



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

DAVID B. ALBO
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SPRINGFIELD, VIRGINIA 22152

FORTY-SECOND DISTRICT

February 27, 2015

COMMITTEE ASSIGNMENTS:
COURTS OF JUSTICE (CHAIRMAN)
PRIVILEGES AND ELECTIONS
GENERAL LAWS

The Honorable John S. Edwards
Chair, Virginia Code Commission
P.O. Box 1179
Roanoke, VA 24006

Dear Senator Edwards,

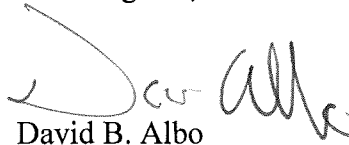
During the 2015 legislative session the Courts of Justice Committee tabled identical bills HB 1600 and SB 1211, which concerned the use of gender-specific terms in the Code of Virginia:

- **HB 1600** (Simon) and **SB 1211** (Ebbin)
Gender-specific references. Revises references to certain gender-specific terms in the Code of Virginia in light of the 2014 *Bostic v. Rainey* decision, 970 F.Supp.2d 456 (E.D. Va. 2014), *cert. denied*, 83 U.S.L.W. 3189 (U.S. Oct. 6, 2014), which struck down Virginia's ban on same-sex marriage.

However, the Committee felt that the subject matter was in keeping with the responsibilities of the Code Commission. Therefore, we would appreciate the Commission reviewing these bills over the course of the year and making any suggestions for clarification or improvement.

If you have any questions regarding these bills, please let me know.

Best Regards,


David B. Albo

CC: The Honorable Marcus Simon
The Honorable Adam P. Ebbin

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2015 SESSION

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HB 1600 Gender-specific terms; revises certain references.

Introduced by: [Marcus B. Simon](#) | [all patrons](#) ... [notes](#) | [add to my profiles](#)

SUMMARY AS INTRODUCED:

Gender-specific references. Revises references to certain gender-specific terms in the Code of Virginia in light of the 2014 *Bostic v. Rainey* decision, 970 F.Supp.2d 456 (E.D. Va. 2014), *cert. denied*, 83 U.S.L.W. 3189 (U.S. Oct. 6, 2014), which struck down Virginia's ban on same-sex marriage.

FULL TEXT

01/08/15 House: Prefiled and ordered printed; offered 01/14/15 15102472D pdf

HISTORY

01/08/15 House: Prefiled and ordered printed; offered 01/14/15 15102472D

01/08/15 House: Referred to Committee for Courts of Justice

01/13/15 House: Assigned Courts sub: Civil Law

01/28/15 House: Subcommittee recommends laying on the table by voice vote

02/10/15 House: Left in Courts of Justice

2015 SESSION

INTRODUCED

15102472D

HOUSE BILL NO. 1600

Offered January 14, 2015

Prefiled January 8, 2015

A BILL to amend and reenact §§ 1-216 and 32.1-271 of the Code of Virginia, relating to gender-specific terms.

Patrons—Simon, Carr, Hope, Kory, Lindsey, Lopez, McClellan, McQuinn, Plum, Rasoul, Sickles, Sullivan, Surovell and Watts; Senators: Ebbin, Edwards, Favola, Howell, Lewis, Locke, Puller and Saslaw

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 1-216 and 32.1-271 of the Code of Virginia are amended and reenacted as follows:

§ 1-216. Gender.

A. A word used in the masculine includes the feminine and neuter.

B. Unless the context clearly indicates otherwise:

1. The terms "father" and "mother" may mean any parent of a child.

2. The terms "husband" and "wife" mean either spouse to a marriage.

3. The terms "maternal" or "paternal" when describing any familial relationship may be used interchangeably.

§ 32.1-271. Disclosure of information in records; when unlawful; when permitted; proceeding to compel disclosure; when certain records made public.

A. To protect the integrity of vital records and to ensure the efficient and proper administration of the system of vital records, it shall be unlawful, notwithstanding the provisions of §§ 2.2-3700 through 2.2-3714, for any person to permit inspection of or to disclose information contained in vital records or to copy or issue a copy of all or part of any such vital records except as authorized by this section or regulation of the Board or when so ordered by a court of the Commonwealth.

B. Data contained in vital records may be disclosed for valid and substantial research purposes in accordance with the regulations of the Board.

C. Any person aggrieved by a decision of a county or city registrar may appeal to the State Registrar. If the State Registrar denies disclosure of information or inspection of or copying of vital records, such person may petition the court of the county or city in which he resides if he resides in the Commonwealth or in which the recorded event occurred or the Circuit Court of the City of Richmond, Division I, for an order compelling disclosure, inspection or copying of such vital record. The State Registrar or his authorized representative may appear and testify in such proceeding.

D. When 100 years have elapsed after the date of birth, or 25 years have elapsed after the date of death, marriage, divorce, or annulment the records of these events in the custody of the State Registrar shall, unless precluded from release by statute or court order, or at law-enforcement request, become public information and be made available in accordance with regulations that shall provide for the continued safekeeping of the records. All records that are public information on July 1, 1983, shall continue to be public information. Original records in the custody of the State Registrar that become public information shall be turned over to the Library of Virginia for safekeeping and for public access consistent with other state archival records, subject to the State Registrar and the Library of Virginia entering into a memorandum of understanding to arrange for continued prompt access by the State Registrar to original records for purposes of amendments to those records or other working purposes. The State Registrar's office may retain copies thereof for its own administrative and disclosure purposes.

E. The State Registrar or the city or county registrar shall disclose data about or issue a certified copy of a birth certificate of a child to the grandparent of the child upon the written request of the grandparent when the grandparent has demonstrated to the State Registrar evidence of need, as prescribed by Board regulation, for the data or birth certificate.

F. The State Registrar or the city or county registrar shall issue a certified copy of a death certificate to the grandchild or great-grandchild of a decedent in accordance with procedures prescribed by the Board in regulation.

G. The State Registrar or the city or county registrar shall disclose data about or issue a certified copy of a death certificate to a nonprofit organ, eye or tissue procurement organization that is a member of the Virginia Transplant Council for the purpose of determining the suitability of organs, eyes and tissues for donation, as prescribed by the Board in regulations. Such regulations shall ensure that the information disclosed includes the cause of death and any other medical information necessary to

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HB1600

HB1600

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57 determine the suitability of the organs, eyes and tissues for donation.

58 H. The State Registrar shall seek to enter into a long-term contract with a private company
59 experienced in maintaining genealogical research databases to create, maintain, and update such an
60 online index at no direct cost to the Commonwealth, in exchange for allowing the private company to
61 also provide such index to its subscribers and customers. The online index shall be designed and
62 constructed to have the capability of allowing birth, marriage, divorce, and death entries on the index to
63 be linked to a digital image of the underlying original birth, marriage, divorce, or death record once any
64 such underlying record has become public information, and the index shall be designed to allow the
65 Library of Virginia to create and activate such links to digital images of the original records. Any social
66 security numbers appearing on original birth, marriage, divorce, or death records shall be redacted from
67 the digital images provided to the public in the manner provided by law, which may include bulk
68 redaction of social security fields from the images via automated methods.

69 Following contract implementation, the State Registrar shall maintain a publicly available online vital
70 records index or indexes, consisting at a minimum of name, date, and county or city of occurrence for
71 births (naming the child), marriages (naming the ~~bride and groom~~ *parties*), divorces (naming the parties
72 to the divorce), and deaths (naming the decedent), which vital records index information, except as
73 otherwise precluded from release by statute, court order, or law-enforcement request, shall be public
74 information from the time of its receipt by the State Registrar and shall be accessible on the State
75 Registrar's website and on or through the Library of Virginia website.



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2015 SESSION

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SB 1211 Gender-specific references; revisions to certain terms in the Code of Virginia.

Introduced by: [Adam P. Ebbin](#) | [all patrons](#) ... [notes](#) | [add to my profiles](#)

SUMMARY AS INTRODUCED:

Gender-specific references. Revises references to certain gender-specific terms in the Code of Virginia in light of the 2014 *Bostic v. Rainey* decision, 970 F.Supp.2d 456 (E.D. Va. 2014), *cert. denied*, 83 U.S.L.W. 3189 (U.S. Oct. 6, 2014), which struck down Virginia's ban on same-sex marriage. The bill also makes technical amendments.

FULL TEXT

[01/13/15 Senate: Prefiled and ordered printed; offered 01/14/15 15103437D pdf](#)

HISTORY

01/13/15 Senate: Prefiled and ordered printed; offered 01/14/15 15103437D

[01/13/15 Senate: Referred to Committee on General Laws and Technology](#)

[01/26/15 Senate: Reported from General Laws and Technology \(12-Y 2-N\)](#)

[01/28/15 Senate: Constitutional reading dispensed \(38-Y 0-N\)](#)

01/29/15 Senate: Read second time and engrossed

01/30/15 Senate: Passed by for the day

02/02/15 Senate: Passed by for the day

[02/03/15 Senate: Read third time and passed Senate \(20-Y 18-N\)](#)

02/06/15 House: Placed on Calendar

02/06/15 House: Read first time

[02/06/15 House: Referred to Committee on General Laws](#)

02/10/15 House: Referred from General Laws by voice vote

[02/10/15 House: Referred to Committee for Courts of Justice](#)

[02/10/15 House: Assigned Courts sub: Civil Law](#)

02/11/15 House: Subcommittee recommends laying on the table by voice vote

02/24/15 House: Left in Courts of Justice

ACROSS SESSIONS

Subject Index: *Since 1995*

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Developed and maintained by the Division
of Legislative Automated Systems.

2015 SESSION

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15103437D

SENATE BILL NO. 1211

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend and reenact §§ 1-216, 11-8, and 32.1-271 of the Code of Virginia, relating to gender-specific terms.

Patrons—Ebbin; Delegate: Simon

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 1-216, 11-8, and 32.1-271 of the Code of Virginia are amended and reenacted as follows:

§ 1-216. Gender.

A. A word used in the masculine includes the feminine and neuter.

B. Unless the context clearly indicates otherwise:

1. The terms "father" and "mother" may mean any parent of a child.

2. The terms "husband" and "wife" mean either spouse to a marriage.

3. The terms "maternal" or "paternal" when describing any familial relationship may be used interchangeably.

§ 11-8. Instruments executed by minors or unmarried widows or widowers to obtain benefits under certain federal legislation.

Any person under the age of ~~eighteen~~ 18 or any widow or widower who has not remarried who is eligible for a guaranty of credit under the provisions of Title III of an Act of Congress of the United States approved June 22, 1944, entitled the "Servicemen's Readjustment Act of 1944," as now or hereafter amended, or other like federal law, shall be, upon complying with the terms of this section, qualified to contract for and purchase any real or personal property with respect to which the guaranteed loan is to be made, to execute the note or other evidence of the loan indebtedness, and to secure the debt by the execution of a deed of trust or chattel mortgage, or other instrument, upon the real or personal property acquired as aforesaid in connection with the proposed loan or theretofore acquired by such person, whether by purchase or otherwise, and such person shall, in all respects, be bound by such contracts or other instruments entered into as though he or she were of full age.

When any such person is under the age of ~~eighteen~~ 18 years, no contract, note, deed of trust, mortgage, or other instrument required to obtain benefits under such federal legislation shall be executed by such person unless the circuit or corporation court of the city or county, or judge thereof in vacation, in which the property is located or to be used, after a petition signed by any such person shall have been filed with it or him, approve the same. Such petition shall set forth the facts pertaining to the proposed transaction and shall state why the judge or court should approve and authorize the execution of the necessary instruments.

The petition shall be heard by the court without a jury and its decision thereon shall be final. A guardian ad litem shall be appointed who shall make an investigation and report in writing whether in his opinion the best interest of the petitioner would be served by permitting the petitioner to enter into such transaction and the report shall be filed with the papers in the case. No such petition shall be approved by the court unless such approval is recommended by the report of the guardian ad litem and unless it is also recommended by the testimony of at least two disinterested and qualified witnesses appointed by the court, or the judge thereof in vacation. The order of approval shall recite the recommendation of the guardian ad litem and the witnesses and also their names and addresses. And the judge of the court hearing the case shall fix a reasonable fee for the attorneys and guardians ad litem.

The court, if of opinion that entry into such transaction would benefit the petitioner, shall approve the prayer of the petition and the petitioner, if he enter into such transaction and execute any instrument required therein, shall be bound thereby as if of full age whether all or part of the obligation secured be so guaranteed.

All rights which have accrued or obligations which have arisen under this section prior to January 30, 1947, are hereby declared valid and binding.

If the court approve the prayer of the petition such approval shall operate to vest title and confer the power to encumber or convey title to real or personal property acquired pursuant to such approval.

Any infant spouse of an infant veteran permitted by the court to make loans under this section may unite in any conveyance to effectuate such a loan as if he or she was a spouse of an adult signing as provided under the provisions of § ~~55-42~~ 64.2-301, relating to the removal of disability of infancy in

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SB1211

59 certain cases.

60 **§ 32.1-271. Disclosure of information in records; when unlawful; when permitted; proceeding to**
61 **compel disclosure; when certain records made public.**

62 A. To protect the integrity of vital records and to ensure the efficient and proper administration of
63 the system of vital records, it shall be unlawful, notwithstanding the provisions of §§ 2.2-3700 through
64 2.2-3714, for any person to permit inspection of or to disclose information contained in vital records or
65 to copy or issue a copy of all or part of any such vital records except as authorized by this section or
66 regulation of the Board or when so ordered by a court of the Commonwealth.

67 B. Data contained in vital records may be disclosed for valid and substantial research purposes in
68 accordance with the regulations of the Board.

69 C. Any person aggrieved by a decision of a county or city registrar may appeal to the State
70 Registrar. If the State Registrar denies disclosure of information or inspection of or copying of vital
71 records, such person may petition the court of the county or city in which he resides if he resides in the
72 Commonwealth or in which the recorded event occurred or the Circuit Court of the City of Richmond,
73 Division I, for an order compelling disclosure, inspection or copying of such vital record. The State
74 Registrar or his authorized representative may appear and testify in such proceeding.

75 D. When 100 years have elapsed after the date of birth, or 25 years have elapsed after the date of
76 death, marriage, divorce, or annulment the records of these events in the custody of the State Registrar
77 shall, unless precluded from release by statute or court order, or at law-enforcement request, become
78 public information and be made available in accordance with regulations that shall provide for the
79 continued safekeeping of the records. All records that are public information on July 1, 1983, shall
80 continue to be public information. Original records in the custody of the State Registrar that become
81 public information shall be turned over to the Library of Virginia for safekeeping and for public access
82 consistent with other state archival records, subject to the State Registrar and the Library of Virginia
83 entering into a memorandum of understanding to arrange for continued prompt access by the State
84 Registrar to original records for purposes of amendments to those records or other working purposes.
85 The State Registrar's office may retain copies thereof for its own administrative and disclosure purposes.

86 E. The State Registrar or the city or county registrar shall disclose data about or issue a certified
87 copy of a birth certificate of a child to the grandparent of the child upon the written request of the
88 grandparent when the grandparent has demonstrated to the State Registrar evidence of need, as
89 prescribed by Board regulation, for the data or birth certificate.

90 F. The State Registrar or the city or county registrar shall issue a certified copy of a death certificate
91 to the grandchild or great-grandchild of a decedent in accordance with procedures prescribed by the
92 Board in regulation.

93 G. The State Registrar or the city or county registrar shall disclose data about or issue a certified
94 copy of a death certificate to a nonprofit organ, eye or tissue procurement organization that is a member
95 of the Virginia Transplant Council for the purpose of determining the suitability of organs, eyes and
96 tissues for donation, as prescribed by the Board in regulations. Such regulations shall ensure that the
97 information disclosed includes the cause of death and any other medical information necessary to
98 determine the suitability of the organs, eyes and tissues for donation.

99 H. The State Registrar shall seek to enter into a long-term contract with a private company
100 experienced in maintaining genealogical research databases to create, maintain, and update such an
101 online index at no direct cost to the Commonwealth, in exchange for allowing the private company to
102 also provide such index to its subscribers and customers. The online index shall be designed and
103 constructed to have the capability of allowing birth, marriage, divorce, and death entries on the index to
104 be linked to a digital image of the underlying original birth, marriage, divorce, or death record once any
105 such underlying record has become public information, and the index shall be designed to allow the
106 Library of Virginia to create and activate such links to digital images of the original records. Any social
107 security numbers appearing on original birth, marriage, divorce, or death records shall be redacted from
108 the digital images provided to the public in the manner provided by law, which may include bulk
109 redaction of social security fields from the images via automated methods.

110 Following contract implementation, the State Registrar shall maintain a publicly available online vital
111 records index or indexes, consisting at a minimum of name, date, and county or city of occurrence for
112 births (naming the child), marriages (naming the ~~bride and groom~~ *parties*), divorces (naming the parties
113 to the divorce), and deaths (naming the decedent), which vital records index information, except as
114 otherwise precluded from release by statute, court order, or law-enforcement request, shall be public
115 information from the time of its receipt by the State Registrar and shall be accessible on the State
116 Registrar's website and on or through the Library of Virginia website.

Virginia General Assembly



June 26, 2015

The Honorable John S. Edwards
Chair, Virginia Code Commission

The Honorable James M. LeMunyon
Vice Chair, Virginia Code Commission

Virginia General Assembly
P.O. Box 406
Richmond, VA 23218

Dear Senator Edwards and Delegate LeMunyon,

As you know, the Supreme Court issued a ruling today in *Obergefell v. Hodges*, which relates to the validity of same-sex marriage in the United States. The Court ruled that states must license same-sex marriages and that states must recognize same-sex marriages performed in other states.

The Supreme Court's ruling is binding on the Commonwealth, regardless of any current provisions of Virginia law. There is no need to make immediate changes to the *Code of Virginia* in order to bring the Code into compliance.

However, we respectfully request the Code Commission begin to evaluate what, if any, changes are necessary to ensure Virginia's Code remains consistent with current federal law.

Thank you for your attention to this matter.

Sincerely,

Handwritten signature of William J. Howell in black ink.

William J. Howell
Speaker, House of Delegates

Handwritten signature of Thomas K. Norment in black ink.

Thomas K. Norment
Majority Leader, Senate of Virginia

Husband and Wife

Title	Section	Reference
Title 6.2 - Financial Institutions and Services	§ 6.2-1526. Wage assignments	The assignment or order is in writing, signed in person by the borrower, and not by an attorney, or if the borrower is married unless it is signed in person by both husband and wife , and not by an attorney. Written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the giving of the assignment or order.
	§ 6.2-1527. Lien on household furniture	No chattel mortgage or other lien on household furniture then in the possession and use of the borrower given to secure any loan made by a licensee shall be valid unless it is in writing, signed in person by the borrower, and not by an attorney, or if the borrower is married unless it is signed in person by both husband and wife , and not by an attorney. Written assent of a spouse shall not be required when a husband and wife have been living separate and apart for a period of at least five months prior to the giving of the mortgage or lien.
Title 8.01 - Civil Remedies and Procedure	§ 8.01-398. Privileged marital communications	Husband and wife shall be competent witnesses to testify for or against each other in all civil actions.
Title 18.2 - Crimes	§ 18.2-19. How accessories after the fact punished; exceptions	However, no person in the relation of husband or wife , parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, or servant to the offender, who, after the commission of a felony, shall aid or assist a principal felon or accessory before the fact to avoid or escape from prosecution or punishment, shall be deemed an accessory after the fact.
	§ 18.2-362. Person marrying when husband or wife living	If any person, being married, shall, during the life of the husband or wife , marry another person in this Commonwealth, or if the marriage with such other person take place out of the Commonwealth, shall thereafter cohabit with such other person in this Commonwealth, he or she shall be guilty of a Class 4 felony.
	§ 18.2-363. Leaving Commonwealth to evade law against bigamy	If any persons, resident in this Commonwealth, one of whom has a husband or wife living, shall, with the intention of returning to reside in this Commonwealth, go into another state or country and there intermarry and return to and reside in this Commonwealth cohabiting as man and wife , such marriage shall be governed by the same law, in all respects, as if it had been solemnized in this Commonwealth.
	§ 18.2-364. Exceptions to preceding sections	Sections 18.2-362 and 18.2-363 shall not extend to a person whose husband or wife shall have been continuously absent from such person for seven years next before marriage of such person to another, and shall not have been known by such person to be living within that time; nor to a person who can show that the second marriage was contracted in good faith under a reasonable belief that the former consort was dead; nor to a person who shall, at the time of the subsequent marriage, have been divorced from the bond of the former marriage; nor to a person whose former marriage was void.
	§ 18.2-368. Placing or leaving wife for prostitution	Any person who, by force, fraud, intimidation, or threats, places or leaves or procures any other person to place or leave his wife in a bawdy place for the purpose of prostitution or unlawful sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus is guilty of pandering, punishable as a Class 4 felony.
	§ 18.2-462. Concealing or compounding offenses	B. Any person, other than the victim of the crime or the husband, wife , parent, grandparent, child, grandchild, brother, or sister, by consanguinity or affinity of the offender, who with actual knowledge of the commission by another of any felony offense under Chapter 4 (§ 18.2-30 et seq.) of this title, willfully

		conceals, alters, dismembers, or destroys any item of physical evidence with the intent to delay, impede, obstruct, prevent, or hinder the investigation, apprehension, prosecution, conviction, or punishment of any person regarding such offense is guilty of a Class 6 felony.
Title 19.2 - Criminal Procedure	§ 19.2-271.1. Competency of husband and wife to testify	Husband and wife shall be competent witnesses to testify for or against each other in criminal cases, except as otherwise provided.
	§ 19.2-271.2. Testimony of husband and wife in criminal cases	In criminal cases husband and wife shall be allowed, and, subject to the rules of evidence governing other witnesses, may be compelled to testify in behalf of each other, but neither shall be compelled to be called as a witness against the other, except (i) in the case of a prosecution for an offense committed by one against the other, against a minor child of either, or against the property of either; (ii) in any case where either is charged with forgery of the name of the other or uttering or attempting to utter a writing bearing the allegedly forged signature of the other; or (iii) in any proceeding relating to a violation of the laws pertaining to criminal sexual assault (§§ 18.2-61 through 18.2-67.10), crimes against nature (§ 18.2-361) involving a minor as a victim and provided the defendant and the victim are not married to each other, incest (§ 18.2-366), or abuse of children (§§ 18.2-370 through 18.2-371). The failure of either husband or wife to testify, however, shall create no presumption against the accused, nor be the subject of any comment before the court or jury by any attorney.
	§ 19.2-305. Requiring fines, costs, restitution for damages, support or community services from probationer	B. A defendant placed on probation following conviction may be required to make at least partial restitution or reparation to the aggrieved party or parties for damages or loss caused by the offense for which conviction was had, or may be required to provide for the support of his wife or others for whose support he may be legally responsible, or may be required to perform community services.
Title 20 - Domestic Relations	§ 20-40. Punishment for violation of such prohibition; leaving Commonwealth to avoid	If any persons, resident in this Commonwealth, and within the degrees of relationship mentioned in that section, shall go out of this Commonwealth for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife , they shall be punished as provided in this section, and the marriage shall be governed by the same law as if it had been solemnized in this Commonwealth.
	§ 20-43. Bigamous marriages void without decree	All marriages which are prohibited by law on account of either of the parties having a former wife or husband then living shall be absolutely void, without any decree of divorce, or other legal process.
	§ 20-61. Desertion or nonsupport of wife, husband or children in necessitous circumstances	Husband/wife only used in catchline. Spouse used throughout section.
	§ 20-82. Husband and wife competent as witnesses	In every prosecution under this chapter both husband and wife shall be competent witnesses to testify against each other in all relevant matters, including the facts of such marriage, provided that neither shall be compelled to give evidence incriminating himself or herself.
	§ 20-88.59. Special rules of evidence and procedure	I. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter. [UIFSA]
	§ 20-89.1. Suit to annul marriage	(b) . . . or when, at the time of the marriage, the wife, without the knowledge of the husband, was with child by some person other than the husband, or where the husband, without knowledge of the wife, had fathered a child born to a woman other than the wife within ten months after the date of the solemnization of the marriage, or where, prior to the marriage, either party had been, without the knowledge

		of the other, a prostitute, a decree of annulment may be entered upon proof, on complaint of the party aggrieved.
§ 20-91. Ground for divorce from bond of matrimony; contents of decree		(9) (a) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for one year. In any case where the parties have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, a divorce may be decreed on application if and when the husband and wife have lived separately and apart without cohabitation and without interruption for six months.
§ 20-97. Domicile and residential requirements		4. Upon separation of the husband and wife , the wife may establish her own and separate domicile, though the separation may have been caused under such circumstances as would entitle the wife to a divorce or annulment.
§ 20-106. Testimony may be required to be given orally; evidence by affidavit		The affidavit shall: . . . 7. State whether there were children born or adopted of the marriage and affirm that the wife is not known to be pregnant from the marriage; and . . . e. Verify whether there were children born or adopted of the marriage and verify that the wife is not known to be pregnant from the marriage; and
§ 20-118. Prohibition of remarriage pending appeal from divorce decree; certain marriages validated		Marriages heretofore celebrated in violation of any prohibition against remarriage shall not hereafter be deemed to be invalid because of the violation of such prohibition, provided that the parties to such a marriage have continued to reside together as husband and wife until the first day of July, 1960, or until such time as one of the parties dies prior to July 1, 1960.
§ 20-146.31. Hearing and order		D. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this article.
§ 20-156. Definitions		"Surrogacy contract" means an agreement between intended parents, a surrogate, and her husband , if any, in which the surrogate agrees to be impregnated through the use of assisted conception, to carry any resulting fetus, and to relinquish to the intended parents the custody of and parental rights to any resulting child.
§ 20-158. Parentage of child resulting from assisted conception		A. Determination of parentage, generally. - Except as provided in subsections B, C, D, and E of this section, the parentage of any child resulting from the performance of assisted conception shall be determined as follows: 1. The gestational mother of a child is the child's mother. 2. The husband of the gestational mother of a child is the child's father, notwithstanding any declaration of invalidity or annulment of the marriage obtained after the performance of assisted conception, unless he commences an action in which the mother and child are parties within two years after he discovers or, in the exercise of due diligence, reasonably should have discovered the child's birth and in which it is determined that he did not consent to the performance of assisted conception. 3. A donor is not the parent of a child conceived through assisted conception, unless the donor is the husband of the gestational mother. B. Death of spouse. - Any child resulting from the insemination of a wife's ovum using her husband's sperm, with his consent, is the child of the husband and wife notwithstanding that, during the ten-month period

		<p>immediately preceding the birth, either party died. . . .</p> <p>E. 2. If either of the intended parents is a genetic parent of the resulting child, the intended father is the child's father. However, if (i) the surrogate is married, (ii) her husband is a party to the surrogacy contract, and (iii) the surrogate exercises her right to retain custody and parental rights to the resulting child pursuant to § 20-162, then the surrogate and her husband are the parents.</p>
	§ 20-159. Surrogacy contacts permissible	A. A surrogate, her husband , if any, and prospective intended parents may enter into a written agreement whereby the surrogate may relinquish all her rights and duties as parent of a child conceived through assisted conception, and the intended parents may become the parents of the child as provided in subsection D or E of § 20-158.
	§ 20-160. Petition and hearing for court approval of surrogacy contract; requirements; orders	<p>A. Prior to the performance of assisted conception, the intended parents, the surrogate, and her husband shall join in a petition to the circuit court of the county or city in which at least one of the parties resides.</p> <p>B. 2. A local department of social services or welfare or a licensed child-placing agency has conducted a home study of the intended parents, the surrogate, and her husband, if any, and has filed a report of this home study with the court;</p> <p>3. The intended parents, the surrogate, and her husband, if any, meet the standards of fitness applicable to adoptive parents;</p> <p>7. Prior to signing the surrogacy contract, the intended parents, the surrogate, and her husband, if any, have submitted to physical examinations and psychological evaluations</p> <p>10. The husband of the surrogate, if any, is a party to the surrogacy agreement</p> <p>If evidence cannot be produced that at least one of the intended parents is the genetic parent of the resulting child, the court shall not enter an order directing the issuance of a new birth certificate naming the intended parents as the parents of the child, and the surrogate and her husband, if any, shall be the parents of the child.</p>
	§ 20-161. Termination of court-approved surrogacy contract	A. Subsequent to an order entered pursuant to subsection B of § 20-160, but before the surrogate becomes pregnant through the use of assisted conception, the court for cause, or the surrogate, her husband , if any, or the intended parents may terminate the agreement by giving written notice of termination to all other parties and by filing notice of the termination with the court
	§ 20-162. Contracts not approved by the court	<p>A. In the case of any surrogacy agreement for which prior court approval has not been obtained pursuant to § 20-160, the provisions of this section and §§ 20-156 through 20-159 and §§ 20-163 through 20-165 shall apply. Any provision in a surrogacy contract that attempts to reduce the rights or responsibilities of the intended parents, surrogate, or her husband, if any, or the rights of any resulting child shall be reformed to include the requirements set forth in this chapter. A provision in the contract providing for compensation to be paid to the surrogate is void and unenforceable. Such surrogacy contracts shall be enforceable and shall be construed only as follows:</p> <p>1. The surrogate, her husband, if any, and the intended parents shall be parties to any such surrogacy contract.</p>
	§ 20-163. Misc. provisions relating to all surrogacy contracts	B. After the entry of an order under subsection B of § 20-160 or upon the execution of a contract pursuant to §20-162, the marriage of the surrogate shall not affect the validity of the order or contract, and her husband shall not be deemed a party to the contract in the absence of his explicit written consent .

	§ 20-165	B. Any person who acts as a surrogate broker in violation of this section shall, in addition, be liable to all the parties to the purported surrogacy contract in a total amount equal to three times the amount of compensation to have been paid to the broker pursuant to the contract. One-half of the damages under this subsection shall be due the surrogate and her husband, if any , and if he is a party to the contract, and one-half shall be due the intended parents.
Title 32.1 - Health	§ 32.1-257. Filing birth certificates; from whom required; signatures of parents	For the purpose of birth registration in the case of a child resulting from assisted conception, pursuant to Chapter 9 (§ 20-156 et seq.) of Title 20, the birth certificate of such child shall contain full information concerning the mother's husband as the father of the child and the gestational mother as the mother of the child. Donors of sperm or ova shall not have any parental rights or duties for any such child.
Title 37.2 - Behavioral Health	§ 37.2-718. Order to compel payment of expenses	B. The individual receiving services and his estate shall first be liable for the payment of his expenses and thereafter, the person liable for the support of the individual. Such person shall be the father, mother, husband, wife , or child of the individual who has attained the age of majority.
Title 38.2 - Insurance	§ 38.2-302. Life, accident, and sickness insurance	1. A wife or husband may effect an insurance contract upon each other
	§ 38.2-2204. Liability insurance on motor vehicles, aircraft and watercraft; standard provisions; "omnibus clause."	Each such policy or contract of liability insurance, or endorsement to the policy or contract, insuring private passenger automobiles, aircraft, or private pleasure watercraft principally garaged, docked, or used in this Commonwealth, that has as the named insured an individual or husband and wife and that includes, with respect to any liability insurance provided by the policy, contract or endorsement for use of a nonowned automobile, aircraft or private pleasure watercraft, any provision requiring permission or consent of the owner of such automobile, aircraft, or private pleasure watercraft for the insurance to apply, shall be construed to include permission or consent of the custodian in the provision requiring permission or consent of the owner.
	§ 38.2-2212. Grounds and procedure for cancellation of or refusal to renew motor vehicle insurance policies; review by Commissioner	"Policy of motor vehicle insurance" or "policy" means a policy or contract for bodily injury or property damage liability insurance issued or delivered in this Commonwealth covering liability arising from the ownership, maintenance, or use of any motor vehicle, insuring as the named insured one individual or husband and wife who are residents of the same household, and under which the insured vehicle designated in the policy is either:
	§ 38.2-4019. Beneficiaries	No person other than a wife, husband , relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchild, or child by legal adoption of the member, or one who is dependent upon the member or one who has an insurable interest in the life of the member as described in § 38.2-301, shall be named a beneficiary of the member's certificate.
Title 55 - Property	§ 55-20. Survivorship between joint tenants abolished	When any joint tenant dies, before or after the vesting of the estate, whether the estate is real or personal, or whether partition could have been compelled or not, his part shall descend to his heirs, or pass by devise, or go to his personal representative, subject to debts or distribution, as if he had been a tenant in common. And if hereafter any estate, real or personal, is conveyed or devised to a husband and his wife , they shall take and hold the same by moieties in like manner as if a distinct moiety had been given to each by a separate conveyance.
	§ 55-20.2. Tenants by the entirety in real and personal property; certain trusts	A. Any husband and wife may own real or personal property as tenants by the entirety. Personal property may be owned as tenants by the entirety whether or not the personal property represents the proceeds of the sale of real property. An intent that the part of the one dying should belong to the other shall be manifest

		<p>from a designation of a husband and wife as "tenants by the entirety" or "tenants by the entirety."</p> <p>B. Any property of a husband and wife that is held by them as tenants by the entirety and conveyed to their joint revocable or irrevocable trusts, or to their separate revocable or irrevocable trusts, shall have the same immunity from the claims of their separate creditors as it would if it had remained a tenancy by the entirety, so long as (i) they remain husband and wife, (ii) it continues to be held in the trust or trusts, and (iii) it continues to be their property.</p>
	§ 55-35. How married women may acquire and dispose of property	A married woman shall have the right to acquire, hold, use, control and dispose of property as if she were unmarried and such power of use, control and disposition shall apply to all property of a married woman which has been acquired by her since April 4, 1877, or shall be hereafter acquired. Her husband's marital rights shall not entitle him to the possession or use, or to the rents, issues and profits, of such real estate during the coverture; nor shall the property of the wife be subject to the debts or liabilities of the husband .
	§ 55-36. Contracts of, and suits by and against, married women	A married woman may contract and be contracted with and sue and be sued in the same manner and with the same consequences as if she were unmarried, whether the right or liability asserted by or against her accrued heretofore or hereafter. In an action by a married woman to recover for a personal injury inflicted on her she may recover the entire damage sustained including the personal injury and expenses arising out of the injury, whether chargeable to her or her husband , notwithstanding the husband may be entitled to the benefit of her services about domestic affairs and consortium, and any sum recovered therein shall be chargeable with expenses arising out of the injury, including hospital, medical and funeral expenses, and any person, including the husband , partially or completely discharging such debts shall be reimbursed out of the sum recovered in the action, whensoever paid, to the extent to which such payment was justified by services rendered or expenses incurred by the obligee, provided, however, that written notice of such claim for reimbursement, and the amount and items thereof, shall have been served on such married woman and on the defendant prior to any settlement of the sum recovered by her; and no action for such injury, expenses or loss of services or consortium shall be maintained by the husband .
	§ 55-38. Wife's right of entry into land not barred by certain judgments; when she may defend her right in lands which are her inheritance.	A woman shall not be barred of her right of entry into land by a judgment in her husband's lifetime by default or collusion, but after his death may prosecute the same by any proper suit; or, in the lifetime of the husband, if he will not appear, or, against his wife's consent, will render the wife's lands during the coverture in a suit against the husband and wife for lands which are her inheritance, the wife may come at any time before judgment, and defend her right.
	§ 55-39. Rights of wife, etc., not affected by husband's acts only	No conveyance or other act suffered or done by the husband only of any land which is the inheritance of his wife shall be or make any discontinuance thereof, or be prejudicial to the wife or her heirs, or to any having right or title to the same by her death, but they may respectively enter into such land, according to their right and title therein, as if no such act had been done.
	§ 55-41. Conveyance from husband and wife; effect on right of wife or husband	When a husband and his wife have signed and delivered a writing purporting to convey any estate, real or personal, such writing, whether admitted to record or not, shall (i) if delivered prior to January 1, 1991, operate to convey from the spouse her right of dower or his right of curtesy in the real estate embraced therein, and (ii) if delivered after December 31, 1990, operate to manifest the spouse's written consent or joinder, as contemplated in § 64.2-305 to the transfer embraced therein.
	§ 55-131. Acknowledgments taken by officer who was	Any certificate of acknowledgment to a deed or other writings taken prior to July 1, 1995, by a notary public or other officer duly authorized to take acknowledgments, who at the time of taking such acknowledgment

	husband or wife of grantee	was the husband or wife of the grantee in the deed or other instrument, shall be held, and the same is hereby declared, valid and effective in all respects, if otherwise valid according to the law then in force. All acknowledgments of conveyances to a fiduciary taken before an officer, who is the husband or wife of the same and who has no beneficial or monetary interest other than possible commissions or legal fees shall be conclusively presumed valid.
Title 58.1 - Taxation	§ 58.1-324. Husband and wife	<p>A. If the federal taxable income of husband or wife is determined on a separate federal return, their Virginia taxable incomes shall be separately determined.</p> <p>B. If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:</p> <ol style="list-style-type: none"> 1. Their tax shall be determined on their joint Virginia taxable income; or 2. Separate taxes may be determined on their separate Virginia taxable incomes if they so elect. <p>C. Where husband and wife have not separately reported and claimed items of income, exemptions and deductions for federal income tax purposes, and have not elected to file a joint Virginia income tax return, such items allowable for Virginia income tax purposes shall be allocated and adjusted as follows:</p> <ol style="list-style-type: none"> 1. Income shall be allocated to the spouse who earned the income or with respect to whose property the income is attributable. 2. Allowable deductions with respect to trade, business, production of income, or employment shall be allocated to the spouse to whom attributable. 3. Nonbusiness deductions, where properly taken for federal income tax purposes, shall be allowable for Virginia income tax purposes, but shall be allocable between husband and wife as they may mutually agree. For this purpose, "nonbusiness deductions" consist of allowable deductions not described in subdivision 2 of this subsection. 4. Where the standard deduction or low income allowance is properly taken pursuant to subdivision D 1 a of §58.1-322 such deduction or allowance shall be allocable between husband and wife as they may mutually agree. 5. Personal exemptions properly allowable for federal income tax purposes shall be allocated for Virginia income tax purposes as husband and wife may mutually agree; however, exemptions for taxpayer and spouse together with exemptions for old age and blindness must be allocated respectively to the spouse to whom they relate. <p>D. Where allocations are permitted to be made under subsection C pursuant to agreement between husband and wife, and husband and wife have failed to agree as to those allocations, such allocations shall be made between husband and wife in a manner corresponding to the treatment for federal income tax purposes of the items involved, under regulations prescribed by the Department of Taxation.</p>
	§ 58.1-326. Husband and wife when one nonresident	If husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate Virginia taxable incomes on such single or separate forms as may be required by the Department, unless both elect to determine their joint Virginia taxable income as if both were residents.
	§ 58.1-339.8. Income tax credit for low-income taxpayers	<p>A. As used in this section, unless the context requires otherwise:</p> <p>"Family Virginia adjusted gross income" means the combined Virginia adjusted gross income of an individual, the individual's spouse, and any person claimed as a dependent on the individual's or his spouse's income tax return for the taxable year.</p>

		<p>B.1. . . . For any taxable year in which a husband and wife file separate Virginia income tax returns, the credit provided under this section shall be allowed against the tax for only one of such two tax returns. Additionally, the credit provided under this section shall not be allowed against such tax of a dependent of the individual or of married persons.</p> <p>2. For taxable years beginning on and after January 1, 2006, any individual or married persons, eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu of the credit authorized under subdivision B 1, claim a credit against the tax imposed pursuant to § 58.1-320 in an amount equal to 20 percent of the credit claimed by the individual or married persons for federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable year. In no case shall a household be allowed a credit pursuant to this subdivision and subdivision B 1 for the same taxable year. For purpose of this subdivision, "household" means an individual and in the case of married persons, the individual and his spouse regardless of whether or not the individual and his spouse file combined or separate Virginia individual income tax returns.</p>
	§ 58.1-341. Returns of individuals	<p>B. If the federal income tax liability of husband or wife is determined on a separate federal return, their Virginia income tax liabilities and returns shall be separate. If the federal income tax liabilities of husband and wife (other than a husband and wife described in subdivision 2 of subsection A) are determined on a joint federal return, or if neither files a federal return:</p> <ol style="list-style-type: none"> 1. They shall file a joint Virginia income tax return, and their tax liabilities shall be joint and several; or 2. They may elect to file separate Virginia income tax returns if they comply with the requirements of the Department in setting forth information (whether or not on a single form), in which event their tax liabilities shall be separate unless such husband and wife file separately on a combined return. The election permitted under this subsection may be made or changed at any time within three years from the last day prescribed by law for the timely filing of the return. <p>C. If either husband or wife is a resident and the other is a nonresident, they shall file separate Virginia income tax returns on such single or separate forms as may be required by the Department, in which event their tax liabilities shall be separate except as provided in subsection D, unless both elect to determine their joint Virginia taxable income as if both were residents, in which event their tax liabilities shall be joint and several.</p> <p>D. If husband and wife file separate Virginia income tax returns on a single form pursuant to subsection B or C, and:</p>
	§ 58.1-344.3. Voluntary contributions of refunds requirements	<p>All moneys contributed shall be paid to the State Central Committee of any party that meets the definition of a political party under § 24.2-101 as of July 1 of the previous taxable year. The maximum contribution allowable under this subdivision shall be \$25. In the case of a joint return of husband and wife, each spouse may designate that the maximum contribution allowable be paid.</p>
	§ 58.1-344.4. Voluntary contributions of refunds into Virginia College Savings Plan accounts	<p>2. If a contribution to a Virginia College Savings Plan account is designated in an individual income tax return filed jointly by a husband and wife, the Department of Taxation shall send the information described in subdivision 1 for both the husband and wife to the Virginia College Savings Plan.</p>

	§ 58.1-490. Declarations of estimated tax	D. In the case of a husband and wife , a single declaration under this section may be made by them jointly, in which case the liability with respect to the estimated tax shall be joint and several. No joint declaration may be made if either the husband or the wife is a nonresident of the Commonwealth unless both are required by this chapter to file a return, if they are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. If a joint declaration is made but a joint return is not made for the taxable year, the estimated tax for such year may be treated as the estimated tax of either the husband or the wife , or may be divided between them.
	§ 58.1-499. Refunds to individual taxpayers; crediting overpayment against estimated tax for ensuing year	<p>B. If a refund of an overpayment of individual income tax payments is made payable jointly to a husband and wife who receive a final divorce decree after filing a joint income tax return, separate income tax returns on a single form, an amendment thereto, or other claim resulting in the issuance of a refund, the Tax Commissioner shall order the reissuance of the refund in separate checks to the husband and to the wife if the unnegotiated joint refund check is returned to Department with a certification, in a form satisfactory to the Department, made by one spouse that the other spouse refuses to endorse the joint refund check or cannot be located. In making such certification, the spouse returning the check shall agree to indemnify the Commonwealth for any amounts that the Commonwealth may be required to pay to the other spouse with respect to such refund. A certified copy of the final divorce decree, including any agreement with respect to the division of property between the spouses, shall be provided with the certification. If the final divorce decree addresses the apportionment or ownership of the refunded amount, the refund shall be apportioned and separate payments ordered as provided therein. If the final divorce decree does not address the apportionment or ownership of the refunded amount, the amount of the refund shall be divided equally between the husband and wife. The reissuance of refund payments pursuant to this subsection shall not affect the joint and several liability of the husband and wife for tax liabilities for the period for which the return or returns were filed.</p> <p>C. Whenever the annual income tax return of an individual income taxpayer indicates in the place provided thereon that the taxpayer has overpaid his tax for the taxable year by reason of excessive withholding or overestimating and overpaying estimated tax, or both, the amount of the overpayment as shown on his return, subject to correction for error, may be credited against the estimated income tax for the ensuing year at the taxpayer's election and according to regulations prescribed by the Department and such overpayments by either a husband or wife on a separate return may be credited to the tax for the ensuing year of either of them or may be credited to their joint tax at the election of the person to whom the overpayment is payable; or otherwise such amount shall be refunded to him as soon as practicable.</p>
	§ 58.1-520. Definitions	"Refund" means any individual's Virginia state or local income tax refund payable pursuant to § 58.1-309. This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § 58.1-324 B 2.
	§ 58.1-810. What other deeds not taxable	<p>When the tax has been paid at the time of the recordation of the original deed, no additional recordation tax shall be required for admitting to record:</p> <p>3. A deed to which a husband and wife are the only parties;</p>

	§ 58.1-3210. Exemption or deferral of taxes on property of certain elderly and handicapped persons	A. ... A dwelling jointly held by a husband and wife , with no other joint owners, may qualify if either spouse is 65 or over or is permanently and totally disabled, and the proration of the exemption or deferral under § 58.1-3211.1 shall not apply for such dwelling.
	§ 58.1-3211.1. Prorated tax exemption or deferral of tax	C. The provisions of this section shall not apply to dwellings jointly held by a husband and wife , with no other joint owners.
	§ 58.1-3219.5. Exemption from taxes on property of disabled veterans	A. Pursuant to subdivision (a) of Section 6-A of Article X of the Constitution of Virginia, and for tax years beginning on or after January 1, 2011, the General Assembly hereby exempts from taxation the real property, including the joint real property of husband and wife , of any veteran who has been rated by the U.S. Department of Veterans Affairs or its successor agency pursuant to federal law to have a 100 percent service-connected, permanent, and total disability, and who occupies the real property as his principal place of residence.
	§ 58.1-3219.6. Application for exemption	The veteran or surviving spouse claiming the exemption under this article shall file with the commissioner of the revenue of the county, city, or town or such other officer as may be designated by the governing body in which the real property is located, on forms to be supplied by the county, city, or town, an affidavit or written statement (i) setting forth the name of the disabled veteran and the name of the spouse, if any, also occupying the real property, (ii) indicating whether the real property is jointly owned by a husband and wife , and (iii) certifying that the real property is occupied as the veteran's principal place of residence.
	§ 58.1-3343. Effect of lien on certain real estate jointly owned	The lien on real estate owned by more than one person as tenants in common, joint tenants or otherwise for the payment of all prior, present and subsequent taxes and levies or assessments thereof, including any tax, levy, or assessment authorized under § 58.1-3712, 58.1-3713, 58.1-3713.4, or 58.1-3741, shall not be impaired if such real estate was or is assessed in the name of one of such owners with the notation, "and another," or "and others," or " and wife, " or " and husband, " or the appropriate abbreviations of such words, or their legal equivalents, so as to indicate that the real estate was or is owned by more than one person.
	§ 58.1-3506.1. Other classification for taxation of certain tangible personal property owned by certain elderly and handicapped persons	Any such motor vehicle owned by a husband and wife may qualify if either spouse is 65 or over or if either spouse is permanently and totally disabled.
	§ 58.1-3506.2. Restrictions and conditions	4. All income and net worth limitations shall be computed by aggregating the income and assets, as the case may be, of a husband and wife who reside in the same dwelling and shall be applied to any owner of the motor vehicle who seeks the benefit of the preferential tax rate permitted under this article, irrespective of how such motor vehicle may be titled.
Title 59.1 - Trade	§ 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: 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.
Title 63.2 - Welfare	§ 63.2-510. Obligation of person to support certain children living in same home	A person shall be responsible for the support and maintenance of any child or children living in the same home in which he and the natural or adoptive parent of such child or children cohabit as man and wife and any such person who without cause willfully neglects or refuses or fails to provide for such support and maintenance shall be guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of §20-61.
	§ 63.2-1201. Filing of petition for adoption; venue; jurisdiction; proceedings	The petition shall ask leave to adopt a minor child not legally the petitioner's by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, or persons who were previously married who are permitted to adopt a child under § 63.2-1201.1, the petition shall be the joint petition of the husband and wife or former spouses but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating consent to the prayer thereof only.
	§ 63.2-1215. Legal effects of adoption	The birth parents, and the parents by previous adoption, if any, other than any such parent who is the husband or wife of one of the petitioners, shall, by final order of adoption, be divested of all legal rights and obligations in respect to the child including the right to petition any court for visitation with the child.
	§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; etc.	D. The execution of an entrustment agreement shall be required of a presumed father except under the following circumstances: (i) if he denies paternity under oath and in writing in accordance with § 63.2-1202; (ii) if the presumption is rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child; (iii) if another man admits, in writing and under oath, that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best interests of the child pursuant to § 63.2-1205.
	§ 63.2-1233. Consent to be executed in JDR court; exceptions	f. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required, unless the court finds that the father's consent is withheld contrary to the best interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such presumed father shall be under oath and in writing and may be executed in or out of court. The presumption that the husband is the father of the child may be rebutted by sufficient evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required. The executed denial of paternity by the putative father shall be sufficient to rebut the presumption that he is the father of the child. If the court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to be given to the presumed father.
	§ 63.2-1237. Petition for parental placement adoption; jurisdiction; contents	In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating his or her consent to the prayer thereof only.

	§ 63.2-1519. Physician-patient and husband-wife privileges inapplicable	In any legal proceeding resulting from the filing of any report or complaint pursuant to this chapter, the physician-patient and husband-wife privileges shall not apply.
Title 64.2 - Wills, Trusts, and Fiduciaries	§ 64.2-905. Multiple beneficiaries; separate custodial trusts; survivorship	A. Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of husband and wife , for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship or survivorship is required as to marital property.
	§ 64.2-2401. Bond; orders as to management of estate; support of dependents	The court shall also enter any orders it deems necessary (i) directing the conservator in the management, operation, and control of the estate and (ii) requiring the conservator to make ample and suitable provisions out of the estate in his possession, subject to the rights of creditors, for the support of the absentee's wife and minor children, as well as any other person dependent upon the absentee for support and maintenance. The court shall require the conservator to make reports from time to time as the court may deem expedient.
Title 65.2 - Workers' Compensation	§ 65.2-515. Persons conclusively presumed to be wholly dependent	A. The following persons shall be conclusively presumed to be dependents wholly dependent for support upon the deceased employee: <ol style="list-style-type: none"> 1. A wife upon a husband whom she had not voluntarily deserted or abandoned at the time of the accident or with whom she lived at the time of his accident, if she is then actually dependent upon him; 2. A husband upon a wife whom he had not voluntarily deserted at the time of the accident or with whom he lived at the time of her accident, if he is then actually dependent upon her;

Mother/Father

Title	Section	Reference
Title 2.2 - Administration of Government	§ 2.2-3119. Additional provisions applicable to school boards and employees of school boards	A. Notwithstanding any other provision of this chapter, it shall be unlawful for the school board of any county or city or of any town constituting a separate school division to employ or pay any teacher or other school board employee from the public funds, federal, state or local, or for a division superintendent to recommend to the school board the employment of any teacher or other employee, if the teacher or other employee is the father, mother , brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of the superintendent, or of any member of the school board. E. The provisions of this section shall not apply to employment by a school district located in Planning Districts 3, 11, 12, and 13 of the father, mother , brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law of any member of the school board provided...
	§ 2.2-3304. Display of flags on Mother's Day	The Governor may issue annually a proclamation calling upon state officials to display the flag of the United States and of the Commonwealth on all public buildings, and the people of the Commonwealth to display such flags at their homes and other suitable places on the second Sunday in May, known as " Mother's Day ," as a public expression of love and reverence for the mothers of the Commonwealth.
	§ 2.2-3304.1. Little League Challenger Week in Virginia	The first full week of May preceding Mother's Day of each year shall be designated as Little League Baseball Challenger Week in Virginia.
	§ 2.2-3311. Day of recognition for early childhood and day-care providers and professionals	The Friday before Mother's Day of each year shall be designated as a day of recognition for early childhood and day-care providers and professionals to acknowledge the contributions of and pay tribute to early childhood and day-care providers and professionals who serve the children of the Commonwealth.
Title 8.01 - Civil Remedies and Procedure	§ 8.01-50. Action for death by wrongful act; etc.	B. Whenever a fetal death, as defined in § 32.1-249, is caused by the wrongful act, neglect, or default of any person, ship, vessel, or corporation, the natural mother of the fetus may bring an action pursuant to this section against such tortfeasor. Nothing in this section shall be construed to create a cause of action for a fetal death against the natural mother of the fetus. C. Every such action under subsection A shall be brought by and in the name of the personal representative of such deceased person. Actions for fetal death under subsection B shall be brought by and in the name of the natural mother ; provided, however, if the natural mother dies, or is or becomes a person under a disability as defined in § 8.01-2, such action may be initiated or maintained by the administrator of the natural mother's estate, her guardian, or her personal representative qualified to bring such action. In an action for fetal death under subsection B brought under Chapter 21.1 (§ 8.01-581.1 et seq.) where the wrongful act that resulted in a fetal death also resulted in the death of another fetus of the natural mother or in the death or injury of the natural mother , recovery for all damages sustained as a result of such wrongful act shall not exceed the limitations on the total amount recoverable for a single patient for any injury under § 8.01-581.15. The person bringing an action under subsection B shall have the power to compromise a claim pursuant to § 8.01-55 and any damages recovered shall be distributed pursuant to this article. Every such action under this section shall be brought within the time limits specified in § 8.01-244. E. For purposes of this section, " natural mother " means the woman carrying the child.

	§ 8.01-217. How name of person may be changed	B. Every application shall be under oath and shall include the place of residence of the applicant, the names of both parents, including the maiden name of his mother , the date and place of birth of the applicant, the applicant's felony conviction record, if any, ... G. Such order shall set forth the date and place of birth of the person whose name is changed, the full names of his parents, including the maiden name of the mother and, if such person has previously changed his name, his former name or names.
	§ 8.01-341.1. Exemptions from jury service upon request	8. A person who has legal custody of and is necessarily and personally responsible for a child or children 16 years of age or younger requiring continuous care by him during normal court hours, or any mother who is breast-feeding a child;
Title 16.1 - Courts Not of Record	§ 16.1-69.23. In what cases judge disqualified	(3) Be related to any party to the action as spouse, grandparent, parent, father-in-law, mother-in-law , child, grandchild, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, first cousin, guardian or ward;
	§ 16.1-228. Definitions	"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law , sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.
	§ 16.1-241. Jurisdiction; consent for abortion	The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein.
	§ 16.1-263. Summonses	An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit.
	§ 16.1-277.01. Approval of entrustment agreement	An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit.
	§ 16.1-277.02. Petition for relief of care and custody	An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit.
	§ 16.1-282. Foster care review	An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit.
Title 17.1 - Courts of Record	§ 17.1-275. Fees collected by clerks of circuit courts	an additional \$50 filing fee as required under § 63.2-1201 shall be deposited in the Putative Father Registry Fund pursuant to § 63.2-1249.
Title 18.2 - Crimes	§ 18.2-71.1. Partial birth infanticide; penalty	B. For the purposes of this section, "partial birth infanticide" means any deliberate act that (i) is intended to kill a human infant who has been born alive, but who has not been completely extracted or expelled from its

		mother , and that (ii) does kill such infant, regardless of whether death occurs before or after extraction or expulsion from its mother has been completed. [9 other similar references to mother]
	§ 18.2-76. Informed written consent required; civil penalty	This offer for the woman to review the material shall advise her of the following: . . . (iii) the father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion, that assistance in the collection of such support is available, and that more detailed information on the availability of such assistance is contained in the printed materials published by the Department;
	§ 18.2-361. Crimes against nature; penalty	. . . upon or by his daughter or granddaughter, son or grandson, brother or sister, or <i>father or mother</i> is guilty of a Class 5 felony.
	§ 18.2-366. Adultery and fornication by persons forbidden to marry; incest	B. Any person who commits adultery or fornication with his daughter or granddaughter, or with her son or grandson, or her father or his mother , shall be guilty of a Class 5 felony.
Title 19.2 - Criminal Procedure	§ 19.2-389. Dissemination of criminal history record information	28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father , provided that only the name, address, demographics and social security number of the data subject shall be released;
Title 20 - Domestic Relations	§ 20-31.1. When marriage legitimates children; issue of marriages prohibited by law; etc.	If a person, having had a child, shall afterwards intermarry with the mother or father , such child if recognized by both of them, as their own child, jointly or separately, before or after marriage, shall be deemed legitimate.
	§ 20-49. When consent required and how given	If any person intending to marry is under eighteen years of age and has not been previously married, the consent of the father or mother or guardian of such person or persons shall be given either personally to the clerk or judge or in writing subscribed by a witness, who shall make oath before the clerk or judge that the writing was signed or sworn to in his presence by such father , guardian, or mother , as the case may be, or the writing shall be sworn to before a notary public or some person authorized to take acknowledgments to deeds under the laws of this Commonwealth, which oath shall be properly certified by such officer. If there is no father , guardian, or mother , or if such person or persons are abandoned by his or their parents, the judge of the circuit court of the county or city wherein such person or either of them resides, either in term or vacation, may on verified petition of such person or persons intending to marry, authorize a marriage license to be issued, or issue the same, as the case may be. However, no consent shall be required where the minor has been emancipated.
	§ 20-49.1. How parent and child relationship established	2. A voluntary written statement of the father and mother made under oath acknowledging paternity and confirming that prior to signing the acknowledgment, the parties were provided with a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences arising from a signed acknowledgment, including the right to rescind. . . .Written acknowledgments of paternity made under oath by the father and mother prior to July 1, 1990, shall have the same legal effect as a judgment entered pursuant to § 20-49.8.
	§ 20-49.2. Commencement of action; parties; jurisdiction	The child's mother or father may not represent the child as guardian or otherwise. The determination of the court under the provisions of this chapter shall not be binding on any person who is not a party.
	§ 20-49.4. Evidence relating to parentage	2. Medical or anthropological evidence relating to the alleged parentage of the child based on tests performed by experts. If a person has been identified by the mother as the putative father of the child, the court may, and upon request of a party shall, require the child, the known parent, and the alleged parent to

		submit to appropriate tests;
	§ 20-49.5. Support of children of unwed parents by the father; testimony under oath	Whenever in any legal proceedings a man voluntarily testifies under oath or affirmation that he is the father of a child whose parents are not married, or are not married to each other, the court may require that he complete an acknowledgment of paternity on a form provided by the Department of Social Services.
	§ 20-49.6. Proceedings to establish paternity or enforce support obligations of males between the ages of 14 and 19	The order may provide for support and maintenance of the child by the father and shall be enforceable as if the father were an adult.
	§ 20-49.8. Judgment or order; costs; birth record	The judgment or order may direct either party to pay the reasonable and necessary unpaid expenses of the mother's pregnancy and delivery or equitably apportion the unpaid expenses between the parties. Such order shall set forth the full name and date and place of birth of the person whose parentage has been determined, the full names of both parents, including the maiden name, if any, of the mother and the name and address of an informant who can furnish the information necessary to complete a new birth record.
	§ 20-49.10. Relief from legal determination of paternity	A court shall not grant relief from determination of paternity if the individual named as father (i) acknowledged paternity knowing he was not the father , (ii) adopted the child, or (iii) knew that the child was conceived through artificial insemination.
	§ 20-61.3. Consequences of putative father failing to appear	If a putative father fails to appear after having been personally served with notice, in accordance with the provisions of subdivision 1 of § 8.01-296 or § 8.01-320, alleging that he is the father of a minor child, the court shall proceed in hearing the evidence in the case as provided in Chapter 3.1 (§ 20-49.1 et seq.) of Title 20 as if the putative father were present. The order of the court in any such proceedings shall be served upon the father in accordance with the provisions of Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01.
	§ 20-88. Support of parents by children	It shall be the joint and several duty of all persons eighteen years of age or over, of sufficient earning capacity or income, after reasonably providing for his or her own immediate family, to assist in providing for the support and maintenance of his or her mother or father , he or she being then and there in necessitous circumstances. This section shall not apply if there is substantial evidence of desertion, neglect, abuse or willful failure to support any such child by the father or mother , as the case may be, prior to the child's emancipation or, except as provided hereafter in this section, if a parent is otherwise eligible for and is receiving public assistance or services under a federal or state program.
	§ 20-88.59. Special rules of evidence and procedure	D. Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.
	§ 20-88.63. Establishment of support order	B. The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is: 1. A presumed father of the child; 7. The mother of the child; or
	§ 20-156. Definitions	"Gestational mother " means the woman who gives birth to a child, regardless of her genetic relationship to the child.

