

Virginia Compacts

Preface

Compilation of compacts and related records and reports, § 2.2-403

Publication of Virginia compacts, § 30-154.1

U.S. Constitution Article I, Section 10.

Compacts

A compact is an interstate agreement between two or more signatory states that is approved by Congress.

Updated annually.

Administration of Government

Southern States Energy Compact, §§ 2.2-5600 through 2.2-5603

Chesapeake Regional Olympic Games Compact, §§ 2.2-5900 through 2.2-5901

Agriculture, Animal Care, and Food

Southern Dairy Compact, §§ 3.2-3300 through 3.2-3303

Aviation

Metropolitan Washington Airports Authority, §§ 5.1-152 through 5.1-178

Conservation

Breaks Interstate Park Compact of 1954, § 10.1-205.1

Southeastern Interstate Forest Fire Protection Compact, § 10.1-1149

Middle Atlantic Interstate Forest Fire Protection Compact, § 10.1-1150

Southeast Interstate Low-Level Radioactive Waste Management Compact, §§ 10.1-1500 through 10.1-1504

Counties, Cities and Towns

Appalachian Region Interstate Compact, § 15.2-6900

Courts Not of Record

Interstate Compact Relating to Juveniles, §§ 16.1-323 through 16.1-323.1

Education

Interstate Agreement on Qualification of Educational Personnel, §§ 22.1-316 through 22.1-318

Compact for Education; Education Commission of the States, §§ 22.1-336 through 22.1-338

Southern Regional Education Compact, §§ 22.1-358 through 22.1-359

Interstate Compact on Educational Opportunity for Military Children, §§ 22.1-360 through 22.1-361

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Atlantic States Marine Fisheries Compact, §§ 28.2-1000 through 28.2-1000.2

Potomac River Compact, §§ 28.2-1001 through 28.2-1007

Game, Inland Fisheries and Boating

Wildlife Violator Compact, § 29.1-530.5

Health

Recognition of Emergency Medical Services Personnel Licensure Interstate Compact [not in effect], § 32.1-371

Highways and Other Surface Transportation Systems

Virginia-North Carolina Interstate High-Speed Rail Compact, § 33.2-1400

Interstate 73 Transportation Compact [not in effect], § 33.2-1830

Washington Metropolitan Area Transit Regulation Compact of 1958, § 33.2-3000

Washington Metropolitan Area Transit Authority Compact of 1966, § 33.2-3100

Insurance

Interstate Insurance Product Regulation Compact, §§ 38.2-6200 through 38.2-6201

Libraries

Interstate Library Compact, § 42.1-75

Military and Emergency Laws

National Guard Mutual Assistance Compact, §§ 44-54.1 through 44-54.3

Interstate Compact on National Guard Counterdrug Operations, § 44-75.1:1

Emergency Management Assistance Compact, § 44-146.28:1

Mines and Mining

Interstate Mining Compact, § 45.1-271

Interstate Compact to Conserve Oil and Gas, §§ 45.1-381 through 45.1-382

Motor Vehicles

Driver License Compact, §§ 46.2-483 through 46.2-488

Nonresident Violator Compact of 1977

Potomac River Bridge Towing Compact of 1991, § 46.2-1239.1

Prisons and Other Methods of Correction

Jail Industry Programs [not in effect], § 53.1-133.10
 The Interstate Compact for the Supervision of Adult Offenders, §§ 53.1-176.1 through 53.1-176.3
 Agreement on Detainers, §§ 53.1-210 through 53.1-215
 Interstate Corrections Compact, §§ 53.1-216 through 53.1-217

Professions and Occupations

Nurse Licensure Compact, §§ 54.1-3030 through 54.1-3040
 Nurse Licensure Compact [not in effect], §§ 54.1-3040.1 through 54.1-3040.11

Trade and Commerce

Live Horseracing Compact, §§ 59.1-394.1 through 59.1-394.4

Waters of The State, Ports and Harbors

Potomac River Basin Commission, §§ 62.1-64 through 62.1-69
 Ohio River Valley Water Sanitation Commission, §§ 62.1-70 through 62.1-79

Welfare (Social Services)

Interstate Compact on the Placement of Children, § 63.2-1000
 Implementation of the Interstate Compact on the Placement of Children, §§ 63.2-1100 through 63.2-1105

Boundaries

Until the 1920's, most compacts dealt with the settlement of boundary lines between the states.

Boundaries, § 1-300
 Extent of territory of the Commonwealth after the Constitution of 1776, § 1-301
 Jurisdiction and ownership of Commonwealth over offshore waters and submerged lands, § 1-302
 Cession of territory northwest of Ohio River, § 1-303
 Boundary with North Carolina, § 1-304 & Virginia-North Carolina Boundary Agreement of 1791
 Boundary with North Carolina eastward from low-water mark of Atlantic Ocean, § 1-305 & Virginia-North Carolina Boundary Agreement of 1970
 Boundary with Tennessee, § 1-306 & Virginia-Tennessee Boundary Agreement of 1901
 Compact and boundary with Kentucky, § 1-307 & Kentucky and Virginia Jurisdiction Act of 1789
 Boundary with Maryland, § 1-308 & Virginia and Maryland Boundary Agreement of 1878
 Boundary with Maryland eastward from Assateague Island, § 1-309
 Boundary with Maryland in upper reaches of Pocomoke sound and lower reaches of Pocomoke River, § 1-310
 Recession of portion of District of Columbia, § 1-311 & Chap. 64.- An Act Accepting by the State of Virginia the County of Alexandria, in the District of Columbia, When the Same Shall be Re-ceded by the Congress of the United States.
 Boundary with District of Columbia, § 1-312 & Virginia and District of Columbia Boundary Line Compact of 1946
 Boundary line between Loudoun County, Virginia, and Jefferson County, West Virginia, § 1-313

Historical References

An Act for Confirming and Establishing the Boundary Line Between this State and the State of Kentucky,
Ascertained and Fixed by Certain Commissioners Appointed by Both States, and for Other Purposes
Virginia and West Virginia Boundary Agreement of 1863
Virginia and West Virginia Boundary Compact of 1959
Virginia-West Virginia Debt Agreement of 1861
Maryland-Virginia Compact of 1785
Virginia-Tennessee Boundary Agreement of 1803



COMMONWEALTH of VIRGINIA

Department of Motor Vehicles

2300 West Broad Street

Richard D. Holcomb
Commissioner

Post Office Box 27412
Richmond, VA 23269-0001

September 23, 2016

The Honorable John S. Edwards, Senator
Chair, Virginia Code Commission
General Assembly Building
201 North 9th Street
2nd Floor
Richmond, VA 23219

Dear Chairman Edwards:

I write in reference to the work of the Virginia Code Commission in codifying and incorporating into the *Code of Virginia* all compacts to which the Commonwealth is a party pursuant to VA Code § 30-154.1. This section provides that "[w]ithin the discretion of the Commission, such incorporation may be through insertion within the existing text and organization of the Code of Virginia or as a freestanding volume."

In the spring of 2015 staff members here at the Department of Motor Vehicles (DMV) were contacted by Nicole Brenner at the Division of Legislative Services regarding the need to codify the Nonresident Violator Compact that DMV relies upon to process traffic citations across state borders. (The NRVC's 44 member states rely on this compact in those instances when a motorist is cited in another member state and chooses not to respond to the ticket, such as not paying the fine. The state issuing the citation notifies the driver's home state and the home state will suspend the driver's license until the driver takes care of the matter in the state where the citation was issued.) At that time when Ms. Brenner contacted DMV I requested that she delay pursuing this action with the Commission as DMV was in the process of working with the American Association of Motor Vehicle Administrators (AAMVA) regarding possibly entering into the Driver License Agreement (DLA). The DLA is another interstate compact that could ultimately replace the NRVC and the Driver License Compact.

Over the past year DMV's efforts in working with AAMVA and other states regarding the DLA have not resulted in action to pursue entry into the DLA compact. Based on this, we have revisited the issue regarding whether there is a need to codify the NRVC per Ms. Brenner's original request. DMV staff members in consultation with the Office of Attorney General have

The Honorable John S. Edwards, Senator

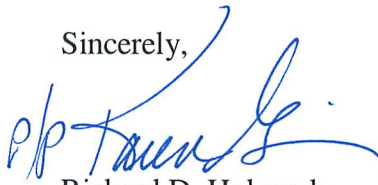
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examined the Code and the provisions that relate to the NRVC at VA Code §§ 46.2-944 - 46.2-947. Our Assistant Attorney General has advised and I concur that the NRVC is currently codified in those sections. No further action is necessary unless the Commission would consider altering the headline of Title 46.2, Chapter 8, Article 18 to read "Nonresident Violator Compact" rather than the current headline of "Arrest of Nonresidents."

I hope you find this information helpful. Should you or members of the Commission or Legislative Services need additional information you may contact me at 804-367-6618. In the alternative, if the Commission would like for me or Karen Grim, Deputy Commissioner of Operations, and DMV's Assistant Attorney General to attend a meeting of the Commission to address this matter please let me know.

Sincerely,



Richard D. Holcomb

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Jamerson, Beth

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 46.2-945 and 46.2-946 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 46.2-944.1 and 46.2-944.2, and to repeal § 46.2-944 of the Code of Virginia, relating to the Nonresident Violator Compact.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-945 and 46.2-946 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 46.2-944.1 and 46.2-944.2 as follows:

§ 46.2-944.1. Compact entered into law; terms.

The Nonresident Violator Compact is hereby entered into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

NONRESIDENT VIOLATOR COMPACTArticle 1Findings, Declaration of Policy and Purpose

(a) The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

(i) Must post collateral or bond to secure appearance for trial at a later date; or

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted;

or

(iii) Is taken directly to court for the trial to be held.

(2) In some instance, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

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(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as directed in paragraph (2) is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

(b) It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(c) The purpose of the compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

Article II

Definitions

53 (a) In the Nonresident Violator Compact, the following words have the meaning indicated,
54 unless the context requires otherwise.

55 (b) Definitions.

56 (1) "Citation" means any summons, ticket, or other official document issued by a police officer
57 for a traffic violation containing an order which requires the motorist to respond.

58 (2) "Collateral" means any cash or other security deposited to secure an appearance for trial,
59 following the issuance by a police officer of a citation for a traffic violation.

60 (3) "Compliance"* means the act of answering a citation, summons, or subpoena through
61 appearance at court, a tribunal, and/or payment of fines and costs.

62 (4) "Court" means a court of law or traffic tribunal.

63 (5) "Driver's License" means any license or privilege to operate a motor vehicle issued under the
64 laws of the home jurisdiction.

65 (6) "Home Jurisdiction" means the jurisdiction that issued the driver's license of the traffic
66 violin.

67 (7) "Issuing Jurisdiction" means the jurisdiction in which the traffic citation was issued to the
68 motorist.

69 (8) "Jurisdiction" means a state, territory, or possession of the United States, the District of
70 Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

71 (9) "Motorist" means driver of a motor vehicle operating in a party jurisdiction other than the
72 home jurisdiction.

73 (10) "Personal Recognizance" means an agreement by a motorist made at the time of issuance of
74 the traffic citation that he will comply with the terms of that traffic citation.

75 (11) "Police Officer" means any individual authorized by the party jurisdiction to issue a citation
76 for a traffic violation.

77 (12) "Terms of the Citation" means those options expressly stated upon the citation.

78 *For purposes of the Nonresident Violator Compact, the posting of collateral or bail has not been
79 considered in this definition.

80 Article III

81 Procedure for Issuing Jurisdiction

82 (a) When issuing a citation for a traffic violation, a police officer shall issue the citation to a
83 motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the
84 exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure
85 appearance, if the officer receives the motorist's personal recognizance that he or she will comply with
86 the terms of the citation.

87 (b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is
88 required, it should take place immediately following issuance of the citation

89 (c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate
90 official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic
91 citation was issued. The report shall be made in accordance with procedures specified by the issuing
92 jurisdiction and shall contain information as specified in the Compact Manual as minimum requirements
93 for effective processing by the home jurisdiction.

94 (d) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to
95 the licensing authority in the home jurisdiction of the motorist, the information in a form and content as
96 contained in the Compact Manual.

97 (e) The licensing authority of the issuing jurisdiction need not suspend the privilege of a motorist
98 for whom a report has been transmitted.

99 (f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation
100 if the date of transmission is more than six months after the date on which the traffic citation was issued.

101 (g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation
102 where the date of issuance of the citation predates the most recent of the effective dates of entry for the
103 two jurisdictions affected.

104 Article IV

105 Procedure for Home Jurisdiction

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106 (a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing
107 jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a
108 suspension action in accordance with the home jurisdiction's procedures, to suspend the motorist's
109 driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been
110 furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

111 (b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and
112 make reports to issuing jurisdictions as provided in the Compact Manual.

113 Article V

114 Applicability of Other Laws

115 Except as expressly required by provisions of this compact, nothing contained herein shall be
116 construed to affect the right of any party jurisdiction to apply any of its other laws relating to license to
117 drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other
118 cooperative arrangements between a party jurisdiction and a nonparty jurisdiction.

119 Article VI

120 Compact Administrator Procedures

121 (a) For the purpose of administering the provisions of this compact and to serve as a governing
122 body for the resolution of all matters relating to the operation of this compact, a Board of Compact
123 Administrators is established. The board shall be composed of one representative from each party
124 jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by
125 the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the
126 jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the
127 performance of his functions as a board member by an alternate. An alternate may not be entitled to
128 serve unless written notification of his identity has been given to the board.

129 (b) Each member of the Board of Compact Administrators shall be entitled to one vote. No
130 action of the board shall be binding unless taken at a meeting at which a majority of the total number of
131 votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority
132 of the party jurisdictions are represented.

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133 (c) The board shall elect annually, from its membership, a chairman and vice chairman.

134 (d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws
135 of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its
136 bylaws.

137 (e) The board may accept for any of its purposes and functions under this compact any and all
138 donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise,
139 from any jurisdiction, the United States, or any other governmental agency, and may receive, utilize, and
140 dispose of the same.

141 (f) The board may contract with, or accept services or personnel from any governmental or
142 intergovernmental agency, person, firm, or corporation, or any private nonprofit organization or
143 institution.

144 (g) The board shall formulate all necessary procedures and develop uniform forms and
145 documents for administering the provisions of this compact. All procedures and forms adopted pursuant
146 to board action shall be contained in the Compact Manual.

147 Article VII

148 Entry into Compact and Withdrawal

149 (a) This compact shall become effective when it has been adopted by at least two jurisdictions.

150 (b) (1) Entry into the compact shall be made by a Resolution of Ratification executed by the
151 authorized officials of the applying jurisdiction and submitted to the chairman of the board.

152 (2) The resolution shall be in a form and content as provided in the Compact Manual and shall
153 include statements that in substance are as follows:

154 (i) A citation of the authority by which the jurisdiction is empowered to become a party to this
155 compact.

156 (ii) Agreement to comply with the terms and provisions of the compact.

157 (iii) That compact entry is with all jurisdiction then party to the compact and with any
158 jurisdiction that legally becomes a party to the compact.

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(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than 60 days after notice has been given by the chairman of the Board of Compact Administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(c) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

Article VIII

Exceptions

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

Article IX

Amendments to the Compact

(a) Thus compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the Board of Compact Administrators and may be initiated by one or more party jurisdictions.

(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective 30 days after the date of the last endorsement.

(c) Failure of a party jurisdiction to respond to the compact chairman within 120 days after receipt of the proposed amendment shall constitute endorsement.

Article X

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the construction of any party jurisdiction or of the United States or the applicability thereof to any government agency person, or circumstance, the compact shall not be

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affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

Article XI

Title

This compact shall be known as the Nonresident Violator Compact of 1977.

§ 46.2-944.2. Department of Motor Vehicles to be "licensing authority" within meaning of compact; duties of Department.

As used in the Nonresident Violator Compact, the term "licensing authority" with reference to this Commonwealth shall mean the Department of Motor Vehicles. The Department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III and IV of the compact.

§ 46.2-945. Issuance of citation to motorist; party jurisdiction; police officer to report noncompliance with citation.

A. When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who is a resident of or holds a driver's license issued by a party jurisdiction ~~and shall not, subject to the exceptions noted in subsection C of this section, require such motorist to post collateral or bond to secure appearance for trial, but shall accept such motorist's written promise that he will comply with the terms of such citation;~~ in accordance with Article III of the Nonresident Violator Compact, provided, however, that the motorist shall have the right upon his request to post collateral or bond in a manner provided by law and, in such case, the provisions of this article shall not apply.

B. In the absence of the motorist's ~~written promise~~ personal recognizance, the officer shall proceed according to the provisions of § 46.2-940.

C. No motorist shall be entitled to receive a citation under the terms of ~~subsection A of this section~~ this article, nor shall any police officer issue such citation under the same, in the event that the offense for which the citation is issued ~~shall be~~ is one of the following: (i) an offense for which the issuance of a citation in lieu of a hearing or the posting of collateral or bond is prohibited by the laws of

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~~this the~~ Commonwealth; or (ii) an offense; the conviction of or the forfeiture of collateral for which requires the revocation of the motorist's license.

~~D. Upon the failure of any motorist to comply with the terms of a traffic citation, the police officer or the appropriate official shall report this fact to the Department of Motor Vehicles. Such~~ The report required by subsection (c) of Article III of the Nonresident Violator Compact shall clearly identify the motorist; describe the violation, specifying the section of the statute, code, or ordinance violated; ~~shall~~ indicate the location of the offense; ~~;~~ give a description of vehicle involved; ~~;~~ and show the registration or license number of the vehicle. Such report shall be signed by the police officer or appropriate official.

§ 46.2-946. Department to transmit officer's report to party jurisdiction; suspension of resident's license for noncompliance with citation issued by party jurisdiction.

~~Upon receipt of the report as described in § 46.2-945, the Department of Motor Vehicles shall transmit a certified copy of such report to the official in charge of the issuance of driver's licenses in the home jurisdiction in which the motorist resides or by which he is licensed.~~

~~Upon receipt from the issuing jurisdiction of a certification of noncompliance with a citation by a motorist holding a driver's license issued by this Commonwealth, the Commissioner of the Department of Motor Vehicles forthwith shall suspend such motorist's driver's license.~~ The order of suspension authorized by subsection (a) of Article IV of the Nonresident Violator Compact shall indicate the reason for the order; and shall notify the motorist that his license shall remain suspended until he has furnished evidence satisfactory to the Commissioner that he has fully complied with the terms of the citation ~~which that~~ was the basis for the suspension order.

~~The licensing authority of the issuing jurisdiction may suspend the privilege of a motorist for whom a report has been transmitted.~~

It shall be the duty of the Commissioner of Motor Vehicles to ascertain and remain informed as to which jurisdictions are party jurisdictions hereunder and, accordingly, to maintain a current listing of such jurisdictions, which listing he shall from time to time cause to be disseminated among the appropriate departments, divisions, bureaus, and agencies of ~~this the~~ Commonwealth; ~~;~~ the principal

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240 executive officers of the several counties, cities, and towns of ~~this~~ the Commonwealth; and the licensing
241 authorities in all other jurisdictions ~~which~~ that are, have been, or claim to be a party jurisdiction pursuant
242 hereto.

243 ~~Consistent with the terms of the applicable Nonresident Violator Compact, the home jurisdiction~~
244 ~~shall take no action regarding any report transmitted by the issuing jurisdiction, which is transmitted~~
245 ~~more than six months after the date on which the traffic citation was issued.~~

246 ~~Consistent with the terms of the applicable Nonresident Violator Compact, the home jurisdiction~~
247 ~~shall take no action regarding any report on any violation where the date of issuance of the citation~~
248 ~~predates the entry into the compact for the two party jurisdictions affected.~~

249 **2. That § 46.2-944 of the Code of Virginia is repealed.**

250 #

§ 58.1-322 Reorganization Table

Old Cite	New Cite	Notes
58.1-322 (B)	58.1-322.01	Additions
58.1-322(B)(1)	58.1-322.01(1)	
58.1-322(B)(2)	58.1-322.01(2)	
58.1-322(B)(3)	58.1-322.01(3)	
58.1-322(B)(4)	58.1-322.01(4)	
58.1-322(B)(9)	58.1-322.01(5)	
58.1-322(B)(10)	58.1-322.01(6)	keep reference to "on or after January 1, 2014" because change less than 5 years old
58.1-322(B)(11)	58.1-322.01(7)	Keep reference to "on or after January 1, 2016" because change less than 5 years old
58.1-322(C)	58.1-322.02	Subtractions
58.1-322(C)(1)	58.1-322.02(1)	
58.1-322(C)(2)	58.1-322.02(2)	
58.1-322(C)(4)	58.1-322.02(3)	
58.1-322(C)(4a)	deleted	obsolete -- good through December 31, 2000
58.1-322(C)(4b)	58.1-322.02(4)	Removed language "For taxable years beginning on or after January 1, 2001"
58.1-322(C)(5)	58.1-322.02(5)	
58.1-322(C)(6)	58.1-322.02(6)	Updated reference from "Targeted Jobs Credit" to "Work Opportunity Credit" per 1996 change in federal law
58.1-322(C)(10)	58.1-322.02(7)	
58.1-322(C)(11)	58.1-322.02(8)	
58.1-322(C)(12)	58.1-322.02(9)	
58.1-322(C)(17)	58.1-322.02(10)	Removed language "For taxable years beginning on or after January 1, 1995"
58.1-322(C)(19)	58.1-322.02(11)	Removed language "For taxable years beginning on or after January 1, 1996"

58.1-322(C)(20)	58.1-322.02(12)	Removed language "For taxable years beginning on or after January 1, 1997"
58.1-322(C)(21)	58.1-322.02(13)	Removed language "For taxable years beginning on or after January 1, 1998"
58.1-322(C)(22)	58.1-322.02(14)	Removed language referencing January 1, 2000, but left in 2015 sunset.
58.1-322(C)(23)	58.1-322.02(15)	Removed language "Effective for all taxable years beginning on or after January 1, 2000"
58.1-322(C)(24)	58.1-322.02(16)	Removed language "Effective for all taxable years beginning on or after January 1, 2000"
58.1-322(C)(25)	58.1-322.02(17)	
58.1-322(C)(26)	58.1-322.02(18)	Removed language "For taxable years beginning on or after January 1, 2001"
58.1-322(C)(27)	deleted	obsolete
58.1-322(C)(28)	58.1-322.02(19)	Removed language "For taxable years beginning on or after January 1, 2000"
58.1-322(C)(31)	58.1-322.02(20)	Removed language "Effective for all taxable years beginning on or after January 1, 2001"
58.1-322(C)(32)	58.1-322.02(21)	Removed language "Effective for all taxable years beginning on or after January 1, 2007"
58.1-322(C)(33)	58.1-322.02(22)	Removed language "For taxable years beginning on or after January 1, 2009"
58.1-322(C)(34)	58.1-322.02(23)	Removed language "For taxable years beginning on or after January 1, 2009"
58.1-322(C)(35)	58.1-322.02(24)	Removed language "For taxable years beginning on or after January 1, 2011"
58.1-322(C)(36)	58.1-322.02(25)	
58.1-322(C)(37)	58.1-322.02(26)	
58.1-322(D)	58.1-322.03	Deductions
58.1-322(D)(1)	58.1-322.03(1)	Removed language "for taxable years beginning on and after January 1, 2005" in subdivision b

58.1-322(D)(2)	58.1-322.03(2)	Removed language related to \$900/prior to January 1, 2005 in subdivision a; removed language "For taxable years beginning on or after January 1, 1987" in subdivision b
58.1-322(D)(3)	58.1-322.03(3)	
58.1-322(D)(4)	58.1-322.03(4)	
58.1-322(D)(5)	58.1-322.03(5)	Removed reference to "taxable years beginning on and after January 1, 2004" in subdivisions a and b
58.1-322(D)(6)	58.1-322.03(6)	Removed language "For taxable years beginning on and after January 1, 1997"
58.1-322(D)(7)(a)(b)(c)	58.1-322.03(7)(a), (b)	Existing subdivision (b) deleted because obsolete
58.1-322(D)(8)	58.1-322.03(8)	Removed language "For taxable years beginning on and after January 1, 2000"
58.1-322(D)(9)	58.1-322.03(9)	Removed language "For taxable years beginning on and after January 1, 1999"
58.1-322(D)(10)	58.1-322.03(10)	Removed language "For taxable years beginning on or after January 1, 2000"
58.1-322(D)(11)	58.1-322.03(11)	Removed language "For taxable years beginning on and after January 1, 2006"
58.1-322(D)(12)	58.1-322.03(12)	Removed language "For taxable years beginning on and after January 1, 2007"
58.1-322(D)(13)	58.1-322.03(13)	Removed language "For taxable years beginning on or after January 1, 2007"
58.1-322(D)(14)	58.1-322.03(14)	
58.1-322(E)	58.1-322.04(1)	
58.1-322(F)	58.1-322.04(2)	
58.1-322(G)	58.1-322.04(3)	Removed language "Effective for taxable years beginning on or after January 1, 2007" in paragraph 1 & 2
58.1-322(H)	58.1-322.04(4)	

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SUMMARY

Virginia taxable income of residents; reorganization of additions, subtractions, and deductions. Reorganizes the provisions of the Code of Virginia related to the calculation of Virginia taxable income of residents. Current law sets out the additions, subtractions, deductions, and other modifications in one lengthy section. The reorganization creates four new, smaller sections for additions, subtractions, deductions, and other modifications, respectively, but does not make any substantive changes to the calculation of Virginia taxable income. The bill contains numerous technical amendments.

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SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 55-556, 55-557, 55-558, 58.1-302, 58.1-315, 58.1-321, 58.1-322, 58.1-324, 58.1-339.8, 58.1-362, 58.1-363, 58.1-391, 58.1-490, 58.1-513, and 58.1-1823 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-322.01 through 58.1-322.04, relating to Virginia taxable income of residents; reorganization of additions, subtractions, deductions, and other modifications.

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-556, 55-557, 55-558, 58.1-302, 58.1-315, 58.1-321, 58.1-322, 58.1-324, 58.1-339.8, 58.1-362, 58.1-363, 58.1-391, 58.1-490, 58.1-513, and 58.1-1823 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-322.01 through 58.1-322.04 as follows:

§ 55-556. Claiming first-time home buyer status.

A. The account holder shall be responsible for the use or application of moneys or funds in an account for which the account holder claims first-time home buyer savings account status.

B. The account holder shall (i) not use moneys or funds held in an account to pay expenses of administering the account, except that a service fee may be deducted from the account by a financial institution; (ii) maintain documentation of the segregation of moneys or funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence in the Commonwealth; such documentation may include the settlement statement; (iii) file, with the account holder's Virginia income tax return, forms developed by the Department of Taxation regarding treatment of the account as a first-time home buyer savings account under this chapter, along with the Form 1099 issued by the financial institution for such account; and (iv) remit to the Department of Taxation the tax on any amounts (a) added to individual income pursuant to subdivision ~~B-10.6~~ of § ~~58.1-322~~ 58.1-322.01 or (b) recaptured pursuant to subdivision ~~C-36.25~~ of § ~~58.1-322~~ 58.1-322.02.

C. The Tax Commissioner shall develop guidelines applicable to account holders to implement the provisions of this chapter. Such guidelines shall be exempt from the provisions of the Administrative

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26 Process Act (§ 2.2-4000 et seq.). Such guidelines shall not apply to, or impose administrative, reporting,
 27 or other obligations or requirements on, financial institutions-related accounts for which first-time home
 28 buyer savings account status is claimed by the account holder.

29 **§ 55-557. Tax exemption; conditions.**

30 A. All interest or other income earned attributable to an account shall be excluded from the
 31 Virginia taxable income of the account holder as provided under subdivision ~~C-36.25~~ of § ~~58.1-322~~
 32 58.1-322.02.

33 B. There shall be an aggregate limit of \$50,000 per account on the amount of principal for which
 34 the account holder may claim first-time home buyer savings account status. Only cash and marketable
 35 securities may be contributed to an account.

36 C. Subject to the aggregate limit on the amount of principal that may be contributed to an
 37 account pursuant to subsection B, there shall be a limitation of \$150,000 on the amount of principal and
 38 interest or other income on the principal that may be retained within an account.

39 D. An account holder shall be subject to Virginia income tax pursuant to subdivision ~~B-10.6~~ of §
 40 ~~58.1-322~~ 58.1-322.01 to the extent of any loss deducted as a capital loss by the individual for federal
 41 income tax purposes attributable to the person's account.

42 E. Upon being furnished proof of the death of the account holder, a financial institution shall
 43 distribute the principal and accumulated interest or other income in the account in accordance with the
 44 terms of the contract governing the account.

45 **§ 55-558. Withdrawal of funds from account for purposes other than eligible costs for first-**
 46 **time home purchase.**

47 If moneys or funds are withdrawn from an account for any purpose other than the payment of
 48 eligible costs by or on behalf of a qualified beneficiary, there shall be imposed a penalty calculated using
 49 the Form 1099 showing the amount of income exempted from state income tax and a five percent
 50 penalty shall be assessed on the amount of exempted income. The penalty shall be paid to the
 51 Department of Taxation. In addition, as provided under subdivision ~~C-36.25~~ of § ~~58.1-322~~ 58.1-322.02,

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52 the account holder shall also be subject to recapture of income that was subtracted pursuant to that
53 subdivision.

54 Such five percent penalty shall not apply to, and there shall be no recapture of income with
55 regard to, the extent of moneys or funds withdrawn that were (i) withdrawn by reason of the qualified
56 beneficiary's death or disability, (ii) a disbursement of assets of the account pursuant to a filing for
57 protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101 through 1330, or (iii) transferred
58 from an account established pursuant to this chapter into another account established pursuant to this
59 chapter for the benefit of another qualified beneficiary.

60 **§ 58.1-302. Definitions.**

61 For the purpose of this chapter and unless otherwise required by the context:

62 "Affiliated" means two or more corporations subject to Virginia income taxes whose relationship
63 to each other is such that (i) one corporation owns at least 80 percent of the voting stock of the other or
64 others or (ii) at least 80 percent of the voting stock of two or more corporations is owned by the same
65 interests.

66 "Compensation" means wages, salaries, commissions and any other form of remuneration paid or
67 accrued to employees for personal services.

68 "Corporation" includes associations, joint stock companies and insurance companies.

69 "Domicile" means the permanent place of residence of a taxpayer and the place to which he
70 intends to return even though he may actually reside elsewhere. In determining domicile, consideration
71 may be given to the applicant's expressed intent, conduct, and all attendant circumstances including, but
72 not limited to, financial independence, business pursuits, employment, income sources, residence for
73 federal income tax purposes, marital status, residence of parents, spouse and children, if any, leasehold,
74 sites of personal and real property owned by the applicant, motor vehicle and other personal property
75 registration, residence for purposes of voting as proven by registration to vote, if any, and such other
76 factors as may reasonably be deemed necessary to determine the person's domicile.

77 "Foreign source income" means:

78 1. Interest, other than interest derived from sources within the United States;

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79 2. Dividends, other than dividends derived from sources within the United States;

80 3. Rents, royalties, license, and technical fees from property located or services performed
81 without the United States or from any interest in such property, including rents, royalties, or fees for the
82 use of or the privilege of using without the United States any patents, copyrights, secret processes and
83 formulas, good will, trademarks, trade brands, franchises, and other like properties;

84 4. Gains, profits, or other income from the sale of intangible or real property located without the
85 United States; and

86 5. The amount of an individual's share of net income attributable to a foreign source qualified
87 business unit of an electing small business corporation (S corporation). For purposes of this subsection,
88 qualified business unit shall be defined by § 989 of the Internal Revenue Code, and the source of such
89 income shall be determined in accordance with §§ 861, 862 and 987 of the Internal Revenue Code.

90 In determining the source of "foreign source income," the provisions of §§ 861, 862, and 863 of
91 the Internal Revenue Code shall be applied except as specifically provided in subsection 5 above.

92 "Income and deductions from Virginia sources" includes:

93 1. Items of income, gain, loss and deduction attributable to:

94 a. The ownership of any interest in real or tangible personal property in Virginia;

95 b. A business, trade, profession or occupation carried on in Virginia; or

96 c. Prizes paid by the Virginia Lottery Department, and gambling winnings from wagers placed or
97 paid at a location in Virginia.

98 2. Income from intangible personal property, including annuities, dividends, interest, royalties
99 and gains from the disposition of intangible personal property to the extent that such income is from
100 property employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia.

101 "Income tax return preparer" means any person who prepares for compensation, or who employs
102 one or more persons to prepare for compensation, any return of tax imposed by this chapter or any claim
103 for refund of tax. For purposes of the preceding sentence, the preparation for compensation of any
104 portion of a return or claim for refund shall be treated as if it were the preparation of the return or claim
105 for refund. A person shall not be an "income tax return preparer" merely because the person:

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- 106 1. Furnishes typing, reproducing, or other mechanical assistance;
107 2. Prepares a return or claim for refund of the employer (or of an officer or employee of the
108 employer) by whom he is regularly and continuously employed;
109 3. Prepares as a fiduciary a return or claim for refund for any person; or
110 4. Prepares an application for correction of an erroneous assessment or a protective claim for
111 refund for a taxpayer in response to any assessment pursuant to § 58.1-1812 issued to the taxpayer or in
112 response to any waiver pursuant to § 58.1-101 or 58.1-220 after the commencement of an audit of the
113 taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly
114 affects the tax liability of such taxpayer.

115 "Individual" means all natural persons whether married or unmarried and fiduciaries acting for
116 natural persons, but not fiduciaries acting for trusts or estates.

117 "Intangible expenses and costs" means:

- 118 1. Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct
119 or indirect acquisition, use, maintenance or management, ownership, sale, exchange, lease, transfer, or
120 any other disposition of intangible property to the extent such amounts are allowed as deductions or
121 costs in determining taxable income;
122 2. Losses related to or incurred in connection directly or indirectly with factoring transactions or
123 discounting transactions;
124 3. Royalty, patent, technical and copyright fees;
125 4. Licensing fees; and
126 5. Other similar expenses and costs.

127 "Intangible property" means patents, patent applications, trade names, trademarks, service marks,
128 copyrights and similar types of intangible assets.

129 "Interest expenses and costs" means amounts directly or indirectly allowed as deductions under §
130 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal
131 Revenue Code to the extent such expenses and costs are directly or indirectly for, related to, or in

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connection with the direct or indirect acquisition, use, maintenance, management, ownership, sale, exchange, lease, transfer, or disposition of intangible property.

"Nonresident estate or trust" means an estate or trust which is not a resident estate or trust.

"Related entity" means:

1. A stockholder who is an individual, or a member of the stockholder's family enumerated in § 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock;

2. A stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or

3. A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of § 318 of the Internal Revenue Code, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of § 318 of the Internal Revenue Code shall apply for purposes of determining whether the ownership requirements of this subdivision have been met.

"Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is a related entity, a component member as defined in § 1563(b) of the Internal Revenue Code, or is a person to or from whom there is attribution of stock ownership in accordance with § 1563(e) of the Internal Revenue Code.

"Resident" applies only to natural persons and includes, for the purpose of determining liability for the taxes imposed by this chapter upon the income of any taxable year every person domiciled in Virginia at any time during the taxable year and every other person who, for an aggregate of more than 183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in

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158 Virginia or not. The word "resident" shall not include any member of the United States Congress who is
 159 domiciled in another state.

160 "Resident estate or trust" means:

- 161 1. The estate of a decedent who at his death was domiciled in the Commonwealth;
- 162 2. A trust created by will of a decedent who at his death was domiciled in the Commonwealth;
- 163 3. A trust created by or consisting of property of a person domiciled in the Commonwealth; or
- 164 4. A trust or estate which is being administered in the Commonwealth.

165 "Sales" means all gross receipts of the corporation not allocated under § 58.1-407, except the sale
 166 or other disposition of intangible property shall include only the net gain realized from the transaction.

167 "State," ~~means~~ for purposes of Article 10 ~~of this chapter (§ 58.1-400 et seq.), means~~ any state of
 168 the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or
 169 possession of the United States, and any foreign country.

170 "Trust" or "estate" means a trust or estate, or a fiduciary thereof, which is required to file a
 171 fiduciary income tax return under the laws of the United States.

172 "Virginia fiduciary adjustment" means the net amount of the applicable modifications described
 173 in ~~§ 58.1-322 §§ 58.1-322.01, 58.1-322.02, and 58.1-322.04~~ (including ~~subsection E thereof subdivision~~
 174 ~~1 of § 58.1-322.04~~ if the estate or trust is a beneficiary of another estate or trust) which relate to items of
 175 income, gain, loss or deduction of an estate or trust. The fiduciary adjustment shall not include the
 176 modification in ~~subsection D of § 58.1-322 58.1-322.03~~, except that the amount of state income taxes
 177 excluded from federal taxable income shall be included. The fiduciary adjustment shall also include the
 178 modification in ~~subsection D- subdivision 7 of § 58.1-322, 58.1-322.03~~ regarding the deduction for the
 179 purchase of a prepaid tuition contract or contribution to a savings trust account.

180 § 58.1-315. Transitional modifications to Virginia taxable income.

181 The modifications of Virginia taxable income to be made in accordance with ~~subsection F~~
 182 ~~subdivision 2~~ of ~~§ 58.1-322 58.1-322.04~~ and subsection D of § 58.1-402, so long as applicable, are as
 183 follows:

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184 1. There shall be subtracted from Virginia taxable income the amount necessary to prevent the
185 taxation under this chapter of any annuity or of any other amount of income or gain which was properly
186 included in income or gain and was taxable under Articles 1, 2, 3, 4, 5, 6, or 7 (§§ 58-77 through 58-
187 151) of Chapter 4 of Title 58 to the taxpayer prior to the repeal thereof, or to a decedent by reason of
188 whose death the taxpayer acquires the right to receive the income or gain, or to a trust or estate from
189 which the taxpayer received the income or gain.

190 2. The carry-back of net operating losses or net capital losses to reduce taxable income of taxable
191 years beginning prior to January 1, 1972, shall not be permitted. Where a taxpayer would have been
192 allowed to deduct an amount as a net operating loss carry-over or net capital loss carry-over in
193 determining taxable income for a taxable year beginning after December 31, 1971, but for the fact that
194 such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable
195 year beginning prior to January 1, 1972, there shall be added to Virginia taxable income any amount
196 which was actually deducted in determining taxable income as a net operating loss carry-over or net
197 capital loss carry-over and there shall be subtracted from Virginia taxable income the amount which
198 could have been deducted as a net operating loss carry-over or net capital loss carry-over in arriving at
199 taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal
200 purposes.

201 3. There shall be added to Virginia taxable income the amount necessary to prevent the
202 deduction under this chapter of any item which was properly deductible by the taxpayer in determining a
203 tax under §§ 58-77 through 58-151 prior to the repeal thereof.

204 4. There shall be subtracted from Virginia taxable income that portion of any accumulation
205 distribution which is allocable, under the laws of the United States relating to federal income taxes, to
206 undistributed net income of a trust for any taxable year beginning on or before December 31, 1971. The
207 rules prescribed by such laws of the United States with reference to any such accumulation distribution
208 shall be applied, mutatis mutandis, to allow for this limitation; and, without limiting the generality of the
209 foregoing, the credit provided by § 58.1-370 in the case of accumulation distributions shall in no

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instance encompass any part of any tax paid for a taxable year beginning on or before December 31, 1971.

5. As to gain or loss attributable to the sale or exchange of nondepreciable property, Virginia taxable income shall be adjusted to effect a reduction in such gain or increase in such loss by the amount by which the adjusted basis of such property, determined for Virginia income tax purposes at the close of the taxable period immediately preceding the first taxable period to which Articles 7.1 to 7.6 (§ 58-151.01 et seq.) of Title 58 applied prior to repeal thereof exceeds the adjusted basis of such property for federal income tax purposes determined at the close of the same period.

6. There shall be subtracted from the Virginia taxable income of a shareholder of an electing small business corporation any amount included in his taxable income as his share of the undistributed taxable income of such corporation for any year of the corporation beginning before January 1, 1972.

7. There shall be subtracted from federal taxable income amounts which would have been deductible by the corporation in computing federal taxable income but for the election of such corporation of the additional investment tax credit under § 46(a)(2)(B) of the Internal Revenue Code in effect on January 1, 1978.

§ 58.1-321. Exemptions and exclusions.

A. No tax levied pursuant to § 58.1-320 is imposed, nor any return required to be filed, by:

1. ~~A single individual where the Virginia adjusted gross income for such taxable year is less than \$5,000 for taxable years beginning on and after January 1, 1987, but before January 1, 2004.~~

~~A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D-5 of § 58.1-322 for such taxable year is less than \$5,000 for taxable years beginning on and after January 1, 2004, but before January 1, 2005.~~

~~A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D-5 of § 58.1-322 for such taxable year is less than \$7,000 for taxable years beginning on and after January 1, 2005, but before January 1, 2008.~~

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~~A single individual where the Virginia adjusted gross income plus the modification specified in subdivision D 5 of § 58.1-322 for such taxable year is less than \$11,250 for taxable years beginning on and after January 1, 2008, but before January 1, 2010.~~

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03 for such taxable year is less than \$11,650 for taxable years beginning on and after January 1, 2010, but before January 1, 2012.

A single individual where the Virginia adjusted gross income plus the modification specified in subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03 for such taxable year is less than \$11,950 for taxable years beginning on and after January 1, 2012.

~~2. An individual and spouse if their combined Virginia adjusted gross income for such taxable year is less than \$8,000 for taxable years beginning on and after January 1, 1987, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2004.~~

An individual and spouse if their combined Virginia adjusted gross income plus the modification specified in subdivision ~~D~~ 5 of § ~~58.1-322~~ 58.1-322.03 is less than ~~\$8,000 for taxable years beginning on and after January 1, 2004, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2005; less than \$14,000 for taxable years beginning on and after January 1, 2005, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2008; less than \$22,500 for taxable years beginning on and after January 1, 2008, (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2010; less than~~ \$23,300 for taxable years beginning on and after January 1, 2010; (or one-half of such amount in the case of a married individual filing a separate return) but before January 1, 2012; and less than \$23,900 for taxable years beginning on and after January 1, 2012; (or one-half of such amount in the case of a married individual filing a separate return).

For the purposes of this section, "Virginia adjusted gross income" means federal adjusted gross income for the taxable years with the modifications specified in ~~§ 58.1-322 B, § 58.1-322 C and the additional deductions allowed under § 58.1-322 D 2 b and D 5 for taxable years beginning before January 1, 2004 §§ 58.1-322.01 and 58.1-322.02.~~ For taxable years beginning on and after January 1,

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~~2004, Virginia adjusted gross income means federal adjusted gross income with the modifications specified in subsections B and C of § 58.1-322.~~

B. Persons in the ~~armed forces~~ Armed Forces of the United States stationed on military or naval reservations within Virginia who are not domiciled in Virginia shall not be held liable to income taxation for compensation received from military or naval service.

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in ~~this section~~ §§ 58.1-322.01 through 58.1-322.04.

~~B. To the extent excluded from federal adjusted gross income, there shall be added:~~

~~1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;~~

~~2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;~~

~~3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;~~

~~4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes that is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code;~~

~~5 through 8. [Repealed.]~~

~~9. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code;~~

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~~10. For taxable years beginning on and after January 1, 2014, any loss for the taxable year that was deducted as a capital loss for federal income tax purposes by an account holder attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55. For purposes of this subdivision, "account holder" and "first-time home buyer savings account" mean the same as those terms are defined in § 55-555; and~~

~~11. For taxable years beginning on or after January 1, 2016, to the extent that tax credit is allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.~~

~~C. To the extent included in federal adjusted gross income, there shall be subtracted:~~

~~1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.~~

~~2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of the Commonwealth.~~

~~3. [Repealed.]~~

~~4. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.~~

~~4a. Through December 31, 2000, the same amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22(b)(2) of the Internal Revenue Code; however, any person who claims a deduction under subdivision D-5 may not also claim a subtraction under this subdivision.~~

~~4b. For taxable years beginning on or after January 1, 2001, up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision D-5 may not also claim a subtraction under this subdivision.~~

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~~5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.~~

~~6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue Code.~~

~~7, 8. [Repealed.]~~

~~9. [Expired.]~~

~~10. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.~~

~~11. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified herein.~~

~~12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for information provided to a law enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee of, or under contract with, a law enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.~~

~~13. [Repealed.]~~

~~14. [Expired.]~~

~~15, 16. [Repealed.]~~

~~17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.~~

~~18. [Repealed.]~~

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~~19. For taxable years beginning on and after January 1, 1996, any income received during the taxable year derived from a qualified pension, profit sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.~~

~~20. For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.~~

~~21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.~~

~~22. For taxable years beginning on or after January 1, 2000, but before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.~~

~~23. Effective for all taxable years beginning on or after January 1, 2000, \$15,000 of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar for dollar by the amount which the taxpayer's~~

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~~military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.~~

~~24. Effective for all taxable years beginning on and after January 1, 2000, the first \$15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is \$15,000 or less.~~

~~25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.~~

~~26. For taxable years beginning on and after January 1, 2001, any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.~~

~~27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 3.2-3100; and (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999, by (a) tobacco farmers; (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.~~

~~28. For taxable years beginning on and after January 1, 2000, items of income attributable to, derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. 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.~~

~~"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of~~

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~~any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.~~

~~29, 30. [Repealed.]~~

~~31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount shall be reduced dollar for dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.~~

~~32. Effective for all taxable years beginning on or after January 1, 2007, the death benefit payments from an annuity contract that are received by a beneficiary of such contract provided that (i) the death benefit payment is made pursuant to an annuity contract with an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction under this subdivision shall be allowed only for that portion of the death benefit payment that is included in federal adjusted gross income.~~

~~33. For taxable years beginning on and after January 1, 2009, any gain recognized from the sale of launch services to space flight participants, as defined in 49 U.S.C. § 70102, or launch services intended to provide individuals the training or experience of a launch, without performing an actual launch. To qualify for a deduction under this subdivision, launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.~~

~~34. For taxable years beginning on and after January 1, 2009, any gain recognized as a result of resupply services contracts for delivering payload, as defined in 49 U.S.C. § 70102, entered into with the~~

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~~Commercial Orbital Transportation Services division of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-227.8, and launched from an airport or spaceport in Virginia.~~

~~35. For taxable years beginning on or after January 1, 2011, any income taxed as a long-term capital gain for federal income tax purposes, or any income taxed as investment services partnership interest income (otherwise known as investment partnership carried interest income) for federal income tax purposes. To qualify for a subtraction under this subdivision, such income shall be attributable to an investment in a "qualified business," as defined in § 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided the business has its principal office or facility in the Commonwealth and less than \$3 million in annual revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision, the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible for the subtraction under this subdivision for an investment in the same business.~~

~~36. For taxable years beginning on and after January 1, 2014, any income of an account holder for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of Title 55 and (ii) interest income or other income for federal income tax purposes attributable to such person's first-time home buyer savings account.~~

~~Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in which moneys or funds withdrawn from the first-time home buyer savings account were used for any purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided under § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the taxable year that was used for other than the payment of eligible costs, computed by multiplying the amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate earnings in the account at the time of the withdrawal to the total balance in the account at such time.~~

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450 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)
451 withdrawn by reason of the qualified beneficiary's death or disability, (ii) a disbursement of assets of the
452 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101
453 through 1330, or (iii) transferred from an account established pursuant to Chapter 32 (§ 55-555 et seq.)
454 of Title 55 into another account established pursuant to such chapter for the benefit of another qualified
455 beneficiary.

456 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer
457 savings account," and "qualified beneficiary" mean the same as those terms are defined in § 55-555.

458 37. For taxable years beginning on or after January 1, 2015, any income for the taxable year
459 attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this
460 subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal
461 Revenue Code.

462 D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross
463 income as defined in § 58.1-321:

464 1. a. The amount allowable for itemized deductions for federal income tax purposes where the
465 taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the
466 amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted
467 on such federal return and increased by an amount which, when added to the amount deducted under §
468 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such
469 purposes at a rate of 18 cents per mile; or

470 b. Three thousand dollars for single individuals and \$6,000 for married persons (one-half of such
471 amounts in the case of a married individual filing a separate return) for taxable years beginning on and
472 after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his
473 federal income tax return. For purposes of this section, any person who may be claimed as a dependent
474 on another taxpayer's return for the taxable year may compute the deduction only with respect to earned
475 income.

