

Draft
VIRGINIA CODE COMMISSION

Monday, November 20, 2017 - 10:00 a.m.
Richmond, Virginia 23219

Members Present: John S. Edwards; James M. LeMunyon; Ryan T. McDougle; Gregory D. Habeeb; Robert L. Calhoun; Leslie L. Lilley; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; G. Timothy Oksman; Mark Vucci; Noah Sullivan

Members Absent: Charles S. Sharp, Chris Nolen

Staff Present: David Cotter, Meg Lamb, Scott Meacham, Amigo Wade, Brittany Olwine, Kristen Walsh, Jane Chaffin, Karen Perrine, Anne Bloomsburg, Andrew Kubincanek, Lilli Hausenfluck, Division of Legislative Services (DLS)

Others Present: Tom Lisk, Chair, Administrative Law Advisory Committee; Kenneth Grigg, Office of the Executive Secretary, Supreme Court of Virginia; Brian Kennedy, LexisNexis; Alex Medrano, Thomson Reuters

Call to order: Senator Edwards, chair, called the meeting to order at 10:05 a.m.

Approval of minutes: The minutes of the October 16, 2017, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Virginia Administrative Code - CDs: Karen Perrine stated that the Commission's contract with Thomson Reuters (West) to publish the Virginia Administrative Code (VAC) includes a provision requiring West to provide 25 CDs, which come out quarterly, to the Commission at no charge. West is phasing out Premise, the platform for the VAC CDs, and has a proposal for a replacement, which will be presented by Alex Medrano. This change requires Commission approval and a contract amendment.

Mr. Medrano addressed the Commission by telephone and explained that his company will provide the Commission and staff with access to VAC on Westlaw™ in place of the CDs, with distribution of the access passwords as determined by the Commission. Mr. Medrano stated that currently there are only 50 subscribers to the VAC CDs, and those are mainly law libraries that receive the CDs as part of a bundle of products from West. On the basis of customer feedback, he does not expect any concern or negative effect from discontinuing Premise and the CDs.

On motion of Senator McDougle and seconded by Mr. Miller, the Commission approved an amendment to the contract as presented.

In response to a question from Judge Lilley, Mr. Medrano stated that Westlaw™ has versioning, and he will check how far back the versioning goes.

Virginia Administrative Code - Copyright: As reported at the June 20, 2016, meeting, West applies to register a copyright for the VAC with the United States Copyright Office on behalf of the Commonwealth. The Commonwealth owns the copyright and grants a license to West to publish and sell the print version of VAC. The Copyright Office declined to register the copyright filed for 2015, claiming that the material was not copyrightable because it lacked a sufficient amount of new copyrightable material or compilation authorship. At the direction of the Commission, West requested reconsideration of the copyright registration rejection. Ms. Perrine stated that the Copyright Office reexamined the application and determined that it would grant the copyright registration.

Mr. Medrano stated that the application for copyright registration has been filed for 2016, but a decision has not been reached.

Proposed policy for drafting gender-neutral language: At the October 16, 2017, meeting, the Commission requested that staff develop a written policy regarding an ongoing process for new and existing statutory language consistent with § 1-216 of the Code of Virginia regarding the use of "he" as a neutral term. In addition, the policy should address terms such as "husband" or "wife." David Cotter presented and reviewed a draft written policy and list of terms that would be standardized.

On motion of Mr. Calhoun and seconded by Delegate Habeeb, the Commission approved the policy.

Follow-up: Proposed bill draft to repeal obsolete statutory prohibitions on same-sex marriages and civil unions: As requested by the Commission at its October 16, 2017, meeting, Mr. Cotter presented a draft bill to repeal obsolete statutory prohibitions on same-sex marriages and civil unions in §§ 20-45.2 and 20-45.3 of the Code of Virginia. Mr. Cotter also presented a summary of the bill for the Commission's review.

On motion of Mr. Oksman, seconded by Delegate Habeeb, the Commission approved the bill for introduction at the 2018 Session of the General Assembly with an amendment to the summary to include a reference to the Opinion of the Attorney General to the Commission regarding this matter.

Report of the Administrative Law Advisory Committee (ALAC): Mr. Lisk presented a report on ALAC activities.

Mr. Lisk stated that ALAC has two draft bills for introduction in the 2018 Session of the General Assembly for consideration by the Commission. The first proposal was brought to ALAC by the Executive Secretary of the Supreme Court. The bill modifies the time frame for completion of a hearing officer's report to align with federal requirements. After a brief discussion, Judge Lilley moved approval of the draft bill. Mr. Miller seconded, and the motion passed.

Mr. Lisk stated that the second draft bill, prompted by the Model Administrative Process Act, addresses a hearing officer's discretion to close a hearing or seal a record in limited cases. Hearing officers are closing hearings and records now, and no standard exists to govern closure. The bill addresses this gap and exempts from court review the decision to close a hearing or record. In response to a question from Senator Edwards, Mr. Lisk explained that the purpose of exempting the decision from court review is to prevent overburdening the courts. Commission members also expressed concerns over the use and interpretation of "includes but not limited to." After a brief discussion, the Commission requested that ALAC review the implications of the bill and report back to the Commission.

Mr. Lisk reported that ALAC will continue to look at the executive review process for promulgating regulations with the goal of shortening the time it takes. ALAC also is reviewing information from other states regarding veto by a governor. Senator Edwards requested that ALAC continue to study this matter.

Mr. Lisk reported on ALAC's review of Department of Taxation regulations. The review was initiated because the department had started a number of regulatory actions some years ago and many were still pending. In addition, a concern had been raised regarding the department's use of guidance documents. Mr. Lisk stated that after an informative presentation by the department to ALAC, it appears that the department has been using the regulatory process more recently, and the concerns seem to be alleviated.

Follow-up: Title 24.2 obsolete laws draft legislation: At the October 16, 2017, meeting, Ms. Lamb presented information regarding obsolete laws in Title 24.2 of the Code of Virginia. On the basis of the discussion at that meeting, Ms. Lamb presented a draft bill for consideration by the Commission

to be introduced in the 2018 Session of the General Assembly. The proposed bill amends §§ 24.2-613, 24.2-614, 24.2-615, and 24.2-644 and repeals § 24.2-113 of the Code of Virginia. On motion of Senator McDougle, seconded by Delegate Habeeb, the bill draft was approved.

Code of Virginia: 2018 Code of Virginia replacement volumes and pricing proposal: Brian Kennedy presented the annual analysis of the current Code of Virginia volumes for determining the 2018 replacement volumes. LexisNexis recommends four replacement volumes: 2B (Titles 9.1 and 10.1), 5B (Titles 29.1-32.1), and a split of 3A (Title 15.2) into 3A Part I and 3A Part II. After discussion, including how to label the two parts of current Volume 3A once split, Mr. Calhoun moved that the Commission accept Mr. Kennedy's proposal to replace Volumes 2B and 5B and to split Volume 3A into two parts. The motion was seconded by Senator McDougle and passed. Staff will work with LexisNexis on how to label the two parts of Volume 3A.

At the request of Mr. Calhoun, Mr. Vucci agreed that staff will review the authorities in Subtitle IV of Title 15.2 for possible relocation.

Mr. Kennedy presented the annual price increase proposal from LexisNexis. He explained that every year, LexisNexis reviews the Producer Price Index (PPI) for professional publications, and last year there was an 8% increase in the PPI. Lexis is proposing a 5% increase for state and private purchasers of the print Code of Virginia. On motion of Judge Lilley, seconded by Senator McDougle, the Commission approved the 5% price increase.

Code of Virginia contract expiration and option to renew: Mr. Vucci stated that the most recent contract with LexisNexis was signed in 2009 and contained an expiration date of August 31, 2016, with two two-year renewal options. The first two-year renewal option was exercised, and the contract will expire on August 31, 2018. If the Commission decides to exercise the second two-year renewal option, the final contract expiration will be August 31, 2020. On motion of Senator McDougle, seconded by Judge Lilley, the Commission approved renewing the contract until August 31, 2020.

Recodification of Title 55, Property and Conveyances:

Subtitle I - Property Conveyances.

Amigo Wade stated that after additional review by staff or the work group in response to questions raised at the October 16, 2017, meeting regarding proposed Article 1 (Creation and Transfer of Estates) of Chapter 1 (Creation and Limitation of Estates), staff recommends that (i) § 55-3 remain in Title 55.1, as the section addresses property of a living person, and that the reference to the Uniform Commercial Code be removed and (ii) in § 55-4, "attainder of felony" and "corruption of blood" be retained. In response to a question from Mr. Oksman as to whether § 55-24 (lines 232-238) were necessary, Mr. Wade stated that the work group did not want to risk repealing language that might still be applicable, even if unlikely. Mr. Wade went over the remainder of Article 1, which completed the review of Chapter 1.

Mr. Wade presented proposed Chapter 2 (Property Rights of Married Persons) and noted that the language is updated to replace gender-specific terms with gender-neutral terms in accordance with title-wide conventions.

Subtitle II - Real Estate Settlements and Recordation.

Mr. Wade presented proposed Chapters 1 (Recordation of Documents), 2 (Virginia Property Disclosure Act), 3 (Exchange Facilitators Act), 4 (Real Estate Settlements), 5 (Real Estate Settlement Agents), and 6 (Commercial Real Estate Broker's Lien Act). During its review, the Commission discussed or took action as follows:

Chapter 1, Article 5, § 55-123 (line 621): Mr. Miller asked the significance of the date "July 1, 1995." Staff advised that the statute was amended in 1995, when the date of "1989" was changed to "1995." Staff will research this question and report back to the Commission.

Mr. Wade stated that Subtitle V and the rework of Subtitle III are the remaining subtitles for consideration by the Commission.

2018 legislation recommended by the Virginia Code Commission; selection of bill patrons:

Senator Edwards stated that he will carry the Commission bills regarding obsolete laws in Title 24.2, repeal of notification of withholding order, repeal of same-sex marriages prohibition, and time frame for decisions by hearing officers. Senator McDougle will carry the bills on Title 23.1 cleanup and venue in criminal cases. Delegate Habeeb also will carry the bills on venue in criminal cases and obsolete laws in Title 24.2.

Next title recodification recommendation: As requested by the Commission, staff contacted the Department of Mines, Minerals and Energy (DMME) regarding the recodification of Title 45.1. Michael Skiffington, DMME, indicated that the department supports the recodification of Title 45.1.

Other business: Mark Vucci provided information regarding adoption of the Uniform Electronic Legal Material Act (UELMA) by other states, as requested by the Commission. As shown on the handout, 17 states have adopted UELMA, but there is a diverse spectrum of the legal materials to which UELMA applies in each state. The goals of UELMA are authenticity of, preservation of, and access to an online code. In Virginia, the issue is authenticity; many of the provisions of the Appropriation Act override the Code of Virginia, and some Code sections have a version that is effective until one date and a version that is effective on or after another date. Senator Edwards asked about cybersecurity and hacking. Mr. Vucci suggested that David Burhop, Director of the Division of Legislative Automated Systems, be invited to a meeting in 2018 to provide information and address those concerns.

Senator Edwards stated that this meeting is Delegate LeMunyon's last meeting. He thanked Delegate LeMunyon for his service on the Commission, particularly as vice chair.

Mr. Vucci stated that Jane Chaffin is retiring January 1, 2018, so this is her last meeting. He commended Ms. Chaffin for her dedication, professionalism, and hard work as Registrar and as a state employee for many years. Mr. Vucci presented Ms. Chaffin with a gift on behalf of the Commission. Ms. Chaffin thanked the Commission for the gift and the staff of the Registrar's Office for its work and support.

Public comment, adjournment: Senator Edwards opened the floor for public comment. As there was no public comment and no further business to discuss, the meeting was adjourned at 12:30 p.m.

17104944D

SENATE JOINT RESOLUTION NO. 216

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on January 31, 2017)

(Patrons Prior to Substitute—Senators Ebbin and Locke [SJ 220])

Proposing the repeal of Section 15-A of Article I of the Constitution of Virginia, relating to marriage.

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Repeal Section 15-A of Article I of the Constitution of Virginia as follows:

ARTICLE I

BILL OF RIGHTS

Section 15-A. Marriage.

That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions.

This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.

SENATE SUBSTITUTE

SJ216S1

Title 55.1 Proposed Subtitles

Subtitle I Property Conveyances

Proposed	Current	Date Approved by Code Commission
<i>Chapter XX [1]: Creation and Limitation of Estates</i>	<i>Chapter 1: Creation and Limitation of Estates; Their Qualities; Chapter 20: Virginia Solar Easements Act; § 55-153 (Clouds on Title) from Chapter 8: Clouds on Title</i>	10/16/17; 11/20/17 (for Article 1)
<i>Chapter XX [2]: Property Rights of Married Persons</i>	<i>Chapter 3: Property Rights of Married Women</i>	11/20/17
<i>Chapter XX [3]: Form and Effect of Deeds and Covenants; Liens</i>	<i>Chapter 4: Form and Effect of Deeds and Covenants; Liens</i>	10/16/17
<i>Chapter XX [4]: Fraudulent and Voluntary Conveyances; Writings Necessary to be Recorded</i>	<i>Chapter 5: Fraudulent and Voluntary Conveyances, Bulk and Conditional Sales, etc.; Writing Necessary to be Recorded</i>	10/16/17
<i>Chapter XX [5]: Commutation and Valuation of Certain Estates and Interests</i>	<i>Chapter 15: Apportionment of Moneys; Management of Institutional Funds</i>	8/14/17

Subtitle II Real Estate Settlements and Recordation

Proposed	Current	Date Approved by Code Commission
<i>Chapter XX [1]: Recordation of Documents</i>	<i>Chapter 6: Recordation of Documents</i>	11/20/17
<i>Chapter XX [2]: Virginia Residential property Disclosure Act</i>	<i>Chapter 27: Virginia Residential Property Disclosure Act</i>	11/20/17
<i>Chapter XX [3]: Exchange Facilitators Act</i>	<i>Chapter 27.1: Exchange Facilitators Act</i>	11/20/17
<i>Chapter XX [4]: Real Estate Settlements</i>	<i>Chapter 27.2: Real Estate Settlements</i>	11/20/17
<i>Chapter XX [5]: Real Estate Settlement Agents</i>	<i>Chapter 27.3: Real Estate Settlement Agents</i>	11/20/17
<i>Chapter XX [6]: Commercial Real Estate Brokers Lien Act</i>	<i>Chapter 28: Commercial Real Estate Broker's Lien Act</i>	11/20/17