		"Embryo transfer" means the placing of a viable embryo into the uterus of a gestational mother .
	§ 20-158. Parentage of child resulting from assisted conception	<p>A. Determination of parentage, generally. - Except as provided in subsections B, C, D, and E of this section, the parentage of any child resulting from the performance of assisted conception shall be determined as follows:</p> <p>1. The gestational mother of a child is the child's mother.</p> <p>2. The husband of the gestational mother of a child is the child's father, notwithstanding any declaration of invalidity or annulment of the marriage obtained after the performance of assisted conception, unless he commences an action in which the mother and child are parties within two years after he discovers or, in the exercise of due diligence, reasonably should have discovered the child's birth and in which it is determined that he did not consent to the performance of assisted conception.</p> <p>D. Birth pursuant to court approved surrogacy contract. -- After approval of a surrogacy contract by the court and entry of an order as provided in subsection D of § 20-160, the intended parents are the parents of any resulting child. However, if the court vacates the order approving the agreement pursuant to subsection B of § 20-161, the surrogate is the mother of the resulting child and her husband is the father. The intended parents may only obtain parental rights through adoption as provided in Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2.</p> <p>E. 2. If either of the intended parents is a genetic parent of the resulting child, the intended father is the child's father. However, if (i) the surrogate is married, (ii) her husband is a party to the surrogacy contract, and (iii) the surrogate exercises her right to retain custody and parental rights to the resulting child pursuant to § 20-162, then the surrogate and her husband are the parents.</p> <p>3. If neither of the intended parents is a genetic parent of the resulting child, the surrogate is the mother and her husband is the child's father if he is a party to the contract. The intended parents may only obtain parental rights through adoption as provided in Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2.</p>
	§ 20-160. Petition and hearing for court approval of surrogacy contract	8. The intended mother is infertile, is unable to bear a child, or is unable to do so without unreasonable risk to the unborn child or to the physical or mental health of the intended mother or the child. This finding shall be supported by medical evidence;
	§ 20-163. Misc. provisions related to all surrogacy contracts	E. Health care providers shall not be liable for recognizing the surrogate as the mother of the resulting child before receipt of a copy of an order entered under § 20-160 or a copy of the contract, or for recognizing the intended parents as the parents of the resulting child after receipt of such order or copy of the contract.
Title 22.1 - Education	§ 22.1-30. Certain officers may not act on school board or serve as tie breaker	A. No state, county, city or town officer, no deputy of any such officer, no member of the governing body of a county, city or town, no employee of a school board, and no father, mother , brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of a member of the county governing body may, during his term of office, be appointed as a member of the school board for such county, city or town or as tie breaker for such school board except:
	§ 22.1-79.6. Employee lactation support policy	Each local school board shall adopt a policy to set aside, in each school in the school division, a non-restroom location that is shielded from the public view to be designated as an area in which any mother who is employed by the local school board or enrolled as a student may take breaks of reasonable length during the school day to express milk to feed her child until the child reaches the age of one.
Title 32.1 - Health	§ 32.1-46.01. Virginia Immunization Information	6. The patient identifying data to be reported, including, but not limited to, the patient's name, date of birth, gender, telephone number, home address, birth place, and mother's maiden name ;

	System	
	§ 32.1-69.1. Virginia Congenital Anomalies Reporting and Education System	At a minimum, data collected shall include, but need not be limited to, the following: (i) the infant's first and last name, date of birth, gender, state of residence, birth hospital, physician's name, date of admission, date of discharge or transfer, and diagnosis; (ii) the first and last names of the infant's mother and father ;
	§ 32.1-69.4. Publication of information regarding cord blood education	1. An explanation of the potential value and uses of umbilical cord blood, including cord blood cells and stem cells, for individuals who are, as well as individuals who are not, biologically related to a mother or her newborn child.
	§ 32.1-102.3:2. Certificates of public need	"Family member" means spouse, mother, father , son, daughter, brother, sister, aunt, uncle, or cousin by blood, marriage, or adoption.
	§ 32.1-127. Regulations	6. Shall also require that each licensed hospital develop and implement a protocol requiring written discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall require that the discharge plan be discussed with the patient and that appropriate referrals for the mother and the infant be made and documented. The discharge planning process shall involve, to the extent possible, the father of the infant and any members of the patient's extended family who may participate in the follow-up care for the mother and the infant.
	§ 32.1-134.01. Certain information required for maternity patients	Every licensed nurse midwife, licensed midwife, or hospital providing maternity care shall, prior to releasing each maternity patient, make available to such patient and, if present, to the father of the infant, other relevant family members, or caretakers, information about the incidence of postpartum blues and perinatal depression, information to increase awareness of shaken baby syndrome and the dangers of shaking infants, and information about safe sleep environments for infants that is consistent with current information available from the American Academy of Pediatrics. This information shall be discussed with the maternity patient and the father of the infant, other relevant family members, or caretakers who are present at discharge.
	§ 32.1-134.02. Infants; blood sample provided to parents	Every hospital providing maternity care shall offer to obtain a sample of blood from an infant born at the hospital and provide that sample to the mother of the infant.
	§ 32.1-249. Definitions	"Live birth" means the complete or substantial expulsion or extraction from its mother of a product of human conception, ... "Substantial expulsion or extraction" means, in the case of a headfirst presentation, the infant's entire head is outside the body of the mother or,
	§ 32.1-257. Filing birth certificates; from whom required; signature of parents	C. When a birth occurs outside an institution, the certificate shall be prepared on forms furnished by the State Registrar and filed by one of the following in the indicated order of priority, in accordance with the regulations of the Board: 3. The father, the mother, or, in the absence of the father and the inability of the mother , the person in charge of the premises where the birth occurred. D. If the mother of a child is not married to the natural father of the child at the time of birth or was not married to the natural father at any time during the ten months next preceding such birth, the name of the father shall not be entered on the certificate of birth without a sworn acknowledgment of paternity, executed subsequent to the birth of the child, of both the mother and of the person to be named as the father .

	§ 32.1-258.1. Certificate of Birth Resulting in Stillbirth	Upon the request of either individual listed as the mother or father on a report of fetal death in the Commonwealth as defined in § 32.1-264, the State Registrar shall issue a Certificate of Birth Resulting in Stillbirth for unintended, intrauterine fetal deaths occurring after a gestational period of 20 weeks or more. The requesting mother or father may, but shall not be required to, provide a name for the stillborn child on the Certificate of Birth Resulting in Stillbirth.
	§ 32.1-264. reports of fetal deaths; medical certification	D. When a fetal death occurs without medical attendance upon the mother at or after the delivery or abortion or when inquiry or investigation by the Office of the Chief Medical Examiner is required, the Chief Medical Examiner shall cause an investigation of the cause of fetal death to be made and the medical certification portion of the fetal death report to be completed and signed within 24 hours after being notified of a fetal death.
	§ 32.1-269. amending vital records; change of name; etc.	D. Upon written request of both parents and receipt of a sworn acknowledgment of paternity executed subsequent to the birth and signed by both parents of a child born out of wedlock, the State Registrar shall amend the certificate of birth to show such paternity if paternity is not shown on the birth certificate. Upon request of the parents, the surname of the child shall be changed on the certificate to that of the father .
	§ 32.1-283.1. State Child Fatality Review Team; membership; etc.	In addition, the Office of the Chief Medical Examiner may inspect and copy from any Virginia health care provider, on behalf of the Team, (i) without obtaining consent, the health and mental health records of the child and those perinatal medical records of the child's mother that related to such child and (ii) upon obtaining consent from each adult regarding his personal records, or from a parent regarding the records of a minor child, the health and mental health records of the child's family.
Title 37.2 - Behavioral Health	§ 37.2-714. Children born in state facilities	Any child born in a state facility shall be deemed a resident of the county or city in which the mother resided at the time of her admission. The child shall be removed from the state facility as soon after birth as the health and well-being of the child permit and shall be delivered to his father or other member of his family. . . If the mother has received services in a state facility continuously for 10 months, the Department of Social Services shall have financial responsibility for the care of the child, and the custody of the child shall be determined in accordance with the provisions of § 16.1-278.3.
	§ 37.2-718. Order to compel payment of services	B. The individual receiving services and his estate shall first be liable for the payment of his expenses and thereafter, the person liable for the support of the individual. Such person shall be the father, mother, husband, wife, or child of the individual who has attained the age of majority.
Title 38.2 - Insurance	§ 38.2-3451. Essential health benefits	No qualified health insurance plan that is sold or offered for sale through an exchange established or operating in the Commonwealth shall provide coverage for abortions, regardless of whether such coverage is provided through the plan or is offered as a separate optional rider thereto, provided that such limitation shall not apply to an abortion performed (i) when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or (ii) when the pregnancy is the result of an alleged act of rape or incest.
	§ 38.2-4019. Beneficiaries	No person other than a wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother , stepchild, or child by legal adoption of the member, or one who is dependent upon the member or one who has an insurable interest in the life of the member as described in § 38.2-301, shall be named a beneficiary of the member's certificate.
	§ 38.2-5002. Virginia Birth-Related Neurological Injury	This subsection shall not be construed to exclude other rights and remedies available to the infant's mother arising out of or related to a physical injury, separate and distinct from an injury to the infant, that is

	Compensation Program	suffered by the infant's mother during the course of the infant's delivery.
	§ 38.2-5004.1. Notification of possible beneficiaries	B. In addition to any other postpartum materials provided to the mother or other appropriate person, every hospital shall provide for each infant who was hospitalized in a neonatal intensive care unit an informational brochure prepared or approved by the board of directors of the Program.
	§ 38.2-5009.1. Infants dying shortly after birth	D. As used in this section, an infant's family means the infant's father, mother , or both, or if neither is a party to the proceeding, the infant's legal guardian.
Title 40.1 - Labor and Employment	§ 40.1-28.9. Definition of terms	6. Any person under the age of 18 in the employ of his father, mother or legal guardian;
	§ 40.1-122. Approval of agreement by Commissioner	Every apprentice agreement shall be signed by the employer, or by an association of employers or an organization of employees as provided in § 40.1-124, and by the apprentice, and, if the apprentice is a minor, by the minor's father or mother , provided, that if both father and mother be dead or legally incapable of giving consent or have abandoned their children, then by the guardian of the minor.
Title 54.1 - Professions and Occupations	§ 54.1-1101. Exemptions; failure to obtain certificate of occupancy	8. Any person who performs or supervises the construction, removal, repair or improvement of a house upon his own real property as a bona fide gift to a member of his immediate family provided such member lives in the house. For purposes of this section, "immediate family" includes one's mother, father , son, daughter, brother, sister, grandchild, grandparent, mother-in-law and father-in-law ;
	§ 54.1-2403.01. Routine component of prenatal care	The practitioner shall offer the pregnant woman oral or written information that includes an explanation of HIV infection, a description of interventions that can reduce HIV transmission from mother to infant, and the meaning of positive and negative test results.
	§ 54.1-2969. Authority to consent to surgical and medical care of certain minors	G. A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and her child to surgical and medical treatment relating to the delivery of her child when such surgical or medical treatment is provided during the delivery of the child or the duration of the hospital admission for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the purpose of giving consent to surgical and medical treatment for her child.
Title 59.1 - Trade and Commerce	§ 59.1-352.1. Definitions	"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.
	§ 59.1-365. Definitions	"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.
Title 60.2 - Unemployment Compensation	§ 60.2-219. Services not included in term "employment"	7. Service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 21 in the employ of his father or mother ;
Title 63.2 - Welfare (Social Services)	§ 63.2-602. Eligibility for TANF; penalty	3. Is living with his father, mother , grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece in a residence maintained by such relative or is in placement under conditions specified by the Board;
	§ 63.2-604. Eligibility for TANF; children born to TANF parents	The Board shall provide that a recipient family in which the mother gives birth to an additional child during the period of the mother's eligibility for TANF financial assistance, or during a temporary penalty period of ineligibility for financial assistance
	§ 63.2-903. Entrustment agreements; adoption	B. For purposes of §§ 63.2-900, 63.2-1817 and this section, a parent who is less than 18 years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement,

		<p>including an agreement that provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of 18 years. An entrustment agreement for the termination of all parental rights and responsibilities shall be executed in writing and notarized. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within 15 days of mailing of such notice. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.</p> <p>C. An entrustment agreement for the termination of parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when such father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.</p>
	<p>§ 63.2-1201. Filing of petition for adoption; venue; etc.</p>	<p>The petition for adoption, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, shall include an additional \$50 filing fee that shall be used to fund the Putative Father Registry established in Article 7 (§ 63.2-1249 et seq.) of this chapter.</p>
	<p>§ 63.2-1201.1 Previously married parents who stood in loco parentis during time of marriage</p>	<p>D. Nothing in this section shall be construed to permit any child to have more than two living parents by birth or adoption, who have legal rights and obligations in respect to the child, in the form of one father and one mother.</p>
	<p>§ 63.2-1202. Parental, or agency, consent required</p>	<p>C. Consent shall be executed:</p> <ol style="list-style-type: none"> 1. By the birth mother and by any man who: <ol style="list-style-type: none"> a. Is an acknowledged father under § 20-49.1; b. Is an adjudicated father under § 20-49.8; c. Is a presumed father under subsection D; or d. Has registered with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.). <p>Verification of compliance with the notice provisions of the Putative Father Registry shall be provided to the court.</p> <p>D. A man shall be presumed to be the father of a child if:</p> <ol style="list-style-type: none"> 1. He and the mother of the child are married to each other and the child is born during the marriage; 2. He and the mother of the child were married to each other and the child is born within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or 3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the

		<p>invalid marriage or within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.</p> <p>Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.</p> <p>E. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.</p> <p>F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.</p> <p>I. A birth father of the child may consent to the termination of all of his parental rights prior to the birth of the child.</p>
	<p>§ 63.2-1203. When consent is withheld or unobtainable</p>	<p>An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the circuit court that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.</p>
	<p>§ 63.2-1218. Certain exchange of property, advertisement, etc.</p>	<p>No person or child-placing agency shall charge, pay, give, or agree to give or accept any money, property, service or other thing of value in connection with a placement or adoption or any act undertaken pursuant to this chapter except (i) reasonable and customary services provided by a licensed or duly authorized child-placing agency and fees paid for such services; (ii) payment or reimbursement for medical expenses and insurance premiums that are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, for mental health counseling received by the birth mother or birth father related to the adoption, and for expenses incurred for medical care for the child; (iii) payment or reimbursement for reasonable and necessary expenses for food, clothing, and shelter when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child;</p>
	<p>§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; etc.</p>	<p>B. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable or such birth father did not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) or the birth father named by the birth mother denies under oath and in writing the paternity of the child. An affidavit signed by the birth mother stating that the identity of the birth father is unknown may be filed with the court alleging that the identity of the birth father is not known or reasonably ascertainable. A birth father shall be given notice of the entrustment if he is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to</p>

		<p>§ 20-49.8, a presumed father pursuant to § 63.2-1202, or a putative father who has registered with Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.). If the putative father's identity is reasonably ascertainable, he shall be given notice pursuant to the requirements of § 63.2-1250.</p> <p>C. When a birth father is required to be given notice, he may be given notice of the entrustment by registered or certified mail to his last known address. If he fails to object to the entrustment within 15 days of the mailing of such notice, his entrustment shall not be required. An objection to an entrustment agreement shall be in writing, signed by the objecting party or counsel of record for the objecting party and filed with the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223.</p> <p>D. The execution of an entrustment agreement shall be required of a presumed father except under the following circumstances: (i) if he denies paternity under oath and in writing in accordance with § 63.2-1202; (ii) if the presumption is rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child; (iii) if another man admits, in writing and under oath, that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best interests of the child pursuant to § 63.2-1205.</p> <p>E. When none of the provisions of subsections C and D apply, notice of the entrustment shall be given to the presumed father pursuant to the requirements of § 16.1-277.01.</p> <p>F. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.</p> <p>G. A birth father may execute an entrustment agreement for the termination of all of his parental rights prior to the birth of the child. Such entrustment shall be subject to the revocation provisions of § 63.2-1223.</p> <p>H. No entrustment shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.</p>
	<p>§ 63.2-1224. Explanation of process, legal effects of adoption required</p>	<p>Prior to the placement of a child for adoption, the licensed child-placing agency or local board having custody of the child shall provide an explanation of the adoption process to the birth mother and, if reasonably available, the man who is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed father pursuant to § 63.2-1202, or a putative father who has registered with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter.</p>
	<p>§ 63.2-1233. Consent to be executed in JDR court</p>	<p>1. a. The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father if the birth father consents under oath and in writing to the adoption.</p> <p>b. The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father named by the birth mother denies under oath and in writing the paternity of the child or if the putative father did not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter. If the identity of the birth father is</p>

		<p>reasonably ascertainable, but the whereabouts of the birth father are not reasonably ascertainable, verification of compliance with the Putative Father Registry shall be provided to the court.</p> <p>c. When a birth father is required to be given notice, he may be given notice of the adoption by registered or certified mail to his last known address and if he fails to object to the adoption within 15 days of the mailing of such notice, his consent shall not be required. An objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the court, within the time period specified in this section. When no timely objection is filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled hearing, either in person or by counsel, shall constitute a waiver of such objection.</p> <p>d. The juvenile and domestic relations district court may accept the written consent of the birth father at the time of the child's conception or birth, provided that his identifying information required in § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent shall advise the birth father of his opportunity for legal representation, shall identify the court in which the case was or is intended to be filed, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation. For good cause shown, the court may dispense with the requirements regarding the filing of the birth father's identifying information pursuant to this subdivision 1. d.</p> <p>e. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father shall be executed in the juvenile and domestic relations district court.</p> <p>f. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required, unless the court finds that the father's consent is withheld contrary to the best interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such presumed father shall be under oath and in writing and may be executed in or out of court. The presumption that the husband is the father of the child may be rebutted by sufficient evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required. The executed denial of paternity by the putative father shall be sufficient to rebut the presumption that he is the father of the child. If the court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to be given to the presumed father.</p>
	<p>§ 63.2-1241. Adoption of child by spouse of birth or adoptive parent</p>	<p>B. The court may order the proposed adoption and change of name without referring the matter to the local director if (i) the birth parent or parent by adoption, other than the birth parent or parent by adoption joining in the petition for adoption, is deceased; (ii) the birth parent or parent by adoption, other than the birth parent or parent by adoption joining in the petition for adoption, consents to the adoption in writing and under oath; (iii) the acknowledged, adjudicated, presumed, or putative father denies paternity of the child; (iv) the birth mother swears under oath and in writing that the identity of the father is not reasonably</p>

		ascertainable; (v) the child is the result of surrogacy and the birth parent, other than the birth parent joining in the petition, consents to the adoption in writing; (vi) the parent by adoption joining in the petition was not married at the time the child was adopted; or (vii) the child is 14 years of age or older and has lived in the home of the person desiring to adopt the child for at least five years.
	§ 63.2-1249. Establishment of Registry	A. A Putative Father Registry is hereby established in the Department of Social Services.
	§ 63.2-1250. Registration; notice; form	B. A man will not prejudice any rights by failing to register if: 1. A father-child relationship between the man and the child has been established pursuant to § 20-49.1, 20-49.8, or if the man is a presumed father as defined in § 63.2-1202; or C. Failure to register pursuant to subsection A shall waive all rights of a man who is not an acknowledged, presumed, or adjudicated father to withhold consent to an adoption proceeding unless the man was led to believe through the birth mother's fraud that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) that the child died when in fact the child is alive. Upon the discovery of the fraud, the man shall register with the Putative Father Registry within 10 days. E. Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice that a child may be conceived and the man is entitled to all legal rights and obligations resulting therefrom. Lack of knowledge of the pregnancy does not excuse failure to timely register. In the event that the identity and whereabouts of the birth father are reasonably ascertainable, written notice of the existence of an adoption plan and the availability of registration with the Putative Father Registry shall be provided by personal service or by certified mailing to the man's last known address. The man shall have no more than 10 days from the date of such personal service or certified mailing to register. The personal service or certified mailing may be done either prior to or after the birth of the child.
	§ 63.2-1251. Furnishing information; confidentiality	A. The Department is not required to locate the mother of a child who is the subject of a registration, but the Department shall send a copy of the notice of registration to the mother if an address is provided. B. Information contained in the registry is confidential and may only be released on request to: 1. A court or a person designated by the court; 2. The mother of the child who is the subject of the registration; 3. An agency authorized by law to receive such information; 8. A putative father registry in another state; and
	§ 63.2-1252. Search of registry	A. If no father-child relationship has been established pursuant to § 20-49.1, a petitioner for adoption shall obtain from the Department a certificate that a search of the Putative Father Registry was performed. If the conception or birth of the child occurred in another state, a petitioner for adoption shall obtain a certificate from that state indicating that a search of the putative father registry was performed, if that state has a putative father registry .
	§ 63.2-1253. Duty to publicize registry	Four references to Putative Father Registry
	§ 63.2-1505. Investigations by local departments	2. Complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection B of § 63.2-1509 and the mother sought substance abuse counseling or treatment prior to the child's birth;

	§ 63.2-1509. Requirement that certain injuries to children be reported by physicians, nurses, etc.	B. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by a health care provider within six weeks of the birth of a child that the results of toxicology studies of the child indicate the presence of a controlled substance not prescribed for the mother by a physician; (ii) a finding made by a health care provider within six weeks of the birth of a child that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis made by a health care provider at any time following a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child;
	§ 63.2-1902. Central unit for information and administration; etc.	With respect to individuals who owe child support or are alleged in a pending paternity proceeding to be a putative father , the Commissioner may request and shall receive the names and addresses of such individuals and the names and addresses of such individuals' employers . . .
	§ 63.2-1913. Administrative establishment of paternity	<p>Paternity may be established by a written statement of the father and mother made under oath acknowledging paternity or scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of paternity. The Department may order genetic testing and shall pay the costs of such tests, subject to recoupment from the father, if paternity is established. Where an original test is contested and additional testing is requested, the Department may require advance payment by the contestant.</p> <p>Before a voluntary acknowledgment of paternity is accepted by the Department as the basis for establishing paternity, the Department shall provide to both the mother and the putative father a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences that arise from a signed acknowledgment, including the right to rescind the acknowledgment within the earlier of (i) sixty days from the date of signing or (ii) the date of entry of an order in an administrative or judicial proceeding relating to the child in which the signatory is a party.</p>
	§ 63.2-1914. Hospital paternity establishment programs	<p>Each public and private birthing hospital in the Commonwealth shall provide unwed parents the opportunity to legally establish the paternity of a child prior to the child's discharge from the hospital following birth, by means of a voluntary acknowledgment of paternity signed by the mother and the father, under oath. Designated staff members of such hospitals shall provide to both the mother and the alleged father, if he is present at the hospital, (i) written materials regarding paternity establishment, (ii) the forms necessary to voluntarily acknowledge paternity, (iii) a written and oral description of the rights and responsibilities of acknowledging paternity, and (iv) the opportunity, prior to the child's discharge from the hospital, to speak with staff who are trained to provide information and answer questions about paternity establishment. The provision by designated hospital staff members of the information required by this section, consistent with federal regulations, shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1.</p> <p>Hospitals shall send the original acknowledgment of paternity containing the social security numbers, if available, of both parents, with the information required by Article 2 (§ 32.1-257 et seq.) of Chapter 7 of Title 32.1, to the State Registrar of Vital Records so that the birth certificate issued includes the name of the legal father of the child.</p>
Title 64.2 - Wills, Trusts, and	§ 64.2-102. Meaning of child	3. Except as otherwise provided by subdivision 1 or 2, a person born out of wedlock is a child of the

Fiduciaries	and related terms	<p>mother. That person is also a child of the father, if:</p> <ul style="list-style-type: none"> a. The biological parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage was prohibited by law, deemed null or void, or dissolved by a court; or b. Paternity is established by clear and convincing evidence, including scientifically reliable genetic testing, as set forth in § 64.2-103; however, paternity established pursuant to this subdivision is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his and has not refused to support the child.
	§ 64.2-103. Evidence of paternity	<p>A. For the purposes of this title, paternity of a child born out of wedlock shall be established by clear and convincing evidence, and such evidence may include the following:</p> <ul style="list-style-type: none"> 1. That he cohabited openly with the mother during all of the 10 months immediately prior to the time the child was born; 2. That he gave consent to a physician or other person, not including the mother, charged with the responsibility of securing information for the preparation of a birth record that his name be used as the father of the child upon the birth record of the child; 3. That he allowed by a general course of conduct the common use of his surname by the child; 4. That he claimed the child as his child on any statement, tax return, or other document filed and signed by him with any local, state, or federal government or any agency thereof; 5. That he admitted before any court having jurisdiction to determine his paternity that he is the father of the child; 6. That he voluntarily admitted paternity in writing under oath; 7. The results of scientifically reliable genetic tests, including DNA tests, weighted with all the evidence; or 8. Other medical, scientific, or anthropological evidence relating to the alleged parentage of the child based on tests performed by experts. <p>B. A judgment establishing a father's paternity made by a court having jurisdiction to determine his paternity is sufficient evidence of paternity for the purposes of this section.</p>

Paternal/Maternal

Title	Section	Reference
Title 8.01 - Civil Remedies and Procedure	§ 8.01-66.9. Lien in favor of Commonwealth, its programs, institutions or departments on claim for personal injuries	Two references to the Maternal and Child Health Program
Title 18.2 - Crimes	§ 18.2-76. Informed written consent required; penalty	Reference to maternal health care
Title 20 - Domestic Relations	§ 20-156. Definitions	Two references to maternal health care
Title 32.1 - Health	§ 32.1-77. State plans for maternal and child health services	Reference to maternal health care
Title 38.2 - Insurance	§ 38.2-3418.3. Coverage for hemophilia and congenital bleeding disorders	"State-approved hemophilia treatment center" means a hospital or clinic which receives federal or state Maternal and Child Health Bureau, and/or Centers for Disease Control funds to conduct comprehensive care for persons with hemophilia and other congenital bleeding disorders.
	§ 38.2-5001. Definitions	This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality, degenerative neurological disease, or maternal substance abuse.
Title 54.1 - Professions and Occupations	§ 54.1-2800. Definitions	"Next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to §54.1-2825, the legal spouse, child aged 18 years or older, parent of a decedent aged 18 years or older, custodial parent or noncustodial parent of a decedent younger than 18 years of age, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age , or any other relative in the descending order of blood relationship.
Title 57 - Religious and Charitable Matters; Cemeteries	§ 57-27.3. Authorization for interment	For purposes of this section, "next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child over 18 years of age, custodial parent, noncustodial parent, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age , or any other relative in the descending order of blood relationship.
Title 63.2 - Welfare (Social Services)	§ 63.2-1253. Duty to publicize registry	A. The Department shall produce and distribute a pamphlet or other publication informing the public about the Putative Father Registry including . . . (v) paternal rights and associated responsibilities, and (vi) other appropriate provisions of this article.
Title 64.2 - Wills, Trusts, and Fiduciaries	§ 64.2-200. Course of descents generally; etc.	5. If there is none of the foregoing, then one-half of the estate descends and passes to the paternal kindred and one-half descends and passes to the maternal kindred of the decedent in the following course:... B. If there are either no surviving paternal kindred or no surviving maternal kindred , the whole estate descends and passes to the paternal or maternal kindred who survive the decedent. If there are neither maternal nor paternal kindred , the whole estate descends and passes to the kindred of the decedent's most

		recent spouse, if any, provided that the decedent and the spouse were married at the time of the spouse's death, as if such spouse had died intestate and entitled to the estate.
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Married/Marriage

Title	Section	Reference
Title 20 - Domestic Relations	§ 20-38.1. Certain marriages prohibited	(a) The following marriages are prohibited: (1) A marriage entered into prior to the dissolution of an earlier marriage of one of the parties; (2) A marriage between an ancestor and descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood or by adoption; (3) A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.
	§ 20-45.2. Marriage between persons of same sex	A marriage between persons of the same sex is prohibited. Any marriage entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created by such marriage shall be void and unenforceable.
	§ 20-45.3. Civil unions between persons of same sex	A civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable.
	§ 20-156. Definitions	"Intended parents" means a man and a woman, married to each other, who enter into an agreement with a surrogate under the terms of which they will be the parents of any child born to the surrogate through assisted conception regardless of the genetic relationships between the intended parents, the surrogate, and the child.

Bride/Groom

Title	Section	Reference
Title 20 - Domestic Relations	§ 20-16. Issuance of marriage licenses and certificates	The parties shall be able to designate themselves on the application for marriage license as spouse, bride, or groom.
Title 32.1 -Health	§ 32.1-271. Disclosure of information in records; etc.	Following contract implementation, the State Registrar shall maintain a publicly available online vital records index or indexes, consisting at a minimum of name, date, and county or city of occurrence for births (naming the child), marriages (naming the bride and groom), divorces (naming the parties to the divorce), and deaths (naming the decedent),

Widow/Widower

Title	Section	Reference
Title 11 - Contracts	§ 11-8. Instruments issued by minors or unmarried widows to obtain benefits	Any person under the age of eighteen or widow who has not remarried who is eligible for a guaranty of credit under the provisions of Title III of an Act of Congress of the United States approved June 22, 1944, entitled the "Servicemen's Readjustment Act of 1944," as now or hereafter amended, or other like federal law, shall be upon complying with the terms of this section, qualified to contract for and purchase any real or personal property with respect to which the guaranteed loan is to be made
Title 58.1 - Taxation	§ 58.1-322. Virginia taxable income of residents	The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower , or child or stepchild of such victim.
Title 65.2 - Workers' Compensation	§ 65.2-517. Termination of dependency	For the purpose of this title, the dependence of a widow or widower of a deceased employee shall terminate with death or remarriage,

PRESENT: Lemons, C.J., Goodwyn, Mims, McClanahan, Powell, and Kelsey, JJ., and Millette, S.J.

REVI, LLC

v. Record No. 141562

CHICAGO TITLE INSURANCE COMPANY

OPINION BY
JUSTICE WILLIAM C. MIMS
September 17, 2015

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY
Brett A. Kassabian, Judge

In this appeal, we consider whether Code § 38.2-209(A) requires a trial judge, rather than a jury, to determine whether an insurer committed a bad faith breach of an insurance contract warranting an award of attorney's fees to the insured.

I. BACKGROUND AND MATERIAL PROCEEDINGS

In 2000, REVI, LLC ("REVI") purchased a five-acre parcel of residential property along the Potomac River in Fairfax County (the "Property"). At that time, REVI also purchased a title insurance policy from Chicago Title Insurance Company ("Chicago Title"), which insured against "loss or damage" caused by "[a]ny defect in or lien or encumbrance on the title," among other risks.

In 2004, REVI discovered that the Property was subject to a number of restrictions contained in a stipulation arising out of a condemnation action filed by the United States in 1963. These restrictions prohibited tree removal except in limited circumstances, prescribed permissible building heights, and provided that the property could be developed only in accordance with a "master plan" approved by the United States Secretary of the Interior. Upon learning of the restrictions, REVI filed a claim with Chicago Title.

In 2005, Chicago Title accepted the claim and began negotiations with the National Park Service, a division of the United States Department of the Interior, seeking a release of the

restrictions. The negotiations resulted in a new agreement (the “Release and Easement Agreement”), which recognized that REVI could subdivide the Property and construct five residences in accordance with the original stipulation without the consent of the United States. The Release and Easement Agreement modified slightly the prohibition on tree removal, allowing REVI to request permission to remove certain trees from the Property. However, the Release and Easement Agreement carried over the restriction on building height and created some additional restrictions. After receiving assurances that Chicago Title would indemnify it for any diminution in the Property’s value as a result of the restrictions, REVI signed the Release and Easement Agreement in September 2011.

Subsequently, Chicago Title informed REVI that the restrictions contained in the Release and Easement Agreement did not diminish the value of the Property, and as a result, REVI had not suffered a compensable loss under the policy. However, Chicago Title invited REVI to submit an updated Proof of Loss.

In April 2012, REVI submitted an updated Proof of Loss, claiming that the restrictions contained in the Release and Easement Agreement had diminished the value of the property by \$1.6 million. Chicago Title reiterated its position that the restrictions contained in the Release and Easement Agreement did not diminish the value of the Property, and it denied REVI’s claim.

On April 2, 2013, REVI filed a complaint in the Circuit Court of Fairfax County, alleging that Chicago Title had breached the title insurance policy. REVI also alleged that Chicago Title had acted in bad faith, and it requested an award of attorney’s fees and costs pursuant to Code § 38.2-209. REVI demanded a jury trial “on all counts so triable.”

Chicago Title filed a motion seeking to bifurcate the trial and seeking to have the trial judge, rather than the jury, consider the issues of bad faith and attorney’s fees under Code § 38.2-

209(A). Chief Judge Dennis J. Smith ordered the trial to be bifurcated, but he also ruled that Code § 38.2-209(A) permitted the jury to determine whether Chicago Title had breached the insurance contract in bad faith, and accordingly, permitted the jury to award attorney's fees.

Judge Brett A. Kassabian presided over the jury trial. The jury found that Chicago Title had breached the contract and awarded REVI \$1,241,000 in damages. Then, the jury found that Chicago Title had acted in bad faith and awarded REVI \$442,000 in attorney's fees and costs.

After receiving the verdicts, Judge Kassabian sua sponte suspended the final order. He then asked the parties to submit post-trial briefs on whether Code § 38.2-209(A) permits a jury to determine whether an insurer breached an insurance contract in bad faith and award attorney's fees and costs.

Upon further consideration, Judge Kassabian vacated the jury's award of attorney's fees and costs, ruling that Code § 38.2-209(A) requires a judge, not a jury, to determine whether an insurer committed a bad faith breach of an insurance contract warranting an award of attorney's fees. Judge Kassabian then reconsidered the evidence de novo and concluded that the evidence was insufficient to prove that Chicago Title had acted in bad faith.

REVI filed a petition for appeal challenging (1) the ruling that only a judge, not a jury, may determine whether an insurer breached an insurance contract in bad faith, and accordingly, award attorney's fees and costs to the insured pursuant to Code § 38.2-209(A) and (2) the factual finding that Chicago Title did not act in bad faith. We awarded REVI an appeal only on its first assignment of error.

II. ANALYSIS

A. Standard of Review

We review questions of statutory interpretation de novo. Eberhardt v. Fairfax Cnty. Emps. Ret. Sys., 283 Va. 190, 194, 721 S.E.2d 524, 526 (2012). We look to the words of the statute to determine its meaning, and we consider the entire statute to “place its terms in context.” Id. “[I]t is our duty to interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal.” VEPCO v. Board of Cnty. Supervisors, 226 Va. 382, 387-88, 309 S.E.2d 308, 311 (1983).

B. The Meaning of “court” in Code § 38.2-209

Code § 38.2-209(A) states:

[I]n any civil case in which an insured individual sues his insurer to determine what coverage, if any, exists under his present policy . . . or the extent to which his insurer is liable for compensating a covered loss, the individual insured shall be entitled to recover from the insurer costs and such reasonable attorney fees as the court may award. However, these costs and attorney’s fees shall not be awarded unless the court determines that the insurer, not acting in good faith, has either denied coverage or failed or refused to make payment to the insured under the policy.

(Emphasis added.) REVI argues that the meaning of “court,” as used in Code § 38.2-209(A), is ambiguous. REVI contends that the word “court” when used in the Code sometimes includes a “jury” and may refer to either the judge or the jury in this statute. To support its argument, REVI draws an analogy between Code § 38.2-209(A) and a common law bad faith claim. REVI argues that a determination of bad faith is a factual finding, and it asserts that the common law entitled litigants to a jury trial on questions of fact. REVI concludes that interpreting “court” to exclude a jury alters the common law rule, ignores canons of statutory construction, and violates its constitutional right to have a jury decide whether bad faith exists. We disagree.

Code § 38.2-209 traces its origins to former Code § 38.1-32.1, enacted in 1982. 1982 Acts ch. 576. As enacted, former Code § 38.1-32.1 (Cum. Supp. 1982) provided that the insured

could recover “costs and such reasonable attorney fees as the trial judge after verdict may award if it is determined by such trial judge in such case that the insurer has not in good faith either denied coverage or failed or refused to make payment to the insured under such policy.”

(Emphasis added.)

Two years later, the General Assembly directed the Virginia Code Commission to study Title 38.1 of the Code, consisting of the Commonwealth’s insurance laws, and “report its findings in the form of a revision.” H. J. Res. 1, Va. Gen. Assem. (Reg. Sess. 1984). The Commission submitted its report to the General Assembly in 1986. Virginia Code Commission, Report to the Governor and General Assembly of Virginia [The Revision of Title 38.1 of the Code of Virginia] (Jan. 1986), H. Doc. No. 17 (1986). Subsequently, the General Assembly enacted 1986 Acts ch. 562 (the “Recodification Act”), titled “An Act to amend the Code of Virginia by adding a title numbered 38.2 . . . and to repeal Title 38.1 of the Code of Virginia . . . so as to revise, rearrange, amend and recodify the insurance laws of Virginia generally.” The Recodification Act enacted the text currently codified as Code § 38.2-209(A).¹

REVI invokes the “presumption that the General Assembly, in amending a statute, intended to effect a substantive change in the law.” West Lewinsville Heights Citizens Ass’n v. Board of Supervisors, 270 Va. 259, 265, 618 S.E.2d 311, 314 (2005) (citations omitted). It contends that the term “trial judge” clearly excluded a jury. Therefore, it argues that the substitution of “court” for “trial judge” leads to the conclusion that “court” refers to either a judge or a jury. However, “there is [also] a presumption that a recodified statute does not make substantive changes in the former statute unless a contrary intent plainly appears in the recodified statute.” Waldrop v. Commonwealth, 255 Va. 210, 214, 495 S.E.2d 822, 825 (1998)

¹ The only change in this statute from 1986 to the present was the addition of the word “fidelity” before “bond.” See 2006 Acts ch. 279.

(citing State Farm Mut. Auto. Ins. v. Major, 239 Va. 375, 378, 389 S.E.2d 307, 309 (1990)).

Thus, we turn to the language of the entire Recodification Act to determine whether the General Assembly intended to make a substantive change. See Eberhardt, 283 Va. at 194-95, 721 S.E.2d at 526 (courts may reference the Acts of Assembly as the “authoritative text” of a single legislative enactment).

From the Recodification Act, the provision subsequently codified as Code § 38.2-807 stated:

In any action against an unlicensed insurer upon an insurance contract issued or delivered in this Commonwealth to a resident of this Commonwealth or to a corporation authorized to do business in this Commonwealth, the court may allow the plaintiff a reasonable attorney fee if (i) the insurer has failed to make payment in accordance with the terms of the contract for thirty days after demand prior to the commencement of the action and (ii) the court concludes that the refusal was vexatious and without reasonable cause. The fee shall not exceed twelve and one-half percent of the amount that the court or jury finds the plaintiff is entitled to recover against the insurer.

1986 Acts ch. 562 (emphasis added).² The meaning of this text is plain: the General Assembly did not intend for the word “court” to include “jury” in this provision. Thus, Code § 38.2-807 clearly requires the judge, not the jury, to determine whether the insurer acted in bad faith before awarding attorney’s fees to the insured.

Significantly, Code § 38.2-807 — like Code § 38.2-209 — regulates the court’s authority to award attorney’s fees and costs to the insured when an insurer breaches an insurance contract, limiting its authority to instances of bad faith. We construe “all statutes in pari materia in such a manner as to reconcile, if possible, any discordant feature which may exist, and make the body of

² The General Assembly amended Code § 38.2-807 in 2010. However, none of the amendments are relevant to the determination of the meaning of the word “court” in Code § 38.2-209(A). See 2010 Acts ch. 343.

the laws harmonious.” Lucy v. County of Albemarle, 258 Va. 118, 129-30, 516 S.E.2d 480, 485 (1999); Eberhardt, 283 Va. at 195, 721 S.E.2d at 526 (“[W]hen a term is used in different sections of a statute, we give it the same meaning in each instance unless there is a clear indication the General Assembly intended a different meaning.”). In light of the relationship between the two sections in this single enactment, we conclude that “court,” as used in Code § 38.2-209(A), means “judge.” Accordingly, the judge, not the jury, must determine whether the insurer breached the insurance contract in bad faith before it may award attorney’s fees and costs to the insured pursuant to Code § 38.2-209(A).

Our conclusion is consistent with the commonly accepted definition of “court,” which is “[a] tribunal constituted to administer justice [or t]he judge or judges who sit on such a tribunal.” Black’s Law Dictionary 430 (10th ed. 2014); see Alexandria Gazette Corp. v. West, 198 Va. 154, 162, 93 S.E.2d 274, 281 (1956) (“[T]he word ‘court’ refers sometimes to the judicial institution, at other times to the judicial officer, and still at other times to the place where a court is being held.”).

The case relied upon by REVI, Beasley v. Bosschermuller, 206 Va. 360, 143 S.E.2d 881 (1965), is not to the contrary. In that case, we considered a different statutory provision requiring “courts” to take judicial notice of the statutory tables of speed and stopping distances of vehicles. Id. at 366, 143 S.E.2d at 886 (quoting provisions currently codified at Code § 46.2-880). Given the context of the statute, we reasoned that the General Assembly intended “to include juries within the meaning of the word ‘courts’” and concluded that courts could instruct juries “as to the contents of the statute which are pertinent to the issues in a particular case.” Id. Nothing in Code § 38.2-209 or the Recodification Act suggests that the General Assembly intended to include juries within the meaning of “court” in this context.

We also observe that the General Assembly plainly stated its intent behind the Recodification Act. When the legislature directed the Commission to study former Title 38.1, it recited that the provisions of former Title 38.1 had become rife with “inconsistencies both in style and substance.” H. J. Res. 1, Va. Gen. Assem. (Reg. Sess. 1984). The General Assembly further recited that the provisions of former Title 38.1 needed to be reorganized and revised for “grammar, clarity and purpose,” and that substantive changes were required to account for developments in the industry. Id.

The Commission addressed these concerns in its report, identifying the principal changes in the introduction and additional substantive changes at the beginning of each chapter, and providing drafting notes throughout. As explained, the substitution of “court” for “trial judge” made the provision codified as Code § 38.2-209 consistent with a related provision within the title.³ Moreover, the Commission did not indicate that it intended to make a substantive change by substituting the term “court” for “trial judge” in Code § 38.2-209. See The Revision of Title 38.1 of the Code of Virginia (Jan. 1986), H. Doc. No. 17, at 12-13.

The Recodification Act “was the legislative implementation” of the Commission’s report on the revision of former Title 38.1. Eberhardt, 283 Va. at 196, 721 S.E.2d at 527. The General Assembly enacted the Commission’s recommendations with few amendments, and no amendments to the recommended language now codified as Code § 38.2-209. Therefore, we accept the report as “persuasive authority” that the General Assembly did not intend to make a substantive change in Code § 38.2-209. Newberry Station Homeowners Ass’n v. Board of Supervisors, 285 Va. 604, 617, 740 S.E.2d 548, 555 (2013).

³ See Code § 38.2-807 (former Code § 38.1-70, enacted by 1952 Acts ch. 317 (distinguishing between “court” and “jury”)); see also Code § 38.2-617(C) (former Code § 38.1-57.24(C), enacted by 1981 Acts ch. 389 (authorizing the “court” to “award the cost of the action and reasonable attorney’s fees to the prevailing party”)).

C. The Right to a Jury Trial Does Not Apply to Proceedings Under Code § 38.2-209

We find no merit in REVI's argument that Code § 38.2-209 denies it the right to a jury trial under the Constitution of Virginia. Article I, Section 11 of the Constitution of Virginia provides "[t]hat in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred." Yet, the right to a jury trial does not apply "to those proceedings in which there was no right to jury trial when the Constitution was adopted." Stanardsville Volunteer Fire Co. v. Berry, 229 Va. 578, 583, 331 S.E.2d 466, 469 (1985) (citing Bowman v. Virginia State Entomologist, 128 Va. 351, 372, 105 S.E. 141, 148 (1920)).

Code § 38.2-209(A) does not create an independent cause of action for an insurer's bad faith breach of an insurance contract. See Code § 38.2-209(B) ("Nothing in this section shall be deemed to grant a right to bring an action against an insurer by an insured who would otherwise lack standing to bring an action."); see also 1982 Acts ch. 576 (codified as former Code § 38.1-32.1). Thus, it is not a cause of action separate from REVI's claim for breach of contract, nor is it a codified version of the common law claim for bad faith. See CUNA Mut. Ins. Soc'y v. Norman, 237 Va. 33, 38, 375 S.E.2d 724, 726-27 (1989); State Farm Mut. Auto. Ins. Co. v. Floyd, 235 Va. 136, 142, 366 S.E.2d 93, 96 (1988). Rather, the section authorizes the court to award attorney's fees and costs after the insured establishes coverage under the disputed policy, and the court finds that the insurer denied coverage in bad faith. It is a vehicle for shifting attorney's fees and costs where otherwise such costs would not be recoverable.

Virginia follows the "American Rule," which states that "[g]enerally, absent a specific contractual or statutory provision to the contrary, attorney's fees are not recoverable by a prevailing litigant from the losing litigant." Mullins v. Richlands Nat'l Bank, 241 Va. 447, 449,

403 S.E.2d 334, 335 (1991) (citations omitted). In Virginia, the right to recover attorney's fees and costs has been regulated by statute since the colonial era.⁴ See 1778 Acts ch. 14, § 5; 1764 Acts ch. 15, § 3; 1765 Acts ch. 52, § 3; 1761 Acts ch. 3, § 11; see also John Leubsdorf, Toward a History of the American Rule on Attorney Fee Recovery, 47 Law & Contemp. Probs. 9, 10, 12 (1984).

In 1761, the General Assembly enacted "An Act for Regulating the Practice of Attornies," prescribing the fees that an attorney could charge for his services. 1761 Acts ch. 3, § 11. Subsequently, the General Assembly authorized the clerks of court to tax the prescribed attorney's fee upon recovery in the bill of costs. See 1778 Acts ch. 14, § 5; 1765 Acts ch. 52, § 3; 1764 Acts ch. 15, § 3; see also 1745 Acts ch. 1, § 15 (directing the clerk of court to tax an attorney's fee in the bill of costs for certain actions). These acts demonstrate that when Article I, Section 11 was adopted, an attorney's fee award was a ministerial matter, closely regulated by the General Assembly, and not a question for the jury. Moreover, no provision or cause of action analogous to the fee-shifting provision of Code § 38.2-209(A) existed when the Constitution was adopted. Accordingly, Article I, Section 11 does not apply to proceedings under Code § 38.2-209(A). REVI has no right to a jury trial on the issue of bad faith or the corresponding award of attorney's fees and costs.

⁴ In England, the common law did not expressly allow costs except by statute, the first of which was the Statute of Gloucester. 4 St. George Tucker, Blackstone's Commentaries with Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia 399 (1803). Before the Statute of Gloucester, costs were "considered and included" in the damages, but the amounts were "frequently inadequate" to cover the plaintiff's expenses. Id. Following the enactment of the statute, Blackstone explains that "costs for the plaintiff are always entered on the roll as increase of damages by the court." Id. Even so, until 1797, "if a later statute provided that a fixed amount of damages should be recoverable for a new offence created by it," the plaintiff could not also recover costs unless the statute expressly provided for such costs. 4 W. S. Holdsworth, A History of English Law 537 (1924).

III. CONCLUSION

For these reasons, we conclude that the word “court,” as used in Code § 38.2-209(A), means “judge.” A judge, not a jury, must determine whether an insurer “has either denied coverage or failed or refused to make payment to the insured under the policy” in bad faith. We also conclude that Code § 38.2-209(A) does not implicate the right to a jury trial under Article I, Section 11 of the Constitution of Virginia. Therefore, we affirm the judgment of the circuit court.

Affirmed.

JUSTICE McCLANAHAN, concurring.

I agree with the dissent that the legislative history of Code § 38.2-209(A) is not determinative and that, when in doubt, a trial by jury should be preferred. In a vacuum, the term “court” can be understood to include both judge and jury. But in the context of a statute providing for a finding or determination to be made by “the court,” the General Assembly has consistently used the term “court” to refer to the trial judge.¹ In light of the General Assembly’s consistent use of the term “court” to mean trial judge, not jury, when referring to a finding or

¹ See, e.g., Code § 4.1-323 (“the jury or the court may find the defendant guilty of an attempt, or being an accessory”); Code § 5.1-13 (“in the discretion of the court or jury trying the case”); Code § 8.01-52 (“[t]he jury or the court, as the case may be” may award damages); Code § 8.01-53 (class and beneficiaries shall be fixed at the time of verdict “if the jury makes the specification” or at the time judgment is rendered if the “court specifies the distribution”); Code § 8.01-54 (if jury unable to agree then the court shall specify distribution); Code § 8.01-188 (such issues may be submitted to a jury with proper instructions by the court); Code § 8.01-430 (providing for the court to set aside jury verdict and decide case on the merits that is contrary to the evidence or without evidence to support it); Code § 8.01-643 (“Unless the defendant shall ask for a trial by jury, the court shall hear the same.”); Code § 36-96.18(C) (if the court or jury finds a discriminatory housing practice has occurred, the court or jury may award damages to plaintiff and the court may award reasonable attorney’s fees); Code § 38.2-807(A) (attorney’s fees shall not exceed 33 1/3 percent of amount that the court or jury finds plaintiff is entitled to recover).

determination by “the court,” and the absence of language in the statute to the contrary, I agree with the majority that Code § 38.2-209(A) provides for the determination of attorney's fees to be made by the trial judge.

For these reasons, I concur in the result reached by the majority.

JUSTICE KELSEY, dissenting.

The majority holds that a trial judge, not a jury, must determine whether an insurer committed a bad-faith breach of contract justifying an award of attorney’s fees under Code § 38.2-209(A). I recognize the well-worn path taken by the majority, but I cannot follow. The specific legal question presented by this case, while seemingly narrow, touches on far broader issues — and the answer given by the majority adds weight to a modern jurisprudential trend that I lament.¹

I.

REVI, LLC filed a first-party breach of contract claim against Chicago Title Insurance Company (the insurer). REVI claimed that the insurer had breached, in bad faith, its contractual obligation to pay REVI’s claim on the insurer’s policy of title insurance. At a bifurcated trial, a jury agreed with REVI, awarding REVI \$1,241,000 in benefit-of-the bargain damages and \$442,000 in attorney’s fees.

¹ See generally John H. Langbein, The Disappearance of Civil Trial in the United States, 122 Yale L.J. 522, 524 (2012) (citing statistics showing that, in 2002, 1.2% of federal civil filings terminated in jury trials and 0.6% of state court dispositions ended in jury trials). We have experienced a similar trend in Virginia. In 1999, 1.9% of all civil cases filed in Virginia circuit courts were concluded by a jury trial. See Office of the Executive Secretary, Supreme Court of Virginia, State of the Judiciary Report, at A-37 & tbl. 17 (2008). By 2012, that percentage dropped to 0.6%. See Office of the Executive Secretary, State of the Judiciary Report, Supreme Court of Virginia, at A-16 & tbl. 11 (2012).

After receiving both verdicts, the trial judge sua sponte vacated the jury's award of attorney's fees, holding that Code § 38.2-209(A) provides that the issue of bad faith in breach of contract actions can only be decided by a judge, not a jury, because the statute provides that "the court," and not the "jury," may make the award. The trial judge then reconsidered the evidence de novo and held that the insurer had not committed a bad-faith breach warranting an award of attorney's fees.

REVI filed a petition for appeal challenging (i) the trial judge's holding that only a judge, not a jury, could decide the bad-faith issue and (ii) the trial judge's de novo factual finding that the insurer did not commit a bad-faith breach of the insurance contract. We awarded REVI an appeal on its first, but not its second, assignment of error.

II.

On appeal, REVI argues that the reference to "the court" in Code § 38.2-209(A) is ambiguous and should be interpreted to include a jury. I agree.

A.

Code § 38.2-209(A) authorizes "the court" to determine whether an insurer commits a bad-faith breach of contract and to award attorney's fees.

The traditional meaning of the term "court," as Sir Edward Coke defined it, is simply "a place where justice is judicially administered." 1 Edward Coke, *The First Part of the Institutes of the Laws of England, or, a Commentary upon Littleton* § 73, at 58 (10th ed. 1703).² Unadorned

² See, e.g., 1 Benjamin V. Abbott, *Dictionary of Terms and Phrases Used in American or English Jurisprudence* 301 (1879) ("a tribunal of justice; an authority organized to hear and determine controversies in the exercise of judicial power"); James A. Ballentine, *A Law Dictionary* 95 (1916) ("[p]ersons officially assembled under authority of law, for the administration of justice"); Henry C. Black, *A Law Dictionary* 284 (2d ed. 1910) ("[t]he place where justice is judicially administered"); 1 John Bouvier, *A Law Dictionary* 325 (6th rev. ed. 1856) ("a place where justice is judicially administered" (citing Coke, *supra*, at 58)); Richard

by context, the ordinary meaning of the term does not specify whether a judge or jury will decide the case. For example, when two drivers walk away from a car wreck, and one says to the other, “I’m going to take you to court” or “You’ll see me in court,” most people would not think, “Well, thank heavens a judge and not a jury will be deciding the case.” The ordinary use of the term, therefore, is imbued with ambiguity.³ The contention otherwise is as unconvincing as it is unconventional.

While it is true that the term “[c]ourt is frequently used as a metonymic substitute for judge,” Bryan A. Garner, *A Dictionary of Modern Legal Usage* 231 (3d ed. 2011) (emphasis omitted), that meaning, some say, can be attributed to “the sometimes-strange jargon of jurists,” *id.* (quoting John A. Jenkins, *The Litigators* 165 (1989)). The more traditional view, widely recognized by our Founders, declares that “[j]uries form, with a few exceptions, another constituent part of courts.” 2 *The Works of the Honourable James Wilson* 305 (Bird Wilson ed., 1804)⁴; *see, e.g.*, *Black’s Law Dictionary* 318 (5th ed. 1979) (defining “court” as “[a] body organized to administer justice, and including both judge and jury”). This view continues to Burn, *A New Law Dictionary* 203 (1792) (same); 1 Arthur English, *A Dictionary of Words and Phrases Used in Ancient and Modern Law* 226 (Beard Books 2000) (1898) (“[a] place where justice is administered in accordance with legal forms and principles”); Stephen H. Gifis, *Barron’s Law Dictionary* (6th ed. 2010) (“[t]he branch of government which is responsible for the resolution of disputes under the law of the government”); 2 *Words and Phrases* 650-51 (3d ed. 1928) (collecting cases interpreting “court” to “ordinarily designate[] the tribunal itself, including its constituent parts of judge and jury”).

³ 1 Abbott, *supra* note 2, at 302 (“The term court may be construed to mean the judges of the court, or to include the judges and jury, according to the connection and the object of its use.” (citation omitted)); English, *supra* note 2, at 226 (“Court” denotes “[t]he judge, judges, or the judge and jury when the court is in session.”); 2 *Words and Phrases*, *supra* note 2, at 650 (“[T]he statute provides that the ‘court’ shall allow a reasonable attorney’s fee The word, ‘court’ however, was doubtless used by the Legislature in the broader sense as including both judge and jury or judge alone, according as the ‘court’ may be constituted when the trial occurs.”).

⁴ Justice James Wilson was a signer of the Declaration of Independence, a principal drafter of Article III of the United States Constitution, and an inaugural member of the United States Supreme Court. *See generally* William Ewald, *James Wilson and the Drafting of the Constitution*, 10 U. Pa. J. Const. L. 901, 901, 915, 1004-05 (2008).

resonate as authoritative in modern times. See, e.g., Lorillard v. Pons, 434 U.S. 575, 579 n.5, 582-83 (1978) (holding that a federal statute authorizing “the court” to grant legal or equitable relief could fairly be read to afford a right to jury trial on claims for lost wages).⁵

Fifty years ago, we applied the traditional view in Beasley v. Bosschermuller, 206 Va. 360, 143 S.E.2d 881 (1965). Specifically, we held that a statute authorizing “courts” to take judicial notice of the statutory tables of speed and stopping distances of vehicles must be understood “to include juries within the meaning of the word ‘courts.’” 206 Va. at 366, 143 S.E.2d at 886. We came to this conclusion because “in cases triable by a jury the word ‘court’ employed in a statute includes the jury as a constituent part.” Id.

