, cc. 101, 996; 2001, cc. 762, 763; 2002, c. 403.

§ 59.1-505.4. Effect of transfer of contractual interest

(a) A transfer of "the contract" or of "all my rights under the contract," or a transfer in similar general terms, is a transfer of all contractual interests under the contract. Whether the transfer is effective is determined by §§ 59.1-505.3 and 59.1-505.8 (a) (1) (B) .

(b) The following rules apply to a transfer of a party's contractual interests:

(1) The transferee is subject to all contractual use terms.

(2) Unless the language or circumstances otherwise indicate, as in a transfer as security, the transfer delegates the duties of the transferor and transfers its rights.

(3) Acceptance of the transfer is a promise by the transferee to perform the delegated duties. The promise is enforceable by the transferor and any other party to the original contract.

(4) The transfer does not relieve the transferor of any duty to perform, or of liability for breach of contract, unless the other party to the original contract agrees that the transfer has that effect.

(c) A party to the original contract, other than the transferor, may treat a transfer that conveys a right or duty of performance without its consent as creating reasonable grounds for insecurity and, without prejudice to the party's rights against the transferor, may demand assurances from the transferee under § 59.1-507.8.

2000, cc. 101, 996.

§ 59.1-505.5. Performance by delegate; subcontract

(a) A party may perform its contractual duties or exercise its contractual rights through a delegate or a subcontract unless:

(1) the contract prohibits delegation or subcontracting; or

(2) the other party has a substantial interest in having the original promisor perform or control the performance.

(b) Delegating or subcontracting performance does not relieve the delegating party of a duty to perform or of liability for breach.

(c) An attempted delegation that violates a term prohibiting delegation is not effective.

2000, cc. 101, 996.

§ 59.1-505.6. Transfer by licensee

(a) If all or any part of a licensee's interest in a license is transferred, voluntarily or involuntarily, the transferee does not acquire an interest in information, copies, or the contractual or informational rights of the licensee unless the transfer is effective under § 59.1-505.3 or § 59.1-505.8 (a) (1) (B) . If the transfer is effective, the transferee takes subject to the terms of the license.

(b) Except as otherwise provided under trade secret law, a transferee acquires no more than the contractual interest or other rights that the transferor was authorized to transfer.

2000, cc. 101, 996.

§ 59.1-505.7. Financing if financier does not become licensee

If a financier does not become a licensee in connection with its financial accommodation contract, the following rules apply:

(1) The financier does not receive the benefits or burdens of the license.

(2) The licensee's rights and obligations with respect to the information and informational rights are governed by:

(A) the license;

(B) any rights of the licensor under other law; and

(C) to the extent not inconsistent with subparagraphs (A) and (B), any financial accommodation contract between the financier and the licensee, which may add additional conditions to the licensee's right to use the licensed information or informational rights.

2000, cc. 101, 996.

§ 59.1-505.8. Finance licenses

(a) If a financier becomes a licensee in connection with its financial accommodation contract and then transfers its contractual interest under the license, or sublicenses the licensed computer information or informational rights, to a licensee receiving the financial accommodation, the following rules apply:

(1) The transfer or sublicense to the accommodated licensee is not effective unless:

(A) the transfer or sublicense is effective under § 59.1-505.3; or

(B) the following conditions are fulfilled:

(i) before the licensor delivered the information or granted the license to the financier, the licensor received notice in a record from the financier giving the name and location of the accommodated licensee and clearly indicating that the license was being obtained in order to transfer the contractual interest or sublicense the licensed information or informational rights to the accommodated licensee;

(ii) the financier became a licensee solely to make the financial accommodation; and

(iii) the accommodated licensee adopts the terms of the license, which terms may be supplemented by the financial accommodation contract, to the extent the terms of the financial accommodation contract are not inconsistent with the license and any rights of the licensor under other law.

(2) A financier that makes a transfer that is effective under paragraph (1) (B) may make only the single transfer or sublicense contemplated by the notice unless the licensor consents to a later transfer.

(b) If a financier makes an effective transfer of its contractual interest in a license, or an effective sublicense of the licensed information or informational rights, to an accommodated licensee, the following rules apply:

(1) The accommodated licensee's rights and obligations are governed by:

(A) the license;

(B) any rights of the licensor under other law; and

(C) to the extent not inconsistent with subparagraphs (A) and (B), the financial accommodation contract, which may impose additional conditions to the licensee's right to use the licensed information or informational rights.

(2) The financier does not make warranties to the accommodated licensee other than the warranty under § 59.1-504.1 (b) (1) and any express warranties in the financial accommodation contract.

2000, cc. 101, 996.

§ 59.1-505.9. Financing arrangements; obligations irrevocable

Unless the accommodated licensee is a consumer, a term in a financial accommodation contract providing that the accommodated licensee's obligations to the financier are irrevocable and independent is enforceable. The obligations become irrevocable and independent upon the licensee's acceptance of the license or the financier's giving of value, whichever occurs first.

2000, cc. 101, 996.

§ 59.1-505.10. Financing arrangements; remedies or enforcement

(a) Except as otherwise provided in subsection (b), on material breach of a financial accommodation contract by the accommodated licensee, the following rules apply:

(1) The financier may cancel the financial accommodation contract.

(2) Subject to paragraphs (3) and (4), the financier may pursue its remedies against the accommodated licensee under the financial accommodation contract.

(3) If the financier became a licensee and made a transfer or sublicense that was effective under § 59.1-505.8, it may exercise the remedies of a licensor for breach, including the rights of an aggrieved party under § 59.1-508.15, subject to the limitations of § 59.1-508.16.

(4) If the financier did not become a licensee or did not make a transfer that was effective under § 59.1-505.8, it may enforce a contractual right contained in the financial accommodation contract to preclude the licensee's further use of the information. However, the following rules apply:

(A) The financier has no right to take possession of copies, use the information or informational rights, or transfer any contractual interest in the license.

(B) If the accommodated licensee agreed to transfer possession of copies to the financier in the event of material breach of the financial accommodation contract, the financier may enforce that contractual right only if permitted to do so under subsection (b) (1) and § 59.1-505.3.

(b) The following additional limitations apply to a financier's remedies under subsection (a):

(1) A financier described in subsection (a) (3) which is entitled under the financial accommodation contract to take possession or prevent use of information, copies, or related materials may do so only if the licensor consents or if doing so would not result in a material adverse change of the duty of the licensor, materially increase the burden or risk imposed on the licensor, disclose or threaten to disclose trade secrets or confidential material of the licensor, or materially impair the licensor's likelihood or expectation of obtaining return performance.

(2) The financier may not otherwise exercise control over, have access to, or sell, transfer, or otherwise use the information or copies without the consent of the licensor unless the financier or transferee is subject to the terms of the license and:

(A) the licensee owns the licensed copy, the license does not preclude transfer of the licensee's contractual rights, and the transfer complies with federal copyright law for the owner of a copy to make the transfer; or

(B) the license is transferable by its express terms and the financier fulfills any conditions to, or complies with any restrictions on, transfer.

(3) The financier's remedies under the financial accommodation contract are subject to the licensor's rights and the terms of the license.

2000, cc. 101, 996.

§ 59.1-505.11. Financing arrangements; effect on licensor's rights

(a) The creation of a financier's interest does not place any obligations on or alter the rights of a licensor.

(b) A financier's interest does not attach to any intellectual property rights of the licensor unless the licensor expressly consents to such attachment in a license or another record.

2000, cc. 101, 996.

§§ 59.1-505.12 through 59.1-506. Reserved

Reserved.

Part 6 - PERFORMANCE

§ 59.1-506.1. Performance of contract in general

(a) A party shall perform in a manner that conforms to the contract.

(b) If an uncured material breach of contract by one party precedes the aggrieved party's performance, the aggrieved party need not perform except with respect to contractual use terms, but the contractual use terms do not apply to information or copies properly received or obtained from another source. In addition, the following rules apply:

(1) The aggrieved party may refuse a performance that is a material breach as to that performance or a performance that may be refused under § 59.1-507.4 (b) .

(2) The aggrieved party may cancel the contract only if the breach is a material breach of the whole contract or the agreement so provides.

(c) Except as otherwise provided in subsection (b), tender of performance by a party entitles the party to acceptance of that performance. In addition, the following rules apply:

(1) A tender of performance occurs when the party, with manifest present ability and willingness to perform, offers to complete the performance.

(2) If a performance by the other party is due at the time of the tendered performance, tender of the other party's performance is a condition to the tendering party's obligation to complete the tendered performance.

(3) A party shall pay or render the consideration required by the agreement for a performance it accepts. A party that accepts a performance has the burden of establishing a breach of contract with respect to the accepted performance.

(d) Except as otherwise provided in §§ 59.1-506.3 and 59.1-506.4, in the case of a performance with respect to a copy, this section is subject to §§ 59.1-506.6 through 59.1-506.10 and 59.1-507.4 through 59.1-507.7.

2000, cc. 101, 996.

§ 59.1-506.2. Licensor's obligations to enable use

(a) In this section, "enable use" means to grant a contractual right or permission with respect to information or informational rights and to complete the acts, if any, required under the agreement to make the information available to the licensee.

(b) A licensor shall enable use by the licensee pursuant to the contract. The following rules apply to enabling use:

(1) If nothing other than the grant of a contractual right or permission is required to enable use, the licensor enables use when the contract becomes enforceable.

(2) If the agreement requires delivery of a copy, enabling use occurs when the copy is tendered to the licensee.

(3) If the agreement requires delivery of a copy and steps authorizing the licensee's use, enabling use occurs when the last of those acts occurs.

(4) In an access contract, enabling use requires tendering all access material necessary to enable the agreed access.

(5) If the agreement requires a transfer of ownership of informational rights and a filing or recording is allowed by law to establish priority of the transferred ownership, on request by the licensee, the licensor shall execute and tender a record appropriate for that purpose.

2000, cc. 101, 996.

§ 59.1-506.3. Submissions of information to satisfaction of party

If an agreement requires that submitted information be to the satisfaction of the recipient, the following rules apply:

(1) Sections 59.1-506.6 through 59.1-506.10 and 59.1-507.4 through 59.1-507.7 do not apply to the submission.

(2) If the information is not satisfactory to the recipient and the parties engage in efforts to correct the deficiencies in a manner and over a time consistent with the ordinary standards of the business, trade, or industry, neither the efforts nor the passage of time required for the efforts is an acceptance or a refusal of the submission.

(3) Except as otherwise provided in paragraph (4), neither refusal nor acceptance occurs unless the recipient expressly refuses or accepts the submitted information, but the recipient may not use the submitted information before acceptance.

(4) Silence and a failure to act in reference to a submission beyond a commercially reasonable time to respond entitle the submitting party to demand, in a record delivered to the recipient, a decision on the submission. If the recipient fails to respond within a reasonable time after receipt of the demand, the submission is deemed to have been refused.

2000, cc. 101, 996.

§ 59.1-506.4. Immediately completed performance

If a performance involves delivery of information or services which, because of their nature, may provide a licensee, immediately on performance or delivery, with substantially all the benefit of the performance or with other significant benefit that cannot be returned, the following rules apply:

(1) Sections 59.1-506.7 through 59.1-506.10 and 59.1-507.4 through 59.1-507.7 do not apply.

(2) The rights of the parties are determined under § 59.1-506.1 and the ordinary standards of the business, trade, or industry.

(3) Before tender of the performance, a party entitled to receive the tender may inspect the media, labels, or packaging but may not view the information or otherwise receive the performance before completing any performance of its own that is then due.

2000, cc. 101, 996.

§ 59.1-506.5. Electronic regulation of performance

(a) In this section, "automatic restraint" means a program, code, device, or similar electronic or physical limitation the intended purpose of which is to prevent use of information contrary to the contract or applicable law.

(b) A party entitled to enforce a limitation on use of information may include an automatic restraint in the information or a copy of it and use that restraint if:

(1) a term of the agreement authorizes use of the restraint;

(2) the restraint prevents a use that is inconsistent with the agreement;

(3) the restraint prevents use after expiration of the stated duration of the contract or a stated number of uses; or

(4) the restraint prevents use after the contract terminates, other than on expiration of a stated duration or number of uses, and the licensor gives reasonable notice to the licensee before further use is prevented.

(c) This section does not authorize an automatic restraint that affirmatively prevents or makes impracticable a licensee's access to its own information or information of a third party, other than the licensor, if that information is in the possession of the licensee or a third party.

(d) A party that includes or uses an automatic restraint consistent with subsection (b) or (c) is not liable for any loss caused by the use of the restraint.

(e) This section does not preclude electronic replacement or disabling of an earlier copy of information by the licensor in connection with delivery of a new copy or version under an agreement to replace or disable the earlier copy by electronic means with an upgrade or other new information.