Subtitle III Rental Conveyances

Proposed	Current	Date Approved by Code Commission
<i>Part A</i>		
<i>Chapter XX [1]: General Provisions</i>	<i>Chapter 13: Landlord and Tenant; Chapter 13.2: Virginia Residential Landlord and Tenant Act; Chapter 25: Transfer of Deposits</i>	<i>9/19/16 - needs to be rewritten; present in Aug 2018</i>
<i>Chapter XX [2]: Virginia Residential Landlord and Tenant Act</i>	<i>Chapter 13.2: Virginia Residential Landlord and Tenant Act</i>	<i>9/19/16; 10/17/16 (follow-up) - needs to be rewritten; present in Aug 2018</i>
<i>Chapter XX [3]: Other Residential Tenancies</i>	<i>Chapter 13: Landlord and Tenant</i>	<i>10/17/16 - needs to be rewritten; present in Aug 2018</i>
<i>Part B: Commercial and Other Tenancies</i>		
<i>Chapter XX [4]: Manufactured Home Lot Rental Act</i>	<i>Chapter 13.3: Manufactured Home Lot Rental Act</i>	<i>present in Aug 2018</i>
<i>Chapter XX [5]: Residential Ground Rent Act</i>	<i>Article 4 (Residential Ground Rent Act) of Chapter 4: Form and Effect of Deeds and Covenants; Liens</i>	<i>10/17/16</i>
<i>Chapter XX [6]: Commercial Tenancies</i>	<i>Chapter 13: Landlord and Tenant; Chapter 25: Transfer of Deposits</i>	<i>11/21/16</i>
<i>Chapter XX [7]: Deeds of Lease</i>	<i>Article 1 (Form and Effect of Deeds and Leases) and Article 3 (Effect of Certain Expressions in Deeds and Leases) of Chapter 4: Form and Effect of Deeds and Covenants; Liens</i>	<i>10/17/16</i>
<i>Chapter XX [8]: Emblements</i>	<i>Chapter 14: Emblements</i>	<i>10/17/16</i>

****HB 2033 will require rewrite of Part A**

Subtitle IV Common Interest Communities

Proposed	Current	Date Approved by Code Commission
<i>Chapter XX [1]: Property Owners' Association Act</i>	<i>Chapter 26: Property Owners' Association Act</i>	<i>6/26/17</i>
<i>Chapter XX [2]: Virginia Condominium Act</i>	<i>Chapter 4.2: Virginia Condominium Act</i>	<i>6/26/17</i>
<i>Chapter XX [3]: Horizontal Property Act</i>	<i>Chapter 4.1: Horizontal Property</i>	<i>5/15/17</i>
<i>Chapter XX [4]: Virginia Real Estate Cooperative Act</i>	<i>Chapter 24: Virginia Real Estate Cooperative Act</i>	<i>6/26/17</i>
<i>Chapter XX [5]: Virginia Real Estate Time-Share Act</i>	<i>Chapter 21: The Virginia Real Estate Time-Share Act</i>	<i>8/14/17</i>
<i>Chapter XX [6]: Subdivided Land Sales Act</i>	<i>Chapter 19: Subdivided Land Sales Act</i>	<i>5/15/17</i>

Subtitle V Miscellaneous

Proposed	Current	Date Approved by Code Commission
<i>Chapter XX [1]: Escheats</i>	<i>Chapter 10: Escheats Generally</i>	present in May 2018
<i>Chapter XX [2]: Uniform Disposition of Unclaimed Property Act</i>	<i>Chapter 11.1: Disposition of Unclaimed Property</i>	present in May 2018
<i>Chapter XX [3]: Property Loaned to Museums</i>	<i>Chapter 11.2: Property Loaned to Museums</i>	present in May 2018
<i>Chapter XX [4]: Drift Property</i>	<i>Chapter 11: Estrays and Drift Property</i>	present in May 2018
<i>Chapter XX [5]: Trespasses; Fences</i>	<i>Chapter 18: Trespasses; Fences</i>	present in May 2018
<i>Chapter XX [6]: Virginia Self-Service Storage Act</i>	<i>Chapter 23: Virginia Self-Service Storage Act</i>	present in May 2018

Sections and Chapters Relocated from Title 55

Proposed	Current	Date Approved by Code Commission
<i>Title 1: Chapter 6: Virginia Coordinate System</i>	<i>Chapter 17: Virginia Coordinate System</i>	present in June 2018
<i>Title 8.01: Chapter 3: Article 13.1: Warrants in Distress; Article 15.1: Waste; Chapter 18.1: Assignment for the Benefit of Creditors</i>	<i>Chapter 9: Assignment for Benefit of Creditors; Chapter 13: Landlord and Tenant; Chapter 12: Waste</i>	10/17/16 (Warrants in Distress) present in June 2018 (Waste; Assignment for the Benefit of Creditors)
<i>Title 32.1: Chapter 20: Disposition of Assets by Nonprofit Health Care Entities</i>	<i>Chapter 30: Disposition of Assets by Nonprofit Health Care Entities</i>	present in June 2018
<i>Title 36: Chapter 12: First-Time Home Buyer Savings Plan Act</i>	<i>Chapter 32: First-Time Home Buyer Savings Plan Act</i>	present in June 2018
<i>Title 45.1: Chapter 14.7.3: Mineral Rights</i>	<i>Chapter 8: Clouds on Title</i>	10/16/17
<i>Title 54.1: Chapter 23.3: Article 1: Common Interest Community Board and Article 2: Common Interest Community Management Information Fund; Common Interest Community Ombudsman; Common Interest Community Management Recovery Fund</i>	<i>Chapter 23.3 of Title 54.1: Common Interest Communities; Chapter 29 of Title 55</i>	5/15/17
<i>Title 57: Chapter 2: Article 1</i>	<i>Chapter 2: Educational, Literary, and Charitable Gifts, Devises, Etc.</i>	present in June 2018
<i>Title 64.2: Chapter 1: Article 2</i>	<i>§ 55-19.5 (provisions in certain trust void)</i>	10/16/17

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)
Jeremy Moss (Vandevender Black)
Nicole Brenner (Reed Smith)

Real Estate Conveyance Sub-Work Group (21)

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)
*Vicki Bridgeman (Director, Virginia Treasury Department, Division of Unclaimed Property)
*Ellen Coates (Senior Assistant Attorney General, Office of the Attorney General)

**Added to assist with review of the chapters pertaining to escheats and unclaimed property.*

Title 55 Recodification

Reference Guide for Material to be presented on 5/7/18

Subtitle V (containing reorganized miscellaneous chapters):

- Proposed Subtitle V is created to reorganize miscellaneous chapters that are contained in existing Title 55 and belong in proposed Title 55.1 but that do not logically fit within any of the other proposed subtitles of proposed Title 55.1.
- Proposed Subtitle V contains six chapters for a total of 97 pages: [1] Escheats; [2] Uniform Disposition of Unclaimed Property Act; [3] Property Loaned to Museums; [4] Drift Property; [5] Trespasses; Fences; and [6] Virginia Self-Service Storage Act.

Chapter 1 - Escheats

- Escheat is the power of the state to acquire title to property for which there is no owner. The most common reason that an escheat takes place is that an individual dies intestate, meaning without a valid will indicating who is to inherit his or her property, and without relatives who are legally entitled to inherit in the absence of a will.
- Staff worked very closely with a representative of the Office of the Attorney General specializing in the escheat process to ensure provisions have been properly modernized and to maintain relevance to current practice.
- Consists of current Chapter 10. Section order is retained, except for the relocation of one chapter-wide definition to the beginning of the chapter, consistent with preferred Code organization
- Proposed chapter consists of 42 sections covering 21 pages. Of the 42 sections, 34 include recommendations for only technical changes

Chapter 2 - Uniform Disposition of Unclaimed Property Act (UDUPA)
--

- The UDUPA (i) defines what constitutes unclaimed property, (ii) how long a business entity must maintain the property, and (iii) what to do with the property once it is determined to be abandoned.
- Staff worked closely with the Division of Unclaimed Property of the Virginia Treasury Department and a representative of the Office of the Attorney General.
- Consists of current Chapter 11.1. Proposed chapter consists of 47 sections organized into 3 Articles covering 38 pages. Of the 47 sections, 38 include recommendations for only technical changes.

Chapter 3 - Property Loaned to Museums

- Consists of existing Chapter 11.2, which provides a process for establishing ownership of property that is loaned to museums.
- Proposed chapter consists of 8 sections covering 5 pages. No substantive changes are recommended.

Chapter 4 - Drift Property

- Consists of existing Chapter 11 Estrays and Drift Property, which describes a procedure by which a property owner who finds a stray animal or a boat or vessel adrift on his land may notify the court of the finding and through a proceeding obtains an appraisal of the value of the property.
- Staff is recommending repeal of five sections as obsolete because other procedures in the Code of Virginia and common law cover the situations according to modern practice.
 - For stray animals, a procedure is provided for a humane investigator, law-enforcement officer, or animal control officer, to lawfully impound the animal under § 3.2-6569.
 - For stray companion animals, a property owner who (i) provides care or safekeeping or (ii) retains the companion animal in such a manner as to control its activities, has certain restrictions on his actions pursuant to § 3.2-6551.
 - For abandoned watercraft, the procedure by which an individual may claim title is set out in § 29.1-733.25.
- Proposed chapter consists of 4 sections (because the other existing five sections are recommended for repeal) covering four pages.

Chapter 5 - Trespasses; Fences

- Consists of existing Chapter 18, which contains provisions relating to fences and boundaries, trespasses by animals, and damages for timber cutting. Proposed chapter consists of 40 sections organized into 8 articles.
- Article 1 - Electrical Fences. (Requirements for electrical fences) A total of 4 sections with two having only technical changes recommended. (p. 1, I. 12 through p. 3, I. 73)

- Article 2 - What Constitutes a Lawful Fence. (Definition of lawful fence) A total of 4 sections with two having only technical changes recommended. (p. 3, L1 21 through P. 6, I. 159)
- Article 3 - Cattle Guards and Gates Across Rights-of-Way. A total of 2 sections both containing only technical changes recommended. (p. 7, II. 161 through 184)
- Article 4 - Trespass in Crossing Lawful Fence. (Damages cause by trespass of domesticated livestock) A total of 4 sections with two having only technical changes recommended. (p. 7, I. 185 through p. 9, I. 235)
- Article 5 - No-Fence Law. (Detailing how a county may establish local fence law) A total of 7 sections with 3 having only technical changes recommended and 1 with no changes recommended. (p. 9, I. 236 through p. 12, I. 306)
- Article 6 - Division Fences. (Provisions relating to the obligation of adjoining landowners to build and maintain division fences between their lands) A total of 6 sections all of which have only technical changes recommended. (p. 12, I. 307 through p. 15, I. 378)
- Article 7 - Special Provisions for Unincorporated Communities. (Fixing boundaries of villages to prevent animals from running at large) A total of 8 sections with 5 having only technical changes recommended. (p. 15, I. 379 through p. 19, I. 484)
- Article 8 - Cutting Timber. (Relating to process for recovering damages for trespass involving timber cutting) A total of 5 sections with 3 having only technical changes recommended and two with no changes recommended. (p. 19, I. 485 through p.21, I. 549)

Chapter 6 - Virginia Self-Service Storage Act
--

- Consists of existing Chapter 27.2. Self-service storage facilities rent space on a short-term basis, often month-to-month, though options for longer-term leases are available. The rented spaces are typically secured by the tenant's own lock and key. A self-storage facility does not take possession or control of the contents of the space unless a lien is imposed for non-payment of rent.
- Contains 7 sections with 2 having only technical changes recommended and 3 with no changes recommended.

This completes the review of proposed Subtitle V.

Subtitle V: List of Technical Changes

- Striking out the words/phrases: "thereof," "the same," "therein," "herein," "wherein," "thereto," "whereby," "thereafter," "therefrom," "hereof," "hereunder," "thereunder" and replacing such words with clearer, more explanatory language.
- Striking plural words used after identical singular words on the basis of § 1-227, which states that throughout the Code any word used in the singular includes the plural.
- Replacing the phrase "county, city, or town" with the word "locality" on the basis of § 1-221, which states that throughout the Code, "'locality' means a county, city, or town." Replacing the word "corporation" with "city" as necessary.
- Replacing the word "must" or "will" with the word "shall" as necessary.
- Replacing the phrase "shall be" with the word "is" or "does" as necessary.
- Replacing the phrase "shall have the authority to" with the word "may."
- Replacing the phrase "may not" with "shall not."
- Spelling out the numbers one through nine.
- Using numerals for the numbers 10 or more, except when the numbers begins a sentence or subdivision.
- Replacing the word "which" with the word "that" as necessary.
- Language is updated to reflect the merger of law and equity in Virginia (replacing "bill in equity" with "petition," replacing "bill of complaint" with "complaint," replacing "suit" with "action," removal of the phrase "of equity" after "circuit court," replacing "decree" and "personal decree" with "order,")
- Replacing the word "attorney's" with the word "attorney" when referring to "attorney fees."
- Replacing the word "Virginia" with the phrase "the Commonwealth," and striking the words "of Virginia" after the word "Commonwealth."
- Deleting "rules" in the phrase "rules and regulations" in the context of an administrative agency adopting regulations.
- Deleting the phrase "but not limited to" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUBTITLE V.

MISCELLANEOUS.

Drafting note: Proposed Subtitle V is created to reorganize miscellaneous chapters that are contained in existing Title 55 and belong in proposed Title 55.1 but that do not logically fit within any of the other proposed subtitles of proposed Title 55.1. Proposed Subtitle V contains seven chapters: [1] Escheats; [2] Uniform Disposition of Unclaimed Property Act; [3] Property Loaned to Museums; [4] Drift Property; [5] Trespasses; Fences; and [6] Virginia Self-Service Storage Act.

~~CHAPTER 10~~ XX [1].

~~ESCHEATS~~ GENERALLY.

Drafting note: Existing Chapter 10, Escheats Generally, is retained as proposed Chapter XX [1] of Subtitle V and renamed. Section order is also retained, except for the relocation of one chapter-wide definition to the beginning of the chapter, consistent with preferred Code organization.

~~§ 55-170.1~~ 55.1-xxx. Definition.

As used in this chapter, ~~unless the context otherwise requires: "Knowledge" "known" in terms of a "known determining whether an owner" shall include is "known" includes~~ inspection of tax records and any other inquiry deemed to be reasonable. It need not include inspection of the premises or inspection of title records in the clerk's office in the county or city in which the land is located.

Drafting note: Existing § 55-170.1, which contains a chapter-wide definition, is relocated to the beginning of Chapter XX [1]. The terms "knowledge" and "known owner" do not appear in this chapter; instead, the definition of "known" is only necessary when making a determination as to whether an owner is known or not. Technical changes are made.

~~§ 55-168~~ 55.1-xxx. Appointment of escheators.

27 The Governor shall appoint one escheator for every judicial circuit as set forth in § 17.1-
28 506, to serve at the pleasure of the Governor. Such escheator shall reside within ~~a~~ the circuit to
29 which he is appointed.

30 **Drafting note: Technical change.**

31 § ~~55-169~~ 55.1-xxx. ~~Their bond; their removal~~ Bond of escheator.

32 Each escheator shall give bond for the judicial circuit for which he is appointed in the
33 circuit court for the locality in which he resides, in the penalty of \$3,000, and may continue in
34 office until removed or until a successor is duly appointed and qualified. If property in another
35 locality within the appointed judicial circuit escheats to the Commonwealth at the inquest hearing,
36 the escheator shall give bond within that locality as determined by the clerk of the circuit court in
37 the locality and in a penalty of a percentage of the assessed value of the property according to the
38 records of the commissioner of the revenue. The bond ~~must~~ shall be obtained within ~~ten~~ 10 days
39 following the inquest hearing.