The majority holds that the traditional view must give way when the statutory context suggests otherwise. I could not agree more. There are countless examples of this. See, e.g., Ingram v. Commonwealth, 62 Va. App. 14, 24, 741 S.E.2d 62, 67 (2013) (holding that “court,” used in the context of a statute governing involuntary treatment orders under Code § 37.2-1101(A), means a court sitting without a jury). But nothing in the Code of Virginia or, more specifically, Title 38.2, provides the contextual support for the interpretation the majority imputes to Code § 38.2-209(A).

In dozens of statutes throughout the Code, the General Assembly speaks of the “court” sitting “without a jury.”⁶ In each of these, “without a jury” would be superfluous if, as the

⁵ See also Feltner v. Columbia Pictures TV, Inc., 523 U.S. 340, 356 (1998) (Scalia, J., concurring) (“In common legal parlance, the word ‘court’ can mean ‘the judge or judges, as distinguished from the counsel or jury.’ But it also has a broader meaning, which includes both judge and jury.” (citations omitted)); Sibley v. Fulton DeKalb Collection Serv., 677 F.2d 830, 832, 834 (11th Cir. 1982) (holding that the term “court” in the statutory phrase, “in such amount as the court may allow,” refers to trial by both judge and jury and not only to trial by judge alone).

⁶ See, e.g., Code §§ 2.2-3006(B), 3.2-5216, 3.2-5414(A), 8.01-52, 8.01-519, 8.01-581.20(B), 9.1-405, 10.1-1437(A), 11-8, 15.2-717, 15.2-1507(A)(9)(b), 15.2-1607, 15.2-1654,

majority contends, the term “court” necessarily means a judge deciding the issue entirely on his own. It is true that other statutes use the term “court” to imply court qua judge. But many of these statutes specifically mention “jury” as distinct from “court,” so as to make clear that, in those particular contexts, “court” refers only to the constituent part of judges.⁷ In other instances, even within Title 38.2, the General Assembly explicitly refers to the “judge” as distinct from the “court,” thus employing a broader meaning of “court.”⁸ To the extent that any

15.2-1812.2(B), 15.2-2135(A), 15.2-2411, 15.2-3000, 15.2-3104, 18.2-10(e), 18.2-10(f), 18.2-15, 18.2-22(a)(3), 18.2-54, 18.2-56.1(B), 18.2-56.1(D), 18.2-61(C), 18.2-67.1(C), 18.2-67.2(C), 18.2-91, 18.2-95, 18.2-153, 18.2-155, 18.2-248.5(A), 18.2-384, 19.2-244, 19.2-283, 19.2-298.01(C), 21-126, 22.1-314, 32.1-314(A), 33.2-1103, 45.1-161.322(B), 46.2-357(B)(2), 46.2-391(D)(2)(a), 51.1-124.13(B), 55-326, 56-522, 58.1-1825(D), 58.1-3709(B), 58.1-3984(A), 59.1-41.6, 63.2-507(B); see also Code §§ 8.01-680 (“court without the intervention of a jury”); 16.1-272 (“court shall fix the sentence without the intervention of a jury”); 19.2-257 (“court shall hear and determine the case without the intervention of a jury”); 19.2-258 (same); 19.2-258.1 (same); 19.2-400 (“in cases to be tried without a jury, before the court begins to hear or receive evidence”).

⁷ See, e.g., Code §§ 2.2-1839, 4.1-323, 5.1-13, 6.2-201, 8.01-53(B), 8.01-54(B), 8.01-55, 8.01-106, 8.01-107, 8.01-120, 8.01-158, 8.01-159, 8.01-166, 8.01-188, 8.01-194, 8.01-229(A)(2)(b), 8.01-267.6, 8.01-336, 8.01-360, 8.01-361, 8.01-362, 8.01-374, 8.01-374.1, 8.01-377, 8.01-379.3, 8.01-380(A), 8.01-381, 8.01-382, 8.01-383, 8.01-383.1, 8.01-403, 8.01-417.1, 8.01-423, 8.01-430, 8.01-565, 8.01-573, 8.01-576.1, 8.01-576.2, 8.01-576.3, 8.01-581.7(A), 8.01-643, 11-4, 16.1-113, 18.2-61(B), 18.2-67.5:1, 18.2-248(C), 18.2-268.10(D), 18.2-386.1(E), 18.2-457, 19.2-219, 19.2-231, 19.2-262(A), 19.2-264, 19.2-264.1, 19.2-264.2, 19.2-264.3(A), 19.2-264.3:1(F)(2), 19.2-264.4, 19.2-266.1, 19.2-268, 19.2-271.2, 19.2-291, 19.2-295, 19.2-295.1, 19.2-295.3, 19.2-307, 19.2-339, 19.2-386.10, 25.1-219, 25.1-318, 29.1-738.2(E), 29.1-810(B), 36-96.16(C), 36-96.17(E), 36-96.18(C), 37.2-908, 38.2-807, 46.2-341.26:4, 46.2-341.26:10(D), 46.2-942, 46.2-943, 53.1-55, 53.1-156, 55-153, 55-177, 55-178, 55-238, 59.1-130, 61.1-61, 64.2-446(B), 64.2-448(E), 64.2-1212(B), 64.2-2007, 65.2-819, 65.2-1006(D).

⁸ See, e.g., Code §§ 38.2-1506(C) (“Action on the petition may be taken by the court or a judge of the court.” (emphasis added)); 38.2-2405 (“Any fidelity and surety insurer shall be accepted as surety upon any bond required by . . . any court, judge, public officer, board, or organization upon presentation of evidence satisfactory to the court, judge, or other officer.”); 38.2-2409 (“Assets shall be . . . held in a manner that prevents the withdrawal . . . without an order of a court or a judge, made on any notice to the surety which the court or judge directs.” (emphasis added)); 38.2-2410 (“Any court, judge or other officer . . . shall . . . allow a sum for the expense.”); see also Code §§ 18.2-67.7(C) (referring to “court” broadly and explicitly recognizing the constituent parts of “judge” and “jury”); 18.2-67.9(B) (same); 19.2-154 (same);

inference can be drawn from these statutes, it is that when “court” designates only a judge, the legislature typically reinforces that meaning by specifically distinguishing the “court” from the “jury.”

Suffice it to say, the host of discordant uses of these statutory terms — particularly the inconsistent usage of the term “court” within Title 38.2 — is alone enough to dissuade me from accepting the majority’s conclusory assertion that the term “court” has a “commonly accepted definition” that necessarily excludes juries. See Ante at 7. The majority implicitly concedes the point by relying heavily on the legislative history of Code § 38.2-209 in an unorthodox effort to vouch for this “commonly accepted definition.” Ante at 7-8.⁹

I do not see how the legislative history provides the majority with the confidence it seeks. If anything, I would think it would do just the opposite. The General Assembly amended and recodified the insurance laws (formerly Title 38.1) as Title 38.2 in 1986. See 1986 Acts ch. 562. Prior to that recodification, the predecessor statute to Code § 38.2-209 specifically provided that “the trial judge after verdict” should decide the bad-faith issue and that fees could be awarded “if it is determined by such trial judge in such case” that the insurer has not acted in good faith.

1982 Acts ch. 576 (as enacted, former Code § 38.1-32.1 (Cum. Supp. 1982), quoted in CUNA 19.2-303 (acknowledging implicitly that a jury is a constituent part of “court” by permitting the court, “whether with or without jury,” to suspend the imposition of a sentence).

⁹ If the term “court” truly had a “commonly accepted definition” that rendered the statute unambiguous, ante at 7, neither the majority nor I should be consulting legislative history at all. We would instead just consult our favored dictionary and be done with it. See, e.g., Clark v. Strother, 238 Va. 533, 541, 385 S.E.2d 578, 582 (1989) (relying solely on a dictionary for a word’s “commonly accepted” meaning); Roanoke City Sch. Bd. v. Times-World Co., 226 Va. 185, 192, 307 S.E.2d 256, 259 (1983) (relying only on two dictionaries); Suggs v. Life Ins. Co. of Va., 207 Va. 7, 11, 147 S.E.2d 707, 710 (1966) (finding no “ambiguity” in a term that has a “commonly accepted definition”). As we have often said, “When the language of an enactment is free from ambiguity, resort to legislative history and extrinsic facts is not permitted because we take the words as written to determine their meaning.” Virginia Broad. Corp. v. Commonwealth, 286 Va. 239, 249, 749 S.E.2d 313, 318 (2013) (alteration omitted) (quoting Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985)).

Mut. Ins. Soc’y v. Norman, 237 Va. 33, 38, 375 S.E.2d 724, 726 (1989)). The 1986 amendment deleted the phrases “the trial judge after verdict” and “if it is determined by such trial judge in such case,” replacing “trial judge” with “the court.” Compare former Code § 38.1-32.1 with Code § 38.2-209(A).

In Virginia, “a presumption exists that a substantive change in law was intended by an amendment to an existing statute,” Commonwealth v. Bruhn, 264 Va. 597, 602, 570 S.E.2d 866, 869 (2002) (quoting Virginia-American Water Co. v. Prince William Cty. Serv. Auth., 246 Va. 509, 517, 436 S.E.2d 618, 622-23 (1993)), and thus, we should “assume that the General Assembly’s amendments to the law are purposeful and not unnecessary or vain,” Virginia-American Water Co., 246 Va. at 517, 436 S.E.2d at 623.

That presumption surely applies here. If “the court” means exactly the same thing as the phrase “the trial judge after verdict,” then the 1986 amendment accomplished nothing except to make unclear what had previously been perfectly clear. See Appellant’s Br. at 16–17. If we are to draw any inferences at all from the amendment, it should be toward giving the new language some meaning — as opposed to none at all. That is particularly true given our prior observation that “in cases triable by a jury the word ‘court’ employed in a statute includes the jury as a constituent part.” Beasley, 206 Va. at 366, 143 S.E.2d at 886.

The majority makes much over the fact that the Code Commission’s Report to the General Assembly does not specifically call attention to the amendment as “substantive.” Ante at 8. But that is a peculiarly thin basis on which to rebut the judicial presumption to the contrary.¹⁰ The Report plainly states that the recodification was a “complete rewrite” of the

¹⁰ This presumption can be rebutted when a recodification makes no substantive change in law. See, e.g., Newberry Station Homeowners Ass’n v. Board of Supervisors, 285 Va. 604, 617-18, 740 S.E.2d 548, 555-56 (2013) (finding no change in law when drafting note expressly

insurance laws and made “substantive changes” to it.¹¹ Although the Report summarizes certain “principal changes,” *id.*, it is highly speculative to assume that not expressly mentioning the amendment of former Code § 38.1-32.1 to Code § 38.2-209 as a “principal” change somehow proves that the staffers who wrote the Report thought that the amendment was a non-substantive, purely stylistic edit.¹² And, frankly, I am not sure that it should matter if they did. The judicial function of interpreting statutes must operate at a higher level than this. It is the legislative intent of the General Assembly, not the Code Commission, that we must discern. See *Lavery v. Automation Mgmt. Consultants, Inc.*, 234 Va. 145, 149 n.3, 360 S.E.2d 336, 339 n.3 (1987) (“Revisers” notes accompanying a statute are “not law and they cannot control the exercise of this Court’s obligation to say what the law is.”).

B.

As useful as they may be, canons of construction are not infallible. “Canons of construction need not be conclusive and are often countered, of course, by some maxim pointing

stated that the recodification did not intend to effect any substantive change and when General Assembly adopted all of the Code Commission’s recommended language without amendment); Waldrop v. Commonwealth, 255 Va. 210, 214, 495 S.E.2d 822, 825 (1998) (finding no change in law where “nothing in the Recodified Act suggests an intent to make substantive changes in the Act” and where the Report of the Code Commission stated “the goal of [the] recodification is a clearer, more easily understood set of election laws and the elimination of ambiguities in the present law rather than substantive changes in the law.” (emphasis added) (quoting Report of the Virginia Code Commission on the Recodification of Title 24.1 of the Code of Virginia, S. Doc. No. 25 (1993)). Furthermore, “courts do not give much, if any, weight to section headings, comments, or notes where they were inserted by the compiler or publisher for convenience of reference.” 2A Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 47:14, at 346 (7th rev. ed. 2014).

¹¹ Virginia Code Commission, Report of the Virginia Code Commission on the Revision of Title 38.1 of the Code of Virginia, H. Doc. No. 17, at 1 (1986).

¹² See State Farm Mut. Auto. Ins. Co. v. Major, 239 Va. 375, 377-79, 389 S.E.2d 307, 309 (1990) (finding a “plainly indicate[d]” legislative intent “to alter the substantive meaning of the recodified provision” of the insurance law from “the change in language in the recodified provision,” notwithstanding the absence of a “revisors’ note” designating the revision as substantive).

in a different direction.” Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 115 (2001). When this occurs, as is arguably the case here, courts should acknowledge the analytical stalemate and search for a tie-breaker principle. Virginia judges need not go very far to find one that directly addresses this case.

Authored by George Mason, the 1776 Virginia Declaration of Rights declared that “the ancient trial by jury is preferable to any other” and thus “ought to be held sacred.” Virginia’s Declaration of Rights, § 11, 9 Hening’s Statutes of Virginia 109, 111-12 (1776). This sacred, constitutional preference survives to this day as Article I, Section 11, of the Constitution of Virginia and constitutes a meta-canon recognizing the Commonwealth’s venerated tradition of viewing the citizen jury as a constituent and essential part of the judiciary — “preferable” to any other. Id.

Our faith in this premise comes from the English common law, so deeply embedded in the Commonwealth’s history,¹³ which declared juries to be “the best investigators of truth, and the surest guardians of public justice.” 3 William Blackstone, Commentaries *380; see also The Works of the Honourable James Wilson, supra, at 315-17. “So tight was the linkage between trial and jury that there was in fact no such thing as nonjury trial at common law. In any case involving a disputed issue of fact, bench trial (adjudication by the judge sitting without a jury)

¹³ “The common law of England was the common law of Colonial Virginia, and after the Revolution became the common law of the Commonwealth.” Miller v. Commonwealth, 159 Va. 924, 931, 166 S.E. 557, 559 (1932); see also United States Fid. & Guar. Co. v. Carter, 161 Va. 381, 387-89, 170 S.E. 764, 765-66 (1933) (reaffirming that Virginia adopted English common law “as understood at the time of the American Revolution”); Briggs v. Commonwealth, 82 Va. 554, 557 (1886) (recognizing the export of English common law to Colonial Virginia and the Commonwealth’s official adoption of it following the Revolution); Taylor v. Commonwealth, 58 Va. App. 435, 443-46, 710 S.E.2d 518, 522-24 (2011) (acknowledging the adoption and reach of English common law in the Commonwealth); W. Hamilton Bryson, English Common Law in Virginia, 6 J. Legal Hist. 249, 251 (1985) (noting that “the common law was brought from England to Virginia in 1607”).

was unknown until the later nineteenth century.” John H. Langbein, The Disappearance of Civil Trial in the United States, 122 Yale L.J. 522, 524 (2012).

The citizen jury was understood as “the ‘lower judicial bench’ in a bicameral judiciary”¹⁴ and “the democratic branch of the judiciary power.”¹⁵ Within this tradition, the jury does not function as a “mere procedural formality, but a fundamental reservation of power in our constitutional structure. Just as suffrage ensures the people’s ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary.” Blakely v. Washington, 542 U.S. 296, 305-06 (2004). Ordinary citizens, John Adams wrote, “should have as complete a control . . . in every judgment of a court of judicature” as in the legislature. Id. at 306 (quoting in parenthetical John Adams, Diary Entry (Feb. 12, 1771), reprinted in 2 Works of John Adams 252, 253 (C. Adams ed. 1850)).¹⁶

As the “democratical balance in the Judiciary power,”¹⁷ the jury system secured to the citizenry “a share of Judicature which they have reserved for themselves.”¹⁸ From this perspective, “the common man in the jury box, no less than the citizen in the voting booth, was

¹⁴ Akhil Reed Amar & Les Adams, The Bill of Rights Primer 138 (2002) (quoting John Taylor, An Inquiry into the Principles and Policy of the Government of the United States 209 (W. Stark ed., 1950) (1814)).

¹⁵ Id. (quoting Essays by a Farmer (IV), reprinted in 5 The Complete Anti-Federalist 36, 38 (Herbert J. Storing ed., 1981)). See generally Akhil Reed Amar, The Bill of Rights: Creation and Reconstruction 11, 81-118 (1998).

¹⁶ With characteristic hyperbole, Jefferson was even more emphatic: “Were I called upon to decide whether the people had best be omitted in the Legislative or Judiciary department, I would say it is better to leave them out of the Legislative.” Blakely, 542 U.S. at 306 (quoting in parenthetical Letter from Thomas Jefferson to the Abbé Arnoux (July 19, 1789), reprinted in 15 Papers of Thomas Jefferson 282, 283 (J. Boyd ed. 1958)).

¹⁷ Amar, The Bill of Rights: Creation and Reconstruction 95 (quoting Essays by Hampden, reprinted in 4 The Complete Anti-Federalist, supra note 15, at 198, 200).

¹⁸ Id. at 94 (quoting Wythe Hold, “The Federal Courts Have Enemies in All Who Fear Their Influence on State Objects”: The Failure to Abolish Supreme Court Circuit-Riding in the Judiciary Acts of 1792 and 1793, 36 Buff. L. Rev. 301, 325 (1987)).

central to a democratic theory that asserted the sovereignty of the people through self-government.” Ronald J. Bacigal, Putting the People Back into the Fourth Amendment, 62 Geo. Wash. L. Rev. 359, 409 (1994).¹⁹ Because of its unique role within our democracy, the jury remains to this day a “cornerstone of Anglo-American judicial procedure.” Glossip v. Gross, ___ U.S. ___, ___, 135 S. Ct. 2726, 2748 (2015) (Scalia, J., concurring).

Could we ask for a more worthy canon of construction than the constitutional bias in favor of the “ancient trial by jury” and the declared will of the People that it “is preferable to any other” manner of trial? Virginia’s Declaration of Rights, § 11, 9 Hening’s Statutes of Virginia 109, 111-12 (1776); see also Va. Const., art. I, § 11. Is there any better meta-canon to rule over the lesser canons of constructions that rely almost entirely on linguistics, syntax, and assumptions about ideal draftsmanship?

III.

In short, I believe that the term “court” in Code § 38.2-209(A) is ambiguous because reasonable interpreters could read it to include a jury or, conversely, to exclude a jury. Picking solely from these opposing views seems to me to miss the forest for the trees. The legal timberland of the Commonwealth was planted by arborists who considered the citizen jury as sacred. If any reasonable statutory construction exists to preserve this “preferable” method of deciding disputes, Va. Const. art. 1, § 11, it should prevail over all the others. Only by following this interpretative path can we preserve “in the hands of the people that share which they ought to have in the administration of public justice.” Blackstone, supra, at *380.

For these reasons, I respectfully dissent.

¹⁹ See also 1 Alexis De Tocqueville, *Democracy in America* 362 (Henry Reeve trans., 3d ed. 1863) (“The system of the jury, as it is understood in America, appears to be as direct and as extreme a consequence of the sovereignty of the people as universal suffrage.”); see generally id. at 358-67 (discussing trial by jury as a democratic “political institution” in the United States).

Code of Virginia Titles with Recodification Dates

(shown with repealed titles in italics and currently effective titles in bold)

Updated 3-31-2015

Recodification Dates¹	Code of Virginia Titles
1966 2005²	1 General Provisions
<i>1966</i> 2001	<i>2 Administration of the Government Generally</i> <i>2.1 Administration of the Government Generally</i> 2.2 Administration of Government
<i>1966</i> 2008	<i>3 Agriculture, Horticulture and Food</i> <i>3.1 Agriculture, Horticulture and Food</i> 3.2 Agriculture, Animal Care, and Food
1993	<i>4 Alcoholic Beverages and Industrial Alcohol</i> 4.1 Alcoholic Beverage Control Act
1966	<i>5 Aviation</i> 5.1 Aviation
<i>1966</i> 2010	<i>6 Banking and Finance</i> <i>6.1 Banking and Finance</i> 6.2 Financial Institutions and Services
<i>1966</i>	<i>7 Boundaries, Jurisdiction and Emblems of the Commonwealth</i> <i>7.1 Boundaries, Jurisdiction and Emblems of the Commonwealth³</i>
1977	<i>8 Civil Remedies and Procedure; Evidence Generally</i> 8.01 Civil Remedies and Procedure - Code Commission tentatively approved for 2015 work plan on 6/19/2013
<i>1964</i> 2003	<i>8.1 Commercial Code - General Provisions</i> 8.1A Uniform Commercial Code - General Provisions
1964	8.2 Commercial Code - Sales
1991	8.2A Commercial Code - Leases
<i>1964</i> 1992	<i>8.3 Commercial Code - Commercial Paper</i> 8.3A Commercial Code - Negotiable Instruments
1964	8.4 Commercial Code - Bank Deposits and Collections
1990	8.4A Commercial Code - Funds Transfers
<i>1964</i> 1997	<i>8.5 Commercial Code - Letters of Credit</i> 8.5A Commercial Code - Letters of Credit
<i>1964</i> <i>1997</i>	<i>8.6 Commercial Code - Bulk Transfers</i> <i>8.6A Commercial Code - Bulk Sales⁴</i>
1964	8.7 Commercial Code - Warehouse Receipts, Bills of Lading and Other Documents of Title

¹ Titles were codified in 1950 unless a different date is indicated. The dates listed represent the General Assembly session in which the recodification was enacted.

² Title 1 was not recodified but substantially reorganized in 1966 and 2005.

³ Title 7.1 was repealed and its contents incorporated into Title 1 in 2005.

⁴ Title 8.6A was repealed as obsolete in 2011.

Code of Virginia Titles with Recodification Dates

(shown with repealed titles in italics and currently effective titles in bold)

Updated 3-31-2015

1964 1996	8.8 <i>Commercial Code - Investment Securities</i> 8.8A Commercial Code - Investment Securities
1964 2000	8.9 <i>Commercial Code - Secured Transactions; Sales of Accounts, Contract Rights and Chattel Paper</i> 8.9A Commercial Code - Secured Transactions
1964	8.10 Commercial Code - Effective Date - Transitional Provisions
1973	8.11 1973 Amendatory Act - Effective Date and Transition Provisions
2001	9 <i>Commissions, Boards and Institutions Generally</i> ⁵ 9.1 Commonwealth Public Safety
1988	10 <i>Conservation Generally</i> 10.1 Conservation
	11 Contracts
1971	12 <i>Corporation Commission</i> 12.1 State Corporation Commission
1956	13 <i>Corporations Generally</i> 13.1 Corporations
1964	14 <i>Costs, Fees, Salaries and Allowances</i> 14.1 <i>Costs, Fees, Salaries and Allowances</i> ⁶
1962 1997	15 <i>Counties, Cities and Towns</i> 15.1 <i>Counties, Cities and Towns</i> 15.2 Counties, Cities and Towns
1956	16 <i>Courts Not of Record</i> 16.1 Courts Not of Record
1998	17 <i>Courts of Record</i> 17.1 Courts of Record
1960 1975	18 <i>Crimes and Offenses Generally</i> 18.1 <i>Crimes and Offenses Generally</i> 18.2 Crimes and Offenses Generally
1960 1975	19 <i>Criminal Procedure</i> 19.1 <i>Criminal Procedure</i> 19.2 Criminal Procedure
	20 Domestic Relations
	21 Drainage, Soil Conservation, Sanitation and Public Facilities Districts
1980	22 <i>Education</i> 22.1 Education
	23 Educational Institutions - On current work plan scheduled for completion in 2015

⁵ Title 9 was repealed in 2001; certain material was incorporated into Titles 2.2, 3.1, and 30.⁶ Title 14.1 was repealed in 1998; provisions relating to costs, fees, salaries, and allowances are now located throughout the Code of Virginia.

Code of Virginia Titles with Recodification Dates

(shown with repealed titles in italics and currently effective titles in bold)

Updated 3-31-2015

<i>1970</i> 1993	<i>24 Elections</i> <i>24.1 Elections</i> 24.2 Elections
2003	<i>25 Eminent Domain</i> 25.1 Eminent Domain
	<i>26 Fiduciaries Generally⁷</i>
	27 Fire Protection
<i>1962</i> 1992	<i>28 Fish, Oysters and Shellfish</i> <i>28.1 Fish, Oysters, Shellfish and Other Marine Life</i> 28.2 Fisheries and Habitat of the Tidal Waters
1987	<i>29 Game, Inland Fisheries and Dogs</i> 29.1 Game, Inland Fisheries and Boating
	30 General Assembly
	<i>31 Guardian and Ward⁷</i>
1979	<i>32 Health</i> 32.1 Health
	<i>33 Highways, Bridges and Ferries</i>
<i>1970</i> 2014	<i>33.1 Highways, Bridges and Ferries</i> 33.2 Highways and Other Surface Transportation Systems
	34 Homestead and Other Exemptions
1981	<i>35 Hotels, Restaurants and Camps</i> 35.1 Hotels, Restaurants, Summer Camps, and Campgrounds
	36 Housing
<i>1968</i> 2005	<i>37 Insane, Epileptic, Feeble-Minded and Inebriate Persons</i> <i>37.1 Institutions for the Mentally Ill; Mental Health Generally</i> 37.2 Behavioral Health and Developmental Services
<i>1952</i> 1986	<i>38 Insurance</i> <i>38.1 Insurance</i> 38.2 Insurance
<i>1968</i>	<i>39 Justices of the Peace</i> <i>39.1 Justices of the Peace⁸</i>
1970	<i>40 Labor and Employment</i> 40.1 Labor and Employment
1970	<i>41 Land Office</i> 41.1 Land Office
1970	<i>42 Libraries</i> 42.1 Libraries
	43 Mechanics' and Certain Other Liens

⁷ Titles 26 and 31 were repealed in 2012 and their provisions incorporated into Title 64.2.⁸ Title 39.1 was repealed in 1973 and its provisions incorporated into Title 19.2.

Code of Virginia Titles with Recodification Dates

(shown with repealed titles in italics and currently effective titles in bold)

Updated 3-31-2015

	44 Military and Emergency Laws
1966	<i>45 Mines and Mining</i> 45.1 Mines and Mining
<i>1958</i> 1989	<i>46 Motor Vehicles</i> <i>46.1 Motor Vehicles</i> 46.2 Motor Vehicles
1980	<i>47 Notaries and Out-of-State Commissioners</i> 47.1 Notaries and Out-of-State Commissioners
	48 Nuisances
	49 Oaths, Affirmations and Bonds
	50 Partnerships
1990	<i>51 Pensions and Retirement</i> 51.1 Pensions, Benefits, and Retirement
<i>1985</i> 1985	<i>51.01 Persons with Disabilities⁹</i> 51.5 Persons with Disabilities
	52 Police (State)
1982	<i>53 Prisons and Other Methods of Correction</i> 53.1 Prisons and Other Methods of Correction
1988	<i>54 Professions and Occupations</i> 54.1 Professions and Occupations
	55 Property and Conveyances
	56 Public Service Companies
	57 Religious and Charitable Matters; Cemeteries
1984	<i>58 Taxation</i> 58.1 Taxation
1968	<i>59 Trade and Commerce</i> 59.1 Trade and Commerce
<i>1968</i> 1986	<i>60 Unemployment Compensation</i> <i>60.1 Unemployment Compensation</i> 60.2 Unemployment Compensation
1968	<i>61 Warehouses, Cold Storage and Refrigerated Locker Plants</i> 61.1 Warehouses, Cold Storage and Refrigerated Locker Plants
1968	<i>62 Waters of the State, Ports and Harbors</i> 62.1 Waters of the State, Ports and Harbors
<i>1968</i> 2002	<i>63 Welfare</i> <i>63.1 Welfare (Social Services)</i> 63.2 Welfare (Social Services)

⁹ Title 51.01 was recodified as Title 51.5 for better arrangement in the Code.

Code of Virginia Titles with Recodification Dates

(shown with repealed titles in italics and currently effective titles in bold)

Updated 3-31-2015

1968 2012	64 <i>Wills and Decedents' Estates</i> 64.1 <i>Wills and Decedents' Estates</i> 64.2 Wills, Trusts, and Fiduciaries
1968 1991	65 <i>Workmen's Compensation</i> 65.1 <i>Workers' Compensation</i> 65.2 Workers' Compensation
1989	66 Juvenile Justice¹⁰
2006	67 Virginia Energy Plan

¹⁰ Title 66 was originally titled "Youth and Family Services"; the name was changed in 1996.

1 CHAPTER 5.

2 IN-STATE TUITION AND REDUCED RATE TUITION ELIGIBILITY.

3 **Drafting note: Provisions of existing Chapter 1 of Title 23 relating to in-state tuition**
4 **eligibility are consolidated as proposed Chapter 5.**

5 ~~§ 23-7.~~

6 **Drafting note: Repealed by Acts 1984, c. 422.**

7 ~~§§ 23-7.1, 23-7.1:01.~~

8 **Drafting note: Repealed by Acts 1996, cc. 931 and 981.**

9 ~~§§ 23-7.2 through 23-7.3.~~

10 **Drafting note: Repealed by Acts 1996, cc. 931 and 981.**

11 ~~§ 23-7.4 23.1-500. Eligibility for in-state tuition charges~~ Definitions.

12 ~~A. For purposes of this section and §§ 23-7.4:1, 23-7.4:2, and 23-7.4:3, the following~~
13 ~~definitions shall apply~~ As used in this chapter:

14 "Date of the alleged entitlement" means the first official day of class within the term,
15 semester, or quarter of the ~~student's~~ program of study in which a student is enrolled.

16 "Dependent student" means ~~one~~ a student who is listed as a dependent on the federal or
17 state income tax return of his parents or legal guardian or who receives substantial financial
18 support from his spouse, ~~parents~~ parent, or legal guardian. ~~It shall be presumed that a student~~
19 ~~under the age of 24 on the date of the alleged entitlement receives substantial financial support~~
20 ~~from his parents or legal guardian, and therefore is dependent on his parents or legal guardian,~~
21 ~~unless the student (i) is a veteran or an active duty member of the U.S. Armed Forces; (ii) is a~~
22 ~~graduate or professional student; (iii) is married; (iv) is a ward of the court or was a ward of the~~
23 ~~court until age 18; (v) has no adoptive or legal guardian when both parents are deceased; (vi)~~
24 ~~has legal dependents other than a spouse; or (vii) is able to present clear and convincing~~
25 ~~evidence that he is financially self-sufficient.~~ "Dependent student" includes unemancipated
26 minors.

27 "Domicile" means the present, fixed home of an individual to which he returns following
28 temporary absences and at which he intends to stay indefinitely. No individual may have more
29 than one domicile at a time. Domicile, once established, shall not be affected by (i) mere
30 transient or temporary physical presence ~~in another jurisdiction outside the Commonwealth~~ or
31 (ii) the establishment and maintenance of a place of residence ~~in another jurisdiction outside the~~
32 Commonwealth for the purpose of maintaining a joint household with an active duty United
33 States military spouse.

34 "Domiciliary intent" means present intent to remain indefinitely.

35 "Emancipated minor" means a minor student ~~under the age of 18 on the date of the~~
36 ~~alleged entitlement whose parents or guardians have surrendered the right to his care, custody~~
37 ~~and earnings and who no longer claim him as a dependent for tax purposes~~ who has been
38 emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1 or the
39 applicable laws of any other jurisdiction.

40 "~~Full-time employment~~Employed full time" means ~~employment~~ employed in a position
41 resulting in, at least, an annual earned income reported for tax purposes equivalent to 50 work
42 weeks of 40 hours at minimum wage.

43 "Independent student" means ~~one a student~~ whose parents have surrendered the right to
44 his care, custody, and earnings; ~~;~~ do not claim him as a dependent on federal or state income tax
45 returns; ~~;~~ and have ceased to provide him with substantial financial support. "Independent
46 student" includes emancipated minors.

47 "~~Special arrangement contract~~" means ~~a contract between a Virginia employer or the~~
48 ~~authorities controlling a federal installation or agency located in Virginia and a public institution~~
49 ~~of higher education for reduced rate tuition charges as described in subsection F of § 23-7.4:2.~~

50 "Substantial financial support" means ~~financial support in an any amount which equals~~
51 ~~or exceeds that required to qualify the individual of financial support received by a student that~~
52 qualifies him to be listed as a dependent on federal and state income tax returns.

53 "Surviving spouse" means the spouse of a military service member who, while serving
54 as an active duty member in the United States Armed Forces, United States Armed Forces
55 Reserves, or Virginia National Guard, ~~or Virginia National Guard Reserve~~, during military
56 operations against terrorism, on a peacekeeping mission, or as a result of a terrorist act, or in any
57 armed conflict ~~subsequent to December 6, 1941~~, was killed in action, is became missing in
58 action, or is became a prisoner of war.

59 "Unemancipated minor" means a minor student ~~under the age of 18 on the date of the~~
60 ~~alleged entitlement who is under the legal control of and is financially supported by either of his~~
61 ~~parents, legal guardian or other person having legal custody who has not been emancipated~~
62 ~~pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1 or the applicable laws of~~
63 ~~any other jurisdiction.~~

64 "Veteran" means an individual who has served ~~in the~~ on active ~~military, naval or air~~
65 ~~service~~ duty in the Armed Forces of the United States and who was discharged or released
66 ~~therefrom~~ from such service under conditions other than dishonorable.

67 "Virginia employer" means (i) any employing unit organized under the laws of ~~Virginia~~
68 the Commonwealth or having income from ~~Virginia~~ sources in the Commonwealth regardless of
69 its organizational structure; or (ii) any public or nonprofit organization authorized to operate in
70 ~~Virginia~~ the Commonwealth.

71 **Drafting note: Existing § 23-7.4 is divided into seven sections, proposed §§ 23.1-500**
72 **through 23.1-505 and 23.1-509. Proposed § 23.1-500 updates definitions from subsection A**
73 **of existing § 23-7.4. The definition of "dependent student" is updated to include**
74 **unemancipated minors, a defined term. The definition of "independent student" is**
75 **updated to include emancipated minors, a defined term. A portion of the definition of**
76 **"dependent student" is stricken here and incorporated into proposed § 23.1-501. The**
77 **definition of "special arrangement contract" is removed as unnecessary given the context**
78 **of the term's use. Technical changes are made.**

79 § 23.1-501. Presumption of dependency for certain students.

80 It shall be presumed that a student under the age of 24 on the date of the alleged
81 entitlement receives substantial financial support from his parent or legal guardian and is
82 therefore the dependent of his parent or legal guardian unless the student (i) is a veteran or an
83 active duty member of the Armed Forces of the United States, (ii) is a graduate or professional
84 student, (iii) is married, (iv) is a ward of the court or was a ward of the court until age 18, (v)
85 has no adoptive parent or legal guardian and each of the student's parents is deceased, (vi) has
86 legal dependents other than a spouse, or (vii) is able to present clear and convincing evidence
87 that he is financially self-sufficient.

88 **Drafting note: Proposed § 23.1-501 incorporates the portion of the definition of**
89 **"dependent student" in existing § 23-7.4 that relates to the presumption of dependency.**
90 **Technical changes are made.**

91 § 23.1-502. Eligibility for in-state tuition charges; domicile; domiciliary intent.

92 B-A. To-become be eligible for in-state tuition at public institutions of higher education,
93 an independent student or, in the case of a dependent student, the individual through whom he
94 claims eligibility, shall establish by clear and convincing evidence that (i) domicile in the
95 Commonwealth for a period of at least one year immediately prior to the date of the alleged
96 entitlement, he was domiciled in Virginia and had abandoned and (ii) the abandonment of any
97 previous domicile, if such existed.

98 ~~To become eligible for in-state tuition, a dependent student or unemancipated minor~~
99 ~~shall establish by clear and convincing evidence that for a period of at least one year prior to the~~
100 ~~date of the alleged entitlement, the person through whom he claims eligibility was domiciled in~~
101 ~~Virginia and had abandoned any previous domicile, if such existed. If the person individual~~
102 ~~through whom the dependent student or unemancipated minor established such establishes~~
103 ~~domicile and eligibility for in-state tuition charges abandons his Virginia domicile in the~~
104 ~~Commonwealth, the dependent such student or unemancipated minor shall be is entitled to such~~
105 ~~in-state tuition charges for one year from the date of such abandonment.~~

106 B. To establish domicile, an independent student or, in the case of a dependent student,
107 the individual through whom he claims eligibility shall establish by clear and convincing
108 evidence domiciliary intent. In determining domiciliary intent, ~~all of public institutions of higher~~
109 education shall consider the totality of the circumstances, including the following applicable
110 factors ~~shall be considered~~: continuous residence for at least one year prior to the date of alleged
111 entitlement, except in the event of the establishment and maintenance of a place of residence in
112 another jurisdiction for the purpose of maintaining a joint household with an active duty United
113 States military spouse; state to which income taxes are filed or paid; driver's license; motor
114 vehicle registration; voter registration; employment; property ownership; sources of financial
115 support; military records; a written offer and acceptance of employment following graduation;
116 and any other social or economic relationships with the Commonwealth and other jurisdictions.

117 **Drafting note: Proposed § 23.1-502 incorporates the basic requirements for**
118 **eligibility for in-state tuition charges in the first three paragraphs of subsection B of**
119 **existing § 23-7.4. Technical changes are made.**

120 § 23.1-503. Determination of domicile; rules; presumptions.

121 ~~Domiciliary status~~ A. Students shall not ordinarily ~~be conferred~~ establish domicile by the
122 performance of acts ~~which that~~ are auxiliary to fulfilling educational objectives or are required
123 or routinely performed by temporary residents of the Commonwealth. ~~Mere Students shall not~~
124 establish domicile by mere physical presence or residence primarily for educational purposes
125 ~~shall not confer domiciliary status. A matriculating student who has entered an institution and is~~
126 ~~classified as an out-of-state student shall be required to rebut by clear and convincing evidence~~
127 ~~the presumption that he is in the Commonwealth for the purpose of attending school and not as a~~
128 ~~bona fide domiciliary.~~

129 ~~Those factors presented in support of entitlement to in-state tuition shall have existed for~~
130 ~~the one-year period prior to the date of the alleged entitlement. However, in determining the~~
131 ~~domiciliary intent of active-duty military personnel residing in the Commonwealth, retired~~
132 ~~military personnel residing in the Commonwealth at the time of their retirement, surviving~~

133 ~~spouses, or veterans, or the domiciliary intent of their dependent spouse or children who claim~~
134 ~~domicile through them, who voluntarily elect to establish Virginia as their permanent residence~~
135 ~~for domiciliary purposes, the requirement of one year shall be waived.~~

136 ~~C.~~B. A married ~~person~~ individual may establish domicile in the same manner as an
137 unmarried ~~person~~ individual.

138 ~~An emancipated minor may establish domicile in the same manner as any other~~
139 ~~independent student.~~C. A nonmilitary student whose parent or spouse is a member of the ~~armed~~
140 ~~forces~~ Armed Forces of the United States may establish domicile in the same manner as any
141 other student.

142 D. Any alien holding an immigration visa or classified as a political refugee ~~shall also~~
143 ~~may~~ establish ~~eligibility for in-state tuition domicile~~ in the same manner as any other student.
144 However, absent congressional intent to the contrary, any ~~person~~ individual holding a student
145 ~~visa~~ or ~~other~~ another temporary visa ~~shall~~ does not have the capacity to intend to remain in
146 Virginia the Commonwealth indefinitely and, is therefore, ~~shall be~~ ineligible ~~for Virginia to~~
147 ~~establish~~ domicile and ~~for~~ receive in-state tuition charges.

148 E. The domicile of a dependent student shall be rebuttably presumed to be the domicile
149 of the parent or legal guardian (i) claiming him as an exemption on federal or state income tax
150 returns currently and for the tax year prior to the date of the alleged entitlement or (ii) providing
151 him with substantial financial support. The spouse of an active duty military service member, if
152 such spouse has established domicile and claimed the dependent student on federal or state
153 income tax returns, shall not be subject to minimum income tests or requirements.

154 ~~For the purposes of this section, the~~ F. The domicile of an unemancipated minor or a
155 dependent student 18 years of age or older may be ~~either~~ the domicile of either the parent with
156 whom he resides, the parent who claims the student as a dependent for federal or Virginia
157 income tax purposes for the tax year prior to the date of the alleged entitlement and is currently
158 so claiming the student, or the parent who provides the student with substantial financial
159 support. If there is no surviving parent or the whereabouts of the parents are unknown, then the

160 domicile of an unemancipated minor shall be the domicile of the legal guardian of such
161 unemancipated minor unless ~~there are~~ circumstances ~~indicating~~ indicate that such guardianship
162 was created primarily for the purpose of ~~conferring a Virginia~~ establishing domicile ~~on the~~
163 unemancipated minor.

164 G. Continuously enrolled non-Virginia students shall be presumed to be in the
165 Commonwealth for educational purposes but may rebut such presumption with clear and
166 convincing evidence of domicile.

167 ~~D. It is incumbent on the student to apply for change in domiciliary status on becoming~~
168 ~~eligible for such change. Changes in domiciliary status~~ H. A non-Virginia student is not eligible
169 for reclassification as a Virginia student unless he applies for such reclassification. Any such
170 reclassification shall only be granted prospectively from the date such application is received.

171 I. A student who knowingly provides erroneous information in an attempt to evade
172 payment of out-of-state ~~fees~~ tuition charges shall be charged out-of-state tuition ~~fees~~ for each
173 term, semester, or quarter attended and may be subject to dismissal from the institution. All
174 disputes related to the veracity of information provided to establish ~~Virginia~~ domicile ~~shall be~~
175 are ~~appealable through the due process procedure required by § 23-7.4:3 as set forth in § 23.1-~~
176 510.

177 **Drafting note: Proposed § 23.1-503 incorporates the special rules and presumptions**
178 **related to domicile in the fourth paragraph of subsection B and all of subsections C and D**
179 **of existing § 23-7.4. The second sentence of the fifth paragraph of subsection B of existing**
180 **§ 23-7.4 related to the determination of domicile for certain active duty and retired**
181 **military personnel is shown as stricken and relocated to proposed § 23.1-504.**

182 § 23.1-504. Determination of domicile; exception; certain active duty and retired
183 military personnel, etc.

184 In determining the domicile of (i) active duty military personnel residing in the
185 Commonwealth, retired military personnel residing in the Commonwealth at the time of their
186 retirement, surviving spouses, or veterans who voluntarily elect to establish the Commonwealth

187 [as their permanent residence for the purpose of domicile or \(ii\) a dependent spouse or dependent](#)
188 [child who claims domicile through an individual listed in clause \(i\), public institutions of higher](#)
189 [education shall waive the one-year requirement set forth in subsection B of § 23.1-502.](#)

190 **Drafting note: Proposed § 23.1-504 incorporates the second sentence of the fifth**
191 **paragraph of subsection B of existing § 23-7.4 related to the determination of domicile for**
192 **certain active duty and retired military personnel and others. Technical changes are made.**

193 [§ 23.1-505. Determination of domicile; exception; dependents of certain active duty](#)
194 [military personnel, etc.](#)

195 [A. As used in and for the purposes of this section:](#)

196 ["Date of alleged entitlement" means the date of admission or acceptance for dependents](#)
197 [currently residing in the Commonwealth or the final add/drop date for dependents of members](#)
198 [newly transferred to the Commonwealth.](#)

199 ["Temporarily mobilized" means activated for service for 180 days or more.](#)

200 ["Unaccompanied orders" means orders that assign active duty military personnel or](#)
201 [activated or temporarily mobilized reserve or guard members an unaccompanied tour listed in](#)
202 [Appendix Q of the Joint Federal Travel Regulations.](#)

203 ~~E.-B.~~ Notwithstanding [§ 23.1-502](#) or any other provision of law [to the contrary](#), all
204 dependents, as defined by 37 U.S.C. § 401, of active duty military personnel; or activated or
205 temporarily mobilized reservists or guard members; (i) assigned to a permanent duty station or
206 workplace ~~geographically located in Virginia in the Commonwealth, the District of Columbia,~~
207 ~~or in~~ a state contiguous to ~~Virginia or the District of Columbia, the Commonwealth~~ who reside
208 in ~~Virginia the Commonwealth~~; (ii) assigned unaccompanied orders and immediately prior to
209 receiving such unaccompanied orders were assigned to a permanent duty station or workplace
210 ~~geographically located in Virginia the Commonwealth, or in the District of Columbia, or~~ a state
211 contiguous to ~~Virginia or the District of Columbia, the Commonwealth~~ and resided in ~~Virginia~~
212 ~~the Commonwealth~~; or (iii) assigned unaccompanied orders with ~~Virginia the Commonwealth~~
213 listed as the designated place move shall be deemed to be domiciled in ~~Virginia for purposes of~~

214 ~~eligibility for in-state tuition the Commonwealth~~ and ~~shall be~~ are eligible to receive in-state
215 tuition ~~in Virginia in accordance with this section.~~

216 C. All such dependents shall be afforded the same educational benefits as any other
217 individual ~~receiving who receives~~ in-state tuition pursuant to this ~~section § 23.1-502~~. Such
218 ~~dependents are eligible for such~~ benefits ~~and, including~~ in-state tuition status ~~shall continue so,~~
219 ~~for as~~ long as they are continuously enrolled in ~~an a~~ a public or private institution of higher
220 education ~~in Virginia~~ or ~~are transferring have transferred~~ between ~~Virginia public or private~~
221 institutions of higher education or from an undergraduate degree program to a graduate degree
222 program at a public or private institution of higher education, regardless of any change of duty
223 station or residence of the military service member.

224 ~~For the purpose of this subsection:~~

225 ~~"Date of alleged entitlement" means the date of admission or acceptance for dependents~~
226 ~~currently residing in Virginia or the final add/drop date for dependents of members newly~~
227 ~~transferred to Virginia.~~

228 ~~"Temporarily mobilized" means activated for service for six months or more.~~

229 ~~"Unaccompanied orders" means orders that assign the active duty military personnel, or~~
230 ~~activated or temporarily mobilized reservists or guard members, an unaccompanied tour listed in~~
231 Appendix Q of the Joint Federal Travel Regulations.

232 ~~F. After August 1, 2006, for students who enroll at a public, baccalaureate degree-~~
233 ~~granting, institution of higher education in Virginia and who have established Virginia domicile~~
234 ~~and eligibility for in-state tuition in compliance with this section, the entitlement to in-state~~
235 ~~tuition shall be modified to require the assessment of a surcharge, as defined herein, for each~~
236 ~~semester that the student continues to be enrolled after such student has completed 125 percent~~
237 ~~of the credit hours needed to satisfy the degree requirements for a specified undergraduate~~
238 ~~program, hereinafter referred to as the "credit hour threshold."~~

239 ~~In calculating the 125 percent credit hour threshold, the following courses and credit~~
240 ~~hours shall be excluded: (i) remedial courses; (ii) transfer credits from another college or~~

241 ~~university that do not meet degree requirements for general education courses or the student's~~
242 ~~chosen program of study; (iii) advanced placement or international baccalaureate credits that~~
243 ~~were obtained while in high school or another secondary school program; and (iv) dual~~
244 ~~enrollment, college level credits obtained by the student prior to receiving a high school~~
245 ~~diploma.~~

246 ~~The relevant public institution of higher education may waive the surcharge assessment~~
247 ~~for students who exceed the 125 percent credit hour threshold in accordance with the guidelines~~
248 ~~and criteria established by the State Council of Higher Education for Virginia. Waiver criteria~~
249 ~~may include, but shall not be limited to, illness or disability and active service in the armed~~
250 ~~forces of the United States.~~

251 ~~For the purpose of this subsection, "surcharge" shall mean an amount calculated to equal~~
252 ~~100 percent of the average cost of the student's education at the relevant institution less tuition~~
253 ~~and mandatory educational and general fee charges assessed to a student meeting Virginia~~
254 ~~domiciliary status who has not exceeded the 125 percent credit hour threshold.~~

255 **Drafting note: Proposed § 23.1-505 incorporates the provisions of subsection E of**
256 **existing § 23-7.4. Technical changes are made, including moving definitions to the**
257 **beginning of the proposed section and removing the definition of "date of alleged**
258 **entitlement" because such term is not used in this proposed section. Subsection F of**
259 **existing § 23-7.4 is stricken here and relocated as proposed § 23.1-509.**

260 ~~§ ~~23-7.4:2~~ 23.1-506. Eligibility for in-state ~~or reduced~~ tuition ~~for~~; exception; certain out-~~
261 ~~of-state and high school~~ students ~~not domiciled in Virginia~~; ~~tuition grants and in-state tuition for~~
262 ~~members of the National Guard.~~

263 ~~A. Students who live outside the Commonwealth and have Notwithstanding § 23.1-502~~
264 ~~or any other provision of law to the contrary, the following students are eligible for in-state~~
265 ~~tuition charges regardless of domicile:~~

266 ~~1. Any non-Virginia student who resides outside the Commonwealth and has been~~
267 ~~employed full time inside Virginia in the Commonwealth for at least one year immediately prior~~

268 to the date of the alleged entitlement ~~for in-state tuition shall be eligible for in-state tuition~~
269 ~~charges~~ if such student has paid Virginia income taxes on all taxable income earned in the
270 Commonwealth for the tax year prior to the date of the alleged entitlement. ~~Students~~ Such
271 student shall continue to be eligible for in-state tuition charges for so long as the student is
272 employed full time in the Commonwealth and the student pays Virginia income taxes on all
273 taxable income earned in the Commonwealth.

274 2. Any non-Virginia student who resides outside the Commonwealth and is claimed as
275 dependents a dependent for federal and Virginia income tax purposes ~~who live outside the~~
276 ~~Commonwealth shall become eligible for in-state tuition charges~~ if the nonresident ~~parents~~
277 parent claiming ~~them~~ the student as ~~dependents have a dependent has~~ been employed full time
278 inside Virginia in the Commonwealth for at least one year immediately prior to the date of the
279 alleged entitlement and paid Virginia income taxes on all taxable income earned in the
280 Commonwealth for the tax year prior to the date of the alleged entitlement. Such ~~students~~
281 student shall continue to be eligible for in-state tuition charges for so long as ~~they or their his~~
282 qualifying parent is employed full time in ~~Virginia the Commonwealth,~~ paying pays Virginia
283 income taxes on all taxable income earned in the Commonwealth, and claims the student ~~is~~
284 claimed as a dependent for Virginia and federal income tax purposes.

285 3. Any active duty member, activated guard or reserve member, or guard or reserve
286 member mobilized or on temporary active orders for 180 days or more who resides in the
287 Commonwealth.

288 4. Any veteran who resides in the Commonwealth.

289 5. Any surviving spouse who resides in the Commonwealth.

290 6. Following completion of active duty service, any non-Virginia student who
291 established domicile before being called to active duty in the National Guard of another state if
292 during such active duty he maintained at least one of the following in the Commonwealth: a
293 driver's license, motor vehicle registration, voter registration, employment, property ownership,
294 or sources of financial support.

295 Any ~~out-of-state students~~ non-Virginia student granted in-state tuition pursuant to this
296 subsection shall be counted as ~~in-state students~~ a Virginia student for the purposes of
297 determining college admissions, enrollment, and tuition and fee revenue policies.

298 B. ~~Any person who (i) is a member of the National Guard of the Commonwealth of~~
299 ~~Virginia and has a minimum remaining obligation of two years, (ii) has satisfactorily completed~~
300 ~~required initial active duty service, (iii) is satisfactorily performing duty in accordance with~~
301 ~~regulations of the National Guard, and (iv) is enrolled in any state institution of higher~~
302 ~~education, any private, accredited, and nonprofit institution of higher education in the~~
303 ~~Commonwealth whose primary purpose is to provide collegiate or graduate education and not to~~
304 ~~provide religious training or theological education, any course or program offered by any such~~
305 ~~institution or any public career and technical education school shall be eligible for a grant in the~~
306 ~~amount of the difference between the full cost of tuition and any other educational benefits for~~
307 ~~which he is eligible as a member of the National Guard. Application for a grant shall be made to~~
308 ~~the Department of Military Affairs. Grants shall be awarded from funds available for the~~
309 ~~purpose by such Department.~~

310 ~~Notwithstanding the foregoing requirement that a member of the National Guard have a~~
311 ~~minimum of two years remaining on his service obligation, if a member is activated or deployed~~
312 ~~for federal military service, an additional day shall be added to the member's eligibility for the~~
313 ~~grant for each day of active federal service up to 365 days. Additional credit, or credit for state~~
314 ~~duty, may be given at the discretion of the Adjutant General.~~

315 ~~In addition, any person who met the requirements for in-state tuition prior to being called~~
316 ~~to active duty in the National Guard of another state shall be eligible for in-state tuition~~
317 ~~following completion of active duty service if during active duty that person maintained one or~~
318 ~~more of the following in Virginia rather than in another state or jurisdiction: a driver's license,~~
319 ~~motor vehicle registration, voter registration, employment, property ownership, or sources of~~
320 ~~financial support. Any out-of-state students granted in-state tuition pursuant to this subsection~~

321 ~~shall be counted as in-state students for the purposes of determining college admissions,~~
322 ~~enrollment, and tuition and fee revenue policies.~~

323 ~~C.~~ Notwithstanding the provisions of § ~~23-7.4~~ 23.1-502 or any other provision of ~~the~~ law
324 to the contrary, the governing board of any state public institution of higher education ~~or the~~
325 ~~governing board of the Virginia Community College System~~ may charge ~~the same in-state~~
326 ~~tuition as is charged to any person domiciled in Virginia pursuant to the provisions of § 23-7.4~~
327 ~~to the following students regardless of domicile:~~

328 1. Any ~~person~~ non-Virginia student enrolled in one of the institution's programs
329 designated by the ~~State Council of Higher Education who is domiciled in and who (i)~~ is entitled
330 to reduced tuition charges ~~in at~~ the institutions of higher education in any other state ~~which that~~
331 is a party to the Southern Regional Education Compact ~~which and that~~ has similar reciprocal
332 provisions for ~~persons domiciled in~~ Virginia students and (ii) is domiciled in such other state;

333 2. Any non-Virginia student from a foreign country who is enrolled in a foreign
334 exchange program approved by the ~~state~~ institution of higher education during the same period
335 ~~that an exchange in which a Virginia student from the same state such~~ institution, ~~who is entitled~~
336 ~~to in-state tuition pursuant to § 23-7.4,~~ is attending ~~the such~~ foreign institution as an exchange
337 student; and

338 3. Any high school or magnet school student, not otherwise qualified for in-state tuition,
339 who is enrolled in courses specifically designed as part of the high school or magnet school
340 curriculum in a comprehensive community college for which he may, upon successful
341 completion, receive high school and ~~community~~ college credit pursuant to a dual enrollment
342 agreement between the high school or magnet school and the comprehensive community
343 college.

344 Any ~~out-of-state students~~ non-Virginia student granted in-state tuition pursuant to this
345 subsection shall be counted as ~~out-of-state students~~ a non-Virginia student for the purposes of
346 determining college admissions, enrollment, and tuition and fee revenue policies.

347 D. The ~~governing board of the Virginia Community College System State Board~~ shall
348 charge in-state tuition to any ~~person non-Virginia student~~ enrolled ~~in one of the System's~~
349 ~~institutions at a comprehensive community college~~ who ~~lives~~ resides in another state within a
350 30-mile radius of a ~~Virginia public~~ institution, ~~is domiciled in, of higher education in the~~
351 Commonwealth, is domiciled in such other state, and is entitled to in-state tuition charges ~~in at~~
352 the institutions of higher ~~learning education~~ in any state ~~which that~~ is contiguous to ~~Virginia the~~
353 Commonwealth and ~~which that~~ has similar reciprocal provisions for ~~persons domiciled in~~
354 Virginia students.

355 Any ~~out-of-state students~~ non-Virginia student granted in-state tuition pursuant to this
356 subsection shall be counted as ~~in-state students~~ a Virginia student for the purposes of
357 determining college admissions, enrollment, and tuition and fee revenue policies.

358 **Drafting note: Proposed § 23.1-506 incorporates the provisions of existing § 23-**
359 **7.4:2 relating to permissive and mandatory in-state tuition for certain out-of-state and**
360 **high school students. Subdivisions A 3, 4, and 5 incorporate the provisions of subsections**
361 **G, H, and I of existing § 23-7.4:2 with technical changes. Subdivision A 6 incorporates the**
362 **provisions of the third paragraph of subsection B of existing § 23-7.4:2 with technical**
363 **changes. The provisions of the first two paragraphs of subsection B of existing § 23-7.4:2**
364 **are stricken and relocated as proposed § 23.1-609. Technical changes are made.**

365 § 23.1-507. University of Virginia's College at Wise; reduced rate tuition charges for
366 certain students.

367 ~~E. A.~~ The ~~board of the University of Virginia's College at Wise and the~~ board of visitors
368 of the University of Virginia may charge reduced rate tuition to any ~~person student~~ enrolled at
369 the University of Virginia's College at Wise who ~~lives~~ resides in Kentucky within a 50-mile
370 radius of the University of Virginia's College at Wise, is domiciled in Kentucky, and is entitled
371 to in-state tuition charges ~~in at~~ the institutions of higher ~~learning education~~ in Kentucky, if
372 Kentucky has similar reciprocal provisions for ~~persons domiciled in~~ Virginia students.

373 ~~In addition, the board of the University of Virginia's College at Wise and the~~B. The
374 board of visitors of the University of Virginia may charge reduced rate tuition to any ~~person~~
375 student enrolled at the University of Virginia's College at Wise who ~~lives~~ resides in Tennessee
376 within a 50-mile radius of the University of Virginia's College at Wise, is domiciled in
377 Tennessee, and is entitled to in-state tuition charges ~~in at~~ the institutions of higher ~~learning~~
378 education in Tennessee; if Tennessee has similar reciprocal provisions for ~~persons domiciled in~~
379 Virginia students.