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~~2. a. A deduction in the amount of \$900 for taxable years beginning on and after January 1, 2005, but before January 1, 2008; and \$930 for taxable years beginning on and after January 1, 2008, for each personal exemption allowable to the taxpayer for federal income tax purposes.~~

~~b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of \$800.~~

~~The additional deduction for blind or aged taxpayers allowed under this subdivision shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.~~

~~3. A deduction equal to the amount of employment related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.~~

~~4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.~~

~~5. a. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.~~

~~b. For taxable years beginning on and after January 1, 2004, a deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the deduction will be reduced by \$1 for every \$1 the total combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.~~

~~For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.~~

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~~6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.~~

~~7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a college savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed \$4,000 per contract or college savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to, carryover and recapture of deductions.~~

~~b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.~~

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~~c. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a college savings trust account, less any amounts previously deducted.~~

~~8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.~~

~~9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.~~

~~10. For taxable years beginning on or after January 1, 2000, the amount an individual pays annually in premiums for long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on or after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.~~

~~11. For taxable years beginning on and after January 1, 2006, contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:~~

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~~a. If the payment is received in installment payments, then the recognized gain, including any gain recognized in taxable year 2005, may be subtracted in the taxable year immediately following the year in which the installment payment is received.~~

~~b. If the payment is received in a single payment, then 10 percent of the recognized gain may be subtracted in the taxable year immediately following the year in which the single payment is received. The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.~~

~~12. For taxable years beginning on and after January 1, 2007, an amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity only generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel utilization rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel utilization rating of 85; and (x) programmable thermostats.~~

~~13. For taxable years beginning on or after January 1, 2007, the lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12 months of such donation, provided the donor has not taken a medical deduction in accordance with the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in the taxable year in which the donation is made or the taxable year in which the 12-month period expires.~~

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~~14. For taxable years beginning on or after January 1, 2013, the amount an individual age 66 or older with earned income of at least \$20,000 for the year and federal adjusted gross income not in excess of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a deduction for such premiums under federal income tax laws. "Earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code of 1954, as amended or renumbered. The deduction shall not be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.~~

~~E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.~~

~~F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.~~

~~G. Effective for all taxable years beginning on or after January 1, 2007, to the extent included in federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the income or gain of such electing small business corporation (S corporation), and (ii) added back to federal adjusted gross income such that, federal adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or deductions of such electing small business corporation (S corporation).~~

~~Effective for all taxable years beginning on or after January 1, 2007, to the extent excluded from federal adjusted gross income, there shall be added to federal adjusted gross income by a shareholder of~~

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~~an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the value of any distribution paid or distributed to the shareholder by such electing small business corporation (S corporation).~~

~~H. Notwithstanding any other provision of law, the income from any disposition of real property which is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property made on or after January 1, 2009, may, at the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs, and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).~~

§ 58.1-322.01. Virginia taxable income; additions.

In computing Virginia taxable income pursuant to § 58.1-322, to the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party.

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission, or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes.

3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code.

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637 4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum
638 distribution allowance and any amount excludable for federal income tax purposes that is excluded from
639 federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions
640 under § 402 of the Internal Revenue Code.

641 5. The amount required to be included in income for the purpose of computing the partial tax on
642 an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

643 6. For taxable years beginning on and after January 1, 2014, any loss for the taxable year that
644 was deducted as a capital loss for federal income tax purposes by an account holder attributable to such
645 person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of
646 Title 55. For purposes of this subdivision, "account holder" and "first-time home buyer savings account"
647 mean the same as those terms are defined in § 55-555.

648 7. For taxable years beginning on and after January 1, 2016, to the extent that tax credit is
649 allowed for the same donation pursuant to § 58.1-439.12:12, any amount claimed as a federal income
650 tax deduction for such donation under § 170 of the Internal Revenue Code, as amended or renumbered.

651 **§ 58.1-322.02. Virginia taxable income; subtractions.**

652 In computing Virginia taxable income pursuant to § 58.1-322, to the extent included in federal
653 adjusted gross income, there shall be subtracted:

654 1. Income derived from obligations, or on the sale or exchange of obligations, of the United
655 States and on obligations or securities of any authority, commission, or instrumentality of the United
656 States to the extent exempt from state income taxes under the laws of the United States, including, but
657 not limited to, stocks, bonds, treasury bills, and treasury notes but not including interest on refunds of
658 federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

659 2. Income derived from obligations, or on the sale or exchange of obligations, of the
660 Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

661 3. Benefits received under Title II of the Social Security Act and other benefits subject to federal
662 income taxation solely pursuant to § 86 of the Internal Revenue Code.

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663 4. Up to \$20,000 of disability income, as defined in § 22(c)(2)(B)(iii) of the Internal Revenue
664 Code; however, any person who claims a deduction under subdivision 5 of § 58.1-322.03 may not also
665 claim a subtraction under this subdivision.

666 5. The amount of any refund or credit for overpayment of income taxes imposed by the
667 Commonwealth or any other taxing jurisdiction.

668 6. The amount of wages or salaries eligible for the federal Work Opportunity Credit which was
669 not deducted for federal purposes on account of the provisions of § 280C(a) of the Internal Revenue
670 Code.

671 7. Any amount included therein less than \$600 from a prize awarded by the Virginia Lottery.

672 8. The wages or salaries received by any person for active and inactive service in the National
673 Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar
674 days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of
675 O3 and below shall be entitled to the deductions specified in this subdivision.

676 9. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for
677 information provided to a law-enforcement official or agency, or to a nonprofit corporation created
678 exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of
679 perpetrators of crimes. This subdivision shall not apply to the following: an individual who is an
680 employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime
681 for which the reward was paid, or any person who is compensated for the investigation of crimes or
682 accidents.

683 10. The amount of "qualified research expenses" or "basic research expenses" eligible for
684 deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C(c)
685 of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations,
686 and members of limited liability companies to the extent and in the same manner as other deductions
687 may pass through to such partners, shareholders, and members.

688 11. Any income received during the taxable year derived from a qualified pension, profit-
689 sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual

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retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

12. Any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

13. All military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted, or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area that is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

14. For taxable years beginning before January 1, 2015, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent that a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

15. Fifteen thousand dollars of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount by which the taxpayer's military basic pay exceeds \$15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds \$30,000.

16. The first \$15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is \$15,000 or less.

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717 17. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

718 18. Any amount received as military retirement income by an individual awarded the
719 Congressional Medal of Honor.

720 19. Items of income attributable to, derived from, or in any way related to (i) assets stolen from,
721 hidden from, or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii)
722 damages, reparations, or other consideration received by a victim or target of Nazi persecution to
723 compensate such individual for performing labor against his will under the threat of death, during World
724 War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such
725 items of income or with the proceeds from the sale of assets stolen from, hidden from, or otherwise lost
726 to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The
727 provisions of this subdivision shall only apply to an individual who was the first recipient of such items
728 of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or
729 stepchild of such victim.

730 As used in this subdivision:

731 "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those
732 European countries allied with Nazi Germany, or any other neutral European country or area in Europe
733 under the influence or threat of Nazi invasion.

734 "Victim or target of Nazi persecution" means any individual persecuted or targeted for
735 persecution by the Nazi regime who had assets stolen from, hidden from, or otherwise lost as a result of
736 any act or omission in any way relating to (i) the Holocaust, (ii) World War II and its prelude and direct
737 aftermath, (iii) transactions with or actions of the Nazi regime, (iv) treatment of refugees fleeing Nazi
738 persecution, or (v) the holding of such assets by entities or persons in the Swiss Confederation during
739 World War II and its prelude and aftermath. A "victim or target of Nazi persecution" also includes any
740 individual forced into labor against his will, under the threat of death, during World War II and its
741 prelude and direct aftermath.

742 20. The military death gratuity payment made after September 11, 2001, to the survivor of
743 deceased military personnel killed in the line of duty, pursuant to 10 U.S.C. Chapter 75; however, the

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744 subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from
745 his federal gross income in accordance with § 134 of the Internal Revenue Code.

746 21. The death benefit payments from an annuity contract that are received by a beneficiary of
747 such contract, provided that (i) the death benefit payment is made pursuant to an annuity contract with
748 an insurance company and (ii) the death benefit payment is paid solely by lump sum. The subtraction
749 under this subdivision shall be allowed only for that portion of the death benefit payment that is included
750 in federal adjusted gross income.

751 22. Any gain recognized from the sale of launch services to space flight participants, as defined
752 in 49 U.S.C. § 70102, or launch services intended to provide individuals with the training or experience
753 of a launch, without performing an actual launch. To qualify for a deduction under this subdivision,
754 launch services must be performed in Virginia or originate from an airport or spaceport in Virginia.

755 23. Any gain recognized as a result of resupply services contracts for delivering payload, as
756 defined in 49 U.S.C. § 70102, entered into with the Commercial Orbital Transportation Services division
757 of the National Aeronautics and Space Administration or other space flight entity, as defined in § 8.01-
758 227.8, and launched from an airport or spaceport in Virginia.

759 24. Any income taxed as a long-term capital gain for federal income tax purposes, or any income
760 taxed as investment services partnership interest income (otherwise known as investment partnership
761 carried interest income) for federal income tax purposes. To qualify for a subtraction under this
762 subdivision, such income shall be attributable to an investment in a "qualified business," as defined in §
763 58.1-339.4, or in any other technology business approved by the Secretary of Technology, provided that
764 the business has its principal office or facility in the Commonwealth and less than \$3 million in annual
765 revenues in the fiscal year prior to the investment. To qualify for a subtraction under this subdivision,
766 the investment shall be made between the dates of April 1, 2010, and June 30, 2020. No taxpayer who
767 has claimed a tax credit for an investment in a "qualified business" under § 58.1-339.4 shall be eligible
768 for the subtraction under this subdivision for an investment in the same business.

769 25. For taxable years beginning on and after January 1, 2014, any income of an account holder
770 for the taxable year taxed as (i) a capital gain for federal income tax purposes attributable to such

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771 person's first-time home buyer savings account established pursuant to Chapter 32 (§ 55-555 et seq.) of
772 Title 55 and (ii) interest income or other income for federal income tax purposes attributable to such
773 person's first-time home buyer savings account.

774 Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any
775 subtraction taken under this subdivision shall be subject to recapture in the taxable year or years in
776 which moneys or funds withdrawn from the first-time home buyer savings account were used for any
777 purpose other than the payment of eligible costs by or on behalf of a qualified beneficiary, as provided
778 under § 55-558. The amount subject to recapture shall be a portion of the amount withdrawn in the
779 taxable year that was used for other than the payment of eligible costs, computed by multiplying the
780 amount withdrawn and used for other than the payment of eligible costs by the ratio of the aggregate
781 earnings in the account at the time of the withdrawal to the total balance in the account at such time.

782 However, recapture shall not apply to the extent of moneys or funds withdrawn that were (i)
783 withdrawn by reason of the qualified beneficiary's death or disability; (ii) a disbursement of assets of the
784 account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. §§ 101
785 through 1330; or (iii) transferred from an account established pursuant to Chapter 32 (§ 55-555 et seq.)
786 of Title 55 into another account established pursuant to such chapter for the benefit of another qualified
787 beneficiary.

788 For purposes of this subdivision, "account holder," "eligible costs," "first-time home buyer
789 savings account," and "qualified beneficiary" mean the same as those terms are defined in § 55-555.

790 26. For taxable years beginning on and after January 1, 2015, any income for the taxable year
791 attributable to the discharge of a student loan solely by reason of the student's death. For purposes of this
792 subdivision, "student loan" means the same as that term is defined under § 108(f) of the Internal
793 Revenue Code.

794 **§ 58.1-322.03. Virginia taxable income; deductions.**

795 In computing Virginia taxable income pursuant to § 58.1-322, there shall be deducted from
796 Virginia adjusted gross income as defined in § 58.1-321:

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1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount that, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or

b. Three thousand dollars for single individuals and \$6,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return), provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of \$930 for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. Each blind or aged taxpayer as defined under § 63(f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of \$800.

The additional deduction for blind or aged taxpayers allowed under this subdivision shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided that the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. A deduction in the amount of \$12,000 for individuals born on or before January 1, 1939.

b. A deduction in the amount of \$12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by \$1 for every \$1 that the taxpayer's adjusted

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federal adjusted gross income exceeds \$50,000 for single taxpayers or \$75,000 for married taxpayers. For married taxpayers filing separately, the deduction shall be reduced by \$1 for every \$1 that the total combined adjusted federal adjusted gross income of both spouses exceeds \$75,000.

For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

6. The amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or college savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. Except as provided in subdivision b, the amount deducted on any individual income tax return in any taxable year shall be limited to \$4,000 per prepaid tuition contract or college savings trust account. No deduction shall be allowed pursuant to this subdivision 7 if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a college savings trust account exceeds \$4,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or college savings trust contribution has been fully deducted; however, except as provided in subdivision b, in no event shall the amount deducted in any taxable year exceed \$4,000 per contract or college savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid

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tuition contract or college savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or college savings trust account, including, but not limited to, carryover and recapture of deductions.

b. A purchaser of a prepaid tuition contract or contributor to a college savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed \$4,000 per prepaid tuition contract or college savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a college savings trust account, less any amounts previously deducted.

8. The total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided that the individual has not claimed a deduction for such amount on his federal income tax return.

9. An amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subdivision shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. The amount an individual pays annually in premiums for long-term health care insurance, provided that the individual has not claimed a deduction for federal income tax purposes, or, for taxable years beginning before January 1, 2014, a credit under § 58.1-339.11. For taxable years beginning on and after January 1, 2014, no such deduction for long-term health care insurance premiums paid by the individual during the taxable year shall be allowed if the individual has claimed a federal income tax deduction for such taxable year for long-term health care insurance premiums paid by him.

11. Contract payments to a producer of quota tobacco or a tobacco quota holder, or their spouses, as provided under the American Jobs Creation Act of 2004 (P.L. 108-357), but only to the extent that such payments have not been subtracted pursuant to subsection D of § 58.1-402, as follows:

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878 a. If the payment is received in installment payments, then the recognized gain may be subtracted
879 in the taxable year immediately following the year in which the installment payment is received.

880 b. If the payment is received in a single payment, then 10 percent of the recognized gain may be
881 subtracted in the taxable year immediately following the year in which the single payment is received.
882 The taxpayer may then deduct an equal amount in each of the nine succeeding taxable years.

883 12. An amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§
884 58.1-600 et seq.), not to exceed \$500 in each taxable year, in purchasing for his own use the following
885 items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and
886 standard size refrigerators that meet or exceed the applicable energy star efficiency requirements
887 developed by the U.S. Environmental Protection Agency and the U.S. Department of Energy; (ii) any
888 fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only
889 generation efficiency greater than 35 percent, and (c) has a generating capacity of at least two kilowatts;
890 (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70
891 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v)
892 any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling
893 seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling
894 seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an
895 energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization
896 rating of 85; (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85; and
897 (x) programmable thermostats.

898 13. The lesser of \$5,000 or the amount actually paid by a living donor of an organ or other living
899 tissue for unreimbursed out-of-pocket expenses directly related to the donation that arose within 12
900 months of such donation, provided that the donor has not taken a medical deduction in accordance with
901 the provisions of § 213 of the Internal Revenue Code for such expenses. The deduction may be taken in
902 the taxable year in which the donation is made or the taxable year in which the 12-month period expires.

903 14. For taxable years beginning on and after January 1, 2013, the amount an individual age 66 or
904 older with earned income of at least \$20,000 for the year and federal adjusted gross income not in excess

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of \$30,000 for the year pays annually in premiums for (i) a prepaid funeral insurance policy covering the individual or (ii) medical or dental insurance for any person for whom individual tax filers may claim a deduction for such premiums under federal income tax laws. As used in this subdivision, "earned income" means the same as that term is defined in § 32(c) of the Internal Revenue Code. The deduction shall not be allowed for any portion of such premiums paid for which the individual has (a) been reimbursed, (b) claimed a deduction for federal income tax purposes, (c) claimed a deduction or subtraction under another provision of this section, or (d) claimed a federal income tax credit or any income tax credit pursuant to this chapter.

§ 58.1-322.04. Virginia taxable income; additional modifications.

In calculating Virginia taxable income pursuant to § 58.1-322, the following adjustments shall be made:

1. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

2. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

3. To the extent included in federal adjusted gross income, there shall be (i) subtracted from federal adjusted gross income, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the income or gain of such electing small business corporation (S corporation) and (ii) added back to federal adjusted gross income, such that federal adjusted gross income shall be increased, by a shareholder of an electing small business corporation (S corporation) that is subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the shareholder's allocable share of the losses or deductions of such electing small business corporation (S corporation).

To the extent excluded from federal adjusted gross income, there shall be added to federal adjusted gross income, by a shareholder of an electing small business corporation (S corporation) that is

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subject to the bank franchise tax imposed under Chapter 12 (§ 58.1-1200 et seq.) for the calendar year in which such taxable year begins, the value of any distribution paid or distributed to the shareholder by such electing small business corporation (S corporation).

4. Notwithstanding any other provision of law, the income from any disposition of real property that is held by the taxpayer for sale to customers in the ordinary course of the taxpayer's trade or business, as defined in § 453(l)(1)(B) of the Internal Revenue Code, of property may, at the election of the taxpayer, be recognized under the installment method described under § 453 of the Internal Revenue Code, provided that (i) the election relating to the dealer disposition of the property has been made on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of the tax imposed under this chapter for the taxable year in which the disposition occurs and (ii) the dealer disposition is in accordance with restrictions or conditions established by the Department, which shall be set forth in guidelines developed by the Department. Along with such restrictions or conditions, the guidelines shall also address the recapture of such income under certain circumstances. The development of the guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

§ 58.1-324. Husband and wife.

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.

B. If the federal taxable income of husband and wife is determined on a joint federal return, or if neither files a federal return:

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.

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:

1. Income shall be allocated to the spouse who earned the income or with respect to whose property the income is attributable.

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959 2. Allowable deductions with respect to trade, business, production of income, or employment
 960 shall be allocated to the spouse to whom attributable.

961 3. Nonbusiness deductions, where properly taken for federal income tax purposes, shall be
 962 allowable for Virginia income tax purposes, but shall be allocable between husband and wife as they
 963 may mutually agree. For this purpose, "nonbusiness deductions" consist of allowable deductions not
 964 described in subdivision 2 ~~of this subsection.~~

965 4. Where the standard deduction or low income allowance is properly taken pursuant to
 966 subdivision ~~D~~ 1 a of § ~~58.1-322~~ 58.1-322.03, such deduction or allowance shall be allocable between
 967 husband and wife as they may mutually agree.

968 5. Personal exemptions properly allowable for federal income tax purposes shall be allocated for
 969 Virginia income tax purposes as husband and wife may mutually agree; however, exemptions for
 970 taxpayer and spouse together with exemptions for old age and blindness must be allocated respectively
 971 to the spouse to whom they relate.

972 D. Where allocations are permitted to be made under subsection C pursuant to agreement
 973 between husband and wife, and husband and wife have failed to agree as to those allocations, such
 974 allocations shall be made between husband and wife in a manner corresponding to the treatment for
 975 federal income tax purposes of the items involved, under regulations prescribed by the Department ~~of~~
 976 Taxation.

977 **§ 58.1-339.8. Income tax credit for low-income taxpayers.**

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

979 "Family Virginia adjusted gross income" means the combined Virginia adjusted gross income of
 980 an individual, the individual's spouse, and any person claimed as a dependent on the individual's or his
 981 spouse's income tax return for the taxable year.

982 "Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of
 983 Columbia updated annually in the Federal Register by the U.S. Department of Health and Human
 984 Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

985 "Virginia adjusted gross income" has the same meaning as the term is defined in § 58.1-321.

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986 B. 1. For taxable years beginning on and after January 1, 2000, any individual or persons filing a
987 joint return whose family Virginia adjusted gross income does not exceed 100 percent of the poverty
988 guideline amount corresponding to a household of an equal number of persons as listed in the poverty
989 guidelines published during such taxable year, shall be allowed a credit against the tax levied pursuant to
990 § 58.1-320 in an amount equal to \$300 each for the individual, the individual's spouse, and any person
991 claimed as a dependent on the individual's or married persons' income tax return for the taxable year.
992 For any taxable year in which a husband and wife file separate Virginia income tax returns, the credit
993 provided under this section shall be allowed against the tax for only one of such two tax returns.
994 Additionally, the credit provided under this section shall not be allowed against such tax of a dependent
995 of the individual or of married persons.

996 2. For taxable years beginning on and after January 1, 2006, any individual or married persons,
997 eligible for a tax credit pursuant to § 32 of the Internal Revenue Code, may for the taxable year, in lieu
998 of the credit authorized under subdivision B 1, claim a credit against the tax imposed pursuant to § 58.1-
999 320 in an amount equal to 20 percent of the credit claimed by the individual or married persons for
1000 federal individual income taxes pursuant to § 32 of the Internal Revenue Code for the taxable year. In no
1001 case shall a household be allowed a credit pursuant to this subdivision and subdivision B 1 for the same
1002 taxable year.

1003 For purpose of this subdivision, "household" means an individual and in the case of married
1004 persons, the individual and his spouse regardless of whether or not the individual and his spouse file
1005 combined or separate Virginia individual income tax returns.

1006 C. The amount of the credit provided pursuant to subsection B for any taxable year shall not
1007 exceed the individual's or married persons' Virginia income tax liability.

1008 D. Notwithstanding any other provision of this section, no credit shall be allowed pursuant to
1009 subsection B in any taxable year in which the individual, the individual's spouse, or both, or any person
1010 claimed as a dependent on such individual's or married persons' income tax return, claims one or any
1011 combination of the following on his or their income tax return for such taxable year:

1012 1. The subtraction under subdivision ~~C-11.8~~ of § ~~58.1-322~~ 58.1-322.02;

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2. The subtraction under subdivision ~~C 23 15~~ of § ~~58.1-322 58.1-322.02~~;

3. The subtraction under subdivision ~~C 24 16~~ of § ~~58.1-322 58.1-322.02~~;

4. The deduction for the additional personal exemption for blind or aged taxpayers under subdivision ~~D 2 b~~ of § ~~58.1-322 58.1-322.03~~; or

5. The deduction under subdivision ~~D 5~~ of § ~~58.1-322 58.1-322.03~~.

§ 58.1-362. Virginia taxable income of a nonresident estate or trust.

The Virginia taxable income of a nonresident estate or trust shall be its share of income, gain, loss and deduction attributable to Virginia sources as determined under § 58.1-363 increased or reduced, as the case may be, by:

1. The amount derived from or connected with Virginia sources of any income, gain, loss and deduction recognized for federal income tax purposes but excluded from the computation of distributable net income of the estate or trust; and

2. The net amount of any modifications as provided for in ~~§ 58.1-322 (not including subsection D thereof)~~ §§ 58.1-322.01, 58.1-322.02, and 58.1-322.04 with respect to the income or gain referred to in subdivision 1 of this section.

§ 58.1-363. Share of a nonresident estate, trust, or beneficiary in income from Virginia sources.

A. The share of a nonresident estate or trust under § 58.1-362 and the share of a nonresident beneficiary of any estate or trust under provisions otherwise applicable to nonresident individuals in estate or trust income or loss attributable to Virginia sources shall be determined as follows:

1. There shall be determined the items of income, gain, loss and deduction derived from Virginia sources, which enter into the computation of distributable net income of the estate or trust for the taxable year (including such items from another estate or trust of which the first estate or trust is a beneficiary).

2. There shall be added or subtracted (as the case may be) the modifications described in ~~§ 58.1-322 §§ 58.1-322.01, 58.1-322.02, 58.1-322.03, and 58.1-322.04~~ to the extent relating to items of income, gain, loss and deduction derived from Virginia sources which enter into the computation of distributable net income (including all such items from another estate or trust of which the first estate or trust is a

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beneficiary). No modification shall be made under this subsection which has the effect of duplicating an item already reflected in the computation of distributable net income.

3. The amounts determined under subdivisions 1 and 2 shall be allocated among the estate or trust and its beneficiaries (including, solely for the purposes of this allocation, resident beneficiaries) in proportion to their respective shares of distributable net income. The amounts so allocated shall have the same character under this article as under the laws of the United States relating to federal income taxes. Where an item entering into the computation of such amounts is not characterized by such laws, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

B. If the estate or trust has no distributable net income for the taxable year, the share of each beneficiary (including, solely for the purpose of such allocation, resident beneficiaries) in the net amount determined under subdivisions [A](#) 1 and 2 ~~of subsection A~~ shall be in proportion to his share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

§ 58.1-391. Virginia taxable income of owners of a pass-through entity.

A. In determining Virginia taxable income of an owner, any modification described in ~~§ 58.1-322 §§ 58.1-322.01, 58.1-322.02, 58.1-322.03, and 58.1-322.04~~ that relates to an item of pass-through entity income, gain, loss or deduction shall be made in accordance with the owner's distributive share, for federal income tax purposes, of the item to which the modification relates. Where an owner's distributive share of any such item is not included in any category of income, gain, loss or deduction required to be taken into account separately for federal income tax purposes, the owner's distributive share of such item shall be determined in accordance with his distributive share, for federal income tax purposes, of pass-through entity taxable income or loss.

B. Each item of pass-through entity income, gain, loss or deduction shall have the same character for an owner under this chapter as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for an owner as if realized directly from

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the source from which realized by the pass-through entity or incurred in the same manner by the pass-through entity.

C. Where an owner's distributive shares of an item of pass-through entity income, gain, loss or deduction is determined for federal income tax purposes by special provision in the pass-through entity agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this chapter, the owner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the pass-through entity agreement made no special provision with respect to such item.

§ 58.1-490. Declarations of estimated tax.

A. Every resident and nonresident individual shall make a declaration of his estimated tax for every taxable year, if his Virginia tax liability can reasonably be expected to exceed an amount, to be determined under regulations promulgated by the Tax Commissioner, which takes into account the additions, subtractions, and deductions set forth in ~~§ 58.1-322~~ §§ 58.1-322.01, 58.1-322.02, 58.1-322.03, and 58.1-322.04, the credits set forth in Articles 3 (§ 58.1-332 et seq.) and 13.2 (§ 58.1-439.18 et seq.), and the filing exclusions set forth in § 58.1-321. Every estate with respect to any taxable year ending two or more years after the date of death of the decedent and every trust shall make a declaration of its estimated tax for every taxable year, if its Virginia taxable income can reasonably be expected to exceed the amount specified by regulation for individuals as set forth above.

B. For purposes of this article, "estimated tax" means the amount which an individual estimates to be his income tax under this chapter for the taxable year, less the amount which he estimates to be the sum of any credits allowable against the tax.

C. For purposes of this section, the declaration shall be the first voucher.

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

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1094 return is not made for the taxable year, the estimated tax for such year may be treated as the estimated
1095 tax of either the husband or the wife, or may be divided between them.

1096 E. A declaration of estimated tax of an individual other than a farmer, fisherman, or merchant
1097 seaman shall be filed on or before May 1 of the taxable year, except that if the requirements of
1098 subsection A are first met:

1099 1. The declaration shall be filed on or before June 15th or

1100 2. After June 1 and before September 2 of the taxable year, the declaration shall be filed on or
1101 before September 15th or

1102 3. After September 1 of the taxable year, the declaration shall be filed on or before January 15 of
1103 the succeeding year.

1104 F. A declaration of estimated tax of an individual having an estimated gross income from (i)
1105 farming (including oyster farming); (ii) fishing; or (iii) working as a merchant seaman for the taxable
1106 year, which is at least two-thirds of his total estimated gross income for the taxable year, may be filed at
1107 any time on or before January 15 of the succeeding year, in lieu of the time otherwise prescribed.

1108 G. A declaration of estimated tax of an individual having a total estimated tax for the taxable
1109 year of \$40 or less may be filed at any time on or before January 15 of the succeeding year under
1110 regulations of the Tax Commissioner.

1111 H. An individual may amend a declaration under regulations of the Tax Commissioner.

1112 I. If on or before March 1 of the succeeding taxable year an individual files his return for the
1113 taxable year for which the declaration is required, and pays therewith the full amount of the tax shown to
1114 be due on the return:

1115 1. Such return shall be considered as his declaration if no declaration was required to be filed
1116 during the taxable year, but is otherwise required to be filed on or before January 15.

1117 2. Such return shall be considered as the amendment permitted by subsection H to be filed on or
1118 before January 15 if the tax shown on the return is greater than the estimated tax shown in a declaration
1119 previously made.

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J. This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

K. An individual having a taxable year of less than 12 months shall make a declaration in accordance with regulations of the Tax Commissioner.

L. The declaration of estimated tax for an individual who is unable to make a declaration by reason of any disability shall be made and filed by his guardian, committee, fiduciary or other person charged with the care of his person or property (other than a receiver in possession of only a part of his property), or by his duly authorized agent.

M. The declaration of estimated tax for a trust or estate shall be made by the fiduciary. For purposes of the estimated tax imposed in this article, any reference to an "individual" shall be deemed to include the fiduciary required to file a declaration for a trust or estate. Any overpayment of estimated tax with respect to any trust or estate shall be refunded to the fiduciary. A beneficiary of a trust or estate shall not be entitled to a credit against the beneficiary's individual income tax for any overpayment of estimated tax by a trust or estate.

§ 58.1-513. Limitations; transfer of credit; gain or loss from tax credit.

A. Any taxpayer claiming a tax credit under this article shall not claim a credit under any similar Virginia law for costs related to the same project. To the extent a credit is taken in accordance with this article, no subtraction allowed for the gain on the sale of (i) land dedicated to open-space use or (ii) an easement dedicated to open-space use under ~~subsection C subdivision 14~~ of § ~~58.1-322~~ 58.1-322.02 shall be allowed for three years following the year in which the credit is taken. Any building which serves as the basis, in whole or in part, of a tax credit under this article shall not serve as the basis of the tax credit allowed under § 58.1-339.2 for a period of five years following the donation on which the credit is based; and any building which serves as the basis for the tax credit allowed under § 58.1-339.2 shall not serve as the basis, in whole or in part, for a tax credit under this article for a period of five years following the completion of the rehabilitation project on which the credit is based.

B. Any tax credits that arise under this article from the donation of land or an interest in land made by a pass-through tax entity such as a trust, estate, partnership, limited liability company or

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partnership, limited partnership, subchapter S corporation or other fiduciary shall be used either by such entity if it is the taxpayer on behalf of such entity or by the member, manager, partner, shareholder or beneficiary, as the case may be, in proportion to their interest in such entity in the event that income, deductions and tax liability pass through such entity to such member, manager, partner, shareholder or beneficiary or as set forth in the agreement of said entity. Such tax credits shall not be claimed by both the entity and the member, manager, partner, shareholder or beneficiary for the same donation.

C. 1. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable credit for use by another taxpayer on Virginia income tax returns. A taxpayer who transfers any amount of credit under this article shall file a notification of such transfer to the Department in accordance with procedures and forms prescribed by the Tax Commissioner.

2. A fee of two percent of the value of the donated interest shall be imposed upon any transfer arising from the sale by any taxpayer of credits under this article and upon the distribution of a portion of credits under this article to a member, manager, partner, shareholder or beneficiary pursuant to subsection B. Revenues generated by such fees first shall be used by the Department of Taxation and the Department of Conservation and Recreation for their costs in implementing this article but in no event shall such amount exceed 50 percent of the total revenue generated by the fee on an annual basis. The remainder of such revenues shall be transferred to the Virginia Land Conservation Fund for distribution to the public or private conservation agencies or organizations, excluding federal governmental entities, that are responsible for enforcing the conservation and preservation purposes of the donated interests. Distribution of such revenues shall be made annually by the Virginia Land Conservation Foundation proportionally based on a three-year average of the number of donated interests accepted by the public or private conservation agencies or organizations, excluding federal governmental entities, during the immediately preceding three-year period.

D. To the extent included in and not otherwise subtracted from federal adjusted gross income pursuant to § ~~58.1-322~~ 58.1-322.02 or federal taxable income pursuant to § 58.1-402, there shall be subtracted any amount of gain or income recognized by a taxpayer on the application of a tax credit under this article against a Virginia income tax liability.

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E. The transfer of the credit and its application against a tax liability shall not create gain or loss for the transferor or the transferee of such credit.

F. A pass-through tax entity, such as a partnership, limited liability company or Subchapter S corporation, may appoint a tax matters representative, who shall be a general partner, member/manager or shareholder, and register that representative with the Tax Commissioner. The Tax Commissioner shall be entitled to deal with the tax matters representative as representative of the taxpayers to whom credits have been allocated or transferred by the entity under this article with respect to those credits. In the event a pass-through tax entity allocates or transfers tax credits arising under this article to its partners, members or shareholders and the allocated or transferred credits shall be disallowed, in whole or in part, such that an assessment of additional tax against a taxpayer shall be made, the Tax Commissioner shall first make written demand for payment of any additional tax, together with interest and penalties, from the tax matters representative. In the event such payment demand is not satisfied, the Tax Commissioner shall proceed to collection against the taxpayers in accordance with the provisions of Chapter 18 (§ 58.1-1800 et seq.).

§ 58.1-1823. Reassessment and refund upon the filing of amended return or the payment of an assessment.

~~A.~~ Any person filing a tax return or paying an assessment required for any tax administered by the Department ~~of Taxation~~ may file an amended return with the Department within the later of: (i) three years from the last day prescribed by law for the timely filing of the return; (ii) one year from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction; (iii) two years from the filing of an amended Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended return; (iv) two years from the payment of an assessment, provided that the amended return raises issues relating solely to such assessment and that the refund does not exceed the amount of such payment; or (v) one year from the final determination of any change or

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1201 correction in the income tax of the taxpayer for any other state, provided that the refund does not exceed
1202 the amount of the decrease in Virginia tax attributable to such change or correction. If the Department is
1203 satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the original return
1204 exceeds the proper amount, the Department may reassess the taxpayer and order that any amount
1205 excessively paid be refunded to him. The Department may reduce such refund by the amount of any
1206 taxes, penalties and interest which are due for the period covered by the amended return, or any past-due
1207 taxes, penalties and interest which have been assessed within the appropriate period of limitations. Any
1208 order of the Department denying such reassessment and refund, or the failure of the Department to act
1209 thereon within three months shall, as to matters first raised by the amended return, be deemed an
1210 assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under this chapter.

1211 ~~B. Notwithstanding the statute of limitations established in this section, any retired employee of a~~
1212 ~~political subdivision of the Commonwealth, established pursuant to Chapter 627 of the 1958 Acts of~~
1213 ~~Assembly, may file an amended individual income tax return until May 1, 1990, for taxable years~~
1214 ~~beginning on and after January 1, 1985, and before January 1, 1986, for taxes paid on retirement income~~
1215 ~~exempt pursuant to § 58.1-322.~~

1216 ~~C. Notwithstanding the statute of limitations contained in subsection A, any individual who~~
1217 ~~claimed an age subtraction on his 1990 individual income tax return may file an amended individual~~
1218 ~~income tax return on July 1, 1994, for taxable years beginning on and after January 1, 1990, and ending~~
1219 ~~before January 1, 1991, to claim an income deduction as provided in § 58.1-322 D 5 in lieu of the~~
1220 ~~income subtraction originally claimed.~~

1221 #

**Title 55 Recodification Work Group
By Selected Sub-Work Group**

Rental Conveyance Sub-Work Group (7)

John G. "Chip" Dicks (FutureLaw)
Christie Marra (Virginia Poverty Law Center, Inc.)
Brian M. Gordon (Virginia Apartment and Office Building Association)
Tyler Craddock (Virginia Manufactured and Modular Housing Association)
Phil Abraham (Vectre Corporation)
Phil Storey (Legal Aid Justice Center)
John Rick (Attorney)

Common Interest Community Sub-Work Group (10)

Phillip Richardson (Eck, Collins & Richardson)
Robert Diamond (Reed Smith)
John G. "Chip" Dicks (FutureLaw)
Heather Gillespie (Department of Professional and Occupational Regulation)
Trisha Henshaw (DPOR)
Lucia Anna Trigiani (Mercer Trigiani)
David Mercer (Mercer Trigiani)
Edward Mullen (Reed Smith)
Philip W. Richardson (Eck, Collins & Richardson)
Nicole Brenner (Reed Smith)

Real Estate Conveyance Sub-Work Group (17)

Larry J. McElwain (Scott Kroner, PLC)
Melvin E. Tull, III (Virginia Bankers Association)
Philip W. Richardson (Eck, Collins & Richardson)
John G. "Chip" Dicks (FutureLaw)
Professor Eric Kades (William & Mary Law School)
Hon. John Frey (Clerk of the Circuit Court, Fairfax County)
Mary Broz Vaughan (DPOR)
Lucia Anna Trigiani (Mercer Trigiani)
Edward Mullen (Reed Smith)
David Mercer (Mercer Trigiani)
Benjamin D. Leigh (Atwill, Troxell & Leigh, P.C.)
Phil Abraham (Vectre Corporation)
Ann K. Crenshaw (Kaufman & Canoles)
Neil Kessler (Troutman Sanders)
Laura Farley (Virginia Association of REALTORS)
Jeffrey Palmore (Reed Smith)
Professor Alex Johnson (University of Virginia)

Title 55.1 Proposed Subtitles

Subtitle I Real Estate Conveyances

- 1. Creation and Limitation of Estates; Their Qualities, §§ 55-1 through 55-25.1.**
- 3. Property Rights of Married Women, §§ 55-35 through 55-47.1.**
- 4. Form and Effect of Deeds and Covenants; Liens, §§ 55-48 through 55-79.06.**
- 5. Fraudulent and Voluntary Conveyances, Bulk and Conditional Sales, etc.; Writings Necessary to Be Recorded, §§ 55-80 through 55-105.**
- 8. Clouds on Title, §§ 55-153 through 55-155.**
- 15. Apportionment of Moneys; Management of Institutional Funds, §§ 55-253 through 55-277.**
- 20. Virginia Solar Easements Act, §§ 55-352 through 55-359.**

Subtitle II Real Estate Settlements and Recordation

- 6. Recordation of Documents, §§ 55-106 through 55-142.15.**
- 27. Virginia Residential Property Disclosure Act, §§ 55-517 through 55-525.**
- 27.1. Exchange Facilitators Act, §§ 55-525.1 through 55-525.7.**
- 27.2. Real Estate Settlements, §§ 55-525.8 through 55-525.15.**
- 27.3. Real Estate Settlement Agents, §§ 55-525.16 through 55-525.32.**
- 28. Commercial Real Estate Broker's Lien Act, §§ 55-526, 55-527**

Subtitle III Rental Conveyances

- 13. Landlord and Tenant, §§ 55-217 through 55-248.**
- 13.2. Virginia Residential Landlord and Tenant Act, §§ 55-248.2 through 55-248.40.**
- 13.3. Manufactured Home Lot Rental Act, §§ 55-248.41 through 55-248.52.**
- 14. Emblements, §§ 55-249 through 55-252.**
- 25. Transfer of Deposits, § 55-507**

Title 55.1 Proposed Subtitles

Subtitle IV Common Interest Communities
4.1. Horizontal Property, §§ 55-79.1 through 55-79.38.
4.2. Condominium Act, §§ 55-79.39 through 55-79.103.
19. Subdivided Land Sales Act, §§ 55-336 through 55-351.
21. The Virginia Real Estate Time-Share Act, §§ 55-360 through 55-400.
24. Virginia Real Estate Cooperative Act, §§ 55-424 through 55-506.
26. Property Owners' Association Act, §§ 55-508 through 55-516.2

Subtitle V Miscellaneous
9. Assignments for Benefit of Creditors, §§ 55-156 through 55-167.
10. Escheats Generally, §§ 55-168 through 55-201.1.
11. Estrays and Drift Property, §§ 55-202 through 55-210.
11.1. Disposition of Unclaimed Property, §§ 55-210.1 through 55-210.30.
18. Trespasses; Fences, §§ 55-298 through 55-335.
23. Virginia Self-Service Storage Act, §§ 55-416 through 55-423.

Subtitle III. Rental Conveyances



For presentation 10/17/16

Part A. Residential Tenancies

Chapter XX (1) General Provisions (*Presented 9/17/16*)

Chapter XX (2) Virginia Residential Landlord Tenant Act

Chapter XX (3) Other Residential Tenancies

Part B. Commercial and Other Tenancies

Chapter XX (4) Manufactured Home Lot Rental Act

Chapter XX (5) Residential Ground Rent Act

Chapter XX (6) Commercial Tenancies

Chapter XX (7) Deeds of Lease

Chapter XX (8) Emblements

Follow up from 9/19/16 Code Commission Meeting Overview of Proposed Revisions

The organizational approach of the subtitle, as established with the assistance of the Rental Tenancy sub-work group, separates residential tenancies from other tenancies. Those provisions relating to residential tenancies are relocated in Part A of the proposed subtitle and are divided among (i) provisions that apply to all residential tenancies (Chapter 1), (ii) provisions that only apply to tenancies currently covered by the VRLTA (Chapter 2), and (iii) provisions that apply only to tenancies in a single-family dwelling unit where the landlord is a natural person or is the estate of a natural person and who owns in his own name no more than two single-family residences (Chapter 3).

Staff presented the first two chapters of proposed Subtitle III, completing Chapter 1 and roughly half of Chapter 2.

In general, while the Commission approved of the recommended changes, staff was given direction to clarify the applicability provisions for the residential tenancy chapters. It was noted that the organizational approach would be easier to understand if the term "residential tenancy" was defined, since the approach hinges on an understanding of the universe of residential tenancies.

To further clarify the organizational approach, drafters are recommending the following revisions:

- 1) Adding a definition of "residential tenancy" for all of Part A (Chapter 1, line158)
- 2) Revising the applicability provision of Chapter 1 to establish a clear "roadmap" for the applicability of each of the three residential tenancy chapters (Chapter 1, lines 345 through 376);
- 3) Placing references regarding the applicability of the residential tenancies to occupancies at hotel, motel, and extended stay facilities in a single section in Chapter 1 (Chapter 1, Lines 408 through 433), and
- 4) Adding a definition of "multifamily dwelling" for all of Part A to provide additional clarity regarding the applicability of Chapter 2 (Chapter 1, Line103).

1 SUBTITLE III.

2 RENTAL CONVEYANCES.

3 **Drafting note: Proposed Subtitle III is created to logically reorganize all provisions**
4 **relating to rental conveyances in two parts: proposed Part A, Residential Tenancies, and**
5 **proposed Part B, Other Tenancies.**

6 PART A.

7 RESIDENTIAL TENANCIES.

8 **Drafting note: Proposed Part A is created to logically reorganize all provisions**
9 **relating to residential tenancies in three chapters: parts of existing Chapters 13 and 13.2**
10 **are logically reorganized as proposed Chapter XX [1], General Provisions; parts of**
11 **existing Chapter 13.2 are retained as proposed Chapter XX [2], the Virginia Residential**
12 **Landlord and Tenant Act; and parts of existing Chapter 13 are retained as proposed**
13 **Chapter XX [3], Other Residential Tenancies.**

14 CHAPTER XX. [1]

15 GENERAL PROVISIONS.

16 **Drafting note: Parts of existing Chapters 13 and 13.2 are logically reorganized as**
17 **proposed Chapter XX [1] of Part A, which consolidates general provisions that apply to all**
18 **residential tenancies and is divided into the following proposed articles: Article 1, In**
19 **General; Article 2, Assignments; Article 3, Landlord Obligations; Article 4, Tenant**
20 **Obligations; Article 5, Tenant Remedies; and Article 6, Landlord Remedies.**

21 Article 1.

22 In General.

23 **Drafting note: Proposed Article 1 consolidates existing definitions and sections**
24 **from existing Chapters 13 and 13.2 that are generally applicable to all residential**
25 **tenancies.**

26 ~~§ 55-248.4~~ § 55.1-xxx. Definitions.

~~When As~~ used in this ~~chapter Part A~~, unless ~~expressly stated otherwise the context~~ requires a different meaning:

"Action" means any recoupment, counterclaim, ~~set-off~~ setoff, or other civil suit and any other proceeding in which rights are determined, including ~~without limitation~~ actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application deposit" means any refundable deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, ~~which that~~ is paid by a tenant to a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Application fee" means any nonrefundable fee, ~~which that~~ is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit. ~~An application fee shall not exceed \$50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit which is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, an application fee shall not exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.~~

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance, or governmental regulation concerning fitness for habitation; or the construction, maintenance, operation, occupancy, use, or appearance of any structure or that part of a structure that is used as a home, residence, or

53 sleeping place, by one person who maintains a household or by two or more persons who
54 maintain a common household.

55 "Commencement date of rental agreement" means the date ~~upon~~ on which the tenant is
56 entitled to occupy the dwelling unit as a tenant.

57 "Community land trust" means a community housing development organization whose
58 (i) corporate membership is open to any adult resident or organization of a particular geographic
59 area specified in the bylaws of the organization and (ii) board of directors includes a majority of
60 members who are elected by the corporate membership and are composed of tenants, corporate
61 members who are not tenants, and any other category of persons specified in the bylaws of the
62 organization and that:

63 1. Is not sponsored by a for-profit organization;

64 2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term
65 ground leases;

66 3. Transfers ownership of any structural improvements located on such leased parcels to
67 the tenant; and

68 4. Retains a preemptive option to purchase any such structural improvement at a price
69 determined by formula that is designed to ensure that the improvement remains affordable to
70 low-income and moderate-income families in perpetuity.

71 "Dwelling unit" means a structure or part of a structure that is used as a home or
72 residence by one or more persons who maintain a household, including, ~~but not limited to,~~ a
73 manufactured home, as defined in § 55.1-xxx [§ 55-248.41].

74 "Effective date of rental agreement" means the date ~~upon~~ on which the rental agreement
75 is signed by the landlord and the tenant obligating each party to the terms and conditions of the
76 rental agreement.

77 "Essential service" includes heat, running water, hot water, electricity, and gas.

78 "Facility" means something that is built, constructed, installed, or established to perform
79 some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or ~~person authorized by the landlord to occupy the premises~~ an authorized occupant, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03. ~~"Landlord shall"~~ does not, ~~however,~~ include a community land trust ~~as defined in § 55-221.1~~.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the ~~United States~~ U.S. Environmental Protection Agency, the U.S. Department of Housing and Urban Development, or the American Conference of Governmental Industrial Hygienists (the Bioaerosols ~~Manual: Assessment and Control~~); Standard and Reference Guides of the Institute of Inspection, Cleaning, and Restoration Certification (IICRC) for Professional Water Damage Restoration and Professional Mold Remediation; or any protocol for mold remediation prepared by an industrial hygienist consistent with ~~said~~ such guidance documents.

"Multifamily dwelling unit," means a building or structure that is designed to consist of four or more dwelling units.

"Natural person," wherever ~~the chapter~~ Part A refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants, tenants

in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited liability partnerships or limited liability companies, or any other lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, ~~which may be either a United States postal certificate of mailing or in the form of~~ a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or, from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person, whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, or association; two or more persons having a joint or common interest, ~~or~~ any combination thereof; and any other legal or commercial entity.

"Owner" means one or more persons or entities, jointly or severally, including a mortgagee in possession, in whom is vested:

1. All or part of the legal title to the property; or
2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, ~~and the term includes a mortgagee in possession.~~

"Person" means any individual, group of individuals, corporation, partnership, business trust, association, or other legal entity, or any combination thereof.

"Premises" means a dwelling unit and the structure of which it is a part ~~and~~ facilities and appurtenances contained therein, and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Processing fee for payment of rent with bad check" means the processing fee specified in the rental agreement, not to exceed \$50, assessed by a landlord against a tenant for payment of rent with a check drawn by the tenant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment, or similar items.

"Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental agreement, including prepaid rent paid more than one month in advance of the rent due date.

"Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and regulations adopted under ~~§ 55-248.17~~ [§ 55.1-xxx](#) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit. ~~A landlord may charge an application fee as provided in this chapter and may request a prospective tenant to provide information that will enable the landlord to make such determination. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of Title 18 U.S.C. Part I, Chapter 33, § 701. The landlord may require that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit.~~

"Residential tenancy" means a tenancy that is based on a rental agreement between a landlord and a tenant for a dwelling unit.

160 "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or
161 kitchen facility, in a structure where one or more major facilities are used in common by
162 occupants of the dwelling unit and other dwelling units. "Major facility" in the case of a
163 bathroom means a toilet, and either a bath or shower, and in the case of a kitchen means a
164 refrigerator, stove, or sink.

165 "Security deposit" means any refundable deposit of money that is furnished by a tenant
166 to a landlord to secure the performance of the terms and conditions of a rental agreement, as a
167 security for damages to the leased premises, or as a pet deposit. However, such money shall be
168 deemed an application deposit until the commencement date of the rental agreement. "Security
169 deposit ~~shall~~ does not include a damage insurance policy or renter's insurance policy, as those
170 terms are defined in § ~~55-248.7-2~~ 55.1-xxx, purchased by a landlord to provide coverage for a
171 tenant.

172 "Single-family residence" means a structure, other than a multi-family residential
173 structure, maintained and used as a single dwelling unit, condominium unit, or any other
174 dwelling unit that has direct access to a street or thoroughfare and ~~shares neither~~ does not share
175 heating facilities, hot water equipment, ~~nor or~~ any other essential facility or essential service
176 with any other dwelling unit.

177 "Sublease" means the transfer by any tenant of any but not all interests created by a
178 rental agreement.

179 "Tenant" means a person entitled only under the terms of a rental agreement to occupy a
180 dwelling unit to the exclusion of others and ~~shall include~~ includes a roomer. "Tenant ~~shall~~ does
181 not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees
182 or cosigns the payment of the financial obligations of a rental agreement but has no right to
183 occupy a dwelling unit.

184 "Tenant records" means all information, including financial, maintenance, and other
185 records, about a tenant or prospective tenant, whether such information is in written or

electronic form or any other medium. ~~A tenant may request copies of his tenant records pursuant to § 55-248.9:1.~~

"Utility" means electricity, natural gas, or water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2; or a ratio utility billing system as defined in § ~~55-226.2~~ 55.1-xxx.