40 **Drafting note: Language in the catchline is updated to reflect the content of the**
41 **statute. Technical changes are made.**

42 § ~~55-170~~ 55.1-xxx. Increase or reduction of penalty of ~~their bonds~~ escheator's bond; ~~its~~
43 effect.

44 The court may, at any time, ~~on~~ with reasonable notice to the escheator, increase or reduce
45 the penalty of the bond; ~~2~~ provided that in no case shall such penalty be reduced to less than \$1,000.
46 ~~If an escheator be required to give a bond with increased penalty and he fail to give it within a~~
47 ~~reasonable time to be prescribed by the court, such failure shall be deemed a neglect of official~~
48 ~~duty within the meaning of § 55-169.~~ Upon bond being given under an order increasing or
49 reducing the penalty of a former bond, the sureties in such former bond and their estates shall be
50 discharged from all liability for any breach of official duty committed by such escheator after that
51 time.

52 **Drafting note: The second sentence is deleted as obsolete; according to existing § 55-**
53 **168, escheators serve at the pleasure of the Governor, and may be removed with or without**

54 cause, including for neglect of official duty. Existing § 55-169 was amended in 1982 to
 55 remove language related to neglect of official duty, but this section was not amended at that
 56 time to reflect those changes. Technical changes are made.

57 § ~~55-171~~ 55.1-xxx. Annual report to escheator; lands not liable.

58 Each treasurer shall, every May, furnish to the escheator of his county or city a list of all
 59 lands within his district ~~of which~~ owned by any person who has died ~~seised of an estate of~~
 60 inheritance (i) intestate and without any known heir; or (ii) testate without disposing of all
 61 property by will and without leaving any surviving heir to inherit the property. No land shall be
 62 liable to escheat ~~which for fifteen years that~~ has been held for 15 years under adverse possession
 63 as at common law by the person claiming ~~the same such land~~, or those under whom he holds, but
 64 only if taxes were paid throughout that period by the claimant or those under whom he holds.

65 **Drafting note: The archaic term "seised" is replaced with modern terminology;**
 66 **according to Black's Law Dictionary, "seisin" means the possession of real property under**
 67 **claim of freehold estate. Technical changes are made.**

68 § ~~55-172~~ 55.1-xxx. Escheator to hold inquest; notice ~~thereof of inquest~~.

69 On receiving ~~such a~~ list compiled pursuant to § 55.1-xxx [§ 55-171], or upon information
 70 from any person, in writing and under oath, that any of the conditions described in § ~~55-171~~ 55.1-
 71 xxx exists, the escheator shall proceed to hold his inquest to determine whether any land
 72 mentioned identified has escheated to the Commonwealth. He shall give (i) post notice of the time
 73 of taking such inquest, ~~by advertisement~~, at the front door of the courthouse; for ~~thirty~~ 30 days;
 74 prior to the inquest and (ii) advertise once in a newspaper of general circulation within the county
 75 or city ~~once, not more than thirty at least seven but not more than 30 nor less than seven~~ days;
 76 prior to the inquest. Notice shall also be mailed to the last owner of record, if any, as it appears in
 77 the tax records of the local treasurer. The escheator shall send a copy of the newspaper
 78 advertisement to the State Treasurer prior to the date of the inquest. The inquest shall be held in
 79 the same calendar year ~~as in which~~ the list or information is received by the escheator. The
 80 attorney for the Commonwealth shall act as attorney for this proceeding.

81 **Drafting note: Clause designations are added for clarity. Technical changes are**
82 **made.**

83 § ~~55-173~~ 55.1-xxx. Jury of inquest, ~~how summoned, etc.;~~ presentation of evidence, ~~how~~
84 given.

85 ~~For this inquest there shall be summoned and returned by the~~ The sheriff of the county or
86 ~~sergeant of the city~~ ten shall summon and return 10 qualified jurors for the inquest, of whom at
87 least seven shall be impaneled as a jury. They shall meet at the courthouse and sit in public and
88 may be adjourned by the escheator from day to day. Every person competent to testify as a witness
89 shall be required to give evidence openly in the presence of the jurors.

90 **Drafting note: The term "sergeant of the city" is deleted as obsolete. Technical**
91 **changes are made.**

92 § ~~55-174~~ 55.1-xxx. Attendance of jurors.

93 If any person summoned or adjourned as a juror ~~fail~~ fails to attend according to the
94 summons or adjournment, the escheator shall ~~return the fact to the next~~ report such failure to the
95 circuit court having jurisdiction over the county or city in which the land that is the subject of the
96 ~~inquisition may lie~~ inquest is located. Such court may fine such person an amount not ~~exceeding~~
97 ~~fifty dollars to exceed \$50~~. Jurors shall be compensated as provided for jurors in civil cases.

98 **Drafting note: The term "inquisition" is replaced with "inquest" for consistency**
99 **throughout the chapter. Language is updated for modern usage. Technical changes are**
100 **made.**

101 § ~~55-175~~ 55.1-xxx. How verdict signed; where returned and recorded.

102 When the inquest is ~~ended~~ concluded and the verdict concurred in by a majority of the
103 jurors impaneled, ~~or at least seven of them, it~~ such verdict shall be signed by those so concurring
104 and by the escheator. ~~This verdict is effective so long as it is signed by a majority of the jurors.~~

105 The escheator shall, within ~~ten~~ 10 days, return the verdict to the clerk's office of the circuit court.

106 After receiving the verdict, the clerk of such court shall record it in accordance with § 17.1-266

107 and shall provide copies ~~thereof~~ within ~~ten~~ 10 days to the commissioner of the revenue and the

108 local treasurer or the person performing those duties. This escheat verdict shall be recorded in the
109 grantor index of the record books in the clerk's office.

110 **Drafting note: A substantive change regarding the number of jurors required to**
111 **concur in the verdict is recommended because there are conflicting requirements: the first**
112 **sentence states that at least seven of the jurors must concur in and sign the verdict but the**
113 **second sentence says that a verdict is effective if signed by a majority. Under existing § 55-**
114 **173, at least seven, but up to 10, jurors must be impaneled, and this section says at least**
115 **seven or a majority must concur in and sign the verdict for it to be effective. So if the**
116 **maximum of 10 jurors were impaneled, six jurors would be a majority. Language is updated**
117 **for modern usage. Technical changes are made.**

118 § ~~55-176~~ 55.1-xxx. Proceedings to claim land escheated.

119 When the verdict on ~~such an~~ inquest is for the Commonwealth, any person claiming any
120 interest in the lands, whether legal or equitable, may, before the sale ~~thereof of such land~~, petition
121 the circuit court for redress. The petition shall be accompanied by a bond with good security to
122 pay the Commonwealth all past due real estate taxes, penalties, and interest on such lands. ~~To~~
123 ~~such petition the~~ The escheator shall be the sole defendant on behalf of the Commonwealth, and
124 may appear on his own behalf. ~~He~~ The escheator shall file an answer stating the objections to the
125 claim. The cause shall be heard, without any unnecessary delay, upon the petition and answer and
126 the evidence. Upon a judgment in favor of the claimant, he shall pay all past due taxes, penalties,
127 and interest. Upon ~~said entry of such~~ judgment, the court may, ~~in its discretion, allow attorney's~~
128 award attorney fees to the escheator, ~~who may appear on his own behalf~~. For real estate
129 assessment purposes, the commissioner of the revenue or assessor shall continue to assess any
130 escheated property.

131 **Drafting note: Language allowing the escheator to appear on his own behalf is**
132 **relocated from the end of the section to clarify that the escheator may represent himself**
133 **throughout the entire claim. Technical changes are made.**

134 § ~~55-177~~ 55.1-xxx. Trial by jury; judgment of court.

135 ~~The~~ Upon a petition filed pursuant to § 55.1-xxx [§55-176], the court may ~~cause~~ impanel
136 a jury ~~to be impaneled~~ to ascertain any facts ~~which~~ that may be disputed and ~~if it see fit~~ may set
137 aside the verdict ~~and have a new jury impaneled. Its decision shall be such as the rights of the~~
138 ~~petitioner may require.~~ The escheator may initiate a new inquest in accordance with § 55.1-xxx
139 [§ 55-172]

140 **Drafting note: A cross-reference to existing § 55-176 is added for clarity. Language**
141 **stating that the escheator, rather than the court, may initiate a new inquest and have a new**
142 **jury impaneled is added to reflect that the decision to initiate an inquest is up to the**
143 **escheator, not the court. The existing last sentence is deleted as unnecessary because the**
144 **escheator is the one to determine whether to initiate a new inquest. Technical changes are**
145 **made.**

146 ~~§ 55-178~~ 55.1-xxx. Facts or evidence to be certified.

147 If witnesses ~~be~~ are sworn before the court or jury ~~and either party require it~~, the court shall,
148 upon request of either party, certify what facts are proved by such witnesses, ~~if the facts can be~~
149 ~~certified~~. If the facts cannot be certified, the court shall then certify the evidence of the witnesses
150 ~~and such~~. In either case, such certificate shall, ~~in either case~~, be a part of the record.

151 **Drafting note: Technical changes.**

152 ~~§ 55-179~~ 55.1-xxx. Lands may be committed to claimant while claim pending.

153 Pending the petition, the court may commit the lands, or any part thereof, to the claimant,
154 ~~on his giving after he has given~~ bond with good security to pay the Commonwealth the rents and
155 profits of ~~the same such land~~, if ~~the right be found~~ judgment is subsequently entered for the
156 Commonwealth.

157 **Drafting note: Language is updated for modern usage. Technical changes are made.**

158 ~~§ 55-180~~ 55.1-xxx. Disposition ~~thereof of lands while claim is pending~~, if not ~~so~~
159 committed to claimant.

160 If the escheator leases property remaining in his hands, he shall notify and transmit a copy
161 of such lease, ~~if in written form~~, to the State Treasurer within ~~thirty~~ 30 days and remit the rent

162 proceeds to the State Treasurer as they are received. ~~In either case the~~ The escheator shall be
163 answerable, ~~as the right may be determined,~~ to the claimant or to the Commonwealth, as
164 determined by the court, for the rents and profits ~~thereof of such land~~ and ~~that the same the~~
165 escheator shall ensure that such land be kept free from waste and destruction. Where the escheator
166 deems that reasonable business practice would require that insurance be obtained on such income-
167 producing property, he shall obtain insurance coverage on the escheated property after having
168 first obtained the approval of the State Treasurer ~~therefor~~.

169 **Drafting note: The phrase "if in written form" is deleted because every lease under**
170 **the statute of frauds must be in writing. Language is updated for modern usage and clarity.**
171 **Technical changes are made.**

172 § ~~55-181~~ 55.1-xxx. Escheator to notify State Treasurer of claim and decision.

173 The escheator shall certify to the State Treasurer, within ~~sixty~~ 60 days after the end of a
174 year from the date of such ~~inquisition inquest~~, whether any ~~claim by~~ petition has been ~~made;~~ filed
175 claiming an interest in the property pursuant to § 55.1-xxx [§ 55-176], and if such claim ~~be is~~
176 made, he shall certify the decision ~~thereon~~ on such petition within ~~sixty~~ 60 days after such
177 decision.

178 **Drafting note: The term "inquisition" is replaced with "inquest" for consistency**
179 **throughout the chapter. Language regarding the petition, including a cross-reference, is**
180 **added for clarity. Technical changes are made.**

181 § ~~55-182~~ 55.1-xxx. Escheators to certify lands escheated.

182 Every escheator shall, within ~~sixty~~ 60 days after ~~inquisition found an inquest that finds~~ on
183 behalf of the Commonwealth, transmit to the State Treasurer a certificate showing the number of
184 tracts or lots escheated ~~thereby~~, the reputed quantity of each parcel, a description sufficient to
185 identify each parcel, and the names of the persons found to have died ~~seised thereof~~ owning such
186 parcel, or from whom the land escheated.

187 **Drafting note: The term "inquisition" is replaced with "inquest" for consistency**
188 **throughout the chapter. The archaic term "seised" is replaced with modern terminology.**
189 **Technical changes are made.**

190 § ~~55-182.1~~ 55.1-xxx. Removal of parcels from the certificate.

191 If the escheator finds that the escheat of a parcel was improper, for whatever reason, he
192 shall remove the parcel from the certificate [transmitted to the State Treasurer pursuant to § 55.1-](#)
193 [xxx \[§ 55-182\]](#) at any time prior to sale pursuant to § ~~55-184.1~~ 55.1-xxx. The escheator shall state
194 in writing his reasons for such removal to the satisfaction of the State Treasurer. Thereafter, unless
195 a petition has been filed in accordance with § ~~55-176~~ 55.1-xxx, the escheator shall petition the
196 circuit court to correct the verdict returned to the clerk of court pursuant to § ~~55-175~~ 55.1-xxx. A
197 copy of this petition shall be sent to the State Treasurer. The escheator shall notify in writing the
198 [local](#) treasurer or the [local](#) official performing these duties, of any such error and improper escheat.
199 The escheator shall be reimbursed the costs incurred by him for filing such a petition with the
200 circuit court. The escheator shall file, and the clerk of court shall record, any such corrected verdict
201 in the appropriate deed books.

202 **Drafting note: A cross reference regarding the certificate is added for clarity.**
203 **"Local" is added before "treasurer" and "official" to differentiate between those officials**
204 **and the State Treasurer. A technical change is made.**

205 § ~~55-182.2~~ 55.1-xxx. Escheat of property with hazardous materials.

206 In addition to any other remedy provided by law, the Virginia Waste Management Board,
207 pursuant to its authority granted in § 10.1-1402, or the Department of ~~Waste Management~~
208 [Environmental Quality](#), shall have recourse against any prior owner or the estate of any prior
209 owner for the costs of ~~clean-up~~ [cleanup](#) of escheated property in or upon which any hazardous
210 material as defined in § 44-146.34 is found.

211 **Drafting note: Technical changes are made, including updating a state agency**
212 **reference. The Department of Waste Management was incorporated into the Department**
213 **of Environmental Quality effective April 1, 1993.**

214 § ~~55-183~~ 55.1-xxx. Publication of escheator's certificate.

215 The State Treasurer shall cause the contents of ~~such~~ the certificate transmitted pursuant to
216 § 55.1-xxx [§ 55-182] to be published once each week for four consecutive weeks in a newspaper
217 of general circulation in the county or city where the ~~proceedings are~~ inquest was held.

218 **Drafting note: A cross-reference regarding the certificate is added for clarity.**
219 **"Proceedings" is changed to "inquest" for consistency with the contents of the certificate.**
220 **A technical change is made.**

221 § ~~55-184~~. ~~Repealed.~~

222 **Drafting note: Repealed by Acts 1977, c. 583.**

223 § ~~55-184.1~~ 55.1-xxx. Order of sale by Governor.