380 C. The board of visitors of the University of ~~Virginia's College at Wise and its partners~~
381 ~~or associates offering programs jointly at a regional off-campus center~~ Virginia may ~~also~~ charge
382 reduced rate tuition to any ~~person~~ student enrolled in ~~such joint~~ programs offered jointly by its
383 partners or associates and the University of Virginia's College at Wise at a regional off-campus
384 center who ~~lives~~ resides in Tennessee within a 50-mile radius of the University of Virginia's
385 College at Wise, is domiciled in Tennessee, and is entitled to in-state tuition charges ~~in at~~ the
386 institutions of higher ~~learning~~ education in Tennessee; if Tennessee has similar reciprocal
387 provisions for ~~persons domiciled in~~ Virginia students. Any such respective partners or associates
388 shall establish ~~and charge separately~~ tuition rates separate tuition charges for their independent
389 classes or programs at such regional off-campus centers.

390 Any ~~out-of-state students~~ non-Virginia student granted in-state tuition pursuant to this
391 ~~subsection~~ section shall be counted as ~~out-of-state students~~ a non-Virginia student for the
392 purposes of determining admissions, enrollment, and tuition and fee revenue policies.

393 **Drafting note: Proposed § 23.1-507 incorporates the provisions of subsection E of**
394 **existing § 23-7.4:2 relating to reduced tuition for certain non-Virginia at University of**
395 **Virginia's College at Wise. Technical changes are made.**

396 § 23.1-508. Special arrangement contracts; reduced rate tuition charges.

397 ~~F. A.~~ Public institutions of higher education may enter into special arrangement
398 contracts with ~~Virginia~~ employers in the Commonwealth or authorities controlling federal
399 installations or agencies located in ~~Virginia~~. ~~The special arrangement contracts shall be the~~

400 Commonwealth for the purpose of providing reduced rate tuition charges for the employees of
401 ~~the Virginia such~~ employers or ~~federal personnel authorities who are non-Virginia students at~~
402 ~~such institutions~~ when ~~the such~~ employers or ~~federal~~ authorities ~~are assuming assume~~ the
403 liability for paying, to the extent permitted by federal law, the tuition charges for ~~the such~~
404 employees ~~or personnel in question and the employees or personnel are classified by the~~
405 ~~requirements of this section as out of state.~~

406 Special B. Such special arrangement contracts ~~with Virginia employers or federal~~
407 ~~installations or agencies~~ may be (i) for group instruction in facilities provided by the employer
408 or federal authority or in the institution's facilities or (ii) on a student-by-student basis for
409 specific employment-related programs.

410 C. Special arrangement contracts shall be valid for a period not to exceed two years and
411 shall be reviewed for legal sufficiency by the Office of the Attorney General prior to signing.
412 All ~~rates~~ tuition charges agreed to by the public institutions shall be at least equal to in-state
413 tuition and shall ~~only~~ be granted only by the institution with which the employer or the federal
414 authorities have a valid contract for students for whom the employer or federal ~~authorities are~~
415 authority is paying the tuition charges.

416 D. All special arrangement contracts with authorities controlling federal installations or
417 agencies shall include a specific number of students to be ~~served at~~ charged reduced tuition
418 rates.

419 E. Nothing in this ~~subsection~~ section shall change the ~~domiciliary status~~ domicile of any
420 student for the purposes of enrollment reporting or calculating the proportions of general funds
421 and tuition and fees contributed to the cost of education.

422 ~~G. Any active duty members, activated guard or reservist members, or guard or reservist~~
423 ~~members mobilized or on temporary active orders for six months or more, who reside in~~
424 ~~Virginia, shall be eligible for in-state tuition charges. Any out-of-state students granted in-state~~
425 ~~tuition pursuant to this subsection shall be counted as in-state students for the purposes of~~
426 ~~determining college admissions, enrollment, and tuition and fee revenue policies.~~

427 ~~H. Notwithstanding any other provision of law, veterans residing within the~~
428 ~~Commonwealth shall be eligible for in-state tuition charges. Any students granted in-state~~
429 ~~tuition pursuant to this subsection shall be counted as in-state students for the purpose of~~
430 ~~determining college admissions, enrollment, and tuition and fee revenue policies.~~

431 ~~I. Notwithstanding any other provision of law, surviving spouses, as that term is defined~~
432 ~~in § 23-7.4, residing within the Commonwealth shall be eligible for in-state tuition charges. Any~~
433 ~~students granted in-state tuition pursuant to this subsection shall be counted as in-state students~~
434 ~~for the purpose of determining college admissions, enrollment, and tuition and fee revenue~~
435 ~~policies.~~

436 **Drafting note: Proposed § 23.1-508 incorporates the provisions of subsection F of**
437 **existing § 23-7.4:2 with technical changes. Subsections G, H, and I of existing § 23-7.4:2**
438 **are stricken and relocated as subdivisions A 3, 4, and 5 of proposed § 23.1-506 with**
439 **technical changes.**

440 § 23.1-509. In-state tuition; surcharge.

441 A. For the purpose of this section:

442 "Credit hour threshold" means 125 percent of the credit hours needed to satisfy the
443 degree requirements for a specified undergraduate program.

444 "Surcharge" means an amount equal to 100 percent of the average cost of a student's
445 education at the baccalaureate public institution of higher education that the student attends less
446 tuition and mandatory educational and general fee assessed to a Virginia student who has not
447 exceeded the credit hour threshold.

448 B. Virginia students who enroll for the first time at baccalaureate public institutions of
449 higher education after August 1, 2006 shall be assessed a surcharge for each semester beginning
450 in which the student continues to be enrolled after such student has reached the credit hour
451 threshold.

452 C. In calculating the credit hour threshold, the following courses and credit hours shall
453 be excluded: (i) remedial courses; (ii) transfer credits from another institution of higher

454 education that do not meet degree requirements for general education courses or the student's
455 chosen program of study; (iii) advanced placement or international baccalaureate credits that
456 were obtained while in high school or another secondary school program; and (iv) dual
457 enrollment, college-level credits obtained by the student prior to receiving a high school
458 diploma.

459 D. The relevant baccalaureate public institution of higher education may waive the
460 surcharge in accordance with guidelines and criteria established by the Council, which may
461 include illness, disability, and active service in the Armed Forces of the United States.

462 **Drafting note: Proposed § 23.1-509 incorporates the provisions of subsection F of**
463 **existing § 23-7.4. Technical changes are made.**

464 § ~~23-7.4:3~~ 23.1-510. Determinations of eligibility; appeals and guidelines.

465 A. Each public institution of higher education shall establish an appeals process for those
466 students who are aggrieved by decisions regarding eligibility for in-state or reduced ~~out-of-state~~
467 rate tuition charges pursuant to ~~§§ 23-7.4 and 23-7.4:2~~ this chapter. The Administrative Process
468 Act (§ 2.2-4000 et seq.) shall not apply to these administrative reviews.

469 ~~An initial determination shall be made.~~ B. Each appeals process shall include an initial
470 determination, an intermediate review of the initial determination, and a final administrative
471 review. The final administrative decision shall be in writing. A copy of this decision shall be
472 sent to the student. Either the intermediate review or the final administrative review shall be
473 conducted by an appeals committee consisting of an odd number of members. No ~~person~~
474 individual who serves at one level of this appeals process shall be eligible to serve at any other
475 level of this ~~review appeals process~~. All such due process procedures shall be in writing and
476 shall include time limitations in order to provide for orderly and timely resolutions of all
477 disputes.

478 C. Any party aggrieved by a final administrative decision shall have the right to review
479 in the circuit court for the jurisdiction in which the relevant institution is located. A petition for
480 review of the final administrative decision shall be filed within ~~thirty~~ 30 days of receiving the

481 written decision. In any such action, the institution shall forward the record to the court, whose
482 function shall be only to determine whether the decision reached by the institution could
483 reasonably be said, on the basis of the record, not to be arbitrary, capricious, or otherwise
484 contrary to law.

485 ~~B. D.~~ To ensure the application of uniform criteria in administering this section and
486 determining eligibility for in-state tuition charges, the ~~State Council of Higher Education~~ shall
487 issue and ~~from time to time~~ revise domicile guidelines, ~~including domiciliary status questions~~ to
488 be incorporated by all ~~state~~ public institutions of higher education in their admissions
489 applications. These guidelines shall not be subject to the Administrative Process Act. The
490 Council shall consult with the Office of the Attorney General and provide opportunity for public
491 comment prior to issuing any such guidelines.

492 E. An advisory committee, composed of at least ~~ten~~ 10 representatives of public and
493 private institutions of higher education, shall be appointed by the Council each year to cooperate
494 with the Council in developing the guidelines for determining eligibility or revisions ~~thereof of~~
495 such guidelines. ~~The Council shall consult with the Office of the Attorney General and provide~~
496 ~~opportunity for public comment prior to issuing any such guidelines.~~

497 **Drafting note: Technical changes.**

498 ~~§ 23-7.4:4.~~

499 **Drafting note: Repealed by Acts 2002, c. 84.**

500 ~~§ 23-9.2:3.01.~~

501 **Drafting note: Repealed by Acts 2002, c. 84.**

502 ~~CHAPTER 1.2.~~

503 ~~PARTICIPATION IN FEDERAL FINANCIAL ASSISTANCE PROGRAMS.~~

504 ~~§§ 23-9.15 through 23-9.21.~~

505 **Drafting note: Repealed by Acts 1977, c. 676.**

506 ~~CHAPTER 2.~~

507 ~~AID TO PERSONS DENIED ADMISSION.~~

508 | ~~§§ 23-10 through 23-13.~~

509 | **Drafting note: Repealed by Acts 1971, Ex. Sess., c. 102.**

510 | CHAPTER 6.

511 | FINANCIAL ASSISTANCE.

512 | **Drafting note: Provisions of Title 23 relating to financial assistance are consolidated**
513 | **in proposed Chapter 6 of Title 23.1, and technical changes are made.**

514 | Article 1.

515 | General Provisions.

516 | **Drafting note: Provisions relating to financial assistance generally are consolidated**
517 | **in proposed Article 1 of Chapter 6, and technical changes are made.**

518 | § ~~23-7.1:02~~ 23.1-600. Participation in ~~or~~ and eligibility for state-supported financial aid
519 | programs.

520 | A. Participation in and eligibility for state-supported financial aid or other higher
521 | education programs designed to promote greater racial diversity in ~~state-supported~~ public
522 | institutions of higher education shall not be restricted on the basis of race or ethnic origin ~~and~~
523 | ~~any person.~~ Any individual who is a member of any federally recognized minority ~~shall be~~ is
524 | eligible for and may participate in such programs; if such individual meets all other
525 | qualifications for admission to the relevant institution and the specific program ~~are met~~.

526 | B. ~~Persons~~ Individuals who have completed a program of home school instruction in
527 | accordance with § 22.1-254.1 and ~~persons~~ individuals who have been excused from school
528 | attendance pursuant to subsection B of § 22.1-254 shall be deemed to have met the high school
529 | graduation requirements for purposes of eligibility for any state-supported financial aid or other
530 | higher education programs. When a high school grade point average, class rank, or other
531 | academic criteria ~~is~~ are specified as a condition of participating in a program, the ~~State~~
532 | ~~of Higher Education for Virginia~~ shall develop empirical alternative equivalent measures that
533 | may be required for such programs.

534 § ~~23-7.4:5~~ 23.1-601. Grant Comprehensive community colleges; grants for tuition and
535 fees for certain individuals.

536 A. The Each comprehensive community college shall provide a grant for the payment of
537 tuition or fees, except fees established for the purpose of paying for course materials, such as
538 laboratory fees, ~~shall be provided for a person who is a bona fide domiciliary of Virginia, as~~
539 defined in § 23-7.4, and for any Virginia student who:

540 1. (i) Has received a high school diploma or has passed a high school equivalency
541 examination approved by the Board of Education and was in foster care or in the custody of the
542 Department of Social Services or is considered a special needs adoption at the time such
543 diploma or certificate was awarded; or (ii) was in foster care when he turned 18 and
544 subsequently received a high school diploma or passed a high school equivalency examination
545 approved by the Board of Education;

546 ~~2. Is enrolled or has been accepted for enrollment as a full-time or part-time student,~~
547 ~~taking a minimum of six credit hours per semester, in a degree or certificate program of at least~~
548 ~~one academic year in length in a public two-year institution of higher education in the~~
549 Commonwealth comprehensive community college;

550 3. Has not been enrolled in postsecondary education as a full-time student for more than
551 five years ~~and/or or~~ does not have a ~~prior~~ bachelor's degree;

552 4. Maintains the required grade point average established by the State Board ~~for~~
553 Community Colleges;

554 5. Has submitted applications for federal student financial aid programs for which he
555 may be eligible; ~~and~~

556 6. Demonstrates financial need; and ~~meets~~

557 7. Meets any additional financial need requirements established by the State Board ~~for~~
558 Community Colleges for the purposes of such grant.

559 B. The State Board ~~for Community Colleges~~, in consultation with the ~~State Council of~~
560 Higher Education and the Department of Social Services, shall establish regulations governing

561 such grants. The regulations shall include, ~~but shall not be limited to,~~ provisions addressing
562 renewals of grants; financial need; the calculation of grant amounts; after consideration of any
563 additional financial resources or aid the student ~~may hold;~~ holds, the minimum grade point
564 average required to retain such grant; and procedures for the repayment of tuition and fees for
565 failure to meet the requirements imposed by this section.

566 **Drafting note: Technical changes are made, including the use of terms defined**
567 **title-wide pursuant to § 23.1-100 such as "comprehensive community college," "Council,"**
568 **"Virginia student," and "State Board."**

569 ~~§ 23-7.4:6. Expired.~~

570 **Drafting note: Expired pursuant to Acts 2009, c. 447, cl. 3, effective July 1, 2012.**

571 ~~§ 23-9.2:1.~~

572 **Drafting note: Repealed by Acts 1980, c. 229.**

573 ~~§ 23-9.2:2.~~

574 **Drafting note: Repealed by Acts 1972, c. 697.**

575 ~~§ 23-9.2:4~~ 23.1-602. Payments to institutions of higher education for certain courses
576 taken by law-enforcement officers.

577 ~~A. The State Department of Criminal Justice Services is hereby authorized and directed~~
578 ~~to shall~~ enter into contracts to make payments to public institutions of higher education or
579 accredited private institutions of higher education ~~within this Commonwealth whose primary~~
580 campus is within the Commonwealth for tuition, books, and mandatory fees for ~~law-~~
581 ~~enforcement officers any law-enforcement officer~~ of the Commonwealth; or its political
582 subdivisions, departments, or authorities; or ~~of any county, city or town thereof~~ locality of the
583 Commonwealth who (i) is enrolled on a full-time or part-time basis in courses included in an
584 undergraduate or graduate program ~~which that~~ leads to a degree or certificate in an area related
585 to law enforcement or ~~an area~~ suitable for law-enforcement officers. ~~No payments shall be made~~
586 ~~pursuant to this section to any institution of higher education operating within this~~
587 ~~Commonwealth whose primary campus is outside this Commonwealth. Assistance under this~~

588 ~~section may be granted only on behalf of an applicant who~~ and (ii) enters into an agreement to
589 continue to serve as a law-enforcement officer in ~~Virginia~~ the Commonwealth upon completion
590 of his course of study for a period at least as long as the length of the course of study undertaken
591 and paid for under the provisions of this section, ~~and,~~ in the event that he does not complete
592 such service ~~is not completed~~, to repay the full amount of such payments on the terms and in the
593 manner that the ~~State~~ Department of Criminal Justice Services ~~may prescribe~~ prescribes.

594 B. Any ~~person receiving individual who receives~~ the benefit of funds expended pursuant
595 to this section shall ~~be required to make reimbursement of~~ reimburse such funds to the
596 Department of Criminal Justice Services if he fails to satisfactorily complete the course ~~or~~
597 courses for which the funds were expended.

598 Any reimbursement of money advanced under the provisions of this section shall be
599 returned to ~~the State~~ The Department of Criminal Justice Services ~~and used~~ shall use such
600 reimbursed funds in accordance with the purposes of this section.

601 **Drafting note: Technical changes are made, including removing "State" in two**
602 **instances in subsection A when used in conjunction with "Department of Criminal Justice**
603 **Services" and changing a reference to "county, city or town" to "locality" pursuant to § 1-**
604 **221, which states that throughout the Code "locality" means a county, city, or town.**

605 § ~~23-31.1~~ 23.1-603. State cadets; Mary Baldwin College and Virginia Polytechnic
606 Institute and State University; financial assistance awards.

607 From funds appropriated by the Commonwealth to Mary Baldwin College for the
608 Virginia Women's Institute for Leadership and to Virginia Polytechnic Institute and State
609 University, ~~their respective boards of visitors~~ each such institution's governing board may, ~~in~~
610 ~~their discretion~~, provide for financial assistance awards to students designated as state cadets, on
611 terms and conditions comparable to the provisions of §§ ~~23-105 through 23-107~~ 23.1-2506.

612 **Drafting note: Technical changes are made, including replacing a reference to**
613 **"boards of visitors" with the more general "governing board"; Mary Baldwin College has**
614 **an advisory board of visitors but refers to its governing board as a board of trustees.**

615 § ~~23-32~~ 23.1-604. Investment of funds donated for scholarships.

616 Whenever-A. When any person ~~shall deposit deposits moneys~~ in ~~the state treasury, or~~
617 ~~bequeath money bequeaths moneys~~ to be ~~so~~ deposited in, or ~~devise devises~~ or ~~bequeath~~
618 ~~bequeaths~~ property to be sold and the proceeds to be ~~so~~ deposited, in the state treasury for the
619 benefit of any ~~of the educational institutions in the Commonwealth, to~~ institution of higher
620 education in such an amount that the interest ~~thereof will be~~ on such moneys is sufficient to
621 ~~educate and maintain thereat one or more cadets or students~~ cover the costs of tuition,
622 mandatory fees, and other necessary expenses for a cadet or student enrolled in such institution,
623 the ~~fund~~ moneys shall be invested in securities that are legal investments under the laws of the
624 Commonwealth for public funds in the name and for the benefit of ~~the~~ such institution.

625 § ~~23-33. Donations irrevocable; right of nomination by donor.~~

626 B. Such donation ~~shall be~~ is irrevocable, but the donor, ~~or~~ his heirs, or ~~their~~ the guardian,
627 ~~if they be of any heir who is~~ under ~~twenty-one~~ 21 years of age, ~~shall have the right to~~ may
628 nominate and place in such institution ~~one or more cadets or students, according to the~~
629 ~~regulations aforesaid~~ any cadet or student.

630 § ~~23-34. Selection when donor fails to nominate.~~

631 C. If such donor, ~~or his~~ heirs, or ~~such~~ guardian, ~~shall fail for~~ fails to nominate a cadet or
632 student within one year ~~to nominate as aforesaid of such donation~~, the governing board ~~of~~
633 ~~visitors, trustees, or corporate authorities of the institution~~ may appropriate ~~the income of such~~
634 ~~fund to the education and maintenance of such moneys to cover tuition, mandatory fees, and~~
635 ~~other necessary expenses for~~ indigent ~~cadets or~~ Virginia students, ~~to be selected by them from~~
636 ~~the Commonwealth at large or cadets~~.

637 **Drafting note: The provisions of existing §§ 23-32, 23-33, and 23-34 are logically**
638 **combined as proposed subsections A, B, and C of § 23.1-604. Technical changes are made.**

639 § ~~23-108~~ 23.1-605. Commissioned officers ~~may become students; waiver of tuition and~~
640 ~~mandatory fees~~.

641 Any commissioned officer of the ~~organized militia and Governor's military staff of the~~
642 Commonwealth Virginia National Guard of the Virginia Defense Force may become a student
643 at any ~~state public~~ institution of higher education for a period not exceeding 10 months, and
644 receive instruction in ~~any or all~~ the departments of military science, emergency management,
645 emergency services, public safety, and disaster management ~~taught therein~~ at such institution
646 without being required to pay ~~any fee or charge for~~ tuition and mandatory fees.

647 **Drafting note: Technical changes are made.**

648 § 23-38 ~~23.1-606~~. Service in ~~armed forces discharges obligation to render services to~~
649 Commonwealth in consideration of scholarship Armed Forces of the United States; discharge of
650 scholarship service obligations.

651 Service Any length of service by any ~~person individual~~ in ~~any of the armed forces~~
652 Armed Forces of the United States as an officer, private, or nurse, or in any other capacity,
653 ~~regardless of length of service~~, in time of war or other declared national emergency, is a
654 complete and final discharge of any obligation of such person to serve the Commonwealth as a
655 teacher in the public schools, or in any other capacity, including any such obligation ~~which that~~
656 has been reduced or computed into terms of a monetary obligation in lieu of such service,
657 arising by virtue of any statute or of any contract entered into between such ~~person individual~~
658 and any ~~state-owned or state-supported~~ public institution of higher ~~learning, education~~ in
659 consideration of any state scholarship awarded to or received by such ~~person individual~~ as a
660 student in such institution; provided, that such service is terminated by an honorable or medical
661 discharge; ~~provided, further, that~~ and such ~~person shall have individual~~ entered such service
662 ~~with the armed forces~~ within four years after leaving such ~~state-owned or state-operated~~
663 institution.

664 **Drafting note: Technical changes.**

665 § ~~23-8.2:1~~ 23.1-607. Compensation of cooperating teachers.

666 A. As used in this section, "cooperating teacher" means an individual licensed by the
667 Board of Education who meets the criteria established by the relevant institution of higher
668 education and is engaged in supervising and evaluating one or more student teachers.

669 B. In addition to the provisions of § 22.1-290.1 relating to compensation of certain
670 licensed teachers while engaged in supervising and evaluating student teachers, any institution
671 of higher education engaged in educating students to be teachers may, from such funds as may
672 be available for such purpose, develop and implement a program to compensate ~~public school~~
673 public school or ~~private school~~ private school teachers who agree to be cooperating teachers ~~as~~
674 defined in this section. Such compensation programs may provide for payment in the form of
675 money or ~~in the form of~~ authorization to enroll, without charge, for a designated number of
676 credit hours in the school, department, or other unit of the ~~relevant~~ institution of higher
677 education ~~in at~~ which the student teacher being supervised is enrolled.

678 ~~For the purposes of this section, "cooperating teacher" means an individual licensed by~~
679 ~~the Board of Education who meets the criteria established by the relevant institution of higher~~
680 ~~education and is engaged in supervising and evaluating one or more student teachers.~~

681 **Drafting note: Technical changes are made, including moving a definition to the**
682 **beginning of the proposed section.**

683 ~~§ 23-7.4:1 23.1-608. Waiver of tuition and certain charges and fees for eligible children~~
684 ~~and spouses of certain military service members, eligible children and spouses of certain public~~
685 ~~safety personnel, and certain foreign students~~ Virginia Military Survivors and Dependents
686 Education Program and Fund; tuition and fee waivers.

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

688 "Domicile" has the same meaning as provided in § 23.1-500.

689 "Qualified survivors and dependents" means the spouse or a child between the ages of 16
690 and 29 of a military service member who, while serving as an active duty member in the United
691 States Armed Forces, United States Armed Forces Reserves, or Virginia National Guard, during
692 military operations against terrorism, on a peacekeeping mission, as a result of a terrorist act, or

693 in any armed conflict, was killed, became missing in action, or became a prisoner of war, or of a
694 veteran who, as a direct result of such service, has been rated by the U.S. Department of
695 Veterans Affairs as totally and permanently disabled or at least 90 percent permanently disabled
696 and has been discharged or released under conditions other than dishonorable. However, the
697 Commissioner of the Department of Veterans Services may certify dependents above the age of
698 29 in those cases in which extenuating circumstances prevented the dependent child from using
699 his benefits before the age of 30.

700 There is hereby established the B. The Virginia Military Survivors and Dependents
701 Education Program. Qualified (the Program) is established for the purpose of waiving tuition
702 and mandatory fees at a public institution of higher education or Eastern Virginia Medical
703 School for qualified survivors and dependents of military service members, who have been
704 admitted to any public such institution of higher education or other public accredited
705 postsecondary institution granting a degree, diploma, or certificate in the Commonwealth of
706 Virginia, upon certification to and meet the requirements of subsection B, as certified by the
707 Commissioner of the Department of Veterans Services of eligibility under this subsection, shall
708 be admitted free of tuition and all required fees.

709 The Virginia Military Survivors and Dependents Education Program shall be
710 implemented pursuant to the following:

711 1. For the purposes of this subsection, "qualified survivors and dependents" means the
712 spouse or a child between the ages of 16 and 29 of a military service member who, while
713 serving as an active duty member in the United States Armed Forces, United States Armed
714 Forces Reserves, the Virginia National Guard, or Virginia National Guard Reserve, during
715 military operations against terrorism, on a peacekeeping mission, as a result of a terrorist act, or
716 in any armed conflict subsequent to December 6, 1941, was killed or is missing in action or is a
717 prisoner of war, or of a veteran who, due to such service, has been rated by the United States
718 Department of Veterans Affairs as totally and permanently disabled or at least 90% disabled,
719 and has been discharged or released under conditions other than dishonorable. However, the

720 ~~Commissioner of the Department of Veterans Services may certify dependents above the age of~~
721 ~~29 in those cases in which extenuating circumstances prevented the dependent child from using~~
722 ~~his benefits before the age of 30.~~

723 2. ~~Such qualified~~ C. Admitted qualified survivors and dependents ~~shall be~~ are eligible for
724 ~~the benefits conferred by this subsection~~ a waiver of tuition and mandatory fees pursuant to this
725 section if the military service member who was killed, is missing in action, is a prisoner of war,
726 or is disabled (i) ~~was a bona fide domiciliary of Virginia established domicile (a)~~ at the time of
727 entering such active military service or called to active duty as a member of the Armed Forces
728 Reserves or Virginia National Guard ~~Reserve; (ii) is and has been a bona fide domiciliary of~~
729 Virginia (b) for at least five years immediately prior to, or ~~has~~ had a physical presence in
730 Virginia the Commonwealth for at least five years immediately prior to, the date on which the
731 admission application was submitted by or on behalf of such qualified survivor or dependent for
732 admission to such institution of higher education ~~or other public accredited postsecondary~~
733 institution; (iii) if deceased, was a bona fide domiciliary of Virginia or Eastern Virginia Medical
734 School or (c) on the date of his death and ~~had been a bona fide domiciliary of Virginia~~ for at
735 least five years immediately prior to his death or had a physical presence in ~~Virginia the~~
736 Commonwealth on the date of his death and ~~has~~ had a physical presence in Virginia for at least
737 five years immediately prior to his death; ~~(iv) (ii)~~ in the case of a qualified child, is deceased and
738 the surviving parent ~~had been~~, at some time previous to marrying the deceased parent, ~~a bona~~
739 fide domiciliary of Virginia established domicile for at least five years ~~or is and has been a bona~~
740 fide domiciliary of Virginia, or established domicile or had a physical presence in the
741 Commonwealth for at least five years immediately prior ~~to or has had a physical presence in~~
742 Virginia for at least five years immediately prior to the date on which the admission application
743 was submitted by or on behalf of such child; or ~~(v) (iii)~~ in the case of a qualified spouse, is
744 deceased and the surviving spouse ~~had been~~, at some time previous to marrying the deceased
745 spouse, ~~a bona fide domiciliary of Virginia for~~ established domicile at least five years or ~~is and~~
746 ~~has been a bona fide domiciliary of Virginia for at least five years or has had a physical~~

747 ~~presence in Virginia had a physical presence in the Commonwealth~~ for at least five years prior
748 to the date on which the admission application was submitted by such qualified spouse.

749 3.-C. From such funds as may be appropriated and from such gifts, bequests, and any
750 gifts, grants, or donations from public or private sources, ~~there is hereby established~~ the Virginia
751 Military Survivors and Dependents Education Fund (the Fund) is established for the sole
752 purpose of providing financial assistance; in an amount (i) up to \$2,000 or (ii) as provided in the
753 appropriation act, for board and room charges, books and supplies, and other expenses at any
754 public institution of higher education or ~~other public accredited postsecondary institution~~
755 ~~granting a degree, diploma, or certificate in the Commonwealth of Virginia~~ Eastern Virginia
756 Medical School for the use and benefit of qualified survivors and dependents, provided that the
757 maximum amount to be expended for each such survivor or dependent pursuant to this
758 subsection shall not exceed, when combined with any other form of scholarship, grant, or
759 waiver, the actual costs related to the survivor's or dependent's educational expenses allowed
760 under this subsection.

761 D. Each year, from the funds available in the ~~Virginia Military Survivors and~~
762 ~~Dependents Education~~ Fund, the ~~State Council of Higher Education for Virginia~~ and ~~its member~~
763 ~~institutions~~ each public institution of higher education shall determine the amount and the
764 manner in which financial assistance shall be made available to beneficiaries and shall make
765 that information available to the Commissioner of the Department of Veterans Services for
766 distribution.

767 E. The ~~State Council of Higher Education for Virginia~~ shall ~~be responsible for~~
768 ~~disbursing~~ disburse to ~~the institutions~~ each public institution of higher education the funds
769 appropriated or otherwise made available by the Commonwealth ~~of Virginia~~ to support the
770 ~~Virginia Military Survivors and Dependents Education~~ Fund and shall report to the
771 Commissioner of the Department of Veterans Services the beneficiaries' completion rate.

772 ~~The maximum amount to be expended for each such survivor or dependent pursuant to~~
773 ~~this subsection shall not exceed, when combined with any other form of scholarship, grant, or~~

774 ~~waiver, the actual costs related to the survivor's or dependent's educational expenses allowed~~
775 ~~under this subsection.~~

776 4.F. The Commissioner of the Department of Veterans Services shall designate a senior-
777 level official who shall be responsible for developing and implementing the agency's strategy
778 for disseminating information about the ~~Military Survivors and Dependents Education~~ Program
779 and Fund to those spouses and dependents who may qualify. The Department of Veterans
780 Services shall coordinate with the ~~United States U.S.~~ Department of Veterans Affairs to identify
781 veterans and qualified survivors and dependents. The Commissioner of the Department of
782 Veterans Services shall report annually to the Governor and the General Assembly as to the
783 agency's policies and strategies relating to dissemination of information about the Program and
784 Fund. ~~The report shall also include the number of current beneficiaries, the educational~~
785 ~~institutions attended by beneficiaries, and the completion rate of the beneficiaries.~~

786 G. Each public institution of higher education and Eastern Virginia Medical School shall
787 include in its catalog or equivalent publication a statement describing the benefits available
788 pursuant to this section.

789 **Drafting note: Proposed § 23.1-608 incorporates subsection A of existing § 23-7.4:1.**
790 **Reporting requirements contained in proposed subsection F are recommended for repeal**
791 **as duplicative of reports made by the Council. Proposed subsection G incorporates the**
792 **provisions of part of subsection E of existing § 23-7.4:1. Technical changes are made,**
793 **including moving an existing definition to the beginning of the section and cross-**
794 **referencing the definition of "domicile" from the definitions section in proposed Chapter 5**
795 **(§ 23.1-500 et seq.).**

796 § 23.1-609. Surviving spouses and children of certain individuals: tuition and fee
797 waivers.

798 B.-A. (Effective until July 1, 2018) The surviving spouse and any child between the ages
799 of 16 and 25 ~~whose parent or whose spouse has been~~ of an individual who was killed in the line
800 of duty while employed or serving as a (i) law-enforcement officer, including as a campus

801 police officer appointed under ~~Chapter 17 Article 3~~ (§ ~~23-232 23.1-809~~ et seq.) of Chapter 8,
802 sworn law-enforcement officer, firefighter, special forest warden pursuant to § 10.1-1135,
803 member of a rescue squad, special agent of the Department of Alcoholic Beverage Control, state
804 correctional, regional or local jail officer, regional jail or jail farm superintendent, sheriff, or
805 deputy sheriff; (ii) member of the Virginia National Guard while serving on official state duty
806 or federal duty under Title 32 of the United States Code; or (iii) member of the Virginia
807 Defense Force while serving on official state duty, and any person individual whose spouse was
808 killed in the line of duty while employed or serving in any of such occupations, ~~shall be is~~
809 entitled to free a waiver of undergraduate tuition and the payment of required mandatory fees at
810 any public institution of higher education ~~or other public accredited postsecondary institution~~
811 granting a degree, diploma, or certificate in Eastern Virginia Medical School under the
812 following conditions:

813 B.-A. (Effective July 1, 2018) The surviving spouse and any child between the ages of
814 16 and 25 ~~whose parent or whose spouse has been of an individual who was~~ killed in the line of
815 duty while employed or serving as a (i) law-enforcement officer, including as a campus police
816 officer appointed under ~~Chapter 17 Article 3~~ (§ ~~23-232 23.1-809~~ et seq.) of Chapter 8, sworn
817 law-enforcement officer, firefighter, special forest warden pursuant to § 10.1-1135, member of a
818 rescue squad, special agent of the Virginia Alcoholic Beverage Control Authority, state
819 correctional, regional or local jail officer, regional jail or jail farm superintendent, sheriff, or
820 deputy sheriff; (ii) member of the Virginia National Guard while serving on official state duty
821 or federal duty under Title 32 of the United States Code; or (iii) member of the Virginia
822 Defense Force while serving on official state duty, and any person individual whose spouse was
823 killed in the line of duty while employed or serving in any of such occupations, ~~shall be is~~
824 entitled to free a waiver of undergraduate tuition and the payment of required mandatory fees at
825 any public institution of higher education ~~or other public accredited postsecondary institution~~
826 granting a degree, diploma, or certificate in Eastern Virginia Medical School under the
827 following conditions:

828 1. (Effective until July 1, 2018) The chief executive officer of the ~~Alcoholic Beverage~~
829 ~~Control Board, emergency medical services agency, law enforcement agency, or other~~
830 ~~appropriate agency or the Superintendent of State Police~~ deceased individual's employer
831 certifies that ~~the deceased parent or spouse~~ such individual was so employed ~~or serving as a~~
832 ~~law enforcement officer, sworn law enforcement officer, firefighter, special forest warden~~
833 ~~pursuant to § 10.1-1135, or member of a rescue squad or in any other capacity as specified in~~
834 ~~this section~~ and was killed in the line of duty while serving or living in the Commonwealth; and

835 1. (Effective July 1, 2018) The ~~Chief Executive Officer~~ chief executive officer of the
836 ~~Virginia Alcoholic Beverage Control Authority, emergency medical services agency, law~~
837 ~~enforcement agency, or other appropriate agency or the Superintendent of State Police~~ deceased
838 individual's employer certifies that ~~the deceased parent or spouse~~ such individual was so
839 employed ~~or serving as a law enforcement officer, sworn law enforcement officer, firefighter,~~
840 ~~special forest warden pursuant to § 10.1-1135, or member of a rescue squad or in any other~~
841 ~~capacity as specified in this section~~ and was killed in the line of duty while serving or living in
842 the Commonwealth; and

843 2. The surviving spouse or child or spouse shall have been offered admission to such
844 public institution of higher education or other public accredited postsecondary institution. Any
845 child or spouse who believes he is eligible shall apply to the public institution of higher
846 education or other accredited postsecondary institution to which he has been admitted for the
847 benefits provided by this subsection. The institution shall determine the eligibility of the
848 applicant for these benefits and shall also ascertain that the recipients are in attendance and are
849 making is admitted to, enrolls at, and is in attendance at such institution and applies to such
850 institution for the waiver. Waiver recipients who make satisfactory academic progress are
851 eligible for renewal of such waiver.

852 The B. Institutions that grant such waivers shall waive the amounts payable for tuition,
853 institutional charges and ~~required~~ mandatory educational and auxiliary fees, and books and
854 supplies ~~for the applicants shall be waived by the institution accepting the students.~~

855 ~~C. For the purposes of subsection B, but shall not waive~~ user fees, such as room and
856 board charges, ~~shall not be included in this authorization to waive tuition and fees. However, all~~
857 ~~required educational and auxiliary fees shall be waived along with tuition.~~

858 ~~D. Tuition and required fees may be waived for a student from a foreign country~~
859 ~~enrolled in a public institution of higher education through a student exchange program~~
860 ~~approved by such institution, provided the number of foreign students does not exceed the~~
861 ~~number of students paying full tuition and required fees to the institution under the provisions of~~
862 ~~the exchange program for a given three year period.~~

863 E. ~~C.~~ Each public institution of higher education ~~and other public accredited~~
864 ~~postsecondary institution granting a degree, diploma, or certificate in and Eastern~~ Virginia
865 ~~Medical School~~ shall include in its ~~catalogue catalog~~ or equivalent publication a statement
866 describing the benefits ~~provided by subsections A and B available pursuant to this section.~~

867 **Drafting note: Proposed § 23-609 incorporates the provisions of subsections B and**
868 **C and part of subsection E of existing § 23-7.4:1. The stricken language in existing**
869 **subsection E is relocated as subsection G of proposed § 23.1-608. Existing subsection D is**
870 **stricken and relocated as proposed § 23.1-611.**

871 Existing subsection B and subdivision B 1 are set out twice to reflect 2015
872 amendments by Chapters 38 and 730, effective July 1, 2018, which are identical and
873 substituted "Virginia Alcoholic Beverage Control Authority" for "Department of
874 Alcoholic Beverage Control" in subsection B; and substituted "Chief Executive Officer of
875 the Virginia Alcoholic Beverage Control Authority" for "chief administrative officer of
876 the Alcoholic Beverage Control Board" in subdivision B 1.

877 **Technical changes are made.**

878 § 23.1-610. Members of the National Guard; grants.

879 A. Any individual who (i) is a member of the Virginia National Guard and has a
880 minimum remaining obligation of two years, (ii) has satisfactorily completed required initial
881 active duty service, (iii) is satisfactorily performing duty in accordance with regulations of the

882 National Guard, and (iv) is enrolled in any course or program at any public institution of higher
883 education or accredited nonprofit private institution of higher education whose primary purpose
884 is to provide collegiate or graduate education and not to provide religious training or theological
885 education is eligible for a grant in the amount of the difference between the full cost of tuition
886 and any other educational benefits for which he is eligible as a member of the National Guard.
887 Application for a grant shall be made to the Department of Military Affairs. Grants shall be
888 awarded from funds made available for the purpose by the Department of Military Affairs.

889 B. Notwithstanding the requirement in subsection A that a member of the Virginia
890 National Guard have a minimum of two years remaining on his service obligation, if a member
891 is activated or deployed for federal military service, an additional day shall be added to the
892 member's eligibility for the grant for each day of active federal service, up to 365 days.
893 Additional credit or credit for state duty may be given at the discretion of the Adjutant General.

894 **Drafting note: Proposed § 23.1-610 incorporates the provisions of the first two**
895 **paragraphs of subsection B of existing § 23-7.4:2. Technical changes are made.**

896 § 23.1-611. Students from foreign countries; student exchange programs; tuition and fee
897 waivers.

898 D. Tuition and ~~required mandatory~~ fees may be waived for a student from a foreign
899 country enrolled in a public institution of higher education through a student exchange program
900 approved by such institution, provided that the number of ~~foreign~~ students from a foreign
901 country for whom tuition and mandatory fees has been waived does not exceed during any
902 three-year period the number of students ~~paying from a foreign country who are enrolled~~
903 through such student exchange program and who pay full tuition and ~~required mandatory~~ fees to
904 the institution ~~under the provisions of the exchange program for a given three-year period.~~

905 **Drafting note: Proposed § 23.1-611 incorporates the provisions of subsection D of**
906 **existing § 23-7.4:1. Technical changes are made.**

907 CHAPTER 4.

908 COLLEGE AND UNIVERSITY SCHOLARSHIPS.

909 Article 2.

910 Scholarships.

911 **Drafting note: Provisions of Title 23 relating to scholarships are consolidated in**
912 **proposed Article 2 of Chapter 6, and technical changes are made.**

913 ~~§ 23-34~~ 23.1-612. Unfunded scholarships.

914 ~~A. The corporate authorities of the University of Virginia, the University of Virginia's~~
915 ~~College at Wise, Virginia Military Institute, Virginia Polytechnic Institute and State University,~~
916 ~~The College of William and Mary, Christopher Newport University, George Mason University,~~
917 ~~Longwood University, the University of Mary Washington, James Madison University, Virginia~~
918 ~~Commonwealth University, Radford University, Old Dominion University, the Virginia~~
919 ~~Community College System, Virginia State University, Norfolk State University, and Richard~~
920 ~~Bland College may establish scholarships, hereafter to be designated as unfunded scholarships,~~
921 ~~in their respective institutions under such regulations and conditions as they may prescribe, but~~
922 ~~governing board of each public institution of higher education may establish unfunded~~
923 ~~scholarships that are~~ subject to such regulations and conditions as the governing board
924 establishes and the following limitations and restrictions:

925 1. All such scholarships shall be applied exclusively to the remission, in whole or in part,
926 of tuition and ~~required mandatory~~ fees.

927 2. The ~~respective corporate authorities~~ governing board shall determine the number of
928 such scholarships annually awarded to undergraduate Virginia students and non-Virginia
929 students.

930 3. The total value of all such scholarships annually awarded ~~by an institution~~ to
931 undergraduate Virginia students shall not exceed ~~in any year~~ the amount ~~arrived at by~~
932 multiplying of the applicable ~~figure for sum of~~ undergraduate tuition and ~~required mandatory~~
933 fees multiplied by 20 percent of the enrollment of undergraduate Virginia students ~~in~~
934 ~~undergraduate studies in the institution~~ during the preceding academic year.

935 4. The total value of all such scholarships annually awarded by an institution to
936 undergraduate non-Virginia-~~undergraduate~~ students shall not exceed ~~in any year~~ the amount of
937 the applicable, per capita out-of-state tuition differential paid by undergraduate non-Virginia
938 undergraduate students for tuition and ~~required mandatory~~ fees multiplied by 20 percent of the
939 enrollment of undergraduate non-Virginia students ~~in undergraduate studies in the institution~~
940 during the preceding academic year.

941 5. All such scholarships awarded to undergraduate students shall be awarded only to
942 undergraduate students in the first four years of undergraduate work and shall be awarded and
943 renewed on a selective basis to students of character and ability who are in need of financial
944 assistance. For purposes of determining need under this section, each governing board shall use
945 a nationally recognized needs-analysis system approved by the ~~State Council of Higher~~
946 Education shall be used.

947 3.-6. The ~~respective corporate authorities~~ governing board of each public institution of
948 higher education shall determine the number of such scholarships annually awarded to graduate
949 students or teachers serving as clinical faculty pursuant to § 22.1-290.1. The total value of all
950 such scholarships annually awarded to such graduate students and clinical faculty shall not
951 exceed ~~in any year~~ the amount ~~arrived at by multiplying of~~ the ~~applicable figure for sum of~~
952 graduate tuition and ~~required mandatory~~ fees multiplied by the number of teachers serving as
953 clinical faculty pursuant to § 22.1-290.1 and graduate students who are employed as teaching
954 assistants, graduate assistants, or research assistants with significant academic or academic
955 support responsibilities and who are paid a stipend of at least \$2,000 in the particular academic
956 year ~~and such clinical faculty~~. All graduate unfunded scholarships awarded to graduate students
957 or teachers serving as clinical faculty shall be awarded and renewed on a selective basis to such
958 graduate students and clinical faculty of character and ability.

959 4. ~~A scholarship awarded under this program~~ 7. An unfunded scholarship shall entitle the
960 holder to the following award, as appropriate:

961 a. ~~A Virginia An~~ undergraduate Virginia student may receive an annual remission of an
962 amount not to exceed the cost of tuition and mandatory fees ~~required to be paid by the student~~;

963 b. ~~A non-Virginia An~~ undergraduate non-Virginia student may receive an annual
964 remission not to exceed the amount of the out-of-state tuition differential required to be paid by
965 the student for tuition and mandatory fees;

966 c. A qualified graduate student may receive an annual remission of an amount not to
967 exceed the cost of tuition and mandatory fees ~~required to be paid by the student~~; and

968 d. A teacher serving as clinical faculty ~~member~~ may receive an award as determined by
969 the governing body board of the institution.

970 ~~5-8.~~ Notwithstanding the limitations on the awards of unfunded scholarships to
971 undergraduate students pursuant to subdivision A ~~4 of this section 7~~, an institution may award
972 additional unfunded scholarships to visiting foreign exchange students; ~~however, as long as~~ the
973 number of such awards in any fiscal year ~~shall~~ does not exceed one quarter of one percent of the
974 total institutional headcount enrollment.

975 B. No public institution ~~named herein of higher education~~ shall remit any tuition ~~or~~
976 required, mandatory fees, or ~~any~~ special fees or charges to any student at such institution except
977 as authorized in this section. Each such institution ~~named herein~~ shall make a report to the ~~State~~
978 ~~Council of Higher Education~~, upon request, showing the number and value of scholarships
979 awarded under this section according to each student classification.

980 C. Nothing in this section shall be construed to prevent or limit in any way the admission
981 of certain students, known as state cadets, at the Virginia Military Institute or to affect the
982 remission of tuition ~~or required, mandatory~~ fees, or other charges to such state cadets as
983 permitted under existing law.

984 D. Nothing in this section shall be construed to affect or limit in any way the control of
985 the governing ~~bodies boards~~ of the respective institutions over (i) any other scholarships; ~~or~~
986 ~~over, (ii)~~ any gifts or donations made to such institutions for scholarships or other special
987 purposes; ~~or over, (iii)~~ any funds provided by the federal government or otherwise for the

988 purpose of career and technical education or vocational rehabilitation in ~~this~~ the
989 Commonwealth; ~~or~~ or (iv) any funds derived from endowment or appropriations from the
990 federal government for instruction in agriculture and mechanic arts in land grant colleges.

991 E. Nothing in this section shall be construed to prevent the governing bodies of the
992 respective institutions board of any public institution of higher education from fixing a
993 reasonably lower tuition charge for Virginia students reasonably lower than that for non-
994 Virginia students.

995 F. Nothing in this section or any other provision of law shall prohibit the awarding of 10
996 full tuition unfunded scholarships each year by Old Dominion University under the terms and
997 conditions provided for in a deed conveying certain property in Norfolk known as the Old
998 Larchmont School made July 5, 1930, between the City of Norfolk and The College of William
999 and Mary.

1000 G. Nothing in this section shall be construed to limit other financial aid programs
1001 provided pursuant to state law.

1002 **Drafting note: Technical changes.**

1003 § ~~23-35~~ 23.1-613. Alumni scholarships.

1004 The ~~society of~~ alumni association of any public institution ~~aforsaid of higher education~~
1005 may provide for and maintain a scholarship ~~therein~~; fund by annual contributions; under such
1006 regulations criteria as may be prescribed ~~as aforsaid~~.

1007 **Drafting note: Technical changes are made, including replacing "society of alumni"**
1008 **with preferred "alumni association."**

1009 § ~~23.35.1 through 23-35.8~~.

1010 **Drafting note: Repealed by Acts 1994, c. 867.**

1011 § ~~23-35.9~~ 23.1-614. Nursing scholarships; ~~Advisory Committee~~.

1012 A. As used in this section:

1013 "Graduate nursing program" means a program at a school of nursing that leads to a
1014 master's degree or doctorate in nursing or a field related to nursing activities.

1015 "Undergraduate nursing program" means a program at a school of nursing that leads to
1016 an associate degree, diploma, or baccalaureate degree in nursing.

1017 B. Annual nursing scholarships are hereby established for part-time and full-time
1018 Virginia students enrolled in undergraduate and graduate nursing programs or first-year Virginia
1019 students at the beginning of their first academic year who present to the advisory committee
1020 established pursuant to subsection D a notice of intention to pursue an undergraduate nursing
1021 program. For the purposes of §§ 23-35.9 through 23-35.13, undergraduate nursing programs are
1022 defined as programs leading to an associate degree, diploma, or baccalaureate degree in nursing;
1023 graduate nursing programs are herein defined as those programs offering masters and doctoral
1024 degrees in nursing or related to nursing activities.

1025 C. Undergraduate nursing scholarships shall not exceed \$2,000 annually. Graduate
1026 nursing scholarships shall not exceed \$4,000,5,000 annually. No scholarship shall be less than
1027 \$150 annually. Scholarship funds shall be paid directly to the recipient.

1028 These awards D. Each nursing scholarship shall be made by the Advisory Committee to
1029 the State Board of Health and the recipients shall be required to attend a school of professional
1030 nursing in this Commonwealth if such schools are available and the student can receive
1031 admission thereto. This section shall not be construed to prohibit such scholarship from being
1032 available to any first-year college student at the beginning of the first college year who presents
1033 to the Advisory Committee a notice of intention to pursue an undergraduate nursing program as
1034 defined for the purposes of this section.

1035 The Advisory Committee shall be an advisory committee appointed by the State Board
1036 of Health. ~~The Committee shall consist~~ that consists of eight members; four of whom shall be
1037 deans or directors of schools of nursing or their designees; two of whom shall be past recipients
1038 of nursing scholarships awarded pursuant to this ~~title; and~~ section, two of whom shall have
1039 experience in the administration of student financial aid programs, and at least two of whom
1040 shall not have served as members of the advisory committee during the previous two years.

1041 Appointments shall be for two-year terms. No member of the ~~Committee~~ advisory committee

1042 shall be eligible to serve more than two ~~successive~~ consecutive two-year terms ~~in addition to the~~
1043 ~~portion of immediately succeeding~~ any unexpired term for which such member was appointed.
1044 ~~Following initial appointments, the State Board of Health shall schedule appointments to the~~
1045 ~~Advisory Committee in such a manner that at least two persons who have not served during the~~
1046 ~~previous two years are appointed to the Committee.~~

1047 ~~§ 23-35.10. Nursing scholarships; recipients to be bona fide residents; basis of awards.~~

1048 Each applicant for such scholarship must be a bona fide resident of the Commonwealth
1049 pursuant to § 23-7.4 when such scholarship is awarded. E. Awards shall be made upon such
1050 basis, competitive or otherwise, as determined by the ~~Advisory Committee~~ advisory committee,
1051 with due regard for scholastic attainments, character, need, and adaptability of the applicant for
1052 the service contemplated in such award. No award shall be made if the applicant fails to possess
1053 the requisite qualifications. With due consideration of the number of applications and the
1054 qualifications of all such applicants, the ~~Advisory Committee will~~ advisory committee shall, ~~so~~
1055 ~~far as practical~~ to the extent that it is practicable, award an equal number of scholarships among
1056 the various congressional districts within the Commonwealth.

1057 ~~§ 23-35.11. Nursing scholarships; contract to be signed before award.~~

1058 F. Before any such scholarship is awarded, the applicant ~~must sign~~ shall agree in a
1059 signed written contract, ~~under the terms of which the applicant agrees to pursue a nursing~~
1060 ~~program until completion and thereupon to complete a nursing program and, upon completion,~~
1061 to promptly begin and ~~thereafter~~ continuously engage ~~continuously~~ in nursing work in the
1062 Commonwealth in a region with a critical shortage of nurses for one month for each \$100 of
1063 scholarship awarded ~~pursuant to § 23-35.9~~. The requirement for continuous engagement in
1064 nursing work may be waived by the ~~Committee~~ advisory committee if the scholarship recipient
1065 requests leave to pursue an undergraduate or graduate degree in nursing or related to nursing
1066 activities. The contract shall contain such other provisions as ~~are~~ the State Board of Health
1067 determines to be necessary, ~~in the opinion of the State Board of Health~~, to accomplish the
1068 purposes of the scholarship.

1069 ~~§ 23-35.12. Nursing scholarships; scholarship may be from year to year.~~

1070 ~~G. Each said scholarship shall be awarded for a single award year, but the same student~~
1071 ~~may, after making satisfactory progress toward the completion of his training in the school,~~
1072 ~~receive such award for any succeeding year or years; however, no student shall receive any such~~
1073 ~~scholarship for more than a total of five years and may be renewed annually for up to four~~
1074 ~~additional award years upon a showing of satisfactory progress toward completion of the~~
1075 ~~relevant nursing program.~~

1076 ~~§ 23-35.13. Nursing scholarships; how payments made.~~

1077 ~~The funds making up each scholarship shall be paid to the recipient. No recipient shall~~
1078 ~~receive for any such scholarship less than \$150.~~

1079 **Drafting note: The provisions of existing §§ 23-35.9 through 23-35.13 on nursing**
1080 **scholarships are logically combined into this single proposed section. The amount of such**
1081 **scholarships is increased from \$4,000 to \$5,000 to reflect current state funding levels.**
1082 **Technical changes are made, including moving definitions to the beginning of the section.**

1083 ~~§ 23-36, 23-36.1.~~

1084 **Drafting note: Repealed by Acts 1950, p. 1292.**

1085 ~~§ 23-36.2. Nursing scholarships at the Medical College of Virginia and the University of~~
1086 ~~Virginia.~~

1087 ~~The governing board of the Medical College of Virginia may establish thirteen annual~~
1088 ~~nursing scholarships which thirteen scholarships hereby authorized shall be of the annual value~~
1089 ~~of \$150 each, and the governing board of the University of Virginia may establish fifteen annual~~
1090 ~~nursing scholarships, which fifteen scholarships hereby authorized shall be of the annual value~~
1091 ~~of \$100 each, and shall be awarded and paid subject to the conditions and restrictions set out in~~
1092 ~~the following subsections:~~

1093 ~~(1) Each applicant for any such scholarship must be a bona fide resident of the~~
1094 ~~Commonwealth of Virginia when such scholarship is awarded. The awards shall be made upon~~
1095 ~~such basis, competitive or otherwise, as may be determined by the president or other proper~~

1096 ~~officer of the school with due regard to the scholastic attainments, character, and adaptability of~~
1097 ~~the applicant for the service contemplated in such award; provided, that no award shall be made~~
1098 ~~if the applicant fails to possess the requisite qualifications.~~

1099 ~~(2) Before any such scholarship is awarded the applicant shall sign written contract~~
1100 ~~under the terms of which he agrees to pursue the nursing course of the school awarding the~~
1101 ~~scholarship until completion and thereupon to promptly begin and thereafter engage~~
1102 ~~continuously in nursing work in the Commonwealth of Virginia, for a period of years equal in~~
1103 ~~number to the years that he has been or shall be a beneficiary of any such scholarship or~~
1104 ~~scholarships. The contract shall provide that if the applicant shall fail to comply with the~~
1105 ~~provisions thereof or any of them he shall repay to the school all amounts received by him as a~~
1106 ~~beneficiary of such awards, such repayment to be upon such terms and conditions as may be~~
1107 ~~determined by the school. Such contract shall contain such other provisions as may be~~
1108 ~~necessary, in the opinion of the president or other proper officer of the school, to accomplish the~~
1109 ~~purposes of the scholarships.~~

1110 ~~(3) As further evidence of the promise of such recipient to make such repayment, as to~~
1111 ~~each scholarship awarded him in the event he shall fail or refuse to fulfill the conditions and~~
1112 ~~requirements herein specified as to such scholarships, he shall, when such scholarship is~~
1113 ~~awarded, be required to execute and deliver to the school awarding the scholarship a note in a~~
1114 ~~principal sum equal to the amount of such scholarship with interest at not less than two nor more~~
1115 ~~than four per centum, which note shall be accepted by the school upon the condition that such~~
1116 ~~note, and any other similar notes so given, shall be cancelled by the school upon the basis of one~~
1117 ~~note for each year in which he shall continuously engage in nursing work in the Commonwealth~~
1118 ~~of Virginia; provided, however, that no recipient of any such scholarship shall be permitted to~~
1119 ~~plead the statute of limitations or interpose a plea of infancy in the event of an action being~~
1120 ~~brought against him on any such note.~~

1121 ~~(4) All money repaid by any such recipient shall be placed in a special fund which shall~~
1122 ~~be used for nursing scholarships in accordance with the provisions of this section.~~

1123 ~~(5) Each such scholarship shall be awarded for a single year, but the same student shall,~~
1124 ~~after making satisfactory progress towards completion of his training in the school, receive such~~
1125 ~~award for any succeeding year or years, provided no student shall receive any such scholarship~~
1126 ~~for more than a total of three years.~~

1127 ~~(6) The funds making up each such scholarship shall be paid to the recipient thereof, or~~
1128 ~~applied to the payment of his expenses, at such medical school, in such amounts and at such~~
1129 ~~times during such school year as may be determined by the president or other proper officer of~~
1130 ~~the school; provided, however, that no recipient shall receive for any such scholarship less than~~
1131 ~~\$100.~~

1132 **Drafting note: Repeal of obsolete existing § 23-36.2 is recommended.**

1133 ~~§ 23-37.~~

1134 **Drafting note: Repealed by Acts 1979, c. 730.**

1135 ~~§ 23-37.1. Scholarships for dental hygienists; established.~~

1136 ~~There are established twelve annual scholarships of \$500 each. These awards shall be~~
1137 ~~made by the State Board of Health and the recipients shall be allowed to attend any accredited~~
1138 ~~school of dental hygiene in this Commonwealth.~~

1139 **Drafting note: Repeal of obsolete existing § 23-37.1 is recommended.**

1140 ~~§ 23-37.2. Scholarships for dental hygienists; qualifications of applicants; how awarded.~~

1141 ~~Each applicant for such scholarship must be a bona fide resident of the Commonwealth~~
1142 ~~of Virginia when such scholarship is awarded. Awards shall be made upon such basis,~~
1143 ~~competitive or otherwise, as determined by the State Board of Health, with due regard for~~
1144 ~~scholastic attainments, character and adaptability of the applicant for the service contemplated~~
1145 ~~in such award; provided no award shall be made if the applicant fails to possess the requisite~~
1146 ~~qualifications.~~

1147 **Drafting note: Repeal of obsolete existing § 23-37.2 is recommended.**

1148 ~~§ 23-37.3. Scholarships for dental hygienists; contracts to be signed by applicants.~~

1149 ~~Before any such scholarship is awarded, the applicant must sign a written contract, under~~
1150 ~~the terms of which the applicant agrees to pursue the dental hygiene course of the school~~
1151 ~~awarding the scholarship until completion, and thereupon to promptly begin and thereafter~~
1152 ~~engage continuously in dental hygiene work in the Commonwealth of Virginia for a period of~~
1153 ~~years equal in number to the years the applicant has been a beneficiary of such scholarship or~~
1154 ~~scholarships. The contract shall contain such other provisions as are necessary, in the opinion of~~
1155 ~~the State Board of Health, to accomplish the purposes of the scholarship.~~

1156 **Drafting note: Repeal of obsolete existing § 23-37.3 is recommended.**

1157 ~~§ 23-37.4. Scholarships for dental hygienists; duration.~~

1158 ~~Each said scholarship shall be awarded for a single year, but the same student shall, after~~
1159 ~~making satisfactory progress toward the completion of the student's training in the school,~~
1160 ~~receive such award for any succeeding year or years, providing no student shall receive any~~
1161 ~~such scholarship for more than a total of three years.~~

1162 **Drafting note: Repeal of obsolete existing § 23-37.4 is recommended.**

1163 ~~§ 23-37.5. Scholarships for dental hygienists; how payments made.~~

1164 ~~The funds making up such scholarship shall be paid to the recipient thereof or applied~~
1165 ~~toward the payment of the student's expenses at the school in such a manner and at such a time~~
1166 ~~during the school year as determined by the director or other proper officer of the school of~~
1167 ~~dental hygiene attended, provided no recipient shall receive for any such scholarship less than~~
1168 ~~\$500.~~

1169 **Drafting note: Repeal of obsolete existing § 23-37.5 is recommended.**

1170 ~~§ 23-38.1.~~

1171 **Drafting note: Repealed by Acts 1964, Ex. Sess., c. 8.**

1172 ~~§ 23-38.2. Virginia Behavioral Health and Developmental Services Scholarship Fund.~~

1173 ~~(a) There is hereby established a fund, to be known as the Virginia Behavioral Health~~
1174 ~~and Developmental Services Scholarship Fund, which shall consist of funds appropriated to it~~
1175 ~~from time to time by the General Assembly and which shall be administered by the Department~~

1176 ~~of Behavioral Health and Developmental Services, for the purpose of providing scholarships for~~
1177 ~~study in various professions and skills that deal with the treatment, training and care of~~
1178 ~~individuals with mental illness and intellectual disability.~~

1179 ~~(b) The State Board of Behavioral Health and Developmental Services shall adopt the~~
1180 ~~necessary rules and regulations, not inconsistent with other laws, for the implementation of this~~
1181 ~~section. Such rules and regulations shall provide:~~

1182 ~~(1) That scholarships be awarded for a period no longer than one year, but that certain~~
1183 ~~scholarships may be reawarded not more than two times;~~

1184 ~~(2) That persons who receive such scholarships agree to serve in state employment upon~~
1185 ~~completion of training for a period at least as long as the length of training provided by the~~
1186 ~~scholarship, and that if they do not fulfill this agreement they shall repay to the Commonwealth~~
1187 ~~the amount of the scholarship with interest;~~

1188 ~~(3) That priorities be given for training in professions and skills where shortages exist~~
1189 ~~and are anticipated in state hospitals and training centers; and~~

1190 ~~(4) That priorities be given to citizens of the Commonwealth.~~

1191 ~~(c) The Commissioner of Behavioral Health and Developmental Services is hereby~~
1192 ~~authorized to receive gifts, donations, bequests, and federal grants to the Virginia Behavioral~~
1193 ~~Health and Developmental Services Scholarship Fund.~~

1194 **Drafting note: Repeal of obsolete existing § 23-38.2 is recommended.**

1195 ~~§ 23-38.3 23.1-615. Soil scientist scholarships; governing body of Virginia Polytechnic~~
1196 ~~Institute and State University authorized to establish.~~

1197 ~~A. The governing board of Virginia Polytechnic Institute and State University is~~
1198 ~~authorized to Board of Visitors may establish twenty up to 20 annual soil scientist scholarships~~
1199 ~~to be awarded from the Commonwealth at large, each of the value of the University fee of for~~
1200 ~~Virginia students in an amount equal to tuition and mandatory fees at Virginia Polytechnic~~
1201 ~~Institute and State University. ~~The awarding and payment of such scholarships shall be subject~~~~
1202 ~~to the conditions and restrictions hereinafter set out in §§ 23-38.4 to 23-38.10.~~

1203 ~~§ 23-38.4. Soil scientist scholarships; recipients to be bona fide residents; basis of~~
1204 ~~awards.~~

1205 Each applicant for a scholarship must be a bona fide resident of the Commonwealth of
1206 Virginia before such scholarship may be awarded to him. The B. Each scholarship award shall
1207 be made upon such basis, competitive or otherwise, as is determined by the president or other
1208 proper officer of the institution of higher education ~~which (institution) that~~ the applicant plans to
1209 attend, ~~hereinafter referred to as "school,"~~ with due regard to the scholastic ~~attainments~~
1210 achievements, character, and adaptability of the applicant to the service contemplated under
1211 such award; ~~provided, that no.~~ No award shall be made unless the applicant possesses the
1212 requisite qualifications.