(f) This section does not authorize use of an automatic restraint to enforce remedies because of breach of contract or for cancellation for breach. If a right to cancel for breach of contract and a right to exercise restraint under subdivision (b) (4) exist simultaneously, affirmative acts constituting electronic self-help must be taken pursuant to § 59.1-508.16, including its prohibition on mass-market transactions, instead of this section. Affirmative acts under this subsection do not include (i) use of a program, code, device, or similar electronic or physical limitation that operates automatically without regard to breach or (ii) a refusal to prevent the operation of a restraint authorized by this section or to reverse its effect.

2000, cc. 101, 996; 2001, c. 763.

§ 59.1-506.6. Copy; delivery; tender of delivery

(a) Delivery of a copy must be at the location designated by agreement. In the absence of a designation, the following rules apply:

(1) The place for delivery of a copy on a tangible medium is the tendering party's place of business or, if it has none, its residence. However, if the parties know at the time of contracting that the copy is located in some other place, that place is the place for delivery.

(2) The place for electronic delivery of a copy is an information processing system designated or used by the licensor.

(3) Documents of title may be delivered through customary banking channels.

(b) Tender of delivery of a copy requires the tendering party to put and hold a conforming copy at the other party's disposition and give the other party any notice reasonably necessary to enable it to obtain access to, control, or possession of the copy. Tender must be at a reasonable hour and, if applicable, requires tender of access material and other documents required by the agreement. The party receiving tender shall furnish facilities reasonably suited to receive tender. In addition, the following rules apply:

(1) If the contract requires delivery of a copy held by a third person without being moved, the tendering party shall tender access material or documents required by the agreement.

(2) If the tendering party is required or authorized to send a copy to the other party and the contract does not require the tendering party to deliver the copy at a particular destination, the following rules apply:

(A) In tendering delivery of a copy on a tangible medium, the tendering party shall put the copy in the possession of a carrier and make a contract for its transportation that is reasonable in light of the nature of the information and other circumstances, with expenses of transportation to be borne by the receiving party.

(B) In tendering electronic delivery of a copy, the tendering party shall initiate or cause to have initiated a transmission that is reasonable in light of the nature of the information and other circumstances, with expenses of transmission to be borne by the receiving party.

(3) If the tendering party is required to deliver a copy at a particular destination, the tendering party shall make a copy available at that destination and bear the expenses of transportation or transmission.

2000, cc. 101, 996.

§ 59.1-506.7. Copy; performance related to delivery; payment

(a) If performance requires delivery of a copy, the following rules apply:

(1) The party required to deliver need not complete a tendered delivery until the receiving party tenders any performance then due.

(2) Tender of delivery is a condition of the other party's duty to accept the copy and entitles the tendering party to acceptance of the copy.

(b) If payment is due on delivery of a copy, the following rules apply:

(1) Tender of delivery is a condition of the receiving party's duty to pay and entitles the tendering party to payment according to the contract.

(2) All copies required by the contract must be tendered in a single delivery, and payment is due only on tender.

(c) If the circumstances give either party the right to make or demand delivery in lots, the contract fee, if it can be apportioned, may be demanded for each lot.

(d) If payment is due and demanded on delivery of a copy or on delivery of a document of title, the right of the party receiving tender to retain or dispose of the copy or document, as against the tendering party, is conditioned on making the payment due.

2000, cc. 101, 996.

§ 59.1-506.8. Copy; right to inspect; payment before inspection

(a) Except as otherwise provided in §§ 59.1-506.3 and 59.1-506.4, if performance requires delivery of a copy, the following rules apply:

(1) Except as otherwise provided in this section, the party receiving the copy has a right before payment or acceptance to inspect the copy at a reasonable place and time and in a reasonable manner to determine conformance to the contract.

(2) The party making the inspection shall bear the expenses of inspection.

(3) A place or method of inspection or an acceptance standard fixed by the parties is presumed to be exclusive. However, the fixing of a place, method, or standard does not postpone identification to the contract or shift the place for delivery, passage of title, or risk of loss. If compliance with the place or method becomes impossible, inspection must be made as provided in this section unless the place or method fixed by the parties was an indispensable condition the failure of which voids the contract.

(4) A party's right to inspect is subject to existing obligations of confidentiality.

(b) If a right to inspect exists under subsection (a) but the agreement is inconsistent with an opportunity to inspect before payment, the party does not have a right to inspect before payment.

(c) If a contract requires payment before inspection of a copy, nonconformity in the tender does not excuse the party receiving the tender from making payment unless:

(1) the nonconformity appears without inspection and would justify refusal under § 59.1-507.4; or

(2) despite tender of the required documents, the circumstances would justify an injunction against honor of a letter of credit under Title 8.5A.

(d) Payment made under circumstances described in subsection (b) or (c) is not an acceptance of the copy and does not impair a party's right to inspect or preclude any of the party's remedies.

2000, cc. 101, 996.

§ 59.1-506.9. Copy; when acceptance occurs

(a) Acceptance of a copy occurs when the party to which the copy is tendered:

(1) signifies, or acts with respect to the copy in a manner that signifies, that the tender was conforming or that the party will take or retain the copy despite the nonconformity;

(2) does not make an effective refusal;

(3) commingles the copy or the information in a manner that makes compliance with the party's duties after refusal impossible;

(4) obtains a substantial benefit from the copy and cannot return that benefit; or

(5) acts in a manner inconsistent with the licensor's ownership, but the act is an acceptance only if the licensor elects to treat it as an acceptance and ratifies the act to the extent it was within contractual use terms.

(b) Except in cases governed by subsection (a) (3) or (4), if there is a right to inspect under § 59.1-506.8 or the agreement, acceptance of a copy occurs only after the party has had a reasonable opportunity to inspect the copy.

(c) If an agreement requires delivery in stages involving separate portions that taken together comprise the whole of the information, acceptance of any stage is conditional until acceptance of the whole.

2000, cc. 101, 996.

§ 59.1-506.10. Copy; effect of acceptance; burden of establishing; notice of claims

(a) A party accepting a copy shall pay or render the consideration required by the agreement for the copy it accepts. Acceptance of a copy precludes refusal and, if made with knowledge of a nonconformity in a tender, may not be revoked because of the nonconformity unless acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance by itself does not impair any other remedy for nonconformity.

(b) A party accepting a copy has the burden of establishing a breach of contract with respect to the copy.

(c) If a copy has been accepted, the accepting party shall:

(1) except with respect to claims of a type described in § 59.1-508.5 (d) (1), within a reasonable time after it discovers or should have discovered a breach of contract, notify the other party of the breach or be barred from any remedy for the breach; and

(2) if the claim is for breach of a warranty regarding noninfringement and the accepting party is sued by a third party because of the breach, notify the warrantor within a reasonable time after receiving notice of the litigation or be precluded from any remedy for the liability established by the litigation.

2000, cc. 101, 996.

§ 59.1-506.11. Access contracts

(a) If an access contract provides for access over a period of time, the following rules apply:

(1) The licensee's rights of access are to the information as modified and made commercially available by the licensor from time to time during that period.

(2) A change in the content of the information is a breach of contract only if the change conflicts with an express term of the agreement.

(3) Unless it is subject to a contractual use term, information obtained by the licensee is free of any use restriction other than a restriction resulting from the informational rights of another person or other law.

(4) Access must be available:

(A) at times and in a manner conforming to the express terms of the agreement; and

(B) to the extent not expressly stated in the agreement, at times and in a manner reasonable for the particular type of contract in light of the ordinary standards of the business, trade, or industry.

(b) In an access contract that gives the licensee a right of access at times substantially of its own choosing during agreed periods, an occasional failure to have access available during those times is not a breach of contract if it is:

(1) consistent with ordinary standards of the business, trade, or industry for the particular type of contract; or

(2) caused by:

(A) scheduled downtime;

(B) reasonable needs for maintenance;

(C) reasonable periods of failure of equipment, computer programs, or communications; or

(D) events reasonably beyond the licensor's control, and the licensor exercises such commercially reasonable efforts as the circumstances require.

2000, cc. 101, 996.

§ 59.1-506.12. Correction and support contracts

(a) If a person agrees to provide services regarding the correction of performance problems in computer information, other than an agreement to cure its own existing breach of contract, the following rules apply:

(1) If the services are provided by a licensor of the information as part of a limited remedy, the licensor undertakes that its performance will provide the licensee with information that conforms to the agreement to which the limited remedy applies.

(2) In all other cases, the person:

(A) shall perform at a time and place and in a manner consistent with the express terms of the agreement and, to the extent not stated in the express terms, at a time and place and in a manner that is reasonable in light of ordinary standards of the business, trade, or industry; and

(B) does not undertake that its services will correct performance problems unless the agreement expressly so provides.

(b) Unless required to do so by an express or implied warranty, a licensor is not required to provide instruction or other support for the licensee's use of information or access. A person that agrees to provide support shall make the support available in a manner and with a quality consistent with express terms of the support agreement and, to the extent not stated in the express terms, at a time and place and in a manner that is reasonable in light of ordinary standards of the business, trade, or industry.

2000, cc. 101, 996.

§ 59.1-506.13. Contracts involving publishers, dealers, and end users

(a) In this section:

(1) "Dealer" means a merchant licensee that receives information directly or indirectly from a licensor for sale or license to end users.

(2) "End user" means a licensee that acquires a copy of the information from a dealer by delivery on a tangible medium for the licensee's own use and not for sale, license, transmission to third persons, or public display or performance for a fee.

(3) "Publisher" means a licensor, other than a dealer, that offers a license to an end user with respect to information distributed by a dealer to the end user.

(b) In a contract between a dealer and an end user, if the end user's right to use the information or informational rights is subject to a license by the publisher and there was no opportunity to review the license before the end user became obligated to pay the dealer, the following rules apply:

(1) The contract between the end user and the dealer is conditioned on the end user's agreement to the publisher's license.

(2) If the end user does not agree, such as by manifesting assent, to the terms of the publisher's license, the end user has a right to a return from the dealer. A right under this paragraph is a return for purposes of §§ 59.1-501.12, 59.1-502.8, and 59.1-502.9.

(3) The dealer is not bound by the terms, and does not receive the benefits, of an agreement between the publisher and the end user unless the dealer and end user adopt those terms as part of the agreement.

(c) If an agreement provides for distribution of copies on a tangible medium or in packaging provided by the publisher or an authorized third party, a dealer may distribute those copies and documentation only:

(1) in the form as received; and

(2) subject to the terms of any license that the publisher provides to the dealer to be furnished to end users.

(d) A dealer that enters into an agreement with an end user is a licensor with respect to the end user under this chapter.

2000, cc. 101, 996.

§ 59.1-506.14. Risk of loss of copy

(a) Except as otherwise provided in this section, the risk of loss as to a copy that is to be delivered to a licensee, including a copy delivered by electronic means, passes to the licensee upon its receipt of the copy.

(b) If an agreement requires or authorizes a licensor to send a copy on a tangible medium by carrier, the following rules apply:

(1) If the agreement does not require the licensor to deliver the copy at a particular destination, the risk of loss passes to the licensee when the copy is duly delivered to the carrier, even if the shipment is under reservation.

(2) If the agreement requires the licensor to deliver the copy at a particular destination and the copy is duly tendered there in the possession of the carrier, the risk of loss passes to the licensee when the copy is tendered at that destination.

(3) If a tender of delivery of a copy or a shipping document fails to conform to the contract, the risk of loss remains with the licensor until cure or acceptance.

(c) If a copy is held by a third party to be delivered or reproduced without being moved or a copy is to be delivered by making access available to a third party resource containing a copy, the risk of loss passes to the licensee upon:

(1) the licensee's receipt of a negotiable document of title or other access materials covering the copy;

(2) acknowledgment by the third party to the licensee of the licensee's right to possession of or access to the copy; or

(3) the licensee's receipt of a record directing the third party, pursuant to an agreement between the licensor and the third party, to make delivery or authorizing the third party to allow access.

2000, cc. 101, 996.

§ 59.1-506.15. Excuse by failure of presupposed conditions

(a) Unless a party has assumed a different obligation, delay in performance by a party, or nonperformance in whole or part by a party, other than of an obligation to make payments or to conform to contractual use terms, is not a breach of contract if the delay or nonperformance is of a performance that has been made impracticable by:

(1) the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made; or

(2) compliance in good faith with any foreign or domestic statute, governmental rule, regulation, or order, whether or not it later proves to be invalid.

(b) A party claiming excuse under subsection (a) shall seasonably notify the other party that there will be delay or nonperformance.