224 Not less than six months after the publication of the escheator's certificate pursuant to §
225 55.1-xxx [§ 55-183], the State Treasurer shall ~~lay before~~ present to the Governor the escheator's
226 certificate, and proof of publication, and, if claim has not been made ~~as aforesaid~~ pursuant to §
227 55.1-xxx [§ 55-176], or, if made, has been decided in favor of the Commonwealth, the Governor
228 shall order the escheated land to be sold upon such terms, at such time, and at such place within
229 the county or city ~~wherein the lands lie in which the property is located~~, or if the ~~lands lie~~ property
230 is located within a city that is located wholly within a county, then the sale may take place in the
231 city, or a contiguous county or city ~~or county~~ as he ~~may think~~ deems proper. The order of sale
232 shall be delivered to the State Treasurer, to be transmitted to the escheator, who shall proceed to
233 sell according to such order.

234 **Drafting note: Cross-references are added for clarity. Technical changes are made.**

235 § ~~55-184.2~~ 55.1-xxx. Form of sale agreement; notice of right to refund.

236 A sale agreement for the purchase of ~~escheat~~ escheated property shall include a statement
237 of the ~~buyer's~~ purchaser's right to claim a refund pursuant to § ~~55-200~~ 55.1-xxx upon submission
238 to the State Treasurer within 120 days of the sale of satisfactory evidence that the ~~escheat~~
239 escheated property does not exist or was improperly escheated. The following form may be used:

240 Sale Agreement of ~~Eseheat~~ Escheated Property

241 This agreement of sale made in triplicate this ____ day of _____, 20____,
 242 between _____, Escheator (hereinafter known as Seller) and _____ (hereinafter
 243 known as Buyer Purchaser) and _____ (hereinafter known as Agent).

244 WITNESS

245 That for and in consideration of the full purchase price of \$_____ by cash/check in
 246 hand paid, receipt of which is hereby acknowledged, the Seller agrees to sell and the Buyer
 247 Purchaser agrees to buy all that certain lot or parcel of land with all the appurtenances (if any)
 248 thereunto belonging and described as follows:

249 _____
 250 _____
 251 _____

252 The seller agrees to obtain a state grant. It is hereby understood that GRANTS for lots,
 253 parcels and acreage sold pursuant to this agreement shall be ~~without warranty~~ WITHOUT
 254 WARRANTY and in accordance with § ~~55-186.1~~ 55.1-xxx of the Code of Virginia. The recovery
 255 of proceeds of each sale from the Commonwealth, less the expenses of sale and the escheator's
 256 fee commission, may be obtained if the Buyer Purchaser, pursuant to § ~~55-200~~ 55.1-xxx of the
 257 Code of Virginia, submits satisfactory evidence to the State Treasurer within 120 days of the sale
 258 that the ~~escheat~~ escheated property does not exist or was improperly escheated.

259 WITNESS the following signatures and seals made this ____ day of _____,
 260 20____.

261 _____ (SEAL)

262 _____ (SEAL)

263 Agent

264 _____ (SEAL)

265 Buyer Purchaser

266 _____ (SEAL)

267 Escheator for

268 _____, Virginia,

269 Seller

270 **Drafting note: The term "escheat property" is changed to "escheated property" for**
271 **consistency throughout the chapter. The term "buyer" is replaced with "purchaser" for**
272 **chapter-wide consistency. The term "fee" is replaced with "commission" for consistency**
273 **with § 55.1-xxx [§ 55-192]. The term "without warranty" is capitalized for its importance.**

274 ~~§ 55-185. Repealed.~~

275 **Drafting note: Repealed by Acts 1977, c. 583.**

276 ~~§ 55-186~~ 55.1-xxx. When grant to issue to purchaser; reimbursable expenses.

277 A. When the escheator sells for cash, he shall certify the purchase and the price to the State
278 Treasurer, who, after determining that such price, deducting the expenses, has been paid into the
279 state treasury and that the expenses of the inquest and sale have been paid to the escheator, shall
280 have a grant issued and executed for the lands so sold. At the time of sale, the escheator shall
281 require the purchaser to sign an authorization for recordation prior to distribution. A clerk's fee
282 per parcel purchased in accordance with subdivision A 2 of § 17.1-275 ~~per parcel purchased~~ shall
283 be collected by the escheator in addition to the purchase price. The fee shall be forwarded to the
284 State Treasurer, together with the names and addresses of the purchasers of the escheated property
285 and the sale proceeds as required in ~~§ 55-189~~ 55.1-xxx, who shall send the fee with the grants to
286 the local clerk's office for recording. The fee in effect at the time of sale shall be in lieu of all fees
287 and costs. Grants of escheated property shall be exempt from all recording taxes. After recording
288 the grants, the local clerk shall forward the grants to the escheator, who shall be responsible for
289 notifying the purchasers of the recordation and the distribution of the grants to the purchaser.

290 B. Expenses reimbursable by the State Treasurer under subsection A ~~of this section~~ shall
291 include an auctioneer's fee, which shall not exceed five percent of the sale proceeds. The State
292 Treasurer, by regulation, shall detail other appropriate reimbursable expenses.

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

294 ~~§ 55-186.1~~ 55.1-xxx. ~~In what form grant to issue~~ Form of grant of escheated property.

295 Such grant shall be without warranty, and to the following effect:

296 "~~A.B., Governor of the Commonwealth of Virginia, to all to whom these presents shall~~
 297 ~~come, greeting: Know ye, that in~~ In consideration of the sum of \$_____ paid by _____
 298 ~~, the purchaser,~~ into the treasury of ~~this the~~ Commonwealth, etc., there is granted without warranty
 299 by the Commonwealth ~~unto the said to~~ _____, ~~the purchaser,~~ a certain tract or parcel
 300 of land, containing _____ acres, lying in the county (or city) of _____, etc., (describing the
 301 bounds of the land and date of the survey or other description sufficient to identify the parcel)
 302 with its appurtenances, to ~~the said~~ _____, ~~the purchaser,~~ and his heirs forever. In
 303 witness whereof, _____, ~~the said A.B.,~~ Governor of the Commonwealth, has set his
 304 hand and caused the lesser seal of the Commonwealth to be affixed hereunto, at _____, on
 305 the _____ day of _____, in the year _____, ~~and of the Commonwealth~~
 306 _____ A.B."

307 **Drafting note: Language is updated for modern usage. Technical changes are made.**

308 § ~~55-186.2~~ 55.1-xxx. Governor to sign and seal grant; Librarian of Virginia to record it,
 309 etc.; delivery to and by State Treasurer.

310 The State Treasurer shall deliver such grant to the Governor, by whom it shall be signed
 311 and ~~sealed~~ caused to be affixed with the lesser seal of the Commonwealth. The grant shall then
 312 be delivered by the Governor to the Librarian of Virginia, who shall record it, and the plat and
 313 certificate of survey, if provided, or other description sufficient to identify the parcel on which
 314 the grant is founded, by a procedural microphotographic process ~~which that~~ meets archival
 315 standards. The Librarian of Virginia shall certify to the State Treasurer that the grant has been
 316 recorded and then deliver the grant to the State Treasurer, who shall in turn mail it to the party to
 317 whom it is made, or his ~~order~~ another person, as directed by such party.

318 **Drafting note: Technical changes.**

319 § ~~55-186.3~~ 55.1-xxx. ~~Unrecorded escheat grants; original lost or destroyed; Recordation~~
 320 of certified copy of grant.

321 The clerk shall accept for recordation a copy of the grant from the Commonwealth that is
322 certified as a true copy by the Librarian of Virginia under § ~~55-186.2~~ 55.1-xxx.

323 **Drafting note: The catchline is updated to reflect the text of the statute, which does**
324 **not speak to unrecorded escheat grants or original grants that are lost or destroyed.**

325 § ~~55-187~~ 55.1-xxx. Resale in case of default.

326 If the purchaser does not pay the purchase money into the state treasury within a
327 reasonable time, ~~deposits, if any deposit, are is~~ forfeited, and the State Treasurer may, ~~in his~~
328 discretion, rescind the contract and order a new sale.

329 **Drafting note: The term "deposits" is replaced with "deposit" on the basis of § 1-**
330 **227, which states that throughout the Code any word used in the singular includes the plural**
331 **and vice versa. The phrase "in his discretion" is deleted as unnecessary. Technical changes**
332 **are made.**

333 § ~~55-188~~. Repealed.

334 **Drafting note: Repealed by Acts 1990, c. 938.**

335 § ~~55-189~~ 55.1-xxx. Reports by escheators to State Treasurer; ~~payment of moneys into state~~
336 treasury.

337 The escheator shall file reports with the State Treasurer as required by the State Treasurer
338 by agency directive.

339 **Drafting note: The catchline is updated to reflect the text of the statute, which does**
340 **not speak to payment of moneys into the state treasury. The phrase "with the State**
341 **Treasurer" is added to clarify where the reports are to be filed.**

342 § ~~55-190~~ 55.1-xxx. Reports by State Treasurer to the Governor; penalty on escheators for
343 failure of duty.

344 The State Treasurer shall, every May 1, file a report with the Governor containing the
345 name of any escheator who fails to perform any duty required of him by this chapter. If any
346 escheator fails to report to and account with the State Treasurer, or fails to pay into the state
347 treasury the proceeds of any sale made by him, or any such rents and profits, in the manner and

348 within the time prescribed by law, he shall be fined no more than \$200 for every ~~sixty~~ 60 days
349 such failure continues. If any escheator fails to perform any other duty required of him by this
350 chapter, ~~for the failure of which and~~ no specific penalty for such failure is provided, he shall be
351 fined ~~therefor~~ no more than ~~fifty dollars~~ \$50. Any action ~~or motion~~ for any fine under this chapter
352 may be instituted ~~or made~~, at the discretion of the State Treasurer, or of the Attorney General, in
353 the Circuit Court of the City of Richmond, after ~~fifteen~~ 15 days' notice, ~~in the case of such motion~~.

354 **Drafting note: References to "motion" are deleted as unnecessary; a proceeding to**
355 **collect the fine would be instituted by an action. Technical changes are made.**

356 § ~~55-190.1~~ 55.1-xxx. State Treasurer may examine records of any escheator,
357 commissioner of the revenue, or ~~escheator~~ treasurer.

358 The State Treasurer may at reasonable times and upon reasonable notice examine the
359 records of any escheator, commissioner of the revenue, treasurer, or other person charged with
360 his duties.

361 **Drafting note: The catchline is updated to reflect the text of the statute. Technical**
362 **changes are made.**

363 § ~~55-191~~ 55.1-xxx. When State Treasurer to issue grant to purchaser.

364 ~~When The State Treasurer shall not request that the Governor issue a grant for the lands~~
365 sold to the purchaser, or his heirs or assigns, until the purchase money ~~shall have~~ has been fully
366 paid, ~~according to law, and not before, the State Treasurer shall issue a grant, for the lands so sold~~
367 ~~to the purchaser, or his heirs or assigns~~.

368 **Drafting note: Language is reorganized for clarity.**

369 § ~~55-192~~ 55.1-xxx. Escheator's pay.

370 Except as otherwise provided ~~hereinafter in this section~~, the escheator shall ~~have be~~
371 entitled to a commission of ~~ten~~ 10 percent on all proceeds of sales made by him of escheated lands
372 ~~which that~~ are paid to him or into the state treasury. Where an escheator is replaced by the
373 appointment and qualification of a successor and where such escheator ~~has published the notice~~
374 of held an inquest provided for in § ~~55-172~~ 55.1-xxx but the sale provided for in § ~~55-184.1~~ 55.1-

375 xxx has not been held, the ~~ten~~ 10 percent commission on the proceeds of the sales of the escheated
376 lands so advertised shall be divided equally between such escheator and his successor. For ~~the~~
377 ~~inquest of~~ each parcel ~~taken by him that escheats,~~ the escheator shall be paid ~~ten dollars,~~ \$10 out
378 of any money in the state treasury belonging to the ~~literary fund~~ Literary Fund.

379 **Drafting note: Language is corrected to state that the escheator must have held the**
380 **inquest prior to receiving his commission instead of just publishing notice for such inquest.**
381 **It is also corrected to reflect that the \$10 fee is only given to the escheator for each parcel**
382 **that is successfully escheated, not for every parcel for which an inquiry is held. Technical**
383 **changes are made.**

384 § ~~55-193~~ 55.1-xxx. Escheat of estates in trust and equitable titles.

385 An estate vested in a person ~~merely solely~~ by ~~way of~~ mortgage or ~~on deed of~~ trust shall
386 not escheat or be forfeited to the Commonwealth by reason of the mortgagee or trustee dying
387 without heirs; 2 but any equitable title to lands shall escheat or be forfeited, ~~so far as it would as~~
388 the case may be, if the person having the equitable title also had the legal title.

389 **Drafting note: Language is updated for modern usage and clarity A technical**
390 **changes is made.**

391 § ~~55-194~~ 55.1-xxx. Provision in favor of tenant of escheated land.

392 If any person holds any escheated land under a lease or has right to any rent or other profit
393 out of ~~the same~~ such land, he shall hold and enjoy his lease, rent, 1 or other profit, whether ~~the same~~
394 such lease or right to rent or other profit is found in the ~~inquisition~~ inquest or not.

395 **Drafting note: The term "inquisition" is replaced with "inquest" for consistency**
396 **throughout the chapter. A technical change is made.**

397 § ~~55-195~~ 55.1-xxx. In favor of creditor of decedent.

398 If any debt of a person who died ~~seized of owning~~ lands that escheated to the
399 Commonwealth, ~~remain~~ remains unpaid after all the personal estate of such person has been
400 applied to the payment of his debts, the creditor may file his bill in equity complaint, accompanied
401 with an affidavit that the debt is bona fide due, to recover such debt in the circuit court to which

402 the ~~inquisition~~ inquest of escheat was returned and make the escheator defendant. If the court
403 ~~upon the evidence adduced shall be of opinion and decree~~ orders that the debt or any part thereof
404 is due, the amount decreed to be due shall be paid by the escheator, if ~~so much of~~ the escheator
405 has enough of the proceeds of sale ~~remain in his hands~~ remaining to cover the amount, or out of
406 the state treasury, if ~~so much of such~~ enough of the proceeds ~~shall that~~ have been paid into ~~and~~
407 ~~still remain in~~ the state treasury still remain in the state treasury, or to the credit of the Literary
408 Fund.

409 **Drafting note: The archaic term "seized" is replaced with modern terminology.**
410 **Language used in the old equitable pleading practice, including "bill in equity" and**
411 **"decree" is replaced with modern terminology. The term "inquisition" is replaced with**
412 **"inquest" for consistency throughout the chapter. Language is updated for modern usage**
413 **and clarity. Technical changes are made.**

414 § ~~55-196~~ 55.1-xxx. Escheators to defend on behalf of Commonwealth.

415 The escheator shall answer and defend on the part of the Commonwealth any ~~such~~ suit
416 against him or any petition filed under § ~~55-176~~ 55.1-xxx and shall be allowed the costs incurred
417 by him in ~~defending the same~~ such defense.

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

419 § ~~55-197~~ 55.1-xxx. Recovery by escheator of decedent's escheated ~~residuum~~ residue; and
420 of property abandoned or derelict; fee.

421 The ~~residuum~~ residue of a decedent's estate consisting of real property; belonging to the
422 Commonwealth, or subject to escheat to the Commonwealth, and any such property abandoned
423 or derelict, or having no rightful owner, may be recovered from any person in possession thereof
424 by an escheator by a ~~bill in equity~~ complaint in the name of the Commonwealth. For his services
425 in such recovery, the escheator shall be entitled to such fee as may be approved by the State
426 Treasurer, but in no event shall such fee exceed ~~ten~~ 10 percent of the value of such recovered
427 property.