1213 ~~§ 23-38.6. Soil scientist scholarships; scholarship may be from year to year.~~

1214 C. Each such scholarship shall be awarded for a single award year, ~~but the same student~~
1215 ~~shall, after making satisfactory progress toward completion of his training in the school, receive~~
1216 ~~such award for any succeeding year or years, provided no student shall receive any such~~
1217 ~~scholarship for more than a total of four years and may be renewed annually for up to three~~
1218 additional award years upon a showing of satisfactory progress.

1219 ~~§ 23-38.5. Soil scientist scholarships; contract to be signed before award.~~

1220 D. Before any such scholarship is awarded, the applicant shall ~~sign~~ agree in a signed
1221 written contract, ~~under the terms of which the applicant agrees to pursue the agronomy course~~
1222 soil science at the ~~school~~ institution at which the scholarship is awarded, until his graduation,
1223 and ~~that,~~ upon graduating ~~he will, to~~ promptly begin and ~~thereafter~~ engage continuously as a soil
1224 scientist as an employee of the Commonwealth ~~of Virginia~~ for ~~a period of~~ as many years ~~equal~~
1225 ~~in number to the years which he has been as he was~~ a beneficiary of such scholarship; ~~provided,~~
1226 unless no such suitable vacancy exists as an employee of the Commonwealth ~~of Virginia then,~~
1227 in which case the obligation of such contract ~~may shall~~ be discharged by being continuously
1228 engaged ~~continuously~~ in Virginia the Commonwealth as a soil scientist as an employee of a
1229 local, Virginia state, or federal government agency for ~~a period of~~ as many years, ~~equal in~~

1230 ~~number to the years which he has been as he was~~ a beneficiary of such scholarship. The contract
1231 shall contain such other provisions as ~~are~~ Virginia Polytechnic Institute and State University
1232 deems necessary ~~in the opinion of Virginia Polytechnic Institute and State University~~ to
1233 accomplish the purposes of the scholarship. In the event that the holder of any awarded soil
1234 scientist scholarship ~~awarded~~ dies while receiving instruction under such a scholarship, any
1235 balance unpaid and agreed to be repaid by the holder thereof shall be deemed paid, and no
1236 liability shall be attached to his estate.

1237 ~~§ 23-38.9. Soil scientist scholarships; relief from obligation of contract.~~

1238 The ~~E. Such~~ contract shall ~~have contain~~ a clause under which the ~~holder may applicant~~
1239 shall be relieved of his obligation to serve the Commonwealth as a soil scientist, for a period
1240 equal to that during which he was a beneficiary of such scholarship, at any time ~~the holder that~~
1241 he (i) fails to maintain a scholastic standard at least equal to the standard required of the general
1242 student body ~~in at such school, institution~~ or ~~if the holder, at any time, (ii)~~ becomes permanently
1243 disabled ~~so as and is not to be~~ able to engage in the profession of soil scientist. ~~In such case, the~~
1244 ~~contract shall provide that,~~ upon ~~certificate of certification by~~ a faculty committee, ~~the holder~~
1245 ~~shall be relieved of his obligation to serve the Commonwealth as a soil scientist for a period~~
1246 ~~equal to that during which he has been a beneficiary of such scholarship~~. Any applicant, ~~upon~~
1247 ~~being~~ so relieved ~~from the obligations imposed by such contract~~, shall arrange to reimburse the
1248 Commonwealth for the amount ~~he has~~ received on account of such scholarship plus interest on
1249 such amount computed at the prevailing rate charged on student loans at the ~~school~~ institution
1250 attended by the applicant. ~~Provided, however, if such applicant, or any Any~~ applicant who ~~for~~
1251 ~~any reason repays all or any part of the amount received of such scholarships, after reimbursing~~
1252 ~~such amount plus interest to the Commonwealth, later~~ so reimburses the Commonwealth and
1253 subsequently fulfills the terms of his contract by completing his studies and serving the
1254 Commonwealth as a soil scientist for a period equal to that during which he received such
1255 scholarship, ~~such applicant~~ shall have be reimbursed ~~to him~~, from the general fund of the state
1256 treasury; the amount of the scholarship and interest previously repaid to the Commonwealth.

1257 This reimbursement shall be made on any contract made under the provisions of this ~~section~~
1258 subsection.

1259 ~~§ 23-38.10. Soil scientist scholarships; disposition of funds repaid.~~

1260 F. All funds repaid by any applicant ~~in pursuance of the provisions of § 23-38.9, or~~
1261 ~~otherwise,~~ pursuant to subsection F shall be paid into the state treasury and shall become a part
1262 of the general fund. The governing board of the ~~school~~ institution attended by the applicant shall
1263 collect such payments and shall pay all moneys so received into the state treasury promptly. If
1264 any applicant fails to abide by the terms of such contract, such fact shall be communicated to the
1265 Attorney General by the proper officer of the ~~school~~ institution or by the employing state
1266 agency, ~~respectively~~. The Attorney General shall take such action ~~thereon~~ as he deems proper.

1267 ~~§ 23-38.7. Soil scientist scholarships; how payments made.~~

1268 G. The funds making up each scholarship shall be paid to the recipient ~~thereof~~ or applied
1269 toward the payment of his expenses at the ~~school~~ relevant institution in such a manner and at
1270 such a time during the ~~school~~ academic year as ~~determined by~~ the president or other proper
1271 officer ~~of the school attended~~ determines.

1272 H. There is ~~hereby~~ appropriated to Virginia Polytechnic Institute and State University
1273 from the general fund of the state treasury the sum of \$8,000 each year of the biennium for
1274 carrying out the purpose of ~~§§ 23-38.3 to 23-38.10~~ this section.

1275 **Drafting note: The provisions of existing §§ 23-38.3 through 23-38.10, exclusive of**
1276 **relating to soil scientist scholarships are logically combined in this single proposed section.**

1277 **Technical changes are made.**

1278 ~~§ 23-38.8. Soil scientist scholarships; military service.~~

1279 ~~The contract shall provide that the applicant will not obligate himself for more than the~~
1280 ~~minimum military service required by virtue of either being drafted into such service or~~
1281 ~~voluntarily enlisting therein in lieu of being drafted. It shall further provide that on termination~~
1282 ~~of the minimum period of obligatory military service, he shall promptly begin the discharge of~~
1283 ~~his obligation by compliance with the conditions set forth in § 23-38.5.~~

1311 3.2. "Institution" means a ~~state public~~ institution of higher education ~~which that~~ has
1312 established a student loan fund from appropriations from the general fund of the state treasury
1313 for fellowships, scholarships, and loans.

1314 4.3. "Student" means a medical student, dental student, intern, resident, or undergraduate
1315 student who is entitled to reduced tuition charges pursuant to ~~the provisions of § 23-7.4 Chapter~~
1316 ~~5~~ (§ 23.1-500 et seq.).

1317 **Drafting note: "Council" is defined title-wide and as such, the definition in this**
1318 **proposed section is removed. Technical changes are made.**

1319 § ~~23-38.10:3~~ 23.1-618. Loans to students.

1320 A. Any institution may make loans from its ~~student loan~~ fund only to needy students
1321 who might be unable to attend such institution without such loans and who are duly admitted
1322 into degree or certificate programs at the institution. Such loans shall be made upon such terms
1323 and according to such rules as may be prescribed by the governing board of the institution.

1324 B. In any one academic year, no student ~~may shall~~ receive a loan ~~or loans~~ from the fund
1325 of an institution ~~which that~~ would result in ~~that such~~ student owing a net outstanding amount at
1326 the end of that year in excess of the tuition and ~~required mandatory~~ fees charged by the
1327 institution.

1328 C. The rate of interest charged on loans to students from a fund shall be three ~~per centum~~
1329 ~~per annum~~ percent annually.

1330 **Drafting note: Technical changes.**

1331 § ~~23-38.10:4~~ 23.1-619. Collection of loans.

1332 ~~An~~Each institution shall make every effort to collect each loan made from its ~~student~~
1333 ~~loan~~ fund. ~~Institutions shall follow the provisions of and comply with~~ the Virginia Debt
1334 Collection Act (§ 2.2-4801 et seq.) with regard to the collection of ~~student such~~ loans.

1335 **Drafting note: Technical changes.**

1336 § ~~23-38.10:5~~.

1337 **Drafting note: Repealed by Acts 1991, c. 590.**

1338 § ~~23-38.10:6~~ 23.1-620. Biennial audits.

1339 The Auditor of Public Accounts shall at least biennially audit and exhibit the account of
1340 ~~student loan funds at the fund of~~ each institution.

1341 **Drafting note: Technical changes.**

1342 § ~~23-38.10:7~~ 23.1-621. Additional student loan funds.

1343 A. Whenever ~~the student loan an institution's~~ fund ~~at an institution~~ is inadequate to carry
1344 out fully the purpose for which the fund was established, the governing board and president of
1345 such institution, with the written consent and approval of the Governor first obtained, are
1346 authorized, for the purpose of providing an additional ~~student loan~~ fund, to borrow from such
1347 sources and on such terms as may be approved by the Governor an amount not to exceed
1348 \$25,000, and ~~to~~ provide for such extensions or renewals of such loans as may be necessary.
1349 Such additional ~~student loan~~ fund shall be used only in making loans to students as provided in
1350 this ~~chapter article~~ and for no other purpose ~~whatsoever~~.

1351 B. ~~The repayments and interest accretions to the additional student loan~~ fund shall be
1352 used insofar as may be necessary to repay the indebtedness of the institution created by the
1353 governing board and president in establishing ~~the such~~ additional ~~student loan~~ fund.

1354 C. Such additional amounts may be borrowed as may be deemed necessary by the
1355 governing board and president of the institution, with the Governor's approval, but in no event
1356 ~~may shall~~ the amount of the additional ~~student loan~~ fund, including cash, notes receivable, and
1357 all amounts ~~heretofore~~ borrowed and not repaid exceed \$50,000.

1358 D. Accounts shall be kept and reports rendered for each such additional ~~student loan~~
1359 fund in all respects as required by this ~~chapter article~~ for ~~student loan fund funds~~ created by
1360 appropriations from the general fund of the state treasury; and the Auditor of Public Accounts
1361 shall biennially exhibit in his report the amount of the additional ~~student loan~~ fund at each
1362 institution.

1363 **Drafting note: Technical changes.**

1364 ~~CHAPTER 4.02.~~

1365 ~~TWO YEAR COLLEGE TRANSFER GRANT PROGRAM.~~

1366 Article 4.

1367 Two-Year College Transfer Grant Program.

1368 **Drafting note: Existing Chapter 4.02 is reorganized as Article 3 of proposed**
1369 **Chapter 6.**

1370 § ~~23-38.10:8~~ 23.1-622. Definitions.

1371 As used in this ~~chapter~~ article:

1372 "Accredited institution" means any eligible institution approved to confer degrees
1373 pursuant to ~~Chapter 21.1 (§ 23-276.1 et seq.) of this title~~ Article 3 (§ 23.1-213 et seq.) of
1374 Chapter 2.

1375 "Council" means the State Council of Higher Education for Virginia.

1376 "Eligible institution" means a baccalaureate public institution of higher education or
1377 nonprofit private institution of higher education whose primary purpose is to provide
1378 undergraduate collegiate education and not to provide religious training or theological
1379 education.

1380 "Grant" means the amount of financial assistance awarded under this ~~chapter~~ article
1381 whether disbursed by warrant directly to an eligible institution ~~of higher education~~ or directly to
1382 a Virginia student.

1383 ~~"Institution of higher education" means a four-year public or private nonprofit~~
1384 ~~educational institution within the Commonwealth whose primary purpose is to provide~~
1385 ~~undergraduate collegiate education and not to provide religious training or theological~~
1386 ~~education.~~

1387 "Student" means an undergraduate student who is entitled to in-state tuition charges
1388 pursuant to the provisions of § 23-7.4.

1389 ~~"Program" means the Two Year College Transfer Grant Program.~~

1390 **Drafting note: The definition of "Council" is stricken because that term is defined**
1391 **title-wide in § 23.1-100. The term "institution of higher education" is replaced with**
1392 **"eligible institution" and the definition of "Program" is created for the sake of clarity.**

1393 § ~~23-38.10:9~~ 23.1-623. Two-Year College Transfer Grant Program ~~created~~; ~~State~~
1394 Council ~~of Higher Education for Virginia to promulgate~~ regulations.

1395 ~~There is hereby created the~~ A. The Two-Year College Transfer Grant Program is
1396 created to provide financial assistance to eligible students, beginning with the first-time entering
1397 freshman class of the fall 2007 academic year, for the costs of attending ~~a public or private an~~
1398 eligible institution ~~of higher education in Virginia~~. Funds may be paid to any ~~institutions of~~
1399 higher education eligible institution on behalf of students who have been awarded financial
1400 assistance pursuant to § ~~23-38.10:10~~ 23.1-624.

1401 ~~B.~~ The Council shall promulgate regulations for the implementation of the provisions of
1402 this ~~chapter article~~ and the disbursement of funds consistent ~~therewith and~~ with the provisions of
1403 this article that are appropriate to the administration of the ~~program~~ Program.

1404 **Drafting note: Technical changes.**

1405 § ~~23-38.10:10~~ 23.1-624. Eligibility criteria.

1406 ~~A. Under this program, grants shall~~ Grants shall be made under the Program to or on
1407 behalf of ~~eligible~~ Virginia ~~domiciles~~ students who (i) maintained a cumulative grade point
1408 average of at least 3.0 on a scale of 4.0 or its equivalent while enrolled in an associate degree
1409 program at an associate-degree-granting public institution of higher education, (ii) have received
1410 an associate degree at ~~a Virginia two-year~~ an associate-degree-granting public institution of
1411 higher education, ~~(ii)~~ (iii) have enrolled in ~~a Virginia four-year public or private~~ an eligible
1412 institution ~~of higher education~~ by the fall or spring following the award of ~~the~~ such associate
1413 degree, ~~(iii)~~ (iv) have applied for financial aid, and ~~(iv)~~ (v) have demonstrated financial need,
1414 defined ~~by~~ as an Expected Family Contribution (EFC) of no more than \$8,000 as calculated by
1415 the federal government using the family's financial information reported on the Free Application
1416 for Federal Student Aid (FAFSA) form. ~~Only students who maintained a cumulative grade point~~

1417 ~~average of at least 3.0 on a scale of 4.0 or its equivalent while enrolled in an associate degree~~
1418 ~~program at a Virginia two-year public institution of higher education shall be eligible to receive~~
1419 ~~a grant under this chapter.~~

1420 B. Eligibility for a ~~higher education~~ grant under ~~this program shall be~~ the Program is
1421 limited to three academic years or ~~70 credit hours and~~. Grants under the Program shall be used
1422 only for undergraduate collegiate work in educational programs other than those providing
1423 religious training or theological education.

1424 C. To remain eligible for a grant under ~~this program~~ the Program, a student must
1425 continue to demonstrate financial need, as defined in ~~this section~~ subsection A, maintain a
1426 cumulative grade point average of at least 3.0 on a scale of 4.0 or its equivalent; and make
1427 satisfactory academic progress ~~towards~~ toward a degree.

1428 C.-D. Individuals who have failed to meet the federal requirement to register for the
1429 Selective Service shall not be eligible to receive grants pursuant to this ~~chapter~~ article. However,
1430 ~~a person~~ an individual who has failed to register for the Selective Service shall not be denied a
1431 right, privilege, or benefit under this section if (i) the requirement to so register has terminated
1432 or become inapplicable to the ~~person~~ individual and (ii) the ~~person~~ individual shows by a
1433 preponderance of the evidence that the failure to register was not a knowing and willful failure
1434 to register.

1435 **Drafting note: Technical changes.**

1436 § ~~23-38.10:11~~ 23.1-625. Amount of award.

1437 The amount of the grant for an eligible student shall be provided in accordance with the
1438 general appropriation act and shall be fixed at \$1,000 per academic year. An additional \$1,000
1439 per academic year shall be provided to ~~those eligible~~ students pursuing undergraduate collegiate
1440 work in engineering, mathematics, nursing, teaching, or science.

1441 **Drafting note: Technical changes.**

1442 § ~~23-38.10:12~~ 23.1-626. Determination of domicile.

1443 ~~For the purposes of determining the a student's~~ eligibility ~~of a student for a two year~~
1444 ~~college transfer for a~~ grant, ~~domicile shall be determined by~~ the enrolling institution, shall
1445 determine domicile as provided in § ~~23-7.4, 23.1-502~~ and the ~~State Council of Higher~~
1446 Education's Council's domicile guidelines ~~for domiciliary status determinations.~~

1447 **Drafting note: Technical changes.**

1448 § ~~23-38.10:13~~ 23.1-627. State financial aid eligibility.

1449 The institutions of higher education-A. Eligible institutions shall reduce a student's state
1450 financial aid eligibility by the amount of the grant awarded pursuant to this ~~chapter~~ article.

1451 ~~Tuition assistance received by a student under this program~~ B. Grants shall not be
1452 reduced by ~~the virtue of an eligible student's~~ receipt of any other financial aid from any other
1453 source ~~by such student. However, a student shall not receive a grant pursuant to this chapter~~
1454 ~~that, when added to~~ except when the total of the grant and such other financial aid ~~received by~~
1455 ~~that student,~~ would enable the student to receive total financial assistance in excess of the
1456 estimated cost to the student of attending the institution in which he is enrolled.

1457 **Drafting note: Technical changes.**

1458 ~~CHAPTER 4.1.~~

1459 ~~TUITION ASSISTANCE GRANT ACT.~~

1460 ~~Article 1.~~

1461 ~~General Provisions.~~

1462 Article 5.

1463 Tuition Assistance Grant Act.

1464 **Drafting note: Existing Chapter 4.1 is reorganized as proposed Article 4 of Chapter**
1465 **6.**

1466 § ~~23-38.11.~~ Short title.

1467 ~~This chapter may be cited as the "Tuition Assistance Grant Act."~~

1468 **Drafting note: Existing § 23-38.11 is recommended for repeal because of the Code-**
1469 **wide application of § 1-244, which states that the caption of a subtitle, chapter, or article**
1470 **serves as a short title citation.**

1471 § ~~23-38.12~~ 23.1-628. ~~Program of tuition assistance established~~ Tuition Assistance Grant
1472 Program.

1473 There is hereby established, from funds provided by law, a program of tuition assistance
1474 in the form of-A. As used in this section:

1475 "Eligible institution" means nonprofit private institutions of higher education whose
1476 primary purpose is to provide collegiate, graduate, or professional education and not to provide
1477 religious training or theological education.

1478 "Principal place of business" means the single state in which the natural persons who
1479 establish policy for the direction, control, and coordination of the operations of the institution as
1480 a whole primarily exercise that function, considering the following factors: (i) the state in which
1481 the primary executive and administrative offices of the institution are located; (ii) the state in
1482 which the principal office of the chief executive officer of the institution is located; (iii) the state
1483 in which the board of trustees or similar governing board of the institution conducts a majority
1484 of its meetings; and (iv) the state from which the overall operations of the institution are
1485 directed.

1486 B. From such funds as may be provided for such purpose, the Tuition Assistance Grant
1487 Program (Program) is established to provide Tuition Assistance Grants (grants, as hereinafter
1488 provided,) to or on behalf of bona fide residents of Virginia students who attend private
1489 nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to
1490 provide collegiate, graduate, or professional education and not to provide religious training or
1491 theological education eligible institutions.

1492 C. Eligible institutions ~~not~~ admitted to this program ~~before~~ on or after January 1, 2011,
1493 shall ~~also~~ (i) be formed, chartered, established, or incorporated within the Commonwealth; (ii)
1494 have their principal place of business within the Commonwealth; (iii) conduct their primary

1495 educational activity within the Commonwealth; and (iv) be accredited by a nationally
1496 recognized regional accrediting agency. ~~Individuals who have failed to meet the federal~~
1497 ~~requirement to register for the Selective Service shall not be eligible to receive these grants.~~
1498 ~~However, a person who has failed to register for the Selective Service shall not be denied a~~
1499 ~~right, privilege, or benefit under this section if: (a) the requirement to so register has terminated~~
1500 ~~or become inapplicable to the person and (b) the person shows by a preponderance of the~~
1501 ~~evidence that the failure to register was not a knowing and willful failure to register. The State~~
1502 ~~Council of Higher Education shall be assisted in enforcing this provision by the private~~
1503 ~~institutions of higher education whose students benefit from this program.~~

1504 ~~For the purposes of this section, the "principal place of business" of a nonprofit~~
1505 ~~institution of collegiate education means the single state in which the natural persons who~~
1506 ~~establish policy for the direction, control, and coordination of the operations of the institution as~~
1507 ~~a whole primarily exercise that function, considering the following factors: (1) the state in which~~
1508 ~~the primary executive and administrative offices of the institution are located; (2) the state in~~
1509 ~~which the principal office of the chief executive officer of the institution is located; (3) the state~~
1510 ~~in which the board of trustees, or similar governing person or persons, of the institution~~
1511 ~~conducts a majority of its meetings; and (4) the state from which the overall operations of the~~
1512 ~~institution are directed.~~

1513 **Drafting note: The provisions of proposed subsection C relating to Selective Service**
1514 **registration are stricken and logically relocated to proposed § 23.1-632. Technical changes**
1515 **are made, including moving the defined term "principal place of business" to the**
1516 **beginning of the proposed section and providing article-wide references for "eligible**
1517 **institutions," "grants," and "Program."**

1518 ~~§ 23-38.13 23.1-629. State Council of Higher Education designated as administering~~
1519 ~~agency; power to define certain terms.~~

1520 ~~The State Council of Higher Education is hereby designated as the administering agency~~
1521 ~~for the program established by this chapter, Program and authorized to promulgate regulations~~

1522 consistent ~~therewith~~ with this article and appropriate to the administration of the ~~program~~
1523 Program. The ~~administering agency shall have the power to~~ Council may define by regulation
1524 such terms used in this article as, ~~but not limited to,~~ "full-time," "undergraduate," "graduate,"
1525 "professional," ~~"successful academic year," and~~ "financial aid," ~~"meritorious extenuating~~
1526 ~~circumstances," and "incapacity" as used in this chapter.~~

1527 **Drafting note: Technical changes are made, including removing the Council's**
1528 **power to define "successful academic year," "meritorious extenuating circumstances,"**
1529 **and "incapacity" because those terms are not used in proposed Article 4.**

1530 § ~~23-38.14~~ 23.1-630. Maximum amount of tuition assistance per student.

1531 ~~The annual~~ amount of tuition assistance, in the form of a grant ~~pursuant to this chapter,~~
1532 ~~which shall be available annually to a bona fide resident of Virginia for a Virginia student~~
1533 ~~attending a qualified private~~ an eligible institution, ~~as described in § 23-38.12,~~ shall not exceed
1534 ~~in amount~~ the annual average appropriation per full-time equivalent student for the previous
1535 year from the general fund of the state treasury for operating costs at ~~two and four year~~ public
1536 institutions of ~~collegiate~~ higher education ~~in Virginia.~~

1537 **Drafting note: Technical changes are made, including using the defined term**
1538 **"public institution[s] of higher education," as appropriate.**

1539 § ~~23-38.15~~ 23.1-631. ~~To whom grants made~~ Eligibility; duration.

1540 Under this program, grants shall be made to or on behalf of eligible Virginia residents
1541 for the academic year for which they enroll and ~~A. Virginia students who~~ are obligated to pay
1542 tuition as full-time undergraduate, graduate, or professional students at ~~a qualified private~~
1543 ~~institution, as described in § 23-38.12~~ an eligible institution are eligible to receive a grant for the
1544 academic year for which they enroll.

1545 § ~~23-38.16~~. ~~Duration of eligibility; grants to be used only for undergraduate, graduate, or~~
1546 ~~professional work.~~

1547 B. Eligibility for ~~tuition assistance grants~~ grants under ~~this program shall be~~ the Program is
1548 limited to a total of four academic years for undergraduate students, pharmacy students, and

1549 medical students, and a total of three academic years for graduate students and other
1550 professional school students, ~~which years.~~ The academic years for which grants are awarded
1551 need not be in succession.

1552 ~~Tuition grants~~ C. Grants under ~~this program~~ the Program shall be used only for
1553 undergraduate, graduate, or professional collegiate work in educational programs other than
1554 those providing religious training or theological education ~~of an indoctrinating nature.~~

1555 **Drafting note: The provisions of existing §§ 23-38.15 and 23-38.16 are logically**
1556 **combined in this proposed section. Technical changes are made.**

1557 § 23.1-632. Eligibility; Selective Service registration.

1558 Individuals who have failed to meet the federal requirement to register for the Selective
1559 Service shall not be eligible to receive grants. However, an individual who has failed to register
1560 for the Selective Service shall not be denied a right, privilege, or benefit under this section if (i)
1561 the requirement to so register has terminated or become inapplicable to the person and (ii) the
1562 individual shows by a preponderance of the evidence that the failure to register was not a
1563 knowing and willful failure to register. The Council shall be assisted in enforcing this provision
1564 by the eligible institutions whose students benefit from the Program.

1565 **Drafting note: Proposed § 23.1-630 incorporates the provisions of existing § 23-**
1566 **38.12 relating to Selective Service registration. Technical changes are made.**

1567 ~~§ 23-38.17~~ 23.1-633. Receipt ~~by student~~ of other financial aid by students.

1568 ~~Tuition assistance received by a student under this program~~ Grants shall not be reduced
1569 by ~~the virtue of the student's~~ receipt ~~by such student~~ of any other financial aid from any other
1570 source, ~~provided, however, that in no case shall a student receive a grant pursuant to this chapter~~
1571 ~~which except~~ when ~~added to said~~ the total of the grant and such other financial aid, would
1572 enable the student to receive total financial assistance in excess of the estimated cost to the
1573 student of attending the institution in which he is enrolled.

1574 **Drafting note: Technical changes.**

1575 ~~§ 23-38.17:1~~ 23.1-634. Prompt crediting and expeditious refunding of funds.

1576 ~~Institutions~~ Each eligible institution acting as ~~agents~~ an agent for students receiving
1577 awards under ~~this program~~ the Program shall promptly credit disbursed funds to student
1578 accounts following the institution's verification of student eligibility ~~by the relevant institution~~.
1579 ~~These institutions shall also~~ and expeditiously distribute any refunds due recipients.

1580 **Drafting note: Technical changes.**

1581 § ~~23-38.18~~ 23.1-635. Determination of ~~bona fide residence~~ domicile; Council oversight
1582 and reports.

1583 ~~A.~~ For the purposes of determining ~~the a student's~~ eligibility of a student for a ~~tuition~~
1584 ~~assistance~~ grant, ~~domicile shall be determined by~~ the enrolling institution, shall determine
1585 domicile as provided in § ~~23-7.4~~, 23.1-502 and the ~~State Council of Higher Education's~~
1586 Council's domicile guidelines ~~for domiciliary status determinations~~.

1587 B. In ~~addition, in~~ order to ensure consistency and fairness, the ~~State Council of Higher~~
1588 ~~Education~~ shall (i) require all participating eligible institutions to file ~~student specific student-~~
1589 ~~specific~~ data, ~~shall~~ (ii) monitor the ~~domiciliary status~~ decisions of ~~these such~~ institutions
1590 regarding domicile, and ~~shall~~ (iii) make final decisions on any disputes between ~~the such~~
1591 institutions and ~~the grant recipients~~ applicants.

1592 C. The Council shall report to the Governor and the General Assembly, as the Council
1593 deems necessary, on issues related to ~~domiciliary status~~ determinations of domicile for students
1594 ~~receiving tuition assistance~~ applying for grants.

1595 **Drafting note: Technical changes.**

1596 § 23-38.19.

1597 **Drafting note: Not set out. (1972, c. 18).**

1598 Article 2.

1599 Virginia Graduate and Undergraduate Assistance Program.

1600 § 23-38.19:1, § 23-38.19:2.

1601 **Drafting note: Repealed by Acts 2014, c. 484, cl. 2.**

1602 Article 3.

1603 ~~Virginia Undergraduate Career and Technical Incentive Scholarship Program.~~

1604 ~~§§ 23-38.19:3 through 23-38.19:5.~~

1605 **Drafting note: Repealed by Acts 2004 c. 872, cl. 8, effective May 4, 2005.**

1606 ~~CHAPTER 4.2.~~

1607 ~~VIRGINIA GRANT AND LOAN COMMISSION.~~

1608 ~~§§ 23-38.20 through 23-38.29.~~

1609 **Drafting note: Repealed by Acts 1973, cc. 24, 106.**

1610 ~~CHAPTER 4.3.~~

1611 ~~VIRGINIA STUDENT ASSISTANCE AUTHORITIES.~~

1612 ~~§§ 23-28.30 through 23-38.44:4.~~

1613 **Drafting note: Repealed by Acts 1998, cc. 39 and 784.**

1614 ~~CHAPTER 4.4.~~

1615 ~~COLLEGE SCHOLARSHIP ASSISTANCE ACT.~~

1616 ~~§§ 23-38.45 through 23-38.53.~~

1617 **Drafting note: Repealed by Acts 2014, c. 484, cl. 2.**

1618 ~~CHAPTER 4.4:1.~~

1619 ~~VIRGINIA SCHOLARS PROGRAM.~~

1620 ~~§§ 23-38.53:1 through 23-38.53:3.~~

1621 **Drafting note: Repealed by Acts 2006, c. 50.**

1622 ~~CHAPTER 4.4:2.~~

1623 ~~VIRGINIA GUARANTEED ASSISTANCE PROGRAM AND FUND.~~

1624 ~~Article 6.~~

1625 ~~Virginia Guaranteed Assistance Program and Fund.~~

1626 **Drafting note: Existing Chapter 4.4:2 is reorganized as proposed Article 5 of**
1627 **Chapter 6.**

1628 ~~§ 23-38.53:4 23.1-636. State Virginia Guaranteed Assistance Program; Council of~~

1629 ~~Higher Education to administer; promulgation of promulgate regulations.~~

1630 There is hereby created the ~~A. The~~ Virginia Guaranteed Assistance Program is created to
1631 provide financial assistance in the form of grants to eligible students for the costs of attending a
1632 public institution of higher education ~~in Virginia~~. Funds may be paid to any public institution of
1633 higher education on behalf of students who have been awarded ~~financial assistance grants~~
1634 pursuant to § ~~23-38.53:6~~ 23.1-638.

1635 B. The Council shall promulgate regulations for the implementation of the provisions of
1636 this ~~chapter article~~.

1637 **Drafting note: Technical changes.**

1638 § ~~23-38.53:5~~ 23.1-637. Virginia Guaranteed Assistance Fund ~~created~~.

1639 A. There is hereby created in the ~~Department of the Treasury state treasury~~ a special
1640 nonreverting fund ~~which shall to~~ be known as the Virginia Guaranteed Assistance Fund (the
1641 Fund). The ~~Virginia Guaranteed Assistance~~ Fund shall be established on the books of the
1642 Comptroller, ~~and any funds~~. All moneys as may be appropriated by the General Assembly and
1643 any gifts, donations, grants, bequests, or other moneys as may be received for the purposes of
1644 the Fund shall be paid into the state treasury and credited to the Fund. Interest earned on moneys
1645 in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in ~~such the~~
1646 Fund, including interest thereon, at the end of each fiscal year shall not revert to the general
1647 fund but shall remain in the Fund. ~~Interest earned on such funds shall remain in the Fund and be~~
1648 ~~credited to it. Funds may~~ Moneys in the Fund shall be paid to any public institution of higher
1649 education on behalf of students who have been awarded ~~financial assistance grants~~ pursuant to
1650 the provisions of § ~~23-38.53:6~~ 23.1-638. ~~On and after July 1, 1995, any funds~~ Any moneys
1651 remaining in the Fund shall be credited to the account of the ~~State Council of Higher Education~~.
1652 Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants
1653 issued by the Comptroller upon written request signed by the director of the Council.

1654 B. ~~The Department of the Treasury shall administer and manage the Virginia Guaranteed~~
1655 ~~Assistance Fund, subject to the authority of the State Council of Higher Education to provide for~~
1656 ~~its disbursement, from such funds as are appropriated for this purpose and from such gifts,~~

1657 ~~donations, grants, bequests, and other funds as may be received on its behalf. The Fund shall be~~
1658 ~~disbursed for the purpose of making grants to be determined by the use of a needs analysis~~
1659 ~~methodology approved by the Council. The first such awards shall be made after July 1, 1994.~~
1660 ~~The Council shall award such grants to students who are enrolled in or accepted for enrollment~~
1661 ~~in any public institution of higher education in Virginia.~~

1662 **Drafting note: Obsolete references to 1994 and 1995 are recommended for repeal.**
1663 **The final sentence of existing § 23-38.53:5 is stricken as duplicative of the provisions of**
1664 **proposed § 23.1-638. Technical changes are made, including rearranging sentence order**
1665 **and otherwise conforming language to text recommended by the Department of the**
1666 **Treasury for special nonreverting funds.**

1667 ~~§ 23-38.53:6 23.1-638. Eligible students Eligibility; criteria for awarding amount of~~
1668 ~~grants; renewals.~~

1669 A. Only students who (i) are accepted for enrollment as dependent students at a public
1670 institution of higher education; (ii) are not receiving a Virginia Commonwealth Award; (iii)
1671 demonstrate financial need as determined by the Council according to the congressional
1672 methodology for determining financial need and eligibility for financial aid; and (iv) are either
1673 (a) Virginia students who (i) are domiciled residents of Virginia as defined by § 23-7.4 and who
1674 are graduates of graduated from a high school in the Commonwealth with a cumulative
1675 secondary school grade point average of at least 2.5 on a scale of 4.0 or its equivalent; or (ii) (b)
1676 are dependent children of active duty military personnel residing outside the Commonwealth
1677 pursuant to military orders and, claiming Virginia on their State of Legal Residence Certificate,
1678 and satisfying the domicile requirements for such active duty military personnel pursuant to
1679 subsection B of § 23-7.4, 23.1-504 and who are graduates of graduated from a high school
1680 inside within or outside the Commonwealth with a cumulative secondary school grade point
1681 average of at least 2.5 on a scale of 4.0 or its equivalent; and who (iii) are accepted for
1682 enrollment as dependent students in any public institution of higher education in Virginia, and

1683 ~~(iv) are not receiving state discretionary aid and demonstrate financial need as defined by the~~
1684 ~~State Council of Higher Education~~ shall be eligible to receive such awards.

1685 ~~B. The amount of the Guaranteed Assistance Program grant awarded students shall be~~
1686 ~~determined annually by the State Council of Higher Education. Eligibility for such awards shall~~
1687 ~~be determined according to the Congressional methodology for determining financial need and~~
1688 ~~eligibility for financial aid.~~

1689 C. All grants shall be awarded for one award year, ~~but~~ and may be renewed annually for
1690 no more than three subsequent award years ~~of study~~ if the recipient:

1691 1. Maintains ~~at least~~ a 2.0 cumulative grade point average of at least 2.0 on a scale of 4.0
1692 or its equivalent;

1693 2. Demonstrates continued financial need;

1694 3. Makes satisfactory academic progress toward a degree, earning not less than the
1695 minimum number of hours of credit required for full-time standing in each academic period
1696 during enrollment at a public institution of higher education ~~in Virginia~~; and

1697 4. Maintains continuous enrollment for not less than two semesters or three quarters in
1698 each successive ~~academic~~ award year; unless ~~granted~~ the Council grants the recipient an
1699 exception for cause ~~by the State Council of Higher Education~~.

1700 **Drafting note: Subsection B is stricken as obsolete. Technical changes are made.**

1701 ~~§ 23-38.53:7.~~

1702 **Drafting note: Repealed by Acts 1994, c. 789.**

1703 ~~§ 23-38.53:8.~~

1704 **Drafting note: Repealed by Acts 2004, c. 872, cl. 10, effective May 4, 2005.**

1705 ~~§ 23-38.53:9.~~

1706 **Drafting note: Repealed by Acts 2004, c. 872, cl. 2, effective July 1, 2004.**

1707 ~~§ 23-38.53:10.~~

1708 **Drafting note: Repealed by Acts 2004, c. 872, cl. 10, effective May 4, 2005.**

1709 ~~CHAPTER 4.4:4.~~

1710 ADVANTAGE VIRGINIA INCENTIVE PROGRAM.

1711 §§ 23-38.53:12 through 23-38.53:20.

1712 **Drafting note: Repealed by Acts 2014, c. 815, cl. 2.**

1713 CHAPTER 4.4:5.

1714 BROWN V. BOARD OF EDUCATION SCHOLARSHIP PROGRAM AND FUND.

1715 §§ 23-38.53:21 through 23-38.53:24.

1716 **Drafting note: Repealed by Acts 2005, cc. 753 and 834, effective March 26, 2005.**

1717 CHAPTER 4.5.

1718 SENIOR CITIZENS HIGHER EDUCATION.

1719 Article 7.

1720 Senior Citizens Higher Education.

1721 **Drafting note: Existing Chapter 4.5 is reorganized as proposed Article 6 of Chapter**
1722 **6.**

1723 § 23-38.54. Title of chapter.

1724 This chapter may be cited as the "Senior Citizens Higher Education Act of 1974."

1725 **Drafting note: Existing § 23-38.54 is recommended for repeal because of the Code-**
1726 **wide application of § 1-244, which states that the caption of a subtitle, chapter, or article**
1727 **serves as a short title citation.**

1728 § 23-38.55 23.1-639. Definitions.

1729 For the purposes of A. As used in this chapter, the following words shall have the
1730 meanings ascribed to them by this section: article.

1731 "Course" means any course of study offered in any state institution of higher education
1732 including the regular curriculum of any department, or school, or subdivision of any such
1733 institution or any special course given for any purpose, including, but not limited to, adult
1734 education.

1735 "Senior "senior citizen" means any person individual who, before the beginning of any
1736 academic term, semester, or quarter in which such person he claims entitlement to the benefits

1737 of this ~~chapter article~~, ~~(i)~~ has reached the age of 60 years of age, and ~~(ii)~~ has ~~had his legal~~
1738 domicile been legally domiciled in ~~this the~~ Commonwealth for at least one year.

1739 B. Nothing in this section shall be construed to exclude any other rules and requirements
1740 ~~now or hereafter~~ made applicable by any public institution of higher education for all other
1741 persons students besides senior citizens with respect to ~~residency domicile~~ in ~~this the~~
1742 Commonwealth ~~by a state institution of higher learning~~.

1743 **Drafting note: The definition of "course" is stricken as inconsistent with the usage**
1744 **of the defined term throughout the proposed article. Technical changes are made.**

1745 ~~§ 23-38.56 23.1-640. Attendance at state institutions; conditions Senior citizens;~~
1746 registration and enrollment in courses.

1747 A. Any senior citizen ~~shall be permitted may, under subject to any~~ regulations ~~as may be~~
1748 prescribed by the ~~State~~ Council ~~of Higher Education~~:

1749 (i) To ~~register-1. Register~~ for and enroll in courses for academic credit as a full-time or
1750 part-time student ~~for academic credit~~ if ~~such senior citizen he~~ had a taxable individual income
1751 not exceeding \$23,850 for Virginia income tax purposes for the year preceding ~~the award~~ year
1752 ~~in which enrollment is sought~~;

1753 (ii) To register ~~-2. Register~~ for and audit up to three courses offered for academic credit in
1754 any one academic term, quarter, or semester for an unlimited number of academic terms,
1755 quarters, or semesters; and

1756 (iii) To register-3. Register for and enroll in up to three courses not offered for academic
1757 credit in any ~~state institution of higher education in this Commonwealth~~ one academic term,
1758 quarter, or semester for an unlimited number of academic terms, quarters, or semesters.

1759 Such-B. No senior citizen who enrolls in or audits courses pursuant to subsection A shall
1760 pay ~~no~~ tuition or fees except fees established for the purpose of paying for course materials;
1761 such as laboratory fees, ~~but~~.

1762 C. Senior citizens shall be subject to the admission requirements of the institution and a
1763 determination by the institution of its ability to offer the course~~or courses~~ for which the senior
1764 citizen registers.

1765 D. The ~~State~~ Council~~of Higher Education~~ shall establish procedures to ensure that
1766 tuition-paying students are accommodated in courses before senior citizens~~participating in this~~
1767 ~~program are enrolled~~ enroll in or audit courses pursuant to subsection A. However, ~~the state~~
1768 public institutions of higher education may make individual exceptions to these procedures
1769 ~~when the~~ for any senior citizen who has completed~~seventy-five~~ 75 percent of the requirements
1770 for a degree.

1771 **Drafting note: Proposed subdivisions A 2 and 3 incorporate the provisions of**
1772 **existing § 23-38.58. Technical changes are made.**

1773 ~~§ 23-38.57.~~

1774 **Drafting note: Repealed by Acts 1977, c. 281.**

1775 ~~§ 23-38.58. Courses; terms; number and limitations.~~

1776 ~~There shall be no limit to the number of terms, quarters or semesters in which a senior~~
1777 ~~citizen who is not enrolled for academic credit may register for courses but he may register for~~
1778 ~~no more than three courses in any one term, quarter or semester.~~

1779 **Drafting note: Language in existing § 23-38.58 is relocated to subdivisions A 2 and**
1780 **3 of proposed § 23.1-640.**

1781 ~~§ 23-38.59~~ 23.1-641. Catalogue Catalog to include statement of benefits.

1782 Each ~~state~~ public institution of higher~~learning~~ education shall prominently include in its
1783 ~~eatalogue~~ course catalog a statement of the benefits provided by this~~chapter~~ article for senior
1784 citizens.

1785 **Drafting note: Technical changes.**

1786 ~~§ 23-38.60~~ 23.1-642. Determination of senior citizen status; forms.

1787 ~~The registrar or other admissions officer of an each~~ public institution of higher~~learning~~
1788 education shall determine whether~~a person~~ an individual is a senior citizen pursuant to the

1789 provisions of this ~~chapter. Upon determination that a person qualifies as a senior citizen, the~~
1790 ~~registrar or other admissions officer~~ article and may require ~~such person~~ senior citizens to
1791 execute appropriate forms to request the benefits provided by this ~~chapter~~ article.

1792 **Drafting note: Technical changes.**

1793 ~~CHAPTER 4.6.~~

1794 ~~STATE EDUCATION ASSISTANCE AUTHORITY.~~

1795 ~~§§ 23-38.61 through 23-38.69:3.~~

1796 **Drafting note: Repealed by Acts 1992, c. 630.**

1797 ~~CHAPTER 4.7.~~

1798 ~~VIRGINIA WORK STUDY PROGRAM.~~

1799 ~~§§ 23-38.70, 23-38.71.~~

1800 **Drafting note: Repealed by Acts 2006, c. 51.**

1801 ~~CHAPTER 4.8.~~

1802 ~~VIRGINIA COLLEGE SAVINGS PROGRAM.~~

1803 ~~§§ 23-38.72 through 23-38.74.~~

1804 **Drafting note: Repealed by Acts 2014, c. 484, cl. 2.**

1805 ~~CHAPTER 4.9.7.~~

1806 ~~VIRGINIA COLLEGE SAVINGS PLAN AND ABLE SAVINGS TRUST ACCOUNTS~~

1807 ~~PLANS.~~

1808 **Drafting note: Existing Chapter 4.9, the Virginia College Savings Plan and ABLE**
1809 **Savings Trust Accounts, is reorganized as proposed Chapter 7, Virginia Savings Plans.**

1810 ~~§ 23-38.75~~ 23.1-700. Definitions.

1811 As used in this chapter, unless the context requires a different meaning:

1812 "ABLE savings trust account" means an account established pursuant to this chapter to
1813 assist individuals and families to save private funds to support individuals with disabilities to
1814 maintain health, independence, and quality of life, with such account used to apply distributions

1815 for qualified disability expenses for an eligible individual, ~~both~~ as both such terms are defined in
1816 § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

1817 "Board" means the Board governing board of the ~~Virginia College Savings Plan Plans~~.

1818 "College savings trust account" means an account established pursuant to this chapter to
1819 assist individuals and families to enhance the accessibility and affordability of higher education,
1820 with such account used to apply distributions from the account toward qualified higher
1821 education expenses at eligible educational institutions, ~~both~~ as both such terms are defined in §
1822 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

1823 "Contributor" means a person who contributes money to a savings trust account
1824 established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the
1825 owner of the savings trust account.

1826 "Non-Virginia public and accredited nonprofit private institutions of higher education"
1827 means public and accredited nonprofit private institutions of higher education that are located
1828 outside the Commonwealth.

1829 ~~"PlanPlans"~~ or "Virginia Savings Plans" means the Virginia College Savings Plan and
1830 ABLE savings trust accounts.

1831 "Prepaid tuition contract" means the contract entered into by the ~~Board board~~ and a
1832 purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level
1833 by the purchaser for a qualified beneficiary to attend any ~~two-year or four-year~~ public institution
1834 of higher education ~~in the Commonwealth~~ to which the qualified beneficiary is admitted.

1835 "Public institution of higher education" has the same meaning as provided in § 23.1-100.

1836 "Purchaser" means a person who makes or is obligated to make advance payments in
1837 accordance with a prepaid tuition contract and who is listed as the owner of the prepaid tuition
1838 contract.

1839 "Qualified beneficiary" or "beneficiary" means (i) a resident of the Commonwealth, as
1840 determined by the ~~Board board~~, who is the beneficiary of a prepaid tuition contract and who
1841 may apply advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a

1842 prepaid tuition contract purchased by a resident of the Commonwealth, as determined by the
1843 Board board, who may apply advance tuition payments to tuition as set forth in this chapter; or
1844 (iii) a beneficiary of a savings trust account established pursuant to this chapter.

1845 "Savings trust account" means an ABLE savings trust account or a college savings trust
1846 account.

1847 "Savings trust agreement" means the agreement entered into by the ~~Board board~~ and a
1848 contributor ~~establishing that establishes~~ a savings trust account.

1849 "Tuition" means the quarter, semester, or term charges imposed for undergraduate
1850 tuition by any ~~two-year or four-year~~ public institution of higher education ~~in the Commonwealth~~
1851 and all mandatory fees required as a condition of enrollment of all students. ~~A. At the discretion~~
1852 ~~of the board, a~~ beneficiary may apply benefits under a prepaid tuition contract and distributions
1853 from a savings trust account toward graduate-level tuition and toward tuition costs at such
1854 eligible educational institutions, as that term is defined in 26 U.S.C. § 529 or any other
1855 applicable section of the Internal Revenue Code of 1986, as amended, ~~as determined by the~~
1856 ~~Board in its sole discretion.~~

1857 **Drafting note: Technical changes.**

1858 § ~~23-38.76~~ 23.1-701. ~~Virginia College Savings Plan Plans~~ established; moneys;
1859 governing board; ~~terms~~.

1860 A. To enhance the accessibility and affordability of higher education for all citizens of
1861 the Commonwealth, ~~there is hereby and assist families and individuals to save for qualified~~
1862 disability expenses, the Virginia Savings Plans are established as a body politic and corporate
1863 and an independent agency of the Commonwealth, ~~the Virginia College Savings Plan (the Plan).~~

1864 ~~Certain moneys~~ B. Moneys of the ~~Plan Plans~~ that are contributions to savings trust
1865 accounts made pursuant to this chapter, except as otherwise authorized or provided in this
1866 chapter, shall be deposited as soon as practicable in a separate account or separate accounts in
1867 banks or trust companies organized under the laws of the Commonwealth, national banking
1868 associations, federal home loan banks, or, to the extent ~~then~~ permitted by law, savings

1869 institutions organized under the laws of the Commonwealth or the United States. The savings
1870 program moneys in such accounts shall be paid out on checks, drafts payable on demand,
1871 electronic wire transfers, or other means authorized by officers or employees of the ~~Plan Plans~~.

1872 C. All other moneys of the ~~Plan Plans~~, including payments received pursuant to prepaid
1873 tuition contracts, bequests, endowments, grants from the United States government or its
1874 agencies or instrumentalities, and any other available public or private sources of funds, ~~public~~
1875 ~~or private~~, shall be first deposited in the state treasury in a special nonreverting fund (the Fund).
1876 Such moneys ~~then~~ shall then be deposited as soon as practicable in a separate account or
1877 separate accounts in banks or trust companies organized under the laws of the Commonwealth,
1878 national banking associations, federal home loan banks, or, to the extent ~~then~~ permitted by law,
1879 savings institutions organized under the laws of the Commonwealth or the United States.
1880 Benefits related to prepaid tuition contracts and ~~Plan~~ operating expenses of the Plans shall be
1881 paid from the Fund. Any moneys remaining in the Fund at the end of a biennium shall not revert
1882 to the general fund but shall remain in the Fund. Interest and income earned from the investment
1883 of such funds shall remain in the Fund and be credited to it.

1884 B. D. The ~~Plan Plans~~ shall be administered by an 11-member ~~Board, as follows: board~~
1885 that consists of (i) the Director director of the ~~State Council of Higher Education for Virginia~~ or
1886 his designee; the Chancellor of the ~~Virginia Community College~~ System or his designee; the
1887 State Treasurer or his designee; and the State Comptroller or his designee; all of whom shall
1888 serve ex officio with voting privileges, and (ii) seven nonlegislative citizen members, four to of
1889 whom shall be appointed by the Governor, one ~~to of whom shall~~ be appointed by the Senate
1890 Committee on Rules ~~and~~, two ~~to of whom shall~~ be appointed by the Speaker of the House of
1891 Delegates, ~~with and all of whom shall have~~ significant experience in finance, accounting, law,
1892 or investment management.

1893 Appointments E. Members appointed to the board shall ~~be for~~ serve terms of four years;
1894 ~~except that appointments to fill vacancies. Vacancies occurring other than by expiration of a~~
1895 term shall be filled for the unexpired ~~terms~~ term. No ~~person shall be member~~ appointed to the

1896 board shall serve ~~for or during~~ more than two ~~successive consecutive~~ four-year terms, ~~but after~~
1897 ~~the expiration of a term of three years or less, or after the expiration of the remainder of a term~~
1898 ~~to which appointed to fill a vacancy, two additional terms may be served by such member if~~
1899 ~~appointed thereto; however, a member appointed to serve an unexpired term shall be eligible to~~
1900 serve two consecutive four-year terms immediately succeeding such unexpired term.

1901 F. Ex officio members of the ~~Board~~ board shall serve terms coincident with their terms
1902 of office.

1903 ~~C. G.~~ Members of the ~~Board~~ board shall receive no compensation but shall be
1904 reimbursed for actual expenses incurred in the performance of their duties.

1905 H. The ~~Board~~ board shall elect from its membership a chairman and a vice-chairman
1906 annually.

1907 I. A majority of the members of the ~~Board~~ board shall constitute a quorum.

1908 **Drafting note: Technical changes.**

1909 ~~§ 23-38.79:1~~ 23.1-702. Advisory committees to the ~~Board~~ board; membership; terms;
1910 qualifications; duties.

1911 A. To ~~further~~ assist the ~~Board~~ board in fulfilling its fiduciary duty as trustee of the funds
1912 of the ~~Plan~~ Plans and to assist the chief executive officer in directing, managing, and
1913 administering the ~~Plan's~~ Plans' assets, the ~~Board~~ board shall appoint an Investment Advisory
1914 Committee to provide sophisticated, objective, and prudent investment advice and direction.

1915 1. Members of the Investment Advisory Committee shall demonstrate extensive
1916 experience in any one or more of the following areas: domestic or international equity or fixed-
1917 income securities, cash management, alternative investments, institutional real estate
1918 investments, or managed futures.

1919 2. The Investment Advisory Committee shall (i) review, evaluate, and monitor
1920 investments and investment opportunities; (ii) make appropriate recommendations to the ~~Board~~
1921 board about such investments and investment opportunities; (iii) make appropriate

1922 recommendations to the ~~Board board~~ about overall asset allocation; and (iv) perform such other
1923 duties as the ~~Board board~~ may delegate to the Investment Advisory Committee.

1924 B. To ~~further~~ assist the ~~Board board~~ in fulfilling its responsibilities relating to the
1925 integrity of the ~~Plan's Plans'~~ financial statements, financial reporting process, and systems of
1926 internal accounting and financial controls, the ~~Board board~~ shall appoint an Audit and Actuarial
1927 Committee.

1928 1. Members of the Audit and Actuarial Committee shall demonstrate an understanding of
1929 generally accepted accounting principles, generally accepted auditing standards, enterprise risk
1930 management principles, and financial statements, and evidence an ability to assess the general
1931 application of such principles to the ~~Plan's Plans'~~ activities. The members should have
1932 experience in preparing, auditing, analyzing, or evaluating financial statements of the same
1933 complexity as those of the ~~Plan, Plans~~ and an understanding of internal controls and procedures
1934 for financial reporting.

1935 2. In order to establish and maintain its effectiveness and independence, the following
1936 ~~persons individuals~~ shall not be members of the Audit and Actuarial Committee: (i) current ~~Plan~~
1937 employees of the Plans; (ii) individuals who have been employees of the ~~Plan Plans~~ in any of
1938 the prior three fiscal years; and (iii) immediate family members of an individual currently
1939 employed as an officer of the ~~Plan Plans~~ or who has been employed in such a capacity within
1940 the past three fiscal years.

1941 3. The Audit and Actuarial Committee shall (i) review, examine, and monitor the ~~Plan's~~
1942 Plans' accounting and financial reporting processes and systems of internal controls; (ii) review
1943 and examine financial statements and financial disclosures and discuss any findings with the
1944 ~~Plan's Plans'~~ senior management; (iii) make appropriate recommendations and reports to the
1945 ~~Board board~~; and (iv) ~~perform such other duties as the Board may delegate to the Committee.~~

1946 4. ~~The Audit and Actuarial Committee shall also~~ monitor the ~~Plan's Plans'~~ external audit
1947 function by ~~(i) (a)~~ participating in the retention, review, and discharge of independent auditors;
1948 ~~(ii) (b)~~ discussing the ~~Plan's Plans'~~ financial statements and accounting policies with

1949 independent auditors; and ~~(iii) (c)~~ reviewing the independence of independent auditors; and (v)
1950 perform such other duties as the board may delegate to the Audit and Actuarial Committee.