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

"Written notice" means notice given in accordance with § ~~55-248.6~~ 55.1-xxx, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or any other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by ~~Chapter 42.1 the Uniform Electronic Transactions Act~~ (§ 59.1-479 et seq.) ~~of Title 59.1~~ is affixed. ~~The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice required by this chapter.~~

Drafting note: Definitions from existing § 55-248.4 are relocated from the Virginia Residential Landlord and Tenant Act (VRLTA) (§ 55-248.2 et seq.) to this proposed chapter because they apply to all residential tenancies. In the definitions of "action," "without limitation" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Language in the definition of "application fee" pertaining to the amount of such fee is stricken and relocated to proposed § 55.1-xxx [§ 55-248.6:1] because it is applicable only to application fees for tenancies governed by the VRLTA. The definition for "community land trust" is relocated from existing § 55-221.1. In the definition of "dwelling unit," "but

not limited to" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means, includes, but not limited to." The definition of "essential service" is added on the basis of the list of essential services in existing § 55-248.23. In the definition of "guest or invitee," the phrase "person authorized by the landlord to occupy the premises" is replaced with the defined term "authorized occupant." In the definition of "Mold remediation in accordance with professional standards," the references to guide documents were updated to reflect the current titles. The definition of "multifamily dwelling unit" is added to clarify applicability of this chapter to certain types of residential tenancies and is based on the definition in the Uniform Statewide Building Code. In the definition of "notice," reference to a U.S. postal certificate of mailing is stricken because that type of certificate is no longer in use. Language in the definition of "rental application" pertaining to application fees and identification is stricken and relocated to proposed § 55.1-xxx [§ 55-248.6:1] because it is applicable only to rental agreements for tenancies governed by the VRLTA. The definition of "residential tenancy" is added for clarity in determining the applicability of proposed Part A. The last sentence in the definition of "tenant records" is stricken because its provisions are contained in current law in subsection D of proposed § 55.1-xxx [§ 55-248.9:1] and it is applicable only to tenancies governed by the VRLTA. The last sentence in the definition of "written notice" is relocated to proposed § 55.1-xxx [§ 55-248.6], which contains all provisions related to service of notice for tenancies governed by the VRLTA. Technical changes are made.

~~§ 55-221.1. Community land trusts not considered landlords.~~

~~For the purposes of this chapter, the term "landlord" shall not include a community land trust. "Community land trust" means a community housing development organization whose (i) corporate membership is open to any adult resident or organization of a particular geographic area specified in the bylaws of the organization and (ii) board of directors includes a majority of members who are elected by the corporate membership and are composed of lessees, corporate~~

~~members who are not lessees, and any other category of persons specified in the bylaws of the organization and that:~~

- ~~1. Is not sponsored by a for-profit organization;~~
- ~~2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;~~
- ~~3. Transfers ownership of any structural improvements located on such leased parcels to the lessee; and~~
- ~~4. Retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low and moderate income families in perpetuity.~~

Drafting note: Existing § 55-221.1 is logically relocated to two proposed sections: The definition of "community land trust" is relocated to proposed § 55.1-xxx[previous section] (Definitions), and the first sentence of existing § 55-221.1 is restated as proposed subdivision A 7 of § 55.1-xxx[next section] (Applicability), excluding occupancy in a community land trust from residential rental tenancies.

~~§ 55-225.8. Residential dwelling units subject to this chapter; definitions; exceptions; application to certain occupants.~~

~~A. As used in this chapter, the following definitions apply:~~

~~"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.~~

~~"Dwelling unit" or "residential dwelling unit" means a single-family residence where one or more persons maintain a household, including a manufactured home. Dwelling unit or residential dwelling unit shall not include:~~

- ~~1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;~~

~~2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;~~

~~3. Occupancy in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging as provided in subsection B;~~

~~4. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;~~

~~5. Occupancy under a rental agreement covering premises used by the occupant primarily in connection with business, commercial, or agricultural purposes; and~~

~~6. Occupancy in a campground as defined in § 35.1-1.~~

~~"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the dwelling unit, who has the permission of the tenant to visit but not to occupy the premises.~~

~~"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.~~

~~"Landlord" means the owner or lessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03.~~

~~"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.~~

~~"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for~~

~~Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.~~

~~"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.~~

~~"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment, or similar items.~~

~~"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.~~

~~"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.~~

~~For any term not expressly defined herein, terms shall have the same meaning as those defined in § 55-248.4.~~

~~B. No guest who is an occupant in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging shall be construed to be a tenant living in a dwelling unit as defined in this section if such person does not reside in such lodging as his~~

~~primary residence. Such guest shall be exempt from this chapter and the innkeeper or property owner, or agent thereof, shall have the right to use self help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant thereto, which would otherwise be required under this chapter. For purposes of this chapter, a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.~~

~~C. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five day period specified in the notice, may exercise self help eviction if payment in full has not been received.~~

~~D. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging as his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be treated as a dwelling unit and be subject to the provisions of this chapter.~~

Drafting note: Because the text in this section is set out in multiple sections of the Code (§ 55-225.8 in Chapter 13 and § 55-248.4 and § 55-248.5 in the VRLTA) and the application of those two chapters is combined in this proposed chapter for application to all residential tenancies, this instance is recommended for repeal. The existing definitions are located in proposed § 55.1-xxx [§ 55-248.4], the applicability provisions are located in proposed § 55.1-xxx, and the provisions relating to extended stay facilities are located in proposed § 55.1-xxx [subsections B through D of § 55-248.5].

[§ 55.1-xxx. Applicability.](#)

A. This chapter shall apply to any occupancy that is a residential tenancy as defined in § 55.1-xxx. The following occupancies are not residential tenancies:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative; or

4. Occupancy in a campground as defined in § 35.1-1.

B. The following residential tenancies shall be subject to the provisions of Chapter XX [2] (§ 55.1-xxx et seq.) in addition to the provisions of this chapter:

1. Residential tenancies subject to a rental agreement that are occupancies where the owners are natural persons or their estates who own in their own name more than two single-family residences;

2. Residential tenancies in a multifamily dwelling unit; and

3. Occupancy in a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development unless the provisions of this chapter or Chapter XX [2] (§ 55.1-xxx et seq.) are inconsistent with the regulations of the Department of Housing and Urban Development.

C. The following residential tenancies shall be subject to the provisions of Chapter XX [3] (§ 55.1-xxx et seq.) in addition to the provisions of this chapter:

1. Occupancy in single-family residences located in Virginia where the owners are natural persons or their estates who own in their own name no more than two single-family residences subject to a rental agreement, unless the rental agreement states that the provisions of Chapter XX [2] (§ 55.1-xxx et seq.) shall apply;

2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;

3. Occupancy by an employee of a landlord whose right to occupancy is conditioned upon employment in and about the premises or an ex-employee whose occupancy continues less than 60 days; and

4. Occupancy by a tenant who pays no rent pursuant to a rental agreement.

Drafting note: Existing applicability provisions in Chapters 13 [§ 55-225.8 et seq.] and 13.2 [§ 55-248.5 et seq.] are combined and reorganized for clarity in this proposed section. This section provides a roadmap directing the reader to the applicable chapter of Part A of Subtitle III for each type of residential tenancy.

~~§ 55-248.5 55.1-xxx. Exemptions; exception to exemption; application of chapter to certain occupants~~ Occupancy in hotel, motel, extended stay facility, etc.

~~A. Except as specifically made applicable by § 55-248.21:1, the following conditions are not governed by this chapter:~~

~~1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious or similar services;~~

~~2. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest;~~

~~3. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;~~

~~4. Occupancy in a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar lodging as provided in subsection B;~~

~~5. Occupancy by an employee of a landlord whose right to occupancy is conditioned upon employment in and about the premises or an ex-employee whose occupancy continues less than sixty days;~~

~~6. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;~~

~~7. Occupancy under a rental agreement covering premises used by the occupant primarily in connection with business, commercial or agricultural purposes;~~

~~8. Occupancy in a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development where such regulation is inconsistent with this chapter;~~

~~9. Occupancy by a tenant who pays no rent;~~

~~10. Occupancy in single family residences located in Virginia where the owners are natural persons or their estates who own in their own name no more than two single family residences subject to a rental agreement; and~~

~~11. Occupancy in a campground as defined in § 35.1-1.~~

~~B.~~ A guest who is an occupant in of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-xxx et seq. [§ 55-360 et seq.]), boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this ~~chapter Part A~~, and the innkeeper or property owner, or his agent ~~thereof~~, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant ~~thereto to such action~~, which would otherwise be required under this ~~chapter Part A~~. For purposes of this ~~chapter Part A~~, a hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of this ~~chapter part~~ if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

~~C.B.~~ If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-xxx et seq. [§ 55-360 et seq.]), boardinghouse, or similar transient lodging as his primary residence for fewer than 90 consecutive days, such lodging shall not be subject to the provisions of this ~~chapter Part A~~. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-

427 day period specified in the notice, may exercise self-help eviction if payment in full has not
428 been received.

429 D.C. If a person resides in a hotel, motel, extended stay facility, vacation residential
430 facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-xxx et
431 seq. [§ 55-360 et seq.]), boardinghouse, or similar transient lodging as ~~their~~ his primary
432 residence for more than 90 consecutive days or is subject to a written lease for more than 90
433 days, such lodging shall be subject to the provisions of this ~~chapter~~ Part A.

434 E. Notwithstanding the provisions of subsection A, the landlord may specifically provide
435 for the applicability of the provisions of this chapter in the rental agreement.

436 **Drafting note:** Existing subsection A is deleted and its provisions relocated to a
437 new applicability section (previous section). In proposed subsection A, the word
438 "transient" is added before "lodging" for consistency with subdivisions B and C, and
439 cross-references are added to the Virginia Real Estate Time-Share Act throughout the
440 section. Existing subsection E is stricken and its provisions relocated to Chapter XX [3].
441 Technical changes are made.

442 #

~~CHAPTER 13.1~~

~~RENT CONTROL.~~

~~§ 55-248.1. Repealed.~~

Drafting note: Repealed by Acts 2010, c. 92, cl. 1.

~~CHAPTER 13.2~~ XX. [2]

VIRGINIA RESIDENTIAL LANDLORD AND TENANT ACT.

Existing Chapter 13.2 of Title 55, the Virginia Residential Landlord and Tenant Act (VRLTA), is retained as proposed Chapter XX [2]. Numerous provisions of the existing VRLTA that are applicable to all residential tenancies and that appear as stricken text have been logically relocated to proposed Chapter XX [1] (General Provisions) of Part A (Residential Tenancies), which specifically provides that residential tenancies covered by the VRLTA are subject to both Chapter XX [1] and Chapter XX [2]. The drafting note for each section of proposed Chapter XX [2] that contains relocated general provisions explains the reason for relocating and the proposed destination of the provision.

Article 1.

In General ~~Provisions.~~

Drafting note: Existing §§ 55-248.3:1, 55-248.6, 55-248.6:1, 55-248.7, 55-248.7:1, 55-248.7:2, 55-248.8, 55-248.9, 55-248.9:1, and 55-248.10:1 in Article 1 of the VRLTA are retained as proposed Article 1 of the VRLTA in proposed Subtitle III. Existing §§ 55-248.4 and 55-248.5 from Article 1 and § 55-248.40 from Article 6 of the VRLTA are relocated to this article because they apply to all residential tenancies governed by the VRLTA.

~~§ 55-248.2. Short title.~~

~~This chapter may be cited as the "Virginia Residential Landlord and Tenant Act" or the "Virginia Rental Housing Act."~~

Drafting note: Existing § 55-248.2 is recommended for repeal on the basis of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation. The short title citation is retained in the title of proposed Chapter XX [2].

§ ~~55-248.3:1~~ 55.1-xxx. Applicability ~~of chapter~~.

A. This chapter shall apply to all rental agreements ~~entered into on or after July 1, 1974,~~
~~which are not exempted pursuant to § 55-248.5 for residential tenancies under subsection B of §~~
~~55.1-xxx [Applicability § in Chapter 1, General Provisions], and all provisions thereof of this~~
~~chapter~~ shall apply to all jurisdictions in the Commonwealth and may not be waived or
 otherwise modified, in whole or in part, by the governing body of any locality, its boards and
 commissions or other instrumentalities, or by the courts of the Commonwealth.

§ ~~55-248.3~~. ~~Purposes of chapter~~.

~~The purposes of this chapter are to simplify, clarify, modernize and revise the law~~
~~governing the rental of dwelling units and the rights and obligations of landlords and tenants; to~~
~~encourage landlords and tenants to maintain and improve the quality of housing; and to establish~~
~~a single body of law relating to landlord and tenant relations throughout the Commonwealth;~~
~~provided, however, that nothing~~

B. Nothing in this chapter shall prohibit a ~~county, city or town~~ locality from establishing
 a commission, reconciliatory in nature only, or designating an existing agency, which upon
 mutual agreement of the parties may mediate conflicts ~~which that~~ may arise out of the
 application of this chapter, nor shall anything ~~herein in this chapter~~ be deemed to prohibit an
 ordinance designed to effect compliance with local property maintenance codes. This chapter
 shall supersede all other local, ~~county, or municipal~~ ordinances or regulations concerning
 landlord and tenant relations and the leasing of residential property.

**Drafting note: Existing §§ 55-248.3 and 55-248.3:1 are combined. The initial
 purpose statement in existing § 55-248.3 is stricken per the Code Commission general
 policy that purpose statements do not have general and permanent application and thus
 are not included in the Code. The provision ("provided, however, that nothing in this
 chapter ...") of existing § 55-248.3 is relocated as proposed subsection C. Technical
 changes are made.**

§ ~~55-248.6~~ 55.1-xxx. Notice.

55 A. As used in this chapter, "notice" means the same as that term is defined in § 55.1-xxx
56 [§ 55-248.4]:

57 ~~"Notice" means notice given in writing by either regular mail or hand delivery, with the~~
58 ~~sender retaining sufficient proof of having given such notice, which may be either a United~~
59 ~~States postal certificate of mailing or a certificate of service confirming such mailing prepared~~
60 ~~by the sender. However, a person shall be deemed to have notice of a fact if he has actual~~
61 ~~knowledge of it, he has received a verbal notice of it, or from all the facts and circumstances~~
62 ~~known to him at the time in question, he has reason to know it exists. A person "notifies" or~~
63 ~~"gives" a notice or notification to another by taking steps reasonably calculated to inform~~
64 ~~another person whether or not the other person actually comes to know of it. If notice is given~~
65 ~~that is not in writing, the person giving the notice has the burden of proof to show that the notice~~
66 ~~was given to the recipient of the notice.~~

67 B. If the rental agreement so provides, the landlord and tenant may send notices in
68 electronic form_; however_, any tenant who so requests may elect to send and receive notices in
69 paper form. If electronic delivery is used, the sender shall retain sufficient proof of the
70 electronic delivery, which may be an electronic receipt of delivery, a confirmation that the
71 notice was sent by facsimile, or a certificate of service prepared by the sender confirming the
72 electronic delivery.

73 C. In the case of the landlord, notice is served on the landlord at his place of business
74 where the rental agreement was made_; or at any place held out by the landlord as the place for
75 receipt of the communication.

76 C.D. In the case of the tenant, notice is served at the tenant's last known place of
77 residence, which may be the dwelling unit.

78 D.E. Notice, knowledge_, or a notice or notification received by an organization is
79 effective for a particular transaction from the time it is brought to the attention of the person
80 conducting that transaction, or from the time it would have been brought to his attention if the
81 organization had exercised reasonable diligence.

~~E.F.~~ No notice of termination of tenancy served upon a tenant by a public housing authority organized under the Housing Authorities Law (§ 36-1 et seq.) ~~of Title 36~~ shall be effective unless it contains on its first page, in type no smaller or less legible than that otherwise used in the body of the notice, the name, address, and telephone number of the legal services program, if any, serving the jurisdiction ~~wherein in which~~ the premises ~~are is~~ located.

G. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice required by this chapter.

Drafting note: Existing subsection A, the definition of "notice," is relocated to proposed § 55.1-xxx [§ 55-248.4], the definitions section for Part A, and a cross-reference is added for ease of use. Proposed subsection G contains a notice provision relocated from the definition of "written notice" in existing § 55-248.4. Technical changes are made.

~~§ 55-248.6:1~~ § 55.1-xxx. Application deposit and application fee.

A. Any landlord may require a refundable application deposit in addition to a nonrefundable application fee. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of ~~said such~~ expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.

B. A landlord may request that a prospective tenant provide information that will enable the landlord to determine whether each applicant may become a tenant. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing

either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of 18 U.S.C. § 701. The landlord may require, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit, that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service.

C. An application fee shall not exceed \$50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit that is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, an application fee shall not exceed \$32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

Drafting note: Proposed subsection B contains rental application provisions relocated from the definition of "rental application" in existing § 55-248.4 because these provisions apply only to tenancies governed by the VRLTA. Proposed subsection C contains rental application provisions relocated from the definition of "application fee" in existing § 55-248.4 because these provisions apply only to tenancies governed by the VRLTA. Technical changes are made.

~~§ 55-248.7~~ 55.1-xxx. Terms and conditions of rental agreement; payment of rent; copy of rental agreement for tenant; ~~accounting of rental payments~~.

A. A landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law, including rent, charges for late payment of rent, the term of the agreement, automatic renewal of the rental agreement, requirements for notice of intent to vacate or terminate the rental agreement, and other provisions governing the rights and obligations of the parties.

B. In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit.

C. Rent shall be payable without demand or notice at the time and place agreed upon by the parties. Unless otherwise agreed, rent is payable at the place designated by the landlord, and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for an accounting of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

D. Unless the rental agreement fixes a definite term, the tenancy shall be ~~week-to-week~~ week-to-week in the case of a ~~roomer~~ tenant who pays weekly rent, and month-to-month in all other cases ~~month-to-month~~. Terminations of tenancies shall be governed by § ~~55-248.37~~ 55.1-xxx, unless the rental agreement provides for a different notice period.

E. If the rental agreement contains any provision ~~whereby allowing~~ the landlord ~~may to~~ approve or disapprove a sublessee or assignee of the tenant, the landlord shall within 10 business days of receipt ~~by him~~ of the written application of the prospective sublessee or assignee, on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days ~~shall be deemed is~~ evidence of his approval.

F. ~~A~~ The landlord shall provide a copy of any written rental agreement signed by both the tenant and the landlord ~~shall be provided~~ to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

G. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

~~H. The landlord shall provide the tenant with a written receipt, upon request from the tenant, whenever the tenant pays rent in the form of cash or money order.~~

Drafting note: In subsection D, the term "roomer" is changed to "tenant" to correct a drafting error. Subsection H is stricken because it is identical to existing § 55-225.15, which has been relocated to proposed Chapter XX [1] as applicable to all residential tenancies. Technical changes are made.

~~§ 55-248.7:1~~ § 55.1-xxx. Prepaid rent; maintenance of escrow account.

A landlord and a tenant may agree in a rental agreement that the tenant pay prepaid rent. If a landlord receives prepaid rent, it shall be placed in an escrow account in a federally insured depository in Virginia by the end of the fifth business day following receipt and shall remain in the account until such time as the prepaid rent becomes due. Unless the landlord has otherwise become entitled to receive any portion of the prepaid rent, it shall not be removed from the escrow account required by this section without the written consent of the tenant.

Drafting note: No change.

~~§ 55-248.7:2~~ § 55.1-xxx. Landlord may obtain certain insurance for tenant.

A. ~~Damage Insurance.~~ A landlord may require as a condition of tenancy that a tenant have commercial insurance coverage as specified in the rental agreement to secure the performance by the tenant of the terms and conditions of the rental agreement and pay for the cost of premiums for such insurance coverage obtained by the landlord, generally known as "damage insurance." As provided in ~~§ 55-248.4~~ § 55.1-xxx, such payments shall not be deemed a security deposit, but shall be rent. However, as provided in ~~§ 55-248.9~~ § 55.1-xxx, the landlord ~~cannot~~ shall not require a tenant to pay both a security-deposits deposit and the cost of damage insurance premiums, if the total amount of any security-deposits deposit and damage insurance premiums exceeds the amount of two months' periodic rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the

term of the rental agreement. Where a landlord obtains damage insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with administration of a damage insurance policy, including a tenant opting out of the insurance coverage provided by the landlord pursuant to this subsection. If a landlord obtains damage insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

B. ~~Renter's Insurance.~~ A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal property located in residential dwelling units not occupied by the owner. A landlord may require a tenant to pay for the cost of premiums for such insurance obtained by the landlord, in order to provide such coverage for the tenant as part of rent or as otherwise provided ~~herein in this section.~~ As provided in § ~~55-248.4~~ 55.1-xxx, such payments shall not be deemed a security deposit, but shall be rent. ~~If the landlord requires that such premiums be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for damage insurance and renter's insurance shall not exceed the amount of two months' periodic rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such insurance coverage.~~ The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement.

C. If the landlord requires that premiums for damage insurance or renter's insurance be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for such insurance shall not exceed the amount of two months' periodic

217 rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs
218 of such insurance coverage.

219 D. Where a landlord obtains renter's insurance coverage on behalf of a tenant, the
220 insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover
221 from the tenant the actual costs of such insurance coverage and may recover administrative or
222 other fees associated with the administration of a renter's insurance program, including a tenant
223 opting out of the insurance coverage provided to the tenant pursuant to this subsection. If a
224 landlord obtains renter's insurance for his tenants, the landlord shall provide to each tenant, prior
225 to execution of the rental agreement, a summary of the insurance policy prepared by the insurer
226 or certificate evidencing the coverage being provided and upon request of the tenant make
227 available a copy of the insurance policy.

228 D.E. Nothing in this section shall be construed to prohibit the landlord from recovering
229 from the tenant, as part of the rent, the tenant's prorated share of the actual costs of other
230 insurance coverages provided by the landlord relative to the premises, or the tenant's prorated
231 share of a self-insurance program held in an escrow account by the landlord, including the
232 landlord's administrative or other fees associated with the administration of such coverages. The
233 landlord may apply such funds held in escrow to pay claims pursuant to the landlord's self-
234 insurance plan.

235 **Drafting note: Subsection catchlines in subsections A and B are stricken per the**
236 **general policy of the Code Commission that such internal catchlines are unnecessary.**
237 **Language in subsection B is relocated to subsection C because it deals with both damage**
238 **insurance and renter's insurance, which are covered in both subsection A and B.**
239 **Technical changes are made.**

240 ~~§ 55-248.8~~ 55.1-xxx. Effect of unsigned or undelivered rental agreement.

241 If the landlord does not sign and deliver a written rental agreement signed and delivered
242 to him by the tenant, acceptance of rent without reservation by the landlord gives the rental
243 agreement the same effect as if it had been signed and delivered by the landlord. If the tenant

does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession or payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant. If a rental agreement, given effect ~~by the operation of~~ pursuant to this section, provides for a term longer than one year, it is effective for only one year.

Drafting note: Technical changes.

§ ~~55-248.9~~ 55.1-xxx. Prohibited provisions in rental agreements.

A. A rental agreement shall not contain provisions that the tenant:

1. Agrees to waive or ~~forego~~ forgo rights or remedies under this ~~chapter~~ Part A;
2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Condominium Act (§ ~~55-79.39~~ 55.1-xxx et seq.), the Virginia Real Estate Cooperative Act (§ ~~55-424~~ 55.1-xxx et seq.), or Chapter ~~13~~ XX (§ ~~55-217~~ 55.1-xxx et seq.), except where the tenant is on a month-to-month lease pursuant to § ~~55-222~~ 55.1-xxx;
3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;
4. Agrees to pay the landlord's ~~attorney's~~ attorney fees, except as provided in this ~~chapter~~ Part A;
5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or ~~the~~ any associated costs ~~connected therewith~~;
6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation; or
7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and

conditions of a rental agreement, if the total of the security deposit and the bond or insurance premium exceeds the amount of two months' periodic rent.

B. ~~A~~ Any provision prohibited by subsection A that is included in a rental agreement is unenforceable. If a landlord brings an action to enforce any ~~of the prohibited provisions such~~ provision, the tenant may recover actual damages sustained by him and reasonable ~~attorney's~~ attorney fees.

Drafting note: Technical changes.

~~§ 55-248.9-1~~ § 55.1-xxx. Confidentiality of tenant records.

A. No landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord or managing agent to a third party unless:

1. The tenant or prospective tenant has given prior written consent;
2. The information is a matter of public record as defined in § 2.2-3701;
3. The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;
4. The information is a copy of a material noncompliance notice that has not been remedied or, termination notice given to the tenant under § ~~55-248.31~~ 55.1-xxx, and the tenant did not remain in the premises ~~thereafter~~ after the notice was given;
5. The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties;
6. The information is requested pursuant to a subpoena in a civil case;
7. The information is requested by a local commissioner of the revenue in accordance with § 58.1-3901;
8. The information is requested by a contract purchaser of the landlord's property~~;~~ ; provided that the contract purchaser agrees in writing to maintain the confidentiality of such information;
9. The information is requested by a lender of the landlord for financing or refinancing of the property;

10. The information is requested by the commanding officer, military housing officer, or military attorney of the tenant;

11. The third party is the landlord's attorney or the landlord's collection agency;

12. The information is otherwise provided in the case of an emergency; or

13. The information is requested by the landlord to be provided to the managing agent, or a successor to the managing agent.

B. A tenant may designate a third party to receive duplicate copies of a summons that has been issued pursuant to § 8.01-126 and of written notices from the landlord relating to the tenancy. Where such a third party has been designated by the tenant, the landlord shall mail the duplicate copy of any summons issued pursuant to § 8.01-126 or notice to the designated third party at the same time the summons or notice is mailed to or served upon the tenant. Nothing in this subsection shall be construed to grant standing to any third party designated by the tenant to challenge actions of the landlord in which notice was mailed pursuant to this subsection. The failure of the landlord to give notice to a third party designated by the tenant shall not affect the validity of any judgment entered against the tenant.

C. A landlord or managing agent may enter into an agreement with a third-party service provider to maintain tenant records in electronic form or other medium. In such case, the landlord and managing agent shall not be liable under this section in the event of a breach of the electronic data of such third-party service provider, except in the case of gross negligence or intentional act. Nothing ~~herein~~ in this section shall be construed to require a landlord or managing agent to indemnify such third-party service provider.

D. A tenant may request a copy of his tenant records in paper or electronic form. If the rental agreement so provides, a landlord may charge a tenant requesting more than one copy of his records the actual costs of preparing copies of such records. However, if the landlord makes available tenant records to each tenant by electronic portal, the tenant shall not be required to pay for access to such portal.

Drafting note: Technical changes.

324 ~~§ 55-248.10. Repealed.~~

325 **Drafting note: Repealed by Acts 2000, c. 760, cl. 2.**

326 ~~§ 55-248.10-1~~ 55.1-xxx. Landlord and tenant remedies for abuse of access.

327 If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to
 328 compel access, or terminate the rental agreement. In either case, the landlord may recover actual
 329 damages and reasonable ~~attorney's~~ attorney fees. If the landlord makes an unlawful entry or a
 330 lawful entry in an unreasonable manner or makes repeated demands for entry that is otherwise
 331 lawful but ~~which~~ that have the effect of unreasonably harassing the tenant, the tenant may obtain
 332 injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In
 333 either case, the tenant may recover actual damages and reasonable ~~attorney's~~ attorney fees.

334 **Drafting note: Technical changes.**

335 ~~§ 55-248.40~~ 55.1-xxx. Actions to enforce chapter.

336 In addition to any other remedies in this chapter or Chapter XX [1] (§ 55.1-xxx et seq.),
 337 any person adversely affected by an act or omission prohibited under this chapter or Chapter XX
 338 [1] may institute an action for injunction and damages against the person responsible for such
 339 act or omission in the circuit court in the ~~county or city~~ locality in which such act or omission
 340 occurred. If the court finds that the defendant was responsible for such act or omission, it shall
 341 enjoin the defendant from continuance of such practice, and in its discretion award the plaintiff
 342 damages as ~~herein provided~~ provided in this section.

343 **Drafting note: Existing § 55-248.40 is logically relocated from existing Article 6 of**
 344 **the VRLTA to proposed Article 1 of the VRLTA as a general provision for the VRLTA.**
 345 **References to Chapter XX [1] are added to clarify that the remedies provided in this**
 346 **section are available for suits for acts or omissions prohibited under Chapter XX [1],**
 347 **which contains general provisions applicable to all residential tenancies. "County or city"**
 348 **is replaced with "locality" on the basis of § 1-221, which states that "'locality' means a**
 349 **county, city, or town." Technical changes are made.**

350 Article 2.

351 Landlord Obligations.

352 **Drafting note:** Existing §§ 55-248.11:1, 55-248.11:2, 55-248.12, 55-248.12:1, 55-
 353 248.13:1, 55-248.13:2, 55-248.13:3, 55-248.14, 55-248.15, and 55-248.15:1 in Article 2 of the
 354 VRLTA are retained as proposed Article 2 of the VRLTA. Existing §§ 55-248.12:2, 55-
 355 248.12:3, and 55-248.13 are relocated to proposed Article 3 of Chapter XX [1] because
 356 they apply to all residential tenancies.

357 ~~§ 55-248.11.~~

358 **Drafting note:** Repealed by Acts 2000, c. 760, cl. 2.

359 ~~§ 55-248.11:1~~ 55.1-xxx. Inspection of ~~premises dwelling unit; report~~.

360 The landlord shall, within five days after occupancy of a dwelling unit, submit a written
 361 report to the tenant, ~~for his safekeeping~~, itemizing damages to the dwelling unit existing at the
 362 time of occupancy, ~~which record and the report~~ shall be deemed correct unless the tenant objects
 363 ~~thereto to it~~ in writing within five days after receipt ~~thereof of the report~~. The landlord may
 364 adopt a written policy allowing the tenant to prepare the written report of the move-in
 365 inspection, in which case the tenant shall submit a copy to the landlord, ~~which record and the~~
 366 ~~report~~ shall be deemed correct unless the landlord objects ~~thereto to it~~ in writing within five
 367 days after receipt ~~thereof of the report~~. Such written policy adopted by the landlord may also
 368 provide for the landlord and the tenant to prepare the written report of the move-in inspection
 369 jointly, in which case both the landlord and the tenant shall sign the written report and receive a
 370 copy ~~thereof of the report~~, at which time the inspection ~~record report~~ shall be deemed correct. If
 371 any damages are reflected on the written report, a landlord is not required to make repairs to
 372 address such damages unless required to do so under § ~~55-248.11:2~~ 55.1-xxx or ~~55-248.13~~ 55.1-
 373 xxx.

374 **Drafting note:** The word "premises" is changed in the catchline to "dwelling unit"
 375 consistent with the language in the section. References to "record" are changed to
 376 "report" for consistency. The phrase "for his safekeeping" is stricken as unnecessary.
 377 Technical changes are made.

378 § ~~55-248.11:2~~ 55.1-xxx. Disclosure of mold in dwelling units.

379 As part of the written report of the move-in inspection required by § ~~55-248.11:1~~ 55.1-
 380 xxx, the landlord shall disclose whether there is any visible evidence of mold in areas readily
 381 accessible within the interior of the dwelling unit. If the landlord's written disclosure states that
 382 there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed
 383 correct unless the tenant objects ~~thereto to it~~ in writing within five days after receiving the
 384 report. If the landlord's written disclosure states that there is visible evidence of mold in the
 385 dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession
 386 or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain
 387 in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold,
 388 the landlord shall promptly remediate the mold condition but in no event later than five business
 389 days ~~thereafter and re-inspect~~ after the tenant's request to take possession or decision to remain
 390 in possession, reinspect the dwelling unit to confirm that there is no visible evidence of mold in
 391 the dwelling unit, and ~~reflect on~~ prepare a new report stating that there is no visible evidence of
 392 mold in the dwelling unit upon ~~re-inspection~~ reinspection.

393 **Drafting note: Technical changes.**

394 § ~~55-248.12~~ 55.1-xxx. Disclosure.

395 A. ~~The~~ For the purpose of service of process and receiving and issuing receipts for
 396 notices and demands, the landlord or any person authorized to enter into a rental agreement on
 397 his behalf shall disclose to the tenant in writing at or before the ~~commencement~~ beginning of the
 398 tenancy the name and address of:

- 399 1. The person or persons authorized to manage the premises; and
- 400 2. An owner of the premises or any other person authorized to act for and on behalf of
- 401 the owner, ~~for the purposes of service of process and receiving and receipting for notices and~~
- 402 demands.

B. In the event of the sale of the premises, the landlord shall notify the tenant of such sale and disclose to the tenant the name and address of the purchaser and a telephone number at which such purchaser can be located.

C. If an application for registration of the rental property as a condominium or cooperative has been filed with the Real Estate Board, or if there is within six months an existing plan for tenant displacement resulting from (i) demolition or substantial rehabilitation of the property or (ii) conversion of the rental property to office, hotel, or motel use or planned unit development, ~~then~~ the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose that information in writing to any prospective tenant.

D. The information required to be furnished by this section shall be kept current, and the provisions of this section ~~extends~~ extend to and ~~is~~ are enforceable against any successor landlord or owner. A person who fails to comply with this section becomes an agent of each person who is a landlord for the purposes of service of process and receiving and ~~receiving~~ issuing receipts for notices and demands.

Drafting note: Technical changes.

§ ~~55-248.12-1~~ 55.1-xxx. Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure.

A. Notwithstanding the provisions of ~~subdivision A-10 of~~ § ~~55-248.5~~ 55.1-xxx, the landlord of property in any locality in which a military air installation is located, or any person authorized to enter into a rental agreement on his behalf, shall provide to a prospective tenant a written disclosure that the property is located in a noise zone or accident potential zone, or both, as designated by the locality on its official zoning map. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. The disclosure shall specify the noise zone or accident potential zone in which the property is located according to the official zoning map of the locality. A disclosure made pursuant to this section containing inaccurate information regarding the location of the noise zone or accident potential zone shall be deemed as

430 nondisclosure unless the inaccurate information is provided by an officer or employee of the
431 locality in which the property is located.

432 B. Any tenant who is not provided with the disclosure required by subsection A may
433 terminate the lease agreement at any time during the first 30 days of the lease period by sending
434 to the landlord by certified or registered mail, return receipt requested, a written notice of
435 termination. Such termination shall be effective as of (i) 15 days after the date of the mailing of
436 the notice or (ii) the date through which rent has been paid, whichever is later. In no event,
437 however, shall the effective date of the termination exceed one month from the date of mailing.
438 Termination of the lease agreement shall be the exclusive remedy for the failure to comply with
439 the disclosure provisions of this section; and shall not affect any rights or duties of the landlord
440 or tenant arising under this chapter, other applicable law, or the rental agreement.

441 **Drafting note: Technical changes.**

442 § 55.1-xxx. Landlord to maintain fit premises; additional obligation of the landlord
443 regarding carbon monoxide alarms.

444 In addition to the landlord's obligations contained in § 55.1-xxx [§ 55-248.13], the
445 landlord shall maintain any carbon monoxide alarm that has been installed by the landlord in a
446 dwelling unit.

447 **Drafting note: Existing subdivision A 8 of § 55-248.13 is relocated as proposed §**
448 **55.1-xxx. This provision pertains only to residential tenancies governed by the VRLTA.**

449 ~~§ 55-248.13~~ § 55.1-xxx. Landlord to provide locks and peepholes when required by local
450 ordinance.

451 The governing body of any ~~county, city or town~~ locality may require by ordinance that
452 any landlord who rents five or more dwelling units in any one building shall install:

453 1. Dead-bolt locks ~~which~~ that meet the requirements of the Uniform Statewide Building
454 Code (§ 36-97 et seq.) for new ~~multi-family~~ multifamily construction and peepholes in any
455 exterior swinging entrance door to any such unit; however, any door having a glass panel shall
456 not require a peephole~~;~~.

2. Manufacturer's locks ~~which~~ that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) and removable metal pins or charlie bars in accordance with the Uniform Statewide Building Code on exterior sliding glass doors located in a building at any level ~~or levels~~ designated in the ordinance; and

3. Locking devices ~~which~~ that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) on all exterior windows.

Any ordinance adopted pursuant to this section shall further provide that any landlord subject to the ordinance shall have a reasonable time as determined by the governing body in which to comply with the requirements of the ordinance.

Drafting note: "County, city or town" is replaced with "locality" on the basis of § 1-221, which states that "'locality' means a county, city, or town." The plural "or levels" is stricken in subdivision 2 on the basis of § 1-277, which states that throughout the Code any word used in the singular includes the plural. Technical changes are made.

~~§ 55-248.13:2~~ 55.1-xxx. Access of tenant to cable, satellite, and other television facilities.

No landlord shall demand or accept payment of any fee, charge, or other thing of value from any provider of cable television service, cable modem service, satellite master antenna television service, direct broadcast satellite television service, subscription television service, or service of any other television programming system in exchange for granting a television service provider mere access to the landlord's tenants or giving the tenants of such landlord mere access to such service. A landlord may enter into a service agreement with a television service provider to provide marketing and other services to the television service provider, designed to facilitate the television service provider's delivery of its services. Under such a service agreement, the television service provider may compensate the landlord for the reasonable value of the services provided, and for the reasonable value of the landlord's property used by the television service provider.

No landlord shall demand or accept any such payment from any tenants in exchange ~~therefor~~ for such service unless the landlord is itself the provider of the service. ~~Nor, nor~~ shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing contained ~~herein~~ in this section shall prohibit a landlord from (i) requiring that the provider of such service and the tenant bear the entire cost of the installation, operation, or removal of the facilities incident ~~thereto, to such service~~ or ~~prohibit a landlord from (ii)~~ demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation, or removal.

Drafting note: Technical changes.

§ ~~55-248.13-3~~ 55.1-xxx. Notice to tenants for insecticide or pesticide use.

A. The landlord shall give written notice to the tenant no less than ~~forty-eight~~ 48 hours prior to his application of an insecticide or pesticide in the tenant's dwelling unit, unless the tenant agrees to a shorter notification period. If a tenant requests the application of the insecticide or pesticide, the ~~forty-eight-hour~~ 48-hour notice is not required. Tenants who have concerns about specific insecticides or pesticides shall notify the landlord in writing no less than ~~twenty-four~~ 24 hours before the scheduled insecticide or pesticide application. The tenant shall prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord; and, if insects or pests are found to be present, follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides.

B. In addition, the landlord shall post notice of all insecticide or pesticide applications in areas of the premises other than the dwelling units. Such notice shall consist of conspicuous signs placed in or upon such premises where the insecticide or pesticide will be applied ~~forty-eight at least~~ no less than 48 hours prior to the application.

Drafting note: Technical changes.

§ ~~55-248.14~~ 55.1-xxx. Limitation of liability.

Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement ~~and~~, this chapter, and Chapter XX [1] (§ 55.1-xxx et seq.) as to events occurring subsequent to notice to the tenant of the conveyance. Unless otherwise agreed, a managing agent of premises that include a dwelling unit is relieved of liability under the rental agreement ~~and~~, this chapter, and Chapter XX [1] as to events occurring after written notice to the tenant of the termination of his management.

Drafting note: References to Chapter XX [1] are added because that chapter contains liability provisions that are applicable to landlords of all residential tenancies, including tenancies governed by the VRLTA. Technical changes.

~~§ 55-248.15~~ § 55.1-xxx. Tenancy at will; effect of notice of change of terms or provisions of tenancy.

A notice of any change by a landlord or tenant in any terms or provisions of a tenancy at will shall constitute a notice to vacate the premises, and such notice of change shall be given in accordance with the terms of the rental agreement, if any, or as otherwise required by law.

Drafting note: No change.

~~§ 55-248.15-1~~ § 55.1-xxx. Security deposits.

A. ~~A No~~ landlord may ~~not~~ demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as ~~hereinafter~~ provided in this section, may be applied ~~solely~~ by the landlord solely to (i) ~~to~~ the payment of accrued rent ~~and~~, including the reasonable charges for late payment of rent specified in the rental agreement; (ii) ~~to~~ the payment of the amount of damages ~~which that~~ the landlord has suffered by reason of the tenant's noncompliance with ~~§ 55-248.16~~ § 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter], less reasonable wear and tear; or (iii) ~~to~~ other damages or charges as provided in the rental agreement. The security deposit and any deductions, damages, and charges shall be itemized by the landlord in a written

notice given to the tenant, together with any amount due to the tenant, within 45 days after termination of the tenancy and delivery of possession to the landlord.

B. Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to a forwarding address provided by one of the tenants. Regardless of the number of tenants subject to a rental agreement, if a tenant fails to provide a forwarding address to the landlord to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day time period pursuant to subsection A, the landlord shall, within a reasonable period of time not to exceed 90 days, escheat the balance of such security deposit and any other moneys due to the tenant to the Commonwealth, which sums shall be ~~sent to the Virginia Department of Housing and Community Development, payable to the State Treasurer, and credited to the Virginia Housing Trust Fund established pursuant to § 36-142~~ paid to the Literary Fund. Upon payment to the Commonwealth, the landlord shall have no further liability to any tenant relative to the security deposit. If the landlord or managing agent is a real estate licensee, compliance with this ~~paragraph~~ subsection shall be deemed compliance with § 54.1-2108 and corresponding regulations of the Real Estate Board.

C. Nothing in this section shall be construed ~~by a court of law or otherwise~~ as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the 45-day time period. However, provided that the landlord has given prior written notice in accordance with this section, the landlord may withhold a reasonable portion of the security deposit to cover an amount of the balance due on the water, sewer, or other utility account that is an obligation of the tenant to a third-party provider under the rental agreement for the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation to the tenant within 10 days ~~thereafter~~, along with payment to the tenant of any balance otherwise due to the tenant. In order

to withhold such funds as part of the disposition of the security deposit, the landlord shall have ~~so~~ advised the tenant of his rights and obligations under this section in (i) a termination notice to the tenant in accordance with this chapter or Chapter XX [1] (§ 55.1-xxx et seq.), (ii) a ~~vacating~~ written notice to the tenant confirming the vacating date in accordance with this section, or (iii) a separate written notice to the tenant at least 15 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in accordance with § ~~55-248.6~~ 55.1-xxx.

The tenant may provide the landlord with written confirmation of the payment of the final water, sewer, or other utility bill for the dwelling unit, in which case the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period, ~~or if~~ If the tenant provides such written confirmation after the expiration of the 45-day period, the landlord shall refund any remaining balance of the security deposit held to the tenant within 10 days following the receipt of such written confirmation provided by the tenant. If the landlord otherwise receives confirmation of payment of the final water, sewer, or other utility bill for the dwelling unit, the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period.

D. Nothing in this section shall be construed to prohibit the landlord from making the disposition of the security deposit prior to the 45-day period and charging an administrative fee to the tenant for such expedited processing, if the rental agreement so provides and the tenant requests expedited processing in a separate written document.

E. The landlord shall notify the tenant in writing of any deductions provided by this ~~subsection~~ section to be made from the tenant's security deposit during the course of the tenancy. Such notification shall be made within 30 days of the date of the determination of the deduction and shall itemize the reasons in the same manner as provided in subsection ~~B.F.~~ Such No such notification shall ~~not~~ be required for deductions made less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to comply with this section, the court shall order the return of the security deposit to the tenant, together with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which case, the court

shall order an amount equal to the security deposit credited against the rent due to the landlord. In the event that damages to the premises exceed the amount of the security deposit and require the services of a ~~third party~~ third-party contractor, the landlord shall give written notice to the tenant advising him of that fact within the 45-day period. If notice is given as prescribed in this paragraph subsection, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter or Chapter XX [1] (§ 55.1-xxx et seq.). The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

B.F. The landlord shall:

1. Maintain and itemize records for each tenant of all deductions from security deposits provided for under this section ~~which that~~ the landlord has made by reason of a tenant's noncompliance with § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter] during the preceding two years; and

2. Permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

C.G. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by the landlord of the tenant's intent to vacate, the landlord shall make reasonable efforts to advise the tenant of the tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of determining the amount of security deposit to be returned. If the tenant desires to be present when the landlord makes the inspection, he shall in writing, so advise the landlord ~~in writing~~, who, in turn, shall notify the tenant of the ~~time and~~ date and time of the inspection, which must be made within 72 hours of delivery of possession. Upon

completion of the inspection attended by the tenant, the landlord shall furnish the tenant with an itemized list of damages to the dwelling unit known to exist at the time of the inspection.

D-H. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section.

I. If the rental agreement is terminated due to the landlord's noncompliance pursuant to § 55.1-xxx [§ 55-248.21], the landlord shall return the security deposit in accordance with this section.

J. The maintenance of an action by a landlord pursuant to § 55.1-xxx [§ 55-248.39] does not release the landlord from liability under this section.

K. If a rental agreement is terminated pursuant to § 55.1-xxx [§ 55-248.26], the landlord shall return all of the security deposit in accordance with this section.

Drafting note: Existing § 55-248.15:1 is retained in this article of the VRLTA, with the addition of subsection notation for clarity. In the subsection B, the fund to which security deposits that escheat to the Commonwealth are paid is changed from the Virginia Housing Trust Fund to the Literary Fund in accordance with Art. VIII, Sec 8 of the Virginia Constitution, which states that all money escheated to the Commonwealth must be credited to the Literary Fund. In proposed subsection C, the existing phrase "by a court of law or otherwise" is stricken as unnecessary. In proposed subsection C, the existing term "vacating notice" is changed to "written notice . . . confirming the vacating date" because "vacating notice" was undefined and unclear. Language is relocated (i) to proposed subsection I from existing § 55-248.21, (ii) to proposed subsection J from existing § 55-248.39, and (iii) to proposed subsection K from existing § 55-248.26. These security deposit provisions are applicable only to residential tenancies governed by the VRLTA. Technical changes are made.

~~§ 55-248.15:2. Repealed.~~

Drafting note: Repealed by Acts 2014, c. 651, cl. 2, effective January 1, 2015.

Tenant Obligations.

Drafting note: Existing §§ 55-248.17, 55-248.18, 55-248.18:2, 55-248.19, and 55-248.20 in Article 3 of the VRLTA are retained as proposed Article 3 of the VRLTA. Existing §§ 55-248.16 and 55-248.18:1 are relocated to proposed Article 4 of Chapter XX [1] because they apply to all residential tenancies.

§ 55.1-xxx. Tenant to maintain dwelling unit; additional obligations.

In addition to the provisions of the rental agreement and the tenant obligations provided in § 55.1-xxx [§ 55-248.16], the tenant:

1. Shall keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and promptly notify the landlord of the existence of any insects or pests;

2. Shall remove from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner and place such items in the appropriate receptacles provided by the landlord pursuant to § 55.1-xxx [§ 55-248.13], if such disposal is on the premises;

3. Shall use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;

4. Shall not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the detector inoperative and shall maintain the smoke detector in accordance with the uniform set of standards for maintenance of smoke detectors established in the Uniform Statewide Building Code (§ 36-97 et seq.); and

5. Shall not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative and shall maintain the carbon monoxide alarm in accordance

[with the uniform set of standards for maintenance of carbon monoxide alarms established in the Uniform Statewide Building Code \(§ 36-97 et seq.\).](#)

Drafting note: Subdivisions A 3, 4, 6, 8, and 9 of existing § 55-248.16, which are applicable only to residential tenancies that are covered by the VRLTA, are relocated as proposed § 55.1-xxx [this section].

~~§ 55-248.17~~ [55.1-xxx](#). Rules and regulations.

A. A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenants' use and occupancy of the premises. Any such rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises; preserve the landlord's property from abusive use; or make a fair distribution of services and facilities held out for the tenants generally;

2. It is reasonably related to the purpose for which it is adopted;

3. It applies to all tenants in the premises in a fair manner;

4. It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he ~~must or must not~~ [is required to do](#) ~~or prohibited from doing~~ to comply;

5. It is not for the purpose of evading the obligations of the landlord; and

6. The tenant has been provided with a copy of the rules and regulations or changes ~~thereto~~ [to such rules and regulations](#) at the time he enters into the rental agreement or when they are adopted.

B. A rule or regulation adopted, changed, or provided to the tenant after the tenant enters into the rental agreement shall be enforceable against the tenant if reasonable notice of its adoption or change has been given to the tenant and it does not ~~work constitute~~ a substantial modification of his bargain. If a rule or regulation ~~is~~ adopted or changed after the tenant enters into the rental agreement ~~that~~ does ~~work constitute~~ a substantial modification of his bargain, it shall not be valid unless the tenant consents to it in writing.

C. Any court enforcing this chapter shall consider violations of the reasonable rules and regulations imposed under this section as a breach of the rental agreement and grant the landlord appropriate relief.

Drafting note: Technical changes.

§ ~~55-248.18~~ 55.1-xxx. Access; consent; correction of nonemergency conditions; relocation of tenant.

A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises; make necessary or ~~agreed~~ agreed-upon repairs, decorations, alterations, or improvements; supply necessary or ~~agreed~~ agreed-upon services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors. If, upon inspection of a dwelling unit during the term of a tenancy, the landlord determines there is a violation by the tenant of § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter] or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning in accordance with § ~~55-248.32~~ 55.1-xxx, the landlord may make such repairs and send the tenant an invoice for payment. If, upon inspection of the dwelling unit during the term of a tenancy, the landlord discovers a violation of the rental agreement, this chapter, Chapter XX [1], or other applicable law, the landlord may send a written notice of termination pursuant to § ~~55-248.31~~ 55.1-xxx. If the rental agreement so provides, and if a tenant without reasonable justification declines to permit the landlord or managing agent to exhibit the dwelling unit for sale or lease, the landlord may recover damages, costs, and reasonable attorney fees against such tenant.

The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least ~~24 hours'~~ 24 hours' notice of routine maintenance to be

performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant.

B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, as selected by the landlord, and at no expense or cost to the tenant. The landlord and tenant may agree for the tenant to temporarily vacate the dwelling unit in less than 30 days. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with ~~§ 55-248.13~~ [55.1-xxx or 55.1-xxx \[Landlord to maintain fit premises; additional obligation of the landlord regarding carbon monoxide alarms\]](#); (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs to be remedied within 24 hours being defined as an "emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.

The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the [nonemergency](#) property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the unit and terminate the rental agreement within the 30-day notice period. If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing ~~herein in this section~~ shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing ~~herein in this section~~ shall be construed to limit the landlord from taking legal action against the tenant

for any noncompliance that occurs during the period of any temporary relocation pursuant to this ~~section~~ subsection.

C. The landlord has no other right to access except by court order or that permitted by §§ ~~55-248.32 and 55-248.33~~ 55.1-xxx and 55.1-xxx or if the tenant has abandoned or surrendered the premises.