428 **Drafting note: The term "residuum" is replaced with "residue" for consistency**
 429 **throughout the Code. Language used in the old equitable pleading practice, including "bill**
 430 **in equity," is replaced with modern terminology. A technical change is made.**

431 § ~~55-198~~ 55.1-xxx. Publication of suit; what to state and require.

432 When any ~~such suit~~ action is instituted pursuant to § 55.1-xxx [§ 55-197], the court shall
 433 cause a publication to be made once each week for four consecutive weeks in ~~some a~~ a newspaper
 434 of general circulation in the county or ~~corporation~~ city in which the proceedings are ~~had held~~,
 435 setting forth the nature of the claim, the name and ~~nativity~~ place of birth, when known, of the
 436 deceased person, or of the former owner of the property, if known, as the case may be, and
 437 describing a description of the property or estate claimed, and requiring all persons claiming an
 438 interest ~~therein in such property~~ to appear ~~and make themselves defendants by a given day of an~~
 439 ensuing term assert their interests in such property.

440 **Drafting note: Language used in the old equitable pleading practice, including "suit"**
 441 **is replaced with modern terminology. The term "corporation" is replaced with "city" for**
 442 **consistency with title-wide conventions. The term "nativity" is updated to the modern**
 443 **phrase, "place of birth." Language is updated for modern usage. Technical changes are**
 444 **made.**

445 § ~~55-199~~ 55.1-xxx. Decree Order of the court.

446 If no person ~~appear~~ appears and ~~show title in himself shows that he has title to the property,~~
 447 the court shall ~~decree order that~~ the ~~residuum~~ residue or other property belongs to the
 448 Commonwealth, and enforce the collection thereof, or of the proceeds of the sale of such property;
 449 Provided, provided, however, that if the ~~residuum~~ residue or other property was given,
 450 bequeathed, or devised by will to a charitable institution in ~~this the~~ the Commonwealth and such gift,
 451 bequest, or devise failed by reason of insufficient witnessing of such will and would otherwise
 452 escheat to the Commonwealth, and the court finds that it is in the public interest, the court may
 453 order such ~~residuum~~ residue or other property, or so much thereof as was subject to ~~said such~~ such gift,
 454 bequest, or devise, to be paid to such charitable institution.

455 **Drafting note: Language used in the old equitable pleading practice, including**
456 **"decree" is replaced with modern terminology. The term "residuum" is replaced with**
457 **"residue" for consistency throughout the Code. Language is updated for modern usage.**
458 **Technical changes are made.**

459 § ~~55-200~~ 55.1-xxx. How money paid into state treasury from escheats may be recovered.

460 A. If within 120 days from the date of sale, a purchaser submits evidence satisfactory to
461 the State Treasurer that the property described in the grant does not exist or was improperly
462 escheated, the State Treasurer may refund the purchase price, less the expenses of sale and the
463 escheator's fee. Before any such refund is made, the purchaser ~~must~~ shall return the grant to the
464 State Treasurer, who shall inform the Librarian of Virginia of its return. Both of these officials
465 shall note the grant's return in their records. When the ~~purchaser~~ Commonwealth has recorded ~~his~~
466 the grant ~~from the Commonwealth, he~~ the purchaser shall record a quitclaim deed and send proof
467 thereof to the State Treasurer prior to the issuance of any refund.

468 B. After any sale of escheated lands and upon certification verified by oath of the ~~city,~~
469 town or county local treasurer or other officer charged with the collection of local real estate taxes
470 that the land so sold was, at the time of escheat to the Commonwealth, subject to the lien of unpaid
471 local real estate taxes or that the land so sold was, at any time prior to sale, subject to other
472 assessments, including liens for demolition, cutting or removing weeds, or abating any nuisance
473 on the escheated land, all of which assessments were validly assessed, levied, or imposed by the
474 ~~city, town or county locality~~ locality on the lands within ~~twenty~~ 20 years preceding the date of the escheat
475 or inquest, the State Treasurer shall, upon receipt of the proceeds of sale, deduct the escheator's
476 commission and costs of the inquest and sale. The State Treasurer shall then pay to the ~~city, town~~
477 or county local treasurer out of the net proceeds of such sale, if any, the amount of the local real
478 estate taxes ~~and/or~~ and assessments, including accrued penalties and interest, up to but not
479 exceeding the amount of the funds remaining in the hands of the State Treasurer from the proceeds
480 of the sale. To the extent that local taxes and other appropriate local charges exceed the proceeds
481 obtained for such escheated land at the escheat sale, such local taxes and other charges are

482 exonerated. Any other liens on property ~~which is that was~~ escheated and sold ~~will shall~~ shift to
483 the proceeds of the sale and ~~will shall~~ no longer remain a lien on the property.

484 C. Any person who had not asserted a claim before the sale of escheated property, being
485 entitled to any property so escheated and sold, may recover so much of the net proceeds as remain
486 after deduction of the escheator's commission, costs of the inquest and sale, and allowance of
487 claims for unpaid real estate taxes and assessments due on the land or from any creditors of the
488 decedent. The same may be allowed by the State Treasurer or, if a claim in any such case is
489 rejected by him, a petition for recovery may be made in the manner provided in § 8.01-192 for
490 recovering claims against the Commonwealth, but subject to the limitation in § 8.01-255.

491 **Drafting note: In subsection A, language is updated to reflect that the**
492 **Commonwealth records the grant, not the purchaser, as reflected in subsection A of § 55.1-**
493 **xxx [§ 55-186]. In subsection B, "city, town or county" is replaced with "local" or "locality,"**
494 **as appropriate, on the basis of § 1-221, which states that throughout the Code "locality"**
495 **means a county, city, or town." Also in subsection B, the grammatical shortcut "and/or" is**
496 **amended to reflect the appropriate meaning: "and" in the sense of "both/all." Technical**
497 **changes are made.**

498 ~~§ 55-200.1 55.1-xxx.~~ Rules and regulations Regulations of the State Treasurer.

499 The State Treasurer shall adopt any necessary ~~rules and~~ regulations in accordance with the
500 Administrative Process Act (§ 2.2-4000 et seq.) to carry out the provisions of this chapter.

501 **Drafting note: The word "rules" is deleted because state agencies adopt regulations,**
502 **not rules.**

503 ~~§ 55-201 55.1-xxx.~~ Continuation of certain statutes.

504 The first section of Chapter 114 of the Code of 1849, and the sections following that to
505 the seventeenth section, inclusive, of such chapter; the act passed April 12, 1852 (Chapter 18,
506 Acts 1852); the act passed April 7, 1858 (Chapter 39, Acts 1858); and the Acts of 1857-8, as
507 amended by the act passed March 30, 1860 (Acts of 1859-60) are continued in force.

508 **Drafting note: Technical change.**

509 § ~~55-201.1~~ 55.1-xxx. Pendency of escheat proceedings no bar to condemnation
510 proceedings.

511 Notwithstanding any provision contained in this chapter, the Commissioner of Highways
512 or any ~~city, town, county~~ locality or other political subdivision or agency of ~~this the~~
513 Commonwealth possessing the power of eminent domain may, ~~for any a~~ public purpose in
514 accordance with the law and notwithstanding the pendency of any proceeding brought for the
515 escheat of any land wanted and needed by such Commissioner of Highways or such ~~city, town,~~
516 ~~county~~ locality or other political subdivision or agency of ~~this the~~ Commonwealth for such
517 purpose, institute, maintain, and conduct to final judgment condemnation proceedings to acquire
518 in fee simple such land or such lesser estate, title, or interest therein as is wanted and needed for
519 such public purpose, provided, however, that the escheator in whose name such escheat
520 proceedings ~~be is~~ pending and the Commonwealth of Virginia ~~be are~~ made codefendants to such
521 condemnation proceedings, together with the owner ~~or owners~~, if known, of the land proposed to
522 be condemned in such proceeding. The pendency of such escheat proceedings shall not constitute
523 a bar or defense to such condemnation proceedings, nor to any proceeding therein seeking a right
524 of entry as provided in § 25.1-223, in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, or in Article 1
525 (§ 33.2-1000 et seq.) of Chapter 10 of Title 33.2. No escheator, after being served with notice of
526 the filing of any such condemnation proceeding, shall sell or dispose of any land sought to be
527 acquired in such condemnation proceeding except upon order entered by the court in which such
528 condemnation proceeding is pending. The funds paid into court as compensation ~~and/or or~~
529 damages for the land so taken or damaged shall, after payment of taxes and other claims
530 constituting valid liens against the land so taken, be ordered distributed to the party ~~or parties~~
531 entitled thereto or be ordered paid to the escheator of ~~said such~~ land, or to the State Treasurer, as
532 the court, ~~in its discretion, shall may~~ direct.

533 **Drafting note: "City, town or county" is replaced with "locality" on the basis of § 1-**
534 **221, which states that throughout the Code "locality" means a county, city, or town." The**
535 **phrase "in accordance with the law" is added to ensure that the Commissioner is only**

536 exercising his power of eminent domain in accordance with the Constitution and other
537 statutory requirements. The plural "owners" and "parties" are stricken on the basis of § 1-
538 227, which states that throughout the Code any word used in the singular includes the plural
539 and vice versa. The grammatical shortcut "and/or" is amended to reflect the appropriate
540 meaning: "or" in the sense of "either/any" or "both/all." The phrase "in its discretion,
541 shall" is replaced with "may" for consistency with code-wide conventions. Technical
542 changes are made.

543

#

1 CHAPTER ~~11.1~~ X [2].

2 UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT.

3 **Drafting note: Existing Chapter 11.1, Disposition of Unclaimed Property, is retained**
4 **as proposed Chapter XX [2]. The title of the chapter is renamed in accordance with existing**
5 **§ 55-210.1.**

6 Article 1.

7 ~~Citation of Chapter and~~ Definitions: Property Abandoned or Assumed Abandoned.

8 ~~Article 2.~~

9 ~~Property Abandoned or Assumed Abandoned.~~

10 **Drafting note: Existing Articles 1 and 2 are proposed to be combined and retained**
11 **as proposed Article 1.**

12 ~~§ 55-210.1. Citation of chapter.~~

13 ~~This chapter may be cited as "The Uniform Disposition of Unclaimed Property Act."~~

14 **Drafting note: Existing § 55-210.1 is recommended for repeal on the basis of § 1-244,**
15 **which states that the caption of a subtitle, chapter, or article operates as a short title citation.**
16 **The short title citation is retained in the title of the chapter.**

17 ~~§ 55-210.2 55.1-xxx.~~ Definitions.

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

19 "Act" means the Uniform Disposition of Unclaimed Property Act (§ 55.1-xxx et seq.).

20 "Administrator" means the State Treasurer or his designee.

21 "Apparent owner" means the person whose name appears on the records of the holder as
22 the person entitled to property held, issued, or owing by the holder.

23 "Banking organization" means any bank, trust company, savings bank (industrial bank,
24 land bank, safe deposit company), ~~or a private banker,~~ or any other organization defined by law
25 as a bank or banking organization.

26 "Business association" means any corporation, joint-stock company, investment company,
27 business trust, partnership, limited liability company, cooperative, or association for business

28 purposes of two or more individuals, whether or not for profit, including a banking organization,
29 financial organization, insurance company, or utility.

30 "Credit balance" means an item of intangible property resulting from or attributable to the
31 sale of goods or services, ~~which includes, by way of illustration,~~ including an overpayment, credit
32 memo, refund, discount, rebate, unidentified remittance, or deposit.

33 "Domicile" means (i) the state of incorporation, in the case of a corporation incorporated
34 under the laws of a state; (ii) the state of organization, in the case of an unincorporated business
35 association formed under the laws of a state; (iii) the state of the principal place of business, in
36 the case of a nonnatural person not incorporated or formed under the laws of a state; and (iv) the
37 state of principal residency, in the case of a natural person.

38 "Due diligence" ~~shall include, but not be limited to,~~ includes the mailing of a letter by
39 first-class mail to the last known address of the owner as indicated on the records of the holder.

40 "Financial organization" means any savings and loan association (cooperative bank),
41 building and loan association, or credit union.

42 "Gift certificate" means a certificate, electronic card, or other medium that evidences the
43 giving of consideration in exchange for the right to redeem the certificate, electronic card, or other
44 medium for goods, food, services, credit, or money of an equal value.

45 "Holder" means a person, wherever organized or domiciled, ~~who that~~ is (i) in possession
46 of property belonging to another; (ii) a trustee, in the case of a trust; or (iii) indebted to another
47 on an obligation.

48 "Insurance company" means an association, corporation, or fraternal or mutual benefit
49 organization, whether or not for profit, ~~which that~~ is engaged in providing insurance coverage,
50 including, ~~by way of illustration,~~ accident, burial, casualty, ~~credit life~~, contract performance,
51 credit life, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and
52 annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

53 "Intangible property" includes, ~~by way of illustration,~~ (i) moneys, checks, drafts, deposits,
54 interest, and dividend income; (ii) credits, customer overpayments, gift certificates, security

55 deposits, refunds, unpaid wages, and unidentified remittances; (iii) stocks and other intangible
56 ownership interests in business associations; (iv) moneys deposited to redeem stocks, bonds,
57 coupons, and other securities; or to make distributions; (v) amounts due and payable under the
58 terms of insurance policies; and (vi) amounts distributable from a trust or custodial fund
59 established under a plan to provide any health, welfare, pension, vacation, severance, retirement,
60 death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance,
61 or similar benefit.

62 "Last known address" means a description of the location of the apparent owner sufficient
63 to identify the state of residence of the apparent owner for the purpose of the delivery of mail.

64 "Owner" means (i) a depositor, in the case of a deposit; (ii) a beneficiary, in the case of a
65 trust, other than a deposit in trust; (iii) a creditor, claimant, or payee, in the case of other intangible
66 property; or (iv) a person having a legal or equitable interest in property subject to this chapter
67 or his legal representative.

68 "Payable" means the earliest date upon which the owner of property could become entitled
69 to the payments, possession, delivery, or distribution of such property from a holder.

70 "Person" means an individual; a business association; a government or governmental
71 subdivision or agency, public corporation, or public authority; an estate; a trust; two or more
72 persons having a joint or common interest; or any other legal or commercial entity.

73 "Promotional incentive" means a coupon, rebate, or other promotional device offered to
74 induce a consumer to purchase goods, food, or services and for which (i) no direct consideration
75 is given by the consumer or (ii) the consideration given is less than the value of the goods, food,
76 or services to be received.

77 "State," when applied to a part of the United States, includes any state, district,
78 commonwealth, territory, and insular possession; and any other area subject to the legislative
79 authority of the United States.

80 "Unclaimed property" means property for which the owner, as shown by the records of
81 the holder of his property, has ceased, failed, or neglected, within the times provided in this

82 chapter, to make presentment and demand for payment and satisfaction or to do any other act in
83 relation to or concerning such property. ~~This definition shall be construed as excluding~~ As used
84 in this definition, "act" excludes any act of a holder of unclaimed property not done at the express
85 request or authorization of the owner.