(c) If an excuse affects only a part of a party's capacity to perform an obligation for delivery of copies, the party claiming excuse shall allocate performance among its customers in any manner that is fair and reasonable and notify the other party of the estimated quota to be made available. In

making the allocation, the party claiming excuse may include the requirements of regular customers not then under contract and its own requirements.

(d) A party that receives notice pursuant to subsection (b) of a material or indefinite delay in delivery of copies or of an allocation under subsection (c), by notice in a record, may:

(1) terminate and thereby discharge any executory portion of the contract; or

(2) modify the contract by agreeing to take the available allocation in substitution.

(e) If, after receipt of notice under subsection (b), a party does not modify the contract within a reasonable time not exceeding thirty days, the contract lapses with respect to any performance affected.

2000, cc. 101, 996.

§ 59.1-506.16. Termination; survival of obligations

(a) Except as otherwise provided in subsection (b), on termination all obligations that are still executory on both sides are discharged.

(b) The following survive termination:

(1) a right based on previous breach or performance of the contract;

(2) an obligation of confidentiality, nondisclosure, or noncompetition to the extent enforceable under other law;

(3) a contractual use term applicable to any licensed copy or information received from the other party, or copies made of it, which are not returned or returnable to the other party;

(4) an obligation to deliver, or dispose of information, materials, documentation, copies, records, or the like to the other party, an obligation to destroy copies, or a right to obtain information from an escrow agent;

(5) a choice of law or forum;

(6) an obligation to arbitrate or otherwise resolve disputes by alternative dispute resolution procedures;

(7) a term limiting the time for commencing an action or for giving notice;

(8) an indemnity term or a right related to a claim of a type described in § 59.1-508.5 (d) (1);

(9) a limitation of remedy or modification or disclaimer of warranty;

(10) an obligation to provide an accounting and make any payment due under the accounting; and

(11) any term that the agreement provides will survive.

2000, cc. 101, 996.

§ 59.1-506.17. Notice of termination

(a) Except as otherwise provided in subsection (b), a party may not terminate a contract except on the happening of an agreed event, such as the expiration of the stated duration, unless the party gives reasonable notice of termination to the other party.

(b) An access contract may be terminated without giving notice. However, except on the happening of an agreed event, termination requires giving reasonable notice to the licensee if the access contract pertains to information owned and provided by the licensee to the licensor.

(c) A term dispensing with a notice required under this section is invalid if its operation would be unconscionable. However, a term specifying standards for giving notice is enforceable if the standards are not manifestly unreasonable.

2000, cc. 101, 996.

§ 59.1-506.18. Termination; enforcement

(a) On termination of a license, a party in possession or control of information, copies, or other materials that are the property of the other party, or are subject to a contractual obligation to be delivered to that party on termination, shall use commercially reasonable efforts to deliver or hold them for disposal on instructions of that party. If any materials are jointly owned, the party in possession or control shall make them available to the joint owners.

(b) Termination of a license ends all rights under the license for the licensee to use or access the licensed information, informational rights, or copies. Continued use of the licensed copies or exercise of terminated rights is a breach of contract unless authorized by a term that survives termination.

(c) Each party may enforce its rights under subsections (a) and (b) by acting pursuant to § 59.1-506.5 or by judicial process, including obtaining an order that the party or an officer of the court take the following actions with respect to any licensed information, documentation, copies, or other materials to be delivered:

(1) deliver or take possession of them;

(2) without removal, render unusable or eliminate the capability to exercise contractual rights in or use of them;

(3) destroy or prevent access to them; and

(4) require that the party or any other person in possession or control of them make them available to the other party at a place designated by that party which is reasonably convenient to both parties.

(d) In an appropriate case, a court of competent jurisdiction may grant injunctive relief to enforce the parties' rights under this section.

2000, cc. 101, 996.

§§ 59.1-506.19 through 59.1-507. Reserved

Reserved.

Part 7 - BREACH OF CONTRACT

§ 59.1-507.1. Breach of contract; material breach

(a) Whether a party is in breach of contract is determined by the agreement or, in the absence of agreement, this chapter. A breach occurs if a party without legal excuse fails to perform an obligation in a timely manner, repudiates a contract, or exceeds a contractual use term, or otherwise is not in compliance with an obligation placed on it by this chapter or the agreement. A breach, whether or not material, entitles the aggrieved party to its remedies. Whether a breach of a contractual use term is an infringement or a misappropriation is determined by applicable informational property rights law.

(b) A breach of contract is material if:

(1) the contract so provides;

(2) the breach is a substantial failure to perform a term that is an essential element of the agreement; or

(3) the circumstances, including the language of the agreement, the reasonable expectations of the parties, the standards and practices of the business, trade, or industry, and the character of the breach, indicate that:

(A) the breach caused or is likely to cause substantial harm to the aggrieved party; or

(B) the breach substantially deprived or is likely substantially to deprive the aggrieved party of a significant benefit it reasonably expected under the contract.

(c) The cumulative effect of nonmaterial breaches may be material.

2000, cc. 101, 996.

§ 59.1-507.2. Waiver of remedy for breach of contract

(a) A claim or right arising out of a breach of contract may be discharged in whole or part without consideration by a waiver in a record to which the party making the waiver agrees after breach, such as by manifesting assent, or which the party making the waiver authenticates and delivers to the other party.

(b) A party that accepts a performance with knowledge that the performance constitutes a breach of contract and, within a reasonable time after acceptance, does not notify the other party of the breach waives all remedies for the breach, unless acceptance was made on the reasonable assumption that the breach would be cured and it has not been seasonably cured. However, a party that seasonably notifies the other party of a reservation of rights does not waive the rights reserved.

(c) A party that refuses a performance and fails to identify a particular defect that is ascertainable by reasonable inspection waives the right to rely on that defect to justify refusal only if:

(1) the other party could have cured the defect if it were identified seasonably; or

(2) between merchants, the other party after refusal made a request in a record for a full and final statement of all defects on which the refusing party relied.

(d) Waiver of a remedy for breach of contract in one performance does not waive any remedy for the same or a similar breach in future performances unless the party making the waiver expressly so states.

(e) A waiver may not be retracted as to the performance to which the waiver applies.

(f) Except for a waiver in accordance with subsection (a) or a waiver supported by consideration, a waiver affecting an executory portion of a contract may be retracted by seasonable notice received by the other party that strict performance will be required in the future, unless the retraction would be unjust in view of a material change of position in reliance on the waiver by that party.

2000, cc. 101, 996.

§ 59.1-507.3. Cure of breach of contract

(a) A party in breach of contract may cure the breach at its own expense if:

(1) the time for performance has not expired and the party in breach seasonably notifies the aggrieved party of its intent to cure and, within the time for performance, makes a conforming performance;

(2) the party in breach had reasonable grounds to believe the performance would be acceptable with or without monetary allowance, seasonably notifies the aggrieved party of its intent to cure, and provides a conforming performance within a further reasonable time after performance was due; or

(3) in a case not governed by paragraph (1) or (2), the party in breach seasonably notifies the aggrieved party of its intent to cure and promptly provides a conforming performance before cancellation by the aggrieved party.

(b) In a license other than in a mass-market transaction, if the agreement required a single delivery of a copy and the party receiving tender of delivery was required to accept a nonconforming copy because the nonconformity was not a material breach of contract, the party in breach shall promptly and in good faith make an effort to cure if:

(1) the party in breach receives seasonable notice of the specific nonconformity and a demand for cure of it; and

(2) the cost of the effort to cure does not disproportionately exceed the direct damages caused by the nonconformity to the aggrieved party.

(c) A party may not cancel a contract or refuse a performance because of a breach of contract that has been seasonably cured under subsection (a). However, notice of intent to cure does not preclude refusal or cancellation for the uncured breach.

2000, cc. 101, 996.

§ 59.1-507.4. Copy; refusal of defective tender

(a) Subject to subsection (b) and § 59.1-507.5, tender of a copy that is a material breach of contract permits the party to which tender is made to:

(1) refuse the tender;

(2) accept the tender; or

(3) accept any commercially reasonable units and refuse the rest.

(b) In a mass-market transaction that calls for only a single tender of a copy, a licensee may refuse the tender if the tender does not conform to the contract.

(c) Refusal of a tender is ineffective unless:

(1) it is made before acceptance;

(2) it is made within a reasonable time after tender or completion of any permitted effort to cure; and

(3) the refusing party seasonably notifies the tendering party of the refusal.

(d) Except in a case governed by subsection (b), a party that rightfully refuses tender of a copy may cancel the contract only if the tender was a material breach of the whole contract or the agreement so provides.

2000, cc. 101, 996.

§ 59.1-507.5. Copy; contract with previous vested grant of rights

If an agreement grants a right in or permission to use informational rights which precedes or is otherwise independent of the delivery of a copy, the following rules apply:

(1) A party may refuse a tender of a copy which is a material breach as to that copy, but refusal of that tender does not cancel the contract.

(2) In a case governed by paragraph (1), the tendering party may cure the breach by seasonably providing a conforming copy before the breach becomes material as to the whole contract.

(3) A breach that is material with respect to a copy allows cancellation of the contract only if the breach cannot be seasonably cured and is a material breach of the whole contract.

2000, cc. 101, 996.

§ 59.1-507.6. Copy; duties upon rightful refusal

(a) Except as otherwise provided in this section, after rightful refusal or revocation of acceptance of a copy, the following rules apply:

(1) If the refusing party rightfully cancels the contract, § 59.1-508.2 applies and all contractual use terms continue.

(2) If the contract is not canceled, the parties remain bound by all contractual obligations.

(b) On rightful refusal or revocation of acceptance of a copy, the following rules apply to the extent consistent with § 59.1-508.2:

(1) Any use, sale, display, performance, or transfer of the copy or information it contains, or any failure to comply with a contractual use term, is a breach of contract. The licensee shall pay the licensor the reasonable value of any use. However, use for a limited time within contractual use terms is not a breach, and is not an acceptance under § 59.1-506.9 (a) (5), if it:

(A) occurs after the tendering party is seasonably notified of refusal;

(B) is not for distribution and is solely part of measures reasonable under the circumstances to avoid or reduce loss; and

(C) is not contrary to instructions concerning disposition of the copy received from the party in breach.

(2) A party that refuses a copy shall:

(A) deliver the copy and all copies made of it, all access materials, and documentation pertaining to the refused information to the tendering party or hold them with reasonable care for a reasonable time for disposal at that party's instructions; and

(B) follow reasonable instructions of the tendering party for returning or delivering copies, access material, and documentation, but instructions are not reasonable if the tendering party does not arrange for payment of or reimbursement for reasonable expenses of complying with the instructions.

(3) If the tendering party does not give instructions within a reasonable time after being notified of refusal, the refusing party, in a reasonable manner to reduce or avoid loss, may store the copies, access material, and documentation for the tendering party's account or ship them to the tendering party and is entitled to reimbursement for reasonable costs of storage and shipment.

(4) Both parties remain bound by all contractual use terms that would have been enforceable had the performance not been refused.

(5) In complying with this section, the refusing party shall act in good faith. Conduct in good faith under this section is not acceptance or conversion and may not be a ground for an action for damages under the contract.

2000, cc. 101, 996.

§ 59.1-507.7. Copy; revocation of acceptance

(a) A party that accepts a nonconforming tender of a copy may revoke acceptance only if the nonconformity is a material breach of contract and the party accepted it:

(1) on the reasonable assumption that the nonconformity would be cured, and the nonconformity was not seasonably cured;

(2) during a continuing effort by the party in breach at adjustment and cure, and the breach was not seasonably cured; or

(3) without discovery of the nonconformity, if acceptance was reasonably induced either by the other party's assurances or by the difficulty of discovery before acceptance.

(b) Revocation of acceptance is not effective until the revoking party notifies the other party of the revocation.

(c) Revocation of acceptance of a copy is precluded if:

(1) it does not occur within a reasonable time after the party attempting to revoke discovers or should have discovered the grounds for it;

(2) it occurs after a substantial change in condition not caused by defects in the information, such as after the party commingles the information in a manner that makes its return impossible; or

(3) the party attempting to revoke received a substantial benefit or value from the information, and the benefit or value cannot be returned.

(d) A party that rightfully revokes has the same duties and is under the same restrictions as if the party had refused tender of the copy.

2000, cc. 101, 996.

§ 59.1-507.8. Adequate assurance of performance

(a) A contract imposes an obligation on each party not to impair the other's expectation of receiving due performance. If reasonable grounds for insecurity arise with respect to the performance of either party, the aggrieved party may:

(1) demand in a record adequate assurance of due performance; and

(2) until that assurance is received, if commercially reasonable, suspend any performance, other than with respect to contractual use terms, for which the agreed return performance has not been received.

(b) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered is determined according to commercial standards.