1951 C. ~~In addition, the Board~~ The board may appoint such other advisory committees as it
1952 deems necessary and shall set the qualifications for members of any ~~other such~~ advisory
1953 committee ~~shall be set by the Board~~ by resolution.

1954 D. Advisory committee members shall serve at the pleasure of the ~~Board board~~ and may
1955 be removed by a majority vote of the ~~Board board~~.

1956 E. Members of advisory committees shall receive no compensation but shall be
1957 reimbursed for actual expenses incurred in the performance of their duties.

1958 F. The disclosure requirements of subsection B of § 2.2-3114 ~~of the State and Local~~
1959 ~~Government Conflict of Interests Act~~ shall apply to ~~any each~~ member of any advisory
1960 committee established pursuant to this section who is not also a ~~Board board~~ member.

1961 G. The recommendations of an advisory committee are not binding upon the ~~Board~~
1962 ~~board~~ or the designee appointed by the ~~Board board~~ to make investment decisions pursuant to
1963 subsections A and B of § ~~23-38.80~~ 23.1-706.

1964 **Drafting note: Technical changes.**

1965 § ~~23-38.79~~ 23.1-703. Chief executive officer; ~~qualifications; duties of the Plans.~~

1966 A. The ~~Board board~~ shall employ a chief executive officer to direct, manage, and
1967 administer the ~~Plan, and who shall be authorized to~~ Plans. The chief executive officer may
1968 employ such staff as are necessary to accomplish the ~~Plan's Plans'~~ stated objectives.

1969 B. The chief executive officer shall demonstrate extensive experience in management; ~~;~~
1970 finance; ~~;~~ law; ~~;~~ regulatory affairs ~~and/or or~~ investments, or both; and such other qualifications as
1971 the ~~Board board~~ may set.

1972 C. The chief executive officer shall, in addition to such other duties as the ~~Board board~~
1973 may establish, (i) oversee the development, structure, evaluation, and implementation of the
1974 Plan's Plans' strategic goals and objectives; (ii) facilitate communication among and between the
1975 ~~Board board~~, advisory committees, employees, account owners, beneficiaries, and outside

1976 entities interested in the ~~Plan Plans~~; (iii) enhance the ~~Board's board's~~ ability to make effective
1977 and prompt decisions in all matters related to the administration of the ~~Plan Plans~~; (iv) with the
1978 assistance of the Investment Advisory Committee appointed by the ~~Board board~~ and investment
1979 consultants, direct, manage, and administer the ~~Plan's Plans'~~ assets and programs; and (v) report
1980 ~~to the board~~ periodically and as requested ~~to by~~ the ~~Board board~~.

1981 **Drafting note: Technical changes.**

1982 § ~~23-38.77~~ 23.1-704. Powers and duties of ~~Board~~ the board.

1983 The ~~Board board~~ shall ~~administer~~:

1984 1. Administer the ~~Plan Plans~~ established by this chapter ~~and shall develop~~;

1985 2. Develop and implement programs for (i) the prepayment of undergraduate tuition, as
1986 defined in § ~~23-38.75~~ 23.1-700, at a fixed, guaranteed level for application at a ~~two-year or four-~~
1987 ~~year~~ public institution of higher education ~~in the Commonwealth~~; (ii) contributions to college
1988 savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in
1989 order to apply distributions from the account toward qualified higher education expenses at
1990 eligible educational institutions, ~~both~~ as both such terms are defined in § 529 of the Internal
1991 Revenue Code of 1986, as amended, or other applicable federal law; and (iii) contributions to
1992 ABLE savings trust accounts established pursuant to this chapter on behalf of a qualified
1993 beneficiary in order to apply distributions from the account toward qualified disability expenses
1994 for an eligible individual, ~~both~~ as both such terms are defined in § 529A of the Internal Revenue
1995 Code of 1986, as amended, or other applicable federal law. ~~In addition, the Board shall have the~~
1996 ~~power and duty to~~;

1997 1-3. Invest moneys in the ~~Plan Plans~~ in any instruments, obligations, securities, or
1998 property deemed appropriate by the ~~Board board~~;

1999 2-4. Develop requirements, procedures, and guidelines regarding prepaid tuition
2000 contracts and savings trust accounts, including, ~~but not limited to~~, residency and other eligibility
2001 requirements; the number of participants in the ~~Plan Plans~~; the termination, withdrawal, or

2002 transfer of payments under a prepaid tuition contract or savings trust account; time limitations
2003 for the use of tuition benefits or savings trust account distributions; and payment schedules;

2004 ~~3-5.~~ Enter into contractual agreements, including contracts for legal, actuarial, financial,
2005 and consulting services and contracts with other states to provide savings trust accounts for
2006 residents of contracting states;

2007 ~~4-6.~~ Procure insurance as determined appropriate by the board (i) against any loss in
2008 connection with the ~~Plan's Plans'~~ property, assets, or activities and (ii) indemnifying ~~Board~~
2009 board members from personal loss or accountability from liability arising from any action or
2010 inaction as a ~~Board board~~ member;

2011 ~~5-7.~~ Make arrangements with ~~two year and four year~~ public institutions ~~in the~~
2012 Commonwealth of higher education to fulfill obligations under prepaid tuition contracts and ~~to~~
2013 apply college savings trust account distributions, including, ~~but not limited to,~~ (i) payment from
2014 the ~~Plan Plans~~ of the then actual in-state undergraduate tuition ~~cost~~ on behalf of a qualified
2015 beneficiary of a prepaid tuition contract to the institution ~~in to~~ which the beneficiary is admitted
2016 and at which the beneficiary is enrolled and (ii) application of such benefits towards graduate-
2017 level tuition and ~~towards toward~~ tuition costs at such eligible educational institutions, as that
2018 term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code
2019 of 1986, as amended, as determined by the Board in its sole discretion;

2020 ~~6-8.~~ Develop and implement scholarship ~~and/or or~~ matching grant programs, or both, as
2021 the ~~Board board~~ may deem appropriate, to further its goal of making higher education more
2022 affordable and accessible to all citizens of the Commonwealth;

2023 ~~7-9.~~ Apply for, accept, and expend gifts, grants, or donations from public or private
2024 sources to enable it to carry out its objectives;

2025 ~~8-10.~~ Promulgate regulations and procedures and ~~to~~ perform any act or function
2026 consistent with the purposes of this chapter; and

2027 ~~9-11.~~ Reimburse, at its option, all or part of the cost of employing legal counsel and
2028 such other costs as are demonstrated to have been reasonably necessary for the defense of any

2029 ~~Board~~ board member, officer, or employee of the ~~Plan~~ Plans upon the acquittal, dismissal of
2030 charges, nolle prosequi, or any other final disposition concluding the innocence of such
2031 member, officer, or employee who is brought before any regulatory body, summoned before any
2032 grand jury, investigated by any law-enforcement agency, arrested, indicted, or otherwise
2033 prosecuted on any criminal charge arising out of any act committed in the discharge of his
2034 official duties ~~which that~~ alleges a violation of state or federal securities laws. The ~~Board~~ board
2035 shall provide for the payment of such legal fees and expenses out of funds appropriated or
2036 otherwise available to the ~~Board~~ board.

2037 **Drafting note: Technical changes are made, including removing "but not limited**
2038 **to" when used in conjunction with "including" in subdivisions 4 and 7 on the basis of § 1-**
2039 **218, which states "'Includes' means includes, but not limited to."**

2040 § ~~23-38.78~~ 23.1-705. Board actions not a debt of Commonwealth.

2041 A. As used in this section, "current obligations of the Plans" means amounts required for
2042 the payment of contract benefits or other obligations of the Plans, the maintenance of the Plans,
2043 and operating expenses for the current biennium.

2044 B. No act or undertaking of the ~~Board shall be deemed to constitute~~ board is a debt ~~of the~~
2045 ~~Commonwealth or any political subdivision thereof~~, or a pledge of the full faith and credit of the
2046 Commonwealth or ~~of~~ any political subdivision, ~~but shall be~~ of the Commonwealth, and all such
2047 acts and undertakings are payable solely from the ~~Plan~~ Plans.

2048 ~~B.C.~~ Notwithstanding the provisions of subsection ~~A~~ B, in order to ensure that the ~~Plan~~
2049 Plans is able to meet its current obligations, the Governor shall include in the budget bills
2050 submitted pursuant to § 2.2-1509 a sum sufficient appropriation for the purpose of ensuring that
2051 the ~~Plan~~ Plans can meet the current obligations of the ~~Plan~~ Plans. Any sums appropriated by the
2052 General Assembly for such purpose shall be deposited into the Fund. All amounts paid into the
2053 Fund pursuant to this subsection shall constitute and be accounted for as advances by the
2054 Commonwealth to the ~~Plan~~ Plans and, subject to the rights of the ~~Plan's~~ Plans' contract holders,
2055 shall be repaid to the Commonwealth without interest from available operating revenue of the

2056 ~~Plan Plans~~ in excess of amounts required for the payment of current obligations of the ~~Plan~~
2057 ~~Plans. As used in this section, "current obligations of the Plan" means amounts required for the~~
2058 ~~payment of contract benefits or other obligations of the Plan, the maintenance of the Plan, and~~
2059 ~~operating expenses for the current biennium.~~

2060 **Drafting note: Technical changes are made, including moving a definition to the**
2061 **beginning of the proposed section.**

2062 § ~~23-38.80~~ 23.1-706. Standard of care; investment and administration of ~~Plan~~ the Plans.

2063 A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing
2064 property for the benefit of the ~~Plan Plans~~, the ~~Board board~~, and any person, investment manager,
2065 or committee to whom the ~~Board board~~ delegates any of its investment authority, shall act as
2066 trustee and shall exercise the judgment of care under the circumstances then prevailing, ~~which~~
2067 ~~that~~ persons of prudence, discretion, and intelligence exercise in the management of their own
2068 affairs, not in regard to speculation but to the permanent disposition of funds, considering the
2069 probable income as well as the probable safety of their capital.

2070 If the annual accounting and audit required by § ~~23-38.85~~ 23.1-710 reveal that there are
2071 insufficient funds to ensure the actuarial soundness of the ~~Plan Plans~~, the ~~Board shall be~~
2072 ~~authorized to board may~~ adjust the terms of subsequent prepaid tuition contracts, arrange
2073 refunds for current purchasers to ensure actuarial soundness, or take such other action the ~~Board~~
2074 ~~board~~ deems appropriate.

2075 B. The assets of the ~~Plan Plans~~ shall be preserved, invested, and expended solely
2076 pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred
2077 or used by the Commonwealth for any other purpose. Within the standard ~~prescribed of care set~~
2078 ~~forth~~ in subsection A, the ~~Board, board~~ and any person, investment manager, or committee to
2079 whom the ~~Board board~~ delegates any of its investment authority, ~~is authorized to may~~ acquire
2080 and retain ~~every any~~ kind of property and ~~every any~~ kind of investment, ~~specifically~~ including
2081 ~~but not limited to~~ (i) debentures and other corporate obligations of foreign or domestic
2082 corporations; (ii) common or preferred stocks traded on foreign or domestic stock exchanges;

2083 (iii) not less than all of the stock or 100 percent ownership of a corporation or other entity
2084 organized by the ~~Board~~ board under the laws of the Commonwealth for the purposes of
2085 acquiring and retaining real property that the ~~Board~~ board is authorized under this chapter to
2086 acquire and retain; and (iv) securities of any open-end or closed-end management type
2087 investment company or investment trust registered under the federal Investment Company Act
2088 of 1940, as amended, including ~~such~~ investment companies or investment trusts ~~which that~~, in
2089 turn, invest in the securities of such investment companies or investment trusts, ~~which that~~
2090 persons of prudence, discretion, and intelligence acquire or retain for their own account. ~~Within~~
2091 ~~the limitations of the foregoing standard, the Board~~ The board may retain property properly
2092 acquired, without time limitation and without regard to its suitability for original purchase. ~~This~~
2093 ~~section shall not be construed to prohibit the investment of the Plan, by purchase or otherwise,~~
2094 ~~in bonds, notes, or other obligations of the Commonwealth or its agencies and instrumentalities.~~

2095 All provisions of this subsection shall apply to the portion of the ~~Plan~~ assets of the Plans
2096 attributable to savings trust account contributions and the earnings ~~thereon~~ on such
2097 contributions.

2098 C. The selection of services related to the operation and administration of the ~~Plan~~ Plans,
2099 including, ~~but not limited to~~, contracts or agreements for the management, purchase, or sale of
2100 authorized investments or actuarial, recordkeeping, or consulting services, shall be governed by
2101 the ~~foregoing~~ standard of care set forth in subsection A and shall not be subject to the provisions
2102 of the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

2103 D. No ~~Board~~ board member ~~nor any or~~ person, investment manager, or committee to
2104 whom the ~~Board~~ board delegates any of its investment authority who acts ~~within in accordance~~
2105 with the standard of care set forth in subsection A shall be held personally liable for losses
2106 suffered by the ~~Plan~~ Plans on investments made pursuant to this chapter.

2107 E. To the extent necessary to lawfully administer the ~~Plan~~ Plans and in order to comply
2108 with federal, state, and local tax reporting requirements, the ~~Plan~~ Plans may obtain all necessary
2109 social security account or tax identification numbers and such other data as the ~~Plan~~ Plans

2110 | deems necessary for such purposes, whether from a contributor ~~or, a~~ purchaser, ~~or from~~ another
2111 | state agency.

2112 | F. This section shall not be construed to prohibit the investment of the Plans, by
2113 | purchase or otherwise, in bonds, notes, or other obligations of the Commonwealth or its
2114 | agencies and instrumentalities.

2115 | **Drafting note: Technical changes are made, including removing "but not limited**
2116 | **to" when used in conjunction with "including" in subsections B and C on the basis of § 1-**
2117 | **218, which states "'Includes' means includes, but not limited to."**

2118 | ~~§ 23-38.81~~ 23.1-707. Prepaid tuition contracts and ~~college and ABLE~~ savings trust
2119 | agreements; ~~terms; termination; etc.~~

2120 | A. Each prepaid tuition contract made pursuant to this chapter shall include the
2121 | following terms and provisions:

2122 | 1. The amount of payment or payments and the number of payments required from a
2123 | purchaser on behalf of a qualified beneficiary;

2124 | 2. The terms and conditions under which purchasers shall remit payments, including the
2125 | dates of such payments;

2126 | 3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;

2127 | 4. The name and date of birth of the qualified beneficiary on whose behalf the contract is
2128 | made;

2129 | 5. Terms and conditions for a substitution for the qualified beneficiary originally named;

2130 | 6. Terms and conditions for termination of the contract, including any refunds,
2131 | withdrawals, or transfers of tuition prepayments, and the name of the person ~~or persons~~ entitled
2132 | to terminate the contract;

2133 | 7. The time period during which the qualified beneficiary ~~must~~ is required to claim
2134 | benefits from the ~~Plan~~ Plans;

2135 | 8. The number of credit hours or quarters, semesters, or terms contracted for by the
2136 | purchaser;

2137 9. All other rights and obligations of the purchaser and the trust; and
2138 10. Any other terms and conditions ~~which that~~ the ~~Board board~~ deems necessary or
2139 appropriate, including those necessary to conform the contract with the requirements of Internal
2140 Revenue Code § 529, as amended, which specifies the requirements for qualified state tuition
2141 programs.

2142 B. Each college savings trust agreement made pursuant to this chapter shall include the
2143 following terms and provisions:

2144 1. The maximum and minimum contribution allowed on behalf of each qualified
2145 beneficiary for the payment of qualified higher education expenses at eligible institutions, ~~both~~
2146 as both such terms are defined in § 529 of the Internal Revenue Code of 1986, as amended, or
2147 other applicable federal law;

2148 2. Provisions for withdrawals, refunds, transfers, and any penalties;

2149 3. The name, address, and date of birth of the qualified beneficiary on whose behalf the
2150 savings trust account is opened;

2151 4. Terms and conditions for a substitution for the qualified beneficiary originally named;

2152 5. Terms and conditions for termination of the account, including any refunds,
2153 withdrawals, or transfers, and applicable penalties, and the name of the person ~~or persons~~
2154 entitled to terminate the account;

2155 6. The time period during which the qualified beneficiary ~~must is required to~~ use benefits
2156 from the savings trust account;

2157 7. All other rights and obligations of the contributor and the ~~Plan Plans~~; and

2158 8. Any other terms and conditions ~~which that~~ the ~~Board board~~ deems necessary or
2159 appropriate, including those necessary to conform the savings trust account with the
2160 requirements of § 529 of the Internal Revenue Code of 1986, as amended, or other applicable
2161 federal law.

2162 C. Each ABLÉ savings trust agreement made pursuant to this chapter shall include the
2163 following terms and provisions:

2164 1. The maximum and minimum annual contribution and maximum account balance
2165 allowed on behalf of each qualified beneficiary for the payment of qualified disability expenses,
2166 as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable
2167 federal law;

2168 2. Provisions for withdrawals, refunds, transfers, return of excess contributions, and any
2169 penalties;

2170 3. The name, address, and date of birth of the qualified beneficiary on whose behalf the
2171 savings trust account is opened;

2172 4. Terms and conditions for a substitution for the qualified beneficiary originally named;

2173 5. Terms and conditions for termination of the account, including any transfers to the
2174 state upon the death of the qualified beneficiary, refunds, withdrawals, transfers, applicable
2175 penalties, and the name of the person ~~or persons~~ entitled to terminate the account;

2176 6. The time period during which the qualified beneficiary ~~must is required to~~ use benefits
2177 from the savings trust account;

2178 7. All other rights and obligations of the contributor and the ~~Plan Plans~~; and

2179 8. Any other terms and conditions that the ~~Board board~~ deems necessary or appropriate,
2180 including those necessary to conform the savings trust account with the requirements of § 529A
2181 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

2182 D. In addition to the provisions required by subsection A, each prepaid tuition contract
2183 shall include provisions for the application of tuition prepayments (i) at accredited, nonprofit,
2184 ~~independent private~~ institutions of higher education ~~located in Virginia, as that term is defined~~
2185 ~~in § 23.1-100~~, including actual interest and income earned on such prepayments, and (ii) at ~~non-~~
2186 ~~Virginia~~ public and ~~at~~ accredited, nonprofit, ~~independent private~~ institutions of higher education
2187 ~~located in other states~~, including principal and reasonable return on such principal as determined
2188 by the ~~Board board~~. Payments authorized for accredited, nonprofit, ~~independent private~~
2189 institutions ~~located in Virginia may, as that term is defined in § 23.1-100, shall~~ not exceed the
2190 projected highest payment made for tuition at a public institution of higher education ~~in Virginia~~

2191 in the same academic year, less a fee to be determined by the ~~Board~~ board. Payments authorized
2192 for non-Virginia public and ~~for~~ accredited, nonprofit, ~~independent private~~ institutions of higher
2193 education ~~located in other states may shall~~ not exceed the projected average payment made for
2194 tuition at a public institution of higher education ~~in Virginia~~ in the same academic year, less a
2195 fee to be determined by the ~~Board~~ board.

2196 E. All prepaid tuition contracts and savings trust agreements shall specifically provide
2197 that, if after a specified period of time the contract or savings trust agreement has not been
2198 terminated ~~nor and~~ the qualified beneficiary's rights have not been exercised, the ~~Board~~ board,
2199 after making reasonable effort to contact the purchaser or contributor and the qualified
2200 beneficiary or their agents, shall report such unclaimed moneys to the State Treasurer pursuant
2201 to § 55-210.12.

2202 F. Notwithstanding any provision of law to the contrary, money in the ~~Plan~~ Plans shall
2203 be exempt from creditor process and shall not be liable to attachment, garnishment, or other
2204 process, ~~nor shall it or~~ be seized, taken, appropriated, or applied by any legal or equitable
2205 process or operation of law to pay any debt or liability of any purchaser, contributor, or
2206 beneficiary, ~~provided, however, except~~ that the state of residence of the beneficiary of an ABLE
2207 savings trust account shall be a creditor of such account in the event of the death of the
2208 beneficiary.

2209 G. No prepaid tuition contract or savings trust account shall be assigned for the benefit
2210 of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale,
2211 transfer, assignment, pledge, encumbrance, or charge.

2212 H. The ~~Board's~~ board's decision on any dispute, claim, or action arising out of or related
2213 to a prepaid tuition contract or savings trust agreement made or entered into pursuant to this
2214 chapter or benefits ~~thereunder~~ under such prepaid tuition contract or savings trust agreement
2215 shall be considered a case decision as defined in § 2.2-4001 and all proceedings related ~~thereto~~
2216 to such dispute, claim, or action shall be conducted pursuant to Article 3 (§ 2.2-4018 et seq.) of

2217 | the Administrative Process Act. Judicial review shall be ~~exclusively~~ provided exclusively
2218 | pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

2219 | **Drafting note: Technical changes are made, including removing "or persons" in**
2220 | **subdivisions A 6, B 5, and C 5 pursuant to § 1-227, which states that throughout the Code**
2221 | **any word in the singular includes the plural and vice versa.**

2222 | ~~§ 23-38.82.~~

2223 | **Drafting note: Repealed by Acts 1997, cc. 785 and 861.**

2224 | ~~§ 23-38.83~~ 23.1-708. ~~Plan property tax~~ Assets of the Plans exempt from taxation.

2225 | The assets of the ~~Plan Plans~~ and ~~its their~~ income ~~shall be~~ are exempt from state and local
2226 | taxation.

2227 | **Drafting note: Technical changes.**

2228 | ~~§ 23-38.84~~ 23.1-709. Annual report.

2229 | ~~The Board~~ On or before December 15, the board shall post on its website and submit to
2230 | the Governor, the Senate Committee on Finance, and the House Committees on Appropriations
2231 | and Finance; an annual statement ~~on or before December 15~~ of the receipts, disbursements, and
2232 | current investments of the ~~Plan Plans~~ for the preceding year. The report shall set forth a
2233 | complete operating and financial statement covering the operation of the ~~Plan Plans~~ during the
2234 | year and shall include a statement of projected receipts, disbursements, investments, and costs
2235 | for the further operation of the ~~Plan Plans~~.

2236 | **Drafting note: Technical changes.**

2237 | ~~§ 23-38.85~~ 23.1-710. Forms and audit of accounts and records; ~~audit of same~~.

2238 | The accounts and records of the ~~Board board~~ showing the receipt and disbursement of
2239 | funds from whatever source derived shall be in such form as the Auditor of Public Accounts
2240 | prescribes, provided that such accounts ~~shall~~ correspond as nearly as possible to the accounts
2241 | and records for such matters maintained by corporate enterprises. The Auditor of Public
2242 | Accounts; or his legally authorized representatives; shall annually audit the accounts of the

2243 ~~Board board~~, and the ~~board shall bear the~~ cost of such audit services ~~as shall be required shall be~~
2244 ~~borne by the Board.~~

2245 **Drafting note: Technical changes.**

2246 § ~~23-38.86~~ 23.1-711. Admission to institutions not guaranteed; coverage limitations.

2247 Nothing in this chapter ~~nor or~~ in any prepaid tuition contract or savings trust agreement
2248 entered into pursuant to this chapter shall be construed as a promise or guarantee ~~by~~:

2249 1. By the Board board or the Commonwealth of any admission to, continued enrollment
2250 at, or graduation at from any public ~~two-year or four-year~~ institution of higher education ~~in the~~
2251 ~~Commonwealth.~~

2252 ~~Nothing in this chapter or in any prepaid tuition contract entered into pursuant to this~~
2253 ~~chapter shall be construed as a promise or guarantee that;~~

2254 2. That the beneficiary's cost of tuition at an institution of higher education other than a
2255 public institution of higher education will be covered in full by the proceeds of the beneficiary's
2256 tuition credits.

2257 ~~Nothing in this chapter or in any savings trust agreement entered into pursuant to this~~
2258 ~~chapter shall be construed as a promise or guarantee that; or~~

2259 3. That any qualified higher education expense ~~shall will~~ be covered in full by
2260 contributions to or earnings on any savings trust account.

2261 **Drafting note: Technical changes.**

2262 § ~~23-38.87~~ 23.1-712. Payroll deductions.

2263 The Commonwealth ~~and its,~~ the agencies and localities of the Commonwealth and their
2264 subdivisions, and any employer in the Commonwealth are authorized to agree, by contract or
2265 otherwise, to remit payments or contributions on behalf of an employee toward prepaid tuition
2266 contracts or savings trust accounts through payroll deductions.

2267 **Drafting note: Technical changes.**

2268 § ~~23-38.87:1~~ 23.1-713. Liberal construction of chapter.

2269 Insofar as the provisions of this chapter are inconsistent with the provisions of any other
2270 general, special, or local law, ~~general, special, or local~~, the provisions of this chapter shall ~~be~~
2271 controlling control. This chapter ~~shall also constitute~~ constitutes full and complete authority,
2272 without regard to the provisions of any other law, for ~~the doing of performing~~ the acts ~~and~~
2273 ~~things herein~~ authorized in this chapter and shall be liberally construed to effect the purposes
2274 hereof of this chapter.

2275 **Drafting note: Technical changes.**

2276 CHAPTER ~~4.10~~ 10.

2277 RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE
2278 OPERATIONS ACT.

2279 **Drafting note: Existing Chapter 4.10 is reorganized as proposed Chapter 10.**

2280 SUBCHAPTER 1.

2281 GENERAL PROVISIONS.

2282 **Drafting note: Existing Subchapter 1 of Chapter 4.10 is reorganized as proposed**
2283 **Articles 1 and 2 of Chapter 10.**

2284 Article 1.

2285 Definitions.

2286 **Drafting note: Proposed Article 1 consists of chapter-wide definitions.**

2287 § ~~23-38.89~~ 23.1-1000. Definitions.

2288 As used in this chapter, ~~the following terms have the following meanings,~~ unless the
2289 context requires ~~otherwise~~ a different meaning:

2290 "Bonds, notes, or other obligations" means bonds, notes, commercial paper, bond
2291 anticipation notes, revenue certificates, capital leases, lease participation certificates, or other
2292 evidences of indebtedness or deferred purchase financing arrangements.

2293 "Capital project" means the acquisition of any interest in land, including (i) capital leases
2294 and (ii) improvements on the acquired land, ~~either consisting of (a)~~ new construction of at least

2295 5,000 square feet ~~or more or~~, (b) new construction costing at least \$12 million ~~or more, or (c)~~
2296 improvements or renovations costing at least \$12 million ~~or more, or capital leases.~~

2297 "Covered ~~Employee~~ employee" means any ~~person~~ individual who is employed by a
2298 covered institution on either a salaried or wage basis.

2299 "Covered institution" means, ~~on and after its effective date of the initial Management~~
2300 Agreement, a public institution of higher education ~~of the Commonwealth~~ that has entered into a
2301 management agreement with the Commonwealth to be governed by the provisions of
2302 Subchapter 3 Article 4 (§ ~~23-38.91~~ 23.1-1004 et seq.) ~~of this chapter.~~

2303 "Enabling ~~legislation~~ statutes" means ~~those chapters, other than this chapter, of Title 23,~~
2304 as amended, each chapter in subtitle IV (§ 23.1-1301 et seq.), and in the case of the University
2305 of Virginia Medical Center §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100, creating,
2306 continuing, or otherwise setting forth the powers, duties, purposes, and missions of ~~the each~~
2307 individual public ~~institutions~~ institution of higher education ~~of the Commonwealth, and as~~
2308 provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of
2309 Virginia Medical Center, unless otherwise expressly provided in this ~~subchapter~~ chapter.

2310 "Facilities" means all (i) real, personal, tangible, and intangible property ~~or rights in~~
2311 property, real and personal, tangible and intangible, including ~~but not limited to~~ all ~~facilities and~~
2312 (a) infrastructure suitable for supporting a covered institution's mission and ancillary activities
2313 and ~~including any and all~~ (b) structures, buildings, improvements, additions, extensions,
2314 replacements, appurtenances, lands, rights in land, furnishings, landscaping, approaches,
2315 roadways, and other related and supporting facilities, ~~now or hereafter~~ held, possessed, owned,
2316 leased, operated, or used, in whole or in part, by a covered institution and (ii) rights in such
2317 property.

2318 "Includes" has the same meaning as provided in § 1-218.

2319 "Management agreement" means an agreement ~~required by subsection D of § 23-38.88~~
2320 between the Commonwealth and a public institution of higher education seeking to become
2321 governed by Subchapter 3 Article 4 (§ ~~23-38.91~~ 23.1-1004 et seq.) ~~of this chapter.~~

2322 "Participating covered employee" includes (i) all salaried nonfaculty covered employees
2323 who were employed by the covered institution on the day prior to the effective date of the initial
2324 management agreement and elect pursuant to § 23.1-1022 to participate in and be governed by
2325 the program, plans, policies, and procedures established by the institution pursuant to Article 4
2326 (§ 23.1-1004 et seq.); (ii) all salaried nonfaculty covered employees who are employed by the
2327 covered institution on or after the effective date of the initial management agreement; (iii) all
2328 nonsalaried nonfaculty covered employees of the covered institution without regard to when
2329 they were hired; (iv) all faculty covered employees of the covered institution without regard to
2330 when they were hired; and (v) all employees of the University of Virginia Medical Center
2331 without regard to when they were hired.

2332 "Project" means (i) any research ~~programs and any program~~, research facility, or
2333 educational facility of ~~an a covered~~ institution ~~governed by Subchapter 3 (§ 23-38.91 et seq.) of~~
2334 ~~this chapter~~ or equipment necessary or convenient to or consistent with the purposes of such
2335 institution, whether or not owned by the institution, including, ~~without limitation, (a) research,~~
2336 ~~training, teaching, dormitory, and classroom facilities; and~~ all related and supporting facilities,
2337 and equipment necessary or desirable in connection ~~therewith~~ with such facilities or incidental
2338 ~~thereto; or equipment alone; and also including, without limitation, to such facilities; (b) office,~~
2339 parking, kitchen, laundry, laboratory, wellness, pharmaceutical, administrative,
2340 communications, computer, and recreational and athletic facilities; (c) hotels and related
2341 facilities; (d) power plants and equipment; (e) storage space; (f) hospitals; (g) nursing homes;
2342 (h) continuing care facilities; (i) self-care facilities; (j) health maintenance centers; (k) medical
2343 office facilities; (l) clinics; (m) outpatient clinics; (n) surgical centers; (o) alcohol, substance
2344 abuse, and drug treatment centers; ~~laboratories;~~ (p) sanitariums; (q) hospices; (r) facilities for
2345 the residence or care of the elderly, ~~the~~ handicapped, or ~~the~~ chronically ill; (s) residential
2346 facilities for nurses, interns, and physicians; (t) other ~~kinds of~~ facilities for the treatment of sick,
2347 disturbed, or infirm ~~persons or individuals,~~ the prevention of disease, or ~~the~~ maintenance of
2348 health; (u) colleges, schools, or divisions offering undergraduate, graduate, professional, or

2349 extension programs, or any combination of such programs, for such branches of learning as may
2350 be appropriate; (v) vehicles, mobile medical facilities, and other transportation equipment;
2351 ~~together with mobile medical facilities;~~ and (w) air transport equipment, including equipment
2352 necessary or desirable for the transportation of medical equipment, medical personnel, or
2353 patients; and (ii) all lands, buildings, improvements, approaches, and appurtenances necessary
2354 or desirable in connection with or incidental to any such program, facility, or equipment.

2355 ~~"Public institution of higher education" means a two-year or four-year public institution~~
2356 ~~of higher education.~~

2357 "Virginia Retirement System" ~~means that includes any~~ retirement system, ~~or other~~
2358 ~~authorized retirement system,~~ established pursuant to or authorized by Title 51.1.

2359 **Drafting note: This proposed section incorporates the definition of "participating**
2360 **covered employee" from subsection C of existing § 23-38.114. The definition of "public**
2361 **institution of higher education" is stricken as that term is now defined title-wide pursuant**
2362 **to proposed § 23.1-100. The definition of "capital project" is updated to reflect provisions**
2363 **of the general appropriation act. Technical changes are made.**

2364 Article 2.

2365 Financial and Administrative Standards, Authority, and Incentives.

2366 **Drafting note: Proposed Article 2 incorporates the provisions of existing §§ 2.2-**
2367 **5004, 2.2-5005, and 23-38.88 relating to financial and administrative standards, authority,**
2368 **and incentives for public institutions of higher education.**

2369 **Note to drafters: Include repeal of §§ 2.2-5004 and 2.2-5005 in the final bill.**

2370 ~~§ 2.2-5004~~ 23.1-1001. Financial and administrative management standards for public
2371 institutions of higher education.

2372 ~~For purposes of this chapter:~~

2373 ~~"Public institution of higher education" means the same as that term is defined in § 23-~~
2374 ~~38.89.~~

2375 A. ~~Every Each~~ public institution of higher education ~~in the Commonwealth~~ shall ~~take all~~
2376 ~~appropriate actions to~~ meet the following financial and administrative management standards:

2377 1. An unqualified opinion from the Auditor of Public Accounts upon the audit of the
2378 public institution's financial statements;

2379 2. No significant audit deficiencies attested to by the Auditor of Public Accounts;

2380 3. Substantial compliance with all financial reporting standards approved by the State
2381 Comptroller;

2382 4. Substantial attainment of accounts receivable standards approved by the State
2383 Comptroller, including, ~~but not limited to,~~ any standards for outstanding receivables and bad
2384 debts;

2385 5. Substantial attainment of accounts payable standards approved by the State
2386 Comptroller including, ~~but not limited to,~~ any standards for accounts payable past due; and

2387 6. ~~Such other Other~~ financial and administrative management standards ~~as established by~~
2388 the Governor ~~may establish, or as may be or~~ included in the general appropriation act currently
2389 in effect.

2390 B. ~~Any Each~~ public institution of higher education that does not meet all of the financial
2391 management standards in subsection A, ~~including any established by the Governor, and such~~
2392 ~~other financial management standards as may be included in the appropriation act currently in~~
2393 ~~effect as determined in a~~ according to the written certification ~~by of~~ the Auditor of Public
2394 Accounts pursuant to § 30-133.1 shall develop and implement a written plan of corrective action
2395 ~~for purposes of meeting to meet~~ such standards as soon as practicable. The ~~Chairman chairman~~
2396 ~~or rector~~ of the ~~Board of Visitors or other~~ governing body board of the public institution of
2397 higher education shall promptly provide a copy of the completed written plan to the Auditor of
2398 Public Accounts and the Secretaries of Education, Finance, and Administration ~~promptly upon~~
2399 ~~completion of the development of the written plan.~~

2400 C. ~~In addition, any Each~~ public institution of higher education that does not meet all of
2401 the administrative management standards ~~specified established~~ by the Governor; and such

2402 standards currently in effect for such institutions ~~as determined in a~~ according to the written
2403 certification ~~by of~~ the Auditor of Public Accounts pursuant to § 30-133.1 shall develop and
2404 implement a written plan of corrective action ~~for purposes of meeting to meet~~ such standards as
2405 soon as practical. ~~Copies~~ The chairman or rector of the ~~corrective action plan shall be provided~~
2406 ~~to the same persons included under subsection B upon completion~~ governing board of the
2407 ~~development~~ public institution of higher education shall promptly provide a copy of the
2408 completed written plan to the Auditor of Public Accounts and the Secretaries of Education,
2409 Finance, and Administration.

2410 **Drafting note: Proposed § 23.1-1001 incorporates the provisions of existing § 2.2-**
2411 **5004. The definition of "public institution of higher education" is stricken because that**
2412 **term is defined for the title pursuant to proposed § 23.1-100. Technical changes are made.**

2413 § ~~23-38.88~~ 23.1-1002. Eligibility for restructured financial and administrative
2414 operational authority and financial benefits.

2415 A. ~~Public institutions~~ The state goals for each public institution of higher education are
2416 to:

2417 1. Consistent with its institutional mission, provide access to higher education for all
2418 citizens throughout the Commonwealth, including underrepresented populations, and consistent
2419 with subdivision 4 of § 23.1-203 and in accordance with anticipated demand analysis, meet
2420 enrollment projections and degree estimates as agreed upon with the Council. Each such
2421 institution shall bear a measure of responsibility for ensuring that the statewide demand for
2422 enrollment is met;

2423 2. Consistent with § 23.1-306, ensure that higher education remains affordable,
2424 regardless of individual or family income, and through a periodic assessment determine the
2425 impact of tuition and fee levels net of financial aid on applications, enrollment, and student
2426 indebtedness incurred for the payment of tuition, fees, and other necessary charges;

2427 3. Offer a broad range of undergraduate and, where appropriate, graduate programs
2428 consistent with its mission and assess regularly the extent to which the institution's curricula and

2429 degree programs address the Commonwealth's need for sufficient graduates in particular
2430 shortage areas, including specific academic disciplines, professions, and geographic regions;

2431 4. Ensure that the institution's academic programs and course offerings maintain high
2432 academic standards by undertaking a continuous review and improvement of academic
2433 programs, course availability, faculty productivity, and other relevant factors;

2434 5. Improve student retention so that students progress from initial enrollment to a timely
2435 graduation and the number of degrees conferred increases as enrollment increases;

2436 6. Consistent with its institutional mission, develop articulation agreements that have
2437 uniform application to all comprehensive community colleges and meet appropriate general
2438 education and program requirements at the baccalaureate institution of higher education,
2439 provide additional opportunities for associate degree graduates to be admitted and enrolled, and
2440 offer dual enrollment programs in cooperation with high schools;

2441 7. Actively contribute to efforts to stimulate the economic development of the
2442 Commonwealth and the area in which the institution is located, and for those institutions subject
2443 to a management agreement pursuant to Article 4 (§ 23.1-1004 et seq.), in areas with below-
2444 state average income levels and employment rates;

2445 8. Consistent with its institutional mission, increase the level of externally funded
2446 research conducted at the institution and facilitate the transfer of technology from university
2447 research centers to private sector companies;

2448 9. Work actively and cooperatively with public elementary and secondary school
2449 administrators, teachers, and students to improve student achievement, upgrade the knowledge
2450 and skills of teachers, and strengthen leadership skills of school administrators;

2451 10. Prepare a six-year financial plan consistent with § 23.1-306;

2452 11. Conduct the institution's business affairs in a manner that (i) helps maximize the
2453 operational efficiencies and economies of the institution and the Commonwealth and (ii) meets
2454 all financial and administrative management standards pursuant to § 23.1-1001 specified by the
2455 Governor and included in the current general appropriation act, which shall include best

2456 practices for electronic procurement and leveraged purchasing, information technology, real
2457 estate portfolio management, and diversity of suppliers through fair and reasonable
2458 consideration of small, women-owned, and minority-owned business enterprises; and

2459 12. Seek to ensure the safety and security of students on campus.

2460 B. Each public institution of higher education ~~shall be eligible for the following~~
2461 ~~restructured financial and operational authority that meets the state goals set forth in subsection~~
2462 A on or after August 1, 2005 may:

2463 1. ~~To dispose~~ Dispose of ~~their~~ its surplus materials at the location where the surplus
2464 materials are held and ~~to~~ retain any proceeds from such disposal as provided in subdivision B 14
2465 of § 2.2-1124;

2466 2. ~~To have the option, as~~ As provided in and pursuant to the conditions in subsection C
2467 of § 2.2-1132 ~~and pursuant to the conditions and provisions under such subsection, to~~ contract
2468 with a building official of the locality in which construction is taking place and for such official
2469 to perform any inspection and certifications required ~~for the purpose of complying to comply~~
2470 with the Uniform Statewide Building Code (§ 36-97 et seq.) pursuant to subsection C of § 36-
2471 98.1;

2472 3. For ~~those~~ each public ~~institutions~~ institution of higher education that ~~have~~ has in effect
2473 a signed memorandum of understanding with the Secretary of Administration regarding
2474 participation in the nongeneral fund decentralization program as set forth in the general
2475 appropriation act, as provided in subsection C of § 2.2-1132, ~~to~~ enter into contracts for specific
2476 construction projects without the preliminary review and approval of the Division of
2477 Engineering and Buildings of the Department of General Services, provided such institutions are
2478 in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.)
2479 and utilize the general terms and conditions for those forms of procurement approved by the
2480 Division of Engineering and Buildings and the Office of the Attorney General;

2481 4. ~~To acquire~~ Acquire easements as provided in subdivision 4 of § 2.2-1149;

2482 5. ~~To enter~~ Enter into an operating/income lease or capital lease pursuant to the
2483 conditions and provisions ~~provided~~ in subdivision 5 of § 2.2-1149;

2484 6. ~~To convey~~ Convey an easement pertaining to any property such institution owns or
2485 controls as provided in subsection C of § 2.2-1150;

2486 7. In accordance with the conditions and provisions ~~of in~~ subdivision C 2 of § 2.2-1153,
2487 ~~to~~ sell surplus real property that is possessed and controlled by the institution and valued at less
2488 than \$5 million, ~~which is possessed and controlled by the institution;~~

2489 8. For purposes of compliance with § 2.2-4310, ~~to~~ procure goods, services, and
2490 construction from a vendor that the institution has certified as a small, women-owned, ~~and or~~
2491 minority-owned business enterprise pursuant to the conditions and provisions ~~provided~~ in § 2.2-
2492 1609;

2493 9. ~~To be~~ Be exempt from review of their budget request for information technology by
2494 the CIO as provided in subdivision A 4 of § 2.2-2007;

2495 10. ~~To be allowed to establish~~ Adopt policies for the designation of administrative and
2496 professional faculty positions at the institution pursuant to the conditions and provisions
2497 ~~provided~~ in subsection E of § 2.2-2901;

2498 11. ~~To receive the financial benefits described under § 2.2-5005 pursuant to the~~
2499 ~~conditions and provisions of such section;~~

2500 12. ~~To be~~ Be exempt from reporting its purchases to the Secretary of Education,
2501 provided that all purchases, including sole source purchases, are placed through the
2502 Commonwealth's electronic procurement system using proper system codes for the methods of
2503 procurement; and

2504 13. ~~To utilize~~ Utilize as methods of procurement a fixed price, design-build, or
2505 construction management contract notwithstanding the provisions of § 2.2-4306; ~~and~~

2506 14. ~~The restructured financial and operational authority set forth in Article 2 (§ 23-~~
2507 ~~38.90) and Article 3 (§ 23-38.91 et seq.).~~

2508 ~~No such authority shall be granted unless the institution meets the conditions set forth in~~
2509 ~~this chapter.~~

2510 ~~B. The Board of Visitors of a public institution of higher education shall commit to the~~
2511 ~~Governor and the General Assembly by August 1, 2005, through formal resolution adopted~~
2512 ~~according to its own bylaws, to meeting the state goals specified below, and shall be responsible~~
2513 ~~for ensuring that such goals are met, in addition to such other responsibilities as may be~~
2514 ~~prescribed by law. Each such institution shall commit to the Governor and the General~~
2515 ~~Assembly to:~~

2516 ~~1. Consistent with its institutional mission, provide access to higher education for all~~
2517 ~~citizens throughout the Commonwealth, including underrepresented populations, and, consistent~~
2518 ~~with subdivision 4 of § 23-9.6:1 and in accordance with anticipated demand analysis, meet~~
2519 ~~enrollment projections and degree estimates as agreed upon with the State Council of Higher~~
2520 ~~Education for Virginia. Each such institution shall bear a measure of responsibility for ensuring~~
2521 ~~that the statewide demand for enrollment is met;~~

2522 ~~2. Consistent with § 23-38.87:17, ensure that higher education remains affordable,~~
2523 ~~regardless of individual or family income, and through a periodic assessment, determine the~~
2524 ~~impact of tuition and fee levels net of financial aid on applications, enrollment, and student~~
2525 ~~indebtedness incurred for the payment of tuition and fees;~~

2526 ~~3. Offer a broad range of undergraduate and, where appropriate, graduate programs~~
2527 ~~consistent with its mission and assess regularly the extent to which the institution's curricula and~~
2528 ~~degree programs address the Commonwealth's need for sufficient graduates in particular~~
2529 ~~shortage areas, including specific academic disciplines, professions, and geographic regions;~~

2530 ~~4. Ensure that the institution's academic programs and course offerings maintain high~~
2531 ~~academic standards, by undertaking a continuous review and improvement of academic~~
2532 ~~programs, course availability, faculty productivity, and other relevant factors;~~

2533 ~~5. Improve student retention such that students progress from initial enrollment to a~~
2534 ~~timely graduation, and that the number of degrees conferred increases as enrollment increases;~~

2535 ~~6. Consistent with its institutional mission, develop articulation agreements that have~~
2536 ~~uniform application to all Virginia community colleges and meet appropriate general education~~
2537 ~~and program requirements at the four-year institution, provide additional opportunities for~~
2538 ~~associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in~~
2539 ~~cooperation with high schools;~~

2540 ~~7. Actively contribute to efforts to stimulate the economic development of the~~
2541 ~~Commonwealth and the area in which the institution is located, and for those institutions subject~~
2542 ~~to a management agreement set forth in Article 3 (§ 23-38.91 et seq.), in areas that lag the~~
2543 ~~Commonwealth in terms of income, employment, and other factors;~~

2544 ~~8. Consistent with its institutional mission, increase the level of externally funded~~
2545 ~~research conducted at the institution and facilitate the transfer of technology from university~~
2546 ~~research centers to private sector companies;~~

2547 ~~9. Work actively and cooperatively with elementary and secondary school~~
2548 ~~administrators, teachers, and students in public schools and school divisions to improve student~~
2549 ~~achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of~~
2550 ~~school administrators;~~

2551 ~~10. Prepare a six-year financial plan consistent with § 23-38.87:17;~~

2552 ~~11. Conduct the institution's business affairs in a manner that maximizes operational~~
2553 ~~efficiencies and economies for the institution, contributes to maximum efficiencies and~~
2554 ~~economies of state government as a whole, and meets the financial and administrative~~
2555 ~~management standards as specified by the Governor pursuant to § 2.2-5004 and included in the~~
2556 ~~appropriation act that is in effect, which shall include best practices for electronic procurement~~
2557 ~~and leveraged purchasing, information technology, real estate portfolio management, and~~
2558 ~~diversity of suppliers through fair and reasonable consideration of small, women-owned, and~~
2559 ~~minority-owned business enterprises; and~~

2560 ~~12. Seek to ensure the safety and security of the Commonwealth's students on college~~
2561 ~~and university campuses.~~

2562 ~~Upon making such commitments to the Governor and the General Assembly by August~~
2563 ~~1, 2005, the public institution of higher education shall be allowed to exercise the restructured~~
2564 ~~financial and operational authority set forth in subdivisions A 1 through A 13, subject to such~~
2565 ~~conditions as may be provided under the enabling statutes granting the additional authority.~~

2566 ~~C. As provided in § 23-9.6:1.01, the State Council of Higher Education shall in~~
2567 ~~consultation with the respective chairmen of the House Committees on Education and~~
2568 ~~Appropriations and the Senate Committees on Finance and Education and Health or their~~
2569 ~~designees, representatives of public institutions of higher education, and such other state~~
2570 ~~officials as may be designated by the Governor, develop objective measures of educational-~~
2571 ~~related performance and institutional performance benchmarks for such objective measures. At~~
2572 ~~a minimum, the State Council shall develop such objective measures and institutional~~
2573 ~~performance benchmarks for the goals and objectives set forth in subdivisions B 1 through B 10~~
2574 ~~and B 12. In addition, the Governor shall develop objective measures of financial and~~
2575 ~~administrative management performance and related institutional performance benchmarks for~~
2576 ~~the goals and objectives set forth in subdivision B 11.~~

2577 ~~As provided in subsection C of § 23-9.6:1.01, any public institution of higher education~~
2578 ~~that has been certified during the fiscal year by the State Council of Higher Education for~~
2579 ~~Virginia as meeting the institutional performance benchmarks in effect for the fiscal year as set~~
2580 ~~forth in the general appropriation act shall be provided the financial benefits under § 2.2-5005.~~
2581 ~~Such benefits shall first be provided as determined under such section. Objective criteria for~~
2582 ~~measuring performance with regard to the state goals and objectives developed pursuant to~~
2583 ~~subsection B, and benefits or consequences for meeting or not meeting those goals and~~
2584 ~~objectives, shall be developed as provided in subdivision B 5 of § 23-38.87:20.~~

2585 ~~D. 1. The restructured financial and operational authority set forth in Article 3 (§ 23-~~
2586 ~~38.91 et seq.) shall only be granted in accordance with the expressed terms of a management~~
2587 ~~agreement between the public institution of higher education and the Commonwealth.~~

2588 ~~No restructured financial or operational authority set forth in Article 3 (§ 23-38.91 et~~
2589 ~~seq.) shall be granted to a public institution of higher education unless such authority is~~
2590 ~~expressly included in the management agreement. In addition, the only implied authority that~~
2591 ~~shall be granted from entering into a management agreement is that implied authority that is~~
2592 ~~actually necessary to carry out the expressed grant of restructured financial or operational~~
2593 ~~authority. As a matter of law, the initial presumption shall be that any restructured financial or~~
2594 ~~operational authority set forth in Article 3 (§ 23-38.91 et seq.) is not included in the~~
2595 ~~management agreement. These requirements shall also apply to any other provision included in~~
2596 ~~Article 3 (§ 23-38.91 et seq.).~~

2597 ~~2. No public institution of higher education shall enter into a management agreement~~
2598 ~~unless:~~

2599 ~~a. (i) Its most current and unenhanced bond rating received from (a) Moody's Investors~~
2600 ~~Service, Inc., (b) Standard & Poor's, Inc., or (c) Fitch Investor's Services, Inc. is at least AA-~~
2601 ~~(i.e., AA minus) or its equivalent, provided that such bond rating has been received within the~~
2602 ~~last three years of the date that the initial agreement is entered into or (ii) the institution has (a)~~
2603 ~~participated in decentralization pilot programs in the areas of finance and capital outlay, (b)~~
2604 ~~demonstrated management competency in those two areas as evidenced by a written~~
2605 ~~certification from the Cabinet Secretary or Secretaries designated by the Governor, (c) received~~
2606 ~~additional operational authority under a memorandum of understanding pursuant to § 23-38.90~~
2607 ~~in at least one functional area, and (d) demonstrated management competency in that area for a~~
2608 ~~period of at least two years. In submitting "The Budget Bill" for calendar year 2005 pursuant to~~
2609 ~~subsection A of § 2.2-1509, the Governor shall include criteria for determining whether or not~~
2610 ~~an institution has demonstrated the management competency required by clause (ii);~~

2611 ~~b. An absolute two-thirds, or more, of the institution's governing body shall have voted~~
2612 ~~in the affirmative for a resolution expressing the sense of the body that the institution is~~
2613 ~~qualified to be, and should be, governed by the provisions of Article 3 (§ 23-38.91 et seq.);~~
2614 ~~which resolution shall be included in the initial management agreement;~~

2615 ~~c. The institution agrees to reimburse the Commonwealth for any additional costs to the~~
2616 ~~Commonwealth in providing health or other group insurance benefits to employees, and in~~
2617 ~~undertaking any risk management program, that are attributable to the institution's exercise of~~
2618 ~~any restructured financial or operational authority set forth in Article 3 (§ 23-38.91 et seq.). The~~
2619 ~~institution's agreement to reimburse the Commonwealth for such additional costs shall be~~
2620 ~~expressly included in each management agreement with the institution. The Secretary of~~
2621 ~~Finance and the Secretary of Administration, in consultation with the Virginia Retirement~~
2622 ~~System and the affected institutions, shall establish procedures for determining any amounts to~~
2623 ~~be paid by each institution and a mechanism for transferring the appropriate amounts directly~~
2624 ~~and solely to the programs whose costs have been affected.~~

2625 ~~In developing management agreements, public institutions of higher education shall give~~
2626 ~~consideration to potential future impacts of tuition increases on the Virginia College Savings~~
2627 ~~Plan (§ 23-38.75) and shall discuss such potential impacts with parties participating in~~
2628 ~~development of such agreements. The chief executive officer of the Virginia College Savings~~
2629 ~~Plan shall provide to the institution and such parties the Plan's assumptions underlying the~~
2630 ~~contract pricing of the program; and~~

2631 ~~d. Before executing a management agreement with the Commonwealth that affects~~
2632 ~~insurance or benefit programs administered by the Virginia Retirement System, the Governor~~
2633 ~~shall transmit a draft of the relevant provisions to the Board of Trustees of the Virginia~~
2634 ~~Retirement System, which shall review the relevant provisions in order to ensure compliance~~
2635 ~~with the applicable provisions of Title 51.1, administrative policies and procedures and federal~~
2636 ~~regulations governing retirement plans. The Board shall advise the Governor and appropriate~~
2637 ~~Cabinet Secretaries of any conflicts.~~

2638 ~~3. Each initial management agreement with an institution shall remain in effect for a~~
2639 ~~period of three years. Subsequent management agreements with the institution shall remain in~~
2640 ~~effect for a period of five years.~~

2641 ~~If an existing agreement is not renewed or a new agreement executed prior to the~~
2642 ~~expiration of the three year or five year term, as applicable, the existing agreement shall remain~~
2643 ~~in effect on a provisional basis for a period not to exceed one year. If, after the expiration of the~~
2644 ~~provisional one year period, the management agreement has not been renewed or a new~~
2645 ~~agreement executed, the institution shall no longer be granted any of the financial or operational~~
2646 ~~authority set forth in Article 3 (§ 23-38.91 et seq.), unless and until such time as a new~~
2647 ~~management agreement is entered into between the institution and the Commonwealth.~~

2648 ~~The Joint Legislative Audit and Review Commission, in cooperation with the Auditor of~~
2649 ~~Public Accounts, shall conduct a review relating to the initial management agreement with each~~
2650 ~~public institution of higher education. The review shall cover a period of at least the first 24~~
2651 ~~months from the effective date of the management agreement. The review shall include, but~~
2652 ~~shall not be limited to, the degree of compliance with the expressed terms of the management~~
2653 ~~agreement, the degree to which the institution has demonstrated its ability to manage~~
2654 ~~successfully the administrative and financial operations of the institution without jeopardizing~~
2655 ~~the financial integrity and stability of the institution, the degree to which the institution is~~
2656 ~~meeting the objectives described in subsection B, and any related impact on students and~~
2657 ~~employees of the institution from execution of the management agreement. The Joint~~
2658 ~~Legislative Audit and Review Commission shall make a written report of its review no later~~
2659 ~~than June 30 of the third year of the management agreement. The Joint Legislative Audit and~~
2660 ~~Review Commission is authorized, but not required, to conduct a similar review of any~~
2661 ~~management agreement entered into subsequent to the initial agreement.~~

2662 ~~4. The right and power by the Governor to void a management agreement shall be~~
2663 ~~expressly included in each management agreement. The management agreement shall provide~~
2664 ~~that if the Governor makes a written determination that a public institution of higher education~~
2665 ~~that has entered into a management agreement with the Commonwealth is not in substantial~~
2666 ~~compliance with the terms of the agreement or with the requirements of this chapter in general,~~
2667 ~~(i) the Governor shall provide a copy of that written determination to the chairmen of the Board~~

~~2668 of Visitors or other governing body of the public institution of higher education and to the
2669 members of the General Assembly, and (ii) the institution shall develop and implement a plan of
2670 corrective action, satisfactory to the Governor, for purposes of coming into substantial
2671 compliance with the terms of the management agreement and with the requirements of this
2672 chapter, as soon as practicable, and shall provide a copy of such corrective action plan to the
2673 members of the General Assembly. If after a reasonable period of time after the corrective
2674 action plan has been implemented by the institution, the Governor determines that the institution
2675 is not yet in substantial compliance with the management agreement or the requirements of this
2676 chapter, the Governor may void the management agreement. Upon the Governor voiding a
2677 management agreement, the affected public institution of higher education shall not be allowed
2678 to exercise any restructured financial or operational authority pursuant to the provisions of
2679 Article 3 (§ 23-38.91 et seq.) unless and until the institution enters into a subsequent
2680 management agreement with the Secretary or Secretaries designated by the Governor or the void
2681 management agreement is reinstated by the General Assembly.~~

~~2682 5. A management agreement with a public institution of higher education shall not grant
2683 any of the restructured financial or operational authority set forth in Article 3 (§ 23-38.91 et
2684 seq.) to the Virginia Cooperative Extension and Agricultural Experiment Station, the University
2685 of Virginia College at Wise, or the Virginia Institute of Marine Sciences or to an affiliated entity
2686 of the institution unless such intent, as well as the degree of the restructured financial or
2687 operational authority to be granted, is expressly included in the management agreement.~~

~~2688 6. Following the execution of each management agreement with a public institution of
2689 higher education and submission of that management agreement to the Chairmen of the House
2690 Committee on Appropriations, the House Committee on Education, the Senate Committee on
2691 Finance, and the Senate Committee on Education and Health pursuant to § 23-38.97, the
2692 Governor shall include a recommendation for approval of the management agreement in "The
2693 Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his gubernatorial
2694 amendments submitted pursuant to subsection E of § 2.2-1509 due by the December 20 that~~

2695 ~~immediately follows the date of submission of the management agreement to such Committees.~~
2696 ~~Following the General Assembly's consideration of whether to approve or disapprove the~~
2697 ~~management agreement as recommended, if the management agreement is approved as part of~~
2698 ~~the general appropriation act, it shall become effective on the effective date of such general~~
2699 ~~appropriation act. However, no management agreement shall be entered into by a public~~
2700 ~~institution of higher education and the Secretary or Secretaries designated by the Governor after~~
2701 ~~November 15 of a calendar year.~~

2702 ~~E. A covered institution and the members of its governing body, officers, directors,~~
2703 ~~employees, and agents shall be entitled to the same sovereign immunity to which they would be~~
2704 ~~entitled if the institution were not governed by this chapter; provided further, that the Virginia~~
2705 ~~Tort Claims Act (§ 8.01-195.1 et seq.) and its limitations on recoveries shall remain applicable~~
2706 ~~with respect to institutions governed by this chapter.~~

2707 ~~§ 2.2-5005. Incentive performance benefits to certain public institutions of higher~~
2708 ~~education.~~

2709 ~~As used in this section, unless the context requires a different meaning:~~

2710 ~~"Fiscal year of implementation" means the first full fiscal year for which the financial~~
2711 ~~and administrative management and educational related performance benchmarks described~~
2712 ~~under § 23-9.6:1.01 are effective, as provided in a general appropriation act.~~

2713 ~~Beginning with the fiscal year that immediately follows the fiscal year of~~
2714 ~~implementation and for all fiscal years thereafter, each C. Each public institution of higher~~
2715 ~~education that (i) has been certified during the fiscal year by the State Council of Higher~~
2716 ~~Education of Virginia pursuant to § 23-9.6:1.01 23.1-206 as having met the institutional~~
2717 ~~performance benchmarks for public institutions of higher education and (ii) meets the conditions~~
2718 ~~prescribed state goals set in subsection B of § 23-38.88; A shall receive the following financial~~
2719 ~~benefits:~~

2720 1. Interest on the tuition and fees and other nongeneral fund Educational and General
2721 Revenues deposited into the State Treasury by the public institution of higher education, as

2722 provided in the [general](#) appropriation act. Such interest shall be paid from the general fund and
2723 shall be an appropriate and equitable amount as determined and certified in writing by the
2724 Secretary of Finance to the Comptroller by the end of each fiscal year, ~~or as soon thereafter~~ as
2725 practicable [after the end of such fiscal year](#);

2726 2. Any unexpended appropriations of the public institution of higher education at the
2727 ~~close end~~ of the fiscal year, which shall be reappropriated and allotted for expenditure by the
2728 institution in the immediately following fiscal year; ~~and~~

2729 3. A pro rata amount of the rebate due to the Commonwealth on credit card purchases of
2730 \$5,000 or less made during the fiscal year. The amount to be paid to each institution shall equal
2731 a pro rata share based upon its total transactions of \$5,000 or less using the credit card that is
2732 approved for use by all state agencies as compared to all transactions of \$5,000 or less using
2733 such card by all state agencies. The Comptroller shall determine the public institution's pro rata
2734 share and, as provided in the [general](#) appropriation act, shall pay the institution by August 15, ~~or~~
2735 ~~as soon thereafter as practicable~~, of the fiscal year immediately following the year of
2736 certification [or as soon as practicable after August 15 of such fiscal year](#).