86 "Utility" means a person ~~who~~ that owns or operates, for public use, any plant, equipment,
87 property, franchise, or license for the transmission of communications or the production, storage,
88 transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

89 **Drafting note: A definition for the term "Act" is added because the term is used**
90 **throughout the chapter. In the definition of "due diligence," the phrase "but not be limited**
91 **to" is deleted on the basis of § 1-218, which states that throughout the Code "'Includes'**
92 **means includes, but not limited to." In the definitions of "credit balance," "insurance**
93 **company," and "intangible property," the phrase "by way of illustration" is deleted as**
94 **unnecessary. In the definition of "unclaimed property," the exclusion is rewritten to**
95 **logically reflect that it excludes acts related to the defined term. Technical changes are made.**

96 ~~§ 55-210.2:1~~ 55.1-xxx. Property presumed abandoned; general rule.

97 All tangible and intangible property, including any income or increment thereon, less any
98 lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and
99 has remained unclaimed by the owner for more than five years after it became payable is presumed
100 abandoned, except as otherwise provided by this chapter. Property is payable for the purpose of
101 this chapter notwithstanding the owner's failure to make demand or to present any instrument or
102 document required to receive payment.

103 **Drafting note: Technical change.**

104 ~~§ 55-210.2:2~~ 55.1-xxx. ~~General rules for taking~~ Taking custody of intangible unclaimed
105 property; general rules.

106 Unless otherwise provided in this chapter or by other law of ~~this~~ the Commonwealth,
107 intangible property is subject to the custody of ~~this~~ the Commonwealth as unclaimed property if

108 the conditions leading to a presumption of abandonment as described in §§ ~~55-210.2:1~~ 55.1-xxx,
109 ~~55-210.3:01~~ 55.1-xxx and ~~55-210.3:2~~ 55.1-xxx through ~~55-210.10:2~~ 55.1-xxx are satisfied, and:

110 1. The last known address, as shown on the records of the holder, of the apparent owner
111 is in ~~this~~ the Commonwealth;

112 2. The records of the holder do not reflect the identity of the person entitled to the property,
113 and it is established that the last known address of the person entitled to the property is in ~~this~~ the
114 Commonwealth;

115 3. The records of the holder do not reflect the last known address of the apparent owner,
116 and it is established that (i) the last known address of the person entitled to the property is in ~~this~~
117 the Commonwealth or (ii) the holder is a domiciliary or a government or governmental
118 subdivision or agency of ~~this~~ the Commonwealth and has not previously paid the property to the
119 state of the last known address of the apparent owner or other person entitled to the property;

120 4. The last known address, as shown on the records of the holder, of the apparent owner
121 or other person entitled to the property is in a state that does not provide by law for the escheat or
122 custodial taking of the property,₂ or its escheat or unclaimed property law is not applicable to the
123 property,₂ and the holder is a domiciliary or a government or governmental subdivision or agency
124 of ~~this~~ the Commonwealth;

125 5. The last known address, as shown on the records of the holder, of the apparent owner
126 is in a foreign nation,₂ and the holder is a domiciliary or a government or governmental subdivision
127 or agency of ~~this~~ the Commonwealth; or

128 6. ~~(i)~~ a. The transaction out of which the property arose occurred in ~~this~~ the
129 Commonwealth, and (i) the last known address of the apparent owner or other person entitled to
130 the property is unknown,₇ or (ii) the last known address of the apparent owner or other person
131 entitled to the property is in a state that does not provide by law for the escheat or custodial taking
132 of the property,₂ or its escheat or unclaimed property law is not applicable to the property,₂; and ~~(ii)~~
133 the

134 b. The holder is a domiciliary of a state that does not provide by law for the escheat or
135 custodial taking of the property, or its escheat or unclaimed property law is not applicable to the
136 property.

137 **Drafting note: Technical changes.**

138 ~~§ 55-210.3. Repealed.~~

139 **Drafting note: Repealed by Acts 1984, c. 121.**

140 ~~§ 55-210.3-01~~ 55.1-xxx. Bank deposits and funds in financial organizations.

141 A. Any demand, savings, or matured time deposit with a banking or financial organization,
142 including deposits that are automatically renewable, and any funds paid toward the purchase of
143 shares, a mutual investment certificate, or any other interest in a banking or financial organization
144 is presumed abandoned unless the owner has, within five years:

145 1. In the case of a deposit or ownership of shares, increased or decreased the amount of
146 the deposit or the number of shares owned, ~~or~~ presented the passbook or other similar evidence
147 of the deposit or ownership of shares for the crediting of interest or dividends, or negotiated a
148 check in payment of interest or dividends on a time deposit or ownership of shares;

149 2. Communicated in writing with the banking or financial organization concerning the
150 property;

151 3. Otherwise indicated an interest in the property as evidenced by a memorandum or other
152 record on file prepared by an employee of the banking or financial organization;

153 4. Owned other property to which subdivision ~~A~~ 1, ~~A~~ 2, or ~~A~~ 3 is applicable if the banking
154 or financial organization communicated in writing with the owner with regard to the property that
155 would otherwise be presumed abandoned under this ~~paragraph~~ section at the address to which
156 communications regarding the other property regularly are sent;

157 5. Had another relationship with the banking or financial organization concerning which
158 the owner has (i) communicated in writing with the banking or financial organization, or (ii)
159 otherwise indicated an interest as evidenced by a memorandum or other record on file prepared
160 by an employee of the banking or financial organization if the banking or financial organization

161 communicates in writing with the owner with regard to the property that would otherwise be
162 abandoned under this ~~paragraph~~ section at the address to which communications regarding the
163 other relationship regularly are sent; or

164 6. A deposit made with or purchase of shares in a banking or financial organization by a
165 court or by a guardian pursuant to an order of a court or by any other person for the benefit of a
166 person who was an infant at the time of the making of such deposit or purchase of shares, which
167 deposit or ownership of shares is subject to withdrawal or transfer only upon the further order of
168 such court or such guardian or other person, shall not be subject to the provisions of this chapter
169 until one year after such infant attains the age of ~~eighteen~~ 18 years or until one year after the death
170 of such infant, whichever occurs sooner. These accounts are not subject to dormant service
171 charges.

172 B. Notwithstanding any other provision of this section, share accounts of a member of a
173 state or federally chartered credit union that is subject to or covered by life savings insurance
174 provided by the credit union at no additional charge to the member shall be presumed abandoned
175 five years after the date of the second mailing of a statement of account or other notification or
176 communication that was returned as undeliverable; or five years after the date the credit union
177 discontinued the mailings to the member, whichever ~~is~~ occurs earlier. Funds held or owing under
178 the life savings insurance policy are presumed abandoned pursuant to § ~~55-210.4:01~~ 55.1-xxx.

179 C. For purposes of this section, "property" includes any interest or dividends thereon. No
180 banking or financial organization may deduct any service charge or cease to accrue interest on
181 any account; from the date the account is declared dormant or inactive by such organization except
182 in conformity with cessation of interest or service charges generally assessed upon active
183 accounts. With respect to any property described in this section, a holder may not impose any
184 charges due to dormancy or inactivity ~~which~~ that differ from those imposed on active accounts or
185 cease to pay interest unless:

186 1. There is an enforceable contract between the holder and the owner of the property
187 pursuant to which the holder may impose those charges or cease payment of interest;

188 2. For property in excess of \$100, the holder, no more than three months prior to the initial
189 imposition of those charges or cessation of interest, has given written notice to the owner of the
190 amount of those charges at the last known address of the owner stating that those charges will be
191 imposed or that interest will cease; however, such notice need not be given with respect to charges
192 imposed or interest ceased before July 1, 1984; and

193 3. When the holder imposes those charges or ceases payment of interest, it does ~~not for~~
194 ~~any reason other than~~ so solely to correct a documented internal error reverse or cancel those
195 charges or retroactively credit interest with respect to such property. Notwithstanding any
196 provision of this subsection to the contrary, a holder that is a state-chartered credit union may
197 refund charges or reverse or cancel those charges or retroactively credit interest with respect to
198 such property to the same extent that a ~~federally-chartered~~ federally chartered credit union is
199 authorized ~~so~~ to do so pursuant to applicable provisions of federal law.

200 D. Any automatically renewable property to which this section applies is matured upon
201 the expiration of its initial time period. However, in the case of any renewal to which the owner
202 consents at or about the time of renewal by communicating in writing with the banking or financial
203 organization or otherwise indicates consent as specified in subsection A ~~of this section~~, the
204 property is matured upon the expiration of the last time period for which consent was given. If, at
205 the time provided for delivery in subsection D of § ~~55-210.12~~ 55.1-xxx, a penalty or forfeiture in
206 the payment of interest would result from the delivery of the property, the time for delivery is
207 extended until the time when no penalty or forfeiture would result. Notwithstanding any other
208 provision of this section to the contrary, any automatically renewable time deposit that has
209 matured shall be presumed abandoned five years after the date of the second mailing of a
210 statement of account or other notification or communication that was returned as undeliverable,
211 or five years after the date the holder discontinued the mailings to the apparent owner, whichever
212 is occurs earlier. However, any automatically renewable time deposit for which no such statement
213 or other notification or mailing is required to be sent by the banking or financial organization shall
214 be presumed abandoned as otherwise provided in this section.

215 **Drafting note: Technical changes.**

216 § ~~55-210.3-02~~ 55.1-xxx. ~~Travelers'~~ Traveler's checks and money orders.

217 A. Except as otherwise provided in this section, any sum payable on a traveler's check that
218 has been outstanding for more than ~~fifteen~~ 15 years after its issuance is presumed abandoned
219 unless the owner, within ~~fifteen~~ 15 years, has communicated in writing with the issuer concerning
220 it or otherwise indicated an interest as evidenced by a memorandum or other record on file
221 prepared by an employee of the issuer.

222 Except as otherwise provided in this section, any sum payable on a money order or similar
223 written instrument, other than a third-party bank check, that has been outstanding for more than
224 seven years after its issuance is presumed abandoned unless the owner, within seven years, has
225 communicated in writing with the issuer concerning it or otherwise indicated an interest as
226 evidenced by a memorandum or other record on file prepared by an employee of the issuer.

227 B. No holder may deduct from the amount of any traveler's check or money order any
228 charges imposed by reason of the failure to present those instruments for payment unless (i) there
229 is a valid and enforceable written contract between the issuer and the owner of the property
230 pursuant to which the issuer may impose those charges and (ii) the issuer regularly imposes those
231 charges and does not regularly reverse or otherwise cancel those charges with respect to such
232 property.

233 C. Any sum payable on a traveler's check, money order, or similar written instrument,
234 other than a third-party bank check, described in this section ~~may shall~~ not be subjected to the
235 custody of ~~this the~~ Commonwealth as unclaimed property unless:

236 1. The records of the issuer show that the traveler's check, money order, or similar written
237 instrument was purchased in ~~this the~~ Commonwealth;

238 2. The issuer has its principal place of business in ~~this the~~ Commonwealth, and the records
239 of the issuer do not show the state in which the traveler's check, money order, or similar written
240 instrument was purchased; or

241 3. The issuer has its principal place of business in ~~this~~ the Commonwealth, the records of
242 the issuer show the state in which the traveler's check, money order, or similar written instrument
243 was purchased, and the laws of the state of purchase do not provide for the escheat or custodial
244 taking of the property, or its escheat or unclaimed property law is not applicable to the property.

245 D. Notwithstanding any other provision of this chapter, the provisions of ~~the preceding~~
246 ~~paragraph~~ subsection C relating to the requirements for subjecting certain written instruments to
247 the custody of the Commonwealth apply to sums payable on ~~travelers'~~ traveler's checks, money
248 orders, and similar written instruments presumed abandoned on or after February 1, 1965, except
249 to the extent that those sums have been paid over to a state prior to January 1, 1974.

250 **Drafting note: The section is divided into subsections for clarity. In proposed**
251 **subsection C, the word "may" is replaced with "shall" because the phrase "may not" as**
252 **used in this section expresses an absolute prohibition, which, to be consistent throughout the**
253 **Code, is more properly expressed by the phrase "shall not." Technical changes are made.**

254 § 55-210.3:1. Repealed.

255 **Drafting note: Repealed by Acts 1984, c. 121.**

256 § 55-210.3:2 55.1-xxx. Checks, drafts, and similar instruments issued or certified by
257 banking and financial organizations.

258 Any sum payable on a check, draft, or similar instrument, except money orders, ~~travelers'~~
259 traveler's checks, and other similar instruments subject to § 55-210.3:02 55.1-xxx, on which a
260 banking or financial organization is directly liable, including ~~but not limited to,~~ cashier's checks
261 and certified checks, ~~which that~~ has been outstanding for more than five years after it was payable,
262 or after its issuance if payable on demand, is presumed abandoned, unless the owner, within five
263 years, has communicated in writing with the banking or financial organization concerning it or
264 otherwise indicated an interest as evidenced by a memorandum or other record on file prepared
265 by an employee of the banking or financial organization.

266 A holder may not deduct from the amount of any instrument subject to this section any
267 charges imposed by reason of the failure to present the instrument for payment unless there is a

268 valid and enforceable written contract between the holder and the owner of the instrument
269 pursuant to which the holder may impose those charges; and the holder regularly imposes those
270 charges and does not regularly reverse or otherwise cancel those charges with respect to such
271 instruments.

272 **Drafting note: The phrase "but not limited to" is deleted on the basis of § 1-218,**
273 **which states that throughout the Code "'Includes' means includes, but not limited to."**

274 **Technical changes are made.**

275 § ~~55-210.3:3~~ 55.1-xxx. Contents of safe deposit box or other safekeeping repository.

276 All tangible and intangible property held in a safe deposit box or any other safekeeping
277 repository in ~~this~~ the Commonwealth in the ordinary course of the holder's business and all
278 proceeds resulting from the lawful sale of this property shall be presumed abandoned if unclaimed
279 by the owner for more than five years after the lease or rental period on the box or other repository
280 has expired.

281 **Drafting note: Technical change.**

282 ~~§ 55-210.4. Repealed.~~

283 **Drafting note: Repealed by Acts 1984, c. 121.**

284 § ~~55-210.4:01~~ 55.1-xxx. Funds owing under life insurance policies.

285 A. Funds held or owing under any life or endowment insurance policy or annuity contract
286 ~~which~~ that has matured or terminated are presumed abandoned if unclaimed for more than five
287 years after the funds became due and payable as established from the records of the insurance
288 company holding or owing the funds, except that property described in ~~subsection~~ subdivision C
289 2 is presumed abandoned if unclaimed for more than two years.

290 B. If a person other than the insured or annuitant is entitled to the funds and no address of
291 the person is known to the company or it is not definite and certain from the records of the
292 company who is entitled to the funds, it is presumed that the last known address of the person
293 entitled to the funds is the same as the last known address of the insured or annuitant according
294 to the records of the company.