D. The tenant may install, within the dwelling unit, new ~~burglary prevention security systems that the tenant may believe necessary to ensure his safety~~, including chain latch devices approved by the landlord, and fire detection devices, ~~that the tenant may believe necessary to ensure his safety~~, provided that:

1. Installation does no permanent damage to any part of the dwelling unit;
2. A duplicate of all keys and instructions ~~of how to operate~~ for the operation of all devices are given to the landlord; and
3. Upon termination of the tenancy, the tenant ~~shall be~~ is responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.

E. Upon written request of the tenant, the landlord shall install a carbon monoxide alarm in the tenant's dwelling unit within 90 days of such request and may charge the tenant a reasonable fee to recover the costs of such installation. The landlord's installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code (§ 36-97 et seq.).

Drafting note: "Burglary prevention" is modernized to the preferred term "security system." Technical changes are made.

§ ~~55-248.18:2~~ 55.1-xxx. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with

professional standards as defined in § ~~55-248.4~~ 55.1-xxx for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant; or (ii) a hotel room, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where ~~or when~~ the landlord has remediated a mold condition in accordance with professional standards as defined in § ~~55-248.4~~ 55.1-xxx. The landlord shall pay all costs of the relocation and the mold remediation, unless the mold is a result of the tenant's failure to comply with § ~~55-248.16~~ 55.1-xxx.

Drafting note: Technical change.

§ ~~55-248.19~~ 55.1-xxx. Use and occupancy by tenant.

Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a residence.

Drafting note: No change.

§ ~~55-248.20~~ 55.1-xxx. Tenant to surrender possession of dwelling unit.

At the termination of the term of tenancy, whether by expiration of the rental agreement or by reason of default by the tenant, the tenant shall promptly vacate the premises, removing all items of personal property and leaving the premises in good and clean order, reasonable wear and tear excepted. If the tenant fails to vacate, the landlord may bring an action for possession and damages, including reasonable ~~attorney's~~ attorney fees.

Drafting note: Technical change.

Article 4.

Tenant Remedies.

Drafting note: Existing §§ 55-248.22, 55-248.23, 55-248.24, 55-248.25, and 55-248.27 in Article 4 of the VRLTA are retained as proposed Article 4 of the VRLTA. Existing §§ 55-248.21, 55-248.21:1, 55-248.21:2, 55-248.25:1, and 55-248.26 are relocated to proposed Article 5 of Chapter XX [1] because they apply to all residential tenancies.

804 § ~~55-248.22~~ 55.1-xxx. Failure to deliver possession.

805 If the landlord willfully fails to deliver possession of the dwelling unit to the tenant, then
 806 rent abates until possession is delivered, and the tenant may (i) terminate the rental agreement
 807 upon at least five days' written notice to the landlord ~~and~~, upon which termination, the landlord
 808 shall return all prepaid rent and security deposits, or (ii) demand performance of the rental
 809 agreement by the landlord. If the tenant elects, he may file an action for possession of the
 810 dwelling unit against the landlord or any person wrongfully in possession and recover the
 811 damages sustained by him. If a person's failure to deliver possession is willful and not in good
 812 faith, an aggrieved person may recover from that person the actual damages sustained by him
 813 and reasonable ~~attorney's~~ attorney fees.

814 **Drafting note: Technical changes.**

815 § ~~55-248.23~~ 55.1-xxx. Wrongful failure to supply ~~heat, water, hot water or~~ an essential
 816 services service.

817 A. If contrary to the rental agreement or provisions of this chapter the landlord willfully
 818 or negligently fails to supply ~~heat, running water, hot water, electricity, gas or other~~ an essential
 819 service, the tenant ~~must~~ shall serve a written notice on the landlord specifying the breach, if
 820 acting under this section, and, in such event, and after ~~a~~ allowing the landlord reasonable time
 821 ~~allowed the landlord~~ to correct such breach, may:

822 1. Recover damages based upon the diminution in the fair rental value of the dwelling
 823 unit; or

824 2. Procure reasonable substitute housing during the period of the landlord's
 825 noncompliance, in which case the tenant is excused from paying rent for the period of the
 826 landlord's noncompliance, as determined by the court.

827 B. If the tenant proceeds under this section, he shall be entitled to recover reasonable
 828 attorney fees; however, he may not proceed under § ~~55-248.21~~ 55.1-xxx as to that breach. The
 829 rights of the tenant under this section shall not arise until he has given written notice to the
 830 landlord; however, no rights arise if the condition was caused by the deliberate or negligent act

or omission of the tenant, ~~a member of his family or other person on the premises with his~~
~~consent~~ an authorized occupant, or a guest or invitee of the tenant.

**Drafting note: The defined term "essential service" incorporates the named
 elements of and replaces the phrase "heat, running water, hot water, electricity, gas, or
 other." Language in subsection B is amended to use defined terms "authorized occupant"
 and "guest or invitee." Technical changes are made.**

§ ~~55-248.24~~ 55.1-xxx. Fire or casualty damage.

If the dwelling unit or premises ~~are~~ is damaged or destroyed by fire or casualty to an
 extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required
 repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the
 landlord may terminate the rental agreement. The tenant may terminate the rental agreement by
 vacating the premises and, within 14 days thereafter, ~~serve~~ serving on the landlord a written
 notice of his intention to terminate the rental agreement, in which case the rental agreement
 terminates as of the date of vacating; ~~or if~~ If continued occupancy is lawful, § ~~55-226~~ 55.1-xxx
 shall apply.

The landlord may terminate the rental agreement by giving the tenant 14 days' notice of
 his intention to terminate the rental agreement ~~based upon~~ on the basis of the landlord's
 determination that such damage requires the removal of the tenant and that the use of the
 premises is substantially impaired, in which case the rental agreement terminates as of the
 expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in
 accordance with § ~~55-248.15:1~~ 55.1-xxx and prepaid rent, plus accrued interest, recoverable by
 law unless the landlord reasonably believes that the tenant, ~~tenant's guests, invitees or authorized~~
~~occupants were~~ an authorized occupant, or a guest or invitee of the tenant was the cause of the
 damage or casualty, in which case the landlord shall account to the tenant for the security and
 prepaid rent, plus accrued interest based upon the damage or casualty, and may recover actual

damages sustained pursuant to § ~~55-248.35~~ 55.1-xxx. Accounting for rent in the event of termination or apportionment shall be made as of the date of the casualty.

Drafting note: Technical changes.

§ ~~55-248.25~~ 55.1-xxx. Landlord's noncompliance as defense to action for possession for nonpayment of rent.

A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises, a condition ~~which~~ that constitutes, or will constitute, a fire hazard or a serious threat to the life, health, or safety of the occupants ~~thereof of the dwelling unit~~, including ~~but not limited to (i)~~ a lack of heat ~~or~~, running water ~~or of~~, light ~~or of~~, electricity, or adequate sewage disposal facilities ~~or~~; (ii) an infestation of rodents; or (iii) a condition ~~which~~ that constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:

1. Prior to the commencement of the action for rent or possession, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for which he was served a written notice of the ~~aforsaid~~ condition ~~or conditions~~ by the tenant or was notified of such condition by a violation or condemnation notice from an appropriate state or ~~municipal~~ local agency, ~~but that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same~~. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a rebuttable presumption that a period in excess of ~~thirty~~ 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.

883 B. It shall be a sufficient answer to such a defense provided for in this section if the
884 landlord establishes that (i) the conditions alleged in the defense do not in fact exist; ~~or (ii) such~~
885 conditions have been removed or remedied; ~~or (iii) such conditions have been caused by the~~
886 tenant ~~or, his guest or invitee,~~ members of the family of such tenant, or ~~of his or their guests a~~
887 guest or invitee of such family member; or (iv) the tenant has unreasonably refused entry to the
888 landlord to the premises for the purposes of correcting such conditions.

889 C. The court shall make findings of fact upon any defense raised under this section or the
890 answer to any defense and, ~~thereafter,~~ shall ~~pass such~~ issue any order as may be required,
891 including any one or more of the following:

892 1. ~~An order to set off to the tenant as determined by the court~~ Reducing rent in such
893 amount as ~~may the court determines to~~ be equitable to represent the existence of any condition
894 set forth in subsection A ~~which is found by the court to exist;~~

895 2. ~~Terminate~~ Terminating the rental agreement or ~~order~~ ordering the surrender of the
896 premises to the landlord; or

897 3. ~~Refer~~ Referring any matter before the court to the proper state or ~~municipal~~ local
898 agency for investigation and report and ~~grant~~ granting a continuance of the action or complaint
899 pending receipt of such investigation and report. When such a continuance is granted, the tenant
900 shall deposit with the court any rents ~~which that~~ will become due during the period of
901 continuance, to be held by the court pending its further order, or in its discretion, the court may
902 use such funds to (i) pay a mortgage on the property in order to stay a foreclosure, ~~to (ii) pay a~~
903 creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or ~~to (iii)~~
904 remedy any condition set forth in subsection A ~~which that~~ is found by the court to exist.

905 D. If it appears that the tenant has raised a defense under this section in bad faith or has
906 caused the violation or has unreasonably refused entry to the landlord for the purpose of
907 correcting the condition giving rise to the violation, the court, ~~in its discretion,~~ may impose upon
908 the tenant the reasonable costs of the landlord, including court costs, the costs of repair where
909 the court finds the tenant has caused the violation, and reasonable ~~attorney's~~ attorney fees.

Drafting note: The phrase "but not limited to" is deleted after the term "including" in subsection A on the basis of § 1-218, which states that throughout the Code the term "'Includes' means includes, but not limited to." The phrase "or conditions" is deleted after the term "condition" in subdivision A 1 on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Language is reworded for clarity and technical changes are made.

§ ~~55-248.27~~ 55.1-xxx. Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises; a condition~~or~~ conditions which constitute that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law; or ~~which that~~, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of the occupants ~~thereof of~~ the premises, including ~~but not limited to~~, (i) a lack of heat or hot or cold running water, except if where the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; ~~or (ii) a lack~~ of light, electricity, or adequate sewage disposal facilities; ~~or (iii) an~~ infestation of rodents, except if the property is a one-family dwelling; or ~~of (iv) the~~ existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court ~~wherein in~~ which the premises ~~are is~~ located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection D.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for which he was served a written notice of the condition by the tenant ~~of the conditions described in subsection A~~, or was notified of such ~~conditions~~ condition by a violation or condemnation notice from an appropriate state or ~~municipal local~~ agency, ~~and that the landlord has refused, or having a reasonable~~

937 ~~opportunity to do so, has failed to remedy the same.~~ For the purposes of this subsection, what
938 period of time shall be deemed to be unreasonable delay is left to the discretion of the court,
939 except that there shall be a rebuttable presumption that a period in excess of ~~thirty~~ 30 days from
940 receipt of the notification by the landlord is unreasonable; and

941 2. The tenant has paid into court the amount of rent called for under the rental
942 agreement, within five days of the date due ~~thereunder~~ under the rental agreement, unless or
943 until such amount is modified by subsequent order of the court under this chapter.

944 C. It shall be sufficient answer or rejoinder to ~~a declaration~~ an assertion made pursuant
945 to subsection A if the landlord establishes to the satisfaction of the court that (i) the conditions
946 alleged by the tenant do not in fact exist, ~~or~~ (ii) such conditions have been removed or remedied,
947 ~~or~~ (iii) such conditions have been caused by the tenant ~~or, his guest or invitee,~~ members of ~~his~~
948 the family or his or their invitees or licensees of such tenant, or a guest or invitee of such family
949 member, or (iv) the tenant has unreasonably refused entry to the landlord to the premises for the
950 purpose of correcting such conditions.

951 D. Any court shall make findings of fact on the issues before it and shall issue any order
952 that may be required. Such an order may include, ~~but is not limited to,~~ any one or more of the
953 following:

954 1. Terminating the rental agreement upon the request of the tenant or ordering the
955 ~~premises surrendered~~ surrender of the premises to the landlord if the landlord prevails on a
956 request for possession pursuant to an unlawful detainer properly filed with the court;

957 2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the
958 tenant in accordance with this chapter;

959 3. Ordering that the escrow be continued until the conditions causing the complaint are
960 remedied;

961 4. Ordering that the amount of rent, whether paid into the escrow account or paid to the
962 landlord, be abated as determined by the court in such an amount as may be equitable to
963 represent the existence of ~~the any~~ condition or conditions found by the court to exist. In all cases

964 where the court deems that the tenant is entitled to relief under this chapter or Chapter XX [1] (§
965 55.1-xxx et seq.), the burden shall be upon the landlord to show cause why there should not be
966 an abatement of rent;

967 5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where
968 the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor
969 chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either
970 case, the court shall in its order insure that moneys thus disbursed will be in fact used for the
971 purpose of making repairs or effecting a remedy;

972 6. Referring any matter before the court to the proper state or ~~municipal~~ local agency for
973 investigation and report and granting a continuance of the action or complaint pending receipt of
974 such investigation and report. When such a continuance is granted, the tenant shall deposit with
975 the court ~~rents~~, within five days of date due under the rental agreement, subject to any
976 abatement under this section, ~~which rents that~~ become due during the period of the continuance,
977 to be held by the court pending its further order;

978 7. ~~In its discretion, ordering~~ Ordering escrow funds disbursed to pay a mortgage on the
979 property in order to stay a foreclosure; or

980 8. ~~In its discretion, ordering~~ Ordering escrow funds disbursed to pay a creditor to prevent
981 or satisfy a bill to enforce a mechanic's or materialman's lien.

982 E. Notwithstanding any provision of ~~this subsection~~ subsection D, where an escrow
983 account is established by the court and the condition ~~or conditions are~~ is not fully remedied
984 within six months of the establishment of such account, and the landlord has not made
985 reasonable attempts to remedy the condition, the court shall award all moneys accumulated in
986 escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a
987 new six-month period with the same result if, at the end ~~thereof of the period~~, the condition ~~or~~
988 ~~conditions have~~ has not been remedied.

989 E.F. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be
990 held within ~~fifteen~~ 15 calendar days from the date of service of process on the landlord as

authorized by § ~~55-248.12~~ 55.1-xxx, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities, or any other condition ~~which~~ that constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this ~~article~~ chapter or Chapter XX [1] (§ 55.1-xxx et seq.) as to that breach.

Drafting note: The phrase "but not limited to" is deleted after the term "including" and "include" in subsections A and D on the basis of § 1-218, which states that throughout the Code the term "'Includes' means includes, but not limited to." In subdivision B 1, "or his agent" is added after "landlord" for consistency with subsection A 1 of § 55.1-xxx [§ 55-248.25]. In subsection C, "declaration" is changed to "assertion" to conform to the language used in subsection A. In subsection C, the term "licensee" is stricken and the term "guest or invitee" added on the basis of the definition in § 55.1-xxx [§ 55-248.4]. The phrase "or conditions" is stricken after the term "condition" in subdivision D 4 and I subsection E on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural. Language is reworded for clarity and technical changes are made.

~~§§ 55-248.28 through 55-248.30. Repealed.~~

Drafting note: Repealed by Acts 2000, c. 760, cl. 2.

Article 5.

Landlord Remedies.

Drafting note: Existing §§ 55-248.31, 55-248.31:01, 55-248.31:1, 55-248.32, 55-248.33, 55-248.34:1, 55-248.35, 55-248.37, 55-248.38:1, 55-248.38:2, and 55-248.38:3 in Article 5 of the VRLTA are retained as proposed Article 5 of the VRLTA. Existing § 55-248.36 is relocated to proposed Article 5 of Chapter XX [1] because it applies to all residential tenancies.

~~§ 55-248.31~~ § 55.1-xxx. Noncompliance with rental agreement; monetary penalty.

A. Except as otherwise provided in this chapter or Chapter XX [1] (§ 55.1-xxx et seq.), if there is a material noncompliance by the tenant with the rental agreement or a violation of ~~§ 55-248.16~~ § 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter] materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise, and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach ~~which that~~ is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary ~~contained elsewhere in this chapter~~, when a breach of the tenant's obligations under this chapter or Chapter XX [1] (§ 55.1-xxx et seq.) or the rental agreement involves or constitutes a criminal or a willful act, ~~which that~~ is not remediable and ~~which that~~ poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), by the tenant, ~~the tenant's an~~ an authorized ~~occupants~~

1044 occupant, or ~~the tenant's guests or invitees~~ a guest or invitee of the tenant, shall constitute an
1045 immediate nonremediable violation for which the landlord may proceed to terminate the tenancy
1046 without the necessity of waiting for a conviction of any criminal offense that may arise out of
1047 the same actions. In order to obtain an order of possession from a court of competent
1048 jurisdiction terminating the tenancy for illegal drug activity or for any other action that involves
1049 or constitutes a criminal or willful act, the landlord shall prove any such violations by a
1050 preponderance of the evidence. However, where the illegal drug activity is engaged in by ~~a~~
1051 tenant's an authorized ~~occupants, or guests or invitees~~ occupant or a guest or invitee of the
1052 tenant, the tenant shall be presumed to have knowledge of such illegal drug activity unless the
1053 presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's
1054 action for immediate possession of the premises shall be held within 15 calendar days from the
1055 date of service on the tenant; however, the court shall order an earlier hearing when emergency
1056 conditions are alleged to exist upon the premises ~~which~~ that constitute an immediate threat to
1057 the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a
1058 subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that
1059 the matter be given priority on the court's docket. Such subsequent hearing or contested trial
1060 shall be heard no later than 30 days from the date of service on the tenant. During the interim
1061 period between the date of the initial hearing and the date of any subsequent hearing or
1062 contested trial, the court may afford any further remedy or relief as is necessary to protect the
1063 interests of parties to the proceeding or the interests of any other tenant residing on the premises.
1064 Failure by the court to hold either of the hearings within the time limits set out ~~herein~~ in this
1065 section shall not be a basis for dismissal of the case.

1066 D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the
1067 dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to
1068 § ~~55-248.31:01 based upon~~ 55.1-xxx on the basis of information provided by the tenant to the
1069 landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-
1070 253.1, or 16.1-279.1, or subsection B of § 20-103, the lease shall not terminate solely due ~~solely~~

to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails ~~promptly~~ to promptly notify the landlord within 24 hours ~~thereafter~~ that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event ~~more later~~ than 7 seven days ~~thereafter~~. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or invitees pursuant to § ~~55-248.16~~, 55.1-xxx and is subject to termination of the tenancy pursuant to the lease and this chapter and Chapter XX [1] (§ 55.1-xxx et seq.).

E. If the tenant has been served with a prior written notice ~~which~~ that required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § ~~55-248.35~~ 55.1-xxx. If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying

the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § ~~55-248.35~~ 55.1-xxx. Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § ~~55-248.6~~ 55.1-xxx, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter]. In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following, regardless of whether ~~or not~~ a lawsuit is filed or an order is obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages for physical damage to the dwelling unit or premises as contracted for in the rental agreement.

H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement_; (ii) other charges and fees as contracted for in the rental agreement_; (iii) late charges contracted for in the rental agreement_; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a

1125 preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable;² (v)
 1126 costs of the proceeding as contracted for in the rental agreement or as provided by law;² and (vi)
 1127 damages [for physical damage](#) to the dwelling unit or premises.

1128 **Drafting note: In subsections G and H, the phrase "for physical damage" is added**
 1129 **after "damages" to clarify for what the landlord is entitled to recover. Technical changes**
 1130 **are made.**

1131 § ~~55-248.31-01~~ [55.1-xxx](#). Barring guest or invitee of ~~tenants~~ [a tenant](#).

1132 A. A guest or invitee of a tenant may be barred from the premises by the landlord upon
 1133 written notice served personally upon the guest or invitee of the tenant for conduct on the
 1134 landlord's property where the premises are located ~~which~~ [that](#) violates the terms and conditions
 1135 of the rental agreement, a local ordinance, or a state or federal law. A copy of the notice ~~must~~
 1136 [shall](#) be served upon the tenant in accordance with this chapter. The notice shall describe the
 1137 conduct of the guest or invitee ~~which~~ [that](#) is the basis for the landlord's action.

1138 B. In addition to the remedies against the tenant authorized by this chapter [or Chapter](#)
 1139 [XX \[1\] \(§ 55.1-xxx et seq.\)](#), a landlord may apply to the magistrate for a warrant for trespass,
 1140 provided [that](#) the guest or invitee has been served in accordance with subsection A.

1141 C. The tenant may file a tenant's assertion, in accordance with § ~~55-248.27~~ [55.1-xxx](#),
 1142 requesting that the general district court review the landlord's action to bar the guest or invitee.

1143 **Drafting note: Technical changes.**

1144 § ~~55-248.31-1~~ [55.1-xxx](#). Sheriffs authorized to serve certain notices; ~~fees therefor~~ [fee for](#)
 1145 [service](#).

1146 The sheriff of any county or city, upon request, may deliver any notice to a tenant on
 1147 behalf of a landlord or lessor under the provisions of § ~~55-225~~ [55.1-xxx](#) or ~~§ 55-248.31~~ [55.1-](#)
 1148 [xxx](#). For this service, the sheriff shall be allowed a fee not to exceed ~~twelve dollars~~ [\\$12](#).

1149 **Drafting note: Technical changes.**

1150 § ~~55-248.32~~ [55.1-xxx](#). Remedy by repair, etc.; emergencies.

If there is a violation by the tenant of § ~~55-248.16~~ 55.1-xxx or 55.1-xxx [tenant to maintain dwelling unit; additional obligations § in this chapter] or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, the landlord shall send a written notice to the tenant specifying the breach and stating that the landlord will enter the dwelling unit and perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost ~~therefor~~ for such work to the tenant, which shall be due as rent on the next rent due date, or, if the rental agreement has terminated, for immediate payment.

In case of emergency, the landlord may, as promptly as conditions require, enter the dwelling unit, perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost ~~therefor~~ for such work to the tenant, which shall be due as rent on the next rent due date, or, if the rental agreement has terminated, for immediate payment.

The landlord may perform the repair, replacement, or cleaning, or may engage a third party to do so.

Drafting note: Technical changes.

§ ~~55-248.33~~ 55.1-xxx. Remedies for absence, nonuse, and abandonment.

If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days and the tenant fails to do so, the landlord may recover actual damages from the tenant. During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary to protect his possessions and property. The rental agreement is deemed to be terminated by the landlord as of the date of abandonment by the tenant. If the landlord cannot determine whether the premises ~~have~~ has been abandoned by the tenant, the landlord shall serve written notice on the tenant in accordance with § ~~55-248.6~~ 55.1-xxx requiring the tenant to give written notice to the landlord within seven days that the tenant intends to remain in occupancy of the premises. If the tenant gives such written notice to the landlord, or if the landlord otherwise determines that the tenant remains in occupancy of the premises, the landlord shall not treat the premises as having been abandoned.

Unless the landlord receives written notice from the tenant or otherwise determines that the tenant remains in occupancy of the premises, upon the expiration of seven days from the date of the landlord's notice to the tenant, there shall be a rebuttable presumption that the premises ~~have~~ has been abandoned by the tenant, and the rental agreement shall be deemed to terminate on that date. The landlord shall mitigate damages in accordance with § ~~55-248.35~~ 55.1-xxx.

Drafting note: Technical changes.

~~§ 55-248.34. Repealed.~~

Drafting note: Repealed by Acts 2003, c. 427, cl. 2

~~§ 55-248.34:1~~ 55.1-xxx. Landlord's acceptance of rent with reservation.

A. ~~Provided~~ If the landlord has given written notice to the tenant that the rent will be accepted with reservation, the landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under § ~~55-248.38:2~~ 55.1-xxx. Such notice shall be included in a written termination notice given by the landlord to the tenant in accordance with § ~~55-248.31~~ 55.1-xxx or in a separate written notice given by the landlord to the tenant within five business days of receipt of the rent. Unless the landlord has given such notice in a termination notice in accordance with § ~~55-248.31~~ 55.1-xxx, the landlord shall continue to give a separate written notice to the tenant within five business days of receipt of the rent that the landlord continues to accept the rent with reservation in accordance with this section until such time as the violation alleged in the termination notice has been remedied or the matter has been adjudicated in a court of competent jurisdiction. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required ~~herein~~ in this section for the portion of the rent paid by the tenant.

1204 B. Subsequent to the entry of an order of possession by a court of competent jurisdiction
1205 but prior to eviction pursuant to § ~~55-248.38:2~~ 55.1-xxx, the landlord may accept all amounts
1206 owed to the landlord by the tenant, including full payment of any money judgment, award of
1207 attorney fees and court costs, and all subsequent rents that may be paid prior to eviction, and
1208 proceed with eviction, provided that the landlord has given the tenant written notice that any
1209 such payment would be accepted with reservation and would not constitute a waiver of the
1210 landlord's right to evict the tenant from the dwelling unit. However, if a landlord enters into a
1211 new written rental agreement with the tenant prior to eviction, an order of possession obtained
1212 prior to the entry of such new rental agreement is not enforceable. Such notice shall be given in
1213 a separate written notice given by the landlord within five business days of receipt of payment
1214 of such money judgment, attorney fees, and court costs, and of all subsequent rents that may be
1215 paid prior to eviction. If the dwelling unit is a public housing unit or other housing unit subject
1216 to regulation by the U.S. Department of Housing and Urban Development, the landlord shall be
1217 deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives
1218 the tenant the written notice required ~~herein in this section~~ for the portion of the rent paid by the
1219 tenant. Writs of possession in cases of unlawful entry and detainer are otherwise subject to §
1220 8.01-471.

1221 C. ~~However, the~~ The tenant may pay or present to the court a redemption tender for
1222 payment of all rent due and owing as of the return date, including late charges, attorney fees,
1223 and court costs, at or before the first return date on an action for unlawful detainer. For purposes
1224 of this section, "redemption tender" means a written commitment to pay all rent due and owing
1225 as of the return date, including late charges, attorney fees, and court costs, by a local
1226 government or nonprofit entity within 10 days of said return date.

1227 D. If the tenant presents a redemption tender to the court at the return date, the court
1228 shall continue the action for unlawful detainer for 10 days following the return date for payment
1229 to the landlord of all rent due and owing as of the return date, including late charges, attorney
1230 fees, and court costs, and ~~dismissal of~~ dismiss the action upon such payment. Should the

landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

E. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term ~~thereof of the~~ rental agreement.

Drafting note: Technical changes.

§ ~~55-248.35~~ 55.1-xxx. Remedy after termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement, reasonable ~~attorney's attorney~~ fees as provided in § ~~55-248.31~~ 55.1-xxx, and the cost of service of any notice under § ~~55-225~~ 55.1-xxx or § ~~55-248.31~~ 55.1-xxx or process by a sheriff or private process server, which cost shall not exceed the amount authorized by § ~~55-248.31~~ 55.1-xxx, ~~which and such~~ claims may be enforced, without limitation, by ~~the institution of~~ initiating an action for unlawful entry or detainer. Actual damages for breach of the rental agreement may include a claim for ~~such~~ rent ~~as that~~ would have accrued until the expiration of the term ~~thereof of the rental agreement~~ or until a tenancy pursuant to a new rental agreement commences, whichever occurs first ~~occurs~~, provided that nothing ~~herein~~ contained in this section shall diminish the duty of the landlord to mitigate actual damages for breach of the rental agreement. In obtaining post-possession judgments for actual damages as defined ~~herein in this section~~, the

landlord shall not seek a judgment for accelerated rent through the end of the term of the tenancy.

In any unlawful detainer action brought by the landlord, this section shall not be construed to prevent the landlord from being granted by the court a simultaneous judgment for money due and for possession of the premises without a credit for any security deposit. Upon the tenant vacating the premises either voluntarily or by a writ of possession, security deposits shall be credited to the tenants' account by the landlord in accordance with the requirements of § ~~55-248.15:1~~ 55.1-xxx.

Drafting note: Technical changes.

§ ~~55-248.37~~ 55.1-xxx. Periodic tenancy; holdover remedies.

A. The landlord or the tenant may terminate a week-to-week tenancy by serving a written notice on the other at least seven days prior to the next rent due date. The landlord or the tenant may terminate a month-to-month tenancy by serving a written notice on the other at least 30 days prior to the next rent due date, unless the rental agreement provides for a different notice period. The landlord and the tenant may agree in writing to an early termination of a rental agreement. In the event that no such agreement is reached, the provisions of § ~~55-248.35~~ 55.1-xxx shall control.

B. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and may also recover actual damages, reasonable attorney fees, and court costs, unless the tenant proves by a preponderance of the evidence that the failure of the tenant to vacate the dwelling unit as of the termination date was reasonable. The landlord may include in the rental agreement a reasonable liquidated damage penalty, not to exceed an amount equal to 150 percent of the per diem of the monthly rent, for each day the tenant remains in the dwelling unit after the termination date specified in the landlord's notice. However, if the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, any liquidated damage penalty shall not exceed an amount

equal to the per diem of the monthly rent set out in the lease agreement. If the landlord consents to the tenant's continued occupancy, § ~~55-248.7~~ 55.1-xxx applies.

C. In the event of termination of a rental agreement ~~and~~ where the tenant remains in possession with the agreement of the landlord either as a hold-over tenant or a month-to-month tenant and no new rental agreement is entered into, the terms of the terminated agreement shall remain in effect and govern the hold-over or month-to-month tenancy, except that the amount of rent shall be either as provided in the terminated rental agreement or the amount set forth in a written notice to the tenant, provided that such new rent amount shall not take effect until the next rent due date coming 30 days after the notice.

Drafting note: Technical change.

~~§ 55-248.38. Repealed.~~

Drafting note: Repealed by Acts 2000, c. 760, cl. 2.

~~§ 55-248.38:1~~ 55.1-xxx. Disposal of property abandoned by tenants.

If any items of personal property are left in the dwelling unit, the premises, or ~~in~~ any storage area provided by the landlord, after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided that he has: given (i) ~~given~~ a termination notice to the tenant in accordance with this chapter or Chapter XX [1] (§ 55.1-xxx et seq.), ~~which includes~~ including a statement that any items of personal property left in the dwelling unit ~~or~~ the premises, or the storage area would be disposed of within the 24-hour period after termination; (ii) ~~given~~ written notice to the tenant in accordance with § ~~55-248.33~~ 55.1-xxx, ~~which includes~~ including a statement that any items of personal property left in the dwelling unit ~~or~~ the premises, or the storage area would be disposed of within the 24-hour period after expiration of the seven-day notice period; or (iii) given a separate written notice to the tenant, ~~which includes~~ including a statement that any items of personal property left in the dwelling unit ~~or~~ the premises, or the storage area would be disposed of within 24 hours after expiration of a 10-day period from the date such notice was

given to the tenant. Any written notice to the tenant shall be given in accordance with § ~~55-248.6~~ 55.1-xxx. The tenant shall have the right to remove his personal property from the dwelling unit ~~or~~ the premises, or the storage area at reasonable times during the 24-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply ~~same~~ the funds to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in selling, storing, or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § ~~55-248.15-1~~ 55.1-xxx. The provisions of this section shall not be applicable if the landlord has been granted a writ of possession for the premises in accordance with Title 8.01 and execution of such writ has been completed pursuant to § 8.01-470.

Drafting note: The language "or the storage area" is included throughout for consistency with the first sentence of the section. Technical changes are made.

§ ~~55-248.38-2~~ 55.1-xxx. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling unit, the premises, or ~~from~~ any storage area provided by the landlord pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled ~~thereto~~ to such dwelling unit, the sheriff shall oversee the removal of such personal

property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction ~~from the landlord's~~ or at such other reasonable times until the landlord has disposed of the property as provided ~~herein in this section~~. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided ~~herein in this section~~, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply ~~same the funds~~ to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as a security deposit under ~~applicable law~~ the provisions of § 55.1-xxx [§ 55-248.15:1].

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in ~~the said such~~ notice a copy of this statute attached to, or made a part of, ~~this the~~ notice.

Drafting note: In the third paragraph, a reference to § 55.1-xxx [§ 55-248.15:1] is included for consistency with the preceding section. Technical changes.

§ ~~55-248.38:3~~ 55.1-xxx. Disposal of property of deceased tenants.

A. If a tenant, who is the sole occupant of the dwelling unit, dies, and there is no person authorized by order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of the personal property left in the dwelling unit or upon the premises. However, the landlord shall give at least 10 days' written notice to (i) the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance with § ~~55-248.6~~ 55.1-xxx if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § ~~55-248.38:1~~ 55.1-xxx, if not claimed within 10 days.

B. The landlord may request that such authorized contact person provide reasonable proof of identification. Thereafter, the authorized contact person identified in the rental application, lease agreement, or other landlord document may (i) have access to the dwelling unit or the premises and to the tenant records maintained by the landlord and (ii) rightfully claim the personal property of the deceased tenant and otherwise handle the affairs of the deceased tenant with the landlord.

C. The rental agreement is deemed to be terminated by the landlord as of the date of death of the tenant, who is the sole occupant of the dwelling unit, and the landlord shall not be required to seek an order of possession from a court of competent jurisdiction. The estate of the tenant shall remain liable for actual damages under § ~~55-248.35~~ 55.1-xxx, and the landlord shall mitigate such damages ~~as provided thereunder~~.

Drafting note: Technical change.

~~Article 6.~~

1392

~~Retaliatory Action.~~

1393

Drafting note: The designation for existing Article 6 is stricken because its

1394

provisions are relocated: Existing § 55-248.39 is relocated to proposed Article 3 of Chapter

1395

XX [1], and existing § 55-248.40 is relocated to proposed Article 1 of this chapter.

1396

#

1 CHAPTER ~~13~~ XX. [3]

2 LANDLORD AND TENANT-OTHER RESIDENTIAL TENANCIES.

3 **Drafting note: Existing Chapter 13 of Title 55 is retained as proposed Chapter XX**
4 **[3].**

5 Numerous provisions in existing Chapter 13 that are identical or substantially
6 similar to provisions in existing Chapter 13.2 (the VRLTA), that are applicable to all
7 residential tenancies, and that appear as stricken text have been logically relocated to
8 proposed Chapter XX [1] (General Provisions) of Part A (Residential Tenancies), which
9 specifically provides that residential tenancies not covered by the VRLTA are subject to
10 both Chapter XX [1] and Chapter XX [3]. The drafting note for each section containing
11 provisions relocated to proposed Chapter XX [1] explains the reason for relocating and the
12 proposed destination of the provision.

13 Numerous sections in existing Chapter 13 that appear as stricken text are
14 recommended for relocation to other titles of the Code of Virginia; the drafting note for
15 each section relocated to another title of the Code of Virginia explains the reason for
16 relocating and proposed destination of the section.

17 Article 1.

18 In General.

19 **Drafting note: Proposed Article 1 is created to make the organization of proposed**
20 **Chapter XX [3] parallel to the organization of Chapters XX [1], XX [2] (the VRLTA), and**
21 **XX [6] and to consolidate general provisions for residential tenancies not covered by the**
22 **VRLTA.**

23 § 55.1-xxx. Applicability.

24 This chapter shall apply to all rental agreements for residential tenancies as provided in
25 subsection C of § 55.1-xxx [Applicability § in Chapter 1, General Provisions].

26 **Drafting note: This proposed section details the applicability of proposed Chapter**
27 **XX [3]. It is based on existing subdivision A 10 of § 55-248.5.**

~~§ 55-222.1.~~

Drafting note: Repealed by Acts 1974, c. 680.

Article 2.

Landlord Obligations.

Drafting note: Proposed Article 2 is created to make the organization of proposed Chapter XX [3] parallel to the organization of proposed Chapters XX [1], XX [2] (the VRLTA), and XX [6] and to consolidate provisions concerning landlord obligations for residential tenancies not covered by the VRLTA.

~~§ 55-225.6~~ 55.1-xxx. Inspection of dwelling unit.

The landlord may, within five days after occupancy of a dwelling unit, submit a written report to the tenant, ~~for his safekeeping~~, itemizing damages to the dwelling unit existing at the time of occupancy, ~~which record and the report~~ shall be deemed correct unless the tenant objects ~~thereto to it~~ in writing within five days after receipt ~~thereof of the report~~. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, ~~which record and the report~~ shall be deemed correct unless the landlord objects ~~thereto to it~~ in writing within five days after receipt ~~thereof of the report~~. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy ~~thereof of the report~~, at which time the inspection ~~record report~~ shall be deemed correct.

Drafting note: References to "record" are changed to "report" for consistency. The phrase "for his safekeeping" is removed as unnecessary. Technical changes are made.

~~§ 55-225.7~~ 55.1-xxx. Disclosure of mold in dwelling units.

As part of the written report of the move-in inspection pursuant to ~~§ 55-225.6~~ 55.1-xxx, the landlord may disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed

correct unless the tenant objects ~~thereto~~ to it in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days ~~thereafter~~ after the tenant's request to take possession or decision to remain in possession and re-inspect the dwelling unit to confirm that there is no visible evidence of mold in the dwelling unit and ~~reflect on~~ prepare a new report stating that there is no visible evidence of mold in the dwelling unit upon re-inspection.

Drafting note: Technical changes.

§ ~~55-225.10~~ 55.1-xxx. Notice to tenant in event of foreclosure.

A. The landlord of a dwelling unit subject to this chapter shall give written notice to the tenant or any prospective tenant of such dwelling unit that the landlord has received a notice of a mortgage default, mortgage acceleration, or foreclosure sale relative to the loan on the dwelling unit within five business days after written notice from the lender is received by the landlord. This requirement shall not apply (i) to any managing agent who does not receive a copy of such written notice from the lender or (ii) if the tenant or prospective tenant provides a copy of the written notice from the lender to the landlord or the managing agent.

B. If the landlord fails to provide the notice required by this section, the tenant shall have the right to terminate the rental agreement upon written notice to the landlord at least five business days prior to the effective date of termination. If the tenant terminates the rental agreement, the landlord shall make disposition of the tenant's security deposit in accordance with law or the provisions of the rental agreement, whichever is applicable.

~~C. If the dwelling unit is foreclosed upon and there is a tenant lawfully residing in the dwelling unit on the date of foreclosure, the tenant may remain in such dwelling unit as a tenant only pursuant to the Protecting Tenants at Foreclosure Act, P.L. No. 111-22, § 702, 123 Stat.~~

~~1632, 1660 (2009), and provided the tenant remains in compliance with all of the terms and conditions of the lease agreement, including payment of rent.~~

Drafting note: Existing § 55.1-225.10 is retained; however, subsection C is removed because it contains an obsolete reference to a federal act that has expired.

~~§ 55-222.1-xxx.~~ Notice to terminate a tenancy; on whom served; when necessary.

A. A year-to-year tenancy ~~from year to year~~ may be terminated by either party giving three months' notice, in writing, prior to the end of any year of the tenancy, of his intention to terminate the same. A month-to-month tenancy ~~from month to month~~ may be terminated by either party giving 30 days' notice in writing, prior to the next rent due date, of his intention to terminate the same, unless the rental agreement provides for a different notice period. Written notice of termination shall be given in accordance with this chapter or the Virginia Residential Landlord and Tenant Act (~~§ 55-248.2 et seq.~~ 55.1-xxx et seq.), as applicable.

B. In addition to the termination rights set forth in subsection A, and notwithstanding the terms of the lease, the landlord may terminate the lease due to rehabilitation or a change in the use of all or any part of a building containing at least four residential units, upon 120 days' prior written notice to the tenant. Changes in use shall include ~~but not be limited to~~ conversion to hotel, motel, apartment hotel, or other commercial use; planned unit development; substantial rehabilitation; demolition; or sale to a contract purchaser requiring an empty building. This 120-day notice requirement shall not be waived except in the case of a month-to-month tenancy ~~from month to month~~, which may be terminated by the landlord by giving the tenant 30 days' written notice prior to the next rent due date of the landlord's intention to terminate the tenancy.

The written notice required by this section to terminate a tenancy shall not be contained in the rental agreement or lease, but shall be a separate writing.

Drafting note: In subsection B, "but not be limited to" is removed following the term "include" on the basis of § 1-218, which states "'Includes' means includes, but not limited to," and technical changes are made.

~~§ 55-222.1. Repealed.~~

Drafting note: Repealed by Acts 1974, c. 680.

[Article 3.](#)

[Tenant Obligations.](#)

Drafting note: Proposed Article 3 is created to make the organization of proposed Chapter XX [3] parallel to the organization of proposed Chapters XX [1], XX [2] (the VRLTA), and XX [6] and to consolidate provisions concerning tenant obligations for residential tenancies not covered by the VRLTA.

§ ~~55-223~~ [55.1-xxx](#). Effect of failure of tenant to vacate premises at expiration of term.

A tenant from ~~year to year~~ [year-to-year](#), ~~month to month~~ [month-to-month](#), or other definite term, shall not, by his mere failure to vacate the premises upon the expiration of the lease, be held as tenant for another term when such failure is not due to his willfulness, negligence, or other avoidable cause, but such tenant shall be liable to the ~~lessor~~ [landlord](#) for use and occupation of the premises and also for any loss or damage sustained by the ~~lessor~~ [landlord](#) because of such failure to surrender possession **is replaced with "landlord" for consistency throughout the chapter. Technical changes are made.**

§ ~~55-225.9~~ [55.1-xxx](#). Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in a dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § ~~55-225.8~~ [55.1-xxx](#) for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (ii) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where ~~or when~~ the landlord has

remediated a mold condition in accordance with professional standards as defined in § ~~55-225.8~~
~~55.1-xxx~~. The landlord shall pay all costs of the relocation and the mold remediation, unless the
 tenant is at fault for the mold condition.

Drafting note: Technical changes.

Article 4.

Tenant Remedies.

**Drafting note: Proposed Article 4 is created to make the organization of proposed
 Chapter XX [3] parallel to the organization of Chapters XX [1], XX [2] (the VRLTA), and
 XX [6], and to consolidate provisions concerning tenant remedies for residential tenancies
 not covered by the VRLTA.**

§ ~~55-224~~ ~~55.1-xxx~~. ~~When tenant deserts~~ Abandonment of premises, ~~how landlord may~~
~~enter, etc.~~

If any tenant from whom rent is ~~in arrear~~ owed and unpaid ~~shall desert~~ abandons the
~~demised~~ premises and ~~leave~~ leaves the ~~same uncultivated or~~ premises unoccupied, ~~without~~
~~goods thereon~~ and if the tenant's personal property that is subject to distress is not sufficient to
 satisfy the rent owed, the ~~lessor~~ landlord or his agent may post a written notice, ~~in writing, upon~~
on a conspicuous part of the premises requiring the tenant to pay the rent, ~~in the case of a~~
~~monthly tenant~~ within ~~ten~~ 10 days from the date of such notice, in the case of a monthly tenant,
~~and in the case of a yearly tenant or~~ within one month from the date of such notice, in the case
of a yearly tenant. If the ~~same be owed rent is~~ not paid within the time specified in the notice,
 the ~~lessor~~ landlord shall be entitled to possession of the premises and may enter ~~thereon the~~
premises and the right of such tenant ~~thereto to possess the premises~~ shall ~~thenceforth be at an~~
~~end~~ terminate; but the landlord may recover the rent up to ~~that time~~ such termination.

**Drafting note: The term "lessor" is replaced with "landlord" for consistency
 throughout the chapter. Language is updated for modern usage and technical changes are
 made.**

§ ~~55-225~~ 55.1-xxx. Failure to pay certain rents after five days' notice forfeits right of possession.

If any tenant ~~or lessee~~ of premises ~~in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere~~ used for residential purposes, ~~and not for farming or agriculture, being who is~~ in default ~~in for~~ the payment of rent, ~~shall so continue for~~ continues to be in default five days after receipt of written notice, in writing, requiring that requires possession of the premises or the payment of rent, such tenant ~~or lessee shall thereby forfeit~~ forfeits his right to ~~the~~ possession of the premises. In such case ~~the possession of the defendant may, at the option of the landlord or lessor, be deemed unlawful, and he~~ may proceed to recover possession of the premises in the ~~same~~ manner provided by Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01.

Nothing, however, shall be construed to prohibit a landlord from seeking an award of costs or ~~attorney's~~ attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2 as part of the damages requested on an unlawful detainer action filed pursuant to § 8.01-126, provided that the landlord has given notice, which notice may be included in a five-day termination notice provided in accordance with this section.

Drafting note: The terms "lessee" and "lessor" are deleted for consistency throughout the chapter. The phrase "and not for farming or agriculture" is removed because rental tenancies for the purpose of agriculture are covered by Chapter XX [6], Commercial Tenancies. Language is updated for modern usage and technical changes are made.

§ ~~55-225.12~~ 55.1-xxx. Tenant's assertion; rent escrow; dwelling units.

A. The tenant may assert that there exists upon the dwelling unit, a condition ~~or conditions which constitute~~ that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law, ~~or which, that~~ if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of occupants ~~thereof of the dwelling unit~~, including ~~but not limited to, (i)~~ a lack of heat or hot or cold running water, except

189 ~~if~~ where the tenant is responsible for payment of the utility charge and where the lack of such
 190 heat or hot or cold running water is the direct result of the tenant's failure to pay the utility
 191 charge; ~~or~~ (ii) a lack of light, electricity, or adequate sewage disposal facilities; ~~or~~ (iii) an
 192 infestation of rodents; or (iv) the existence of paint containing lead pigment on surfaces within
 193 the dwelling, provided that the landlord has notice of such paint. The tenant may file such an
 194 assertion in a general district court ~~wherein~~ in which the dwelling unit is located by a
 195 declaration setting forth such assertion and asking for one or more forms of relief as provided
 196 for in subsection D.

197 B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court
 198 that:

199 1. Prior to the commencement of the action, the landlord or his agent refused or, having
 200 a reasonable opportunity to do so, failed to remedy the condition for which he was served a
 201 written notice of the condition by the tenant ~~of the conditions described in subsection A,~~ or was
 202 notified of such ~~conditions~~ condition by a violation or condemnation notice from an appropriate
 203 state or municipal agency, ~~and that the landlord has refused, or having a reasonable opportunity~~
 204 ~~to do so, has failed to remedy the same.~~ For the purposes of this subsection, what period of time
 205 shall be deemed to be unreasonable delay is left to the discretion of the court, except that there
 206 shall be a rebuttable presumption that a period in excess of 30 days from receipt of the
 207 notification by the landlord is unreasonable; and

208 2. The tenant has paid into court the amount of rent called for under the rental
 209 agreement, within five days of the date due ~~thereunder~~ under the rental agreement, unless or
 210 until such amount is modified by subsequent order of the court under this chapter.

211 C. It shall be sufficient answer or rejoinder to ~~a declaration~~ an assertion made pursuant
 212 to subsection A if the landlord establishes to the satisfaction of the court that (i) the conditions
 213 alleged by the tenant do not in fact exist, ~~or~~; (ii) such conditions have been removed or
 214 remedied, ~~or~~; (iii) such conditions have been caused by the tenant or members of his family or

his or their guests or invitees ~~or licensees;~~ or (iv) the tenant has unreasonably refused entry to the landlord to the dwelling unit for the purpose of correcting such conditions.

D. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include~~, but is not limited to,~~ any one or more of the following:

1. Terminating the rental agreement upon the request of the tenant or ordering the dwelling unit surrendered to the landlord if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence ~~of the~~ any condition ~~or conditions~~ found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter or Chapter XX [1], the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court rent payments within five days of the date due under the rental agreement, subject to

any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;

7. ~~In the court's discretion, ordering~~ Ordering escrow funds disbursed to pay a mortgage on the property upon which the dwelling unit is located in order to stay a foreclosure; or

8. ~~In the court's discretion, ordering~~ Ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition ~~or conditions are~~ is not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end ~~thereof of the period~~, the condition ~~or conditions have~~ has not been remedied.

E. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15 calendar days from the date of service of process on the landlord, except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the dwelling unit. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed.

Drafting note: The phrase "but not limited to" is deleted after the term "including" and "include" in subsections A and D on the basis of § 1-218, which states that the term "'Includes' means includes, but not limited to." In subdivision B 1, "or his agent" is added

after "landlord" for consistency with subsection A 1 of § 55.1-xxx [§ 55-248.25] and subsection B 1 of § 55.1-xxx [§ 55-248.27]. In subsection C, "declaration" is changed to "assertion" to conform to the language used in subsection A. In subsection C, the term "licensee" is deleted and the term "guest" added on the basis of the definition in § 55.1-xxx [§ 55-248.4]. The phrase "or conditions" is deleted after the term "condition" in subdivision D 4 and in the last paragraph of subsection D on the basis of § 1-227, which states that the singular includes the plural. Language is reworded for clarity and technical changes are made.

§ ~~55-226~~ 55.1-xxx. Buildings destroyed or ~~lessee~~ tenant deprived of possession; covenant to pay rent or repair; reduction of rent.

No covenant or promise by a ~~lessee~~ tenant to pay the rent, or that he will keep or leave the premises in good repair, shall have the effect, if the buildings ~~thereon be~~ on the premises are destroyed by fire or otherwise, in whole or in part, without fault or negligence on his part, or if he ~~be is~~ is deprived of the possession of the premises by the public enemy, of binding him to make such payment or repair or erect such buildings again, unless there be other words showing it to be the intent of the parties that he should be so bound. But in case of such destruction there shall be a reasonable reduction of the rent for such time as may elapse until there ~~be are~~ are again upon the premises buildings of as much value to the tenant for his purposes as what may have been so destroyed; and, in case of such deprivation of possession, a like reduction until possession of the premises ~~be is~~ is restored to him.

Drafting note: References to "lessee" are changed to "tenant" to reflect modern usage of these terms in the residential tenancies context.