(c) Acceptance of any improper delivery or payment does not impair an aggrieved party's right to demand adequate assurance of future performance.

(d) After receipt of a justified demand under subsection (a), failure, within a reasonable time not exceeding thirty days, to provide assurance of due performance which is adequate under the circumstances of the particular case is a repudiation of the contract under § 59.1-507.9.

2000, cc. 101, 996.

§ 59.1-507.9. Anticipatory repudiation

(a) If a party to a contract repudiates a performance not yet due and the loss of performance will substantially impair the value of the contract to the other party, the aggrieved party may:

(1) await performance by the repudiating party for a commercially reasonable time or resort to any remedy for breach of contract, even if it has urged the repudiating party to retract the repudiation or has notified the repudiating party that it would await its performance; and

(2) in either case, suspend its own performance or proceed in accordance with § 59.1-508.12 or § 59.1-508.13, as applicable.

(b) Repudiation includes language that one party will not or cannot make a performance still due under the contract or voluntary, affirmative conduct that reasonably appears to the other party to make a future performance impossible.

2000, cc. 101, 996.

§ 59.1-507.10. Retraction of anticipatory repudiation

(a) A repudiating party may retract its repudiation until its next performance is due unless the aggrieved party, after the repudiation, has canceled the contract, materially changed its position, or otherwise indicated that it considers the repudiation final.

(b) A retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform the contract. However, a retraction must contain any assurance justifiably demanded under § 59.1-507.8.

(c) Retraction restores a repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay caused by the repudiation.

2000, cc. 101, 996.

§§ 59.1-507.11 through 59.1-508. Reserved

Reserved.

Part 8 - REMEDIES

§ 59.1-508.1. Remedies in general

(a) The remedies provided in this chapter are cumulative, but a party may not recover more than once for the same loss.

(b) Except as otherwise provided in §§ 59.1-508.3 and 59.1-508.4, if a party is in breach of contract, whether or not the breach is material, the aggrieved party has the remedies provided in the agreement or this chapter, but the aggrieved party shall continue to comply with any contractual use terms with respect to information or copies received from the other party, but the contractual use terms do not apply to information or copies properly received or obtained from another source.

(c) Rescission or a claim for rescission of the contract, or refusal of the information, does not preclude and is not inconsistent with a claim for damages or other remedy.

2000, cc. 101, 996.

§ 59.1-508.2. Cancellation

(a) An aggrieved party may cancel a contract if there is a material breach that has not been cured or waived or the agreement allows cancellation for the breach.

(b) Cancellation is not effective until the canceling party gives notice of cancellation to the party in breach, unless a delay required to notify the party would cause or threaten material harm or loss to the aggrieved party. The notification may be in any form reasonable under the circumstances. However, in an access contract, a party may cancel rights of access without notice.

(c) On cancellation, the following rules apply:

(1) If a party is in possession or control of licensed information, documentation, materials, or copies of licensed information, the following rules apply:

(A) A party that has rightfully refused a copy shall comply with § 59.1-507.6 (b) as to the refused copy.

(B) A party in breach of contract which would be subject to an obligation to deliver under § 59.1-506.18, shall deliver all information, documentation, materials, and copies to the other party or hold them with reasonable care for a reasonable time for disposal at that party's instructions. The party in breach of contract shall follow any reasonable instructions received from the other party.

(C) Except as otherwise provided in subparagraphs (A) and (B), the party shall comply with § 59.1-506.18.

(2) All obligations that are executory on both sides at the time of cancellation are discharged, but the following survive:

(A) any right based on previous breach or performance; and

(B) the rights, duties, and remedies described in § 59.1-506.16 (b).

(3) Cancellation of a license by the licensor ends any contractual right of the licensee to use the information, informational rights, copies, or other materials.

(4) Cancellation of a license by the licensee ends any contractual right to use the information, informational rights, copies, or other materials, but the licensee may use the information for a limited time after the license has been canceled if the use:

(A) is within contractual use terms;

(B) is not for distribution and is solely part of measures reasonable under the circumstances to avoid or reduce loss; and

(C) is not contrary to instructions received from the party in breach concerning disposition of them.

(5) The licensee shall pay the licensor the reasonable value of any use after cancellation permitted under paragraph (4).

(6) The obligations under this subsection apply to all information, informational rights, documentation, materials, and copies received by the party and any copies made therefrom.

(d) A term providing that a contract may not be canceled precludes cancellation but does not limit other remedies.

(e) Unless a contrary intention clearly appears, an expression such as "cancellation," "rescission," or the like may not be construed as a renunciation or discharge of a claim in damages for an antecedent breach.

2000, cc. 101, 996.

§ 59.1-508.3. Contractual modification of remedy

(a) Except as otherwise provided in this section and in § 59.1-508.4:

(1) an agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter or a party's other remedies under this chapter, such as by precluding a party's right to cancel for breach of contract, limiting remedies to returning or delivering copies and repayment of the contract fee, or limiting remedies to repair or replacement of the nonconforming copies; and

(2) resort to a contractual remedy is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(b) Subject to subsection (c), if performance of an exclusive or limited remedy causes the remedy to fail of its essential purpose, the aggrieved party may pursue other remedies under this chapter.

(c) Failure or unconscionability of an agreed exclusive or limited remedy makes a term disclaiming or limiting consequential or incidental damages unenforceable unless the agreement expressly makes the disclaimer or limitation independent of the agreed remedy.

(d) Consequential damages and incidental damages may be excluded or limited by agreement unless the exclusion or limitation is unconscionable. Exclusion or limitation of consequential damages for personal injury in a consumer contract for a computer program that is subject to this chapter and is contained in consumer goods is prima facie unconscionable, but exclusion or limitation of damages for a commercial loss is not unconscionable.

2000, cc. 101, 996.

§ 59.1-508.4. Liquidation of damages

(a) Damages for breach of contract by either party may be liquidated by agreement in an amount that is reasonable in light of:

(1) the loss anticipated at the time of contracting;

(2) the actual loss; or

(3) the actual or anticipated difficulties of proving loss in the event of breach.

(b) If a term liquidating damages is unenforceable under this subsection, the aggrieved party may pursue the remedies provided in this chapter, except as limited by other terms of the contract.

(c) If a party justifiably withholds delivery of copies because of the other party's breach of contract, the party in breach is entitled to restitution for any amount by which the sum of the payments it made for the copies exceeds the amount of the liquidated damages payable to the aggrieved party in accordance with subsection (a). The right to restitution is subject to offset to the extent that the aggrieved party establishes:

(1) a right to recover damages other than under subsection (a); and

(2) the amount or value of any benefits received by the party in breach, directly or indirectly, by reason of the contract.

(d) A term that does not liquidate damages, but that limits damages available to the aggrieved party, must be evaluated under § 59.1-508.3.

2000, cc. 101, 996.

§ 59.1-508.5. Limitation of actions

(a) Except as otherwise provided in subsection (b), an action for breach of contract must be commenced within the later of four years after the right of action accrues or one year after the breach was or should have been discovered, but not later than five years after the right of action accrues.

(b) If the original agreement of the parties alters the period of limitations, the following rules apply:

(1) The parties may reduce the period of limitation to not less than one year after the right of action accrues but may not extend it.

(2) In a consumer contract, the period of limitation may not be reduced.

(c) Except as otherwise provided in subsection (d), a right of action accrues when the act or omission constituting a breach of contract occurs, even if the aggrieved party did not know of the breach. A right of action for breach of warranty accrues when tender of delivery of a copy pursuant to § 59.1-506.6, or access to the information, occurs. However, if the warranty expressly extends to future performance of the information or a copy, the right of action accrues when the performance fails to conform to the warranty, but not later than the date the warranty expires.

(d) In the following cases, a right of action accrues on the later of the date the act or omission constituting the breach of contract occurred or the date on which it was or should have been discovered by the aggrieved party, but not earlier than the date for delivery of a copy if the claim relates to information in the copy:

(1) a breach of warranty against third-party claims for:

(A) infringement or misappropriation; or

(B) libel, slander, or the like;

(2) a breach of contract involving a party's disclosure or misuse of confidential information; or

(3) a failure to provide an indemnity or to perform another obligation to protect or defend against a third-party claim.

(e) If an action commenced within the period of limitation is so concluded as to leave available a remedy by another action for the same breach of contract, the other action may be commenced after expiration of the period of limitation if the action is commenced within six months after conclusion of the first action, unless the action was concluded as a result of voluntary discontinuance or dismissal for failure or neglect to prosecute.

(f) This section does not alter the law on tolling of the statute of limitations and does not apply to a right of action that accrued before the effective date of this chapter.

2000, cc. 101, 996.

§ 59.1-508.6. Remedies for fraud

Remedies for material misrepresentation or fraud include all remedies available under this chapter for nonfraudulent breach of contract.

2000, cc. 101, 996.

§ 59.1-508.7. Measurement of damages in general

(a) Except as otherwise provided in the contract, an aggrieved party may not recover compensation for that part of a loss which could have been avoided by taking measures reasonable under the circumstances to avoid or reduce loss. The burden of establishing a failure of the aggrieved party to take measures reasonable under the circumstances is on the party in breach of contract.

(b) A party may not recover:

(1) consequential damages for losses resulting from the content of published informational content unless the agreement expressly so provides; or

(2) damages that are speculative.

(c) The remedy for breach of contract for disclosure or misuse of information that is a trade secret or in which the aggrieved party has a right of confidentiality includes as consequential damages compensation for the benefit obtained as a result of the breach.

(d) For purposes of this chapter, market value is determined as of the date of breach of contract and the place for performance.

(e) Damages or expenses that relate to events after the date of entry of judgment must be reduced to their present value as of that date. In this subsection, "present value" means the amount, as of a date certain, of one or more sums payable in the future or the value of one or more performances due in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties in their agreement unless that rate was manifestly

unreasonable when the agreement was entered into. Otherwise, the discount is determined by a commercially reasonable rate that takes into account the circumstances of each case when the agreement was entered into.

2000, cc. 101, 996.

§ 59.1-508.8. Licensor's damages

(a) In this section, "substitute transaction" means a transaction by the licensor which would not have been possible except for the licensee's breach and which transaction is for the same information or informational rights with the same contractual use terms as the transaction to which the licensee's breach applies.

(b) Except as otherwise provided in § 59.1-508.7, a breach of contract by a licensee entitles the licensor to recover the following compensation for losses resulting in the ordinary course from the breach, less expenses avoided as a result of the breach, to the extent not otherwise accounted for under this subsection:

(1) damages measured in any combination of the following ways but not to exceed the contract fee and the market value of other consideration required under the contract for the performance that was the subject of the breach:

(A) the amount of accrued and unpaid contract fees and the market value of other consideration earned but not received for:

(i) any performance accepted by the licensee; and

(ii) any performance to which § 59.1-506.4 applies;

(B) for performances not governed by subparagraph (A), if the licensee repudiated or wrongfully refused the performance or the licensor rightfully canceled and the breach makes possible a substitute transaction, the amount of loss as determined by contract fees and the market value of other consideration required under the contract for the performance less:

(i) the contract fees and market value of other consideration received from an actual and commercially reasonable substitute transaction entered into by the licensor in good faith and without unreasonable delay; or

(ii) the market value of a commercially reasonable hypothetical substitute transaction;

(C) for performances not governed by subparagraph (A), if the breach does not make possible a substitute transaction, lost profit, including reasonable overhead, that the licensor would have realized on acceptance and full payment for performance that was not delivered to the licensee because of the licensee's breach; or

(D) damages calculated in any reasonable manner; and

(2) consequential and incidental damages.

2000, cc. 101, 996.

§ 59.1-508.9. Licensee's damages

(a) Subject to subsection (b) and except as otherwise provided in § 59.1-508.7, a breach of contract by a licensor entitles the licensee to recover the following compensation for losses resulting in the ordinary course from the breach or, if appropriate, as to the whole contract, less expenses avoided as a result of the breach to the extent not otherwise accounted for under this section:

(1) damages measured in any combination of the following ways, but not to exceed the market value of the performance that was the subject of the breach plus restitution of any amounts paid for performance not received and not accounted for within the indicated recovery:

(A) with respect to performance that has been accepted and the acceptance not rightfully revoked, the value of the performance required less the value of the performance accepted as of the time and place of acceptance;

(B) with respect to performance that has not been rendered or that was rightfully refused or acceptance of which was rightfully revoked:

(i) the amount of any payments made and the value of other consideration given to the licensor with respect to that performance and not previously returned to the licensee;

(ii) the market value of the performance less the contract fee for that performance; or

(iii) the cost of a commercially reasonable substitute transaction less the contract fee under the breached contract, if the substitute transaction was entered into by the licensee in good faith and without unreasonable delay for substantially similar information with the same contractual use terms; or

(C) damages calculated in any reasonable manner; and

(2) incidental and consequential damages.