2737 The payment to an institution of its pro rata share under this subdivision shall also be
2738 applicable to other rebate or refund programs in effect that are similar to that of the credit card
2739 rebate program described in this subdivision. The Secretary of Finance shall identify such other
2740 rebate or refund programs and shall determine the pro rata share to be paid to the ~~public~~
2741 institution ~~of higher education~~; [and](#)

2742 4. A rebate of any transaction fees for the prior fiscal year paid for sole source
2743 procurements made by the institution in accordance with subsection E of § 2.2-4303; for using a
2744 vendor ~~who that~~ is not registered with the Department of General ~~Service's Services~~' web-based
2745 electronic procurement program commonly known as "eVA₁"; as provided in the [general](#)
2746 appropriation act. Such rebate shall be certified by the Department of General Services and paid
2747 to each public institution by August 15, ~~or as soon thereafter as practicable~~, of the fiscal year

2748 immediately following the year of certification or as soon as practicable after August 15 of such
2749 fiscal year.

2750 **Drafting note: For the sake of clarity, proposed subsection A incorporates the**
2751 **provisions of existing subsection B of § 23-38.88, and proposed subsection B incorporates**
2752 **the provisions of existing subsection A of § 23-38.88. Existing subsection C of § 23-38.88 is**
2753 **stricken as duplicative of provisions of existing §§ 23-9.6:1.01 (proposed § 23.1-206) and**
2754 **23-38.87:20 (proposed § 23.1-309). Existing subsections D and E of § 23-38.88, which relate**
2755 **to covered institutions, are stricken here and incorporated instead into proposed Article 4**
2756 **on covered institutions. Proposed subsection C incorporates the provisions of existing §**
2757 **2.2-5005. Existing subdivision A 11 of § 23-38.88 is stricken as duplicative of provisions of**
2758 **§ 2.2-5004 (subsection C of proposed § 23.1-1001). Existing subdivision A 14 of § 23-38.88**
2759 **is stricken here and incorporated instead into proposed subsection A of § 23.1-1003 and**
2760 **proposed subsection A of § 23.1-1004. Technical changes are made.**

2761 SUBCHAPTER 2.

2762 FINANCIAL AND ADMINISTRATIVE MEMORANDA OF UNDERSTANDING.

2763 Article 3.

2764 Restructured Financial and Administrative Authority; Memorandum of Understanding.

2765 **Drafting note: Existing Subchapter 2 of Chapter 4.10 is reorganized as proposed**
2766 **Article 3 of Chapter 10.**

2767 § ~~23-38.90~~ 23.1-1003. Memoranda of understanding.

2768 ~~Effective July 1, 2008, any A. Each~~ public institution of higher education that meets the
2769 state goals set forth in subsection A of § 23.1-1002 may enter into a memorandum of
2770 understanding with the appropriate Cabinet Secretary ~~or Secretaries~~, as designated by the
2771 Governor, for ~~additional~~ restructured operational authority in any operational area ~~or areas~~
2772 adopted by the General Assembly in accordance with law, provided that the authority granted in
2773 the memorandum of understanding is consistent with that institution's ability to manage its
2774 operations in the particular area ~~or areas~~ and ~~provided that the following general criteria are met:~~

2775 1. The institution ~~has received and maintained Council certification (i) is certified by the~~
2776 Council pursuant to ~~§ 23-9.6:1.01, 23.1-206~~ or ~~(ii) upon the completion of the development of~~
2777 ~~the objective criteria for measuring goals and objectives described in subdivision B 5 of § 23-~~
2778 ~~38.87:20, pursuant to § 23-38.87:21 23.1-310~~ for the most recent year that the Council has
2779 completed certification;

2780 2. An absolute two-thirds or more of the institution's governing ~~body shall have board~~
2781 has voted in the affirmative for a resolution expressing the sense of the ~~body board~~ that the
2782 institution is qualified to be, and should be, governed by memoranda of understanding ~~as~~
2783 provided in this chapter;

2784 3. The institution ~~shall adopt~~ adopts at least one new measure for each area of
2785 operational authority for which a memorandum of understanding is requested. Each measure
2786 shall be developed in consultation with (i) the appropriate Cabinet Secretary. ~~If the adopted~~
2787 ~~measure is education related, then it shall be developed in consultation with~~ or (ii) the Secretary
2788 of Education and the Council if the measure is education-related. Any education-related
2789 measure ~~shall be approved by~~ is subject to the approval of the Council; and

2790 4. The institution ~~shall post~~ posts on the Department of General Services' central
2791 electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award
2792 notices, and emergency award notices to ensure visibility and access to the Commonwealth's
2793 procurement opportunities on one website.

2794 B. Within 15 days of receipt of a request from a public institution of higher education to
2795 enter into a memorandum of understanding ~~as provided in this section~~, the Cabinet Secretary ~~or~~
2796 Secretaries receiving ~~that the~~ request shall notify the Chairmen of the House Committee on
2797 Appropriations and the Senate Committee on Finance of the request. The Cabinet Secretary ~~or~~
2798 Secretaries shall determine within 90 calendar days whether ~~or not~~ to enter into the requested
2799 memorandum of understanding; or ~~some variation thereof~~ a modified memorandum of
2800 understanding.

2801 C. If the ~~determination is to enter~~ Cabinet Secretary enters into a memorandum of
2802 understanding with the public institution of higher education, ~~the Cabinet Secretary or~~
2803 Secretaries he shall forward a copy of the governing ~~body's board's~~ resolution and a copy of the
2804 memorandum of understanding to the Chairmen of the House Committee on Appropriations and
2805 the Senate Committee on Finance. Each initial memorandum of understanding shall remain in
2806 effect for ~~a period of~~ three years. Subsequent memoranda of understanding shall remain in effect
2807 for ~~a period of~~ five years.

2808 D. If the ~~determination is not to~~ Cabinet Secretary does not enter into a memorandum of
2809 understanding with the public institution of higher education, ~~the Cabinet Secretary or~~
2810 Secretaries he shall notify the Chairmen of the House Committee on Appropriations and the
2811 Senate Committee on Finance of the reasons for denying the institution's request. If an
2812 institution's request is denied, nothing in this section shall prohibit ~~the a public~~ institution of
2813 higher education from submitting a future request to enter into a memorandum of understanding
2814 pursuant to this section.

2815 **Drafting note: The original July 1, 2008, effective date for existing § 23-38.90 is**
2816 **stricken as obsolete. Proposed subsection A of § 23.1-1003 incorporates the provisions of**
2817 **existing subdivision A 14 of § 23-38.88. Technical changes are made.**

2818 ~~SUBCHAPTER 3.~~

2819 ~~ALTERNATIVE AUTHORITY FOR COVERED INSTITUTIONS.~~

2820 ~~Article 1.~~

2821 ~~Governance; Scope of Subchapter; Other Laws.~~

2822 ~~Article 4.~~

2823 ~~Alternative Financial and Administrative Authority; Covered Institutions; Management~~
2824 ~~Agreements.~~

2825 **Drafting note: Existing Subchapter 3 and each of its seven articles are reorganized**
2826 **as proposed Article 4 of Chapter 10.**

2827 § ~~23-38.91~~ 23.1-1004. ~~Responsibility and accountability for management of institution;~~
2828 ~~governance~~ Management agreement; eligibility and application.

2829 A. The ~~Board of Visitors governing~~ and administration of ~~a public university or college~~
2830 ~~of the Commonwealth~~ each public institutions of higher education that meets the state goals set
2831 forth in subsection A of § 23.1-1002 and meets the requirements of this ~~subchapter~~ article to
2832 demonstrate the ability to manage successfully the administrative and financial operations of the
2833 institution without jeopardizing the financial integrity and stability of the institution may ~~enter~~
2834 ~~into negotiation~~ negotiate with the Governor to develop a management agreement with the
2835 Commonwealth, ~~as provided in this subchapter to exercise restructured financial and~~
2836 ~~administrative authority.~~ Consistent with the terms of the management agreement, the Board of
2837 Visitors shall assume full responsibility for management of the institution, subject to the
2838 requirements and conditions set forth in this subchapter, the general requirements for
2839 management agreements as provided in § 23-38.88, and the specific management agreement
2840 with the Commonwealth. The Board of Visitors shall be fully accountable for (a) the
2841 management of the institution of higher education as provided in this subchapter, (b) meeting
2842 the requirements of §§ 2.2-5004, 23-9.6:1.01, and 23-38.87:17 or, upon the completion of the
2843 development of the objective criteria for measuring goals and objectives described in
2844 subdivision B-5 of § 23-38.87:20, § 23-38.87:21, and (c) meeting such other provisions as may
2845 be set forth in the management agreement with the Commonwealth.

2846 B. ~~Each covered institution shall be governed and administered in the manner provided~~
2847 ~~in this subchapter but subject to the expressed terms of the management agreement entered into~~
2848 ~~pursuant to § 23-38.88, in the appropriation act, and in each such institution's enabling~~
2849 ~~legislation.~~ No public institution of higher education shall enter into a management agreement
2850 unless:

2851 1. (i) Its most current and unenhanced bond rating received from Moody's Investors
2852 Service, Inc., Standard & Poor's, Inc., or Fitch Investor's Services, Inc., is at least AA- (i.e., AA
2853 minus) or its equivalent, provided that such bond rating has been received within the last three

2854 years of the date that the initial management agreement is entered into or (ii) the institution has
2855 participated in decentralization pilot programs in the areas of finance and capital outlay,
2856 demonstrated management competency in those two areas as evidenced by a written
2857 certification from the Cabinet Secretary designated by the Governor, received restructured
2858 operational authority under a memorandum of understanding pursuant to Article 3 (§ 23.1-1003
2859 et seq.) in at least one functional area, and demonstrated management competency in that area
2860 for a period of at least two years;

2861 2. At least an absolute two-thirds of the institution's governing board has voted in the
2862 affirmative for a resolution in support of a request for restructured operational authority under a
2863 management agreement;

2864 3. The institution submits to the Governor a written request for his approval of the
2865 management agreement that contains evidence that (i) the institution possesses the necessary
2866 administrative infrastructure, experience, and expertise to perform successfully its public
2867 educational mission as a covered institution; (ii) the institution is financially able to operate as a
2868 covered institution without jeopardizing the financial integrity and stability of the institution;
2869 (iii) the institution consistently meets the financial and administrative management standards
2870 pursuant to § 23.1-1001; and (iv) the institution's governing board has adopted performance and
2871 accountability standards, in addition to any institutional performance benchmarks included in
2872 the general appropriation act and developed pursuant to § 23.1-206, against which its
2873 implementation of the restructured operational authority under the management agreement can
2874 be measured;

2875 4. The institution provides a copy of the written request to the Chairmen of the House
2876 Committee on Appropriations, the House Committee on Education, the Senate Committee on
2877 Finance, and the Senate Committee on Education and Health;

2878 5. The institution agrees to reimburse the Commonwealth for any additional costs that
2879 the Commonwealth incurs to provide health or other group insurance benefits to employees and
2880 undertake any risk management program that are attributable to the institution's exercise of

2881 restructured operational authority. The Secretary of Finance and the Secretary of
2882 Administration, in consultation with the Virginia Retirement System and the affected
2883 institutions, shall establish procedures for determining any amounts to be paid by each
2884 institution and a mechanism for transferring the appropriate amounts directly and solely to the
2885 affected programs;

2886 6. The institution considers potential future impacts of tuition increases on the Virginia
2887 College Savings Plan and discusses such potential impacts with parties participating in
2888 development of the management agreement. The chief executive officer of the Virginia College
2889 Savings Plan shall provide to the institution and such parties the Plan's assumptions underlying
2890 the contract pricing of the program; and

2891 7. The Governor transmits a draft of any management agreement that affects insurance
2892 or benefit programs administered by the Virginia Retirement System to the Board of Trustees of
2893 the Virginia Retirement System, which shall review the relevant provisions of the management
2894 agreement to ensure compliance with the applicable provisions of Title 51.1, administrative
2895 policies and procedures, and federal regulations governing retirement plans and advise the
2896 Governor and appropriate Cabinet Secretaries of any conflicts.

2897 **Drafting note: Proposed subsection A of § 23.1-1004 incorporates the provisions of**
2898 **existing subdivision A 14 of § 23-38.88. Proposed subsection B of § 23.1-1004 incorporates**
2899 **the provisions of existing subdivision D 2 of § 23-38.88 and existing subsection A of § 23-**
2900 **38.97. The second sentence of existing § 23-38.91 is stricken here and incorporated instead**
2901 **into proposed subsection K of § 23.1-1006. Existing subsection B of § 23-38.91 is stricken**
2902 **here and incorporated instead into proposed subsection B of § 23.1-1006. Technical**
2903 **changes are made.**

2904 § ~~23-38.97~~ 23.1-1005. ~~Eligibility requirements and procedures;~~ Approval of a
2905 management agreement.

2906 A. ~~Any public institution of higher education may initiate the process to be governed by~~
2907 this subchapter by complying with the following requirements:

2908 ~~1. An absolute two thirds, or more, of the institution's governing body shall have voted~~
2909 ~~in the affirmative for a resolution expressing the sense of the body that the institution is~~
2910 ~~qualified to be, and should be, governed by this subchapter.~~

2911 ~~2. Following such affirmative vote by such governing body, the institution shall submit~~
2912 ~~to the Governor a written request for his approval to be governed by this subchapter. A copy of~~
2913 ~~such request shall be sent to the Chairmen of the House Committee on Appropriations, the~~
2914 ~~House Committee on Education, the Senate Committee on Finance and the Senate Committee~~
2915 ~~on Education and Health. Such written request shall provide documentation substantiating that:~~
2916 ~~(i) the institution possesses the necessary administrative infrastructure, experience, and expertise~~
2917 ~~to perform successfully its public educational mission as a covered institution; (ii) the institution~~
2918 ~~is financially able to operate as a covered institution without jeopardizing the financial integrity~~
2919 ~~and stability of the institution; (iii) the institution consistently meets the financial and~~
2920 ~~administrative management standards pursuant to § 2.2-5004; and (iv) the institution's~~
2921 ~~governing body has adopted performance and accountability standards, in addition to any~~
2922 ~~institutional performance benchmarks included in the general appropriation act and developed~~
2923 ~~pursuant to § 23-9.6:1.01, against which its implementation of this additional authority can be~~
2924 ~~measured.~~

2925 ~~B.~~ If the Governor finds that the public institution of higher education meets the criteria
2926 set forth in ~~subdivision A 2, § 23.1-1004,~~ he shall authorize ~~those Cabinet Secretaries he deems~~
2927 the appropriate Cabinet Secretary to enter into a management agreement, ~~as described in § 23-~~
2928 ~~38.88,~~ with the governing body board of ~~that such~~ institution ~~addressing such matters as that~~
2929 ~~institution's in-state undergraduate student enrollment, its financial aid requirements and~~
2930 ~~capabilities, and its tuition policy for in-state undergraduate students.~~

2931 ~~C.~~ Any B. Each such management agreement, ~~executed by the designated Cabinet~~
2932 ~~Secretaries and governing body of the institution~~ shall be submitted ~~by~~ no later than the
2933 succeeding November 15 ~~of any given year~~ to the House Committee on Appropriations, the
2934 House Committee on Education, the Senate Committee on Finance, and the Senate Committee

2935 on Education and Health. The Governor shall include a recommendation for approval of the
2936 management agreement with the public institution of higher education in "The Budget Bill"
2937 submitted pursuant to subsection A of § 2.2-1509 or in his gubernatorial amendments submitted
2938 pursuant to subsection E of § 2.2-1509 due by the December 20 that immediately follows the
2939 date of submission of the management agreement to such Committees. ~~Following the~~

2940 C. The General Assembly's consideration of whether Assembly shall consider whether to
2941 approve or disapprove the management agreement as recommended, ~~if.~~ If the management
2942 agreement is approved as part of the general appropriation act, it shall become effective on the
2943 effective date of such general appropriation act.

2944 **Drafting note: Existing subsection A of § 23-38.97 is stricken here and incorporated**
2945 **instead into proposed subsection B of § 23.1-1004. A portion of existing subsection B of §**
2946 **23-38.97 is stricken here and incorporated instead into proposed § 23.1-1006.**

2947 ~~§ 23-38.92~~ 23.1-1006. Scope of subchapter Management agreement; contents and scope.

2948 A. ~~Any public~~ Each covered institution ~~of higher education~~ that complies with the
2949 requirements of this ~~subchapter article~~ shall ~~thereafter~~ have the powers and authority set forth in
2950 this ~~subchapter article~~ that are expressly included in the management agreement.

2951 B. Each management agreement ~~described in § 23-38.88.~~ shall include:

2952 1. A copy of the governing board's resolution in support of a request for restructured
2953 operational authority;

2954 2. The institution's express agreement to reimburse the Commonwealth for any
2955 additional costs that the Commonwealth incurs to provide health or other group insurance
2956 benefits to employees and undertake any risk management program that are attributable to the
2957 institution's exercise of restructured operational authority;

2958 3. The institution's undergraduate Virginia student enrollment, financial aid requirements
2959 and capabilities, and tuition policy for undergraduate Virginia students; and

2960 4. A statement of the Governor's power to void the management agreement pursuant to
2961 subsection E of § 23.1-1007.

2962 C. There shall be a presumption that restructured operational authority is not included in
2963 the management agreement, and such authority shall only be granted to a covered institution if it
2964 is expressly included in the management agreement. The only implied authority that shall be
2965 granted to a covered institution is that which is necessary to carry out the express grant of
2966 restructured operational authority. Each covered institution shall be governed and administered
2967 in the manner provided in (i) this article but subject to the expressed terms of the management
2968 agreement, (ii) the general appropriation act, and (iii) the institution's enabling statutes.

2969 B-D. Except as specifically made inapplicable under ~~this subchapter and this article or~~
2970 the express terms of a management agreement ~~described in § 23-38.88~~, the provisions of Title
2971 2.2 relating generally to the operation, management, supervision, regulation, and control of
2972 public institutions of higher education shall be applicable to covered institutions as provided by
2973 the express terms of the management agreement ~~described in § 23-38.88~~.

2974 C-E. In the event of a conflict between any provision of Title 2.2 and any provision of
2975 ~~this subchapter as expressed by~~ the management agreement, the provisions of the management
2976 agreement shall control. In the event of a conflict between any provision of this ~~subchapter~~
2977 article and an institution's enabling ~~legislation~~ statutes, the enabling ~~legislation shall~~ statutes
2978 control.

2979 ~~§ 23-38.96. Conflicts of interests.~~

2980 F. The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-
2981 3100 et seq.) that are applicable to officers and employees of a state governmental agency shall
2982 continue to apply to the members of the governing ~~body~~ board and the ~~Covered Employees~~
2983 covered employees of a covered institution.

2984 G. A covered institution, its officers, directors, employees, and agents, and the members
2985 of its governing board are entitled to the same sovereign immunity to which they would be
2986 entitled if the institution were not governed by this article.

2987 H. The Virginia Tort Claims Act (§ 8.01-195.1 et seq.) and its limitations on recoveries
2988 remain applicable to covered institutions.

2989 I. A management agreement with a public institution of higher education shall not grant
2990 restructured operational authority to the Virginia Cooperative Extension and Agricultural
2991 Experiment Station Division, the University of Virginia's College at Wise, the Virginia Institute
2992 of Marine Science, or an affiliated entity of the institution unless the intent to grant such
2993 authority and the degree to which such authority is granted is expressly included in the
2994 management agreement.

2995 ~~§ 23-38.93. Educational policies of the Commonwealth; other requirements.~~

2996 ~~A. For purposes of §§ 2.2-5004, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, 23-4.2,~~
2997 ~~23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.2,~~
2998 ~~23-9.2:3, 23-9.2:3.1 through 23-9.2:5, 23-9.6:1.01, Chapter 4.9 (§ 23-38.75 et seq.), and § 23-~~
2999 ~~38.87:17, J. For purposes of § 23.1-101, subdivisions 2 and 3 of § 23.1-102, § 23.1-104, Chapter~~
3000 ~~2 (§ 23.1-200 et seq.), §§ 23.1-306, 23.1-401, and 23.1-402, Chapter 5 (§ 23.1-500 et seq.),~~
3001 ~~Chapter 6 (§ 23.1-600 et seq.), Chapter 7 (§ 23.1-700 et seq.), §§ 23.1-800, 23.1-801, 23.1-901,~~
3002 ~~23.1-902, 23.1-904, 23.1-905, 23.1-906, and 23.1-1001, Chapter 11 (§ 23.1-1100 et seq.),~~
3003 ~~Chapter 12 (§ 23.1-1200 et seq.), subsections G, H, and I of § 23.1-1300, § 23.1-1302, and~~
3004 ~~subsection B of § 23.1-1303, each covered institution shall remain a public institution of higher~~
3005 ~~education of the Commonwealth following its conversion to a covered institution governed by~~
3006 ~~this chapter, article and shall retain the authority granted and any obligations required by such~~
3007 ~~provisions. In addition, each covered institution shall retain the authority, and any obligations~~
3008 ~~related to the exercise of such authority, that is granted to institutions of higher education~~
3009 ~~pursuant to Chapter 1.1 (§ 23-9.3 et seq.); Chapter 3 (§ 23-14 et seq.); Chapter 3.2 (§ 23-30.23~~
3010 ~~et seq.); Chapter 3.3 (§ 23-30.39 et seq.); Chapter 4 (§ 23-31 et seq.); Chapter 4.01 (§ 23-~~
3011 ~~38.10:2 et seq.); Chapter 4.1 (§ 23-38.11 et seq.); Chapter 4.4 (§ 23-38.45 et seq.); Chapter 4.4:1~~
3012 ~~(§ 23-38.53:1 et seq.); Chapter 4.4:2 (§ 23-38.53:4 et seq.); Chapter 4.4:3 (§ 23-38.53:11);~~
3013 ~~Chapter 4.4:4 (§ 23-38.53:12 et seq.); Chapter 4.5 (§ 23-38.54 et seq.); Chapter 4.7 (§ 23-38.70~~
3014 ~~et seq.); Chapter 4.8 (§ 23-38.72 et seq.); and Chapter 4.9 (§ 23-38.75 et seq.).~~

3015 B-K. State government-owned or operated and state-owned teaching hospitals that are a
3016 part of a covered institution as of the ~~institution's~~ effective date of the covered institution's initial
3017 Management Agreement management agreement shall continue to be characterized as state
3018 government-owned or operated and state-owned teaching hospitals for purposes of payments
3019 under the ~~State Plan~~ state plan for ~~Medicaid Services~~ medical assistance services adopted
3020 pursuant to § 32.1-325 ~~et seq.~~, provided that the covered institution commits to serve indigent
3021 and medically indigent patients, ~~in which event.~~ If such covered institution commits to serve
3022 indigent and medically indigent patients, the Commonwealth, through the Department of
3023 Medical Assistance Services, shall, subject to the appropriation in the current general
3024 appropriation act ~~in effect~~, continue to reimburse the full cost of the provision of care, treatment,
3025 health-related services, and educational services to indigent and medically indigent patients and
3026 continue to treat hospitals that were part of a covered institution and that were Type One
3027 Hospitals prior to the ~~institution's~~ effective date of the covered institution's initial ~~Management~~
3028 Agreement management agreement as Type One Hospitals for purposes of such reimbursement.

3029 L. Consistent with the terms of the management agreement, the governing board of each
3030 covered institution shall assume full responsibility for management of the institution, subject to
3031 the requirements and conditions set forth in this article and the management agreement and shall
3032 be fully accountable for meeting the requirements of §§ 23.1-206, 23.1-306, and 23.1-310 and
3033 such other provisions as may be set forth in the management agreement.

3034 **Drafting note: Proposed subsections D and E incorporate the provisions of existing**
3035 **subsections B and C of § 23-38.92. Proposed subdivision B 3 incorporates a portion of**
3036 **existing subsection B of § 23-38.97. The remainder of proposed subsection B and**
3037 **subsections G, H, and I incorporate portions of existing subsections C, D, and E of § 23-**
3038 **38.88. Proposed subsection C incorporates the provisions of the second paragraph of**
3039 **existing subdivision D 1 of § 23-38.88 and existing subsection B of § 23-38.91. Proposed**
3040 **subsection F incorporates the provisions of existing § 23-38.93. Proposed subsections J and**

3041 **K incorporate the provisions of existing § 23-38.96. Proposed subsection L incorporates**
3042 **the provisions of the second sentence of existing § 23-38.91. Technical changes are made.**

3043 Article 2-

3044 Eligibility Requirements and Procedures; Management Agreement-

3045 **Drafting note: The article structure of existing Subchapter 3 of is not retained in**
3046 **proposed Chapter 10.**

3047 § 23-38.94 23.1-1007.-Audits Management agreement; duration and oversight.

3048 A. Each initial management agreement shall remain in effect for a period of three years.

3049 Subsequent management agreements shall remain in effect for a period of five years.

3050 B. If an existing management agreement is not renewed or a new management
3051 agreement is not executed prior to the expiration date, the existing agreement shall remain in
3052 effect on a provisional basis for a period not to exceed one year. If, after the expiration of the
3053 provisional one-year period, the management agreement has not been renewed or a new
3054 agreement has not been executed, the public institution of higher education shall not exercise
3055 such restructured operational authority until it enters into a new management agreement with the
3056 Commonwealth.

3057 C. The Joint Legislative Audit and Review Commission, in cooperation with the Auditor
3058 of Public Accounts, shall review, for at least the first 24 months from the effective date of the
3059 management agreement, the level of compliance with the expressed terms of the management
3060 agreement, the degree to which the public institution of higher education has demonstrated its
3061 ability to manage successfully the administrative and financial operations of the institution
3062 without jeopardizing the financial integrity and stability of the institution, the degree to which
3063 the institution is meeting the state goals set forth in subsection A of § 23.1-1002, and any impact
3064 that the management agreement has had on students and employees of the institution. The Joint
3065 Legislative Audit and Review Commission shall make a written report of its review no later
3066 than June 30 of the third year of the management agreement. The Joint Legislative Audit and

3067 [Review Commission may conduct a similar review of any management agreement entered into](#)
3068 [subsequent to the initial agreement.](#)

3069 [D.](#) The Auditor of Public Accounts or his legally authorized representatives shall audit
3070 annually accounts of all covered institutions and shall distribute copies of each annual audit to
3071 the Governor and to the Chairmen of the House Committee on Appropriations and the Senate
3072 Committee on Finance. Pursuant to § 30-133, the Auditor of Public Accounts and his legally
3073 authorized representatives shall examine annually the accounts and books of each such
3074 institution; ~~however, a, but no~~ covered institution shall ~~not~~ be deemed ~~to be~~ a state or
3075 governmental agency, advisory agency, public body, or agency or instrumentality for purposes
3076 of Chapter 14 (§ 30-130 et seq.) of Title 30 except for those provisions in such chapter that
3077 relate to requirements for financial recordkeeping and bookkeeping. Each covered institution
3078 shall be subject to ~~periodic external review by the Joint Legislative and Audit Review~~
3079 ~~Commission and~~ such other reviews and audits as shall be required by law.

3080 [E. If the Governor makes a written determination that the covered institution is not in](#)
3081 [substantial compliance with the terms of the management agreement or with the requirements of](#)
3082 [this chapter, he shall provide a copy of that written determination to the chairman or rector of](#)
3083 [the governing board of the covered institution and to the General Assembly, and the covered](#)
3084 [institution shall develop and implement a plan of corrective action. The covered institution shall](#)
3085 [provide a copy of such corrective action plan to the Governor and General Assembly. If the](#)
3086 [Governor determines that the covered institution is not yet in substantial compliance with the](#)
3087 [management agreement or the requirements of this chapter after a reasonable period of time](#)
3088 [following the implementation of the corrective action plan, the Governor may void the](#)
3089 [management agreement and the institution's status as a covered institution shall terminate and it](#)
3090 [shall not exercise such restructured operational authority until the institution enters into a](#)
3091 [subsequent management agreement with the Cabinet Secretary designated by the Governor or](#)
3092 [the voided management agreement is reinstated by the General Assembly.](#)

3093 ~~§ 23-38.98. Revocation of management agreement.~~

3094 F. An institution's status as a covered institution may be revoked by an act of the General
 3095 Assembly ~~(i)~~ if the institution fails to meet the requirements of this ~~subchapter, or (ii) if the~~
 3096 ~~institution fails to meet the requirements of the management agreement as provided in § 23-~~
 3097 ~~38.88. An institution's status as a covered institution shall terminate upon the Governor voiding~~
 3098 ~~the management agreement with the institution as provided under subdivision D 4 of § 23-38.88~~
 3099 ~~article or the management agreement.~~

3100 **Drafting note: Proposed subsections A, B, C, and E incorporate portions of existing**
 3101 **subsection D of § 23-38.88. Proposed subsection D incorporates the provisions of existing §**
 3102 **23-38.94. The reference to periodic reviews by the Joint Legislative Audit and Review**
 3103 **Commission in proposed subsection D is stricken as duplicative of language in proposed**
 3104 **subsection C. Proposed subsection F incorporates the provisions of existing § 23-**
 3105 **38.98. Technical changes are made.**

3106 ~~§ 23-38.95.~~

3107 **Drafting note: Repealed by Acts 2013, c. 577, cl. 2.**

3108 ~~Article 3.~~

3109 ~~Powers and Authority Generally.~~

3110 **Drafting note: The article structure of existing Subchapter 3 of Chapter 4.10 is not**
 3111 **retained in proposed Chapter 10.**

3112 ~~§ 23-38.99 23.1-1008. Powers and Covered institutions; operational~~ authority generally.

3113 In addition to those powers granted in each covered institution's enabling ~~legislation~~
 3114 ~~statutes~~ and ~~in~~ the general appropriation act, ~~a each~~ covered institution, subject to the express
 3115 provisions of the management agreement ~~as provided in § 23-38.88, shall have, may exercise~~ all
 3116 the powers and authority necessary or convenient to carry out the purposes and provisions of
 3117 this ~~subchapter. The powers of the Board of Visitors of the institution shall include~~ article and:

3118 1. ~~To make~~ Make and execute contracts, guarantees, or any other instruments and
 3119 agreements necessary or convenient ~~for to~~ the exercise of its powers, authority, and functions,
 3120 including, ~~without limitation, to make and execute~~ contracts with persons to (i) operate and

3121 manage any or all of the covered institution's facilities or operations; and ~~to~~ (ii) incur liabilities
3122 and secure the obligations of any entity or individual; provided, however, that no covered
3123 institution may pledge the faith and credit of the Commonwealth or enter into an
3124 indemnification agreement or binding arbitration agreement contrary to ~~the law of Virginia~~
3125 applicable to state agencies, state law;

3126 2. ~~To conduct~~ Conduct or engage in any lawful business, activity, effort, or project
3127 consistent with the covered institution's purposes or necessary or convenient to the exercise of
3128 its powers and authority; and

3129 3. ~~To procure such~~ Procure insurance, participate in ~~such~~ insurance plans, provide ~~such~~
3130 self-insurance, continue participation in the Commonwealth's insurance or self-insurance plans,
3131 continue ~~to participate~~ participation in the Commonwealth's risk management programs, and
3132 continue participation in the Virginia Retirement System or other Commonwealth sponsored
3133 retirement plans subject to the conditions ~~and provisions of Article 6 (§ 23-38.114 et seq.) of~~
3134 this subchapter, or in §§ 23.1-1020 through 23.1-1026, and any combination of the foregoing, as
3135 provided in this ~~subchapter~~ article. The purchase of insurance, participation in an insurance
3136 plan, or creation of a self-insurance plan by the covered institution shall not be deemed a waiver
3137 or relinquishment of any sovereign immunity to which the covered institution or its officers,
3138 directors, employees, or agents are otherwise entitled. ~~The fact that a covered institution is~~
3139 governed by this subchapter shall not disqualify it from participating Covered institutions may
3140 participate in any Commonwealth or Virginia Retirement System insurance, self-insurance, or
3141 risk management program on the same terms and conditions applicable to other state agencies
3142 and other public institutions of higher education.

3143 **Drafting note: Technical changes.**

3144 § ~~23-38.100~~ 23.1-1009. ~~Operation of projects~~ Covered institutions; operational authority;
3145 projects.

3146 A. ~~A~~ Each covered institution ~~may is authorized to~~ acquire, plan, design, construct, own,
3147 rent as landlord or tenant, operate, control, remove, renovate, enlarge, equip, and maintain,

3148 directly or through stock or nonstock corporations or other entities, any project ~~as defined in this~~
3149 ~~subchapter~~. Such ~~projects~~ project may be owned or operated by the institution ~~or~~, other persons,
3150 or jointly by such institution and other persons, and may be operated within or ~~without~~ outside
3151 the Commonwealth, ~~so as~~ long as ~~their~~ (i) the operations of such project are necessary or
3152 desirable to assist the institution in carrying out its public purposes within the Commonwealth,
3153 and ~~so long as~~ (ii) any private benefit resulting to any such other private persons from any such
3154 project is merely incidental to the public benefit of such project.

3155 B. ~~In~~ Each covered institution may continue, adopt, and enforce policies for the
3156 operation of any facility, including any veterinary facility ~~or any~~, hospital, or other health care
3157 and related ~~facilities~~ facility owned or operated by ~~a covered~~ the institution, ~~such institution may~~
3158 ~~continue in effect or adopt and enforce all policies necessary or desirable for such operation.~~
3159 Any such policies pertaining to the operation of any veterinary facility, hospital, or other health
3160 care or related ~~facilities~~ facility may include, ~~without limitation, rules relating to~~ the conditions
3161 ~~under which the privilege~~ of practicing any health profession or veterinary medicine ~~may be~~
3162 ~~available therein in the facility~~, the admission and treatment of patients, the procedures for
3163 determining the qualification of patients for indigent care or other programs, and the protection
3164 of patients and employees, provided that such policies ~~shall do~~ not discriminate on the basis of
3165 race, religion, color, sex, national origin, or any other factor prohibited by law.

3166 **Drafting note: Technical changes.**

3167 § ~~23-38.101~~ 23.1-1010. ~~Creation~~ Covered institutions; operational authority; creation of
3168 entities; and participation in joint ventures.

3169 A. ~~A~~ Each covered institution may ~~create~~:

3170 1. (i) Create or assist in the creation of; ~~may~~ (ii) own in whole or in part or otherwise
3171 control; ~~may~~ (iii) participate in or with any entities, public or private; and ~~may~~ (iv) purchase,
3172 receive, subscribe for, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise
3173 acquire or dispose of any ~~(i) (a)~~ shares or obligations of, or other interests in, any ~~entities~~ entity
3174 organized for any purpose within or ~~without~~ outside the Commonwealth, and ~~(ii) (b)~~ obligations

3175 of any person or corporation. No part of the assets or net earnings of such institution shall inure
3176 to the benefit of, or be distributable to, any private individual; except that reasonable
3177 compensation may be paid for services rendered to or for such institution in furtherance of its
3178 public purposes; and benefits may be conferred that are in conformity with ~~said~~ its public
3179 purposes.

3180 ~~B. A covered institution may participate~~ 2. Participate in joint ventures with individuals,
3181 corporations, governmental bodies or agencies, partnerships, associations, insurers, or other
3182 entities to facilitate any activities or programs consistent with ~~the its~~ public purposes and the
3183 intent of this ~~subchapter article~~.

3184 ~~C. A covered institution may create~~ 3. Create or continue the existence of one or more
3185 nonprofit entities for the purpose of soliciting, accepting, managing, and administering grants,
3186 and gifts and bequests, including endowment gifts and bequests; and gifts and bequests in trust.

3187 ~~D. 4.~~ In carrying out any activities authorized by this ~~subchapter article, a covered~~
3188 ~~institution may~~ provide appropriate assistance, including (i) making loans from its funds, other
3189 than general fund appropriations or proceeds of bonds issued under Article X, Section 9(a), 9
3190 (b), or 9(c); of the Constitution of Virginia or under Article X, Section 9(d); ~~if such issuance is~~
3191 ~~Commonwealth general fund supported~~; if such issuance is
3192 supported by general funds and (ii) providing the time of its employees to corporations,
3193 partnerships, associations, joint ventures, or other entities; whether ~~or not~~ such ~~corporations,~~
3194 ~~partnerships, associations, joint ventures or other~~ entities are owned or controlled in whole or in
3195 part; or directly or indirectly; by such institution.

3196 **Drafting note: Technical changes.**

3197 ~~§ 23-38.102 23.1-1011. Campus Covered institutions; operational authority; campus~~
3198 police.

3199 A. A covered institution may establish or continue to operate ~~or establish~~ a campus
3200 police department in accordance with the provisions of ~~Chapter 17 Article 3~~ (§ ~~23-232 23.1-809~~
3201 et seq.); ~~as those provisions are modified by this subchapter of Chapter 8.~~ Campus police shall

3202 possess the powers provided in Article 3 of Chapter 17; ~~provided however~~ 8, except that a
3203 covered institution's employment of campus police shall be governed by the provisions of this
3204 subchapter article rather than by Chapter 28 (§ 2.2-2800 et seq.) and Chapter 29 (§ 2.2-2900 et
3205 seq.) of Title 2.2.

3206 B. Campus police officers of a covered institution shall be eligible to participate in the
3207 same state-sponsored retirement plans, ~~and~~ on the same terms and conditions, ~~that as~~ campus
3208 police officers of other public institutions of higher education ~~are eligible to participate in~~.

3209 **Drafting note: Technical changes.**

3210 Article 4.

3211 Institutional Management.

3212 **Drafting note: The article structure of existing Subchapter 3 is not retained in**
3213 **proposed Chapter 10.**

3214 § ~~23-38.104~~ 23.1-1012. Financial Covered institutions; operational authority; financial
3215 operations of covered institutions generally.

3216 A. ~~Subject to such accountability measures and audits as are provided in this subchapter~~
3217 ~~or as may otherwise be specifically made applicable by other law to institutions governed by~~
3218 ~~this subchapter and subject to the expressed terms of the management agreement described in §~~
3219 ~~23-38.88, a~~ Each covered institution may ~~be permitted~~ (i) ~~to~~ independently manage its
3220 operations and finances, including holding and investing its tuition, fees, research funds,
3221 auxiliary enterprise funds, and all other public funds; (ii) ~~to~~ create any ~~and all financial policies~~
3222 policy deemed necessary to conduct its financial operations; (iii) ~~to~~ adopt the budget for the
3223 institution; and (iv) ~~to~~ control the expenditures of all moneys generated or received by the
3224 institution, including tuition, fees, and other nongeneral fund revenue sources.

3225 B. Subject to the express terms of the management agreement ~~described in § 23-38.88, in~~
3226 ~~managing its operations and finances, the Board of Visitors, the governing board of a~~ each
3227 covered institution ~~shall have~~ has the sole authority to establish tuition, ~~fee fees~~, room, ~~and~~
3228 board, and other necessary charges consistent with sum sufficient appropriation authority for all

3229 nongeneral funds as provided by the Governor and the General Assembly in the
3230 Commonwealth's biennial ~~appropriations authorization~~ appropriation act. ~~The Board of Visitors~~
3231 ~~shall include the institution's commitment to provide need-based grant aid for middle and~~
3232 ~~lower income Virginia students in a manner that encourages student enrollment and progression~~
3233 ~~without respect to potential increases in tuition and fees.~~ In the event that the institution retains
3234 ~~any or all of the~~ nongeneral funds ~~are retained by the institution, the institution, it~~ shall invest
3235 such funds consistent with an investment policy established by the ~~Board of Visitors governing~~
3236 board and retain all income earned on such investments. In the event that the Commonwealth
3237 holds ~~any or all of the~~ nongeneral funds ~~are held~~ on behalf of the institution ~~by the~~
3238 ~~Commonwealth of Virginia~~, the institution shall receive a share of the income earned by the
3239 Commonwealth on the investment of such funds as provided in subsection C of § 2.2-5005 23.1-
3240 1002.

3241 C. The governing board of each covered institution shall include in its six-year plan
3242 pursuant to § 23.1-306 its commitment to providing need-based grant aid for middle-income and
3243 lower-income Virginia students in a manner that encourages student enrollment and progression
3244 without respect to potential increases in tuition and fees.

3245 D. Each covered institution's management agreement ~~described in § 23-38.88~~ shall
3246 include the quantification of cost savings realized as a result of the ~~additional restructured~~
3247 operational ~~flexibility provided authority~~ pursuant to this ~~subchapter article~~.

3248 ~~D. A-E. Each~~ covered institution may enter into any contract ~~which the institution that it~~
3249 determines to be necessary or appropriate to place any bond or investment of the institution, in
3250 whole or in part, on the interest rate, cash flow, or other basis desired by the institution, ~~which~~
3251 ~~contract may include, without limitation, including~~ contracts commonly known as interest rate
3252 swap agreements, ~~and~~ futures ~~or, and~~ contracts providing for payments based on levels of, or
3253 changes in, interest rates. ~~These~~ Each covered institution may enter into such contracts ~~or~~
3254 ~~arrangements may be entered into by the institution~~ in connection with, or incidental to, or for
3255 the purpose of entering into, or maintaining any (i) agreement that secures bonds, notes, or other

3256 obligations or (ii) investment or contract providing for investment, otherwise authorized by law,
3257 including ~~but not limited to~~ § ~~23-38.105~~ 23.1-1013. ~~These~~ Such contracts ~~and arrangements~~ may
3258 contain such payment, security, default, remedy, and other terms and conditions as determined
3259 by the institution, after giving due consideration to the creditworthiness of the counterpart or
3260 other obligated party, including any rating by any nationally recognized rating agency, and any
3261 other criteria ~~as that~~ may be appropriate. Any money set aside and pledged to secure payments
3262 of bonds, notes, or other obligations or any ~~of the contracts~~ contract entered into pursuant to this
3263 section may be pledged to and used to service any ~~of the contracts or agreements entered into~~
3264 pursuant to this section such contract.

3265 § ~~23-38.106~~. ~~Records of financial transactions~~.

3266 F. The governing ~~body board~~ of ~~a each~~ covered institution shall adopt a system of
3267 independent financial management that includes bookkeeping and accounting procedures that
3268 have been prescribed for governmental organizations by the Government Accounting Standards
3269 Board.

3270 **Drafting note: Proposed subsection F incorporates the provisions of existing § 23-**
3271 **38.106. Technical changes are made.**

3272 § ~~23-38.105~~ 23.1-1013. ~~Investments~~ Covered institutions; operational authority;
3273 financial operations; investment of operating funds.

3274 A-Each covered institution may invest its operating funds in any obligations or securities
3275 that are considered legal investments for public funds in accordance with Chapter 45 (§ 2.2-
3276 4500 et seq.) of Title 2.2. Such institution's governing ~~body board~~ shall adopt written investment
3277 guidelines ~~which that~~ provide that such investments shall be made solely in the interest of the
3278 covered institution and shall be undertaken with the care, skill, prudence, and diligence under
3279 the circumstances then prevailing that a prudent person acting in a like capacity and familiar
3280 with such matters would use in the conduct of an enterprise of a like character and with like
3281 aims.

3282 **Drafting note: Technical changes.**

3283 § ~~23-38.107~~ 23.1-1014. ~~Financing~~ Covered institutions; operational authority; financial
3284 operations; financing and indebtedness.

3285 A. ~~A~~ Each covered institution ~~shall have the authority to~~ may:

3286 1. Borrow money and issue bonds, notes, or other obligations as provided in this
3287 ~~subchapter article~~ and ~~to~~ purchase such bonds, notes, or other obligations;

3288 2. Seek financing from, incur, or assume indebtedness to, and enter into contractual
3289 commitments with, the Virginia Public Building Authority and the Virginia College Building
3290 Authority, which authorities are authorized to borrow money and make and issue negotiable
3291 notes, bonds, notes, or other obligations ~~and other evidences of indebtedness~~ to provide such
3292 financing relating to facilities or any project; and

3293 3. Seek financing from, incur, or assume indebtedness to, and enter into contractual
3294 commitments with, the Commonwealth as otherwise provided by law relating to the institution's
3295 facilities or any project.

3296 B. Notwithstanding the provisions of this chapter, no covered institution ~~shall be deemed~~
3297 ~~to be is~~ exempt from any requirement or covenant contained in any outstanding bonds, notes, or
3298 other ~~evidences of indebtedness obligations~~.

3299 **Drafting note: Technical changes.**

3300 § ~~23-38.108~~ 23.1-1015. ~~Power~~ Covered institutions; operational authority; financial
3301 operations; power to issue bonds, notes, or other obligations.

3302 A. Notwithstanding the provisions of § ~~23-29~~ 23.1-1119, ~~which shall be inapplicable to~~
3303 ~~the exercise by a covered institution of the authority granted in this article~~, a covered institution
3304 may (i) issue bonds, notes, or other obligations ~~from time to time~~ for any purpose that is
3305 consistent with its institutional mission, including, ~~without limitation~~, to (a) finance or refinance
3306 any project, ~~to~~ (b) appropriately manage operational cash flows, ~~to~~ (c) provide for ~~short-term~~
3307 short-term financing, ~~to~~ (d) refund bonds, notes, or other obligations issued ~~therefore~~ by or on
3308 behalf of such institution, or otherwise, including bonds, notes, or other obligations or
3309 obligations not then subject to redemption, and ~~may~~ (ii) guarantee, assume, or otherwise agree

3310 to pay, in whole or in part, indebtedness issued by such institution or any affiliated entity for
3311 managing operational cash flows or resulting in the acquisition or construction of facilities for
3312 the benefit of such institution; or the refinancing thereof; ~~provided, however, that nothing.~~

3313 B. Nothing in this ~~subchapter~~ article shall preclude a covered institution from
3314 participation in any financing program or bond issue established and implemented by the
3315 Commonwealth; or any agency ~~thereof of the Commonwealth~~, including, ~~without limitation, (i)~~
3316 any financing program or bond issue under Article X, Section 9_(b) or 9_(c) of the Constitution
3317 of Virginia, ~~or and (ii)~~ any financing program or bond issue under Article X, Section 9_(d) of the
3318 Constitution of Virginia undertaken by the Treasury Board, the Virginia College Building
3319 Authority, or the Virginia Public Building Authority, if such institution is otherwise eligible ~~for~~
3320 and approved ~~for such participation to participate~~ and is otherwise able to fulfill any
3321 requirements that may be imposed upon it ~~in relation to such~~ by virtue of its participation.

3322 B. C. Notwithstanding Article 8 (§ 2.2-2415 et seq.) of Chapter 24 of Title 2.2, Chapter
3323 3_11 (§ ~~23-14~~ 23.1-1100 et seq.) ~~of Title 23~~, and § ~~23-65~~ 23.1-2205, each covered ~~institutions~~
3324 institution may issue bonds, notes, or other obligations consistent with debt capacity and
3325 management policies and guidelines established by its ~~Board of Visitors governing board~~
3326 without (i) obtaining the consent of any legislative body, elected official, commission, board,
3327 bureau, political subdivision, or agency of the Commonwealth ~~or of any political subdivision,~~
3328 ~~and without; (ii)~~ any proceedings or conditions other than those specifically required by this
3329 ~~subchapter. Bonds, notes, or other obligations may be issued for the benefit of covered~~
3330 ~~institutions without article; (iii)~~ the approval required by the provisions of Article 8 (§ 2.2-2415
3331 et seq.) of Chapter 24 of Title 2.2. ~~No bonds, notes, or other obligations issued under the~~
3332 ~~authority of this article shall be subject to; or (iv)~~ any ~~review or approval procedure, rules,~~
3333 regulations, regulation or ~~procedures~~ procedure, including a review or approval procedure,
3334 adopted pursuant to Chapter 3_11 (§ ~~23-14~~ 23.1-1100 et seq.) ~~of Title 23.~~

3335 C. A-D. Each covered institution may issue such types of bonds, notes, or other
3336 obligations as it ~~may determine~~ determines are appropriate and consistent with debt capacity and

3337 management policies and guidelines established by its ~~Board of Visitors governing board,~~
3338 including ~~without limitation,~~ bonds, notes, or other obligations payable as to principal and
3339 interest from any one or more of the following sources: (i) its revenues generally; (ii) income
3340 and revenues derived from the operation, sale, or lease of a particular project ~~or projects,~~
3341 whether or not ~~they are~~ it is financed or refinanced from the proceeds of such bonds, notes, or
3342 other obligations; (iii) funds realized from the enforcement of security interests or other liens or
3343 obligations securing such bonds, notes, or other obligations; (iv) proceeds from the sale of
3344 bonds, notes, or other obligations; (v) payments under letters of credit, policies of municipal
3345 bond insurance, guarantees, or other credit enhancements; (vi) any reserve or sinking funds
3346 created to secure such payment; (vii) accounts receivable of such institution; or (viii) other
3347 available funds of such institution.

3348 D-E. Any bonds, notes, or other obligations may be ~~additionally~~ supported by any grant,
3349 contribution, or appropriation from a participating political subdivision, the covered institution,
3350 the Commonwealth ~~or,~~ any political subdivision, agency, or instrumentality ~~thereof of the~~
3351 Commonwealth, any federal agency, or any unit, private corporation, partnership, association, or
3352 individual.

3353 E-F. Bonds, notes, or other obligations of a covered institution are ~~declared to be~~ for an
3354 essential public and governmental purpose.

3355 F-G. It shall be lawful for any bank or trust company within or ~~without outside~~ the
3356 Commonwealth to serve as depository of the proceeds of bonds, notes, or other obligations or ~~of~~
3357 other revenues of a covered institution ~~and to,~~ furnish indemnifying bonds, notes, or other
3358 obligations, or ~~to~~ pledge such securities as may be required by such institution, provided that
3359 any such deposits shall be collateralized in accordance with the Security for Public Deposits Act
3360 (§ 2.2-4400 et seq.) in the case of a bank or savings institution or ~~in accordance with~~ Article 3 (§
3361 6.2-1047 et seq.) of Chapter 10 of Title 6.2 in the case of a trust company.

3389 2. If the capital project is funded in whole or in part with a general fund appropriation
3390 for that purpose or proceeds from bonds issued under Article X, Section 9_(a), 9_(b), or 9_(c) of
3391 the Constitution of Virginia, or under Article X, Section 9_(d) of the Constitution of Virginia, if
3392 such issuance is ~~Commonwealth general fund supported by general funds, of the Constitution of~~
3393 ~~Virginia~~, the project shall remain subject to ~~such the~~ pre-appropriation approvals ~~as that~~ are in
3394 effect ~~from time to time~~ within the executive and legislative branches of state government, but
3395 ~~such project~~ may ~~nevertheless~~ be exempt under the management agreement from any ~~and all~~
3396 state post-appropriation review, approval, administrative, or other policy or procedure functions
3397 performed or required by the Department of General Services, the Division of Engineering and
3398 Buildings, the Department of Planning and Budget, and any other state agency that supports the
3399 functions performed by ~~these such~~ departments, ~~subject to the terms of any management~~
3400 ~~agreement~~.

3401 3. If a covered institution constructs improvements on land, or renovates property, that
3402 was originally ~~was~~ acquired or constructed in whole or in part with a general fund appropriation
3403 for that purpose or proceeds from bonds issued under Article X, Section 9_(a), 9_(b), or 9_(c) of
3404 the Constitution of Virginia, or under Article X, Section 9_(d) of the Constitution of Virginia if
3405 such issuance is ~~Commonwealth general fund supported, of the Constitution of Virginia,~~
3406 supported by general funds and such improvements or renovations are undertaken entirely with
3407 funds not appropriated by the General Assembly, such improvements or renovations ~~must shall~~
3408 be consistent with such institution's master plan approved by its governing ~~body board~~ and, if
3409 the cost of such improvements or renovations is reasonably expected to exceed \$2 million, the
3410 institution's decision to undertake such improvements or renovations shall be communicated to
3411 the Governor and to the Chairmen of the Senate Committee on Finance and the House
3412 Committee on Appropriations no later than 60 days prior to the (i) commencement of
3413 construction or renovation or (ii) issuance of bonds, notes, or other obligations to finance such
3414 construction or renovation.

3415 D. A-E. Each covered institution ~~shall have the authority to~~ may designate its own
3416 building official who shall be a full-time employee ~~and who is hereby authorized to~~ and may
3417 determine the suitability for occupancy of, and ~~to~~ issue certifications for building occupancy for,
3418 all capital projects undertaken at ~~that such~~ institution, ~~and who, prior to issuing any such~~
3419 ~~certification.~~ Such building official shall ensure:

3420 1. Ensure that the Virginia Uniform Statewide Building Code (§ 36-97 et seq.)
3421 requirements are met for that capital project and that such project has been inspected by the
3422 State Fire Marshal or his designee prior to issuing any such certification. ~~When serving as the~~
3423 ~~building official, such individual shall report;~~

3424 2. Report directly and exclusively to the ~~Board of Visitors governing board~~ of the
3425 institution and ~~shall~~ be subject to review by the appropriate personnel in the Department of
3426 General Services. ~~The designated official shall be;~~

3427 3. Be certified by the Department of Housing and Community Development to perform
3428 this function. ~~The individual employed or contracted to serve in such capacity shall have; and~~

3429 4. Have adequate resources and staff who are certified by the Department of Housing
3430 and Community Development in accordance with § 36-137 for such purpose, and who shall
3431 review plans, specifications, and documents for compliance with codes and standards and
3432 perform required inspections of the work in progress and the completed project.

3433 F. No individual licensed professional architect or engineer hired or contracted to
3434 perform ~~these the~~ functions set forth in subsection E shall also perform other code-related
3435 design, construction, facilities-related project management, or facilities management functions
3436 for the institution on the same project.

3437 **Drafting note: Technical changes.**

3438 § ~~23-38.110~~ 23.1-1017. ~~Procurement; discrimination prohibited; participation of small,~~
3439 ~~women-owned, and minority-owned business enterprises~~ Covered institutions; operational
3440 authority; procurement.

3441 A. Subject to the express provisions of the management agreement ~~described in § 23-~~
3442 ~~38.88,~~ each covered ~~institutions~~ institution may be exempt from the provisions of the Virginia
3443 Public Procurement Act (§ 2.2-4300 et seq.), except for § 2.2-4342-~~(,~~ which ~~section~~ shall not be
3444 construed to require compliance with the prequalification application procedures of subsection
3445 B of § 2.2-4317);; provided, however, that (i) any deviations from the Virginia Public
3446 Procurement Act ~~approved in a Management Agreement in the management agreement~~ shall be
3447 uniform across all covered institutions; and ~~provided further that~~ (ii) the governing ~~body~~ board
3448 ~~of a~~ the covered institution shall adopt, and the covered institution shall comply with, policies
3449 for the procurement of goods and services, including professional services, that shall (a) be
3450 based upon competitive principles ~~and shall,~~ (b) in each instance seek competition to the
3451 maximum practical degree. ~~The policies shall,~~ (c) implement a system of competitive
3452 negotiation for professional services pursuant to §§ 2.2-4303.1 and ~~subsections A, B, and C of §~~
3453 ~~2.2-4302.2,~~ shall (d) prohibit discrimination ~~because of in the solicitation and award of contracts~~
3454 based on the bidder's or offeror's race, religion, color, sex ~~or,~~ national origin ~~of the bidder or~~
3455 ~~offeror in the solicitation or award of contracts,~~ shall, age, or disability or on any other basis
3456 prohibited by state or federal law, (e) incorporate the prompt payment principles of §§ 2.2-4350
3457 and 2.2-4354, ~~and shall~~ (f) consider the impact on correctional enterprises under § 53.1-47, and
3458 (g) provide that whenever solicitations are made seeking competitive procurement of goods or
3459 services, it shall be a priority of the institution to provide for fair and reasonable consideration
3460 of small, women-owned, and minority-owned businesses and to promote and encourage a
3461 diversity of suppliers.