~~§ 55-227. Remedy for rent and for use and occupation.~~

~~Rent of every kind may be recovered by distress or action. A landlord may also, by action, recover, when the agreement is not by deed, a reasonable satisfaction for the use and occupation of lands. On the trial of such action, if any parol demise or any agreement not by deed whereon a certain rent was reserved shall appear in evidence, the plaintiff shall not therefor~~

~~be nonsuited, but may use the same as evidence of the amount of his debt or damages. In any action for rent, or for such use and occupation, interest shall be allowed as on other contracts.~~

Drafting Note: Existing §§ 55-227 through 55-232 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-228. Who may recover rent, etc.~~

~~He to whom rent or compensation is due, whether he have the reversion or not, his personal representative or assignee may recover it as provided in § 55-227, whatever be the estate of the person owning it, or though his estate or interest in the land be ended. And when the owner of real estate in fee, or holder of a term, yielding him rent, dies, the rent thereafter due shall be recoverable by such owner's heir or devisee, or such termholder's personal representative. And if the owner or holder alien or assign his estate or term, or the rent thereafter to fall due thereon, the alienee or assignee may recover such rent.~~

Drafting Note: Existing §§ 55-227 through 55-232 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-229. Who liable for rent.~~

~~Rent may be recovered from the lessee or other person owing it, or his assignee, or the personal representative of either; but no assignee is to be liable for rent which became due before his interest began. Nothing herein shall impair or change the liability of heirs or devisees for rent, as for other debts of their ancestor or deviser.~~

Drafting Note: Existing §§ 55-227 through 55-232 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-230. When and by whom distress made.~~

~~A distress action for rent may be brought within five years from the time the rent becomes due, and not afterwards, whether the lease is ended or not. The distress shall be made~~

~~by a sheriff or high constable of the county or city wherein the premises yielding the rent, or some part thereof, may be, or the goods liable to distress may be found, under warrant from a judge of, or a magistrate serving, the judicial district. Such warrant shall be founded upon a sworn petition of the person claiming the rent, or his agent, that (i) the petitioner believes the amount of money or other thing by which the rent is measured (to be specified in the petition in accordance with § 55-231) is justly due to the claimant for rent reserved upon contract from the person of whom it is claimed, (ii) the petitioner alleges one or more of the grounds mentioned in § 8.01-534 and sets forth in the petition specific facts in support of such allegation and (iii) the rent claimed is for rent due within five years from the time that it becomes due. The petition shall also specify the amount of the rent claimed and request either levy or seizure of the affected property prior to trial. The plaintiff shall, at the time of suing out a distress, give bond in conformity with the provisions of § 8.01-537.1. The plaintiff praying for a distress warrant shall, at the time that he files his petition, pay the proper costs, fees and taxes, and in the event of his failure to do so, the distress warrant shall not be issued.~~

~~A judge or magistrate shall make an ex parte review of the petition and may receive evidence only in the form of a sworn petition which shall be filed in the office of the clerks of court. The warrant may be issued in accordance with the prayer of the petition by a judge or magistrate only upon a determination that there appears from the petition that there is reasonable cause to believe that one of the grounds mentioned in § 8.01-534 exists, the allegations required to be in the petition are true and that bond which complies with § 8.01-537.1 has been posted.~~

~~Each copy of the distress warrant shall be issued and served on each defendant together with (i) a form for requesting a hearing of exemption from levy or seizure, as provided in § 8.01-546.1, and (ii) a copy of the bond. The distress warrant may be issued or executed on any day, including a Saturday, Sunday or other legal holiday. Service shall be made in accordance with the methods described in § 8.01-487.1. The provisions of § 8.01-546.2 shall govern claims for exemption.~~

~~The officer into whose hands the warrant is delivered shall levy or seize as directed in the warrant, except as may be provided by statute, the property found on the premises of the tenant as provided by § 55-231. The officer shall return the warrant of distress to the court to which the warrant of distress is returnable by the return date unless otherwise notified by the court to make return by an earlier date.~~

Drafting Note: Existing §§ 55-227 through 55-232 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-230.1. Procedure for trial on warrant in distress.~~

~~The distress warrant shall contain a return date and be tried in the same manner as an action on a warrant as prescribed in § 16.1-79 except that the case shall be returnable not more than thirty days from its date of issuance. The trial or hearing of the issues, except as otherwise provided, shall be the same, as near as may be, as in actions in personam.~~

Drafting Note: Existing §§ 55-227 through 55-232 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-231. On what goods levied; to what extent goods liable; priorities between landlord and other lienors.~~

~~The distress may be levied on any goods of the lessee, or his assignee, or undertenant, found on the premises, or which may have been removed therefrom not more than thirty days. A levy within such thirty days shall have like effect as if the goods levied on had not been removed from the leased premises. If the goods of such lessee, assignee or undertenant, when carried on the premises, are subject to a lien, which is valid against his creditors, his interest only in such goods shall be liable to such distress. If any lien be created thereon while they are upon the leased premises, or within thirty days thereafter, they shall be liable to distress, but for not more than six months' rent if the premises are in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises~~

~~anywhere used for residential purposes, and not for farming, or agriculture, and for not more than twelve months' rent if the lands or premises are used for farming or agriculture whether it shall have accrued before or after the creation of the lien. No other goods shall be liable to distress than such as are declared to be so liable in this section, nor shall the goods of the undertenant be liable to a greater amount than such undertenant owed the tenant at the time the distress was levied.~~

Drafting Note: Existing §§ 55-227 through 55-232 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-232. Procedure when distress levied and tenant unable to give forthcoming bond; what defense may be made.~~

~~A. On affidavit by a tenant, whose property has been levied on under a warrant of distress, that (i) he is unable to give the bond required in § 8.01-526 and (ii) he has a valid defense under subsection B of this section, the officer levying the warrant shall permit the property to remain in the possession and at the risk of the tenant, and shall return the warrant forthwith, together with the affidavit, to the court to which such warrant is returnable. Thereupon the landlord, after 10 days' notice in writing to the tenant, may make a motion before such court for a judgment for the amount of the rent and for a sale of the property levied on, as aforesaid. The tenant may make such defense as he is authorized to make, including defenses permitted under such subsection B to an action or motion on the bond when one is given. Upon making such defense, the officer shall permit the property to remain in the possession of and at the risk of the tenant. If the property is perishable, or expensive to keep, the court, or the judge thereof in vacation, may order it to be sold, and on the final trial of the cause, the court shall dispose of the property, or proceeds of sale, according to the rights of the parties.~~

~~B. In an action or motion on a forthcoming bond, when it is taken under a distress warrant, the defendants may make defense on the ground that the distress was for rent not due in whole or in part, or was otherwise illegal.~~

Drafting Note: Existing §§ 55-227 through 55-232 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-232.1. Repealed.~~

Drafting Note: Repealed by Acts 1993, c. 841.

~~§ 55-232.2. Review of decision to issue ex parte order or process; claim of exemption.~~

~~Promptly after levy on the property or promptly after possession of the property is taken by the officer pursuant to an ex parte order, or after denial of an application to issue such order by a magistrate, upon application of either party, and after reasonable notice, a judge of the general district court having jurisdiction shall conduct a hearing to review the decision to issue the ex parte order or process. In the event the judge finds that the order or process should not have been issued, the court may dismiss the distraint or award actual damages and reasonable attorney's fees to the person whose property was taken, or both. The provisions of § 8.01-546.2 shall govern claims for exemption.~~

Drafting Note: Existing §§ 55-232.2 through 55-237 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-233. On what terms purchasers and lienors inferior to landlord may remove goods; certain liens not affected.~~

~~If, after the commencement of any tenancy, a lien be obtained or created by deed of trust, mortgage or otherwise upon the interest or property in goods on premises leased or rented of any person liable for the rent, or such goods be sold, the party having such lien, or the purchaser of such goods, may remove them from the premises on the following terms, and not otherwise, that is to say: On paying to the person entitled to the rent so much as is in arrear, and securing to him so much as to become due, what is so paid or secured not being more altogether than six months' rent if the premises are in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for~~

~~residential purposes, and not for farming or agriculture, and not being more altogether than twelve months' rent, if the lands or premises are used for farming or agriculture. If the goods be taken under legal process, the officer executing it shall, out of the proceeds of the goods, make such payment of what is in arrear; and as to what is to become due, he shall sell a sufficient portion of the goods on a credit till then, taking from the purchasers bonds, with good security, payable to the person so entitled, and delivering such bonds to him. If the goods be not taken under legal process, such payment and security shall be made and given before their removal. Neither this section nor § 55-231 shall affect any lien for taxes, levies, or militia fines.~~

~~For the purpose of this section and § 55-231 a monthly or weekly tenancy shall not be construed as a new lease for every month or week of occupation of the premises by the tenant, but his tenancy shall be considered as a continuance of his original lease so long as he shall continue to occupy the property without making any new written lease.~~

Drafting Note: Existing §§ 55-232.2 through 55-237 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-234. When goods of an undertenant may be removed from leased premises.~~

~~Section 55-233 is subject to the following limitations: An undertenant, or a purchaser from him, or a creditor holding a deed of trust, mortgage or other encumbrance created on his goods after they were carried on the leased premises, may remove the same upon payment of so much of the rent contracted to be paid by him as is in arrear, and securing the residue, not exceeding six months' rent, if the premises are in a city or town, or in any subdivision of suburban and other lands divided into building lots for residential purposes, or of premises anywhere used for residential purposes, and not for farming or agriculture, and for not more than twelve months' rent if the lands or premises are used for farming or agriculture; and if the goods be taken under legal process against him, the officer executing the same shall, out of the proceeds of his goods, make payment of so much of the rent as to which he is in arrear, and as to what is to become due from him shall sell sufficient of the goods upon credit until then, taking~~

~~from the purchaser bonds with good security, payable to the party entitled to receive the same, and deliver them to him.~~

Drafting Note: Existing §§ 55-232.2 through 55-237 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-235. When officer may enter by force to levy distress or attachment.~~

~~The officer having such distress warrant, or an attachment for rent, if there be need for it, may, in the daytime, break open and enter into any house or close in which there may be goods liable to the distress or attachment, and may, either in the day or night, break open and enter any house or close wherein there may be any goods so liable which have been fraudulently or clandestinely removed from the demised premises. He may also levy such distress warrant or attachment on property liable for the rent found in the personal possession of the party liable therefor.~~

Drafting Note: Existing §§ 55-232.2 through 55-237 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-236. When distress not unlawful because of irregularity, etc.~~

~~When distress shall be made for rent justly due and any irregularity or unlawful act shall be afterwards done by the party distraining, or his agent, the distress itself shall not be deemed to be unlawful, nor the party making it be therefore deemed a trespasser ab initio. The party aggrieved by such irregularity or unlawful act may, by action, recover full satisfaction for the special damage he shall have sustained thereby.~~

Drafting Note: Existing §§ 55-232.2 through 55-237 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-237. Return of execution; process of sale thereunder.~~

~~The sheriff under writ of execution from the court after hearing and judgment for the landlord except when it is otherwise provided by law, shall make return on his execution as may be placed in his hands for collection and file the same, within ninety days after the same may have come to his hands, with the clerk of the court in which the case was heard. Upon the return of such execution such clerk shall preserve such execution in his office as is now provided as to other executions. If such return shall show that a levy has been made and that property levied on remains unsold, it shall be lawful for the clerk of the court in whose office such return is filed to issue a writ of venditioni exponas thereon just as if the return were upon writ of fieri facias.~~

Drafting Note: Existing §§ 55-232.2 through 55-237 are recommended for relocation to Title 8.01. See "Proposed Sections to Relocate Out of Title 55" at the end of this chapter for amendments to and drafting notes for each section.

~~§ 55-237.1~~ 55.1-xxx. Authority of sheriffs to store and sell personal property removed from premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from any ~~leased or rented commercial or residential~~ premises pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the premises in order to restore such premises to the person entitled ~~thereto~~ to such premises, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the ~~leased or rented~~ premises. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction from the premises or at such other reasonable times until the landlord has disposed of the property as provided

[herein in this section](#). During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the loss of such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided ~~herein in this section~~, the tenant shall have a right to injunctive relief and such other relief as may be provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the notice a copy of this statute attached to, or made a part of, this notice.

Nothing ~~herein in this section~~ shall affect the right of a landlord to enforce an inchoate or perfected lien of the landlord on the personal property of a tenant of any ~~leased or rented commercial or residential~~ premises, or of a landlord to distress, levy, and seize such personal property as otherwise provided by law.

Drafting Note: The terms "leased or rented" and "residential" are removed before the word "premises" as unnecessary. Likewise, references to "commercial" property are removed because this proposed chapter applies only to residential tenancies. Technical changes are made.

§ ~~55-238~~ [55.1-xxx](#). Remedy when rent is to be paid in other thing than money.

When goods are distrained or attached for rent reserved in a share of the crop, or in anything other than money, the claimant of the rent ~~having given shall give~~ the tenant ~~ten~~ [10](#)

days' notice, ~~or, if he be is out of the county, having set up the notice in some conspicuous place~~
~~on the premises,~~ and the claimant may then apply to the court to which the attachment is
 returnable, or the circuit court of the city or county ~~or the corporation court of the corporation~~ in
 which the distress is made, to ascertain the value in money of the rent reserved, and to order a
 sale of the goods distrained or attached. The tenant may make the same defenses that he could to
 a motion on a forfeited forthcoming bond given for rent and may also contest the value of what
 was reserved for the rent. The court shall ascertain, either by its own judgment, or, if either party
~~require~~ requires it, by the verdict of a jury impaneled without the formality of pleading, the
 extent of the liability of the tenant for rent, and the value in money of such rent, and if the tenant
 has been served with notice shall enter judgment against him for the amount so ascertained. It
 shall also order the goods distrained or attached, or so much thereof as may be necessary, to be
 sold to pay the amount so ascertained. The officer charged with the execution of such warrant or
 attachment shall ~~make~~ return ~~thereof~~ such warrant or attachment to the clerk's office of the
 court, showing how he has executed ~~the same~~ such warrant or attachment. If the goods so
 directed to be sold prove insufficient to pay the amount of the rent so ascertained, an execution
 may be issued on the judgment as in case of other judgments, which may be levied on such
 property as would be leviable under an execution issued on a judgment in an action brought to
 recover the rent.

Drafting Note: The provision for providing notice for a tenant who is out of the
county is deleted because methods for providing notice are contained in the Part-wide
definitions section (§ 55.1-xxx) in Chapter 1. The reference to "corporation court" is
replaced with circuit court of a city because corporation courts no longer exist. Language
is updated for modern usage.

§ ~~55-239~~ 55.1-xxx. Proceedings to establish right of reentry, ~~and;~~ judgment ~~therefor~~.

Any person who ~~shall have~~ has a right of reentry into lands by reason of any rent issuing
 thereout being in arrear, or by reason of the breach of any covenant or condition, may serve a
 declaration in ejectment on the tenant in possession, ~~when there shall be such tenant~~ if any, or, if

the possession-~~be is~~ vacant, by-~~affixing~~ posting the declaration upon the-~~chief front~~ door of-~~any~~ message the dwelling unit, or at any other notorious place on the premises, and such service shall be in lieu of a demand and reentry;~~and upon~~. Upon proof to the court, by affidavit in case of judgment by default or upon proof on the trial, that the rent claimed was due and no sufficient distress was upon the premises, or that the covenant or condition was broken before the service of the declaration and that the plaintiff had power-~~thereupon~~ to reenter, he shall recover judgment and have execution for such lands.

Drafting Note: Language is updated for modern usage.

~~§ 55-240~~ § 55.1-xxx. When defendant barred of relief.

Should the defendant, or other person for him, not pay the rent in arrear, with interest and costs, nor file a bill in equity for relief against such forfeiture, within-~~twelve calendar~~ 12 months after execution executed, he shall be barred of all right, in law or equity, to be restored to such lands or tenements.

Drafting Note: A technical change is made.

~~§ 55-242~~ § 55.1-xxx. How owner, etc., relieved in equity.

If the owner of such lands, or any person having right or claim-~~thereto, shall, to such~~ lands, files within the time-~~aforsaid, file provided by § 55.1-xxx [§ 55-240]~~ his bill for relief in any court of equity, he shall not have or continue any injunction against the proceedings at law on the ejectment, unless-~~he shall~~, within-~~thirty 30~~ days-~~next after following~~ a full and perfect answer filed by the plaintiff in ejectment, ~~bring he brings~~ into court, or-~~deposit deposits~~ in some bank within the Commonwealth to the credit of the cause; such money as the plaintiff in ejectment-~~shall~~, in his answers, ~~swear swears~~ to be due and in arrear, over and above all just allowances and also the costs taxed in the suit, there to remain till the hearing of the cause, or to be paid out to the plaintiff on good security, subject to the decree of the court. ~~And in case~~ If the bill-~~shall be is~~ filed within the time-~~aforsaid provided by § 55.1-xxx [§ 55-240]~~, and after execution executed, the plaintiff shall be accountable for no more than he-~~shall~~, really and bona fide, without fraud, deceit, or willful neglect, ~~make makes~~ of the premises from the time of his

entering into the actual possession thereof, and if it should be less than the rent payable, then the possession shall not be restored until the plaintiff ~~be is~~ paid the ~~sum which the money so made shall fall short~~ balance of the rent for the time he so held the lands.

Drafting Note: Language is updated for modern usage and technical changes are made.

§ ~~55-243~~ 55.1-xxx. How judgment of forfeiture prevented.

A. If any party having right or claim to such lands ~~shall~~, at any time before the trial in such ejectment, ~~pay or tender~~ pays to the party entitled to such rent, or to his attorney ~~in the cause~~, or ~~pay into to the~~ court, all the rent and arrears owed, along with any reasonable attorney fees and late charges contracted for in a written rental agreement, interest, and costs, all further proceedings in the ejectment shall cease. If the person claiming the land ~~shall, upon bill filed as aforesaid, be is~~ relieved in equity, he ~~shall~~ is entitled to hold the land in the same manner as ~~before he was prior to the commencement of~~ the proceedings ~~began~~, without a new lease or conveyance. If the parties dispute the amount of rent and other charges owed, the court shall take evidence on the issue and make orders for the tender, payment, or refund of any appropriate amounts.

B. In cases of unlawful detainer for the nonpayment of rent of a tenant from a ~~rental~~ dwelling unit, the tenant may present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, at or before the first return date on an action for unlawful detainer. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of ~~said~~ such return date.

C. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, and ~~dismissal of~~ shall dismiss the action upon such payment. ~~Should If~~ the

landlord does not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

D. In cases of unlawful detainer, a tenant may pay the landlord or his attorney or pay ~~into~~ to the court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term thereof.

Drafting Note: Language is updated for modern usage and technical changes are made.

§ ~~55-244~~ 55.1-xxx. When suit for reentry brought.

~~In case the time for reentering be specified in the instrument creating the rent, covenant or condition, the proceedings in~~ Proceedings for ejectment shall not be ~~begun until such time shall have elapsed~~ initiated unless the time for reentry of the premises specified in the rental agreement has lapsed.

Drafting Note: Language is updated for modern usage.

§ ~~55-245~~ 55.1-xxx. Written act of reentry to be returned and recorded, and certificate ~~thereof~~ of reentry published.

When actual reentry is made, the party by or for whom the ~~same~~ reentry is made shall return a written act of reentry, sworn to by the sheriff or ~~other~~ another authorized officer ~~acting therein~~, to the clerk of the circuit court of the county or ~~corporation court of the~~ city ~~wherein in which~~ the lands or tenements are located, ~~who~~ The clerk shall record the ~~same~~ written act of

645 reentry in the deed book, and shall deliver to the party making the reentry a certificate setting
 646 forth the substance of such written act, ~~and that the same had been left in his office to be~~
 647 recorded. Such certificate shall be published at least once a week for two months successively,
 648 in some newspaper published in or nearest to such county or ~~corporation~~ city. Such publication
 649 shall be proved by affidavit to the satisfaction of the clerk, who shall record such affidavit in the
 650 deed book. Such affidavit shall reference the book and page where the original written act of
 651 reentry was recorded. The clerk shall return the original act of reentry to the party entitled
 652 thereto to it. The written act of reentry, when recorded, and the record ~~thereof of such written~~
 653 act, or a duly certified copy from such record, shall be evidence, in all cases, of the facts
 654 contained therein ~~set forth~~.

655 **Drafting Note: Language is updated for modern usage and technical amendments**
 656 **are made.**

657 § ~~55-246~~ 55.1-xxx. Fee of clerk.

658 The clerk shall be paid for recording, granting certificate, and noting publication, as
 659 ~~aforsaid~~ required by § 55.1-xxx [§ 55-245], the ~~same~~ fee ~~as~~ prescribed in subdivision A 2 of §
 660 17.1-275, and shall collect and account for the same tax upon every such act of reentry offered
 661 for record as ~~shall then be~~ is levied by law upon deeds of conveyance.

662 **Drafting Note: Language is updated for modern usage.**

663 § ~~55-247~~ 55.1-xxx. How person entitled, etc., to lands may be restored to his possession.

664 ~~Should-If~~ the person entitled to such lands at the time of reentry made, or having claim
 665 ~~thereto to such lands~~, does not pay or tender the rent and all arrears ~~thereof owed~~, with interest
 666 and all reasonable expenses incurred about such reentry, within one year from the first day of
 667 publication ~~as aforsaid pursuant to § 55.1-xxx [§ 55-245]~~, he shall be forever barred from all
 668 right in law or equity to the lands. ~~In case~~ If any party having right ~~shall pay~~ pays or ~~tender~~
 669 tenders the rent and arrears owed, with interest and expenses ~~as aforsaid~~, to the party making
 670 reentry, within the required time ~~aforementioned therefor~~, he shall be reinstated in his
 671 possession to hold as if the reentry had not been made.

678 #

~~Article 4.~~ CHAPTER XX. [5]

RESIDENTIAL GROUND RENT ACT.

Drafting note: Existing Article 4 (§ 55-79.01 et seq.) of Chapter 4 of Title 55 is relocated to proposed Chapter XX [5] within Part B (Other Tenancies) of Subtitle III (Rental Conveyances) because it is a type of rental conveyance other than a residential tenancy.

~~§ 55-79.01~~ 55.1-xxx. Definitions.

As used in this ~~article~~ chapter:

~~A.~~ "Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this ~~article~~ chapter. Any requirement in this ~~article~~ chapter of a legally sufficient description shall be deemed to include a requirement that the upper and lower boundaries, if any, of the parcel in question be identified with reference to established ~~datum~~ data.

~~B.~~ "Obligee" means any person or entity to whom a residential ground rent is owed.

"Obligor" means one or more individuals who are obligated to pay a residential ground rent.

"Residential ground rent" means a rent or charge paid for the use of land, whether or not title ~~thereto to such land~~ is transferred to the user, or a lease of land, for personal residential purposes, (i) which is assignable by the obligor without the obligee's consent;¹ (ii) which is for a term in excess of ~~fifteen~~ 15 years, including any rights of renewal at the option of the obligor;² (iii) where the obligor has a present or future right to terminate such ground rent and to acquire the entire interest of the obligee in the land by the payment of a determined or determinable amount;³ and (iv) where the obligee's interest in the land is primarily a security interest to protect his right to be paid the rent or charge.

~~C. "Obligor" means one or more individuals who are obligated to pay a residential ground rent.~~

~~D. "Obligee" means any person or entity to whom a residential ground rent is owed.~~

Drafting note: Existing definitions are reordered in alphabetical order, and technical changes are made.

§ ~~55-79.02~~ 55.1-xxx. Form of instrument.

~~In any case where~~ Any agreement in which a residential ground rent is created, ~~the agreement therefor~~ shall:

~~(i)~~ 1. Be reduced to writing;

~~(ii)~~ 2. Be in recordable form; and

~~(iii)~~ 3. Disclose the date, the names of the parties, the ground rent and any future adjustments to ~~it~~ the ground rent, when such rent is payable, the duration of the agreement, and the value of the land at the time the agreement is made. If the parties ~~have so agreed, the agreement shall state~~ agree to the amount for which the ground rent may be redeemed, such amount shall also be included in the agreement. Such agreement shall be included as a part of the deed or other instrument of transfer.

Drafting note: Language is updated for modern usage and technical changes are made.

§ ~~55-79.03~~ 55.1-xxx. Changes in amount of rent.

The amount of a residential ground rent may be changed on demand of either the obligor or obligee at the end of five years from the date of the agreement, and every five years thereafter, by giving notice ~~in writing by registered mail~~ to the other party by certified mail or overnight delivery using a commercial service or the United States Postal Service between ~~the ninetieth and sixtieth day~~ 90 and 60 days prior to such fifth anniversary. Unless the parties agree otherwise, such change in ground rent shall not exceed the percentage change for the preceding three years in the ~~General Average~~ Consumer Price Index for All Items, all urban consumers (CPI-U), as published by the ~~United States Bureau of Labor Statistics of the U.S. Department of Labor~~, ~~Bureau of Labor Statistics~~ or such other instrument or agency of the

54 United States or of ~~this~~ the Commonwealth as may be designated by the General Assembly. The
55 first of such years shall constitute the base year.

56 **Drafting note: The method of delivery is updated from "registered mail" to**
57 **"certified mail or overnight delivery" based on methods available in existing § 55-79.97.**
58 **The name of the relevant consumer price index is updated. Technical changes are made.**

59 § ~~55-79.04~~ 55.1-xxx. Encumbrance on real property.

60 A residential ground rent shall constitute a lien against the real estate from the time it is
61 recorded, ~~in a like manner as would a deed of trust or mortgage~~. Any deed of trust or mortgage
62 may provide that a default in payment of ground rent shall constitute a default in such deed of
63 trust or mortgage; ~~that the trustee or beneficiary~~ thereunder of the deed of trust or mortgage
64 may satisfy such obligation for rent, and that the money ~~so advanced~~ used to satisfy such
65 obligation, along with interest ~~thereon~~, shall be a part of the debt secured, to be repaid as
66 provided in § ~~55-59~~ 55.1-xxx et seq.

67 **Drafting note: Language is updated for modern usage.**

68 § ~~55-79.05~~ 55.1-xxx. Redemption rights.

69 The obligor shall have the right to redeem a residential ground rent at any time after
70 three years from the date ~~of~~ the ground rent agreement is made. The redemption shall be
71 effected for ~~such the~~ amount as agreed upon by the obligor and the obligee ~~may have agreed~~
72 ~~upon~~; or, in the absence of such an agreement, shall be determined by capitalizing the ground
73 rent in effect at the time of redemption, using the average rate on ~~long-term~~ long-term business
74 loans charged by commercial banks in the southeast, as published by the Federal Reserve Board.
75 Upon tender of such amount by the obligor, together with any lawfully collectible arrearages of
76 rent and interest thereon, the obligor may redeem the land from, and shall be entitled to a release
77 from, all obligation to pay ground rent. Such release shall be in recordable form and the cost of
78 recording the same, together with any other charges incidental to it, other than the state transfer
79 tax, shall be paid by the obligor.

80 **Drafting note: Technical changes.**

95 #

CHAPTER XX. [7]DEEDS OF LEASE.

Drafting note: Proposed Chapter 7 consolidates within Part B of Subtitle III (Rental Conveyances) sections from existing Article 1 (Form and Effect of Deeds and Leases) and Article 3 (Effect of Certain Expressions in Deeds and Leases) of Chapter 4 of Title 55 that are related specifically to deeds of lease, which are properly located with other rental conveyance provisions in Subtitle III.

§ ~~55-57~~ 55.1-xxx. Form of a lease.

A deed of lease may be made in ~~the following a~~ form, ~~or to the same effect~~ substantially similar to the following: "This deed, made the day of, in the year, between (herein insert the names of parties), witnesseth: that the said doth (or do) demise unto the said, his personal representative and assigns, all (here describe the property) from the day of, for the term of, thence ensuing, yielding therefor during the said term the rent of (here state the rent and mode of payment). Witness the following signature and seal (or signatures and seals)."

Drafting note: Technical changes.

§ ~~55-57.1~~ 55.1-xxx. Memoranda of leases and options.

A. In lieu of the recording of a lease, ~~there may be recorded with like effect~~ a memorandum of such lease may be recorded, executed by the lessor and the lessee in the manner ~~which that~~ would entitle a conveyance to be recorded. ~~A Such~~ memorandum of lease ~~thus entitled to be recorded~~ shall contain at least the following information with respect to the lease: ~~the~~

1. The name of the lessor, ~~the~~;

2. The name of the lessee and a reference to the lease; ~~the~~

3. The addresses, if any, set forth in the lease as addresses of such parties; ~~its~~

4. The date of the memorandum of such lease; ~~a~~

5. A description of the leased premises; and ~~a~~

6. A statement of the term, commencement date or termination date, and rights of extension or renewal, if any, to the extent required to determine the period for which or date to which the lease may be in effect.

B. In lieu of the recording of an option to purchase real estate, ~~there may be recorded with like effect~~ a memorandum of such option may be recorded, executed by the grantor of the option in the manner ~~which that~~ would entitle a conveyance to be recorded. ~~A Such~~ memorandum of option to purchase real estate ~~thus entitled to be recorded~~ shall contain at least the following information with respect to the option:

1. The name of the person granting the option;
2. The name of the optionee and a reference to the option;
3. The addresses, if any, set forth in the agreement as addresses of such parties;
4. ~~Its~~ The date of the memorandum of the option;
5. A description of the optioned premises;
6. The option price or reference to the document containing the method with regard to how the option price is computed; and
7. The statement of the term, commencement date or termination date, and rights of extension or renewal, if any, to the extent required to determine the period during which or date to which the option may be in effect.

Drafting note: The listed information required in subsection A is reorganized as numbered subdivisions parallel to the information required in subsection B, and language is updated to reflect modern usage.

~~§ 55-76.55.1-xxx. Of Certain covenants of~~ lessee "to pay the rent" and "to pay the taxes."

In a deed of lease, (i) a covenant by the lessee "to pay the rent" shall have the effect of a covenant that the rent reserved by the deed shall be paid to the lessor, or those entitled under ~~him the lessor~~, in the manner ~~therein mentioned~~, stated in the deed, and (ii) a covenant by ~~him~~ the lessee "to pay the taxes" shall have the effect of a covenant that all the taxes, levies, and

assessments upon the demised premises, or upon the lessor on account thereof, shall be paid by the lessee or those claiming under ~~him~~ the lessee.

Drafting note: References to the pronoun "him" are clarified to avoid confusion of lessee and lessor. Technical changes are made.

§ ~~55-77~~ 55.1-xxx. ~~"That~~ Certain covenants of lessee that "he will not assign, ~~etc.,~~ without leave" and ~~"that~~ "he will leave the premises in good repair."

In a deed of lease, (i) a covenant by the lessee that "he will not assign without leave" shall have the same effect as a covenant that the lessee will not, during the term, assign, transfer, or set over the premises, or any part ~~thereof of such premises~~, to any person without the consent, in writing, of the lessor, ~~his or the lessor's~~ representative or assigns. ~~And, and (ii)~~ a covenant by ~~him~~ the lessee that "he will leave the premises in good repair" shall, subject to the qualifications of § ~~55-226~~ 55.1-xxx, have the same effect as a covenant that the demised premises will, at the expiration or other sooner determination of the term, be peaceably surrendered and yielded ~~up~~ unto to the lessor, ~~his or the lessor's~~ representatives or assigns, in good and substantial repair and condition, reasonable wear and tear excepted.

Drafting note: References to the pronouns "his" and "him" are clarified to avoid confusion of lessee and lessor. Technical changes are made.

§ ~~55-78~~ 55.1-xxx. Covenant of lessor "for lessee's quiet enjoyment."-

A covenant by a lessor "for the lessee's quiet enjoyment of his term" shall have the same effect as a covenant that the lessee, ~~his or the lessee's~~ personal representative ~~and or~~ lawful assigns, paying the rent reserved, and performing his ~~or their~~ covenants, shall peaceably possess and enjoy the demised premises, for the term granted, without any interruption or disturbance from any person ~~whatever~~.

Drafting note: A reference to the pronoun "his" is clarified to avoid confusion of lessee and lessor. Technical changes are made.

§ ~~55-79~~ 55.1-xxx. Effect of provision for reentry by lessor.

1 CHAPTER ~~14~~ XX. [8]

2 EMBLEMENTS.

3 **Drafting note: Existing Chapter 14 is relocated to Chapter XX [8] of proposed Title**
 4 **55.1.**

5 § ~~55-249~~ 55.1-xxx. Law of emblements.

6 In all cases, the right to emblements shall be as at common law; provided, however, that
 7 in any sale of land under a deed of trust or mortgage, such sale shall be made subject to the right
 8 and interest of a tenant in any crop planted by him under a bona fide ~~contract of~~ lease for ~~not~~
 9 exceeding no more than one year, entered into by him with the mortgagor after the execution of
 10 such deed of trust or mortgage, but during such time as the mortgagor ~~shall be~~ is allowed to
 11 remain in possession of the mortgaged premises and before the premises ~~shall have been~~ is
 12 advertised for sale under such deed of trust, or under a decree in a suit brought for the
 13 foreclosure of such deed of trust or mortgage.

14 **Drafting note. Technical changes.**

15 § ~~55-250~~ 55.1-xxx. What rent tenant entitled to emblements to pay.

16 The tenant who is entitled to emblements, or his personal representative, shall pay a
 17 reasonable rent for ~~so much the~~ land as occupied by the emblements ~~shall occupy~~, in the same
 18 proportion as ~~it shall bear~~ such land bears in quantity and value to the entire premises; ~~and such~~.
 19 Such rent shall be apportioned among the owners of the reversion, if there ~~be~~ is more than one,
 20 according to their respective interests.

21 **Drafting note. Technical changes.**

22 § ~~55-251~~ 55.1-xxx. Compensation to outgoing tenant for preparation of land for crop.

23 ~~If any land has been prepared by the tenant previous to the expiration of the lease, for the~~
 24 ~~purpose of putting a crop into the ground, under such circumstances as would have entitled the~~
 25 ~~tenant, or his personal representative, to emblements, if the crop had been put in, those who~~
 26 ~~succeed to the land shall pay a reasonable compensation for such preparation.~~

In the case of an outgoing tenant, those who succeed to the land shall pay such outgoing tenant reasonable compensation for any preparation of such land by the tenant for the purpose of planting a crop if the outgoing tenant, or his personal representative, would have been entitled to emblements had the crop been planted by him.

Drafting note. Language rewritten or modern usage.

§ ~~55-252~~ 55.1-xxx. Lessee of life tenant, ~~etc., to~~ may hold ~~to~~ land through end of year on death of tenant; apportionment of rent.

If there ~~be is~~ a tenant for life or other uncertain interest in land ~~which that~~ is let leased to another, upon the ~~termination of such life~~ death of such tenant for life or termination of such other uncertain interest, the lessee may hold the land ~~to~~ through the end of the current year of the tenancy, paying rent ~~therefor; the~~ The rent, if it ~~be is~~ reserved in money, shall be apportioned between the tenant for life or other uncertain interest, or his personal representative, and those who succeed to the land. If rent ~~be is~~ reserved in kind, it shall be paid to the tenant for life or other uncertain interest, or his personal representative, and the tenant or his personal representative, as the case may be, shall pay to those who succeed to the land a reasonable rent, in money, from the expiration of the life estate or other uncertain interest to the end of the current year of the tenancy. The rent to be paid to those who succeed to the land shall be a charge in preference to other claims on the rent received in kind by such tenant or his personal representative.

Drafting note. Technical changes.

#

To Whom It May Concern:

In accordance with its authority to make "consequential changes made necessary by the use in the statutes of titles, terminology and references, and other language no longer appropriate" pursuant to § 30-149 of the Code of Virginia, the Virginia Code Commission requests that the following terminology changes be made throughout the Code of Virginia:

Old reference	New reference	Rationale
The College of William and Mary	The College of William and Mary in Virginia	§ 23.1-2800; ancient royal charter of the institution.
College; college or university; college and university.	Institution of higher education	Style, consistency.
Community college	Comprehensive community college	Definition of "comprehensive community college" in § 23.1-100.
Four-year [public] institution of higher education	Baccalaureate [public] institution of higher education	Definitions of "baccalaureate" and "baccalaureate public institution of higher education" in § 23.1-100.
Governing body or board of visitors of a public institution of higher education	Governing board of a public institution of higher education	Definition of "governing board" in § 23.1-100.
Institution of collegiate education	Institution of higher education	Style; consistency.
Institution of higher education in Virginia	Institution of higher education in the Commonwealth	Style; consistency.
State or state-supported institution of higher learning and similar terms.	Public institution of higher education	Definition of "public institution of higher education" in § 23.1-100.
Two-year [public] institution of higher education	Associate-degree-granting [public] institution of higher education	Definitions of "associate-degree-granting" and "associate-degree-granting public institution of higher education" in § 23.1-100.
University	Baccalaureate institution of higher education	Definition of "baccalaureate" in § 23.1-100.

Sincerely,

TO: The members of the Virginia Code Commission

FROM: Ryan Brimmer and Tom Stevens, Division of Legislative Services

RE: Summary of proposed bill to correct typographical errors and makes other technical amendments relating to the revision and recodification of Title 23.

Changes outside of Title 23.1.

Three Categories:

I. Stylistic or grammatical technical changes.

- Page 12, line 302: "alternative education programs" changed to "alternative educational programs." The adjective form, educational, is preferred here.

II. Technical changes that involve a judgment call on the part of the drafters, deviate from rules set forth in the chart in the accompanying memo, or both.

- Page 3, line 77-78: Under current law, the Commissioner of Agriculture and Consumer Services is required to establish and maintain a farm-to-school website to facilitate and promote the purchase of Virginia farm products by schools, *universities*, and other educational institutions. Propose changing "university" to the more general "institution of higher education" instead of "baccalaureate institution of higher education" because the context doesn't seem to call for the exclusion of colleges.

III. "Institution of learning" changed to "school."

- "Institution of learning" is outdated, not defined, and potentially ambiguous (e.g. does it include all levels of schools or just institutions of higher education? Does it include entities other than just schools?)

Changes within Title 23.1.

Two Categories:

I. Stylistic or grammatical technical changes.

- Page 26, lines 688-89: The Commonwealth and its agencies, localities, and employees "are authorized to" make certain payroll deductions is changed to: the Commonwealth and its agencies, localities, and employees "may" make certain payroll deductions.

II. Typographical or drafting errors.

- Page 26, line 692-93: "The governing and administration of each public institutions of higher education. . ." is changed to "the governing *board* and administration of each public *institution* of higher education. . ." (emphasis added).
- Page 32, line 842: members of governing boards of higher education shall continue to hold office until their successors have been appointed and "confirmed" is changed to appointed and "qualified." Always meant to be "qualified."
- Page 37, line 973: Reinserted inadvertently stricken language "The colleges, schools, and divisions previously existing as The Medical College of Virginia are designated the *Medical College of Virginia*, Health Sciences Schools of the University" (emphasis added).

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SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to implement certain standard terminology throughout the Code of Virginia and to amend and reenact §§ 2.2-2105, 2.2-2806, 3.2-102, 10.1-503, 13.1-543, 13.1-1102, 22.1-349.2, 22.1-349.3, 23.1-107, 23.1-200, 23.1-201, 23.1-203, 23.1-210, 23.1-227, 23.1-301, 23.1-308, 23.1-634, 23.1-712, 23.1-1004, 23.1-1014, 23.1-1026, 23.1-1211, 23.1-1225, 23.1-1300, 23.1-1303, 23.1-1305, 23.1-2308, 23.1-2404, 23.1-2408, 23.1-2409, 23.1-2413, 23.1-2415, 23.1-2607, 23.1-2631, 23.1-2702, 23.1-2903, 23.1-3131, 23.1-3133, 23.1-3208, 23.1-3216, 23.1-3217, 25.1-100, 32.1-299, 44-120, 46.2-100, 54.1-2936, 54.1-2941, 54.1-3220, 58.1-609.10, 58.1-811, 58.1-2403, 58.1-3606, 58.1-3618, 58.1-3703, and of the Code of Virginia, relating to higher education.

Be it enacted by the General Assembly of Virginia:

1. § 1. In accordance with the authority of the Code Commission to make "consequential changes made necessary by the use in the statutes of titles, terminology and references, and other language no longer appropriate" pursuant to § 30-149 of the Code of Virginia, the following terminology changes are made throughout the Code of Virginia:

1. "Community college" is changed to "comprehensive community college."

2. "College and university" is changed to "institution of higher education."

3. "State institution of higher learning," "state-supported institution of collegiate education," and similar terms are changed to "public institution of higher education."

4. "University" is changed to "baccalaureate institution of higher education."

2. That §§ 2.2-2105, 2.2-2806, 3.2-102, 10.1-503, 13.1-543, 13.1-1102, 22.1-349.2, 22.1-349.3, 23.1-107, 23.1-200, 23.1-201, 23.1-203, 23.1-210, 23.1-227, 23.1-301, 23.1-308, 23.1-634, 23.1-712, 23.1-1004, 23.1-1014, 23.1-1026, 23.1-1211, 23.1-1225, 23.1-1300, 23.1-1303, 23.1-1305, 23.1-2308, 23.1-2404, 23.1-2408, 23.1-2409, 23.1-2413, 23.1-2415, 23.1-2607, 23.1-2631, 23.1-2702, 23.1-2903, 23.1-3131, 23.1-3133, 23.1-3208, 23.1-3216, 23.1-3217, 25.1-100, 32.1-299, 44-120, 46.2-100, 54.1-2936, 54.1-2941, 54.1-3220, 58.1-609.10, 58.1-811, 58.1-2403, 58.1-3606, 58.1-3618, 58.1-3703, and of the Code of Virginia are amended and reenacted as follows:

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26 **§ 2.2-2105. Investigation of management of public institutions of higher education or**
 27 **conduct of officers or employees.**

28 Whenever ~~any the governing~~ board of ~~visitors to any of the institutions of public institution of~~
 29 ~~higher education in~~ the Commonwealth ~~deem~~ deems it necessary or expedient to investigate the
 30 management of ~~their the~~ institution or the conduct of any of its officers or employees, such board, or a
 31 committee of its members selected by the board, shall have such power and authority to send for persons
 32 and papers or to order the attendance of witnesses and compel their attendance as is now conferred upon
 33 a committee appointed by the General Assembly or either branch thereof by § 30-10. The oath to be
 34 taken by any witness examined by such board or committee may be administered by the president or the
 35 presiding officer of the board, chairman of its committee, or the clerk or secretary of the board or
 36 committee. All expenses incurred in summoning or in the attendance of such witness shall be paid out of
 37 the funds of the institution whose boards made or ordered the investigation.

38 **§ 2.2-2806. Holding other office by members of governing boards of public institutions of**
 39 **higher education in the Commonwealth.**

40 No person serving as ~~a member, rector, president, or chairman~~ of the governing board of any
 41 ~~public institution, supported in whole or in part by funds paid out of the state treasury, or as rector of~~
 42 ~~such institution, or as president or chairman of the governing board thereof, of higher education~~ shall
 43 hold, during his term of office, any other office or position with ~~the such~~ institution ~~on the board of~~
 44 ~~which he is serving~~. If any such person accepts any such office or position, the acceptance shall ipso
 45 facto vacate his office as a member of such board. Nothing in this section shall be construed to prevent
 46 members of boards of agricultural ~~colleges~~ institutions of higher education from doing field or extension
 47 work.

48 **§ 3.2-102. General powers and duties of the Commissioner.**

49 A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers
 50 and duties herein provided, and such other powers and duties as may be prescribed by law, including
 51 those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders
 52 are carried out. He shall see to the proper execution of laws relating to the Department. Unless the

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53 Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and
54 develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement,
55 and maintain programs within the Department including those that promote the development and
56 marketing of the Commonwealth's agricultural products in domestic and international markets, including
57 promotions, market development and research, marketing assistance, market information, and product
58 grading and certification; promote the creation of new agribusiness including new crops, biotechnology
59 and new uses of agricultural products, and the expansion of existing agribusiness within the
60 Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety
61 and quality of the Commonwealth's food supply through food and dairy inspection activities, industry
62 and consumer education, and information on food safety; preserve the Commonwealth's agricultural
63 lands; ensure animal health and protect the Commonwealth's livestock industries through disease control
64 and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane
65 treatment and care of animals; protect public health and the environment through regulation and proper
66 handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species;
67 protect crop and plant health and productivity; ensure consumer protection and fair trade practices in
68 commerce; develop plans and emergency response protocols to protect the agriculture industry from
69 bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the
70 Commonwealth's response to natural disasters; develop and implement programs and inspection
71 activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and
72 internationally; and enter into agreements with federal, state, and local governments, land grant
73 universities, and other organizations that include marketing, plant protection, pest control, pesticides,
74 and meat and poultry inspection.

75 B. In addition, the Commissioner shall:

76 1. Establish and maintain a farm-to-school website. The purpose of the website shall be to
77 facilitate and promote the purchase of Virginia farm products by schools, ~~universities~~ [public institutions](#)
78 [of higher education](#), and other educational institutions under the jurisdiction of the State Department of
79 Education. The website shall present such current information as the availability of Virginia farm

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80 products, including the types and amount of products, and the names of and contact information for
81 farmers, farm organizations, and businesses marketing such products; and

82 2. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.)
83 of Title 13.1 as a public instrumentality exercising public and essential governmental functions to
84 promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in §
85 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm
86 wineries licensed in accordance with § 4.1-207. The board of directors of such corporation shall be
87 composed of the Commissioner and four members appointed by the Board, including one owner or
88 manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or
89 manager is appointed to the board; one owner or manager of a winery or farm winery licensee that
90 produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees.
91 In making appointments to the board of directors, the Board shall consider nominations of winery and
92 farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees
93 submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such
94 corporation to report to him at least annually on its activities, including reporting the quantity of wine
95 distributed for each winery and farm winery during the preceding year. The provisions of the Virginia
96 Public Procurement Act shall not apply to the establishment of such corporation nor to the exercise of
97 any of its powers granted under this section.

98 **§ 10.1-503. Administrative officer and other employees; executive committee.**

99 The Director shall provide technical experts and other agents and employees, permanent and
100 temporary, necessary for the execution of the functions of the Board. The Board may create an executive
101 committee and delegate to the chairman of the Board, or to the committee or to the Director, such
102 powers and duties as it deems proper. Upon request of the Board, for the purpose of carrying out any of
103 its functions, the supervising officer of any state agency or ~~of any state institution of learning public~~
104 school shall, insofar as possible under available appropriations, and having due regard for the needs of
105 the agency to which the request is directed, assign or detail to the Board, members of the staff or

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personnel of the agency or ~~institution~~ school, and make special reports, surveys, or studies requested by the Board.

§ 13.1-543. Definitions.

A. As used in this chapter:

"Eligible employee stock ownership plan" means an employee stock ownership plan as such term is defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, sponsored by a professional corporation and with respect to which:

1. All of the trustees of the employee stock ownership plan are individuals who are duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter; however, if a conflict of interest exists for one or more trustees with respect to a specific issue or transaction, such trustees may appoint a special independent trustee or special fiduciary, who is not duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, which special independent trustee shall be authorized to make decisions only with respect to the specific issue or transaction that is the subject of the conflict;

2. The employee stock ownership plan provides that no shares, fractional shares, or rights or options to purchase shares of the professional corporation shall at any time be issued, sold, or otherwise transferred directly to anyone other than an individual duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, unless such shares are transferred as a plan distribution to a plan beneficiary and subject to immediate repurchase by the professional corporation, the employee stock ownership plan or another person authorized to hold such shares; however:

a. With respect to a professional corporation rendering the professional services of public accounting or certified public accounting:

(1) The employee stock ownership plan may permit individuals who are not duly licensed or otherwise legally authorized to render these services to participate in such plan, provided such

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133 individuals are employees of the corporation and hold less than a majority of the beneficial interests in
134 such plan; and

135 (2) At least ~~51%~~ 51 percent of the total of allocated and unallocated equity interests in the
136 corporation sponsoring such employee stock ownership plan are held (i) by the trustees of such
137 employee stock ownership plan for the benefit of persons holding a valid CPA certificate as defined in §
138 54.1-4400, with unallocated shares allocated for these purposes pursuant to § 409(p) of the Internal
139 Revenue Code of 1986, as amended, or (ii) by individual employees holding a valid CPA certificate
140 separate from any interests held by such employee stock ownership plan; and

141 b. With respect to a professional corporation rendering the professional services of architects,
142 professional engineers, land surveyors, landscape architects, or certified interior designers, the employee
143 stock ownership plan may permit individuals who are not duly licensed to render the services of
144 architects, professional engineers, land surveyors, or landscape architects, or individuals legally
145 authorized to use the title of certified interior designers to participate in such plan, provided such
146 individuals are employees of the corporation and together hold not more than one-third of the beneficial
147 interests in such plan, and that the total of the shares (i) held by individuals who are employees but not
148 duly licensed to render such services or legally authorized to use a title and (ii) held by the trustees of
149 such employee stock ownership plan for the benefit of individuals who are employees but not duly
150 licensed to render such services or legally authorized to use a title, shall not exceed one-third of the
151 shares of the corporation; and

152 3. The professional corporation, the trustees of the employee stock ownership plan, and the other
153 shareholders of the professional corporation comply with the foregoing provisions of the plan.

154 "Professional business entity" means any entity as defined in § 13.1-603 that is duly licensed or
155 otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under
156 whose laws the entity is formed to render the same professional service as that for which a professional
157 corporation or professional limited liability company may be organized, including, but not limited to, (i)
158 a professional limited liability company as defined in § 13.1-1102, (ii) a professional corporation as
159 defined in this subsection, or (iii) a partnership that is registered as a registered limited liability

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160 partnership registered under § 50-73.132, all of the partners of which are duly licensed or otherwise
161 legally authorized to render the same professional services as those for which the partnership was
162 organized.