(b) The amount of damages must be reduced by any unpaid contract fees for performance by the licensor which has been accepted by the licensee and as to which the acceptance has not been rightfully revoked.

2000, cc. 101, 996.

§ 59.1-508.10. Recoupment

(a) Except as otherwise provided in subsection (b), an aggrieved party, upon notifying the party in breach of contract of its intention to do so, may deduct all or any part of the damages resulting from the breach from any payments still due under the same contract.

(b) If a breach of contract is not material with reference to the particular performance, an aggrieved party may exercise its rights under subsection (a) only if the agreement does not require further affirmative performance by the other party and the amount of damages deducted can be readily liquidated under the agreement.

2000, cc. 101, 996.

§ 59.1-508.11. Specific performance

(a) Specific performance may be ordered:

(1) if the agreement provides for that remedy, other than an obligation for the payment of money;

(2) if the contract was not for personal services and the agreed performance is unique; or

(3) in other proper circumstances.

(b) An order for specific performance may contain any conditions considered just and must provide adequate safeguards consistent with the contract to protect the confidentiality of information, information, and informational rights of both parties.

2000, cc. 101, 996.

§ 59.1-508.12. Completing performance

(a) On breach of contract by a licensee, the licensor may:

(1) identify to the contract any conforming copy not already identified if, at the time the licensor learned of the breach, the copy was in its possession;

(2) in the exercise of reasonable commercial judgment for purposes of avoiding loss and effective realization on effort or investment, complete the information and identify it to the contract, cease work on it, relicense or dispose of it, or proceed in any other commercially reasonable manner; and

(3) pursue any remedy for breach that has not been waived.

(b) On breach by a licensee, both parties remain bound by all contractual use terms, but the contractual use terms do not apply to information or copies properly received or obtained from another source.

2000, cc. 101, 996.

§ 59.1-508.13. Continuing use

On breach of contract by a licensor, the following rules apply:

(1) A licensee that has not canceled the contract may continue to use the information and informational rights under the contract. If the licensee continues to use the information or informational rights, the licensee is bound by all terms of the contract, including contractual use terms, obligations not to compete, and obligations to pay contract fees.

(2) The licensee may pursue any remedy for breach which has not been waived.

(3) The licensor's rights remain in effect but are subject to the licensee's remedy for breach, including any right of recoupment or setoff.

2000, cc. 101, 996.

§ 59.1-508.14. Discontinuing access

On material breach of an access contract or if the agreement so provides, a party may discontinue all contractual rights of access of the party in breach and direct any person that is assisting the performance of the contract to discontinue its performance.

2000, cc. 101, 996.

§ 59.1-508.15. Right to possession and to prevent use

(a) On cancellation of a license, the licensor has the right:

(1) to possession of all copies of the licensed information in the possession or control of the licensee and any other materials pertaining to that information which by contract are to be returned or delivered by the licensee to the licensor; and

(2) to prevent the continued exercise of contractual and informational rights in the licensed information under the license.

(b) Except as otherwise provided in § 59.1-508.14, a licensor may exercise his rights under subsection (a) without judicial process only if this can be done:

(1) without a breach of the peace;

(2) without a foreseeable risk of personal injury or significant physical damage to information or property other than the licensed information; and

(3) in accordance with § 59.1-508.16.

(c) In a judicial proceeding, the court may enjoin a licensee in breach of contract from continued use of the information and informational rights and may order the licensor or a judicial officer to take the steps described in § 59.1-506.18.

(d) A party has a right to an expedited judicial hearing on a request for prejudgment relief to enforce or protect its rights under this section.

(e) The right to possession under this section is not available to the extent that the information, before breach of the license and in the ordinary course of performance under the license, was so altered or commingled that the information is no longer identifiable or separable.

(f) A licensee that provides information to a licensor subject to contractual use terms has the rights and is subject to the limitations of a licensor under this section with respect to the information he provides.

2000, cc. 101, 996.

§ 59.1-508.16. Limitations on electronic self-help

(a) In this section,

(1) "electronic self-help" means the use of electronic means to exercise a licensor's rights under § 59.1-508.15 (b); and

(2) "wrongful use of electronic self-help" means use of electronic self-help other than in compliance with this section.

(b) On cancellation of a license, electronic self-help is not permitted, except as provided in this section. Notwithstanding any provision to the contrary, electronic self-help is prohibited in mass-market transactions.

(c) If the parties agree to permit electronic self-help, a licensee shall separately manifest assent to a term authorizing use of electronic self-help. In accordance with subsection (c) of § 59.1-501.12, a general assent to a license containing a term authorizing use of electronic self-help is not sufficient to manifest assent to the use of electronic self-help. The term must:

(1) provide for notice of exercise as provided in subsection (d);

(2) state the name of the person designated by the licensee to which notice of exercise must be given and the manner in which notice must be given and place to which notice must be sent to that person; and

(3) provide a simple procedure for the licensee to change the designated person or place.

(d) Before resorting to electronic self-help authorized by a term of the license, the licensor shall give notice in a record to the person designated by the licensee stating:

(1) that the licensor intends to resort to electronic self-help as a remedy on or after forty-five days following receipt by the licensee of the notice;

(2) the nature of the claimed breach that entitles the licensor to resort to self-help; and

(3) the name, title, and address, including direct telephone number, facsimile number, or e-mail address, to which the licensee may communicate concerning the claimed breach.

(e) A licensee may recover direct and incidental damages caused by wrongful use of electronic self-help. The licensee may also recover consequential damages for wrongful use of electronic self-help, whether or not those damages are excluded by the terms of the license, if:

(1) within the period specified in subsection (d) (1), the licensee gives notice to the licensor's designated person describing in good faith the general nature and magnitude of damages;

(2) the licensor has reason to know the damages of the type described in subsection (f) may result from the wrongful use of electronic self-help; or

(3) the licensor does not provide the notice required in subsection (d).

(f) Even if the licensor complies with subsections (c) and (d), electronic self-help may not be used if the licensor has reason to know that its use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons not involved in the dispute.

(g) A court of competent jurisdiction of the Commonwealth shall give prompt consideration to a petition for injunctive relief and may enjoin, temporarily or permanently, the licensor from exercising electronic self-help even if authorized by a license term or enjoin the licensee from misappropriation or misuse of computer information, as may be appropriate, upon consideration of the following:

(1) harm of the kinds stated in subsection (f), or the threat thereof, whether or not the licensor has reason to know of those circumstances;

(2) irreparable harm or threat of irreparable harm to the licensee or licensor;

(3) that the party seeking the relief is more likely than not to succeed under his claim when it is finally adjudicated;

(4) that all of the conditions to entitle a person to the relief under the laws of the Commonwealth have been fulfilled; and

(5) that the party that may be adversely affected is adequately protected against loss, including a loss because of misappropriation or misuse of computer information, that he may suffer because the relief is granted under this chapter.

(h) Before breach of contract, rights or obligations under this section may not be waived or varied by an agreement, but the parties may prohibit use of electronic self-help, and the parties, in the term referred to in subsection (c), may specify additional provisions more favorable to the licensee.

(i) This section does not apply if the licensor obtains physical possession of a copy without a breach of the peace and without the use of electronic self-help; in which case, a lawfully obtained copy may be erased or disabled by electronic means.

2000, cc. 101, 996; 2001, c. 763.

§§ 59.1-508.17 through 59.1-509. Reserved
Reserved.

Part 9 - MISCELLANEOUS PROVISIONS

§ 59.1-509.1. Repealed
Repealed by Acts 2015, c. 709, cl. 2.

§ 59.1-509.2. Previous rights and transactions
Contracts that are enforceable and rights of action that accrue before the effective date of this chapter are governed by the law then in effect unless the parties agree to be governed by this chapter.

2000, cc. 101, 996.

Chapter 44 - VIRGINIA TELEPHONE PRIVACY PROTECTION ACT

§ 59.1-510. Definitions

As used in this chapter:

"Established business relationship" means a relationship between the called person and the person on whose behalf the telephone solicitation call is being made based on: (i) the called person's purchase from, or transaction with, the person on whose behalf the telephone solicitation call is being made within the 18 months immediately preceding the date of the call or (ii) the called person's inquiry or application regarding any property, good, or service offered by the person on whose behalf the telephone solicitation call is being made within the three months immediately preceding the date of the call.

"Personal relationship" means the relationship between a telephone solicitor making a telephone solicitation call and any family member, friend, or acquaintance of that telephone solicitor.

"Telephone solicitation call" means any telephone call made to any natural person's residence in the Commonwealth, or to any wireless telephone with a Virginia area code, for the purpose of offering or advertising any property, goods or services for sale, lease, license or investment, including offering or advertising an extension of credit.

"Telephone solicitor" means any person who makes, or causes another person to make, a telephone solicitation call.

2001, cc. 528, 553; 2004, cc. 202, 224.

§ 59.1-511. Calling time restrictions

No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location, unless the telephone solicitor has obtained the prior consent of the called person.

2001, cc. 528, 553; 2004, cc. 202, 224.

§ 59.1-512. Identification of telephone solicitor required

A telephone solicitor who makes a telephone solicitation call shall identify himself by his first and last names and the name of the person on whose behalf the telephone solicitation call is being made promptly upon making contact with the called person.

2001, cc. 528, 553.

§ 59.1-513. Transmission of caller identification information required

A. A telephone solicitor who makes a telephone solicitation call shall transmit the telephone number, and, when available by the telephone solicitor's carrier, the name of the telephone solicitor. It shall not be a violation of this section to substitute (for the name and telephone number used in, or billed for, making the call) the name of the person on whose behalf the telephone solicitation call is being made and that person's customer service telephone number. The number so provided

must permit, during regular business hours, any individual to make a request not to receive telephone solicitation calls.

B. No telephone solicitor shall take any intentional action to prevent the transmission of the telephone solicitor's name or telephone number to any person receiving a telephone solicitation call.

2001, cc. 528, 553; 2004, cc. 202, 224.

§ 59.1-513.1. Abandoned telephone solicitation calls

Whenever a live sales representative is not available to speak with the person answering a telephone solicitation call within two seconds of the person's completed greeting, the telephone solicitor shall play a prerecorded identification message that states the name and telephone number of the person on whose behalf the telephone solicitation call was being made. The number so provided shall permit, during regular business hours, any individual to make a request not to receive telephone solicitation calls.

2004, cc. 202, 224.

§ 59.1-514. Unwanted telephone solicitation calls prohibited

A. No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a telephone number when a person at such telephone number previously has stated that he does not wish to receive a telephone solicitation call made by or on behalf of the person on whose behalf the telephone solicitation call is being made. Such statement may be made to a telephone solicitor or to the person on whose behalf the telephone solicitation call is being made if that person is different from the telephone solicitor. Any such request not to receive telephone solicitation calls shall be honored for at least 10 years from the time the request is made.

B. No telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a telephone number on the National Do Not Call Registry maintained by the federal government pursuant to the Telemarketing Sales Rule, 16 C.F.R. Part 310, and 47 C.F.R. § 64.1200 .

C. It shall be an affirmative defense in any action brought under § 59.1-515 or 59.1-517 for a violation of this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitation calls in violation of this section, including using in accordance with applicable federal regulations a version of the National Do Not Call Registry obtained from the administrator of the registry no more than 31 days prior to the date any telephone solicitation call is made.

D. For purposes of this section, "telephone solicitation call" shall not include a telephone call made to any person: (i) with that person's prior express invitation or permission as evidenced by a signed, written agreement stating that the person agrees to be contacted by or on behalf of a specific party and including the telephone number to which the call may be placed, (ii) with whom the person on whose behalf the telephone call is made has an established business relationship, or (iii) with whom the telephone solicitor making the telephone call has a personal relationship. The exemption for an established business relationship or a personal relationship shall not apply when

the person called previously has stated that he does not wish to receive telephone solicitation calls as provided in subsection A.

2001, cc. 528, 553; 2004, cc. 202, 224; 2005, c. 296.

§ 59.1-515. Individual action for damages

A. Any natural person who is aggrieved by a violation of this chapter shall be entitled to initiate an action to enjoin such violation and to recover damages in the amount of $500 for each such violation.

B. If the court finds a willful violation, the court may, in its discretion, increase the amount of the award to an amount not exceeding $1,500.

C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person may be awarded reasonable attorneys' fees and court costs.

D. An action for damages, attorneys' fees, and costs brought under this section may be filed in an appropriate general district court or small claims court so long as the amount claimed does not exceed the jurisdictional limits set forth in § 16.1-77 or § 16.1-122.2, as applicable. Any action brought under this section that includes a request for an injunction shall be filed in an appropriate circuit court.