295 C. For purposes of this section, a life or endowment insurance policy or annuity contract
296 not matured by actual proof of the death of the insured or annuitant according to the records of
297 the company is deemed matured and the proceeds due and payable if:

298 1. The company knows that the insured or annuitant has died; or

299 2. (i) The insured has attained, or would have attained if he were living, the limiting age
300 under the mortality table on which the reserve is based; (ii) the policy was in force at the time the
301 insured attained, or would have attained, the limiting age specified in ~~paragraph~~ clause (i); and
302 (iii) neither the insured nor any other person appearing to have an interest in the policy within the
303 preceding two years, according to the records of the company, has assigned, readjusted, or paid
304 premiums on the policy, subjected the policy to a loan, corresponded in writing with the company
305 concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other
306 record on file prepared by an employee of the company.

307 D. For purposes of this section, the application of an automatic premium loan provision
308 or other nonforfeiture provision contained in an insurance policy does not prevent a policy from
309 being matured or terminated under subsection A if the insured has died or the insured or the
310 beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the
311 depletion of the cash surrender value of ~~a~~ the policy by the application of those provisions.

312 E. Notwithstanding any other provision of law, if the company learns of the death of the
313 insured or annuitant and the beneficiary has not communicated with the insurer within four
314 months after the death, the company shall take reasonable steps to locate the beneficiary and pay
315 the proceeds to the beneficiary.

316 F. Commencing July 1, 1986, every change of beneficiary form issued by an insurance
317 company under any life or endowment insurance policy or annuity contract to an insured or owner
318 who is a resident of ~~this~~ the Commonwealth ~~must~~ shall request the following information:

319 1. The name of each beneficiary; or, if the class of beneficiaries is named, the name of
320 each current beneficiary in the class;

321 2. The address of each beneficiary; and

322 3. The relationship of each beneficiary to the insured.

323 **Drafting note: Technical changes.**

324 § ~~55-210.4:1~~ 55.1-xxx. ~~When intangible~~ Intangible personal property held by insurance
325 corporation subject to § ~~55-210.2:1~~ 55.1-xxx.

326 An insurance corporation holding any other intangible personal property not covered by
327 subsection A of § ~~55-210.4:01~~ 55.1-xxx or § ~~55-210.4:2~~ 55.1-xxx shall be otherwise subject to §
328 ~~55-210.2:1~~ 55.1-xxx.

329 **Drafting note: Technical change.**

330 § ~~55-210.4:2~~ 55.1-xxx. Unclaimed demutualization proceeds.

331 Unclaimed property payable or distributable in the course of the demutualization of an
332 insurance company is presumed abandoned five years after the earlier of (i) the date of last contact
333 with the policyholder or (ii) the date the property became payable or distributable. The report filed
334 on November 1, 2003 will include demutualization distribution property for which there has been
335 no policyholder contact for the five years prior to June 30, 2003.

336 **Drafting note: No change.**

337 § ~~55-210.5~~ 55.1-xxx. Deposits held by utilities.

338 Any deposit, including any interest thereon, made by a subscriber with a utility to secure
339 payment or any sum paid in advance for utility services to be furnished, less any lawful
340 deductions, ~~which that~~ remains unclaimed by the owner for more than one year after termination
341 of the services for which the deposit or advance payment was made is presumed abandoned.

342 **Drafting note: Technical change.**

343 § ~~55-210.6~~. Repealed.

344 **Drafting note: Repealed by Acts 1991, c. 357.**

345 § ~~55-210.6:1~~ 55.1-xxx. ~~When intangible~~ Intangible interest in business association
346 ~~presumed abandoned~~.

347 A. Any intangible interest in a business association, as evidenced by the stock records or
348 membership records of the association, is presumed abandoned five years after the date of the

349 most recent dividend or other distribution unclaimed by the apparent owner with respect to the
350 stock or other interest; or, if a dividend or other distribution has not been paid on the stock or
351 other interest, or the stock or other interest is held pursuant to a plan that provides for the automatic
352 reinvestment of dividends or other distributions, five years after the date of the second mailing of
353 a statement of account or other notification or communication that was returned as undeliverable;
354 or five years after the date the holder discontinued the mailings to the apparent owner, whichever
355 is occurs earlier. With respect to such interest, the business association shall be deemed the holder.

356 B. Any dividend or other distribution held for or owing to a person at the time the stock
357 or other security to which such dividend or other distribution attaches; is considered abandoned
358 at the same time.

359 **Drafting note: Technical changes.**

360 § ~~55-210.6:2~~ 55.1-xxx. Refunds held by business associations.

361 Except to the extent otherwise ordered by a court or administrative agency of competent
362 jurisdiction, any sum that a business association has been ordered to refund by a court or
363 administrative agency ~~which~~ that has remained unclaimed by the owner for more than one year
364 after it became payable in accordance with the final determination or order providing for the
365 refund, regardless of whether the final determination or order requires any person entitled to a
366 refund to make a claim for it, is presumed abandoned.

367 **Drafting note: Technical change.**

368 § ~~55-210.7~~ 55.1-xxx. Property of business associations held in course of dissolution.

369 All intangible property distributable in the course of a voluntary or involuntary dissolution
370 of a business association ~~which~~ that remains unclaimed by the owner for more than one year after
371 the date for specified final distribution; is presumed abandoned.

372 **Drafting note: Technical changes.**

373 § ~~55-210.8~~ 55.1-xxx. ~~When intangible~~ Intangible personal property held in fiduciary
374 capacity ~~presumed abandoned~~.

375 A. All intangible personal property₂ and any income or increment thereon, held in a
376 fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has,
377 within five years after it ~~becomes~~ became payable, increased or decreased the principal, accepted
378 payment of principal or income, corresponded in writing concerning the property, or otherwise
379 indicated an interest as evidenced by a memorandum or other record on file with and prepared by
380 the fiduciary or an employee of the fiduciary.

381 B. Funds in an individual retirement account, a retirement plan for self-employed
382 individuals₂ or a similar account or plan established pursuant to the Internal Revenue laws of the
383 United States are not payable ~~within the meaning of~~ under this section unless, under the terms of
384 the account or plan, distribution of all or part of the funds would then be mandatory.

385 C. For the purpose of this section, a person who holds property as an agent for a business
386 association is deemed to hold the property in a fiduciary capacity for that business association
387 alone, unless such person's agreement with the business association provides otherwise. A person
388 who is so deemed to hold property in a fiduciary capacity for a business association alone is the
389 holder of the property only insofar as the interest of the business association in the property is
390 concerned, and the business association is the holder of the property insofar as the interest of any
391 other person in the property is concerned.

392 **Drafting note: Subsection designations are added for clarity. Technical changes are**
393 **made.**

394 ~~§ 55-210.8-1~~ 55.1-xxx. Gift certificates and credit balances.

395 A. Except as described in subsection B, a gift certificate or credit balance issued in the
396 ordinary course of the issuer's business that has remained unclaimed by the owner for more than
397 five years after ~~becoming such gift certificate or credit balance~~ became payable is presumed
398 abandoned.

399 B. The following property is exempt from the provisions of this chapter and shall not be
400 assessed by the administrator as unclaimed property: (i) credit balances payable to a business
401 association₂; (ii) outstanding checks resulting from or attributable to the sale of goods or services

402 to a business association; (iii) promotional incentives; and (iv) credits, gift certificates, coupons,
403 layaways, and similar items, provided that such credits, gift certificates, coupons, layaways, and
404 similar items are redeemable in merchandise, in services, or through future purchases.

405 **Drafting note: Technical changes.**

406 § ~~55-210.8:2~~ 55.1-xxx. Wages.

407 Unpaid wages, including wages represented by unrepresented payroll checks owing in the
408 ordinary course of the holder's business, that have remained unclaimed by the owner for more
409 than one year after becoming such unpaid wages became payable are presumed abandoned.

410 **Drafting note: Technical changes.**

411 § ~~55-210.9~~ 55.1-xxx. ~~When intangible~~ Intangible property held for owner by public
412 agency presumed abandoned.

413 All intangible property held for the owner by any government or governmental subdivision
414 or agency, public corporation, or public authority that has remained unclaimed by the owner for
415 more than one year after it became payable is presumed abandoned.

416 **Drafting note: Technical changes.**

417 § ~~55-210.9:1~~ 55.1-xxx. Property held by courts.

418 All intangible property held for the owner by any state or federal court that has remained
419 unclaimed by the owner for more than one year after it became payable is presumed abandoned.

420 **Drafting note: No change.**

421 § ~~55-210.9:2~~ 55.1-xxx. Responsibilities of general receiver and clerk.

422 The general receiver, if one has been appointed, and the clerk of each circuit court shall
423 be responsible for identifying moneys held by them in their respective accounts ~~which~~ that have
424 remained unclaimed by the owner for more than one year after such moneys became payable and
425 for petitioning the court to remit such money to the ~~State Treasurer~~ administrator. There shall be
426 no obligation to report or remit funds deposited as compensation and damages in condemnation
427 proceedings pursuant to § 25.1-237 prior to a final court order or pursuant to § 33.2-1019.

428 **Drafting note: "State Treasurer" is replaced with the defined term "administrator"**
429 **based on the definition in § 55.1-xxx [§ 55-210.2]. A technical change is made.**

430 ~~§ 55-210.10. Repealed.~~

431 **Drafting note: Repealed by Acts 1984, c. 121.**

432 ~~§ 55-210.10:1~~ 55.1-xxx. Employee benefit trust distribution.

433 A. All employee benefit trust distributions and any income or other increment thereon are
434 abandoned to ~~this~~ the Commonwealth under the provisions of this chapter if the owner has not,
435 within ~~ten~~ 10 years after it ~~becomes~~ became payable, accepted such distribution, corresponded in
436 writing concerning such distribution, or otherwise indicated an interest as evidenced by a
437 memorandum or other record on file with the fiduciary of the trust or custodial fund or
438 administrator of the plan under which such trust or fund is established.

439 B. An employee benefit trust distribution and any income or other increment thereon shall
440 not be presumed abandoned to ~~this~~ the Commonwealth under the provisions of this chapter if, at
441 the time such distribution ~~shall become~~ becomes payable to a participant in an employee benefit
442 plan, (i) such plan contains a provision for forfeiture or expressly authorizes the trustee to declare
443 a forfeiture of a distribution to a beneficiary thereof who cannot be found after a period of time
444 specified in such plan; and (ii) the trust or fund established under the plan has not terminated prior
445 to the date on which such distribution would become forfeitable in accordance with such
446 provision.

447 **Drafting note: Technical changes.**

448 ~~§ 55-210.10:2~~ 55.1-xxx. Holder of tangible or intangible personal property may
449 voluntarily report ~~same such property~~.

450 Any holder of tangible or intangible personal property; the owner of which is unlocatable;
451 may voluntarily report the property to the ~~State Treasurer~~ administrator, prior to the statutory due
452 dates, whereupon the property shall be presumed abandoned under this chapter.

453 **Drafting note: "State Treasurer" is replaced with the defined term "administrator"**
454 **based on the definition in § 55.1-xxx [§ 55-210.2]. Technical changes are made.**

455 Article ~~3~~ 2.

456 Reciprocity for Property Presumed Abandoned or Escheated under Laws of Another State.

457 **Drafting note: Existing Article 3, containing provisions related to reciprocity for**
458 **property presumed abandoned or escheated under laws of another state, is retained as**
459 **proposed Article 2.**

460 § ~~55-210.11~~ 55.1-xxx. ~~When certain~~ Certain property not presumed abandoned in ~~this the~~
461 Commonwealth.

462 If specific property ~~which that~~ is subject to the provisions of §§ ~~55-210.2:1~~ 55.1-xxx, ~~55-~~
463 ~~210.3:01~~ 55.1-xxx, ~~55-210.4:01~~ 55.1-xxx, ~~55-210.6:1~~ 55.1-xxx, ~~55-210.7~~ 55.1-xxx, ~~55-210.8~~
464 ~~55.1-xxx~~, ~~55-210.10:1~~ 55.1-xxx, and ~~55-210.10:2~~ 55.1-xxx is payable to an owner whose last
465 known address is in another state by a holder ~~who that~~ is subject to the jurisdiction of that state,
466 the specific property is not presumed abandoned in ~~this the~~ Commonwealth and subject to this
467 chapter if:

468 ~~(a)~~ 1. It may be claimed as abandoned or escheated under the laws of such other state; and

469 ~~(b)~~ 2. The laws of such other state make reciprocal provision that similar specific property
470 is not presumed abandoned or escheatable by such other state when payable to an owner whose
471 last known address is within ~~this the~~ Commonwealth by a holder ~~who that~~ is subject to the
472 jurisdiction of ~~this the~~ Commonwealth.

473 **Drafting note: Technical changes.**

474 § ~~55-210.11:01~~ 55.1-xxx. Interstate agreements and cooperation.

475 A. The administrator may enter into agreements with other states to exchange information
476 needed to enable ~~this the Commonwealth~~ or another state to audit or otherwise determine
477 unclaimed property ~~that it to which the Commonwealth~~ or another state may be entitled ~~to~~ subject
478 to a claim of custody. The administrator may by rule require the reporting of information needed
479 to enable compliance with agreements made pursuant to this section and prescribe the form.

480 B. To avoid conflicts between the administrator's procedures and the procedures of
481 administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the

482 administrator shall, so far as is consistent with the purposes, policies, and provisions of this
483 chapter, before adopting, amending, or repealing rules, advise and consult with administrators in
484 other jurisdictions that enact substantially the ~~Uniform Unclaimed Property~~ Act and take into
485 consideration the rules of administrators in other jurisdictions that enact the ~~Uniform Unclaimed~~
486 ~~Property~~ Act.

487 C. The administrator may join with other states to seek enforcement of ~~this the~~ Act against
488 any person who is or may be holding property reportable under ~~this the~~ Act. At the request of
489 another state, the Attorney General of ~~this the~~ Commonwealth may bring an action in the name
490 of the administrator of the other state in any court of competent jurisdiction to enforce the
491 unclaimed property laws of the other state against a holder in ~~this the~~ Commonwealth of property
492 subject to escheat or a claim of abandonment by the other state, if the other state has agreed to
493 pay expenses incurred by the Attorney General in bringing the action.

494 Similarly, the administrator may request that the Attorney General of another state, or any
495 other person, bring an action in the other state in the name of the administrator. ~~This The~~
496 Commonwealth shall pay all expenses, including ~~attorney's attorney~~ fees, in any such action, and
497 such expenses shall not be deducted from the amount that is subject to the claim by the owner
498 under this chapter.

499 **Drafting note: Subsection designations are added for clarity. Technical changes are**
500 **made.**

501 ~~§ 55-210.11:1. Repealed.~~

502 **Drafting note: Repealed by Acts 1984, c. 121.**

503 Article ~~4~~ 3.

504 Procedural and Administrative Matters.

505 **Drafting note: Existing Article 4, containing provisions related to procedural and**
506 **administrative matters, is retained as proposed Article 3.**

507 ~~§ 55-210.12~~ 55.1-xxx. Report and remittance to be made by holder of funds or property
508 presumed abandoned; holder to exercise due diligence to locate owner.

509 A. Every person holding funds or other property, tangible or intangible, presumed
510 abandoned under this chapter shall report and remit to the administrator with respect to the
511 property as ~~hereinafter~~ provided in this article. Reports containing 25 or more items shall be
512 remitted in an electronic format as prescribed by the administrator. The administrator may waive
513 this requirement when he determines, ~~in his discretion~~, that it creates an undue hardship.