3462 B. Such policies may, ~~among other things,~~ (i) provide for consideration of the dollar
3463 amount of the intended procurement, the term of the anticipated contract, and the likely extent
3464 of competition; (ii) implement a prequalification procedure for contractors or products; and (iii)
3465 include provisions for cooperative arrangements with other covered institutions, other public or
3466 private educational institutions, or other public or private organizations or entities, including 1
3467 public-private partnerships, public bodies, charitable organizations, health care provider

3468 alliances or purchasing organizations or entities, state agencies or institutions of the
3469 Commonwealth or the several states, the District of Columbia, the territories ~~and, or~~ the United
3470 States, and any combination ~~thereof of such organizations and entities.~~

3471 C. Nothing in this section shall preclude a covered institution from requesting and
3472 utilizing, ~~and covered institutions are hereby encouraged to utilize,~~ the assistance of the Virginia
3473 Information Technologies Agency ~~in~~ for information technology procurements and covered
3474 institutions are encouraged to utilize such assistance.

3475 ~~C. In the solicitation and awarding of contracts, no covered institution shall discriminate~~
3476 ~~against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or~~
3477 ~~any other basis prohibited by state or federal law. The procurement policies of a covered~~
3478 ~~institution shall provide that, whenever solicitations are made seeking competitive procurement~~
3479 ~~of goods or services, it shall be a priority of the institution to provide for fair and reasonable~~
3480 ~~consideration of small, women-owned, and minority-owned businesses and to promote and~~
3481 ~~encourage a diversity of suppliers. The~~ D. Each covered institution shall post on the Department
3482 of General Services' central electronic procurement website all Invitations to Bid, Requests for
3483 Proposal, sole source award notices, and emergency award notices to ensure visibility and
3484 access to the Commonwealth's procurement opportunities on one website.

3485 ~~D. E.~~ E. As part of any procurement provisions of ~~a the~~ management agreement, the
3486 governing board of a covered institution shall identify the public, educational, and operational
3487 interests served by any procurement rule ~~or rules~~ that ~~deviate~~ deviates from ~~those procurement~~
3488 rules in the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

3489 **Drafting note: Technical changes.**

3490 ~~§ 23-38.111 23.1-1018. Information Covered institutions; operational authority;~~
3491 information technology.

3492 Subject to the terms of the management agreement, ~~covered institutions~~ each covered
3493 institution may be exempt from the provisions governing the Virginia Information Technologies
3494 Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2, and the provisions governing the

3495 Information Technology Advisory Council, Article 35 (§ 2.2-2699.5 et seq.) of Chapter 26 of
3496 Title 2.2; ~~provided, however, that, if~~ the governing ~~body board~~ of ~~a such~~ covered institution
3497 ~~shall adopt, adopts~~ and the covered institution ~~shall comply complies~~ with, ~~(i)~~ policies for the
3498 procurement of information technology goods and services, including professional services, that
3499 are consistent with the requirements of § ~~23-38.110~~ 23.1-1017 and ~~that~~ include provisions
3500 addressing cooperative arrangements for such procurement as described in § ~~23-38.110, 23.1-~~
3501 1017 and ~~shall adopt and comply with~~ ~~(ii)~~ institutional policies and professional best practices
3502 regarding strategic planning for information technology, project management, security,
3503 budgeting, infrastructure, and ongoing operations.

3504 **Drafting note: Technical changes.**

3505 § ~~23-38.112~~ 23.1-1019. ~~Acquisition, possession, operation, and disposition of Covered~~
3506 ~~institutions; operational authority; property; acceptance of,~~ grants, and loans.

3507 A. Nothing in this ~~subsection~~ section shall limit or reduce the authority granted to a
3508 covered institution in §§ ~~23-38.109 and 23-38.113, which shall govern~~ 23.1-1016 and 23.1-1028
3509 concerning the planning, design, construction, and implementation of capital projects and leases
3510 ~~by covered institutions. In order to continue its mission as a public institution of higher~~
3511 ~~education:~~

3512 ~~1. A-B.~~ Each covered institution may continue to hold, possess, operate, and dispose of
3513 any real, personal, tangible, or intangible property, ~~real or personal, tangible or intangible,~~ that
3514 such covered institution held, possessed, or operated prior to ~~its~~ the effective date of ~~the its~~
3515 initial ~~Management Agreement~~ management agreement as follows:

3516 ~~a. If the property is~~ 1. For real property, including land, buildings, and any
3517 improvements to land or buildings, ~~and it was~~ acquired or constructed in whole or in part with
3518 general fund appropriations or proceeds from a general obligation bond issue under Article X,
3519 Section 9_(a) or 9_(b) of the Constitution of Virginia, the covered institution ~~(i)~~ shall (i) hold,
3520 possess, and operate such property in accordance with the institution's enabling ~~legislation~~
3521 statutes, ~~with~~ this ~~subchapter~~ article, and ~~with~~ any policies adopted by the governing ~~body board~~

3522 of the institution pursuant ~~thereto, to this article~~ and (ii) ~~shall~~ dispose of such property in
3523 accordance with general law applicable to state-owned property and ~~with~~ the institution's
3524 enabling ~~legislation statutes~~.

3525 ~~b. If the property is 2. For~~ real property, including land, buildings, and any
3526 improvements to land or buildings, ~~and it was~~ acquired or constructed either (i) entirely with
3527 nongeneral fund appropriations or proceeds from a nongeneral fund revenue bond issue under
3528 Article X, Section 9_(c) or 9_(d) of the Constitution of Virginia; or (ii) entirely with funds other
3529 than funds appropriated by the General Assembly or proceeds from a general obligation bond
3530 issue under Article X, Section 9_(a) or 9_(b) of the Constitution of Virginia, the covered
3531 institution shall hold, possess, operate, and dispose of such property in accordance with the
3532 institution's enabling ~~legislation statutes~~, notwithstanding the approval requirements of
3533 ~~subdivision B 1 of § 23-77.1, with 23.1-1301; this subchapter, article; and with~~ any policies
3534 adopted by the governing ~~body board~~ of the institution pursuant ~~thereto to this article~~.

3535 ~~c. If the property is 3. For~~ personal property, the covered institution shall hold, possess,
3536 operate, and dispose of such property in accordance with the institution's enabling ~~legislation~~
3537 ~~statutes, with this subchapter article, and with~~ any policies adopted by the governing ~~body board~~
3538 of the institution pursuant ~~thereto to this article~~.

3539 ~~2-C.~~ After the effective date of the initial ~~Management Agreement as provided in § 23-~~
3540 ~~38-88 management agreement~~, a covered institution may acquire any real property, construct
3541 improvements ~~thereon in accordance with § 23-38.109, on real property pursuant to § 23.1-~~
3542 ~~1016~~, and acquire any personal property, tangible or intangible, and hold, possess, operate, and
3543 dispose of such real and personal property as follows:

3544 ~~a. If the property is 1. For~~ real property, including land, buildings, and improvements to
3545 land ~~or and~~ buildings, ~~and it is~~ acquired or constructed with funds appropriated by the General
3546 Assembly for that purpose or with proceeds from a general obligation bond issue under Article
3547 X, Section 9_(a) or 9_(b) of the Constitution of Virginia, the covered institution ~~(i)~~ shall ~~(i)~~ hold,
3548 possess, and operate such property in accordance with the institution's enabling ~~legislation~~

3549 ~~statutes, with~~ this ~~subchapter article~~, and ~~with~~ any policies adopted by the governing ~~body board~~
3550 of the institution pursuant ~~thereto to this article~~, and (ii) ~~shall~~ dispose of such property in
3551 accordance with general law applicable to state-owned property and with the covered
3552 institution's enabling ~~legislation statutes~~.

3553 ~~b. If the property is 2. For~~ real property, including land, buildings, and improvements to
3554 land or buildings, ~~and the property is~~ acquired with any funds in the covered institution's
3555 possession, other than ~~any~~ funds appropriated by the General Assembly or proceeds from a
3556 general obligation bond issue under Article X, Section 9_(a) or 9_(b) of the Constitution of
3557 Virginia, the institution shall hold, possess, operate, dispose of, and otherwise deal with such
3558 property, or any right, easement, estate, or interest ~~therein in such property~~, acquired by
3559 purchase, exchange, gift, assignment, transfer, foreclosure, lease, bequest, devise, operation of
3560 law, or other means, in accordance with the covered institution's enabling ~~legislation statutes~~,
3561 notwithstanding the approval requirements of ~~subdivision B 1 of § 23-77.1, with 23.1-1301~~; this
3562 ~~subchapter, article~~; and ~~with~~ any policies adopted by the governing ~~body board~~ of the institution
3563 pursuant ~~thereto to this article~~.

3564 ~~e. If the property is 3. For~~ personal property, the institution shall hold, possess, operate,
3565 and dispose of such property in accordance with the institution's enabling ~~legislation statutes~~,
3566 ~~with~~ this ~~subchapter article~~, and ~~with~~ any policies adopted by the governing ~~body board~~ of the
3567 institution pursuant ~~thereto to this article~~.

3568 ~~3-D.~~ With the approval of the Governor or as otherwise provided by law, and consistent
3569 with ~~the provisions of subdivisions 1 and 2 of this subsection~~ ~~subsections B and C~~, a covered
3570 institution may (i) sell, assign, encumber, mortgage, demolish, or otherwise dispose of any
3571 project ~~or~~, any other ~~real, personal, tangible, or intangible~~ property, ~~real or personal, tangible or~~
3572 ~~intangible~~, or any right, easement, estate, or interest ~~therein in any such project or property~~, or
3573 any deed of trust or mortgage lien interest owned by it, under its control or custody or in its
3574 possession, and may release or relinquish any right, title, claim, lien, interest, easement, or

3575 demand however acquired, including any equity or right of redemption in property foreclosed
3576 by it; and

3577 4. May (ii) do any of the foregoing by public or private transaction.

3578 B. E. A covered institution may accept loans, grants, contributions, or other assistance
3579 from the federal government, the Commonwealth ~~or~~, any political subdivision ~~thereof of the~~
3580 Commonwealth, or ~~from~~ any other public or private source to carry out its mission as a public
3581 institution of higher education ~~of the Commonwealth~~ and any of the purposes of this ~~subchapter~~
3582 article. A covered institution may enter into any agreement or contract regarding ~~or relating to~~
3583 the acceptance, use, or repayment of any such loan, grant, contribution, or assistance; and may
3584 enter into ~~such~~ other agreements with any such entity in furtherance of the purposes of this
3585 subchapter article.

3586 ~~Counties, cities, and towns are hereby authorized to~~ F. Localities may lend or donate
3587 money or other property to a covered institution for any of ~~its the institution's~~ purposes. Any
3588 local government making ~~the a~~ grant or loan may restrict the use of the grant or loan to a
3589 specific project, within or ~~without that~~ outside such locality.

3590 C. G. Notwithstanding ~~the provisions any other provision~~ of this chapter, no covered
3591 institution shall take action with regard to any real or personal property, ~~real or personal~~, if such
3592 action would be deemed to be in violation of any requirement or covenant contained in any
3593 outstanding bonds, notes, or other ~~evidences of indebtedness obligations~~.

3594 **Drafting note: Technical changes.**

3595 Article 6.

3596 Human Resources.

3597 **Drafting note: The article structure of existing Subchapter 3 is not retained in**
3598 **proposed Chapter 10.**

3599 ~~§ 23-38.114 23.1-1020. General; definition Covered institutions; operational authority;~~
3600 human resources; covered employees generally.

3601 A. ~~Covered Employees are state employees of a covered institution of the~~
3602 ~~Commonwealth of Virginia. Notwithstanding subsections B and C of this section, the state~~
3603 ~~retirement system, state health insurance program, state workers' compensation coverage~~
3604 ~~program, and state grievance procedure, as they may be amended from time to time, shall~~
3605 ~~continue to apply to and govern all eligible Covered Employees. If, however, a covered~~
3606 ~~institution has been or is permitted by law other than in this chapter to establish an alternative~~
3607 ~~health insurance plan or an alternative faculty or University of Virginia Medical Center~~
3608 ~~retirement plan or plans, such alternative health insurance or faculty or University of Virginia~~
3609 ~~Medical Center retirement plan or plans shall apply to and govern the Covered Employees~~
3610 ~~included in such plan or plans. Each Covered Employee covered employee shall continue to be~~
3611 ~~a state employee who is~~ governed by and ~~be~~ eligible to participate in the human resources and
3612 benefits programs ~~which that~~ governed him and in which he was eligible to participate
3613 immediately prior to the effective date of the initial ~~Management Agreement~~ management
3614 agreement for the covered institution by which he is employed ~~unless and, including the state~~
3615 ~~retirement system, state health insurance program, state workers' compensation coverage~~
3616 ~~program, and state grievance procedure, until the covered institution establishes~~ a human
3617 resources program or programs, plan, or procedure applicable to him ~~is established by that~~
3618 ~~covered institution~~ pursuant to ~~§§ 23-38.116, 23-38.118, 23-38.119 and 23-38.120~~ this article.
3619 If, however, a covered institution is permitted by law other than in this chapter to establish an
3620 alternative health insurance plan or an alternative faculty or University of Virginia Medical
3621 Center retirement plan, such alternative health insurance or faculty or University of Virginia
3622 Medical Center retirement plan shall apply to and govern the covered employees included in
3623 such plan.

3624 B. ~~Even if a covered institution establishes a human resources program or programs,~~
3625 ~~plan, or procedure pursuant to §§ 23-38.116, 23-38.118, 23-38.119 and 23-38.120, a salaried~~
3626 ~~nonfaculty Covered Employee who was in the employment of that covered institution as of the~~
3627 ~~day prior to the effective date of the initial Management Agreement, except employees of the~~

3628 ~~University of Virginia Medical Center, may elect pursuant to § 23-38.115 to continue to~~
3629 ~~participate in and be governed by the state human resources program set forth in Chapters 28 (§~~
3630 ~~2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2 and administered by the Department of~~
3631 ~~Human Resources Management. In such case, in addition to the state human resources plans,~~
3632 ~~programs, policies and procedures set forth in subsection A, all other state human resources and~~
3633 ~~benefit plans, programs, policies and procedures that apply to and govern state employees shall~~
3634 ~~continue to apply to and govern such salaried nonfaculty Covered Employees.~~

3635 ~~C. Any All human resources ~~program or~~ programs, plans, policies ~~or, and~~ procedures~~
3636 ~~established by the governing body board of a covered institution pursuant to §§ 23-38.116, 23-~~
3637 ~~38.118, 23-38.119, and 23-38.120 this article shall apply to and govern (i) all salaried~~
3638 ~~nonfaculty Covered Employees of that covered institution who were in its employment as of the~~
3639 ~~day prior to the effective date of the initial Management Agreement and who elect pursuant to §~~
3640 ~~23-38.115 to participate in and be governed by such program or programs, plans, policies, and~~
3641 ~~procedures, (ii) all salaried nonfaculty Covered Employees of that covered institution who are~~
3642 ~~employed by that institution on or after the effective date of the initial Management Agreement,~~
3643 ~~(iii) all non-salaried nonfaculty Covered Employees of that covered institution without regard to~~
3644 ~~when they were hired, (iv) all faculty Covered Employees of that covered institution without~~
3645 ~~regard to when they were hired, and (v) all employees of the University of Virginia Medical~~
3646 ~~Center without regard to when they were hired. For purposes of this article, "participating~~
3647 ~~Covered Employee" means a Covered Employee described in subdivisions (i) through (v) of this~~
3648 ~~subsection all participating covered employees, except as provided in § 23.1-1022.~~

3649 ~~D. C.~~ All covered institutions shall be responsible for meeting the human resource
3650 reporting requirements established by the Governor ~~or~~ and General Assembly.

3651 **Drafting note: The first sentence of existing subsection A of § 23-38.114 is stricken**
3652 **as duplicative of the second sentence of such subsection. The first sentence of existing**
3653 **subsection B of § 23-38.114 is stricken as duplicative of proposed subsection A of § 23.1-**
3654 **1022. The second sentence of existing subsection B of § 23-38.114 is stricken here and**

3655 **incorporated instead into proposed subsection B of § 23.1-1022. Technical changes are**
3656 **made.**

3657 § ~~23-38.116~~ 23.1-1021. ~~Human resources programs~~ Covered institutions; operational
3658 authority; human resources; establishment of a human resources program.

3659 A. As used in this section, "active military duty" means federally funded military duty as
3660 (i) a member of the Armed Forces of the United States on active duty pursuant to Title 10 of the
3661 United States Code or (ii) a member of the Virginia National Guard on active duty pursuant to
3662 either Title 10 or Title 32 of the United States Code.

3663 B. The governing ~~body~~ board of each covered institution may elect to adopt for its
3664 nonfaculty participating ~~Covered Employees~~ covered employees either (i) one or more human
3665 resources programs that is or are generally consistent with the provisions of Chapters 28 (§ 2.2-

3666 2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2, pertaining generally to state employees, or
3667 (ii) such other human resources program or programs as it determines to be appropriate. The
3668 covered institution may administer such human resources program or programs itself or ~~may~~
3669 contract with another covered institution or ~~with~~ the Department of Human Resources
3670 Management to administer some or all of its human resources programs, subject to the execution
3671 of any participation or operating agreement as the parties to that agreement may deem necessary
3672 and appropriate.

3673 B.C. Each covered institution may (i) establish a human resources program or programs
3674 for participating ~~Covered Employees~~ covered employees who are not ~~included in~~ subject to a
3675 human resources program established pursuant to subsection ~~A B~~, including a program or
3676 programs relating to ~~those other personnel~~ such employees that its enabling ~~legislation~~ statutes
3677 authorizes it to employ. ~~In addition, such institution may, in its discretion, and~~ (ii) contract for
3678 such consultants, attorneys, accountants, ~~and~~ financial experts, and ~~such~~ independent providers
3679 of expert advice and consultation as ~~may be~~ such institution deems necessary or desirable ~~in the~~
3680 judgment of the covered institution to assist in the establishment of such program.

3681 ~~C.~~D. Any human resources program adopted by the governing ~~body~~ board of a covered
3682 institution for participating ~~Covered Employees~~ covered employees shall be based on merit
3683 principles and objective methods of appointment, promotion, transfer, layoff, removal,
3684 severance, and discipline, and shall include other appropriate topics ~~included in such a human~~
3685 ~~resources program~~ based on such principles and methods.

3686 E. The human resources program adopted by the governing board of a covered
3687 institution shall, consistent with applicable federal law, address (i) the employment of
3688 participating covered employees who leave the service of a covered institution for service in any
3689 of the Armed Forces of the United States, (ii) the employment of veterans who have served in
3690 any of the Armed Forces of the United States following the termination of their military service,
3691 and (iii) leave and other policies affecting the employment of participating covered employees
3692 who have been ordered to active military duty in the Armed Forces of the United States or the
3693 organized reserve forces of any of the armed services of the United States or the Virginia
3694 National Guard.

3695 **Drafting note: Proposed subsections A and E incorporate the provisions of existing**
3696 **subsection D of § 23-38.118. Technical changes are made.**

3697 § ~~23-38.115~~ 23.1-1022. ~~Election~~ Covered institutions; operational authority; human
3698 resources; election by certain ~~Covered Employees~~ covered employees.

3699 A. If the governing ~~body~~ board of a covered institution establishes a human resources
3700 program or programs pursuant to § ~~23-38.116~~ 23.1-1021, a salaried nonfaculty ~~Covered~~
3701 ~~Employee of that covered institution who was in its employment as of~~ covered employee who
3702 was employed by the covered institution on the day prior to the effective date of the initial
3703 ~~Management Agreement~~ management agreement, except employees of the University of
3704 Virginia Medical Center, ~~shall be permitted to~~ may elect within a prescribed period of the
3705 establishment of the human resources program to participate in and be governed by either (i) the
3706 state human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900
3707 et seq.) of Title 2.2, or (ii) the human resources program or programs established by the

3708 governing ~~body board~~ of ~~that the~~ covered institution pursuant to § ~~23-38.116~~ 23.1-1021. If the
3709 salaried nonfaculty covered employee does not make an election within such prescribed period,
3710 he shall be deemed to have elected to participate in and be governed by the state human
3711 resources program. Elections to participate in the human resources program established by the
3712 covered institution shall be irrevocable. At least once every two years, each covered institution
3713 that establishes a human resources program pursuant to § 23.1-1021 shall provide salaried
3714 nonfaculty employees who elected to participate and be governed by the state human resources
3715 program with (i) a comparison of the state program and the institution's program, including an
3716 assessment of compensation and benefits, and (ii) an opportunity participate in and be governed
3717 by the institution's human resources program.

3718 B. A salaried nonfaculty covered employee who elects to participate in and be governed
3719 by the state human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§
3720 2.2-2900 et seq.) of Title 2.2 shall continue to be governed by all state human resources and
3721 benefit plans, programs, policies, and procedures that apply to and govern state employees.

3722 C. A salaried nonfaculty ~~Covered Employee~~ covered employee who elects to participate
3723 in and be governed by the human resources program or programs established by the governing
3724 body board of ~~that the~~ covered institution pursuant to § ~~23-38.116~~ also, by that election, 23.1-
3725 1021 shall be deemed to have elected to be eligible to participate in and ~~to~~ be governed by the
3726 human resources plans, programs, policies, and procedures ~~that are or may be~~ adopted by ~~that~~
3727 the covered institution for his employment classification ~~of employees~~ pursuant to §§ ~~23-~~
3728 38.118, 23-38.119, and 23-38.120 23.1-1024, 23.1-1025, and 23.1-1026.

3729 B. If the governing body of a covered institution establishes a human resources program
3730 or programs pursuant to § 23-38.116, the covered institution shall provide each of its salaried
3731 nonfaculty Covered Employees who was in its employment as of the day prior to the effective
3732 date of the initial Management Agreement, except employees of the University of Virginia
3733 Medical Center, with a period of at least 90 days after the effective date of the institution's
3734 human resource program for his classification of employees to make the election required by

3735 ~~subsection A. If such a salaried nonfaculty Covered Employee does not make an election by the~~
3736 ~~end of that 90-day period, he shall be deemed not to have elected to participate in the human~~
3737 ~~resources program or programs established by the covered institution pursuant to § 23-38.116. If~~
3738 ~~such a salaried nonfaculty Covered Employee elects to participate in the human resources~~
3739 ~~program or programs established by the covered institution pursuant to § 23-38.116, that~~
3740 ~~election shall be irrevocable. At least every two years, a covered institution shall offer to~~
3741 ~~salaried nonfaculty Covered Employees who have elected to continue to participate in the state~~
3742 ~~human resources program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et~~
3743 ~~seq.) of Title 2.2 an opportunity to elect to participate in the human resources program or~~
3744 ~~programs established by the covered institution pursuant to § 23-38.116; provided that, each~~
3745 ~~time prior to offering such opportunity to such salaried nonfaculty Covered Employees, and at~~
3746 ~~least once every two years after the effective date of the human resources program or programs~~
3747 ~~established pursuant to § 23-38.116, the covered institution shall make available to each of its~~
3748 ~~salaried nonfaculty Covered Employees a comparison of its human resources program for that~~
3749 ~~classification of salaried nonfaculty Covered Employee with the state human resources program~~
3750 ~~for comparable state employees, including but not limited to a comparability assessment of~~
3751 ~~compensation and benefits.~~

3752 **Drafting note: Proposed subsection B incorporates the provisions of the second**
3753 **sentence of existing subsection B of § 23-38.114. The 90-day election period is updated to a**
3754 **"prescribed period" to more accurately reflect current practice and current management**
3755 **agreements. Technical changes are made.**

3756 § 23-38.117 23.1-1023. Grievance Covered institutions; operational authority; human
3757 resources; grievance procedures.

3758 A. No covered institution shall be exempt from the State Grievance Procedure (§ 2.2-
3759 3000 et seq.), which shall continue to apply to all eligible nonfaculty ~~Covered Employees~~
3760 covered employees of a covered institution. The governing ~~body board~~ of each covered
3761 institution shall adopt policies that encourage the resolution of employment-related problems

3762 and complaints of its nonfaculty ~~Covered Employees~~ covered employees. Such policies shall
3763 provide that nonfaculty ~~Covered Employees~~ covered employees of the institution shall be able
3764 to discuss their concerns with their immediate supervisors and management freely and without
3765 retaliation. To the extent that such concerns cannot be resolved informally, the State Grievance
3766 Procedure (§ 2.2-3000 et seq.) ~~of Title 2.2~~ shall apply (i) to the covered institution's nonfaculty
3767 participating ~~nonfaculty Covered Employees~~ covered employees to the same extent that it
3768 applied to the same classifications of nonfaculty employees prior to the institution's effective
3769 date of the initial ~~Management Agreement~~ management agreement and (ii) to the covered
3770 institution's salaried nonfaculty ~~Covered Employees~~ covered employees who have elected
3771 pursuant to § ~~23-38.115~~ 23.1-1022 to continue to participate in the state human resources
3772 program set forth in Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2.

3773 B. ~~A covered institution shall continue to make~~ The grievance policies ~~available to~~
3774 ~~faculty Covered Employees to the extent~~ that ~~such policies~~ were applicable to faculty ~~Covered~~
3775 ~~Employees covered employees~~ prior to ~~its~~ the effective date of the initial ~~Management~~
3776 ~~Agreement, and may amend any such policies~~ management agreement shall continue in effect
3777 but may be amended by the covered institution.

3778 C. A covered institution ~~is not required to adopt grievance policies governing Covered~~
3779 ~~Employees not included in subsections A and B, but it may, in its discretion, do so for some or~~
3780 ~~all such Covered Employees, and such~~ may adopt grievance policies that are applicable to some
3781 or all other employees not subject to grievance policies pursuant to subsection A or B. Such
3782 grievance policies may be the same as ~~or different from~~ the grievance policies adopted pursuant
3783 to subsection A.

3784 **Drafting note: Technical changes.**

3785 § ~~23-38.118~~ 23.1-1024. ~~Miscellaneous Covered institutions; operational authority;~~
3786 human resources; miscellaneous personnel matters.

3787 A. ~~All~~ Each covered institution shall base all appointments ~~to, and~~ promotions, and
3788 tenure ~~in, positions in the service of a covered institution shall be based~~ decisions upon merit

3789 and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by
3790 that institution.

3791 B. No establishment of a position or rate of pay, ~~and no or~~ change in rate of pay, shall
3792 become effective except on order of the appointing covered institution.

3793 C. No ~~participating Covered Employee of, or applicant for employment with, current or~~
3794 prospective participating covered employee of any covered institution shall be required, as a
3795 condition of employment, to smoke or use tobacco products on the job, or ~~to~~ abstain from
3796 smoking or using tobacco products outside the course of his employment, provided that this
3797 section subsection shall not apply to those classes of employees to which § 27-40.1 or 51.1-813
3798 is applicable.

3799 ~~D. The human resources policies adopted by the governing body of a covered institution~~
3800 ~~shall, consistent with applicable federal law, address (i) employment of participating Covered~~
3801 ~~Employees who leave the service of a covered institution for service in any of the armed forces~~
3802 ~~of the United States, and the employment of other veterans of such military service, following~~
3803 ~~the termination of their military service; and (ii) leave and other policies affecting the~~
3804 ~~employment of participating Covered Employees who have been ordered to active military~~
3805 ~~service in the armed forces of the United States, or in the organized reserve forces of any of the~~
3806 ~~armed services of the United States, or of the Virginia National Guard. "Active military duty,"~~
3807 ~~as used in this subsection, means federally funded military duty as (i) a member of the armed~~
3808 ~~forces of the United States on active duty pursuant to Title 10 of the United States Code or (ii) a~~
3809 ~~member of the Virginia National Guard on active duty pursuant to either Title 10 or Title 32 of~~
3810 ~~the United States Code.~~

3811 **Drafting note: Existing subsection D is stricken here and incorporated instead into**
3812 **proposed subsections A and E of § 23.1-1021. Technical changes are made.**

3813 § ~~23-38.119~~ 23.1-1025. ~~Certain Covered institutions; operational authority; human~~
3814 resources; certain insurance plans; ~~legal process and assignment~~.

3815 A. Insurance plans provided under this article and all proceeds ~~therefrom~~ from such
3816 plans shall be subject to the same provisions regarding exemption from levy, garnishment, and
3817 other legal process as is provided to Virginia Retirement System plans under § 51.1-510;
3818 provided, however, that (i) permitted assignments shall be ~~effected~~ made through completion of
3819 forms provided by the covered institution or its vendor; and ~~provided further, that (ii)~~ for
3820 insurance plans established by a covered institution, the covered institution shall exercise the
3821 authority granted to the Board of the Virginia Retirement System in § 51.1-510 ~~is hereby~~
3822 granted to and shall be exercised by the covered institution.

3823 B. Each covered institution (i) shall purchase or make available group life and accidental
3824 death and dismemberment insurance ~~policies~~ plans covering in whole or in part those of its
3825 participating ~~Covered Employees~~ covered employees eligible to participate in the Virginia
3826 Retirement System; and (ii) may purchase or make available such additional insurance ~~policies~~
3827 plans covering its participating ~~Covered Employees~~ covered employees as it deems appropriate.
3828 Participating ~~Covered Employees~~ covered employees shall not be required to present evidence
3829 of insurability satisfactory to an insurance company for basic group life insurance coverage. ~~All~~
3830 Each covered institution shall offer all salaried participating ~~Covered Employees~~ shall be
3831 offered covered employees basic group life insurance at a level of coverage determined by ~~such~~
3832 the institution's governing ~~body board~~. A covered institution may require participating ~~Covered~~
3833 Employees covered employees to pay all or a portion of the cost of the insurance coverage
3834 offered pursuant to this subsection, which may be collected through a payroll deduction
3835 program. If the institution's governing ~~body board~~ so elects, and subject to the execution of such
3836 participation agreements as the Virginia Retirement System may require, the covered
3837 institution's participating ~~Covered Employees~~ covered employees may be covered by the
3838 Virginia Retirement System's group insurance programs established pursuant to Chapter 5 (§
3839 51.1-500 et seq.) of Title 51.1 ~~under with~~ the same terms, costs, ~~and~~ conditions ~~that apply to,~~
3840 and with the same, and benefits ~~that are available to, as~~ other state employees.

3841 C. For those of its participating ~~Covered Employees~~ covered employees eligible to
3842 participate in the Virginia Retirement System, a covered institution shall (i) purchase disability
3843 insurance; (ii) subject to the execution of such participation agreements as may be necessary,
3844 appropriate, and in the best interests of the Commonwealth, continue to participate in the
3845 disability insurance program established for state agencies; (iii) establish a self-insured
3846 disability insurance program; or (iv) perform any combination of clauses (i) ~~through, (ii), and~~
3847 (iii). A covered institution may require participating ~~Covered Employees~~ covered employees to
3848 pay all or a portion of the cost of the insurance coverage offered pursuant to ~~clauses~~ clause (i),
3849 (iii), or (iv) ~~of this subsection~~, which may be collected through a payroll deduction program.
3850 However, ~~the no such~~ covered institution shall ~~not~~ be required to contribute to the program
3851 established for state agencies on behalf of participating ~~Covered Employees~~ covered employees
3852 who do not participate in that program.

3853 D. If a covered institution's governing ~~body~~ board so elects, and subject to the execution
3854 of such participation agreements as may be necessary, appropriate, and in the best interests of
3855 the Commonwealth, each such institution or its participating ~~Covered Employees~~ covered
3856 employees, or both, may participate in any future insurance programs established for state
3857 employees under with the same terms ~~and~~ conditions ~~that apply to, and with the same benefits~~
3858 ~~that are available to, and benefits as~~ other state employees.

3859 **Drafting note: Technical changes.**

3860 § ~~23-38.120~~ 23.1-1026. ~~Severance~~ Covered institutions; operational authority; human
3861 resources; severance policies.

3862 A. Each covered institution shall adopt ~~one or more a~~ severance ~~policies~~ policy for its
3863 eligible participating ~~Covered Employees~~ covered employees that is applicable to voluntary ~~or~~
3864 and involuntary separations, including reductions in workforce. The provisions of the
3865 Workforce Transition Act (§ 2.2-3200 et seq.) shall not apply to participating ~~Covered~~
3866 Employees covered employees.

3867 B. The terms and conditions of a covered institution's severance policy ~~or policies~~ for
3868 eligible participating ~~Covered Employees~~ covered employees shall be determined by the
3869 institution's governing ~~body~~ board. The covered institution and the Board of the Virginia
3870 Retirement System shall negotiate a formula according to which cash severance benefits may be
3871 converted to years of age or creditable service for participating ~~Covered Employees~~ covered
3872 employees who participate in the Virginia Retirement System.

3873 C. Covered ~~Employees~~ employees who (i) were employees of a covered institution and
3874 were covered by the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 prior to ~~its~~ the
3875 effective date of the initial ~~Management Agreement~~ management agreement, ~~who otherwise~~ (ii)
3876 would otherwise be eligible for severance benefits under the Workforce Transition Act (§ 2.2-
3877 3200 et seq.), and ~~who~~ (iii) are separated by a covered institution because of a reduction in
3878 workforce shall have the same preferential hiring rights with state agencies and other executive
3879 branch institutions as other state employees have under § 2.2-3201. ~~Conversely, a~~ A covered
3880 institution shall recognize the hiring preference conferred by § 2.2-3201 on state employees who
3881 were (a) hired by a state agency or executive branch institution before the covered institution's
3882 effective date of the initial ~~Management Agreement~~ management agreement and ~~who were~~ (b)
3883 separated after that date by that state agency or executive branch institution because of a
3884 reduction in workforce. If a covered institution has adopted a classification system pursuant to §
3885 ~~23-38-116~~ 23.1-1021 that differs from the classification system administered by the Department
3886 of Human Resource Management, the covered institution shall classify the separated employee
3887 according to its classification system and shall place the separated employee appropriately. Any
3888 such separated employee who is hired by a covered institution shall be a participating ~~Covered~~
3889 Employee covered employee for purposes of this article. Classification decisions that are made
3890 under pursuant to this subsection and ~~applying~~ apply to employees transferring between state
3891 agencies ~~or~~, between other executive branch institutions and covered institutions, ~~or and~~
3892 between covered institutions, as a result of a reduction in force and with the preferential hiring
3893 rights provided in this subsection and in § 2.2-3201 shall be presumed appropriate, and a

3894 separated employee who grieves the classification decision shall bear the burden of
3895 demonstrating that the classification violates the separated employee's preferential hiring rights.

3896 D. An employee's transition ~~on the effective date of a covered institution's initial~~
3897 ~~Management Agreement~~ from being an employee of a public institution of higher education to
3898 being a ~~Covered Employee~~ covered employee of a covered institution on the effective date of a
3899 covered institution's initial management agreement shall not, in and of itself, constitute a
3900 severance of that employee or a reduction in force that would make either the covered
3901 institution's severance policy ~~or policies~~ adopted pursuant to subsection A or the Workforce
3902 Transition Act (§ 2.2-3200 et seq.) applicable to that employee.

3903 **Drafting note: Technical changes are made, including removing "or policies" in**
3904 **subsections B and D because § 1-227 provides that throughout the Code any word used in**
3905 **the singular includes the plural and vice versa.**

3906 Article 7.

3907 Additional Authority Subject to Management Agreement.

3908 **Drafting note: The article structure of existing Subchapter 3 is not retained in**
3909 **proposed Chapter 10.**

3910 ~~§ 23-38.121. Restructured authority subject to management agreement.~~

3911 ~~As provided in subsection D of § 23-38.88, no restructured financial or operational~~
3912 ~~authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter or any other provision of~~
3913 ~~such chapter shall become effective unless and until the authority or provision is expressly~~
3914 ~~included in a management agreement and all other conditions of subdivisions D 1 and D 2 of §~~
3915 ~~23-38.88 have been met.~~

3916 **Drafting note: This section is stricken as duplicative of provisions contained in**
3917 **proposed subsection B of § 23.1-1006.**

3918 ~~§ 23-38.103~~ 23.1-1027. Tuition, Covered institutions; duties; tuition, fees, rentals, and
3919 other charges; ~~moneys~~.

3920 A-Each covered institution shall fix, revise ~~from time to time~~, charge₂, and collect tuition,
3921 rates, rentals, fees₂, and other charges for the services, goods, or facilities furnished by or on
3922 behalf of such institution₇, and may adopt policies regarding any such service rendered or the
3923 use, occupancy, or operation of any such facility.

3924 **Drafting note: Technical changes are made, including removing the phrase "from**
3925 **time to time" as unnecessary.**

3926 § ~~23-38.113~~ 23.1-1028. Leases Covered institutions; duties; leases of property.

3927 The governing body board of ~~a~~ each covered institution shall adopt such policies relating
3928 to the leasing of real property, including capital or operating/income leases, that reasonably
3929 ensure that such leases are efficiently procured on appropriate terms and for appropriate
3930 purposes. With respect to capital or operating/income leases for real property to be used for
3931 academic purposes₇, or for real property owned by the institution or a foundation related to the
3932 institution to be used for non-academic purposes in accordance with the institution's land use
3933 plan pursuant to § 2.2-1153, other than applicable policies adopted by a covered institution's
3934 governing board ~~of visitors~~ and provisions of general law that expressly apply to covered
3935 institutions, such institutions shall be exempt from any state or local statutes ~~or~~₂ ordinances,
3936 rules, regulations, and guidelines relating to (i) operating/income leases of real property by
3937 public entities and₇ (ii) except as otherwise provided in §§ ~~23-38.109~~ 23.1-1016 and ~~23-38.112~~,
3938 ~~to~~ 23.1-1019, capital leases.

3939 **Drafting note: Technical changes.**

3940 #

1 TITLE 22.1. EDUCATION.

2 CHAPTER ~~7~~ 18.1.

3 THE MILLER SCHOOL OF ALBEMARLE.

4 **Drafting note: Existing Chapter 7 (§ 23-51 et seq.) relating to the Miller School of**
5 **Albemarle, a college preparatory school in Albemarle County, is logically reorganized as**
6 **proposed Chapter 18.1 of Title 22.1 (Education). Obsolete provisions are stricken and**
7 **technical changes are made.**

8 § ~~23-51~~ 22.1-345.2. ~~Miller Manual Labor School continued as~~ The Miller School of
9 Albemarle established.

10 ~~The Miller Manual Labor School of Albemarle, created pursuant to Chapter 61 of the~~
11 ~~Acts of Assembly of 1874, is continued as~~ The Miller School of Albemarle, is established as an
12 educational institution of the Commonwealth ~~of Virginia, as and~~ a corporation with all of the
13 rights and powers of nonprofit, nonstock corporations chartered under Chapter 10 (§ 13.1-801 et
14 seq.) of Title 13.1 for the purpose of providing quality education to certain ~~worthy~~ qualified
15 students.

16 **Drafting note: Obsolete provisions are stricken and technical changes are made.**

17 § ~~23-52~~ 22.1-345.3. Certain statutes continued in force.

18 The second through seventh clauses of section one, and the second section of the act
19 entitled "an act to give effect to a compromise of the litigation in respect to the construction and
20 effect of the will of Samuel Miller, deceased, and to establish the manual labor school provided
21 for in the twenty-fifth clause of the said will," approved February 24, 1874, as amended by
22 Chapter 258 of the Acts of 1946, approved March 25, 1946, by Chapter 553 of the Acts of 1950,
23 approved April 7, 1950, and by Chapter 462 of the Acts of 1966, effective April 4, 1966; the act
24 approved February 19, 1884, amending and reenacting the fourth clause of the second section of
25 the act approved April 2, 1877 relating to the Miller Manual Labor School of Albemarle; and
26 the act to authorize the board of the Miller Manual Labor School to convert coupon bonds into
27 registered bonds, approved August 23, 1884, shall severally continue in force.

28 **Drafting note: No change.**

29 ~~§ 23-53 22.1-345.4. Jurisdiction and powers of~~ Circuit Court for Albemarle County;
30 compensation for control and management of The Miller School of Albemarle.

31 All of the jurisdiction and The Circuit Court for Albemarle County shall be compensated
32 for the exercise of the powers by law in connection with the control and management of The
33 Miller School of Albemarle that are vested in ~~and exercised by the Circuit Court for Albemarle~~
34 ~~County, and the judge thereof in vacation, over the Miller Manual Labor School of Albemarle,~~
35 ~~or in connection with the government, control and management thereof, are continued, and the~~
36 ~~compensation for such duties and services shall be paid to~~ such judge court by law.

37 **Drafting note: Technical changes.**

38 § 23.1-100. Definitions.

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

40 "Associate-degree-granting" means that an associate degree is the most advanced degree
41 that is granted.

42 "Associate-degree-granting public institution of higher education" includes Richard
43 Bland College and each comprehensive community college.

44 "Baccalaureate" means that bachelor's degrees or more advanced degrees, or both, are
45 granted.

46 "Baccalaureate public institution of higher education" includes Christopher Newport
47 University, George Mason University, James Madison University, Longwood University,
48 University of Mary Washington, Norfolk State University, Old Dominion University, Radford
49 University, University of Virginia, University of Virginia's College at Wise as a division of
50 University of Virginia, Virginia Commonwealth University, Virginia Military Institute, Virginia
51 Polytechnic Institute and State University, Virginia State University, and the College of William
52 and Mary in Virginia.

53 "Chief executive officer" includes the chancellor of the System, the chancellor of
54 University of Virginia's College at Wise, the superintendent of Virginia Military Institute, and
55 the president of each other public institution of higher education.

56 "Comprehensive community college" means an associate-degree-granting institution of
57 higher education governed by the State Board that offers instruction in one or more of the
58 following fields:

59 1. Freshman and sophomore courses in arts and sciences acceptable for transfer to
60 baccalaureate degree programs;

61 2. Diversified technical curricula, including programs leading to the associate degree;

62 3. Career and technical education leading directly to employment;

63 4. Courses in general and continuing education for adults in the fields set out in
64 subdivisions 1, 2, and 3; or

65 5. Noncredit training and retraining courses and programs of varying lengths to meet the
66 needs of business and industry in the Commonwealth.

67 "Council" means the State Council of Higher Education for Virginia.

68 "For-profit private institution of higher education" means any postsecondary school, as
69 that term is defined in § 23.1-213, in the Commonwealth that is privately owned, privately
70 managed, and obligated to pay federal income taxes in the Commonwealth and is certified by
71 the Council to offer degrees or exempt from such certification pursuant to Article 3 (§ 23.1-213
72 et seq.) of Chapter 2.

73 "Governing board" includes the State Board and the board of visitors of each
74 baccalaureate public institution of higher education. "Governing board" does not include local
75 community college boards.

76 "Nonprofit private institution of higher education" means any postsecondary school, as
77 that term is defined in § 23.1-213, in the Commonwealth that is exempt from paying federal
78 income taxes under § 501(c)(3) of the Internal Revenue Code and is certified by the Council to

79 [offer degrees or exempt from such certification pursuant to Article 3 \(§ 23.1-213 et seq.\) of](#)
80 [Chapter 2.](#)

81 ["Non-Virginia student" means any student who has not established domicile in the](#)
82 [Commonwealth pursuant to § 23.1-502.](#)

83 ["Public institution of higher education" includes the System as a whole and each](#)
84 [associate-degree-granting and baccalaureate public institution of higher education in the](#)
85 [Commonwealth.](#)

86 ["State Board" means the State Board for Community Colleges.](#)

87 ["System" means the Virginia Community College System.](#)

88 ["Virginia student" means any student who has established domicile in the](#)
89 [Commonwealth pursuant to § 23.1-502.](#)

90 **Drafting note: Definitions for "comprehensive community college," "State Board,"**
91 **and "System" are moved from existing Chapter 16. The remaining definitions are**
92 **proposed for the sake of title-wide clarity.**

93 ~~§ 23-9.2:3-04~~ [23.1-204](#). (Expires June 30, 2017) Post-graduation employment rates.

94 ~~By August 1, 2013, and each year thereafter, the State Council of Higher Education for~~
95 ~~Virginia~~ [A. The Council](#) shall [annually](#) publish data on its website on the proportion of
96 graduates ~~with employment at~~ [who are employed \(i\)](#) 18 months and [\(ii\)](#) five years after the date
97 of graduation for each public institution [of higher education](#) and each [nonprofit](#) private ~~nonprofit~~
98 institution of higher education eligible to participate in the Tuition Assistance Grant Program ([§](#)
99 [23-617 et seq.](#)). The data shall include the program and the program level, as recognized by the
100 ~~State Council of Higher Education~~, for each degree awarded by each institution ~~and shall, at a~~
101 ~~minimum, include:~~ the percentage of graduates known to be employed in the Commonwealth,
102 the average salary, and the average higher education-related debt for the graduates on which the
103 data is based; rates of enrollment in remedial coursework for each institution; individual student
104 credit accumulation for each institution; rates of postsecondary degree completion; and any
105 other information that the Council determines is necessary to address adequate preparation for

106 success in postsecondary education and alignment between secondary and postsecondary
107 education. The Council shall disseminate to each public high school and each institution of
108 higher education in the Commonwealth for which the Council has student-level data a link on its
109 website to the published data. The Council shall provide a notification template that each public
110 high school may use to annually notify students and their parents about the availability of such
111 data. The published data shall be consistent with the Government Data Collection and
112 Dissemination Practices Act (§ 2.2-3800 et seq.) and the federal Family Educational Rights and
113 Privacy Act (20 U.S.C. § 1232g).

114 ~~§ 23-2.4. Postsecondary education and employment data.~~

115 B. Each such institution of higher education shall provide a link to ~~the such published~~
116 postsecondary education and employment data ~~published by the State Council of Higher~~
117 ~~Education on its website pursuant to § 23-9.2:3.04.~~

118 **Drafting note: Existing § 23-2.4 is incorporated as subsection B. An obsolete**
119 **reference to an August 1, 2013, deadline is stricken and technical changes are made.**

120 ~~§ 23-9.2:13~~ 23.1-401. Restrictions on student speech; limitations.

121 Public institutions No public institution of higher education shall ~~not~~ impose restrictions
122 on the time, place, and manner of student speech that (i) occurs in the outdoor areas of the
123 institution's campus and (ii) is protected by the First Amendment to the United States
124 Constitution unless the restrictions (a) are reasonable, (b) are justified without reference to the
125 content of the regulated speech, (c) are narrowly tailored to serve a significant governmental
126 interest, and (d) leave open ample alternative channels for communication of the information.

127 **Drafting note: Technical changes.**

128 ~~§ 23-9.2:8~~ 23.1-802. Student mental health; policies; website resource.

129 A. The governing board of each public institution of higher education shall develop and
130 implement policies that (i) advise students, faculty, and staff, including residence hall staff, of
131 the proper procedures for identifying and addressing the needs of students exhibiting suicidal
132 tendencies or behavior; and (ii) provide for training; where appropriate. Such policies shall

133 require procedures for notifying the institution's student health or counseling center for the
134 purposes set forth in ~~subsection C subdivision B 4~~ of § ~~23-9.2:3~~ 23.1-1303 when a student
135 exhibits suicidal tendencies or behavior.

136 B. The governing board of each baccalaureate public ~~four-year~~ institution of higher
137 education shall establish a written memorandum of understanding with its local community
138 services board or behavioral health authority and with local hospitals and other local mental
139 health facilities in order to expand the scope of services available to students seeking treatment.
140 The memorandum shall designate a contact person to be notified when a student is involuntarily
141 committed, or when a student is discharged from a facility and consents to such notification.
142 The memorandum shall ~~also~~ provide for the inclusion of the institution in the post-discharge
143 planning of a student who has been committed and intends to return to campus, to the extent
144 allowable under state and federal privacy laws.

145 ~~§ 23-9.2:14. Mental health resources website page required.~~

146 C. Each ~~four-year~~ baccalaureate public institution of higher education shall create and
147 feature on its website a page with information dedicated solely to the mental health resources
148 available to students at the institution.

149 **Drafting note: The provisions of existing §§ 23-9.2:8 and 23-9.2:14 are logically**
150 **combined as proposed § 23.1-802. Technical changes are made.**

151 ~~§ 23-9.2:18~~ 23.1-900. Academic transcripts; suspension, permanent dismissal, or
152 withdrawal from institution.

153 A. As used in this section, "sexual violence" means physical sexual acts perpetrated
154 against a person's will or against a person incapable of giving consent.

155 ~~B.~~The registrar of each (i) private institution of higher education that is eligible to
156 participate in the Tuition Assistance Grant Program or to receive project financing from the
157 Virginia College Building Authority pursuant to ~~the Educational Facilities Authority Act of~~
158 1972 Article 2 (§ ~~23-30:39~~ 23.1-1220 et seq.) of Chapter 12 and (ii) public institution of higher
159 education, or the other employee, office, or department of the institution that is responsible for

160 maintaining student academic records, shall include a prominent notation on the academic
161 transcript of each student who has been suspended for, has been permanently dismissed for, or
162 withdraws from the institution while under investigation for an offense involving sexual
163 violence under the institution's code, rules, or set of standards governing student conduct stating
164 that such student was suspended for, was permanently dismissed for, or withdrew from the
165 institution while under investigation for an offense involving sexual violence under the
166 institution's code, rules, or set of standards. Such notation shall be substantially in the following
167 form: "[Suspended, Dismissed, or Withdrew while under investigation] for a violation of [insert
168 name of institution's code, rules, or set of standards]." Each such institution shall (a) notify each
169 student that any such suspension, permanent dismissal, or withdrawal will be documented on the
170 student's academic transcript and (b) adopt a procedure for removing such notation from the
171 academic transcript of any student who is subsequently found not to have committed an offense
172 involving sexual violence under the institution's code, rules, or set of standards governing
173 student conduct. ~~For purposes of this section, "sexual violence" means physical sexual acts~~
174 ~~perpetrated against a person's will or against a person incapable of giving consent.~~

175 B.-C. The institution shall remove from a student's academic transcript any notation
176 placed on such transcript pursuant to subsection ~~A. B~~ due to such student's suspension if the
177 student (i) completed the term and any conditions of the suspension ~~and any conditions thereof~~
178 and (ii) has been determined by the institution to be in good standing according to the
179 institution's code, rules, or set of standards governing such a determination.

180 C.-D. The provisions of this section shall apply only to a student who is taking or has
181 taken a course at ~~a campus of~~ a public or private institution of higher education on a campus that
182 is located in the Commonwealth; however, the provisions of this section shall not apply to any
183 public institution of higher education established pursuant to Chapter ~~10 25~~ (§ ~~23-92 23.1-2500~~
184 et seq.).

185 **Drafting note: Technical changes are made, including moving the definition of**
186 **"sexual violence" to the beginning of this proposed section.**

187 § ~~23-7.4:7~~ 23.1-909. Combined cooperative degree program.

188 The Secretary of Education ~~(Secretary)~~ and the ~~Director~~ director of the ~~State~~ Council ~~of~~
189 Higher Education for Virginia (Director), in consultation with each ~~two-year or four-year~~ public
190 ~~or institution of higher education and nonprofit~~ private, ~~nonprofit~~ institution of higher education
191 ~~in the Commonwealth and the Virginia Community College System~~, shall develop a plan to
192 establish and advertise a cooperative degree program whereby any undergraduate student
193 enrolled at any ~~two-year or four-year~~ public institution of higher education or nonprofit private,
194 ~~nonprofit~~ institution of higher education ~~in the Commonwealth~~ may complete, through the use
195 of online courses at any such institution, the course credit requirements to receive a degree at a
196 tuition cost not to exceed \$4,000, or ~~such~~ the lowest cost that is achievable, per academic year.

197 No later than October 1, 2016, the Secretary of Education and the ~~Director~~ director of
198 the Council shall report to the Chairmen of the House Committee on Appropriations, the House
199 Committee on Education, the Senate Committee on Finance, and the Senate Committee on
200 Education and Health on the progress made ~~by the Secretary and Director~~ toward developing a
201 cooperative degree program plan pursuant to this section.

202 **Drafting note: Technical changes.**

203 § ~~23-2.06~~ 23.1-1300. Members of governing boards; removal; terms; nonvoting,
204 advisory representatives.

205 A. Members appointed by the Governor to the governing boards of public institutions of
206 higher education shall serve for terms of four years. Vacancies occurring other than by
207 expiration of a term shall be filled for the unexpired term. No member appointed by the
208 Governor to such a governing board shall serve for more than two consecutive four-year terms;
209 however, a member appointed by the Governor to serve an unexpired term shall be eligible to
210 serve two consecutive four-year terms immediately succeeding such unexpired term. Except as
211 otherwise provided in § 23.1-2601, all appointments shall be subject to confirmation by the
212 General Assembly. Members appointed by the Governor to the board shall continue to hold

213 office until their successors have been appointed and confirmed. Ex officio members shall serve
214 a term coincident with their term of office.

215 B. No member appointed by the Governor to the governing board of a public institution
216 of higher education who has served two consecutive four-year terms on such board is eligible to
217 serve on the same board until at least four years have passed since the end of his second
218 consecutive four-year term.

219 C. Notwithstanding the provisions of subsection E or any other provision of law, the
220 Governor may remove from office for malfeasance, misfeasance, incompetence, or gross
221 neglect of duty any member of the board of any public institution of higher education and fill
222 the vacancy resulting from the removal.

223 D. The Governor shall set forth in a written public statement his reasons for removing
224 any member pursuant to subsection C at the time the removal occurs. The Governor shall be the
225 sole judge of the sufficiency of the cause for removal as set forth in subsection C.

226 E. If any member of the governing board of a four-year public institution of
227 higher education or the State Board for Community Colleges fails to attend (i) the meetings of
228 the board for one year without sufficient cause, as determined by a majority vote of the board, or
229 (ii) the educational programs required by § 23-9.14:1 23.1-1304 in his first two years of
230 membership without sufficient cause, as determined by a majority vote of the board, the
231 remaining members of the board shall record such failure in the minutes at its next meeting and
232 notify the Governor, and the office of such member shall be vacated. However, no member
233 -serving as of January 1, 2015 shall be removed for failing to attend the educational programs
234 required by § 23-9.14:1 if he attends such training by January 1, 2016.

235 B. F. The board of visitors governing board of each four-year public institution of higher
236 education and the State Board for Community Colleges shall adopt in its bylaws policies (i) for
237 removing members pursuant to subsection A E and (ii) referencing the Governor's power to
238 remove members described in § 2-2-108 subsection C.

239 ~~C. No person who has served two consecutive four-year terms on the board of visitors of~~
240 ~~a four-year public institution of higher education or the State Board for Community Colleges~~
241 ~~shall be eligible to serve on the same board until at least four years have passed since the end of~~
242 ~~his second consecutive four-year term.~~

243 ~~§ 23-9.2:4.1. Faculty representatives to the State Board for Community Colleges, local~~
244 ~~community college boards, and boards of visitors.~~

245 ~~A. The State Board for Community Colleges,~~G. The governing board of each public
246 institution of higher education and each local community college boards, ~~and the boards of~~
247 ~~visitors of any four-year state institution of higher education board~~ may appoint one or more
248 nonvoting, advisory faculty representatives to ~~their~~ its respective ~~boards~~ board. In the case of
249 local community college boards and boards of visitors, ~~the~~ such representatives ~~appointed by the~~
250 ~~boards~~ shall be chosen from individuals elected by the faculty or the institution's faculty senate
251 or ~~other~~ its equivalent ~~group of the relevant institution~~. In the case of the State Board for
252 Community Colleges, such representatives ~~appointed by the Board~~ shall be chosen from
253 individuals elected by the Chancellor's Faculty Advisory Committee. Such representatives shall
254 be appointed to serve ~~terms of not less than one 12-month period~~ (i) at least one term of at least
255 12 months, which shall be coterminous with the institution's fiscal year, or (ii) for such terms as
256 may be mutually agreed to by the State Board for Community Colleges and the Chancellor's
257 Faculty Advisory Committee, or by the local community college board or the board of visitors,
258 as the case may be, and the institution's faculty senate or ~~other~~ its equivalent ~~group~~.

259 ~~B. Nothing in this section shall prohibit the State Board for Community Colleges, local~~
260 ~~community college boards, or any boards of visitors from excluding such representatives from~~
261 ~~discussions of faculty grievances, faculty or staff disciplinary matters, or salaries, or other~~
262 ~~matters, at the discretion of the relevant board.~~

263 ~~§ 23-9.2:5. Student representatives to boards of visitors.~~

264 ~~A. H.~~ The board of visitors of any four-year state baccalaureate public institution of
265 higher education shall appoint one or more students as nonvoting, advisory representatives.

266 Such representatives shall be appointed under such circumstances and serve for such terms as
267 the board of visitors of the institution shall prescribe.

268 B.I. Nothing in ~~this section subsection G and H~~ shall prohibit ~~any board of visitors the~~
269 ~~governing board of any public institution of higher education or any local community college~~
270 ~~board~~ from excluding such nonvoting, advisory faculty or student representatives from
271 discussions of faculty grievances, faculty or staff disciplinary matters or salaries, or any other
272 ~~matters at the discretion of the board matter~~.

273 **Drafting note: Existing provisions relating to the terms and removal of members of**
274 **the board of visitors of each public institution of higher education or other educational**
275 **institution are incorporated into subsections A and B of this proposed section with**
276 **technical changes. Subsections C and D are moved from subsections A and C of § 2.2-108.**
277 **Subsections G, H, and I incorporate the provisions of existing §§ 23-9.2:4.1 and 23-9.2:5.**

278 § ~~23-91.29:1~~ 23.1-1504. Establishment of branch campus in the Republic of Korea.

279 A. In recognition that global educational opportunities benefit the intellectual and
280 economic interests of the Commonwealth, the board ~~of visitors of George Mason University is~~
281 ~~authorized to~~ may create a corporation or other legal entity controlled by ~~George Mason the~~
282 ~~University to establish and operate a branch campus of George Mason the~~ University in the
283 Republic of Korea. Establishment of the branch campus shall be subject to ~~State Council of~~
284 ~~Higher Education for Virginia~~ guidelines governing the approval of branch campuses, pursuant
285 to § ~~23-9.6:1~~ 23.1-203.

286 B. The board ~~of visitors~~ shall have the same powers with respect to operation and
287 governance of its branch campus in Korea as are vested in the board ~~by the Code of Virginia~~
288 with respect to ~~George Mason the~~ University ~~in Virginia, including, but not limited to, fixing of~~
289 ~~fees and charges, the establishment of academic standards, and the conferral of degrees~~.

290 C. No corporation or other legal entity created for the above purpose shall be deemed a
291 state or governmental agency, advisory agency, public body or agency, or other instrumentality.