2001, cc. 528, 553.

§ 59.1-516. Investigative authority

A. The Commissioner of the Department of Agriculture and Consumer Services, or his duly authorized representative, shall have the power to inquire into possible violations of this chapter, and to request, but not to require, an appropriate legal official to bring an action under § 59.1-517 with respect to such violation.

B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in, is engaging in or is about to engage in any violation of this chapter, the Attorney General is empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply mutatis mutandis to civil investigative demands issued pursuant to this section.

2001, cc. 528, 553.

§ 59.1-517. Enforcement; penalties

A. The Attorney General, an attorney for the Commonwealth or the attorney for any county, city or town may cause an action to be brought in the name of the Commonwealth or of the county, city or town to enjoin any violation of this chapter by any person and to recover damages for aggrieved persons in the amount of $500 for each such violation.

B. If the court finds a willful violation, the court may, in its discretion, also award a civil penalty of not more than $1,000 for each such violation.

C. In any action brought under this section, the Attorney General, the attorney for the Commonwealth or the attorney for the county, city or town may recover reasonable expenses incurred by the state or local agency in investigating and preparing the case, and attorneys' fees.

D. Any civil penalties awarded under this section in an action brought in the name of the Commonwealth shall be paid into the Literary Fund. Any civil penalties awarded under this section in an action brought in the name of a county, city or town shall be paid into the general fund of the county, city or town.

2001, cc. 528, 553.

§ 59.1-518. Effect on other remedies, causes of action or penalties

Nothing in this chapter shall be construed to limit any remedies, causes of action or penalties available to any person or governmental agency under any other federal or state law.

2001, cc. 528, 553.

Chapter 44.1 - AUTOMATIC DIALING-ANNOUNCING DEVICES

§ 59.1-518.1. Definitions

As used in this chapter:

"Automatic dialing-announcing device" means a device that (i) selects and dials telephone numbers and (ii) working alone or in conjunction with other equipment, disseminates a prerecorded or synthesized voice message to the telephone number called.

"Caller" means a person that attempts to contact, or contacts, a subscriber in the Commonwealth by using a telephone or telephone line.

"Commercial telephone solicitation" means any unsolicited call to a subscriber when (i) the person initiating the call has not had a prior business or personal relationship with the subscriber and (ii) the purpose of the call is to solicit the purchase or the consideration of the purchase of goods or services by the subscriber. The term does not include calls initiated by the Commonwealth or a political subdivision for exclusively public purposes.

"Subscriber" means (i) a person who has subscribed to telephone service from a telephone company or (ii) other persons living or residing with the person.

2009, c. 699.

§ 59.1-518.2. When automatic dialing-announcing devices prohibited

A caller shall not use an automatic dialing-announcing device in connection with making a commercial telephone solicitation unless:

1. The subscriber has knowingly or voluntarily requested, consented to, permitted, or authorized receipt of the message, or

2. The message is immediately preceded by a live operator who, after disclosing (i) the name of the entity sending the message, (ii) the purpose of the message, (iii) the kinds of goods or services the message is promoting, and (iv), if applicable, the fact that the message intends to solicit payment or the commitment of funds, obtains the subscriber's consent before the commercial telephone solicitation is delivered.

2009, c. 699.

§ 59.1-518.3. Disconnect requirement

A caller shall not use an automatic dialing-announcing device or other device that disseminates a prerecorded or synthesized voice message to the telephone number called unless the device is designed and operated to disconnect, disengage, or terminate within five seconds after the party called terminates the telephone call by any method that is in accordance with normal operating procedures of his telephone receiver.

2009, c. 699.

§ 59.1-518.4. Violations of chapter; penalty

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

2009, c. 699.

Chapter 45 - THE AMUSEMENT DEVICE RIDER SAFETY ACT

§ 59.1-519. Definitions

As used in this chapter:

"Amusement device" means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion and (ii) a device suspended in the air by the use of steel cables, chains, belts, or ropes, and usually supported by trestles or towers with one or more spans, also known as a passenger tramway, used to transport passengers uphill.

"Operator" means the entity listed as operator on the Certificate of Inspection issued for the amusement device pursuant to § 36-98.3 and the regulations promulgated pursuant thereto.

"Owner" means the entity listed as owner on the Certificate of Inspection issued for the amusement device pursuant to § 36-98.3 and the regulations promulgated pursuant thereto.

"Parent or guardian" means any parent, guardian, legal custodian or other person having immediate control or charge of a child.

"Rider" means any person who is (i) waiting in the immediate vicinity to get on an amusement device; (ii) getting on an amusement device; (iii) using an amusement device; (iv) getting off an amusement device; or (v) leaving an amusement device and still in its immediate vicinity. "Rider"

does not include employees, agents, or servants of the owner or operator of the amusement device while engaged in the duties of their employment.

2002, c. 788.

§ 59.1-520. Rider conduct; reports

A. A rider, or his parent or guardian on a rider's behalf, shall report in writing to the owner or operator any injury sustained on an amusement device before leaving the owner's or operator's premises, or, if the parent or guardian is not present, then as soon as reasonably possible, including (i) the name, address, and phone number of the injured person; (ii) a full description of the incident, the injuries claimed, any treatment received, and the location, date, and time of the injury; (iii) the cause of the injury, if known; and (iv) the names, addresses, and phone numbers of any witnesses to the incident, if known by the rider or his parent or guardian. If the rider, or his parent or guardian on a rider's behalf, is unable to file a report because of the severity of his injuries, he shall file the report as soon as reasonably possible. The failure of a rider, or his parent or guardian on a rider's behalf, to report an injury under this subsection shall have no effect on the rider's right to commence a civil action.

B. A rider shall:

1. Obey the posted rules, warnings, and oral instructions for an amusement device issued by the owner, operator or an employee or agent of the owner or operator; and

2. Not intentionally act in any manner that may cause or contribute to injuring the rider or others, including:

a. Interfering with safe operation of the amusement device;

b. Failing to engage any safety devices that are provided;

c. Disconnecting or disabling a safety device except at the express instruction of the owner's or operator's agent or employee;

d. Altering or enhancing the intended speed, course, or direction of an amusement device;

e. Using the controls of an amusement device designed solely to be operated by the owner's or operator's agent or employee;

f. Throwing, intentionally dropping, or intentionally expelling an object from or toward an amusement device;

g. Getting on or off an amusement device except at the designated time and area, if any, at the direction of the owner's or operator's agent or employee, or in an emergency;

h. Not reasonably controlling the speed or direction of the rider or an amusement device that requires the rider to control or direct himself on a ride; and

i. Overloading an amusement device beyond its posted capacity.

2002, c. 788.

§ 59.1-521. Duty of parent or guardian
Parents or guardians of a rider shall have a duty to ensure that the rider complies with all provisions of this chapter.

2002, c. 788.

§ 59.1-522. Owner or operator duty to post
A. The owner or operator shall post signs stating "State law requires riders to obey all warnings and directions and behave in a manner that will not cause or contribute to injuring themselves or others. Riders shall report all injuries before leaving."

B. Such signs shall be posted at (i) any station designated for reporting an injury, (ii) any first aid station, and (iii) every entrance or exit to or from the premises designated for riders or any area or structure at which riders may purchase admission or obtain authority to use an amusement device.

2002, c. 788.

§ 59.1-523. Enforcement; civil penalties; limitation
A. Enforcement of the provisions of this chapter may be brought only as follows:

1. Any law-enforcement officer may issue a summons for a violation of this chapter; and

2. The attorney for the county, city or town in which the alleged violation occurred may bring an action to recover the civil penalty authorized by subsection B.

B. Except for the failure to report an injury, any person who violates the provisions of this chapter may be subject to a civil penalty in an amount not to exceed $500. Such penalty shall be paid into the local treasury.

2002, c. 788.

§ 59.1-524. Common law doctrines not affected
Nothing in this chapter shall be construed to repeal or diminish in any respect common law doctrines, which shall continue in full force and effect nor shall a violation of this chapter constitute negligence per se in any civil action.

2002, c. 788.

Chapter 46 - VIRGINIA POST-DISASTER ANTI-PRICE GOUGING ACT

§ 59.1-525. Title
This chapter may be cited as the Virginia Post-Disaster Anti-Price Gouging Act.

2004, cc. 798, 817.

§ 59.1-526. Definitions
As used in this chapter:

"Disaster" means any "disaster," "emergency," or "major disaster," as those terms are used and defined in § 44-146.16, that results in the declaration of a state of emergency by the Governor or the President of the United States.

"Goods," "services," and "supplier" have the same meanings as are set forth for those terms in § 59.1-198.

"Necessary goods and services" means any necessary good or service for which consumer demand does, or is likely to, increase as a consequence of the disaster, and includes, but is not limited to, water, ice, consumer food items or supplies, property or services for emergency cleanup, emergency supplies, communication supplies and services, medical supplies and services, home heating fuel, building materials and services, tree removal supplies and services, freight, storage services, housing, lodging, transportation, and motor fuels.

"Time of disaster" means the shorter of (i) the period of time when a state of emergency declared by the Governor or the President of the United States as the result of a disaster, emergency, or major disaster, as those terms are used and defined in § 44-146.16, is in effect or (ii) 30 days after the occurrence of the disaster, emergency, or major disaster that resulted in the declaration of the state of emergency; however, if the state of emergency is extended or renewed within 30 days after such an occurrence, then such period shall be extended to include the 30 days following the date the state of emergency was extended or renewed.

2004, cc. 798, 817; 2006, c. 362; 2008, cc. 121, 157.

§ 59.1-527. Prohibitions

During any time of disaster, it shall be unlawful for any supplier to sell, lease, or license, or to offer to sell, lease, or license, any necessary goods and services at an unconscionable price within the area for which the state of emergency is declared. Actual sales at the increased price shall not be required for the increase to be considered unconscionable. In determining whether a price increase is unconscionable, the following shall be considered:

1. Whether the price charged by the supplier grossly exceeded the price charged by the supplier for the same or similar goods or services during the 10 days immediately prior to the time of disaster, provided that, with respect to any supplier who was offering a good or service at a reduced price immediately prior to the time of disaster, the price at which the supplier usually offers the good or service shall be used as the benchmark for these purposes;

2. Whether the price charged by the supplier grossly exceeded the price at which the same or similar goods or services were readily obtainable by consumers in the trade area during the 10 days immediately prior to the time of disaster;

3. Whether the increase in the amount charged by the supplier was attributable solely to additional costs incurred by the supplier in connection with the sale of the goods or services, including additional costs imposed by the supplier's source. Proof that the supplier incurred such additional

costs during the time of disaster shall be prima facie evidence that the price increase was not unconscionable; and

4. Whether the increase in the amount charged by the supplier was attributable solely to a regular seasonal or holiday adjustment in the price charged for the good or service. Proof that the supplier regularly increased the price for a particular good or service during portions of the period covered by the time of disaster would be prima facie evidence that the price increase was not unconscionable during those periods.

2004, cc. 798, 817.

§ 59.1-528. Complaint investigations

In the event that the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town investigates a complaint for a violation of § 59.1-527 and determines that the supplier has not violated the section, and if the supplier requests, the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town shall promptly issue a signed statement indicating that a violation of § 59.1-527 has not been found. Subject to the disclosures allowed by this section, it shall be the duty of the Attorney General, the attorney for the Commonwealth, or the attorney for any city, county or town, or their designees, that investigates any complaint for violation of § 59.1-527 to maintain the confidentiality of all evidence, testimony, documents, or other results of such investigations, including the names of the complainant, and the individual, corporation or other entity that is the subject of the investigation. Nothing herein contained shall be construed to prevent the presentation and disclosure of any such investigative evidence in an action or proceeding brought under this chapter.

2004, cc. 798, 817.

§ 59.1-529. Enforcement; penalties

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title, except that § 59.1-204 notwithstanding, nothing in this chapter shall create a private cause of action in favor of any person aggrieved by a violation of this chapter.

2004, cc. 798, 817.

§ 59.1-529.1. Emergency orders; penalties

A. Upon finding that during a time of disaster a supplier is selling, leasing, or licensing, or offering to sell, lease, or license, a necessary good or service within the area for which the state of emergency is declared at such an unconscionable price that such selling, leasing, or licensing, or offering to sell, lease, or license presents an imminent and substantial danger of endangering the public welfare by creating public panic, the Governor is authorized to issue for a period not to exceed 30 days, without hearing, an emergency order directing the supplier to reduce the price of the necessary good or service to the prevailing price in the local market. The confidentiality of all evidence, testimony, documents, or other results of investigations leading to issuance of the

emergency order, including the names of the complainant and the person that is the subject of the investigation, shall be maintained.