163 "Professional corporation" means a corporation whose articles of incorporation set forth a sole
164 and specific purpose permitted by this chapter and that is either (i) organized under this chapter for the
165 sole and specific purpose of rendering professional service other than that of architects, professional
166 engineers, land surveyors, or landscape architects, or using a title other than that of certified interior
167 designers and, except as expressly otherwise permitted by this chapter, that has as its shareholders or
168 members only individuals or professional business entities that are duly licensed or otherwise legally
169 authorized to render the same professional service as the corporation, including the trustees of an
170 eligible employee stock ownership plan or (ii) organized under this chapter for the sole and specific
171 purpose of rendering the professional services of architects, professional engineers, land surveyors, or
172 landscape architects, or using the title of certified interior designers, or any combination thereof, and at
173 least two-thirds of whose shares are held by persons duly licensed within the Commonwealth to perform
174 the services of an architect, professional engineer, land surveyor, or landscape architect, including the
175 trustees of an eligible employee stock ownership plan, or by persons legally authorized within the
176 Commonwealth to use the title of certified interior designer; or (iii) organized under this chapter or
177 under Chapter 10 (§ 13.1-801 et seq.) ~~of this title~~ for the sole and specific purpose of rendering the
178 professional services of one or more practitioners of the healing arts, licensed under the provisions of
179 Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter
180 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of
181 Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical therapist
182 assistants licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or
183 more practitioners of the behavioral science professions, licensed under the provisions of Chapter 35 (§
184 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more
185 practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600
186 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services licensed

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187 under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any
188 combination of practitioners of the healing arts, optometry, physical therapy, the behavioral science
189 professions, and audiology or speech pathology, and all of whose shares are held by or all of whose
190 members are individuals or professional business entities duly licensed or otherwise legally authorized
191 to perform the services of a practitioner of the healing arts, nurse practitioners, optometry, physical
192 therapy, the behavioral science professions, audiology or speech pathology or of a clinical nurse
193 specialist who renders mental health services, including the trustees of an eligible employee stock
194 ownership plan; however, nothing herein shall be construed so as to allow any member of the healing
195 arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or a
196 nurse practitioner or clinical nurse specialist to conduct his practice in a manner contrary to the
197 standards of ethics of his branch of the healing arts, optometry, physical therapy, the behavioral science
198 professions, audiology or speech pathology, or nursing, as the case may be.

199 "Professional service" means any type of personal service to the public that requires as a
200 condition precedent to the rendering of such service or use of such title the obtaining of a license,
201 certification, or other legal authorization and shall be limited to the personal services rendered by
202 pharmacists, optometrists, physical therapists and physical therapist assistants, practitioners of the
203 healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians,
204 surgeons, dentists, architects, professional engineers, land surveyors, landscape architects, certified
205 interior designers, public accountants, certified public accountants, attorneys-at-law, insurance
206 consultants, audiologists or speech pathologists, and clinical nurse specialists. For the purposes of this
207 chapter, the following shall be deemed to be rendering the same professional service:

- 208 1. Architects, professional engineers, and land surveyors; and
- 209 2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et
210 seq.) of Title 54.1; nurse practitioners, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.)
211 of Title 54.1; optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title
212 54.1; physical therapists and physical therapist assistants, licensed under the provisions of Chapter 34.1
213 (§ 54.1-3473 et seq.) of Title 54.1; practitioners of the behavioral science professions, licensed under the

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214 provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of
 215 Title 54.1; and one or more clinical nurse specialists who render mental health services, licensed under
 216 Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and are registered with the Board of Nursing.

217 B. Persons who practice the healing art of performing professional clinical laboratory services
 218 within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if
 219 such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical
 220 laboratory sciences and (ii) are tenured faculty members of an accredited medical ~~college or university~~
 221 school that is an "educational institution" ~~within the meaning of as that term is defined in § 23.1-1101~~
 222 23.1-1100.

223 § 13.1-1102. Definitions.

224 A. As used in this chapter:

225 "Professional business entity" means any entity as defined in § 13.1-603 that is duly licensed or
 226 otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under
 227 whose laws the entity is formed to render the same professional service as that for which a professional
 228 corporation or professional limited liability company may be organized, including, but not limited to, (i)
 229 a professional limited liability company as defined in this subsection, (ii) a professional corporation as
 230 defined in subsection A of § 13.1-543, or (iii) a partnership that is registered as a registered limited
 231 liability partnership under § 50-73.132, all of the partners of which are duly licensed or otherwise legally
 232 authorized to render the same professional services as those for which the partnership was organized.

233 "Professional limited liability company" means a limited liability company whose articles of
 234 organization set forth a sole and specific purpose permitted by this chapter and that is either (i)
 235 organized under this chapter for the sole and specific purpose of rendering professional service other
 236 than that of architects, professional engineers, land surveyors, or landscape architects, or using a title
 237 other than that of certified interior designers and, except as expressly otherwise permitted by this
 238 chapter, that has as its members only individuals or professional business entities that are duly licensed
 239 or otherwise legally authorized to render the same professional service as the professional limited
 240 liability company or (ii) organized under this chapter for the sole and specific purpose of rendering

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241 professional service of architects, professional engineers, land surveyors, or landscape architects or
242 using the title of certified interior designers, or any combination thereof, and at least two-thirds of whose
243 membership interests are held by persons duly licensed within the Commonwealth to perform the
244 services of an architect, professional engineer, land surveyor, or landscape architect, or by persons
245 legally authorized within the Commonwealth to use the title of certified interior designer; or (iii)
246 organized under this chapter for the sole and specific purpose of rendering the professional services of
247 one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et
248 seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of
249 Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.)
250 of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the
251 provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the
252 behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36 (§
253 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology or
254 speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or one
255 or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-
256 3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of practitioners
257 of the healing arts, of optometry, physical therapy, the behavioral science professions, and audiology or
258 speech pathology and all of whose members are individuals or professional business entities duly
259 licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts,
260 nurse practitioners, optometry, physical therapy, the behavioral science professions, audiology or speech
261 pathology or of a clinical nurse specialist who renders mental health services; however, nothing herein
262 shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the
263 behavioral science professions, audiology or speech pathology or a nurse practitioner or clinical nurse
264 specialist to conduct that person's practice in a manner contrary to the standards of ethics of that person's
265 branch of the healing arts, optometry, physical therapy, the behavioral science professions, or audiology
266 or speech pathology, or nursing as the case may be.

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267 "Professional services" means any type of personal service to the public that requires as a
 268 condition precedent to the rendering of that service or the use of that title the obtaining of a license,
 269 certification, or other legal authorization and shall be limited to the personal services rendered by
 270 pharmacists, optometrists, physical therapists and physical therapist assistants, practitioners of the
 271 healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians,
 272 surgeons, dentists, architects, professional engineers, land surveyors, landscape architects, certified
 273 interior designers, public accountants, certified public accountants, attorneys at law, insurance
 274 consultants, audiologists or speech pathologists and clinical nurse specialists. For the purposes of this
 275 chapter, the following shall be deemed to be rendering the same professional services:

276 1. Architects, professional engineers, and land surveyors; and
 277 2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et
 278 seq.) of Title 54.1, nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1,
 279 optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, physical
 280 therapists, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, practitioners
 281 of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.),
 282 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of Title 54.1, and clinical nurse specialists who
 283 render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and
 284 registered with the Board of Nursing.

285 B. Persons who practice the healing art of performing professional clinical laboratory services
 286 within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if
 287 such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical
 288 laboratory sciences and (ii) are tenured faculty members of an accredited medical-college-or-university
 289 school that is an "educational institution" ~~within the meaning of as that term is defined in § 23.1-1101~~
 290 23.1-1100.

291 C. Except as expressly otherwise provided, all terms defined in § 13.1-1002 shall have the same
 292 meanings for purposes of this chapter.

293 **§ 22.1-349.2. College Partnership Laboratory School Fund.**

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294 There is created in the state treasury a special nonreverting fund to be known as the College
295 Partnership Laboratory School Fund, referred to in this section as "the Fund." The Fund shall be
296 established on the books of the Comptroller. All funds appropriated in accordance with the general
297 appropriation act and any gifts, grants, bequests, or donations from public or private sources shall be
298 paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain
299 in the Fund and be credited to the Fund. Any moneys remaining in the Fund, including interest thereon,
300 at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in
301 the Fund shall be used solely for the purposes of establishing or supporting college partnership
302 laboratory schools that stimulate the development of alternative-~~education~~ educational programs for
303 preschool through grade 12 students by providing opportunities for innovative instruction and greater
304 cooperation and coordination between institutions of higher education and preschool through grade 12
305 education educational systems. Expenditures and disbursements from the Fund shall be made by the
306 State Treasurer on warrants issued by the Comptroller upon written request signed by the Superintendent
307 of Public Instruction. The Board shall establish criteria for making distributions from the Fund to a
308 college partnership laboratory school requesting moneys from the Fund and may issue guidelines
309 governing the Fund as it deems necessary and appropriate.

310 **§ 22.1-349.3. Establishment and operation of college partnership laboratory schools;**
311 **requirements.**

312 A. A college partnership laboratory school is subject to all federal and state laws and regulations
313 and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color,
314 gender, national origin, religion, ancestry, or need for special education services.

315 B. Enrollment in college partnership laboratory schools shall be open through a lottery process
316 on a space-available basis to any student who is deemed to reside within the Commonwealth. A waiting
317 list shall be established if adequate space is not available to accommodate all students whose parents
318 have requested to be entered in the lottery process. Such waiting list shall also be prioritized through a
319 lottery process, and parents shall be informed of their student's position on the list. For college
320 partnership laboratory schools that form a collaborative partnership with one or more local school

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321 divisions in accordance with subsection G, enrollment in the college partnership laboratory school shall
322 be administered by one of the partnering divisions.

323 C. A college partnership laboratory school shall be administered and managed by a governing
324 board. Pursuant to a contract and as specified in § 22.1-349.4, a college partnership laboratory school is
325 subject to the requirements of the Standards of Quality, including the Standards of Learning and the
326 Standards of Accreditation, and such regulations as are determined by the Board.

327 D. Pursuant to a college partnership laboratory school agreement, a college partnership
328 laboratory school is responsible for its own operations, including such budget preparation, contracts for
329 services, and personnel matters as are specified in the agreement. A college partnership laboratory
330 school may also negotiate and contract with a school board, the governing body of an institution of
331 higher education, or any third party for the use of a school building or grounds, the operation and
332 maintenance of such building or grounds, and the provision of any service, activity, or undertaking that
333 the college partnership laboratory school is required to perform in order to carry out the educational
334 program described in its contract. Any services for which a college partnership laboratory school
335 contracts with a school board or institution of higher education shall not exceed the cost to the school
336 division or institution to provide such services.

337 E. No college partnership laboratory school shall charge tuition for courses required for high
338 school graduation. However, (i) tuition may be charged for courses for which the student receives
339 college credit and enrichment courses that are not required to earn a Board-approved high school
340 diploma and (ii) for college partnership laboratory schools that form a collaborative partnership with one
341 or more local school divisions in accordance with subsection G, the school board of the partnering
342 school division that administers student enrollment in accordance with subsection A may charge tuition
343 in accordance with § 22.1-5 for students who do not reside within the partnering school division.

344 F. An approved college partnership laboratory school shall be designated as a local-~~education~~
345 educational agency but shall not constitute a school division.

346 G. College partnership laboratory schools are encouraged to develop collaborative partnerships
347 with local school divisions for the purpose of building seamless-~~education~~ educational opportunities for

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all preschool through postsecondary students in the Commonwealth. An educational program provided to students enrolled in a local school division pursuant to a collaborative partnership between the college partnership laboratory school and the local school division is the educational program of the local school division for purposes of the Standards of Accreditation.

§ 23.1-107. Private institutions of higher education; human research review committees.

The human research review committee at each ~~proprietary private institution of higher education and nonprofit~~ private institution of higher education that conducts human research, as that term is defined in § 32.1-162.16, shall submit to the Governor, the General Assembly, and the president of the institution or his designee at least annually a report on the human research projects reviewed and approved by the committee and any significant deviations from approved proposals.

§ 23.1-200. State Council of Higher Education for Virginia established; purpose; membership; terms; officers.

A. The State Council of Higher Education for Virginia is established to advocate for and promote the development and operation of an educationally and economically sound, vigorous, progressive, and coordinated system of higher education in the Commonwealth and lead state-level strategic planning and policy development and implementation based on research and analysis and in accordance with § 23.1-301 and subsection A of § 23.1-1002. The Council shall seek to facilitate collaboration among institutions of higher education that will enhance quality and create operational efficiencies and work with institutions of higher education and their governing boards on board development.

B. The Council shall be composed of individuals selected from the Commonwealth at large without regard to political affiliation but with due consideration of geographical representation. Nonlegislative citizen members shall have demonstrated experience, knowledge, and understanding of higher education and workforce needs. Nonlegislative citizen members shall be selected for their ability and all appointments shall be of such nature as to aid the work of the Council and inspire the highest degree of cooperation and confidence. No officer, employee, trustee, or member of the governing board of any institution of higher education, employee of the Commonwealth, member of the General Assembly, or member of the Board of Education is eligible for appointment to the Council except as

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375 specified in this section. All members of the Council are members at large who shall serve the best
376 interests of the whole Commonwealth. No member shall act as the representative of any particular
377 region or of any particular institution of higher education.

378 C. The Council shall consist of 13 members: 12 nonlegislative citizen members appointed by the
379 Governor and one ex officio member. At least one nonlegislative citizen member shall have served as a
380 ~~president or~~ chief executive officer of a public institution of higher education. At least one nonlegislative
381 citizen member shall be a division superintendent or the Superintendent of Public Instruction. The
382 President of the Virginia Economic Development Partnership Authority shall serve ex officio with
383 voting privileges.

384 D. All terms shall begin July 1.

385 E. Nonlegislative citizen members shall serve for terms of four years. Vacancies occurring other
386 than by expiration of a term shall be filled for the unexpired term. No nonlegislative citizen member
387 shall serve for more than two consecutive terms; however, a nonlegislative citizen member appointed to
388 serve an unexpired term is eligible to serve two consecutive four-year terms. No nonlegislative citizen
389 member who has served two consecutive four-year terms is eligible to serve on the Council until at least
390 two years have passed since the end of his second consecutive four-year term. All appointments are
391 subject to confirmation by the General Assembly. Nonlegislative citizen members shall continue to hold
392 office until their successors have been appointed and confirmed. Ex officio members shall serve terms
393 coincident with their terms of office.

394 F. The Council shall elect a chairman and a vice-chairman from its membership. The Council
395 shall appoint a secretary and such other officers as it deems necessary and prescribe their duties and
396 terms of office.

397 G. At each meeting, the Council shall involve the chief executive officer of each public
398 institution of higher education in its agenda. The chief executive officers shall present information and
399 comment on issues of common interest and choose presenters to the Council from among themselves
400 who reflect the diversity of the institutions.

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401 H. At each meeting, the Council may involve other groups, including the presidents of private
402 institutions of higher education, in its agenda.

403 **§ 23.1-201. Student advisory committee.**

404 A. The Council shall appoint a student advisory committee consisting of students enrolled in
405 public [institutions of higher education](#) and accredited private institutions of higher education whose
406 primary purpose is to provide collegiate or graduate education and not to provide religious training.
407 Appointments shall be made in a manner to ensure broad student representation from among such
408 institutions.

409 B. Members shall serve for terms of one year. Vacancies occurring other than by expiration of a
410 term shall be filled for the unexpired term. Members may be reappointed to serve subsequent or
411 consecutive terms.

412 C. The Council shall ensure that at least one member of the student advisory committee is
413 reappointed each year. The student advisory committee shall elect a chairman from among its members.

414 D. The student advisory committee shall meet at least twice annually and advise the Council
415 regarding such matters as may come before it.

416 **§ 23.1-203. Duties of Council.**

417 The Council shall:

418 1. Develop a statewide strategic plan that (i) reflects the goals set forth in subsection A of § 23.1-
419 1002 or (ii) once adopted, reflects the goals and objectives developed pursuant to subdivision B 5 of §
420 23.1-309 for higher education in the Commonwealth, identifies a coordinated approach to such state and
421 regional goals, and emphasizes the future needs for higher education in the Commonwealth at both the
422 undergraduate and the graduate levels and the mission, programs, facilities, and location of each of the
423 existing institutions of higher education, each public institution's six-year plan, and such other matters as
424 the Council deems appropriate. The Council shall revise such plan at least once every six years and shall
425 submit such recommendations as are necessary for the implementation of the plan to the Governor and
426 the General Assembly.

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427 2. Review and approve or disapprove any proposed change in the statement of mission of any
428 public institution of higher education and define the mission of all newly created public institutions of
429 higher education. The Council shall report such approvals, disapprovals, and definitions to the Governor
430 and the General Assembly at least once every six years. No such actions shall become effective until 30
431 days after adjournment of the session of the General Assembly next following the filing of such a report.
432 Nothing in this subdivision shall be construed to authorize the Council to modify any mission statement
433 adopted by the General Assembly or empower the Council to affect, either directly or indirectly, the
434 selection of faculty or the standards and criteria for admission of any public institution of higher
435 education, whether relating to academic standards, residence, or other criteria. Faculty selection and
436 student admission policies shall remain a function of the individual public institutions of higher
437 education.

438 3. Study any proposed escalation of any public institution of higher education to a degree-
439 granting level higher than that level to which it is presently restricted and submit a report and
440 recommendation to the Governor and the General Assembly relating to the proposal. The study shall
441 include the need for and benefits or detriments to be derived from the escalation. No such institution
442 shall implement any such proposed escalation until the Council's report and recommendation have been
443 submitted to the General Assembly and the General Assembly approves the institution's proposal.

444 4. Review and approve or disapprove all enrollment projections proposed by each public
445 institution of higher education. The Council's projections shall be organized numerically by level of
446 enrollment and shall be used solely for budgetary, fiscal, and strategic planning purposes. The Council
447 shall develop estimates of the number of degrees to be awarded by each public institution of higher
448 education and include those estimates in its reports of enrollment projections. The student admissions
449 policies for such institutions and their specific programs shall remain the sole responsibility of the
450 individual governing boards but all baccalaureate public institutions of higher education shall adopt dual
451 admissions policies with comprehensive community colleges as required by § 23.1-907.

452 5. Review and approve or disapprove all new undergraduate or graduate academic programs that
453 any public institution of higher education proposes.

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454 6. Review and require the discontinuance of any undergraduate or graduate academic program
455 that is presently offered by any public institution of higher education when the Council determines that
456 such academic program is (i) nonproductive in terms of the number of degrees granted, the number of
457 students served by the program, the program's effectiveness, and budgetary considerations or (ii)
458 supported by state funds and unnecessarily duplicative of academic programs offered at other public
459 institutions of higher education. The Council shall make a report to the Governor and the General
460 Assembly with respect to the discontinuance of any such academic program. No such discontinuance
461 shall become effective until 30 days after the adjournment of the session of the General Assembly next
462 following the filing of such report.

463 7. Review and approve or disapprove the establishment of any department, school, college,
464 branch, division, or extension of any public institution of higher education that such institution proposes
465 to establish, whether located on or off the main campus of such institution. If any organizational change
466 is determined by the Council to be proposed solely for the purpose of internal management and the
467 institution's curricular offerings remain constant, the Council shall approve the proposed change.
468 Nothing in this subdivision shall be construed to authorize the Council to disapprove the establishment
469 of any such department, school, college, branch, division, or extension established by the General
470 Assembly.

471 8. Review the proposed closure of any academic program in a high demand or critical shortage
472 area, as defined by the Council, by any public institution of higher education and assist in the
473 development of an orderly closure plan, when needed.

474 9. Develop a uniform, comprehensive data information system designed to gather all information
475 necessary to the performance of the Council's duties. The system shall include information on
476 admissions, enrollment, self-identified students with documented disabilities, personnel, programs,
477 financing, space inventory, facilities, and such other areas as the Council deems appropriate. When
478 consistent with the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.),
479 the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.), and applicable federal law, the
480 Council, acting solely or in partnership with the Virginia Department of Education or the Virginia

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481 Employment Commission, may contract with private entities to create de-identified student records in
482 which all personally identifiable information has been removed for the purpose of assessing the
483 performance of institutions and specific programs relative to the workforce needs of the Commonwealth.

484 10. In cooperation with public institutions of higher education, develop guidelines for the
485 assessment of student achievement. Each such institution shall use an approved program that complies
486 with the guidelines of the Council and is consistent with the institution's mission and educational
487 objectives in the development of such assessment. The Council shall report each institution's assessment
488 of student achievement in the revisions to the Commonwealth's statewide strategic plan for higher
489 education.

490 11. In cooperation with the appropriate state financial and accounting officials, develop and
491 establish uniform standards and systems of accounting, recordkeeping, and statistical reporting for
492 public institutions of higher education.

493 12. Review biennially and approve or disapprove all changes in the inventory of educational and
494 general space that any public institution of higher education proposes and report such approvals and
495 disapprovals to the Governor and the General Assembly. No such change shall become effective until 30
496 days after the adjournment of the session of the General Assembly next following the filing of such
497 report.

498 13. Visit and study the operations of each public institution of higher education at such times as
499 the Council deems appropriate and conduct such other studies in the field of higher education as the
500 Council deems appropriate or as may be requested by the Governor or the General Assembly.

501 14. Provide advisory services to each accredited nonprofit private institution of higher education
502 whose primary purpose is to provide collegiate or graduate education and not to provide religious
503 training or theological education on academic, administrative, financial, and space utilization matters.
504 The Council may review and advise on joint activities, including contracts for services between public
505 [institutions of higher education](#) and such private institutions of higher education or between such private
506 institutions of higher education and any agency or political subdivision of the Commonwealth.

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507 15. Adopt such policies and regulations as the Council deems necessary to implement its duties
508 established by state law. Each public institution of higher education shall comply with such policies and
509 regulations.

510 16. Issue guidelines consistent with the provisions of the federal Family Educational Rights and
511 Privacy Act (20 U.S.C. § 1232g), requiring public institutions of higher education to release a student's
512 academic and disciplinary record to a student's parent.

513 17. Require each institution of higher education formed, chartered, or established in the
514 Commonwealth after July 1, 1980, to ensure the preservation of student transcripts in the event of
515 institutional closure or revocation of approval to operate in the Commonwealth. An institution may
516 ensure the preservation of student transcripts by binding agreement with another institution of higher
517 education with which it is not corporately connected or in such other way as the Council may authorize
518 by regulation. In the event that an institution closes or has its approval to operate in the Commonwealth
519 revoked, the Council, through its director, may take such action as is necessary to secure and preserve
520 the student transcripts until such time as an appropriate institution accepts all or some of the transcripts.
521 Nothing in this subdivision shall be deemed to interfere with the right of a student to his own transcripts
522 or authorize disclosure of student records except as may otherwise be authorized by law.

523 18. Require the development and submission of articulation, dual admissions, and guaranteed
524 admissions agreements between associate-degree-granting and baccalaureate public institutions of
525 higher education.

526 19. Provide periodic updates of base adequacy funding guidelines adopted by the Joint
527 Subcommittee Studying Higher Education Funding Policies for each public institution of higher
528 education.

529 20. In consultation with each public institution of higher education, develop a one-year uniform
530 certificate of general studies program to be offered at each comprehensive community college. Such
531 program shall ensure that a comprehensive community college student who completes the one-year
532 certificate program is eligible to transfer all credits earned in academic subject coursework to a
533 baccalaureate public institution of higher education upon acceptance to such baccalaureate institution.

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534 21. Cooperate with the Board of Education in matters of interest to both public elementary and
535 secondary schools and public institutions of higher education, particularly in connection with
536 coordination of the college admission requirements, coordination of teacher training programs with the
537 public school programs, and the ~~Board's~~ Board of Education's Six-Year Educational Technology Plan
538 for Virginia. The Council shall encourage public institutions of higher education to design programs that
539 include the skills necessary for the successful implementation of such Plan.

540 22. Advise and provide technical assistance to the Brown v. Board of Education Scholarship
541 Committee in the implementation and administration of the Brown v. Board of Education Scholarship
542 Program pursuant to Chapter 34.1 (§ 30-231.01 et seq.) of Title 30.

543 23. Insofar as possible, seek the cooperation and utilize the facilities of existing state
544 departments, institutions, and agencies in carrying out its duties.

545 24. Serve as the coordinating council for public institutions of higher education.

546 25. Serve as the planning and coordinating agency for all postsecondary educational programs
547 for all health professions and occupations and make recommendations, including those relating to
548 financing, for providing adequate and coordinated educational programs to produce an appropriate
549 supply of properly trained personnel. The Council may conduct such studies as it deems appropriate in
550 furtherance of the requirements of this subdivision. All state departments and agencies shall cooperate
551 with the Council in the execution of its responsibilities under this subdivision.

552 26. Carry out such duties as the Governor may assign to it in response to agency designations
553 requested by the federal government.

554 27. Insofar as practicable, preserve the individuality, traditions, and sense of responsibility of
555 each public institution of higher education in carrying out its duties.

556 28. Insofar as practicable, seek the assistance and advice of each public institution of higher
557 education in fulfilling its duties and responsibilities.

558 29. Assist the Virginia Research Investment Committee with the administration of the Virginia
559 Research Investment Fund consistent with the provisions of Article 8 (§ 23.1-3130 et seq.) of Chapter
560 31.

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§ 23.1-210. Advisory services to accredited nonprofit private institutions of higher education; Private College Advisory Board.

A. The Council shall provide advisory services to accredited nonprofit private institutions of higher education on academic and administrative matters. The Council may review and advise on joint activities, including contracts for services, between nonprofit private [institutions of higher education](#) and public institutions of higher education and between nonprofit private institutions of higher education and any agency or political subdivision of the Commonwealth. The Council may collect and analyze such data as may be pertinent to such activities.

B. The Council shall seek the advice of the Private College Advisory Board, and the Advisory Board shall assist the Council in the performance of its duties as required by subsection A. The Private College Advisory Board shall be composed of representatives of nonprofit private institutions of higher education and such other members as the Council may select and shall be broadly representative of nonprofit private institutions of higher education.

C. The Private College Advisory Board shall meet at least once each year.

§ 23.1-227. Laws of the Commonwealth to apply to contracts.

The laws of the Commonwealth shall govern any agreement, contract, or instrument of indebtedness executed between a postsecondary school and any person ~~enrolling who enrolls~~ in any course or program offered or to be offered by such school in the Commonwealth or any person [who is](#) employed or offered employment by such school in the Commonwealth.

§ 23.1-301. Short title; objective; purposes.

A. This chapter may be cited as the "Preparing for the Top Jobs of the 21st Century: The Virginia Higher Education Opportunity Act of 2011," the "Top Jobs Act," or "TJ21."

B. The objective of this chapter is to fuel strong economic growth in the Commonwealth and prepare Virginians for the top job opportunities in the knowledge-driven economy of the 21st century by establishing a long-term commitment, policy, and framework for sustained investment and innovation that will (i) enable the Commonwealth to build upon the strengths of its excellent higher education system and achieve national and international leadership in college degree attainment and personal

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588 income and (ii) ensure that these educational and economic opportunities are accessible and affordable
589 for all capable and committed Virginia students.

590 C. In furtherance of the objective set forth in subsection B, the following purposes shall inform
591 the development and implementation of funding policies, performance criteria, economic opportunity
592 metrics, and recommendations required by this chapter:

593 1. To ensure an educated workforce in the Commonwealth through a public-private higher
594 education system whose hallmarks are instructional excellence, affordable access, economic impact,
595 institutional diversity and managerial autonomy, cost-efficient operation, technological and pedagogical
596 innovation, and reform-based investment;

597 2. To take optimal advantage of the demonstrated correlation between higher education and
598 economic growth by investing in higher education in a manner that will generate economic growth, job
599 creation, personal income growth, and revenues generated for state and local government in the
600 Commonwealth;

601 3. To (i) place the Commonwealth among the most highly educated states and countries by
602 conferring approximately 100,000 cumulative additional undergraduate degrees on Virginians between
603 2011 and 2025, accompanied by a comparable percentage increase in privately conferred undergraduate
604 degrees in the Commonwealth over the same period and (ii) achieve this purpose by expanding
605 enrollment of Virginians at public institutions of higher education and private institutions of higher
606 education, improving undergraduate graduation and retention rates in the higher education system in the
607 Commonwealth, and increasing degree completion by Virginians with partial credit toward a college
608 degree, including students with ongoing job and family commitments who require access to
609 nontraditional college-level educational opportunities;

610 4. To enhance personal opportunity and earning power for individual Virginians by (i) increasing
611 college degree attainment in the Commonwealth, especially in high-demand, high-income fields such as
612 STEM and health care fields and (ii) providing information about the economic value and impact of
613 individual degree programs by institution;

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614 5. To promote university-based research that produces outside investment in the Commonwealth,
615 fuels economic advances, triggers commercialization of new products and processes, fosters the
616 formation of new businesses, leads businesses to bring their facilities and jobs to the Commonwealth,
617 and in other ways helps place the Commonwealth on the cutting edge of the knowledge-driven
618 economy;

619 6. To support the national effort to enhance the security and economic competitiveness of the
620 United States and secure a leading economic position for the Commonwealth through increased research
621 and instruction in STEM and related fields that require qualified faculty, appropriate research facilities
622 and equipment, public-private and intergovernmental collaboration, and sustained state support;

623 7. To preserve and enhance the excellence and cost-efficiency of the Commonwealth's higher
624 education system through reform-based investment that promotes innovative instructional models and
625 pathways to degree attainment, including optimal use of physical facilities and instructional resources
626 throughout the year, technology-enhanced instruction, sharing of instructional resources between
627 colleges, universities, and other degree-granting entities in the Commonwealth, increased online
628 learning opportunities for nontraditional students, improved rate and pace of degree completion,
629 expanded availability of dual enrollment and advanced placement options and early college commitment
630 programs, expanded comprehensive community college transfer options leading to bachelor's degree
631 completion, and enhanced college readiness before matriculation;

632 8. To realize the potential for enhanced benefits from the Restructured Higher Education
633 Financial and Administrative Operations Act (§ 23.1-1000 et seq.) through a sustained commitment to
634 the principles of autonomy, accountability, affordable access, and mutual trust and obligation underlying
635 the restructuring initiative;

636 9. To establish a higher education funding framework and policy that promotes stable,
637 predictable, equitable, and adequate funding, facilitates effective planning at the institutional and state
638 levels, provides incentives for increased enrollment of Virginia students at public ~~or~~ institutions of
639 higher education and nonprofit private institutions of higher education, provides need-based financial
640 aid for low-income and middle-income students and families, relieves the upward pressure on tuition

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641 associated with loss of state support due to economic downturns or other causes, and provides financial
642 incentives to promote innovation and enhanced economic opportunity in furtherance of the objective of
643 this chapter set forth in subsection A; and

644 10. To recognize that the unique mission and contributions of each public institution of higher
645 education and private institution of higher education is consistent with the desire to build upon the
646 strengths of the Commonwealth's excellent system of higher education, afford these unique missions and
647 contributions appropriate safeguards, and allow these attributes to inform the development and
648 implementation of funding policies, performance criteria, economic opportunity metrics, and
649 recommendations in the furtherance of the objective of this chapter set forth in subsection B.

650 **§ 23.1-308. STEM public-private partnership established; duties.**

651 A. To (i) increase the number of students completing degrees in the high-demand, high-impact
652 STEM fields and other high-demand, anticipated-shortage fields such as the health care-related
653 professions and (ii) help develop and guide the implementation of a comprehensive plan for higher
654 degree attainment in these fields, the Secretaries of Education and Finance, in cooperation with the
655 House Committees on Appropriations and Education and the Senate Committees on Finance and on
656 Education and Health, shall form a public-private partnership comprised of private-sector leaders,
657 distinguished representatives from the scientific community, including retired military personnel,
658 government scientists, and researchers, educational experts, relevant state and local government
659 officials, and such other individuals as they deem appropriate.

660 B. The partnership shall advise on, and may collaborate with public and private entities to
661 develop and implement strategies to address, such priority issues as (i) determining the need for
662 additional high-demand degree enrollment, capacity, and resources at public institutions of higher
663 education and private institutions of higher education; (ii) incentivizing greater coordination, innovation,
664 and private collaboration in kindergarten through secondary school STEM and other high-demand
665 degree initiatives; (iii) determining and refining best practices in STEM instruction and leveraging those
666 best practices to promote STEM education in both the Commonwealth's institutions of higher education
667 and its elementary and secondary schools; (iv) enhancing teacher education and professional

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668 development in STEM disciplines; (v) strengthening mathematics readiness in secondary schools
 669 through earlier diagnosis and remediation of deficiencies; (vi) providing financial incentives to increase
 670 STEM enrollment and degree production at the Commonwealth's institutions of higher education; (vii)
 671 providing assistance to public institutions of higher education and private institutions of higher
 672 education in the acquisition and improvement of STEM-related facilities and equipment; (viii) providing
 673 STEM incentives in early pathway programs at institutions of higher education and in the
 674 ~~comprehensive community college transfer grant program~~ Two-Year College Transfer Grant Program;
 675 (ix) assessing degree programs using such economic opportunity metrics as marketplace demand,
 676 earning potential, and employer satisfaction and other indicators of the historical and projected
 677 economic value and impact of degrees to provide useful information on degrees to students as they make
 678 career choices and to state policy makers and university decision makers as they decide how to allocate
 679 scarce resources; (x) aligning state higher education efforts with marketplace demands; and (xi)
 680 determining such other issues as the partnership deems relevant to increasing the number of students
 681 completing degrees in STEM and other high-demand fields at institutions of higher education.

682 **§ 23.1-634. Prompt crediting and expeditious refunding of funds.**

683 Each eligible institution acting as an agent for students receiving ~~awards~~ grants under the
 684 Program shall promptly credit disbursed funds to student accounts following the institution's verification
 685 of student eligibility and expeditiously distribute any refunds due recipients.

686 **§ 23.1-712. Payroll deductions.**

687 The Commonwealth, the agencies and localities of the Commonwealth and their subdivisions,
 688 and any employer in the Commonwealth ~~are authorized to~~ may agree, by contract or otherwise, to remit
 689 payments or contributions on behalf of an employee toward prepaid tuition contracts or savings trust
 690 accounts through payroll deductions.

691 **§ 23.1-1004. Management agreement; eligibility and application.**

692 A. The governing board and administration of each public ~~institutions~~ institution of higher
 693 education that meets the state goals set forth in subsection A of § 23.1-1002 and meets the requirements
 694 of this article to demonstrate the ability to manage successfully the administrative and financial

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695 operations of the institution without jeopardizing the financial integrity and stability of the institution
696 may negotiate with the Governor to develop a management agreement with the Commonwealth to
697 exercise restructured financial and administrative authority.

698 B. No public institution of higher education shall enter into a management agreement unless:

699 1. a. Its most current and unenhanced bond rating received from Moody's Investors Service, Inc.,
700 Standard & Poor's, Inc., or Fitch Investor's Services, Inc., is at least AA- (i.e., AA minus) or its
701 equivalent, provided that such bond rating has been received within the last three years of the date that
702 the initial management agreement is entered into; or

703 b. The institution has participated in decentralization pilot programs in the areas of finance and
704 capital outlay, demonstrated management competency in those two areas as evidenced by a written
705 certification from the Cabinet Secretary designated by the Governor, received restructured operational
706 authority under a memorandum of understanding pursuant to Article 3 (§ 23.1-1003 et seq.) in at least
707 one functional area, and demonstrated management competency in that area for a period of at least two
708 years;

709 2. At least an absolute two-thirds of the institution's governing board has voted in the affirmative
710 for a resolution in support of a request for restructured operational authority under a management
711 agreement;

712 3. The institution submits to the Governor a written request for his approval of the management
713 agreement that contains evidence that (i) the institution possesses the necessary administrative
714 infrastructure, experience, and expertise to perform successfully its public educational mission as a
715 covered institution; (ii) the institution is financially able to operate as a covered institution without
716 jeopardizing the financial integrity and stability of the institution; (iii) the institution consistently meets
717 the financial and administrative management standards pursuant to § 23.1-1001; and (iv) the institution's
718 governing board has adopted performance and accountability standards, in addition to any institutional
719 performance benchmarks included in the general appropriation act and developed pursuant to § 23.1-
720 206, against which its implementation of the restructured operational authority under the management
721 agreement can be measured;

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722 4. The institution provides a copy of the written request to the Chairmen of the House Committee
723 on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the
724 Senate Committee on Education and Health;

725 5. The institution agrees to reimburse the Commonwealth for any additional costs that the
726 Commonwealth incurs to provide health or other group insurance benefits to employees and undertake
727 any risk management program that are attributable to the institution's exercise of restructured operational
728 authority. The Secretary of Finance and the Secretary of Administration, in consultation with the
729 Virginia Retirement System and the affected institutions, shall establish procedures for determining any
730 amounts to be paid by each institution and a mechanism for transferring the appropriate amounts directly
731 and solely to the affected programs;

732 6. The institution considers potential future impacts of tuition increases on the Virginia College
733 Savings Plan and discusses such potential impacts with parties participating in the development of the
734 management agreement. The chief executive officer of the Virginia College Savings Plan shall provide
735 to the institution and such parties the Plan's assumptions underlying the contract pricing of the program;
736 and

737 7. The Governor transmits a draft of any management agreement that affects insurance or benefit
738 programs administered by the Virginia Retirement System to the Board of Trustees of the Virginia
739 Retirement System, which shall review the relevant provisions of the management agreement to ensure
740 compliance with the applicable provisions of Title 51.1, administrative policies and procedures, and
741 federal regulations governing retirement plans and advise the Governor and appropriate Cabinet
742 Secretaries of any conflicts.

743 **§ 23.1-1014. Covered institutions; operational authority; financial operations; financing**
744 **and indebtedness.**

745 A. Each covered institution may:

746 1. Borrow money and issue bonds, notes, or other obligations as provided in this article and
747 purchase such bonds, notes, or other obligations;

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748 2. Seek financing from, incur, or assume indebtedness to, and enter into contractual
749 commitments with, the Virginia Public Building Authority and the Virginia College Building Authority,
750 which authorities ~~are authorized to~~ may borrow money and make and issue negotiable notes, bonds,
751 notes, or other obligations to provide such financing relating to facilities or any project; and

752 3. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments
753 with, the Commonwealth as otherwise provided by law relating to the institution's facilities or any
754 project.

755 B. Notwithstanding the provisions of this chapter, no covered institution is exempt from any
756 requirement or covenant contained in any outstanding bonds, notes, or other obligations.

757 **§ 23.1-1026. Covered institutions; operational authority; human resources; severance**
758 **policies.**

759 A. Each covered institution shall adopt a severance policy for its eligible participating covered
760 employees that is applicable to voluntary and involuntary separations, including reductions in
761 workforce. The provisions of the Workforce Transition Act (§ 2.2-3200 et seq.) shall not apply to
762 participating covered employees.

763 B. The terms and conditions of a covered institution's severance policy for eligible participating
764 covered employees shall be determined by the institution's governing board. The covered institution and
765 the Board of the Virginia Retirement System shall negotiate a formula according to which cash
766 severance benefits may be converted to years of age or creditable service for participating covered
767 employees who participate in the Virginia Retirement System.

768 C. Covered employees who (i) were employees of a covered institution and were covered by the
769 provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 prior to the effective date of the initial
770 management agreement, (ii) would otherwise be eligible for severance benefits under the Workforce
771 Transition Act (§ 2.2-3200 et seq.), and (iii) are separated by a covered institution because of a reduction
772 in workforce have the same preferential hiring rights with state agencies and other executive branch
773 institutions as other state employees have under § 2.2-3201. A covered institution shall recognize the
774 hiring preference conferred by § 2.2-3201 on state employees who were (a) hired by a state agency or

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775 executive branch institution before the covered institution's effective date of the initial management
776 agreement and (b) separated after that date by that state agency or executive branch institution because
777 of a reduction in workforce. If a covered institution has adopted a classification system pursuant to §
778 23.1-1021 that differs from the classification system administered by the Department of Human
779 Resource Management, the covered institution shall classify the separated employee according to its
780 classification system and shall place the separated employee appropriately. Any such separated
781 employee who is hired by a covered institution is a participating covered employee for purposes of this
782 article. Classification decisions that are made pursuant to this subsection and apply to employees
783 transferring between state agencies, between other executive branch institutions and covered institutions,
784 and between covered institutions as a result of a reduction in force workforce and with the preferential
785 hiring rights provided in this subsection and in § 2.2-3201 are presumed appropriate, and a separated
786 employee who grieves the classification decision bears the burden of demonstrating that the
787 classification violates the separated employee's preferential hiring rights.

788 D. An employee's transition from being an employee of a public institution of higher education
789 to being a covered employee of a covered institution on the effective date of a covered institution's
790 initial management agreement shall not, in and of itself, constitute a severance of that employee or a
791 reduction in force workforce that would make either the covered institution's severance policy adopted
792 pursuant to subsection A or the Workforce Transition Act (§ 2.2-3200 et seq.) applicable to that
793 employee.

794 **§ 23.1-1211. Default on payments.**

795 A. Whenever it appears to the Governor from an affidavit filed with him by the paying agent for
796 the bonds issued by the Authority that an eligible institution has defaulted on the payment of the
797 principal of or premium, if any, or interest on its bonds pursuant to this article, the Governor shall
798 immediately make a summary investigation into the facts set forth in the affidavit. If it is established to
799 the satisfaction of the Governor that the eligible institution is in default in the payment of the principal
800 of or premium, if any, or interest on its bonds, the Governor immediately shall make an order directing
801 the State Comptroller to make payment immediately to the owners or paying agent of the bonds in

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802 default on behalf of the eligible institution from any appropriation available to the eligible institution in
803 the amount due and remaining unpaid by the eligible institution on its bonds.

804 B. Any payment so made by the State Comptroller to the owners or paying agent of the bonds in
805 default shall be credited as if made directly by the eligible institution and charged by the State
806 Comptroller against the appropriations of the eligible institution. The owners or paying agent of the
807 bonds in default at the time of payment shall deliver to the State Comptroller, in a form satisfactory to
808 the State Comptroller, a receipt for payment of the principal, premium, or interest satisfied by the
809 payment. The State Comptroller shall report each payment made to the governing ~~body~~ board of the
810 defaulting eligible institution under the provisions of this section.

811 C. The Governor shall direct the State Comptroller to (i) charge against the appropriations
812 available to any eligible institution that has defaulted on its bonds pursuant to this section all future
813 payments of principal of and interest on the eligible institution's bonds when due and payable and (ii)
814 make such payments to the owners or paying agent of the bonds on behalf of the eligible institution to
815 ensure that no future default will occur on such bonds. The charge and payment shall be made upon
816 receipt of documentation that the State Comptroller deems to be satisfactory evidence of the claim. The
817 owners or paying agent of the bonds at the time of each payment shall deliver to the State Comptroller,
818 in a form satisfactory to the State Comptroller, a receipt for payment of the principal or interest satisfied
819 by the payment.

820 D. Nothing in this section shall be construed to create any obligation on the part of the State
821 Comptroller or the Commonwealth to make any payment on behalf of the defaulting eligible institution
822 other than from funds appropriated to the defaulting eligible institution.

823 **§ 23.1-1225. Powers; acquisition of property.**

824 The Authority may, directly or through a participating institution as its agent, acquire by (i)
825 purchase solely from funds provided under the ~~authority~~ provisions of this article, (ii) gift, or (iii) devise,
826 such lands, structures, property, real or personal, rights, rights-of-way, air rights, franchises, easements,
827 and other interests in lands, including lands lying under water and riparian rights, that are located within
828 the Commonwealth as it may deem necessary or convenient for the acquisition, construction, or

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829 operation of a project, upon such terms and at such prices as it deems reasonable and can be agreed upon
830 between it and the owner of the property and take title to the property in the name of the Authority or
831 any participating institution as its agent.

832 **§ 23.1-1300. Members of governing boards; removal; terms; nonvoting, advisory**
833 **representatives.**

834 A. Members appointed by the Governor to the governing boards of public institutions of higher
835 education shall serve for terms of four years. Vacancies occurring other than by expiration of a term
836 shall be filled for the unexpired term. No member appointed by the Governor to such a governing board
837 shall serve for more than two consecutive four-year terms; however, a member appointed by the
838 Governor to serve an unexpired term is eligible to serve two consecutive four-year terms immediately
839 succeeding such unexpired term. Except as otherwise provided in § 23.1-2601, all appointments are
840 subject to confirmation by the General Assembly. Members appointed by the Governor to the governing
841 board of a public institution of higher education shall continue to hold office until their successors have
842 been appointed and ~~confirmed~~ qualified. Ex officio members shall serve a term coincident with their
843 term of office.

844 B. No member appointed by the Governor to the governing board of a public institution of higher
845 education who has served two consecutive four-year terms on such board is eligible to serve on the same
846 board until at least four years have passed since the end of his second consecutive four-year term.

847 C. Notwithstanding the provisions of subsection E or any other provision of law, the Governor
848 may remove from office for malfeasance, misfeasance, incompetence, or gross neglect of duty any
849 member of the board of any public institution of higher education and fill the vacancy resulting from the
850 removal.

851 D. The Governor shall set forth in a written public statement his reasons for removing any
852 member pursuant to subsection C at the time the removal occurs. The Governor is the sole judge of the
853 sufficiency of the cause for removal as set forth in subsection C.

854 E. If any member of the governing board of a public institution of higher education fails to attend
855 (i) the meetings of the board for one year without sufficient cause, as determined by a majority vote of

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856 the board, or (ii) the educational programs required by § 23.1-1304 in his first two years of membership
857 without sufficient cause, as determined by a majority vote of the board, the remaining members of the
858 board shall record such failure in the minutes at its next meeting and notify the Governor, and the office
859 of such member shall be vacated. No member of the board of visitors of a ~~four-year~~ baccalaureate public
860 institution of higher education or the State Board for Community Colleges who fails to attend the
861 educational programs required by § 23.1-1304 during his first four-year term is eligible for
862 reappointment to such board.

863 F. The governing board of each public institution of higher education shall adopt in its bylaws
864 policies (i) for removing members pursuant to subsection E and (ii) referencing the Governor's power to
865 remove members described in subsection C.

866 G. The governing board of each public institution of higher education and each local community
867 college board may appoint one or more nonvoting, advisory faculty representatives to its respective
868 board. In the case of local community college boards and boards of visitors, such representatives shall be
869 chosen from individuals elected by the faculty or the institution's faculty senate or its equivalent. In the
870 case of the State Board, such representatives shall be chosen from individuals elected by the
871 Chancellor's Faculty Advisory Committee. Such representatives shall be appointed to serve (i) at least
872 one term of at least 12 months, which shall be coterminous with the institution's fiscal year or (ii) for
873 such terms as may be mutually agreed to by the State Board and the Chancellor's Faculty Advisory
874 Committee, or by the local community college board or the board of visitors, and the institution's faculty
875 senate or its equivalent.

876 H. The board of visitors of any baccalaureate public institution of higher education shall appoint
877 one or more students as nonvoting, advisory representatives. Such representatives shall be appointed
878 under such circumstances and serve for such terms as the board of visitors of the institution shall
879 prescribe.

880 I. Nothing in subsections G and H shall prohibit the governing board of any public institution of
881 higher education or any local community college board from excluding such nonvoting, advisory faculty

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882 or student representatives from discussions of faculty grievances, faculty or staff disciplinary matters or
883 salaries, or any other matter.

884 **§ 23.1-1303. Governing boards; duties.**

885 A. For purposes of this section, "intellectual property" means (i) a potentially patentable
886 machine, article of manufacture, composition of matter, process, or improvement in any of those; (ii) an
887 issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

888 B. The governing board of each public institution of higher education shall:

889 1. Adopt and post conspicuously on its website bylaws for its own governance, including
890 provisions that (i) establish the requirement of transparency, to the extent required by law, in all board
891 actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700
892 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board
893 record minutes of each open meeting and post the minutes on the board's website, in accordance with
894 subsection I of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically
895 exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in
896 accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in
897 an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711;
898 and (iii) require that the board invite the Attorney General's appointee or representative to all meetings
899 of the board, executive committee, and board committees;

900 2. Establish regulations or institution policies for the acceptance and assistance of students that
901 include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the
902 federal requirement to register for the selective service are not eligible to receive any state direct student
903 assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth
904 shall not be considered in making admissions determinations for students who have earned a diploma
905 pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of
906 certain graduates of comprehensive community colleges as set forth in § 23.1-907;

907 3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

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908 4. Notwithstanding any other provision of state law, establish policies and procedures requiring
909 the notification of the parent of a dependent student when such student receives mental health treatment
910 at the institution's student health or counseling center and such treatment becomes part of the student's
911 educational record in accordance with the federal Health Insurance Portability and Accountability Act
912 (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal
913 Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part
914 99). Such notification shall only be required if it is determined that there exists a substantial likelihood
915 that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to
916 himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious
917 harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.
918 However, notification may be withheld if any person licensed to diagnose and treat mental, emotional,
919 or behavioral disorders by a health regulatory board within the Department of Health Professions who is
920 treating the student has made a part of the student's record a written statement that, in the exercise of his
921 professional judgment, the notification would be reasonably likely to cause substantial harm to the
922 student or another person. No public institution of higher education or employee of a public institution
923 of higher education making a disclosure pursuant to this subsection is civilly liable for any harm
924 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct
925 by the institution or its employees;

926 5. Establish policies and procedures requiring the release of the educational record of a
927 dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. §
928 1232g), to a parent at his request;

929 6. Establish programs to seek to ensure that all graduates have the technology skills necessary to
930 compete in the twenty-first century and that all students matriculating in teacher-training programs
931 receive instruction in the effective use of educational technology;

932 7. Establish policies for the discipline of students who participate in varsity intercollegiate
933 athletics, including a provision requiring an annual report by the administration of the institution to the
934 governing board regarding enforcement actions taken pursuant to such policies;

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935 8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-
936 2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed
937 meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive
938 officer's performance. Any change to the chief executive officer's employment contract during any such
939 meeting or any other meeting of the board shall be made only by a vote of the majority of the board's
940 members;

941 9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt
942 regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions
943 of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require
944 the human research committee to submit to the Governor, the General Assembly, and the chief executive
945 officer of the institution or his designee at least annually a report on the human research projects
946 reviewed and approved by the committee and require the committee to report any significant deviations
947 from approved proposals;

948 10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and
949 the accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of
950 such statements pursuant to § 30-133;

951 11. Submit to the General Assembly and the Governor an annual executive summary of its
952 interim activity and work no later than the first day of each regular session of the General Assembly.
953 The executive summary shall be submitted as provided in the procedures of the Division of Legislative
954 Automated Systems for the processing of legislative documents and reports and shall be posted on the
955 General Assembly's website;

956 12. Make available to any interested party upon request a copy of the portion of the most recent
957 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in
958 Virginia" pertaining to institutions of higher education;

959 13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and
960 use of intellectual property and provide a copy of such policies [or institution regulations](#) to the Governor
961 and the Joint Commission on Technology and Science. All employees, including student employees, of

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public institutions of higher education are bound by the intellectual property policies [or institution regulations](#) of the institution employing them; and

14. Adopt policies that are supportive of the intellectual property rights of matriculated students who are not employed by such institution.