B. The supplier to whom such emergency order is issued shall be notified by certified mail, return receipt requested, sent to the last known address of the supplier, and by personal delivery by an agent of the Governor.

C. If the supplier who has been issued such an emergency order is not complying with the terms thereof, the Governor shall notify the Attorney General, who shall immediately investigate as provided for under this chapter.

2006, c. 451.

Chapter 47 - GIFT CERTIFICATE DISCLOSURES

§ 59.1-530. Definitions

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

"Gift certificate" or "certificate" means a certificate, electronic card, or other medium issued by a merchant that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of at least an equal value, including any electronic card issued by a merchant with a banked dollar value where the issuer has received payment for the full banked dollar value for the future purchase, or delivery, of goods or services and any certificate issued by a merchant where the issuer has received payment for the full face value of the certificate for future purchases, or delivery, of goods or services.

"Merchant" means an owner or operator of any mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator.

2005, cc. 269, 303.

§ 59.1-531. Required disclosures

A. Each gift certificate issued by a merchant in the Commonwealth that has an expiration date shall include either (i) a statement of the expiration date of the certificate or (ii) a telephone number or Internet address where the holder of the certificate may obtain information regarding the expiration date of the certificate.

B. Each gift certificate issued by a merchant in the Commonwealth that diminishes in value over time shall include a telephone number or Internet address where the holder of the certificate may obtain information regarding the diminution in the value of the certificate over time.

C. The information required by this section shall be clearly and permanently imprinted on the certificate.

2005, cc. 269, 303.

§ 59.1-532. Enforcement; penalties

Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title.

2005, cc. 269, 303.

Chapter 48 - INFLUENZA VACCINE PRICE GOUGING

§ 59.1-533. Definitions

As used in this chapter:

"Influenza vaccine" means a vaccine, intended to be administered by injection, that contains inactivated influenza viruses, that is prepared for the applicable influenza season.

"Influenza vaccine shortage period" means the period of time during which a proclamation of the Governor provides that an influenza vaccine shortage exists.

2005, c. 861.

§ 59.1-534. Proclamation of influenza vaccine shortage

In the event of an existing or threatened influenza vaccine shortage due to an abnormal market disruption or other extraordinary adverse circumstance, the Governor may issue an executive order proclaiming that an influenza vaccine shortage exists. Prior to issuing such a proclamation, the Governor shall consult with the State Health Commissioner. An executive order proclaiming that an influenza vaccine shortage exists shall not be issued unless the Governor determines that:

1. The amount of influenza vaccine available for administration in the Commonwealth is not reasonably sufficient to provide influenza vaccinations to those persons residing in the Commonwealth who are in primary target groups recommended for annual influenza vaccination in accordance with the most recently available recommendations of the Advisory Committee on Immunization Practices of the federal Department of Health and Human Services' Centers for Disease Control and Prevention; and

2. Price gouging with respect to influenza vaccine is occurring or is likely to occur as the proximate result of the influenza vaccine shortage.

2005, c. 861.

§ 59.1-535. Prohibitions

During any influenza vaccine shortage period, it shall be unlawful for any person to sell or administer, or to offer to sell or administer, influenza vaccine at an unconscionable price within the Commonwealth. Actual sales at the increased price shall not be required for the increase to be considered unconscionable. In determining whether the price at which influenza vaccine is sold or administered is unconscionable, the following shall be considered:

1. Whether the price charged by the person for selling or administering the influenza vaccine grossly exceeded the price charged by the person therefor during the 10 days immediately prior to

the commencement of the influenza vaccine shortage period; however, with respect to any person who was offering influenza vaccine at a reduced price immediately prior to the commencement of the influenza vaccine shortage period, the price at which the person usually offers influenza vaccine shall be used as the benchmark for these purposes;

2. Whether the price charged by the person grossly exceeded the price at which influenza vaccine was readily obtainable by consumers in the trade area during the 10 days immediately prior to the commencement of the influenza vaccine shortage period; and

3. Whether the increase in the amount charged by the person was attributable solely to additional costs incurred by the person in connection with the sale of the influenza vaccine, including additional costs imposed by the person's source. Proof that the person incurred such additional costs during the time of the influenza vaccine shortage period shall be prima facie evidence that the price increase was not unconscionable.

2005, c. 861.

§ 59.1-536. Complaint investigations

In the event that the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town investigates a complaint for a violation of § 59.1-535 and determines that the person has not violated the section, and if the person requests, the Attorney General, any attorney for the Commonwealth, or the attorney for any county, city, or town shall promptly issue a signed statement indicating that a violation of § 59.1-535 has not been found. Subject to the disclosures allowed by this section, it shall be the duty of the Attorney General, the attorney for the Commonwealth, or the attorney for any county, city, or town, or their designees, that investigates any complaint for violation of § 59.1-535 to maintain the confidentiality of all evidence, testimony, documents, or other results of such investigations, including the names of the complainant, and the person that is the subject of the investigation. Nothing herein contained shall be construed to prevent the presentation and disclosure of any such investigative evidence in an action or proceeding brought under this chapter.

2005, c. 861.

§ 59.1-537. Enforcement; penalties

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title except that, § 59.1-204 notwithstanding, nothing in this chapter shall create a private cause of action in favor of any person aggrieved by a violation of this chapter.

2005, c. 861.

Chapter 49 - ENTERPRISE ZONE GRANT PROGRAM

§ 59.1-538. Short title

This chapter shall be known and may be cited as the "Enterprise Zone Grant Act."

2005, cc. 863, 884.

§ 59.1-539. Definitions

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

"Board" means the Board of Housing and Community Development.

"Department" means the Department of Housing and Community Development.

"Enterprise zone" means an area declared by the Governor to be eligible for the benefits of this chapter.

"Local zone administrator" means the chief executive of the county or city in which the enterprise zone is located, or his designee.

2005, cc. 863, 884.

§ 59.1-540. Administration

The Department shall administer this chapter and shall have the following powers and duties:

1. To establish the criteria for determining what areas qualify as enterprise zones. Such criteria shall include, but not be limited to, the distress criteria specified in § 59.1-545;

2. To monitor the implementation and operation of this chapter;

3. To evaluate and report on the Enterprise Zone Program;

4. To administer, enforce, and interpret the regulations promulgated by the Board; and

5. To allocate grant funds in accordance with the provisions of this chapter.

2005, cc. 863, 884.

§ 59.1-541. Rules and regulations

Rules and regulations prescribing procedures implementing the purpose of this chapter shall be promulgated by the Board in accordance with the Administrative Process Act.

2005, cc. 863, 884.

§ 59.1-542. Enterprise zone designation

A. Upon the Department's announcement of periodic zone designation competitions, the governing body of any county or city may make written application to the Department to have an area or areas declared an enterprise zone. Such application shall include a description of the area or areas to be included, the development potential of these areas, the need for special state incentives, the local incentives that shall be provided to support new economic activity, and other information that the Department deems necessary to assess requests for designation.

B. Two or more adjacent localities may file a joint application for an enterprise zone. Localities applying for a joint zone shall demonstrate a regional need for an enterprise zone and a regional impact that could not be achieved through a single jurisdiction zone. Applicants for a joint zone

shall also specify what mechanisms will be used to ensure that the economic benefits of such a zone are shared among the applicant localities.

C. An enterprise zone may consist of no more than three noncontiguous areas. The aggregate size of these noncontiguous zone areas shall be specified by regulation. Localities shall be limited to three enterprise zone designations.

D. A joint enterprise zone shall consist of no more than three noncontiguous zone areas for each participating locality. The aggregate size of these noncontiguous areas shall be specified by regulation.

E. Upon recommendation of the Director of the Department, the Governor may designate up to 30 enterprise zones in accordance with the provisions of this chapter. Such designations are to be done in coordination with the expiration of existing zones designated under earlier Enterprise Zone Program provisions. The initial round of six zone designation applications and approval may be conducted prior to adoption of final program regulations provided that the process is consistent with the provisions of this chapter. Enterprise zones shall be designated for an initial 10-year period except as provided for in subsections A and B of § 59.1-546. Upon recommendation of the Director of the Department, the Governor may renew zones for up to two five-year renewal periods. Recommendations for five-year renewals shall be based on the locality's performance of its enterprise zone responsibilities, the continued need for such a zone, and its effectiveness in creating jobs and capital investment.

F. Localities that have zone designations are responsible for providing the local incentives specified in their applications, providing timely submission of enterprise zone reports and evaluations as required by regulation, verifying that businesses and properties seeking enterprise zone incentives are physically located within their zones, and implementing an active local enterprise zone program within the context of overall economic development efforts.

2005, cc. 863, 884.

§ 59.1-543. Local incentives

A. Local governments submitting applications for enterprise zone designation shall propose local incentives that address the economic conditions within their locality and that will help stimulate real property improvements and new job creation. Such local incentives include, but are not limited to: (i) reduction of permit fees; (ii) reduction of user fees; (iii) reduction of business, professional and occupational license tax; (iv) partial exemption from taxation of substantially rehabilitated real estate pursuant to § 58.1-3221; and (v) adoption of a local enterprise zone development taxation program pursuant to Article 4.2 (§ 58.1-3245.6 et seq.) of Chapter 32 of Title 58.1. The extent and duration of such incentives shall conform to the requirements of the Constitution of Virginia and the Constitution of the United States. In making application for designation as an enterprise zone, the application may also contain proposals for regulatory flexibility, including but not limited to: (a) special zoning districts, (b) permit process reform, (c)

exemptions from local ordinances, and (d) other public incentives proposed in the locality's application which shall be binding upon the locality upon designation of the enterprise zone.

B. A locality may establish eligibility criteria for local incentives that differ from the criteria required to qualify for the incentives provided in this chapter.

2005, cc. 863, 884.

§ 59.1-544. Amendment of enterprise zones; redesignation of certain joint enterprise zones

A. Once an enterprise zone has been designated, the local government may make written application to the Department to amend the zone boundaries in accordance with the requirements of § 59.1-542. Such boundary amendments are subject to Department approval. Local governing bodies may amend their local enterprise zone incentives with the approval of the Department provided that the proposed incentive is equal to or superior to that in the original application or any previous amendment approved by the Department.

B. The Department may redesignate an existing joint enterprise zone consisting of two localities for the purpose of expanding the zone provided (i) all of the local governing bodies of the localities in which the proposed redesignated zone will be located have submitted to the Department resolutions supporting the proposed redesignation and applications for redesignation of the joint enterprise zone and (ii) the area of the locality added to the redesignated zone is contiguous to the existing joint enterprise zone and includes a revenue-sharing district that has experienced the loss of 900 permanent full-time positions within a 12-month period.

C. When a county or city was previously added to an existing enterprise zone to create a joint enterprise zone, the Department shall redesignate the enterprise zone when the term of the joint enterprise zone expires. The duration of the enterprise zone redesignated pursuant to this subsection shall be equal to the length of time the original enterprise zone existed before the county or city was added to create the joint enterprise zone.

D. As used in this section, "joint enterprise zone" means an enterprise zone located in two or more adjacent localities.

E. Any redesignation of an existing joint enterprise zone shall be in compliance with all applicable regulations promulgated by the Department.

2005, cc. 863, 884; 2011, cc. 254, 310; 2013, c. 514.

§ 59.1-545. Application review

A. After announcement of a periodic zone designation application process, the Department shall review each application upon receipt and secure any additional information that it deems necessary for the purpose of evaluating the need and potential impact of a zone designation.

B. The Department shall complete review of the applications within 60 days of the last date designated for receipt of an application. After review of the applications the Director of the Department shall recommend to the Governor those applications with the greatest potential for

accomplishing the purpose of this chapter. If an application is denied, the governing body shall be informed of that fact, along with the reasons for the denial.

C. Consideration for enterprise zone designations shall be based upon the locality-wide need and impact of such a designation. Need shall be assessed in part by the following distress factors: (i) the average unemployment rate for the locality over the most recent three-year period, (ii) the average median adjusted gross income for the locality over the most recent three-year period, and (iii) the average percentage of public school students within the locality receiving free or reduced price lunches over the most recent three-year period. These distress factors shall account for at least 50 percent of the consideration given to local governments' applications for enterprise zone designation.

2005, cc. 863, 884.

§ 59.1-546. Review and termination of enterprise zones

A. If the local governing body is unable or unwilling to provide the specified local incentives as proposed in its application for zone designation or as approved by the Department in an amendment, the zone designation shall terminate. Qualified business firms located in such enterprise zone shall be eligible to receive the incentives provided by this chapter even though the zone designation has terminated. No business firm may become a qualified business firm after the date of zone termination.

B. If no business firms have qualified for incentives as provided for in this chapter within a five-year period, the Department shall terminate that enterprise zone designation.

C. The Department shall review the effectiveness in creating jobs and capital investment and activity occurring within designated enterprise zones and shall annually report its findings to the Senate Finance Committee, the Senate Committee on Commerce and Labor, the House Appropriations Committee, and the House Committee on Commerce and Labor.

2005, cc. 863, 884.

§ 59.1-547. Enterprise zone job creation grants

A. As used in this section:

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Federal minimum wage" means the minimum wage standard as currently defined by the United States Department of Labor in the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis. For those permanent full-time employees filling permanent full-time, salaried positions, the minimum wage is defined as the employee's annual salary divided by 52 weeks per year divided by 35 hours per week.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the job creation grant amount. A full month is calculated by dividing the total number of days in the calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, personal service or food and beverage service shall not be considered grant eligible positions.

"Permanent full-time position" means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report for work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (i) seasonal, temporary or contract positions, (ii) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located within an enterprise zone, (iii) any position that previously existed in the Commonwealth, or (iv) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Qualified business firm" means a business firm designated as a qualified business firm by the Department pursuant to § 59.1-542.

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Subsequent base year" means the base year for calculating the number of grant eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as the subsequent base year, at the choice of the business firm.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

B. A business firm shall be eligible to receive enterprise zone job creation grants for any and all years in which the business firm qualifies in the five consecutive calendar years period commencing with the first year of grant eligibility. A business firm may be eligible for subsequent five

consecutive calendar year grant periods if it creates new grant eligible positions above the threshold for its subsequent base year.

C. The amount of the grant for which a business firm is eligible shall be calculated as follows:

1. Either (i) $800 per year for up to five consecutive years for each grant eligible position that during such year is paid a minimum of 200 percent of the federal minimum wage and that is provided with health benefits, or (ii) $500 per year for up to five years for each grant eligible position that during such year is paid less than 200 percent of the federal minimum wage, but at least 175 percent of the federal minimum wage, and that is provided with health benefits. In areas with an unemployment rate that is one and one-half times or more the state average, the business firm will receive $500 per year for up to five years for each grant eligible position that during such year is paid at least 150 percent of the federal minimum wage and that is provided with health benefits. Unemployment rates used to determine eligibility for the reduced wage rate threshold shall be based on the most recent annualized unemployment data published by the Virginia Employment Commission. A business firm may receive grants for up to a maximum of 350 grant eligible jobs annually.

2. Positions paying less than 175 percent of the federal minimum wage or that are not provided with health benefits shall not be eligible for enterprise zone job creation grants.

D. Job creation grants shall be based on a calendar year. The amount of the grant for which a qualified business firm is eligible with respect to any permanent full-time position that is filled for less than a full calendar year shall be prorated based on the number of full months worked.

E. The amount of the job creation grant for which a qualified business firm is eligible in any year shall not include amounts for grant eligible positions in any year other than the preceding calendar year. Job creation grants shall not be available for any calendar year prior to 2005.

F. Permanent full-time positions that have been used to qualify for any other enterprise zone incentive pursuant to former §§ 59.1-270 through 59.1-284.01 shall not be eligible for job creation grants and shall not be counted as a part of the minimum threshold of four new positions.

G. Any qualified business firm receiving a major business facility job tax credit pursuant to § 58.1-439 shall not be eligible to receive an enterprise zone job creation grant under this section for any job used to qualify for the major business facility job tax credit.

2005, cc. 863, 884; 2006, c. 668; 2010, c. 328; 2012, c. 445.

§ 59.1-548. Enterprise zone real property investment grants

A. As used in this section:

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction as well as to the rehabilitation and expansion of existing structures.

"Mixed use" means a building incorporating residential uses in which a minimum of 30 percent of the useable floor space will be devoted to commercial, office or industrial use.

"Qualified real property investment" means the amount properly chargeable to a capital account for improvements to rehabilitate, expand or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) $100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) $500,000 with respect to a single building or a facility in the case of new construction. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.

2. Other costs including: (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.

3. The basis of any property: (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 was previously granted; (iii) which was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267 (b), or a trade or business under common control as defined by Internal Revenue Code § 52 (b); or (iv) which was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014 (a) .

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of the building for which the owner holds title and not to common elements.

B. Grants shall be calculated at a rate of 20 percent of the amount of qualified real property investment in excess of $500,000 in the case of the construction of a new building or facility. Grants shall be calculated at a rate of 20 percent of the amount of qualified real property investment in excess of $100,000 in the case of the rehabilitation or expansion of an existing building or facility. For any qualified zone investor making $5 million or less in qualified real property investment, a real property investment grant shall not exceed $100,000 within any five-year period for any individual building or facility. For any qualified zone investor making more than $5 million in qualified real property investment, a real property investment grant shall not exceed $200,000 within any five-year period for any individual building or facility.

C. A qualified zone investor shall apply for a real property investment grant in the calendar year following the year in which the property was placed in service.

2005, cc. 863, 884; 2007, cc. 242, 287; 2009, cc. 207, 271.

§ 59.1-549. Policies and procedures for allocation of enterprise zone incentive grants

A. Qualified business firms and qualified zone investors shall be eligible to receive enterprise zone incentive grants provided for in this chapter to the extent that they apply for and are approved for grant allocations through the Department.

B. If the sum of (i) the total amount of grants for which qualified business firms are eligible under § 59.1-547 plus (ii) the total amount of grants for which qualified zone investors are eligible under § 59.1-548 exceeds the total annual appropriation for the payment of all grants under this chapter for the relevant year, then the amount of the grant that each qualified business firm and qualified zone investor is eligible for shall be prorated in a proportional manner. The Department shall prioritize allocations to fully fund the grants under § 59.1-547 with any remaining funds to be allocated to grants under § 59.1-548. In such cases, the amount of the grant that each qualified zone investor is eligible for under § 59.1-548 shall be prorated in a proportional manner based on the funds remaining in the annual appropriation after full payment of the grants under § 59.1-547.

C. Qualified zone businesses and qualified zone investors shall make application to the Department each year for which they seek eligibility for enterprise zone incentive grants. Such application is to be in accordance with regulations promulgated by the Board on forms supplied by the Department and in accordance with dates specified by the Department.

D. The accuracy and validity of information on qualified real property investments, permanent full-time positions, wage rates and provision of health benefits provided in such applications are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the Department. Business firms with base year employment of 100 or fewer permanent full-time positions and that create in a qualification year 25 or fewer grant eligible positions seeking to qualify for Job Creation Grants as provided for in § 59.1-547 shall be exempt from the attestation

requirement for that qualification year. The permanent full-time positions, wage rates, and provision of health benefits of such business firms shall be subject to verification by the Department.

E. Applicants for enterprise zone incentive grants under this chapter must have the local zone administrator verify that the location of their business or property is in the enterprise zone using a form supplied by the Department. The local zone administrator shall make this verification in accordance with dates specified by the Department.

F. The Department may at any time review qualified zone businesses and qualified zone investors to assure that information provided in the application process is accurate.

G. Qualified zone businesses shall maintain all documentation regarding qualification for enterprise zone job creation grants for at least one year after the final year of their five-year grant period. Qualified zone investors shall maintain all documentation regarding qualification for enterprise zone incentive grants for a minimum of three years following the receipt of any grant.

H. Enterprise zone incentive grants that do not have adequate documentation regarding qualified real property investments, permanent full-time positions, wage rates and provision of health benefits may be subject to repayment by the qualified zone business or qualified zone investor.

I. Actions of the Department relating to the approval or denial of applications for enterprise zone incentive grants under this chapter shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.

2005, cc. 863, 884; 2009, cc. 207, 271; 2010, c. 328; 2011, cc. 202, 320.

Chapter 50 - ELECTRONIC IDENTITY MANAGEMENT ACT

§ 59.1-550. Definitions

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

"Attribute provider" means an entity, or a supplier, employee, or agent thereof, that acts as the authoritative record of identifying information about an identity credential holder.

"Commonwealth identity management standards" means the minimum specifications and standards that must be included in an identity trust framework so as to define liability pursuant to this chapter that are set forth in guidance documents approved by the Secretary of Technology pursuant to Chapter 4.3 (§ 2.2-436 et seq.) of Title 2.2.

"Identity attribute" means identifying information associated with an identity credential holder.

"Identity credential" means the data, or the physical object upon which the data may reside, that an identity credential holder may present to verify or authenticate his identity in a digital or online transaction.

"Identity credential holder" means a person bound to or in possession of an identity credential who has agreed to the terms and conditions of the identity provider.

"Identity proofer" means a person or entity authorized to act as a representative of an identity provider in the confirmation of a potential identity credential holder's identification and identity attributes prior to issuing an identity credential to a person.

"Identity provider" means an entity, or a supplier, employee, or agent thereof, certified by an identity trust framework operator to provide identity credentials that may be used by an identity credential holder to assert his identity, or any related attributes, in a digital or online transaction. For purposes of this chapter, "identity provider" includes an attribute provider, an identity proofer, and any suppliers, employees, or agents thereof.

"Identity trust framework" means a digital identity system with established identity, security, privacy, technology, and enforcement rules and policies adhered to by certified identity providers that are members of the identity trust framework. Members of an identity trust framework include identity trust framework operators and identity providers. Relying parties may be, but are not required to be, a member of an identity trust framework in order to accept an identity credential issued by a certified identity provider to verify an identity credential holder's identity.

"Identity trust framework operator" means the entity that (i) defines rules and policies for member parties to an identity trust framework, (ii) certifies identity providers to be members of and issue identity credentials pursuant to the identity trust framework, and (iii) evaluates participation in the identity trust framework to ensure compliance by members of the identity trust framework with its rules and policies, including the ability to request audits of participants for verification of compliance.

"Relying party" is an individual or entity that relies on the validity of an identity credential or an associated trustmark.

"Trustmark" means a machine-readable official seal, authentication feature, certification, license, or logo that may be provided by an identity trust framework operator to certified identity providers within its identity trust framework to signify that the identity provider complies with the written rules and policies of the identity trust framework.

2015, cc. 482, 483.

§ 59.1-551. Trustmark; warranty

The use of a trustmark on an identity credential provides a warranty by the identity provider that the written rules and policies of the identity trust framework of which it is a member have been adhered to in asserting the identity and any related attributes contained on the identity credential. No other warranties are applicable unless expressly provided by the identity provider.

2015, cc. 482, 483.

§ 59.1-552. Establishment of liability; limitation of liability

A. An identity trust framework operator or identity provider shall be liable if the issuance of an identity credential or assignment of an identity attribute, or a trustmark, is not in compliance

with the Commonwealth's identity management standards in place at the time of issuance. Further, the identity trust framework operator or identity provider shall be liable for noncompliance with applicable terms of any contractual agreement with a contracting party and any written rules and policies of the identity trust framework of which it is a member.

B. An identity trust framework operator or identity provider shall not be liable if the issuance of the identity credential or assignment of an identity attribute or a trustmark was in compliance with (i) the Commonwealth's identity management standards in place at the time of issuance or assignment, (ii) applicable terms of any contractual agreement with a contracting party, and (iii) any written rules and policies of the identity trust framework of which it is a member, provided such identity trust framework operator or identity provider did not commit an act or omission that constitutes gross negligence or willful misconduct. An identity trust framework operator or identity provider shall not be liable for misuse of an identity credential by the identity credential holder or by any other person who misuses an identity credential.

2015, cc. 482, 483.

§ 59.1-553. Commercially reasonable security procedures for electronic fund transfers

Use of an identity credential or identity attribute shall satisfy any requirement for a commercially reasonable security or attribution procedure in Title 8.4A, the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), and the Uniform Computer Information Transactions Act (§ 59.1-501.1 et seq.), provided that the identity credential or identity attribute was issued or assigned in accordance with (i) the Commonwealth's identity management standards in place at the time of issuance or assignment, (ii) the terms of any contractual agreement, and (iii) any written rules and policies of the identity trust framework of which the issuer is a member.

2015, cc. 482, 483.

§ 59.1-554. Applicability of chapter

The provisions of this chapter shall not be construed to require any individual or entity to rely on or accept any identity credential or attribute issued in accordance with Commonwealth identity management standards or this chapter.

2015, cc. 482, 483.

§ 59.1-555. Sovereign immunity

No provisions of this chapter nor any act or omission of a state, regional, or local governmental entity related to the issuance of electronic identity credentials or attributes or the administration or participation in an identity trust framework related to the issuance of electronic identity credentials or attributes shall be deemed a waiver of sovereign immunity to which the governmental entity or its officers, employees, or agents are otherwise entitled.

2015, cc. 482, 483.