§ 23.1-1305. Governing boards; student accounts; collections.

No governing board shall refer a student account to collections for nonpayment before [such referral is](#) required by the provisions of § 2.2-4806. This section shall not apply to public institutions of higher education that have entered into management agreements with the Commonwealth pursuant to the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

§ 23.1-2308. The Medical College of Virginia, Health Sciences Schools of the University.

The colleges, schools, and divisions previously existing as The Medical College of Virginia are designated the [Medical College of Virginia](#), Health Sciences Schools of the University.

§ 23.1-2404. Powers of the Authority.

A. The Authority has all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the power to:

1. Sue and be sued in its own name;
2. Have and alter an official seal;
3. Have perpetual duration and succession in its name;
4. Locate and maintain offices at such places as it may designate;
5. Make and execute contracts, guarantees, or any other instruments and agreements necessary or convenient for the exercise of its powers and functions, including contracts with hospitals or health care businesses to operate and manage any or all of the hospital facilities or operations, and incur liabilities and secure the obligations of any entity or individual;
6. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;
7. Exercise, in addition to its other powers, all powers that are (i) granted to corporations by the provisions of Title 13.1 or similar provisions of any successor law, except in those cases in which the

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power is confined to corporations created under such title, and (ii) not inconsistent with the purposes and intent of this chapter or the limitations included in this chapter;

8. Accept, hold, and enjoy any gift, devise, or bequest to the Authority or its predecessors to be held for the uses and purposes designated by the donor, if any, or if not so designated, for the general purposes of the Authority, whether given directly or indirectly, and accept, execute, and administer any trust or endowment fund in which it has or may have an interest under the terms of the instrument creating the trust or endowment fund;

9. Borrow money and issue bonds as provided in this chapter and purchase such bonds;

10. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with the Virginia Public Building Authority and the Virginia College Building Authority, which authorities ~~are authorized to~~ may borrow money and make and issue negotiable notes, bonds, and other evidences of indebtedness to provide such financing relating to the hospital facilities or any project;

11. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with the Commonwealth as otherwise provided by law relating to the hospital facilities or any project;

12. Procure such insurance, participate in such insurance plans, or provide such self-insurance as it deems necessary or convenient to carry out the purposes and provisions of this chapter. The purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the Authority is not a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled;

13. Develop policies and procedures generally applicable to the procurement of goods, services, and construction based upon competitive principles;

14. Except as to those hospital facilities or any part of such facilities that are leased to the Authority by the University, the control and disposition of which shall be determined by such lease instruments;

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1015 a. Own, hold, improve, use, and otherwise deal with real or personal property, tangible or
1016 intangible, or any right, easement, estate, or interest in such property, acquired by purchase, exchange,
1017 gift, assignment, transfer, foreclosure, lease, bequest, devise, operation of law, or other means on such
1018 terms and conditions and in such manner as it may deem proper;

1019 b. Sell, assign, lease, encumber, mortgage, or otherwise dispose of any project, any other real or
1020 personal property, tangible or intangible, any right, easement, estate, or interest in such property, or any
1021 deed of trust or mortgage lien interest that it owns, that is under its control or custody or in its
1022 possession;

1023 c. Release or relinquish any right, title, claim, lien, interest, easement, or demand however
1024 acquired, including any equity or right of redemption in property foreclosed by it; and

1025 d. Take any action pursuant to subdivision 14 by public or private sale or with or without public
1026 bidding, notwithstanding the provisions of any other law;

1027 15. Accept loans, grants, contributions, or other assistance from the federal government, the
1028 Commonwealth, any political subdivision of the Commonwealth, or any other public or private source to
1029 carry out any of the purposes of this chapter and enter into any agreement or contract regarding the
1030 acceptance, use, or repayment of any such loan, grant, contribution, or assistance in furtherance of the
1031 purposes of this chapter;

1032 16. Exercise the power of eminent domain pursuant to the provisions of Chapter 2 (§ 25.1-200 et
1033 seq.) of Title 25.1 to acquire by condemnation any real property, including fixtures and improvements,
1034 that it may deem necessary to carry out the purposes of this chapter, upon (i) its adoption of a resolution
1035 declaring that the acquisition of such property is in the public interest and necessary for public use and
1036 (ii) the approval of the Governor. The Authority may acquire property already devoted to a public use,
1037 provided that no property belonging to any locality, religious corporation, unincorporated church, or
1038 charitable corporation may be acquired without its consent;

1039 17. Fix, revise, charge, and collect rates, rentals, fees, and other charges for the services or
1040 facilities furnished by or on behalf of the Authority and establish policies, procedures, and regulations
1041 regarding any such service rendered or the use, occupancy or operation of any such facility. Such

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1042 charges and policies, procedures, and regulations are not subject to supervision or regulation by any
1043 commission, board, bureau, or agency of the Commonwealth except as otherwise provided by law for
1044 the providers of health care;

1045 18. Consistent with § 23.1-2407, create, assist in the creation of, own in whole or in part, control,
1046 participate in or with any public or private entity, purchase, receive, subscribe for, own, hold, vote, use,
1047 employ, sell, mortgage, lend, pledge, or otherwise acquire or dispose of any (i) shares or obligations of,
1048 or other interests in, any entities organized for any purpose within or outside the Commonwealth and (ii)
1049 obligations of any person or corporation;

1050 19. Participate in joint ventures with individuals, corporations, governmental bodies or agencies,
1051 partnerships, associations, insurers, or other entities to facilitate any activities or programs consistent
1052 with the public purposes and intent of this chapter;

1053 20. Create a nonprofit entity for the purpose of soliciting, accepting, and administering grants,
1054 outright gifts and bequests, endowment gifts and bequests, and gifts and bequests in trust. Such entity
1055 shall not engage in trust business or duplicate such activities by the University or its related foundations;

1056 21. Provide appropriate assistance, including making loans and providing time of employees, to
1057 corporations, partnerships, associations, joint ventures, or other entities whether such entities are owned
1058 or controlled in whole or in part or directly or indirectly by the Authority;

1059 22. Provide, promote, support, and sponsor education and scientific research in medicine, public
1060 health, and related fields and promote public knowledge in medicine, public health, and related fields;

1061 23. Administer programs to assist in the delivery of medical and related services to the citizens
1062 of the Commonwealth and others;

1063 24. Participate in and administer federal, state, and local programs affecting, supporting, or
1064 carrying out any of its purposes; and

1065 25. Exercise independently the powers conferred by this chapter in furtherance of its corporate
1066 and public purposes.

1067 B. The exercise of the powers permitted by this chapter shall be deemed the performance of
1068 essential governmental functions and matters of public necessity for the entire Commonwealth in the

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provision of health care, medical and health sciences education, and research for which public moneys may be borrowed, loaned, spent, or otherwise utilized and private property may be utilized or acquired.

§ 23.1-2408. Moneys of the Authority.

A. All moneys of the Authority derived from any source shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies ~~are authorized to~~ may give security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other orders of the treasurer of the Authority or such other person as the Authority may authorize to execute such warrants or orders.

B. Notwithstanding any provision of law to the contrary, the Authority may invest its operating funds in any obligations or securities that are considered legal investments for public funds in accordance with the Investment of Public Funds Act (§ 2.2-4500 et seq.). The board shall adopt written investment guidelines and retain an independent investment advisory firm or consultant to review at least every five years the suitability of the Authority's investments and the consistency of such investments with the investment guidelines.

§ 23.1-2409. Grants and loans from localities.

Localities ~~are authorized to~~ may lend or donate money or other property to the Authority for any of the Authority's purposes. The local governing body making the grant or loan may restrict the use of such grants or loans to a specific project within or outside that locality.

§ 23.1-2413. Capital projects.

A. All capital projects of the Authority shall be approved by the board. Within 30 days after approval of any capital project in excess of \$5 million, the board shall notify the House Appropriations and Senate Finance Committees of the scope, cost, and construction schedule of the proposed capital project. The board may undertake the project unless either Committee raises objections within 30 days of the notification, in which case the Authority shall not undertake the project until such objections are resolved.

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1095 B. Before the Authority materially increases the size or materially changes the scope of any
1096 capital project for which construction has commenced, such project shall be approved again by the board
1097 in accordance with subsection A and, in the case of any capital project in excess of \$5 million, presented
1098 again to the House Appropriations and Senate Finance Committees in accordance with subsection A.

1099 C. Notwithstanding any provision of law to the contrary, the Authority is not subject to any
1100 further process or procedure that requires the submission, review, or approval of any capital project;
1101 however, the Authority shall ensure that ~~BOCA~~ [Building Officials and Code Administrators \(BOCA\)](#)
1102 Code and fire safety inspections are conducted for any capital project and that such projects are
1103 inspected by the State Fire Marshal or his designee prior to certification for building occupancy.

1104 **§ 23.1-2415. Employees of the Authority.**

1105 A. Employees of the Authority shall be employed on such terms and conditions as established by
1106 the Authority. The board shall develop and adopt policies and procedures that afford its employees
1107 grievance rights, ensure that employment decisions are based upon the merit and fitness of applicants,
1108 and prohibit discrimination on the basis of race, religion, color, sex, or national origin.

1109 B. The Authority shall issue a written notice to all individuals whose employment is transferred
1110 to the Authority. The date upon which such written notice is issued is referred to in this section as the
1111 "Option Date." Each individual whose employment is transferred to the Authority may, by written
1112 request made within 180 days of the Option Date, elect not to become employed by the Authority. Any
1113 employee of MCV Hospitals who (i) elects not to become employed by the Authority; (ii) is not
1114 reemployed by any department, institution, board, commission, or agency of the Commonwealth; (iii) is
1115 not offered alternative employment by the Authority; (iv) is not offered a position with the Authority for
1116 which the employee is qualified; or (v) is offered a position by the Authority that requires relocation or a
1117 reduction in salary is eligible for the severance benefits conferred by the provisions of the Workforce
1118 Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment with the Authority has
1119 voluntarily separated from state employment and is not eligible for the severance benefits conferred by
1120 the provisions of the Workforce Transition Act.

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1121 C. Without limiting its power generally with respect to employees, the Authority may employ
1122 any University employee utilized in the operation of the hospital facilities and assume obligations under
1123 any employment agreement for such employee, and the University may assign any such contract to the
1124 Authority.

1125 D. The Authority and the University may enter into agreements providing for the purchase of
1126 services of University employees utilized in the operation of the hospital facilities by paying agreed-
1127 upon amounts to cover all or part of the salaries and other costs of such employees.

1128 E. Notwithstanding any other provision of law to the contrary, any employee whose employment
1129 is transferred to the Authority as a result of this chapter and who is a member of any plan for providing
1130 health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 shall continue to be a
1131 member of such health insurance plan under the same terms and conditions of such plan.

1132 F. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage
1133 to employees who elect to continue to be members of the state employees' health insurance plan shall be
1134 paid by the Authority.

1135 G. Any employee of the Authority may elect to become a member of any health insurance plan
1136 established by the Authority. The Authority may (i) establish a health insurance plan for the benefit of
1137 its employees, residents, and interns and (ii) enter into an agreement with the Department of Human
1138 Resource Management providing for the coverage of its employees, interns, and residents under the state
1139 employees' health insurance plan, provided that such agreement requires the Authority to pay the costs
1140 of providing health insurance coverage under such plan.

1141 H. Notwithstanding any other provision of law to the contrary, any employee whose employment
1142 is transferred to the Authority as a result of this chapter and who is a member of the Virginia Retirement
1143 System or another retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title
1144 51.1 shall continue to be a member of the Virginia Retirement System or such other authorized
1145 retirement plan under the same terms and conditions of such plan. Any such employee and any
1146 employee employed by the Authority between July 1, 1997, and June 30, 1998, who elected to be
1147 covered by the Virginia Retirement System may elect, during an open enrollment period from April 1,

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2001, through April 30, 2001, to become a member of the retirement ~~program~~ plan established by the Authority for the benefit of its employees pursuant to § 23.1-2416 by transferring assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. The Authority shall reimburse the Virginia Retirement System for the actual cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who elect to transfer to the Authority's retirement plan. The following rules shall apply to such transfers:

1. With respect to any transferred employee who elects to remain a member of the Virginia Retirement System or another authorized retirement plan, the Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or such other authorized retirement plan for retirement in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for such transferred employees.

2. Transferred employees who elect to become members of the retirement ~~program~~ plan established by the Authority for the benefit of its employees shall be given full credit for their creditable service as defined in § 51.1-124.3, vesting and benefit accrual under the retirement ~~program~~ plan established by the Authority. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1.

3. For transferred employees who elect to become members of the retirement ~~program~~ plan established by the Authority, the Virginia Retirement System or other such authorized plan shall transfer to the retirement plan established by the Authority assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. For the purposes of such calculation, the basic benefit is the benefit accrued under the Virginia Retirement System or another authorized retirement plan based on creditable service and average final compensation as defined in § 51.1-124.3 and determined as of the transfer date. The actuarial present value shall be determined on the same basis, using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or such other authorized retirement plan so that the transfer of assets to the

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1174 retirement plan established by the Authority has no effect on the funded status and financial stability of
1175 the Virginia Retirement System or other such authorized retirement plan.

1176 **§ 23.1-2607. Purchase of electric power and energy.**

1177 A. For purposes of this section:

1178 "Other party" means any other entity, including any (i) municipality, public institution of higher
1179 education, or political subdivision, public authority, agency, or instrumentality of the Commonwealth, ~~or~~
1180 another state, or the United States or (ii) partnership, limited liability company, nonprofit corporation,
1181 electric cooperative, or investor-owned utility, whether created, incorporated, or otherwise organized
1182 and existing under the laws of the Commonwealth ~~or~~, another state, or the United States.

1183 "Project" means any (i) system or facilities for the generation, transmission, transformation, or
1184 supply of electrical power and energy by any means whatsoever, including fuel, fuel transportation, and
1185 fuel supply resources; (ii) electric generating unit situated at a particular site in the continental United
1186 States; (iii) interest in such system, facilities, or unit, whether an undivided interest as a tenant in
1187 common or otherwise; or (iv) right to the output, capacity, or services of such system, facilities, or unit.

1188 B. The University may contract with any other party to buy power and energy to meet its present
1189 or future requirements. Any such contract may provide that (i) the source of such power and energy is
1190 limited to a specified project; (ii) replacement power and energy shall be provided; or (iii) the University
1191 shall be obligated to make payments required by the contract whether the project is completed, operable,
1192 or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of
1193 the output of a project or the amount of power and energy contracted for; (iv) payments required by the
1194 contract (a) are not subject to any reduction, whether by offset or otherwise, (b) are not conditioned
1195 upon the performance or nonperformance of any other party, (c) shall be made solely from the revenues
1196 derived by the University from the ownership and operation of the electric system of the University, (d)
1197 may be secured by a pledge of and lien upon the electric system of the University, and (e) shall
1198 constitute an operating expense of the electric system of the University; (v) in the event of default by the
1199 University or any other party to the contract in the performance of its obligations for any project, the
1200 University or any other party to the contract for such project shall succeed to the rights and interests and

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1201 assume the obligations of the defaulting party, either pro rata or as may be otherwise agreed upon in the
1202 contract; or (vi) no other party shall be obligated to provide power and energy in the event that (a) the
1203 project is inoperable, (b) the output of the project is subject to suspension, interference, reduction, or
1204 curtailment, or (c) a force majeure occurs.

1205 C. Notwithstanding any other charter or provision of law to the contrary, no such contract, with
1206 respect to the sale or purchase of capacity, output, power, or energy from a project, shall exceed 50 years
1207 from the date that the project is estimated to be placed in normal continuous operation.

1208 D. The execution and effectiveness of any such contract are not subject to any authorizations and
1209 approvals by the Commonwealth or any agency, commission, instrumentality, or political subdivision of
1210 the Commonwealth except as specifically required by law.

1211 E. No obligation under any such contract shall constitute a legal or equitable pledge, charge, lien,
1212 or encumbrance upon any property of the University or upon any of its income, receipts, or revenues,
1213 except the revenues of its electric system, and the faith and credit of the University shall not be pledged
1214 for the payment of any obligation under any such contract.

1215 F. The University shall fix, charge, and collect rents, rates, fees, and charges for electric power
1216 and energy and other services, facilities, and commodities sold, furnished, or supplied through its
1217 electric system sufficient to provide revenues adequate to meet its obligations under any such contract
1218 and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues,
1219 including amounts sufficient to pay the principal of and interest on bonds of the University issued for
1220 purposes relating to its electric system. Any pledge made by the University pursuant to this subsection is
1221 governed by the laws of the Commonwealth.

1222 **§ 23.1-2631. Executive director.**

1223 A. The principal administrative officer of the Water Center shall be an executive director who
1224 shall be appointed by the president of the University, subject to the approval of the board. The executive
1225 director shall be under the supervision of the president of the University.

1226 B. The executive director shall exercise all powers imposed upon him by law, carry out the
1227 specific duties imposed upon him by the president of the University, and develop appropriate policies

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and procedures, with the advice of the Virginia Water Resources Research Center Statewide Advisory Board, for (i) identifying priority research problems; (ii) collaborating with the General Assembly; federal, state, and local governmental agencies; and water user groups in the formulation of its research programs; (iii) selecting projects to be funded; and (iv) disseminating information and transferring technology designed to help resolve water and related land problems of the Commonwealth. ~~He~~ The executive director shall employ such personnel and secure such services as may be required to carry out the purposes of this article and expend appropriated funds and accept moneys for cost-sharing on projects funded with federal and private funds.

§ 23.1-2702. Powers and duties.

A. The board shall appoint all professors, teachers, and agents, and fix their salaries, and generally direct the affairs of the University.

B. The board may confer degrees.

§ 23.1-2903. State Board; officers, meetings, and regulations.

A. The State Board shall elect a chairman from its membership and may provide for the election of one of its members as vice-chairman.

B. The State Board shall meet at least four times annually and on the call of the chairman when in his opinion additional meetings are expedient or necessary.

C. Eight members of the State Board shall constitute a quorum for all purposes.

D. The main office of the State Board shall be in the Commonwealth.

E. The State Board ~~is authorized to~~ may adopt necessary regulations for carrying out the purposes of this chapter.

§ 23.1-3131. Virginia Research Investment Fund.

A. There is hereby created in the state treasury a special nonreverting revolving fund to be known as the Virginia Research Investment Fund. The Fund shall be established on the books of the Comptroller. All moneys appropriated by the General Assembly for the Fund, and from any other sources public or private, shall be paid into the state treasury and credited to the Fund. Interest and other income earned on the Fund shall be credited to the Fund. Any moneys remaining in the Fund, including

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1255 interest and other income thereon, at the end of each fiscal year shall not revert to the general fund but
1256 shall remain in the Fund.

1257 B. 1. Notwithstanding any other provision of law, the General Assembly may specifically
1258 designate that certain moneys appropriated to the Fund be invested, reinvested, and managed by the
1259 Board of the Virginia Retirement System as provided in § 51.1-124.38. The State Treasurer shall not be
1260 held liable for losses suffered by the Virginia Retirement System on investments made under the
1261 authority of this subsection.

1262 2. No more than \$4 million of moneys so invested, net of any administrative fee assessed
1263 pursuant to subsection E of § 51.1-124.38, may be awarded through grants or loans in a fiscal year for
1264 any purpose permitted by this article. At the direction of the Committee, the State Comptroller may
1265 annually request a disbursement of \$4 million from the moneys invested by the Board of the Virginia
1266 Retirement System, to be held with other moneys in the Fund not subject to such investment. At the end
1267 of each fiscal year, if less than \$4 million of such annual allocation is awarded as grants or loans in a
1268 calendar year, the Comptroller shall return the remainder of the annual \$4 million allocation to the
1269 Board of the Virginia Retirement System for reinvestment pursuant to § 51.1-124.38.

1270 3. Any loans awarded pursuant to this article shall be paid by the Comptroller from the \$4
1271 million annual allocation set forth in subdivision 2. The recipient of a loan shall repay the loan pursuant
1272 to the terms set forth by the Committee. At the end of each fiscal year, the Comptroller shall return any
1273 repayments received from loan recipients to the Board of the Virginia Retirement System for
1274 reinvestment pursuant to § 51.1-124.38.

1275 C. Moneys in the Fund shall be used solely for grants and loans to (i) promote research and
1276 development excellence in the Commonwealth; (ii) foster innovative and collaborative research,
1277 development, and commercialization efforts in the Commonwealth in projects and programs with a high
1278 potential for economic development and job creation opportunities; (iii) position the Commonwealth as
1279 a national leader in science-based and technology-based research, development, and commercialization;
1280 (iv) attract and effectively recruit and retain eminent researchers to enhance research superiority at
1281 public institutions of higher education; and (v) encourage cooperation and collaboration among higher

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education research institutions, and with the private sector, in areas and with activities that foster economic development and job creation in the Commonwealth. Areas of focus for awards shall be those areas identified in the Commonwealth Research and Technology Strategic Roadmap, and shall include ~~but not be limited to~~ the biosciences, personalized medicine, cybersecurity, data analytics, and other areas designated in the general appropriation act.

D. The disbursement of grants and loans from the Fund shall be made by the State Comptroller at the written request of the Committee.

§ 23.1-3133. Award from Virginia Research Investment Fund.

A. The Council, in consultation with the Committee, shall establish guidelines, procedures, and objective criteria for the application for and award of grants and loans from the Fund. Such guidelines, procedures, and criteria, and any updates thereto, shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance. The criteria for the award of grants and loans shall consider other grants, awards, loans, or funds awarded to the proposed program or project by the Commonwealth and shall require an applicant to indicate other applications for state grants, awards, loans, or funds currently pending at the time of the application for an award from the Fund. The criteria shall consider the potential of the program or project for which a grant or loan is sought to (i) culminate in the commercialization of research; (ii) culminate in the formation or spin-off of viable bioscience, biotechnology, cybersecurity, genomics, or similar companies; (iii) promote the build-out of scientific areas of expertise in science and technology; (iv) promote applied research and development; (v) provide modern facilities or infrastructure for research and development; (vi) result in significant capital investment and job creation; or (vii) promote collaboration among the public institutions of higher education ~~in the Commonwealth~~. Such criteria shall also require that the program or project for which a grant or loan is sought be related to an area identified in the Commonwealth Research Technology Strategic Roadmap.

B. Grants and loans may be awarded to public institutions of higher education ~~in the Commonwealth~~ or collaborations between public institutions of higher education ~~in the Commonwealth~~

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and private entities. Any award from the Fund shall require a match of funds at least equal to the amount of the award.

C. Applications for grants and loans from the Fund shall be received by the Council in accordance with the procedures developed pursuant to subsection A. Upon confirmation that an application is complete, the Council shall forward the application to an entity with recognized science and technology expertise for a review and certification of the scientific merits of the proposal, including a scoring or prioritization of applicant programs and projects deemed viable by the reviewing entity. Such entities include, ~~but are not limited to,~~ the Virginia Biosciences Health Research Corporation, the Innovation and Entrepreneurship Investment Authority, the Virginia Academy of Science, Engineering and Medicine, or any other entity deemed appropriate by the Council, including a scientific advisory committee created by the Council for the sole purpose of reviewing one or more applications received pursuant to this article.

D. Any proposal receiving a favorable evaluation pursuant to subsection C shall be forwarded, along with the scoring or prioritization, to the Committee for further review and a decision whether to award the proposal a grant or loan from the Fund. The award of a grant or loan from the Fund shall be subject to any terms and conditions set forth by the Committee for the award. All decisions by the Committee shall be final and not subject to further review or appeal. The Governor may announce any award approved by the Committee.

§ 23.1-3208. Regulations.

A. The board or its executive committee may adopt regulations concerning the use and visitation of properties under the control of the Jamestown-Yorktown Foundation to protect and secure such properties and the public enjoyment of such properties.

B. Any person who knowingly violates a regulation of the Foundation may be requested by an agent or employee of the Foundation to leave the property and upon the failure of such person ~~so~~ to do so is guilty of trespass as provided in § 18.2-119.

§ 23.1-3216. Virginia Museum of Fine Arts established.

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The Virginia Museum of Fine Arts (the Museum) is established as an educational institution in the Commonwealth and a public body and instrumentality for the dissemination of education.

§ 23.1-3217. Board of trustees.

A. The management and control of the Virginia Museum of Fine Arts ~~(the Museum)~~ and its building, contents, furnishings, grounds, and other properties is vested in a board of trustees (the board) composed of (i) the Governor, the Speaker of the House of Delegates, and the mayor of the City of Richmond, who shall serve ex officio, and (ii) at least 25 but not more than 35 nonlegislative citizen members. Nonlegislative citizen members shall be appointed by the Governor after consideration of a list of nominees from the Museum submitted at least 60 days before the expiration of the member's term for which the nominations are being made.

B. Nonlegislative citizen members shall be appointed for terms of five years. No nonlegislative citizen member is eligible to serve more than two consecutive five-year terms; however, a member appointed to serve an unexpired term is eligible to serve two consecutive five-year terms immediately succeeding such unexpired term.

C. Nine members shall constitute a quorum at any meeting and a majority vote of those members present shall control in all matters.

D. The board shall adopt bylaws governing its organization and procedure and may alter and amend the bylaws.

E. The board shall elect one of its members president of the Museum.

F. The board may provide for an executive committee composed of at least three members that may exercise the powers vested in it and perform the duties imposed upon it by the board.

§ 25.1-100. Definitions.

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

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

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1360 "Body determining just compensation" means a panel of commissioners empanelled pursuant to
1361 § 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a
1362 jury is appointed or empanelled.

1363 "Court" means the court having jurisdiction as provided in § 25.1-201.

1364 "Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing
1365 of the petition pursuant to § 25.1-205, whichever occurs first.

1366 "Freeholder" means any person owning an interest in land in fee, including a person owning a
1367 condominium unit.

1368 "Land" means real estate and all rights and appurtenances thereto, together with the structures
1369 and other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

1370 "Locality" or "local government" means a county, city, or town, as the context may require.

1371 "Lost access" means a material impairment of direct access to property, a portion of which has
1372 been taken or damaged as set out in subsection B of § 25.1-230.1. This definition of the term "lost
1373 access" shall not diminish any existing right or remedy, and shall not create any new right or remedy
1374 other than to allow the body determining just compensation to consider a change in access in awarding
1375 just compensation.

1376 "Lost profits" means a loss of business profits, as defined in § 25.1-230.1, subject to adjustment
1377 using generally accepted accounting principles consistently applied, from a business or farm operation
1378 for a period not to exceed (i) three years from the date of valuation if less than the entire parcel of
1379 property is taken or (ii) one year from the date of valuation if the entire parcel of property is taken that is
1380 suffered as a result of a taking of the property on which the business or farm operation is located,
1381 provided (a) the business is owned by the owner of the property taken, or by a tenant whose leasehold
1382 interest grants the tenant exclusive possession of substantially all the property taken, or (b) the farm
1383 operation is operated by the owner of the property taken, or by a tenant using for a farm operation the
1384 property taken, to the extent that the loss is determined and proven pursuant to subsection C of § 25.1-
1385 230.1. This definition of the term "lost profits" shall not create any new right or remedy or diminish any
1386 existing right or remedy other than to allow the body determining just compensation to consider lost

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1387 profits in awarding just compensation if a person asserts a right to lost profits in a claim for
1388 compensation.

1389 "Owner" means any person who owns property, provided that the person's ownership of the
1390 property is of record in the land records of the clerk's office of the circuit court of the county or city
1391 where the property is located. The term "owner" shall not include trustees or beneficiaries under a deed
1392 of trust, any person with a security interest in the property, or any person with a judgment or lien against
1393 the property. This definition of the term "owner" shall not affect in any way the valuation of property.

1394 "Person" means any individual; firm; cooperative; association; corporation; limited liability
1395 company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture;
1396 receiver; trustee in bankruptcy or any other person acting in a fiduciary or representative capacity,
1397 whether appointed by a court or otherwise; club, society or other group or combination acting as a unit;
1398 the Commonwealth or any department, agency or instrumentality thereof; any city, county, town, or
1399 other political subdivision or any department, agency or instrumentality thereof; or any interstate body
1400 to which the Commonwealth is a party.

1401 "Petitioner" or "condemnor" means any person who possesses the power to exercise the right of
1402 eminent domain and who seeks to exercise such power. The term "petitioner" or "condemnor" includes a
1403 state agency.

1404 "Property" means land and personal property, and any right, title, interest, estate or claim in or to
1405 such property.

1406 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii)
1407 public authority, municipal corporation, local governmental unit or political subdivision of the
1408 Commonwealth or any department, agency or instrumentality thereof; (iii) person who has the authority
1409 to acquire property by eminent domain under state law; or (iv) two or more of the aforementioned that
1410 carry out projects that cause persons to be displaced.

1411 "State institution" means any (i) ~~educational~~ institution enumerated in § 23.1-1100 or (ii) state
1412 hospital or state training center operated by the Department of Behavioral Health and Developmental
1413 Services.

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§ 32.1-299. Distribution of bodies.

A. The bodies received pursuant to § 32.1-298 shall be distributed by the Commissioner to institutions and individuals as they may be needed for the purposes of scientific education and training in health and related subjects as follows:

1. First, to the medical schools in ~~Virginia~~ the Commonwealth;

2. Second, equitably to ~~the several colleges and schools of this~~ institutions of higher education and other schools in the Commonwealth that are authorized by law to teach health science and issue diplomas and such physicians and surgeons as the Commissioner may designate;

3. Third, to ~~colleges and schools~~ institutions of higher education and other schools in other states and the District of Columbia that are authorized by law to teach health science and issue diplomas.

B. Before any institution or individual may receive any body pursuant to this section, such institution or individual shall have given a bond to the Commonwealth in the penalty of \$1,000 with condition that any body received shall be used only for scientific education and training in health and related subjects. Evidence of such bond shall be filed with the Commissioner.

C. All expenses incurred in the distribution and delivery of bodies pursuant to this section shall be paid by those receiving the bodies in such amount as may be prescribed by the Commissioner.

D. The Commissioner is authorized to employ carriers to effect the distribution of dead human bodies pursuant to this section. Any carrier so employed shall obtain a receipt by name or, if the name be unknown, by a description for each body delivered by him and shall deposit such receipt with the Commissioner.

§ 44-120. Protection of the uniform.

It shall be unlawful for any person, not an officer, warrant officer or enlisted person in the armed forces of the United States, to wear the duly prescribed uniform thereof, or any distinctive part of such uniform, or a uniform any part of which is similar to a distinctive part of the duly prescribed uniform of the armed forces of the United States.

The foregoing provision shall not be construed so as to prevent officers, warrant officers or enlisted persons of the National Guard, nor to prevent members of the organization known as the Boy

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1441 Scouts of America, or such other organizations as the Secretary of Defense may designate, from wearing
1442 their prescribed uniforms; nor to prevent persons who in time of war have served honorably as officers
1443 of the armed forces of the United States and whose most recent service was terminated by an honorable
1444 discharge, muster out, or resignation, from wearing, upon occasions of ceremony, the uniform of the
1445 highest grade they have held in such service; nor to prevent any person who has been honorably
1446 discharged from the armed forces of the United States from wearing his uniform from the place of his
1447 discharge to his home, within three months after his discharge; nor to prevent the members of military
1448 societies composed entirely of honorably discharged officers and enlisted persons, or both, of the armed
1449 forces of the United States from wearing, upon occasions of ceremony, the uniform duly prescribed by
1450 such societies to be worn by members thereof; nor to prevent the instructors and members of the duly
1451 organized cadet corps of any ~~educational institution~~ school offering a regular course in military
1452 instruction from wearing the uniform duly prescribed by appropriate respective authority to be worn by
1453 instructors and members of such cadet corps; nor to prevent the instructors and members of such duly
1454 organized cadet corps of such ~~institution of learning~~ school offering a regular course in military
1455 instruction and at which an officer, warrant officer or enlisted person of the armed forces of the United
1456 States is lawfully detailed for duty as instructor in military science and tactics, from wearing the uniform
1457 duly prescribed by appropriate authority to be worn by instructors and members of such cadet corps; nor
1458 to prevent civilians attending a course of military instruction authorized and conducted by the military
1459 authorities of the United States from wearing while attending such a course the uniform authorized and
1460 prescribed by such military authorities to be worn during such course of instruction; nor to prevent any
1461 person from wearing the uniform of the armed forces of the United States, in any playhouse or theater or
1462 in motion picture films or television while actually engaged in representing therein a military character
1463 not tending to bring discredit or reproach upon the armed forces of the United States.

1464 The uniform worn by members of military societies, or the instructors and members of the cadet
1465 corps referred to in the preceding paragraph, shall include some distinctive mark or insignia approved by
1466 the Secretary of Defense, to distinguish such uniforms from the uniform of the armed forces of the
1467 United States. The members of the military societies and the instructors and members of the cadet corps

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1468 hereinbefore mentioned shall not wear the insignia of rank prescribed to be worn by the officers of the
1469 armed forces of the United States, or any insignia of rank similar thereto, unless otherwise authorized.

1470 Any person who offends against the provisions of this section shall, on conviction, be punished
1471 by a fine not exceeding \$100, or by imprisonment not exceeding 30 days, or by both such fine and
1472 imprisonment.

1473 **§ 46.2-100. Definitions.**

1474 As used in this title, unless the context requires a different meaning:

1475 "All-terrain vehicle" means a motor vehicle having three or more wheels that is powered by a
1476 motor and is manufactured for off-highway use. "All-terrain vehicle" does not include four-wheeled
1477 vehicles commonly known as "go-carts" that have low centers of gravity and are typically used in racing
1478 on relatively level surfaces, nor does the term include any riding lawn mower.

1479 "Antique motor vehicle" means every motor vehicle, as defined in this section, which was
1480 actually manufactured or designated by the manufacturer as a model manufactured in a calendar year not
1481 less than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

1482 "Antique trailer" means every trailer or semitrailer, as defined in this section, that was actually
1483 manufactured or designated by the manufacturer as a model manufactured in a calendar year not less
1484 than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

1485 "Autocycle" means a three-wheeled motor vehicle that has a steering wheel and seating that does
1486 not require the operator to straddle or sit astride and is manufactured to comply with federal safety
1487 requirements for motorcycles. Except as otherwise provided, an autocycle shall not be deemed to be a
1488 motorcycle.

1489 "Automobile or watercraft transporters" means any tractor truck, lowboy, vehicle, or
1490 combination, including vehicles or combinations that transport motor vehicles or watercraft on their
1491 power unit, designed and used exclusively for the transportation of motor vehicles or watercraft.

1492 "Bicycle" means a device propelled solely by human power, upon which a person may ride either
1493 on or astride a regular seat attached thereto, having two or more wheels in tandem, including children's

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1494 bicycles, except a toy vehicle intended for use by young children. For purposes of Chapter 8 (§ 46.2-800
1495 et seq.), a bicycle shall be a vehicle while operated on the highway.

1496 "Bicycle lane" means that portion of a roadway designated by signs and/or pavement markings
1497 for the preferential use of bicycles, electric power-assisted bicycles, and mopeds.

1498 "Business district" means the territory contiguous to a highway where 75 percent or more of the
1499 property contiguous to a highway, on either side of the highway, for a distance of 300 feet or more along
1500 the highway, is occupied by land and buildings actually in use for business purposes.

1501 "Camping trailer" means every vehicle that has collapsible sides and contains sleeping quarters
1502 but may or may not contain bathing and cooking facilities and is designed to be drawn by a motor
1503 vehicle.

1504 "Cancel" or "cancellation" means that the document or privilege cancelled has been annulled or
1505 terminated because of some error, defect, or ineligibility, but the cancellation is without prejudice and
1506 reapplication may be made at any time after cancellation.

1507 "Chauffeur" means every person employed for the principal purpose of driving a motor vehicle
1508 and every person who drives a motor vehicle while in use as a public or common carrier of persons or
1509 property.

1510 "Circular intersection" means an intersection that has an island, generally circular in design,
1511 located in the center of the intersection, where all vehicles pass to the right of the island. Circular
1512 intersections include roundabouts, rotaries, and traffic circles.

1513 "Commission" means the State Corporation Commission.

1514 "Commissioner" means the Commissioner of the Department of Motor Vehicles of the
1515 Commonwealth.

1516 "Converted electric vehicle" means any motor vehicle, other than a motorcycle or autocycle, that
1517 has been modified subsequent to its manufacture to replace an internal combustion engine with an
1518 electric propulsion system. Such vehicles shall retain their original vehicle identification number, line-
1519 make, and model year. A converted electric vehicle shall not be deemed a "reconstructed vehicle" as
1520 defined in this section unless it has been materially altered from its original construction by the removal,

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1521 addition, or substitution of new or used essential parts other than those required for the conversion to
1522 electric propulsion.

1523 "Crosswalk" means that part of a roadway at an intersection included within the connections of
1524 the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the
1525 absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an
1526 intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the
1527 surface.

1528 "Decal" means a device to be attached to a license plate that validates the license plate for a
1529 predetermined registration period.

1530 "Department" means the Department of Motor Vehicles of the Commonwealth.

1531 "Disabled parking license plate" means a license plate that displays the international symbol of
1532 access in the same size as the numbers and letters on the plate and in a color that contrasts with the
1533 background.

1534 "Disabled veteran" means a veteran who (i) has either lost, or lost the use of, a leg, arm, or hand;
1535 (ii) is blind; or (iii) is permanently and totally disabled as certified by the U.S. Department of Veterans
1536 Affairs. A veteran shall be considered blind if he has a permanent impairment of both eyes to the
1537 following extent: central visual acuity of 20/200 or less in the better eye, with corrective lenses, or
1538 central visual acuity of more than 20/200, if there is a field defect in which the peripheral field has
1539 contracted to such an extent that the widest diameter of visual field subtends an angular distance no
1540 greater than 20 degrees in the better eye.

1541 "Driver's license" means any license, including a commercial driver's license as defined in the
1542 Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), issued under the laws of the
1543 Commonwealth authorizing the operation of a motor vehicle.

1544 "Electric personal assistive mobility device" means a self-balancing two-nontandem-wheeled
1545 device that is designed to transport only one person and powered by an electric propulsion system that
1546 limits the device's maximum speed to 15 miles per hour or less. For purposes of Chapter 8 (§ 46.2-800 et
1547 seq.), an electric personal assistive mobility device shall be a vehicle when operated on a highway.

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1548 "Electric power-assisted bicycle" means a vehicle that travels on not more than three wheels in
1549 contact with the ground and is equipped with (i) pedals that allow propulsion by human power and (ii)
1550 an electric motor with an input of no more than 1,000 watts that reduces the pedal effort required of the
1551 rider. For the purposes of Chapter 8 (§ 46.2-800 et seq.), an electric power-assisted bicycle shall be a
1552 vehicle when operated on a highway.

1553 "Essential parts" means all integral parts and body parts, the removal, alteration, or substitution
1554 of which will tend to conceal the identity of a vehicle.

1555 "Farm tractor" means every motor vehicle designed and used as a farm, agricultural, or
1556 horticultural implement for drawing plows, mowing machines, and other farm, agricultural, or
1557 horticultural machinery and implements, including self-propelled mowers designed and used for
1558 mowing lawns.

1559 "Farm utility vehicle" means a vehicle that is powered by a motor and is designed for off-road
1560 use and is used as a farm, agricultural, or horticultural service vehicle, generally having four or more
1561 wheels, bench seating for the operator and a passenger, a steering wheel for control, and a cargo bed.

1562 "Farm utility vehicle" does not include pickup or panel trucks, golf carts, low-speed vehicles, or riding
1563 lawn mowers.

1564 "Federal safety requirements" means applicable provisions of 49 U.S.C. § 30101 et seq. and all
1565 administrative regulations and policies adopted pursuant thereto.

1566 "Financial responsibility" means the ability to respond in damages for liability thereafter incurred
1567 arising out of the ownership, maintenance, use, or operation of a motor vehicle, in the amounts provided
1568 for in § 46.2-472.

1569 "Foreign market vehicle" means any motor vehicle originally manufactured outside the United
1570 States, which was not manufactured in accordance with 49 U.S.C. § 30101 et seq. and the policies and
1571 regulations adopted pursuant to that Act, and for which a Virginia title or registration is sought.

1572 "Foreign vehicle" means every motor vehicle, trailer, or semitrailer that is brought into the
1573 Commonwealth otherwise than in the ordinary course of business by or through a manufacturer or dealer
1574 and that has not been registered in the Commonwealth.

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1575 "Golf cart" means a self-propelled vehicle that is designed to transport persons playing golf and
1576 their equipment on a golf course.

1577 "Governing body" means the board of supervisors of a county, council of a city, or council of a
1578 town, as context may require.

1579 "Gross weight" means the aggregate weight of a vehicle or combination of vehicles and the load
1580 thereon.

1581 "Highway" means the entire width between the boundary lines of every way or place open to the
1582 use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys,
1583 and, for law-enforcement purposes, (i) the entire width between the boundary lines of all private roads or
1584 private streets that have been specifically designated "highways" by an ordinance adopted by the
1585 governing body of the county, city, or town in which such private roads or streets are located and (ii) the
1586 entire width between the boundary lines of every way or place used for purposes of vehicular travel on
1587 any property owned, leased, or controlled by the United States government and located in the
1588 Commonwealth.

1589 "Intersection" means (i) the area embraced within the prolongation or connection of the lateral
1590 curblines or, if none, then the lateral boundary lines of the roadways of two highways that join one
1591 another at, or approximately at, right angles, or the area within which vehicles traveling on different
1592 highways joining at any other angle may come in conflict; (ii) where a highway includes two roadways
1593 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting
1594 highway shall be regarded as a separate intersection, in the event such intersecting highway also
1595 includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways
1596 shall be regarded as a separate intersection; or (iii) for purposes only of authorizing installation of
1597 traffic-control devices, every crossing of a highway or street at grade by a pedestrian crosswalk.

1598 "Lane-use control signal" means a signal face displaying indications to permit or prohibit the use
1599 of specific lanes of a roadway or to indicate the impending prohibition of such use.

1600 "Law-enforcement officer" means any officer authorized to direct or regulate traffic or to make
1601 arrests for violations of this title or local ordinances authorized by law. For the purposes of access to

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1602 law-enforcement databases regarding motor vehicle registration and ownership only, "law-enforcement
1603 officer" also includes city and county commissioners of the revenue and treasurers, together with their
1604 duly designated deputies and employees, when such officials are actually engaged in the enforcement of
1605 §§ 46.2-752, 46.2-753, and 46.2-754 and local ordinances enacted thereunder.

1606 "License plate" means a device containing letters, numerals, or a combination of both, attached
1607 to a motor vehicle, trailer, or semitrailer to indicate that the vehicle is properly registered with the
1608 Department.

1609 "Light" means a device for producing illumination or the illumination produced by the device.

1610 "Low-speed vehicle" means any four-wheeled electrically powered or gas-powered vehicle,
1611 except a motor vehicle or low-speed vehicle that is used exclusively for agricultural or horticultural
1612 purposes or a golf cart, whose maximum speed is greater than 20 miles per hour but not greater than 25
1613 miles per hour and is manufactured to comply with safety standards contained in Title 49 of the Code of
1614 Federal Regulations, § 571.500.

1615 "Manufactured home" means a structure subject to federal regulation, transportable in one or
1616 more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more
1617 in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis
1618 and designed to be used as a dwelling with or without a permanent foundation when connected to the
1619 required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained
1620 therein.

1621 "Moped" means every vehicle that travels on not more than three wheels in contact with the
1622 ground that (i) has a seat that is no less than 24 inches in height, measured from the middle of the seat
1623 perpendicular to the ground; (ii) has a gasoline, electric, or hybrid motor that (a) displaces 50 cubic
1624 centimeters or less or (b) has an input of 1500 watts or less; (iii) is power-driven, with or without pedals
1625 that allow propulsion by human power; and (iv) is not operated at speeds in excess of 35 miles per hour.
1626 For purposes of this title, a moped shall be a motorcycle when operated at speeds in excess of 35 miles
1627 per hour. For purposes of Chapter 8 (§ 46.2-800 et seq.), a moped shall be a vehicle while operated on a
1628 highway.

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1629 "Motor-driven cycle" means every motorcycle that has a gasoline engine that (i) displaces less
1630 than 150 cubic centimeters; (ii) has a seat less than 24 inches in height, measured from the middle of the
1631 seat perpendicular to the ground; and (iii) has no manufacturer-issued vehicle identification number.

1632 "Motor home" means every private motor vehicle with a normal seating capacity of not more
1633 than 10 persons, including the driver, designed primarily for use as living quarters for human beings.

1634 "Motor vehicle" means every vehicle as defined in this section that is self-propelled or designed
1635 for self-propulsion except as otherwise provided in this title. Any structure designed, used, or
1636 maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling,
1637 sleeping place, office, or commercial space shall be considered a part of a motor vehicle. Except as
1638 otherwise provided, for the purposes of this title, any device herein defined as a bicycle, electric
1639 personal assistive mobility device, electric power-assisted bicycle, or moped shall be deemed not to be a
1640 motor vehicle.

1641 "Motorcycle" means every motor vehicle designed to travel on not more than three wheels in
1642 contact with the ground and is capable of traveling at speeds in excess of 35 miles per hour.

1643 "Motorcycle" does not include any "autocycle," "electric personal assistive mobility device," "electric
1644 power-assisted bicycle," "farm tractor," "golf cart," "moped," "motorized skateboard or foot-scooter,"
1645 "utility vehicle," or "wheelchair or wheelchair conveyance" as defined in this section.

1646 "Motorized skateboard or foot-scooter" means every vehicle, regardless of the number of its
1647 wheels in contact with the ground, that (i) has no seat, but is designed to be stood upon by the operator,
1648 (ii) has no manufacturer-issued vehicle identification number, and (iii) is powered by an electric motor
1649 having an input of no more than 1,000 watts or a gasoline engine that displaces less than 36 cubic
1650 centimeters. "Motorized skateboard or foot-scooter" includes vehicles with or without handlebars but
1651 does not include "electric personal assistive mobility devices."

1652 "Nonresident" means every person who is not domiciled in the Commonwealth, except: (i) any
1653 foreign corporation that is authorized to do business in the Commonwealth by the State Corporation
1654 Commission shall be a resident of the Commonwealth for the purpose of this title; in the case of
1655 corporations incorporated in the Commonwealth but doing business outside the Commonwealth, only

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1656 such principal place of business or branches located within the Commonwealth shall be dealt with as
1657 residents of the Commonwealth; (ii) a person who becomes engaged in a gainful occupation in the
1658 Commonwealth for a period exceeding 60 days shall be a resident for the purposes of this title except for
1659 the purposes of Chapter 3 (§ 46.2-300 et seq.); (iii) a person, other than (a) a nonresident student as
1660 defined in this section or (b) a person who is serving a full-time church service or proselyting mission of
1661 not more than 36 months and who is not gainfully employed, who has actually resided in the
1662 Commonwealth for a period of six months, whether employed or not, or who has registered a motor
1663 vehicle, listing an address in the Commonwealth in the application for registration, shall be deemed a
1664 resident for the purposes of this title, except for the purposes of the Virginia Commercial Driver's
1665 License Act (§ 46.2-341.1 et seq.).

1666 "Nonresident student" means every nonresident person who is enrolled as a full-time student in
1667 an accredited ~~institution of learning~~ school in the Commonwealth and who is not gainfully employed.

1668 "Off-road motorcycle" means every motorcycle designed exclusively for off-road use by an
1669 individual rider with not more than two wheels in contact with the ground. Except as otherwise provided
1670 in this chapter, for the purposes of this chapter off-road motorcycles shall be deemed to be
1671 "motorcycles."

1672 "Operation or use for rent or for hire, for the transportation of passengers, or as a property carrier
1673 for compensation," and "business of transporting persons or property" mean any owner or operator of
1674 any motor vehicle, trailer, or semitrailer operating over the highways in the Commonwealth who accepts
1675 or receives compensation for the service, directly or indirectly; but these terms do not mean a "truck
1676 lessor" as defined in this section and do not include persons or businesses that receive compensation for
1677 delivering a product that they themselves sell or produce, where a separate charge is made for delivery
1678 of the product or the cost of delivery is included in the sale price of the product, but where the person or
1679 business does not derive all or a substantial portion of its income from the transportation of persons or
1680 property except as part of a sales transaction.

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1681 "Operator" or "driver" means every person who either (i) drives or is in actual physical control of
1682 a motor vehicle on a highway or (ii) is exercising control over or steering a vehicle being towed by a
1683 motor vehicle.

1684 "Owner" means a person who holds the legal title to a vehicle; however, if a vehicle is the
1685 subject of an agreement for its conditional sale or lease with the right of purchase on performance of the
1686 conditions stated in the agreement and with an immediate right of possession vested in the conditional
1687 vendee or lessee or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee or
1688 lessee or mortgagor shall be the owner for the purpose of this title. In all such instances when the rent
1689 paid by the lessee includes charges for services of any nature or when the lease does not provide that
1690 title shall pass to the lessee on payment of the rent stipulated, the lessor shall be regarded as the owner
1691 of the vehicle, and the vehicle shall be subject to such requirements of this title as are applicable to
1692 vehicles operated for compensation. A "truck lessor" as defined in this section shall be regarded as the
1693 owner, and his vehicles shall be subject to such requirements of this title as are applicable to vehicles of
1694 private carriers.

1695 "Passenger car" means every motor vehicle other than a motorcycle or auticycle designed and
1696 used primarily for the transportation of no more than 10 persons, including the driver.

1697 "Payment device" means any credit card as defined in 15 U.S.C. § 1602 (k) or any "accepted
1698 card or other means of access" set forth in 15 U.S.C. § 1693a (1). For the purposes of this title, this
1699 definition shall also include a card that enables a person to pay for transactions through the use of value
1700 stored on the card itself.

1701 "Pickup or panel truck" means (i) every motor vehicle designed for the transportation of property
1702 and having a registered gross weight of 7,500 pounds or less or (ii) every motor vehicle registered for
1703 personal use, designed to transport property on its own structure independent of any other vehicle, and
1704 having a registered gross weight in excess of 7,500 pounds but not in excess of 10,000 pounds.

1705 "Private road or driveway" means every way in private ownership and used for vehicular travel
1706 by the owner and those having express or implied permission from the owner, but not by other persons.

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1707 "Reconstructed vehicle" means every vehicle of a type required to be registered under this title
1708 materially altered from its original construction by the removal, addition, or substitution of new or used
1709 essential parts. Such vehicles, at the discretion of the Department, shall retain their original vehicle
1710 identification number, line-make, and model year. Except as otherwise provided in this title, this
1711 definition shall not include a "converted electric vehicle" as defined in this section.

1712 "Replica vehicle" means every vehicle of a type required to be registered under this title not fully
1713 constructed by a licensed manufacturer but either constructed or assembled from components. Such
1714 components may be from a single vehicle, multiple vehicles, a kit, parts, or fabricated components. The
1715 kit may be made up of "major components" as defined in § 46.2-1600, a full body, or a full chassis, or a
1716 combination of these parts. The vehicle shall resemble a vehicle of distinctive name, line-make, model,
1717 or type as produced by a licensed manufacturer or manufacturer no longer in business and is not a
1718 reconstructed or specially constructed vehicle as herein defined.

1719 "Residence district" means the territory contiguous to a highway, not comprising a business
1720 district, where 75 percent or more of the property abutting such highway, on either side of the highway,
1721 for a distance of 300 feet or more along the highway consists of land improved for dwelling purposes, or
1722 is occupied by dwellings, or consists of land or buildings in use for business purposes, or consists of
1723 territory zoned residential or territory in residential subdivisions created under Chapter 22 (§ 15.2-2200
1724 et seq.) of Title 15.2.

1725 "Revoke" or "revocation" means that the document or privilege revoked is not subject to renewal
1726 or restoration except through reapplication after the expiration of the period of revocation.

1727 "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular
1728 travel, exclusive of the shoulder. A highway may include two or more roadways if divided by a physical
1729 barrier or barriers or an unpaved area.

1730 "Safety zone" means the area officially set apart within a roadway for the exclusive use of
1731 pedestrians and that is protected or is so marked or indicated by plainly visible signs.

1732 "School bus" means any motor vehicle, other than a station wagon, automobile, truck, or
1733 commercial bus, which is: (i) designed and used primarily for the transportation of pupils to and from

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1734 public, private or religious schools, or used for the transportation of the mentally or physically
1735 handicapped to and from a sheltered workshop; (ii) painted yellow and bears the words "School Bus" in
1736 black letters of a specified size on front and rear; and (iii) is equipped with warning devices prescribed
1737 in § 46.2-1090. A yellow school bus may have a white roof provided such vehicle is painted in
1738 accordance with regulations promulgated by the Department of Education.

1739 "Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a
1740 motor vehicle that some part of its own weight and that of its own load rests on or is carried by another
1741 vehicle.

1742 "Shared-use path" means a bikeway that is physically separated from motorized vehicular traffic
1743 by an open space or barrier and is located either within the highway right-of-way or within a separate
1744 right-of-way. Shared-use paths may also be used by pedestrians, skaters, users of wheel chairs or wheel
1745 chair conveyances, joggers, and other nonmotorized users.

1746 "Shoulder" means that part of a highway between the portion regularly traveled by vehicular
1747 traffic and the lateral curblin or ditch.

1748 "Sidewalk" means the portion of a street between the curb lines, or the lateral lines of a roadway,
1749 and the adjacent property lines, intended for use by pedestrians.

1750 "Snowmobile" means a self-propelled vehicle designed to travel on snow or ice, steered by skis
1751 or runners, and supported in whole or in part by one or more skis, belts, or cleats.

1752 "Special construction and forestry equipment" means any vehicle which is designed primarily for
1753 highway construction, highway maintenance, earth moving, timber harvesting or other construction or
1754 forestry work and which is not designed for the transportation of persons or property on a public
1755 highway.

1756 "Specially constructed vehicle" means any vehicle that was not originally constructed under a
1757 distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not a
1758 reconstructed vehicle as herein defined.

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1759 "Stinger-steered automobile or watercraft transporter" means an automobile or watercraft
1760 transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame
1761 behind and below the rearmost axle of the power unit.

1762 "Superintendent" means the Superintendent of the Department of State Police of the
1763 Commonwealth.

1764 "Suspend" or "suspension" means that the document or privilege suspended has been temporarily
1765 withdrawn, but may be reinstated following the period of suspension unless it has expired prior to the
1766 end of the period of suspension.

1767 "Tow truck" means a motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by
1768 means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight
1769 rating of at least 10,000 pounds. "Tow truck" also includes vehicles designed with a ramp on wheels and
1770 a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks."
1771 "Tow truck" does not include any "automobile or watercraft transporter," "stinger-steered automobile or
1772 watercraft transporter," or "tractor truck" as those terms are defined in this section.

1773 "Towing and recovery operator" means a person engaged in the business of (i) removing
1774 disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping
1775 and (ii) restoring to the highway or other location where they either can be operated or removed to other
1776 locations for repair or safekeeping vehicles that have come to rest in places where they cannot be
1777 operated.

1778 "Toy vehicle" means any motorized or propellant-driven device that has no manufacturer-issued
1779 vehicle identification number that is designed or used to carry any person or persons, on any number of
1780 wheels, bearings, glides, blades, runners, or a cushion of air. "Toy vehicle" does not include electric
1781 personal assistive mobility devices, electric power-assisted bicycles, mopeds, or motorcycles, nor does it
1782 include any nonmotorized or nonpropellant-driven devices such as bicycles, roller skates, or
1783 skateboards.

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1784 "Tractor truck" means every motor vehicle designed and used primarily for drawing other
1785 vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle
1786 attached thereto.

1787 "Traffic control device" means a sign, signal, marking, or other device used to regulate, warn, or
1788 guide traffic placed on, over, or adjacent to a street, highway, private road open to public travel,
1789 pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or
1790 in the case of a private road open to public travel, by authority of the private owner or private official
1791 having jurisdiction.

1792 "Traffic infraction" means a violation of law punishable as provided in § 46.2-113, which is
1793 neither a felony nor a misdemeanor.

1794 "Traffic lane" or "lane" means that portion of a roadway designed or designated to accommodate
1795 the forward movement of a single line of vehicles.

1796 "Trailer" means every vehicle without motive power designed for carrying property or
1797 passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured
1798 homes.

1799 "Truck" means every motor vehicle designed to transport property on its own structure
1800 independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

1801 "Truck" does not include any pickup or panel truck.

1802 "Truck lessor" means a person who holds the legal title to any motor vehicle, trailer, or
1803 semitrailer that is the subject of a bona fide written lease for a term of one year or more to another
1804 person, provided that: (i) neither the lessor nor the lessee is a common carrier by motor vehicle or
1805 restricted common carrier by motor vehicle or contract carrier by motor vehicle as defined in § 46.2-
1806 2000; (ii) the leased motor vehicle, trailer, or semitrailer is used exclusively for the transportation of
1807 property of the lessee; (iii) the lessor is not employed in any capacity by the lessee; (iv) the operator of
1808 the leased motor vehicle is a bona fide employee of the lessee and is not employed in any capacity by
1809 the lessor; and (v) a true copy of the lease, verified by affidavit of the lessor, is filed with the
1810 Commissioner.

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1811 "Utility vehicle" means a motor vehicle that is (i) designed for off-road use, (ii) powered by a
1812 motor, and (iii) used for general maintenance, security, agricultural, or horticultural purposes. "Utility
1813 vehicle" does not include riding lawn mowers.

1814 "Vehicle" means every device in, on or by which any person or property is or may be transported
1815 or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or
1816 tracks. For the purposes of Chapter 8 (§ 46.2-800 et seq.), bicycles, electric personal assistive mobility
1817 devices, electric power-assisted bicycles, and mopeds shall be vehicles while operated on a highway.

1818 "Wheel chair or wheel chair conveyance" means a chair or seat equipped with wheels, typically
1819 used to provide mobility for persons who, by reason of physical disability, are otherwise unable to move
1820 about as pedestrians. "Wheel chair or wheel chair conveyance" includes both three-wheeled and four-
1821 wheeled devices. So long as it is operated only as provided in § 46.2-677, a self-propelled wheel chair or
1822 self-propelled wheel chair conveyance shall not be considered a motor vehicle.

1823 **§ 54.1-2936. Limited licenses to certain graduates of foreign medical schools.**

1824 A. After receiving a recommendation from the dean of an accredited medical school which was
1825 reached after consultation with the chairmen of the departments in the school-or-college and having
1826 become satisfied that the applicant is a person of professorial rank whose knowledge and special training
1827 will benefit the medical school or educational programs sponsored by the medical school in affiliated
1828 hospitals, the Board may issue a limited license to practice medicine in the hospitals and outpatient
1829 clinics of the school-or-college or in a hospital formally affiliated with the medical school for purposes
1830 of undergraduate or postgraduate medical education to a graduate of a foreign medical school as long as
1831 he serves as a full-time or adjunct faculty member. This limited license shall be valid for a period of not
1832 more than one year, but may be renewed annually by the Board upon recommendation of the dean of the
1833 medical school and continued service as a full-time or adjunct faculty member.

1834 B. After receiving a recommendation from the dean of an accredited medical school which was
1835 reached after consultation with the chairmen of the departments in the school-or-college and having
1836 become satisfied that the applicant is a person whose attendance will benefit the medical school, the
1837 Board may issue a limited license to practice medicine as a fellow if such fellowship is ranked between

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the residency level and that of associate professor. This limited license shall only authorize the holder to practice medicine in the hospitals and outpatient clinics of the school while he is a full-time fellow. The license shall be valid for a period of not more than one year, but may be renewed upon recommendation of the dean of the medical school and continuation of the fellowship. A limited license to a foreign graduate engaged in a fellowship shall not be renewed more than twice.

§ 54.1-2941. Contracts of practitioners with approved schools and certain state agencies not prohibited.

This chapter shall not be construed to prohibit, forbid or prevent (i) any approved school of medicine, osteopathy, podiatry or chiropractic from contracting with any licensed practitioner to teach or participate in a preceptorship program in such ~~college school~~ on such terms of compensation as may be mutually satisfactory, which contract may prescribe the extent, if any, to which the practitioner may engage in private practice, or (ii) any institution, hospital, treatment center, sanatorium or other similar agency under the management and control of an agency of the Commonwealth from employing or contracting with any licensed practitioner to furnish professional services in the work of the agency, or to persons entitled to receive such care from the agency.

§ 54.1-3220. Certification for administration of diagnostic pharmaceutical agents.

In order to become certified to administer diagnostic pharmaceutical agents for the purpose of examining and determining abnormal or diseased conditions of the human eye or related structures, an optometrist shall:

1. Complete successfully a Board-approved course in general and ocular pharmacology as it relates to the practice of optometry which shall consist of at least ~~fifty-five~~ 55 classroom hours including a minimum of ~~fifteen~~ 15 classroom hours in general pharmacology, ~~twenty~~ 20 classroom hours in ocular pharmacology and ~~twenty~~ 20 classroom hours of clinical laboratory presented by ~~a college or university~~ an institution of higher education accredited by a regional or professional accreditation organization which is recognized or approved by the Council ~~on Post-Secondary Accreditation for Higher Education~~ Accreditation or by the ~~United States~~ U.S. Department of Education.

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2. Pass a Board-approved, performance-based examination on general and ocular pharmacology designed to test knowledge of the proper use, characteristics, pharmacological effects, indications, contraindications and emergency care associated with the use of diagnostic pharmaceutical agents as defined in this article.

§ 58.1-609.10. Miscellaneous exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Artificial or propane gas, firewood, coal or home heating oil used for domestic consumption.

"Domestic consumption" means the use of artificial or propane gas, firewood, coal or home heating oil by an individual purchaser for other than business, commercial or industrial purposes. The Tax Commissioner shall establish by regulation a system for use by dealers in classifying individual purchases for domestic or nondomestic use based on the principal usage of such gas, wood, coal or oil. Any person making a nondomestic purchase and paying the tax pursuant to this chapter who uses any portion of such purchase for domestic use may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for a refund of the tax paid on the domestic use portion.

2. An occasional sale, as defined in § 58.1-602. A nonprofit organization that is eligible to be granted an exemption on its purchases pursuant to § 58.1-609.11, and that is otherwise eligible for the exemption pursuant to this subdivision, shall be exempt pursuant to this subdivision on its sales of (i) food, prepared food and meals and (ii) tickets to events that include the provision of food, prepared food and meals, so long as such sales take place on fewer than 24 occasions in a calendar year.

3. Tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback.

4. Delivery of tangible personal property outside the Commonwealth for use or consumption outside of the Commonwealth. Delivery of goods destined for foreign export to a factor or export agent shall be deemed to be delivery of goods for use or consumption outside of the Commonwealth.

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1891 5. Tangible personal property purchased with food coupons issued by the United States
1892 Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special
1893 Supplemental Food Program for Women, Infants, and Children.

1894 6. Tangible personal property purchased for use or consumption in the performance of
1895 maintenance and repair services at Nuclear Regulatory Commission-licensed nuclear power plants
1896 located outside the Commonwealth.

1897 7. Beginning July 1, 1997, and ending July 1, 2006, a professional's provision of original,
1898 revised, edited, reformatted or copied documents, including but not limited to documents stored on or
1899 transmitted by electronic media, to its client or to third parties in the course of the professional's
1900 rendition of services to its clientele.

1901 8. School lunches sold and served to pupils and employees of schools and subsidized by
1902 government; school textbooks sold by a local board or authorized agency thereof; and school textbooks
1903 sold for use by students attending ~~a college or other~~ an institution of ~~learning higher education or~~
1904 another school, when sold (i) by such institution ~~of learning or other school~~ or (ii) by any other dealer,
1905 when such textbooks have been certified by a department or instructor of such institution ~~of learning or~~
1906 other school as required textbooks for students attending courses at such institution or other school.

1907 9. Medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses, eyeglass
1908 cases, and contact lens storage containers when distributed free of charge, all solutions or sterilization
1909 kits or other devices applicable to the wearing or maintenance of contact lenses or eyeglasses when
1910 distributed free of charge, and hearing aids dispensed by or sold on prescriptions or work orders of
1911 licensed physicians, dentists, optometrists, ophthalmologists, opticians, audiologists, hearing aid dealers
1912 and fitters, nurse practitioners, physician assistants, and veterinarians; controlled drugs purchased for
1913 use by a licensed physician, optometrist, licensed nurse practitioner, or licensed physician assistant in
1914 his professional practice, regardless of whether such practice is organized as a sole proprietorship,
1915 partnership, or professional corporation, or any other type of corporation in which the shareholders and
1916 operators are all licensed physicians, optometrists, licensed nurse practitioners, or licensed physician
1917 assistants engaged in the practice of medicine, optometry, or nursing; medicines and drugs purchased for

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use or consumption by a licensed hospital, nursing home, clinic, or similar corporation not otherwise exempt under this section; and samples of prescription drugs and medicines and their packaging distributed free of charge to authorized recipients in accordance with the federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 301 et seq., as amended). With the exceptions of those medicines and drugs used for agricultural production animals that are exempt to veterinarians under subdivision 1 of § 58.1-609.2, any veterinarian dispensing or selling medicines or drugs on prescription shall be deemed to be the user or consumer of all such medicines and drugs.

10. Wheelchairs and parts therefor, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, other durable medical equipment and devices, and related parts and supplies specifically designed for those products; and insulin and insulin syringes, and equipment, devices or chemical reagents that may be used by a diabetic to test or monitor blood or urine, when such items or parts are purchased by or on behalf of an individual for use by such individual. Durable medical equipment is equipment that (i) can withstand repeated use, (ii) is primarily and customarily used to serve a medical purpose, (iii) generally is not useful to a person in the absence of illness or injury, and (iv) is appropriate for use in the home.

11. Drugs and supplies used in hemodialysis and peritoneal dialysis.

12. Special equipment installed on a motor vehicle when purchased by a handicapped person to enable such person to operate the motor vehicle.

13. Special typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons to communicate when such equipment is prescribed by a licensed physician.

14. a. (i) Any nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment, or prevention of disease in human beings and (ii) any samples of nonprescription drugs and proprietary medicines distributed free of charge by the manufacturer, including packaging materials and constituent elements and ingredients.

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b. The terms "nonprescription drugs" and "proprietary medicines" shall be defined pursuant to regulations promulgated by the Department of Taxation. The exemption authorized in this subdivision shall not apply to cosmetics.

15. Tangible personal property withdrawn from inventory and donated to (i) an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) the Commonwealth, any political subdivision of the Commonwealth, or any school, agency, or instrumentality thereof.

16. Tangible personal property purchased by nonprofit churches that are exempt from taxation under § 501(c)(3) of the Internal Revenue Code, or whose real property is exempt from local taxation pursuant to the provisions of § 58.1-3606, for use (i) in religious worship services by a congregation or church membership while meeting together in a single location and (ii) in the libraries, offices, meeting or counseling rooms or other rooms in the public church buildings used in carrying out the work of the church and its related ministries, including kindergarten, elementary and secondary schools. The exemption for such churches shall also include baptistries; bulletins, programs, newspapers and newsletters that do not contain paid advertising and are used in carrying out the work of the church; gifts including food for distribution outside the public church building; food, disposable serving items, cleaning supplies and teaching materials used in the operation of camps or conference centers by the church or an organization composed of churches that are exempt under this subdivision and which are used in carrying out the work of the church or churches; and property used in caring for or maintaining property owned by the church including, but not limited to, mowing equipment; and building materials installed by the church, and for which the church does not contract with a person or entity to have installed, in the public church buildings used in carrying out the work of the church and its related ministries, including, but not limited to worship services; administrative rooms; and kindergarten, elementary, and secondary schools.

17. Medical products and supplies, which are otherwise taxable, such as bandages, gauze dressings, incontinence products and wound-care products, when purchased by a Medicaid recipient through a Department of Medical Assistance Services provider agreement.

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18. Beginning July 1, 2007, and ending July 1, 2012, multifuel heating stoves used for heating an individual purchaser's residence. "Multifuel heating stoves" are stoves that are capable of burning a wide variety of alternative fuels, including, but not limited to, shelled corn, wood pellets, cherry pits, and olive pits.

19. Fabrication of animal meat, grains, vegetables, or other foodstuffs when the purchaser (i) supplies the foodstuffs and they are consumed by the purchaser or his family, (ii) is an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code, or (iii) donates the foodstuffs to an organization exempt from taxation under § 501(c)(3) or (c)(4) of the Internal Revenue Code.

§ 58.1-811. (Contingent expiration date) Exemptions.

A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real estate or lease of real estate:

1. To ~~an incorporated college or other incorporated institution of learning not conducted for profit~~ a nonprofit school, including a nonprofit institution of higher education, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an incorporated church or religious body or to the trustee or trustees of any church or religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district, or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it exists at the time of the conveyance;

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1996 7. From a corporation to its stockholders upon complete or partial liquidation of the corporation
1997 in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the
1998 Internal Revenue Code as it exists at the time of liquidation;

1999 8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited
2000 liability company upon a merger or consolidation to which two or more such entities are parties, or in a
2001 reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

2002 9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a
2003 parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal
2004 Revenue Code as amended;

2005 10. To a partnership or limited liability company, when the grantors are entitled to receive not
2006 less than 50 percent of the profits and surplus of such partnership or limited liability company, provided
2007 that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of
2008 the company to avoid recordation taxes;

2009 11. From a partnership or limited liability company, when the grantees are entitled to receive not
2010 less than 50 percent of the profits and surplus of such partnership or limited liability company, provided
2011 that the transfer from a limited liability company is not subsequent to a transfer of control of the assets
2012 of the company to avoid recordation taxes;

2013 12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the
2014 beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be
2015 named in the trust instrument, when no consideration has passed between the grantor and the
2016 beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in
2017 trust;

2018 13. When the grantor is the personal representative of a decedent's estate or trustee under a will
2019 or inter vivos trust of which the decedent was the settlor, other than a deed of trust conveying property to
2020 secure the payment of money or the performance of an obligation, and the sole purpose of such transfer
2021 is to comply with a devise or bequest in the decedent's will or to transfer title to one or more

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beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument;

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would be unable to afford to buy a home through conventional means;

15. When it is a deed of partition, or any combination of deeds simultaneously executed and having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; or

16. When it is a deed transferring property pursuant to a decree of divorce or of separate maintenance or pursuant to a written instrument incident to such divorce or separation.

B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

1. Given by ~~an incorporated college or other incorporated institution of learning not conducted for profit~~ a nonprofit school, including a nonprofit institution of higher education;

2. Given by the trustee or trustees of a church or religious body or given by an incorporated church or religious body, or given by a corporation mentioned in § 57-16.1;

3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a debt payable to any other local governmental entity or political subdivision;

5. Securing a loan made by an organization described in subdivision A 14; or

6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower whose household income does not exceed 80 percent of the area median household income established by the U.S. Department of Housing and Urban Development, for the purpose of erecting or rehabilitating a home for such borrower, including the purchase of land for such home.

C. The tax imposed by § 58.1-802 and the fee imposed by § 58.1-802.2 shall not apply to any:

1. Transaction described in subdivisions A 6 through 13, 15, and 16;

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2049 2. Instrument or writing given to secure a debt;

2050 3. Deed conveying real estate from ~~an incorporated college or other incorporated institution of~~
2051 ~~learning not conducted for profit~~ a nonprofit school, including a nonprofit institution of higher
2052 education;

2053 4. Deed conveying real estate from the United States, the Commonwealth or any county, city,
2054 town, district, or other political subdivision thereof;

2055 5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other
2056 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable
2057 pursuant to § 58.1-802 or subject to the fee under § 58.1-802.2; or

2058 6. Deed conveying real estate from the trustee or trustees of a church or religious body or from
2059 an incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

2060 D. No recordation tax shall be required for the recordation of any deed of gift between a grantor
2061 or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed
2062 shall state therein that it is a deed of gift.

2063 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the
2064 Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.

2065 F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-802.2, 58.1-807, 58.1-808, and
2066 58.1-814 shall not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature
2067 Conservancy or (ii) any lease of real property or any interest therein to The Nature Conservancy, where
2068 such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving
2069 wilderness, natural, or open space areas.

2070 G. The words "trustee" or "trustees," as used in subdivisions A 2, B 2, and C 6, include the
2071 trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

2072 H. No recordation tax levied pursuant to this chapter shall be levied on the release of a
2073 contractual right, if the release is contained within a single deed that performs more than one function,
2074 and at least one of the other functions performed by the deed is subject to the recordation tax.

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2075 I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement,
 2076 release, or other document recorded in connection with a concession pursuant to the Public-Private
 2077 Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

2078 J. No recordation tax shall be required for the recordation of any transfer on death deed or any
 2079 revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act
 2080 (§ 64.2-621 et seq.) when no consideration has passed between the parties.

2081 **§ 58.1-811. (Contingent effective date) Exemptions.**

2082 A. The taxes imposed by §§ 58.1-801 and 58.1-807 shall not apply to any deed conveying real
 2083 estate or lease of real estate:

2084 1. To ~~an incorporated college or other incorporated institution of learning not conducted for~~
 2085 profit a nonprofit school, including a nonprofit institution of higher education, where such real estate is
 2086 intended to be used for educational purposes and not as a source of revenue or profit;

2087 2. To an incorporated church or religious body or to the trustee or trustees of any church or
 2088 religious body, or a corporation mentioned in § 57-16.1, where such real estate is intended to be used
 2089 exclusively for religious purposes, or for the residence of the minister of any such church or religious
 2090 body;

2091 3. To the United States, the Commonwealth, or to any county, city, town, district, or other
 2092 political subdivision of the Commonwealth;

2093 4. To the Virginia Division of the United Daughters of the Confederacy;

2094 5. To any nonstock corporation organized exclusively for the purpose of owning or operating a
 2095 hospital or hospitals not for pecuniary profit;

2096 6. To a corporation upon its organization by persons in control of the corporation in a transaction
 2097 which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it
 2098 exists at the time of the conveyance;

2099 7. From a corporation to its stockholders upon complete or partial liquidation of the corporation
 2100 in a transaction which qualifies for income tax treatment pursuant to § 331, 332, 333, or 337 of the
 2101 Internal Revenue Code as it exists at the time of liquidation;

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8. To the surviving or new corporation, partnership, limited partnership, business trust, or limited liability company upon a merger or consolidation to which two or more such entities are parties, or in a reorganization within the meaning of § 368(a)(1)(C) and (F) of the Internal Revenue Code as amended;

9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal Revenue Code as amended;

10. To a partnership or limited liability company, when the grantors are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer to a limited liability company is not a precursor to a transfer of control of the assets of the company to avoid recordation taxes;

11. From a partnership or limited liability company, when the grantees are entitled to receive not less than 50 percent of the profits and surplus of such partnership or limited liability company, provided that the transfer from a limited liability company is not subsequent to a transfer of control of the assets of the company to avoid recordation taxes;

12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, when no consideration has passed between the grantor and the beneficiaries; and to the original beneficiaries of a trust from the trustees holding title under a deed in trust;

13. When the grantor is the personal representative of a decedent's estate or trustee under a will or inter vivos trust of which the decedent was the settlor, other than a deed of trust conveying property to secure the payment of money or the performance of an obligation, and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive provision in the trust instrument;

14. When the grantor is an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect or

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2129 rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise would
 2130 be unable to afford to buy a home through conventional means;

2131 15. Pursuant to any deed of partition, or any combination of deeds simultaneously executed and
 2132 having the effect of a deed of partition, among joint tenants, tenants in common, or coparceners; or

2133 16. Pursuant to any deed transferring property pursuant to a decree of divorce or of separate
 2134 maintenance or pursuant to a written instrument incident to such divorce or separation.

2135 B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or
 2136 mortgage:

2137 1. Given by ~~an incorporated college or other incorporated institution of learning not conducted~~
 2138 ~~for profit~~ a nonprofit school, including a nonprofit institution of higher education;

2139 2. Given by the trustee or trustees of a church or religious body or given by an incorporated
 2140 church or religious body, or given by a corporation mentioned in § 57-16.1;

2141 3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or
 2142 operating a hospital or hospitals not for pecuniary profit;

2143 4. Given by any local governmental entity or political subdivision of the Commonwealth to
 2144 secure a debt payable to any other local governmental entity or political subdivision;

2145 5. Securing a loan made by an organization described in subdivision A 14; or

2146 6. Securing a loan made by a county, city, or town, or an agency of such a locality, to a borrower
 2147 whose household income does not exceed 80 percent of the area median household income established
 2148 by the U.S. Department of Housing and Urban Development, for the purpose of erecting or
 2149 rehabilitating a home for such borrower, including the purchase of land for such home.

2150 C. The tax imposed by § 58.1-802 shall not apply to any:

2151 1. Transaction described in subdivisions A 6 through 13, 15, and 16;

2152 2. Instrument or writing given to secure a debt;

2153 3. Deed conveying real estate from ~~an incorporated college or other incorporated institution of~~
 2154 ~~learning not conducted for profit~~ a nonprofit school, including a nonprofit institution of higher
 2155 education;

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2156 4. Deed conveying real estate from the United States, the Commonwealth or any county, city,
2157 town, district, or other political subdivision thereof;

2158 5. Conveyance of real estate to the Commonwealth or any county, city, town, district, or other
2159 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable
2160 pursuant to § 58.1-802; or

2161 6. Deed conveying real estate from the trustee or trustees of a church or religious body or from
2162 an incorporated church or religious body, or from a corporation mentioned in § 57-16.1.

2163 D. No recordation tax shall be required for the recordation of any deed of gift between a grantor
2164 or grantors and a grantee or grantees when no consideration has passed between the parties. Such deed
2165 shall state therein that it is a deed of gift.

2166 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the
2167 Commonwealth, or any county, city, town, district, or other political subdivision of the Commonwealth.

2168 F. The taxes and fees imposed by §§ 58.1-801, 58.1-802, 58.1-807, 58.1-808, and 58.1-814 shall
2169 not apply to (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy
2170 or (ii) any lease of real property or any interest therein to The Nature Conservancy, where such deed of
2171 gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness,
2172 natural, or open space areas.

2173 G. The words "trustee" or "trustees," as used in subdivisions A 2, B 2, and C 6, include the
2174 trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

2175 H. No recordation tax levied pursuant to this chapter shall be levied on the release of a
2176 contractual right, if the release is contained within a single deed that performs more than one function,
2177 and at least one of the other functions performed by the deed is subject to the recordation tax.

2178 I. No recordation tax levied pursuant to this chapter shall be levied on a deed, lease, easement,
2179 release, or other document recorded in connection with a concession pursuant to the Public-Private
2180 Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

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2181 J. No recordation tax shall be required for the recordation of any transfer on death deed or any
2182 revocation of transfer on death deed made pursuant to the Uniform Real Property Transfer on Death Act
2183 (§ 64.2-621 et seq.) when no consideration has passed between the parties.

2184 **§ 58.1-2403. Exemptions.**

2185 No tax shall be imposed as provided in § 58.1-2402 if the vehicle is:

- 2186 1. Sold to or used by the United States government or any governmental agency thereof;
- 2187 2. Sold to or used by the Commonwealth of Virginia or any political subdivision thereof;
- 2188 3. Registered in the name of a volunteer fire department or volunteer emergency medical
2189 services agency not operated for profit;
- 2190 4. Registered to any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any
2191 other recognized Indian tribe of the Commonwealth living on the tribal reservation;
- 2192 5. Transferred incidental to repossession under a recorded lien and ownership is transferred to
2193 the lienholder;
- 2194 6. A manufactured home permanently attached to real estate and included in the sale of real
2195 estate;
- 2196 7. A gift to the spouse, son, daughter, or parent of the transferor. With the exception of a gift to a
2197 spouse, this exemption shall not apply to any unpaid obligation assumed by the transferee incidental to
2198 the transfer;
- 2199 8. Transferred from an individual or partnership to a corporation or limited liability company or
2200 from a corporation or limited liability company to an individual or partnership if the transfer is
2201 incidental to the formation, organization or dissolution of a corporation or limited liability company in
2202 which the individual or partnership holds the majority interest;
- 2203 9. Transferred from a wholly owned subsidiary to the parent corporation or from the parent
2204 corporation to a wholly owned subsidiary;
- 2205 10. Being registered for the first time in the Commonwealth and the applicant holds a valid,
2206 assignable title or registration issued to him by another state or a branch of the United States Armed
2207 Forces and (i) has owned the vehicle for longer than 12 months or (ii) has owned the vehicle for less

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2208 than 12 months and provides evidence of a sales tax paid to another state. However, when a vehicle has
2209 been purchased by the applicant within the last 12 months and the applicant is unable to provide
2210 evidence of a sales tax paid to another state, the applicant shall pay the Virginia sales tax based on the
2211 fair market value of the vehicle at the time of registration in Virginia;

2212 11. a. Titled in a Virginia or non-Virginia motor vehicle dealer's name for resale; or

2213 b. Titled in the name of an automotive manufacturer having its headquarters in Virginia, except
2214 for any commercially leased vehicle that is not described under subdivision 3 of § 46.2-602.2. For
2215 purposes of this subdivision, "automotive manufacturer" and "headquarters" means the same as such
2216 terms are defined in § 46.2-602.2;

2217 12. A motor vehicle having seats for more than seven passengers and sold to an urban or
2218 suburban bus line the majority of whose passengers use the buses for traveling a distance of less than 40
2219 miles, one way, on the same day;

2220 13. Purchased in the Commonwealth by a nonresident and a Virginia title is issued for the sole
2221 purpose of recording a lien against the vehicle if the vehicle will be registered in a state other than
2222 Virginia;

2223 14. A motor vehicle designed for the transportation of 10 or more passengers, purchased by and
2224 for the use of a church conducted not for profit;

2225 15. Loaned or leased to a ~~private~~ nonprofit ~~institution of learning~~ private school, for the sole
2226 purpose of use in the instruction of driver's education when such education is a part of such school's
2227 curriculum for full-time students;

2228 16. Sold to an insurance company or local government group self-insurance pool, created
2229 pursuant to § 15.2-2703, for the sole purpose of disposition when such company or pool has paid the
2230 registered owner of such vehicle a total loss claim;

2231 17. Owned and used for personal or official purposes by accredited consular or diplomatic
2232 officers of foreign governments, their employees or agents, and members of their families, if such
2233 persons are nationals of the state by which they are appointed and are not citizens of the United States;

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2234 18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a
2235 nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of the United
2236 States Internal Revenue Code;

2237 19. A motor vehicle having seats for more than seven passengers and sold to a restricted
2238 common carrier or common carrier of passengers;

2239 20. Beginning July 1, 1989, a self-contained mobile unit designed exclusively for human
2240 diagnostic or therapeutic service, sold to, rented to, or used by a nonprofit hospital, or a cooperative
2241 hospital service organization as described in § 501(e) of the United States Internal Revenue Code, or a
2242 nonprofit corporation as defined in § 501(c)(3) of the Internal Revenue Code, established for research in,
2243 diagnosis of, or therapy for human ailments;

2244 21. Transferred, as a gift or through a sale to an organization exempt from taxation under §
2245 501(c)(3) of the Internal Revenue Code, provided the motor vehicle is not titled and tagged for use by
2246 such organization;

2247 22. A motor vehicle sold to an organization which is exempt from taxation under § 501(c)(3) of
2248 the Internal Revenue Code and which is organized for the primary purpose of distributing food, clothing,
2249 medicines, and other necessities of life to, and providing shelter for, needy persons in the United States
2250 and throughout the world;

2251 23. Transferred to the trustees of a revocable inter vivos trust, when the individual titleholder of a
2252 Virginia titled motor vehicle and the beneficiaries of the trust are the same persons, regardless of
2253 whether other beneficiaries of the trust may also be named in the trust instrument, when no
2254 consideration has passed between the titleholder and the beneficiaries; and transferred to the original
2255 titleholder from the trustees holding title to the motor vehicle;

2256 24. Transferred to trustees of a revocable inter vivos trust, when the owners of the vehicle and
2257 the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be
2258 named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust
2259 following the death of the grantor, when no consideration has passed between the grantor and the
2260 beneficiaries in either case;

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2261 25. Sold by a vehicle's lessor to its lessee upon the expiration of the term of the vehicle's lease, if
2262 the lessee is a natural person and this natural person has paid the tax levied pursuant to this chapter with
2263 respect to the vehicle when he leased it from the lessor, and if the lessee presents an original copy of the
2264 lease upon request of the Department of Motor Vehicles or other evidence that the sales tax has been
2265 paid to the Commonwealth by the lessee purchasing the vehicle;

2266 26. Titled in the name of a deceased person and transferred to the spouse or heir, or under the
2267 will, of such deceased person;

2268 27. An all-terrain vehicle, moped, or off-road motorcycle all as defined in § 46.2-100. Such all-
2269 terrain vehicles, mopeds, or off-road motorcycles shall not be deemed a motor vehicle or other vehicle
2270 subject to the tax imposed under this chapter; or

2271 28. A motor vehicle that is sold to an organization that is exempt from taxation under § 501(c)(3)
2272 of the Internal Revenue Code and that is primarily used by the organization to transport to markets for
2273 sale produce that is (i) produced by local farmers and (ii) sold by such farmers to the organization.

2274 **§ 58.1-3606. Property exempt from taxation by classification.**

2275 A. Pursuant to the authority granted in Article X, Section 6 (a)(6) of the Constitution of Virginia
2276 to exempt property from taxation by classification, the following classes of real and personal property
2277 shall be exempt from taxation:

2278 1. Property owned directly or indirectly by the Commonwealth, or any political subdivision
2279 thereof.

2280 2. Real property and personal property owned by churches or religious bodies, including (i) an
2281 incorporated church or religious body and (ii) a corporation mentioned in § 57-16.1, and exclusively
2282 occupied or used for religious worship or for the residence of the minister of any church or religious
2283 body, and such additional adjacent land reasonably necessary for the convenient use of any such
2284 property. Real property exclusively used for religious worship shall also include the following: (a)
2285 property used for outdoor worship activities; (b) property used for ancillary and accessory purposes as
2286 allowed under the local zoning ordinance, the dominant purpose of which is to support or augment the
2287 principal religious worship use; and (c) property used as required by federal, state, or local law.

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3. Nonprofit private or public burying grounds or cemeteries.

4. Property owned by public libraries, law libraries of local bar associations when the same are

used or available for use by a state court or courts or the judge or judges thereof, medical libraries of

local medical associations when the same are used or available for use by state health officials;

~~incorporated colleges or other institutions of learning not conducted for profit or nonprofit schools,~~

~~including nonprofit institutions of higher education.~~ This paragraph shall apply only to property

primarily used for literary, scientific or educational purposes or purposes incidental thereto and shall not

apply to industrial schools which sell their products to other than their own employees or students.

5. Property belonging to and actually and exclusively occupied and used by the Young Men's

Christian Associations and similar religious associations, including religious mission boards and

associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit

but exclusively as charities (which shall include hospitals operated by nonstock corporations not

organized or conducted for profit but which may charge persons able to pay in whole or in part for their

care and treatment).

6. Parks or playgrounds held by trustees for the perpetual use of the general public.

7. Buildings with the land they actually occupy, and the furniture and furnishings therein

belonging to any benevolent or charitable organization and used by it exclusively for lodge purposes or

meeting rooms, together with such additional adjacent land as may be necessary for the convenient use

of the buildings for such purposes.

8. Property of any nonprofit corporation organized to establish and maintain a museum.

B. Property, belonging in one of the classes listed in subsection A ~~of this section~~, which was

exempt from taxation on July 1, 1971, shall continue to be exempt from taxation under the rules of

statutory construction applicable to exempt property prior to such date.

§ 58.1-3618. Alumni associations and foundations operated for the benefit of institutions of higher education or other schools in the Commonwealth.

Incorporated alumni associations operated exclusively on a nonprofit basis for the benefit of

~~colleges or other~~ institutions of ~~learning located~~ higher education or other schools in ~~Virginia the~~

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[Commonwealth](#), and incorporated charitable foundations conducted not for profit, the total income from which is used exclusively for literary, scientific or educational purposes, are hereby classified as charitable and cultural organizations.

§ 58.1-3703. Counties, cities and towns may impose local license taxes and fees; limitation of authority.

A. The governing body of any county, city or town may charge a fee for issuing a license in an amount not to exceed \$100 for any locality with a population greater than 50,000, \$50 for any locality with a population of 25,000 but no more than 50,000 and \$30 for any locality with a population smaller than 25,000. For purposes of this section, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia. Such governing body may levy and provide for the assessment and collection of county, city or town license taxes on businesses, trades, professions, occupations and callings and upon the persons, firms and corporations engaged therein within the county, city or town subject to the limitations in (i) subsection C and (ii) subsection A of § 58.1-3706, provided such tax shall not be assessed and collected on any amount of gross receipts of each business upon which a license fee is charged. Any county, city or town with a population greater than 50,000 shall reduce the fee to an amount not to exceed \$50 by January 1, 2000. The ordinance imposing such license fees and levying such license taxes shall include the provisions of § 58.1-3703.1.

B. Any county, city or town by ordinance may exempt in whole or in part from the license tax (i) the design, development or other creation of computer software for lease, sale or license and (ii) private businesses and industries entering into agreements for the establishment, installation, renovation, remodeling, or construction of satellite classrooms for grades kindergarten through three on a site owned by the business or industry and leased to the school board at no costs pursuant to § 22.1-26.1.

C. No county, city, or town shall impose a license fee or levy any license tax:

1. On any public service corporation or any motor carrier, common carrier, or other carrier of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States

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2342 Department of Transportation, Federal Highway Administration, except as provided in § 58.1-3731 or as
2343 permitted by other provisions of law;

2344 2. For selling farm or domestic products or nursery products, ornamental or otherwise, or for the
2345 planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and
2346 sheds of such county, city or town, provided such products are grown or produced by the person offering
2347 them for sale;

2348 3. Upon the privilege or right of printing or publishing any newspaper, magazine, newsletter or
2349 other publication issued daily or regularly at average intervals not exceeding three months, provided the
2350 publication's subscription sales are exempt from state sales tax, or for the privilege or right of operating
2351 or conducting any radio or television broadcasting station or service;

2352 4. On a manufacturer for the privilege of manufacturing and selling goods, wares and
2353 merchandise at wholesale at the place of manufacture;

2354 5. On a person engaged in the business of severing minerals from the earth for the privilege of
2355 selling the severed mineral at wholesale at the place of severance, except as provided in §§ 58.1-3712
2356 and 58.1-3713;

2357 6. Upon a wholesaler for the privilege of selling goods, wares and merchandise to other persons
2358 for resale unless such wholesaler has a definite place of business or store in such county, city or town.
2359 This subdivision shall not be construed as prohibiting any county, city or town from imposing a local
2360 license tax on a peddler at wholesale pursuant to § 58.1-3718;

2361 7. Upon any person, firm or corporation for engaging in the business of renting, as the owner of
2362 such property, real property other than hotels, motels, motor lodges, auto courts, tourist courts, travel
2363 trailer parks, campgrounds, bed and breakfast establishments, lodging houses, rooming houses, and
2364 boardinghouses; however, any county, city or town imposing such a license tax on January 1, 1974, shall
2365 not be precluded from the levy of such tax by the provisions of this subdivision;

2366 8. [Repealed.]

2367 9. On or measured by receipts for management, accounting, or administrative services provided
2368 on a group basis under a nonprofit cost-sharing agreement by a corporation which is an agricultural

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cooperative association under the provisions of Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, or a member or subsidiary or affiliated association thereof, to other members of the same group. This exemption shall not exempt any such corporation from such license or other tax measured by receipts from outside the group;

10. On or measured by receipts or purchases by an entity which is a member of an affiliated group of entities from other members of the same affiliated group. This exclusion shall not exempt affiliated entities from such license or other tax measured by receipts or purchases from outside the affiliated group. This exclusion also shall not preclude a locality from levying a wholesale merchant's license tax on an affiliated entity on those sales by the affiliated entity to a nonaffiliated entity, notwithstanding the fact that the wholesale merchant's license tax would be based upon purchases from an affiliated entity. Such tax shall be based on the purchase price of the goods sold to the nonaffiliated entity. As used in this subdivision, the term "sales by the affiliated entity to a nonaffiliated entity" means sales by the affiliated entity to a nonaffiliated entity where goods sold by the affiliated entity or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity;

11. On any insurance company subject to taxation under Chapter 25 (§ 58.1-2500 et seq.) of this title or on any agent of such company;

12. On any bank or trust company subject to taxation in Chapter 12 (§ 58.1-1200 et seq.) of this title;

13. Upon a taxicab driver, if the locality has imposed a license tax upon the taxicab company for which the taxicab driver operates;

14. On any blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Blind and Vision Impaired, or a nominee of the Department, as set forth in § 51.5-98;

15. [Expired.]

16. [Repealed.]

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2394 17. On an accredited religious practitioner in the practice of the religious tenets of any church or
 2395 religious denomination. "Accredited religious practitioner" shall be defined as one who is engaged
 2396 solely in praying for others upon accreditation by such church or religious denomination;

2397 18. a. On or measured by receipts of a nonprofit organization described in Internal Revenue
 2398 Code § 501(c)(3) or 501(c)(19) except to the extent the organization has receipts from an unrelated trade
 2399 or business the income of which is taxable under Internal Revenue Code § 511 et seq. For the purpose of
 2400 this subdivision, "nonprofit organization" means an organization that is described in Internal Revenue
 2401 Code § 501(c)(3) or 501(c)(19), and to which contributions are deductible by the contributor under
 2402 Internal Revenue Code § 170, except that educational institutions exempt from federal income tax under
 2403 Internal Revenue Code § 501(c)(3) shall be limited to ~~schools, colleges, and other similar~~ institutions of
 2404 learning higher education and other schools.

2405 b. On or measured by gifts, contributions, and membership dues of a nonprofit organization.
 2406 Activities conducted for consideration that are similar to activities conducted for consideration by for-
 2407 profit businesses shall be presumed to be activities that are part of a business subject to licensure. For
 2408 the purpose of this subdivision, "nonprofit organization" means an organization exempt from federal
 2409 income tax under Internal Revenue Code § 501 other than the nonprofit organizations described in
 2410 subdivision a;

2411 19. On any venture capital fund or other investment fund, except commissions and fees of such
 2412 funds. Gross receipts from the sale and rental of real estate and buildings remain taxable by the locality
 2413 in which the real estate is located provided the locality is otherwise authorized to tax such businesses
 2414 and rental of real estate;

2415 20. On total assessments paid by condominium unit owners for common expenses. "Common
 2416 expenses" and "unit owner" have the same meanings as in § 55-79.41; or

2417 21. On or measured by receipts of a qualifying transportation facility directly or indirectly owned
 2418 or title to which is held by the Commonwealth or any political subdivision thereof or by the United
 2419 States as described in § 58.1-3606.1 and developed and/or operated pursuant to a concession under the
 2420 Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or similar federal law.

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D. Any county, city or town may establish by ordinance a business license incentive program for "qualifying businesses." For purposes of this subsection, a "qualifying business" is a business that locates for the first time in the locality adopting such ordinance. A business shall not be deemed to locate in such locality for the first time based on merger, acquisition, similar business combination, name change, or a change in business form. Any incentive established pursuant to this subsection may extend for a period not to exceed two years from the date the business locates in such locality. The business license incentive program may include (i) an exemption, in whole or in part, of license taxes for any qualifying business; (ii) a refund or rebate, in whole or in part, of license taxes paid by a qualifying business; or (iii) other relief from license taxes for a qualifying business not prohibited by state or federal law.

E. For taxable years beginning on or after January 1, 2012, any locality may exempt, by ordinance, license fees or license taxes on any business that does not have an after-tax profit for the taxable year and offers the income tax return of the business as proof to the local commissioner of the revenue. Eligibility for this exemption shall be determined annually and it shall be the obligation of the business owner to submit the applicable income tax return to the local commissioner of the revenue.

§ 65.2-513. Compensation for death from coal worker's pneumoconiosis; determining whether death was due to pneumoconiosis or any chronic occupational lung disease.

A. If death results from coal worker's pneumoconiosis or if the employee was totally disabled by coal worker's pneumoconiosis at the time of his death and claim for compensation is made within three years after such death, the employer shall pay or cause to be paid to the surviving spouse of the deceased employee until his death or remarriage or the minor dependents of the employee until such minor dependents reach the age of ~~eighteen~~ 18 (or ~~twenty-three~~ 23, so long as they remain as full-time students in a generally accredited ~~institution of learning~~ school) or such other legal dependents as the deceased employee might have had at the time of his death for the duration of such dependency, 66 2/3 percent of the employee's average weekly wage during the last three years that he worked in the coal mines, up to 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500 without any specific limit as to the number of such weeks. However, any claim for compensation of an employee

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who was totally disabled by coal worker's pneumoconiosis at the time of his death shall be paid only to the extent required by federal law.

B. The Commission shall, by regulation duly drawn and published after notice and hearing, prescribe standards, not inconsistent with those prescribed by the Secretary of Health and Human Services under the 1969 Federal Coal Mine Health and Safety Act, as amended, for determining whether the death or total disability of an employee was due to pneumoconiosis or any chronic occupational lung disease.

C. In prescribing such standards the following factors shall be included:

1. If an employee who died from a respirable (respiratory) disease was employed for ~~ten~~ 10 years or more in an environment where he was injuriously exposed to such a disease, there shall be a rebuttable presumption that his disease arose out of such employment, or if he became totally disabled from coal worker's pneumoconiosis or if such disease significantly contributed to his death or disability, there shall be a rebuttable presumption that his death or disability was due to such disease.

2. Where there is clear evidence of exposure to an occupational lung disease, the Commission may make its determination whether compensation is payable to the dependents based on the description of the employee's symptoms, X-rays, and other competent medical evidence, and the opinion of experts as to whether those symptoms reasonably described the symptoms of such an occupational disease.

3. The statement as to the cause of death on a death certificate may be considered as evidence in any such cases but shall not be controlling on the Commission's findings. The Commission may also, by regulation, establish standards, not inconsistent with those prescribed by the Secretary of Labor under the 1969 Federal Coal Mine Health and Safety Act as amended, for apportioning liability for benefits under this section and under § 65.2-504 A 4 among more than one operator, where such apportionment is appropriate, provided that no apportionment shall operate to deprive an employee of the full benefits due him under this title.

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