514 B. The report shall be verified and shall include:

515 1. The name and social security or federal identification number, if known, and last known
516 address, including ~~ZIP~~ zip code, if any, of each person appearing from the records of the holder
517 to be the owner of any property of the value of \$100 or more presumed abandoned under this
518 chapter;

519 2. In the case of unclaimed funds of insurance corporations, the full name of the insured
520 or annuitant and any beneficiary, if known, and the last known address according to the insurance
521 corporation's records;

522 3. In the case of the contents of a safe deposit box or other safekeeping repository or in
523 the case of other tangible property, a description of the property and the place where it is held and
524 may be inspected by the administrator; and any amounts owing to the holder;

525 4. The nature and identifying number, if any, or description of the property and the amount
526 appearing from the records to be due, except that items of value under \$100 each may be reported
527 in aggregate;

528 5. The date when the property became payable, demandable, or returnable; and the date of
529 the last transaction with the owner with respect to the property; and

530 6. Other information ~~which~~ that the administrator prescribes by rule as reasonably
531 necessary for the administration of this chapter.

532 C. If the person holding property presumed abandoned is a successor to other persons who
533 previously held the property for the owner, or if the holder has changed his name while holding
534 the property, he shall file with his report all prior known names and addresses of each holder of
535 the property.

536 D. The report and remittance, including the remittance of unclaimed demutualization
537 proceeds made pursuant to § ~~55-210.4:2~~ 55.1-xxx, shall be filed before November 1 of each year
538 ~~as of for the period ending~~ June 30 ~~next preceding of such year~~, but the report and remittance of
539 insurance corporations shall be filed before May 1 of each year ~~as of for the period ending~~
540 December 31 ~~next preceding of the previous year~~. When property is evidenced by certificate of
541 ownership as set forth in § ~~55-210.6:1~~ 55.1-xxx, the holder shall deliver to the ~~State Treasurer~~
542 administrator a duplicate of any such certificate registered in the name "Treasurer of Virginia" or
543 the Treasurer's designated nominee at the time of report and remittance. The administrator may
544 postpone the reporting and remittance date upon written request by any person required to file a
545 report.

546 E. If the holder of property presumed abandoned under this chapter knows the
547 whereabouts of the owner, the holder shall, before filing the annual report, communicate with the
548 owner and take necessary steps to prevent abandonment from being presumed. All holders shall
549 exercise due diligence, as defined in § ~~55-210.2~~ 55.1-xxx, at least 60 days prior to the submission
550 of the report to ascertain the whereabouts of the owner if (i) the holder has in its records an address
551 for the apparent owner ~~which that~~ the holder's records do not disclose to be inaccurate and (ii) the
552 property has a value of \$100 or more.

553 F. Verification; shall be executed (i) if made by a partnership, ~~shall be executed~~ by a
554 partner; (ii) if made by an unincorporated association or private corporation, by an officer; and
555 (iii) if made by a public corporation, by its chief fiscal officer.

556 **Drafting note: In subsection A, the phrase "in his discretion" is deleted because it is**
557 **redundant when following the word "may." In subsection D, "State Treasurer" is replaced**
558 **with the defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2],**
559 **and language is updated for modern usage and clarity. In subsection E, the cross-reference**
560 **to the definitions section is deleted as unnecessary. Clause designations are added to**
561 **subsection F for clarity. Technical changes are made.**

562 § 55-210.12:1. Repealed.

563 **Drafting note: Repealed by Acts 1983, c. 190.**

564 § ~~55-210.13~~ 55.1-xxx. Notices to be published by ~~State Treasurer~~ administrator.

565 A. The ~~State Treasurer~~ administrator shall cause to be published notice of the report filed
566 under subsection D of § ~~55-210.12~~ 55.1-xxx once each year in ~~an English language~~ a newspaper
567 of general circulation in the area in which ~~is located~~ the last known address of any person to be
568 named in the notice is located. If no address is listed or if the address is outside of the
569 Commonwealth, the notice shall be published in the area in which the holder of the abandoned
570 property has his principal place of business.

571 B. The published notice shall be entitled "Commonwealth of Virginia Unclaimed Property
572 List" and shall contain:

573 1. The names in alphabetical order and account numbers of persons listed in the report and
574 entitled to notice within the area as ~~hereinbefore~~ specified in subsection A; and

575 2. A statement that information concerning the amount or description of the property and
576 the name and address of the holder may be obtained by any persons possessing an interest in the
577 property by addressing an inquiry to the ~~State Treasurer~~ administrator.

578 C. The administrator is not required to publish in such notice any item of less than \$100
579 unless he deems such publication to be in the public interest.

580 **Drafting note: Throughout the section, "State Treasurer" is replaced with the**
581 **defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. In**
582 **subsection A, the requirement that the newspaper be in "an English language" is deleted**
583 **for consistency throughout the Code. Technical changes are made.**

584 ~~§ 55-210.14. Repealed.~~

585 **Drafting note: Repealed by Acts 1988, c. 378.**

586 § ~~55-210.15~~ 55.1-xxx. Holder relieved of liability for property paid or delivered to
587 administrator; payment to owner by holder; proceedings against prior holder; notice to
588 administrator and Attorney General; reimbursement of holder.

589 ~~(a)~~A. Upon the payment or delivery of abandoned property to the administrator, the
590 Commonwealth shall assume custody and shall be responsible for the safekeeping ~~thereof of such~~
591 property. Any person who pays or delivers abandoned property to the administrator under this
592 chapter is relieved of all liability to the extent of the value of the property so paid or delivered for
593 any claim ~~which that~~ then exists or ~~which that~~ thereafter may arise or be made in respect to the
594 property. Any holder ~~who that~~ has paid moneys to the administrator pursuant to this chapter may
595 make payment to any person appearing to such holder to be entitled thereto, and upon proof of
596 such payment and proof that the payee was entitled thereto, the administrator shall forthwith
597 reimburse the holder for the payment.

598 ~~(b)~~B. In the event that legal proceedings are instituted against a prior holder in a court of
599 ~~this the~~ Commonwealth, or in any other state or federal court, by any other state claiming to be
600 entitled to unclaimed funds or abandoned property previously paid or delivered to the
601 administrator, such holder shall give written notice to the administrator and the Attorney General
602 of ~~this the~~ Commonwealth of such proceedings (i) within ~~ten~~ 10 days after service of process, or
603 ~~in the alternative~~ (ii) at least ~~ten~~ 10 days before the return date on which an answer or similar
604 pleading is required to be filed. The Attorney General may intervene or take such other action as
605 he deems appropriate or necessary to protect the interests of ~~this the~~ Commonwealth.

606 ~~(c)~~C. If the notice provided in ~~paragraph (b)~~ subsection B is given by the holder and
607 thereafter a judgment is entered against the holder for any amount paid to the administrator
608 pursuant to the terms of this chapter, the administrator shall, upon being furnished with proof
609 thereof, return to the holder the amount of such judgment, not to exceed, however, the amount of
610 the abandoned property paid to the administrator.

611 ~~(d)~~D. Property removed from a safe deposit box or other safekeeping repository that is
612 received by the administrator shall be subject to the holder's right under this ~~paragraph~~ subsection
613 to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for
614 the holder to be reimbursed for unpaid rent or storage charges. The administrator shall make the

615 reimbursement to the holder out of the proceeds remaining after the deduction of the
616 administrator's selling cost.

617 **Drafting note: Technical changes.**

618 ~~§ 55-210.16. Repealed.~~

619 **Drafting note: Repealed by Acts 1981, c. 47.**

620 ~~§ 55-210.16:1~~ 55.1-xxx. Crediting of dividends, interest, or increments to owner's account.

621 Whenever property other than money is paid or delivered to the administrator under this
622 chapter, the owner is entitled to receive from the administrator any dividends, interest, or other
623 increments realized or accruing on the property at or before liquidation or conversion ~~thereof of~~
624 such property into money.

625 **Drafting note: Technical change.**

626 ~~§ 55-210.17~~ 55.1-xxx. Periods of limitation.

627 A. The expiration of any period of time specified by statute or court order, during which
628 an action or proceeding may be commenced or enforced to obtain payment of a claim for money
629 or recovery of property, shall not prevent the money or property from being presumed abandoned
630 property, ~~nor or~~ affect any duty to file a report required by this chapter or to pay or deliver
631 abandoned property to the ~~State Treasurer~~ administrator.

632 B. Except as provided in subsection C ~~of this section~~, an action or proceeding shall not be
633 maintained by the administrator to enforce this chapter more than five years after the earlier of (i)
634 the date on which the holder identified the property on a report filed with the administrator, (ii)
635 the date on which the holder first filed a report with the administrator wherein the holder should
636 have but failed to report the property, or (iii) the date on which the holder filed a report with the
637 administrator giving reasonable notice to the administrator of a dispute regarding the property.

638 C. An action or proceeding shall not be maintained by the administrator to enforce this
639 chapter with respect to any property more than ~~ten~~ 10 years following the date on which such
640 property first became reportable if the holder (i) filed a materially false or fraudulent report with

641 the intent to evade delivery of property otherwise subject to this chapter or (ii) failed to file a
642 report with the administrator.

643 **Drafting note: "State Treasurer" is replaced with the defined term "administrator"**
644 **based on the definition in § 55.1-xxx [§ 55-210.2]. Technical changes.**

645 ~~§ 55-210.18~~ 55.1-xxx. Sale of abandoned property by administrator.

646 ~~Except as provided in subsection (d) of this section:~~

647 ~~(a) All~~ A. Except as provided in subsection C, all abandoned property other than money
648 or other certificate of ownership delivered to the administrator under this chapter shall be sold by
649 him to the highest bidder at public sale (i) in such city ~~or cities~~, within or outside the
650 Commonwealth, as affords in his judgment the most favorable market for the property involved
651 or (ii) through the use of electronic media in a format approved by the administrator. The
652 administrator may decline the highest bid and reoffer the property for sale if he considers the price
653 bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale
654 exceeds the value of the property.

655 ~~(b) B.~~ Any sale held under this section within the Commonwealth shall be preceded by a
656 single publication of notice ~~thereof of such sale~~ at least three weeks in advance of the sale. Such
657 notice shall be published in ~~an English language a~~ newspaper of general circulation in the county
658 or city where the property is to be sold. If any sale is to occur outside the Commonwealth, then
659 the administrator may use such forms of notice or advertising as he deems necessary to constitute
660 reasonable notice, including post, print, visual, telecommunications, electronic media, or any
661 combination thereof. For the purposes of this section, any sale through the use of electronic media,
662 including the Internet, shall be deemed to be a sale outside of the Commonwealth.

663 ~~(c) The purchaser at any sale conducted by the administrator pursuant to this chapter shall~~
664 ~~receive title to the property purchased, free from all claims of the owner or prior holder thereof~~
665 ~~and of all persons claiming through or under them. The administrator shall execute all documents~~
666 ~~necessary to complete the transfer of title.~~

667 ~~(d)~~C. Securities listed on an established stock exchange shall be sold at prices prevailing
668 at the time of sale on the exchange. Other securities may be sold over the counter at prices
669 prevailing at the time of sale or by any other method the administrator deems advisable.

670 ~~(d)~~Unless the administrator deems it to be in the best interest of the Commonwealth to
671 do otherwise, all securities delivered to the administrator shall be held for at least one year before
672 the securities may be sold. If the administrator sells any securities before the expiration of the
673 one-year period, any person making a claim pursuant to this chapter before the end of the one-
674 year period is entitled to either the proceeds of the sale of the securities or the market value of the
675 securities at the time the claim is made, whichever amount is greater. Any person making a claim
676 pursuant to this chapter after the expiration of the one-year period is entitled to receive either the
677 securities delivered to the administrator by the holder, if they still remain in the hands of the
678 administrator, or the proceeds ~~received from~~ of the sale, but no person has any claim under this
679 chapter against the Commonwealth, the holder, or any transfer agent, registrar, or other person
680 acting for or on behalf of ~~a~~ the holder for any appreciation in the value of the property occurring
681 after delivery by the holder to the Commonwealth.

682 ~~(d2)~~D. The purchaser of property at any sale conducted by the administrator pursuant to
683 this chapter shall receive title to property purchased pursuant to subsections A or B and is entitled
684 to ownership of ~~the~~ property purchased pursuant to subsection C, free from all claims of the owner
685 or previous holder thereof and of all persons claiming through or under ~~them~~ such owner or
686 previous holder. The administrator shall execute all documents necessary to complete the transfer
687 of ownership.

688 ~~(e)~~E. If the administrator determines after investigation that any property delivered to him
689 pursuant to this chapter has insubstantial commercial value, he may destroy or otherwise dispose
690 of the property at any time. No action or proceeding may be maintained against the
691 Commonwealth or any officer or against the holder for or on account of any action taken by the
692 administrator with respect to the property pursuant to this ~~paragraph~~ subsection.

693 **Drafting note: Language at the beginning of the section is logically relocated into**
694 **subsection A. In subsection A, the plural "cities" is stricken on the basis of § 1-227, which**
695 **states that throughout the Code any word used in the singular includes the plural and vice**
696 **versa. In subsection B, the requirement that the newspaper be in "an English language" is**
697 **deleted for consistency throughout the Code. Existing subsection C is stricken and its**
698 **language combined with the language in proposed subsection D, both of which discuss that**
699 **the purchaser of property owns such property free from all claims of the previous owner.**
700 **Technical changes are made.**

701 § ~~55-210.18:1~~ 55.1-xxx. ~~When securities~~ Securities received in name of owner.

702 Whenever the ~~State Treasurer shall receive~~ administrator receives securities under this
703 chapter in the name of the owner, he shall forthwith take appropriate action to transfer the record
704 of ownership of ~~said~~ such securities into the title of the State Treasurer of the Commonwealth of
705 Virginia as soon as practical.

706 **Drafting note: The first instance of the term "State Treasurer" is replaced with the**
707 **defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]; it is not**
708 **changed in the second instance because that specifies the titling of the property. Technical**
709 **changes.**

710 § ~~55-210.19~~ 55.1-xxx. Disposition of funds received under chapter; records to be kept by
711 administrator.

712 ~~(a)~~ A. All funds received under this chapter, including the proceeds from the sale of
713 abandoned property under § ~~55-210.18~~ 55.1-xxx, shall forthwith be deposited by the administrator
714 in the Literary Fund of the Commonwealth as soon as practical, except that the administrator shall
715 retain in a separate trust fund a sum sufficient from which he shall make prompt payment of claims
716 duly allowed by him as hereinafter provided by subsection B. Before making the deposit, he shall
717 record the name and last known address of each person appearing from the holders' reports to be
718 entitled to the abandoned property ~~and of~~, the name and last known address of each insured person

719 or annuitant, and₂ with respect to each policy or contract listed in the report of an insurance
720 corporation, its number, the name of the corporation, and the amount due.

721 ~~(b)~~B. Before making any deposit to the credit of the Literary Fund₂ the administrator may
722 deduct: ~~(1)~~ (i) any costs in connection with the sale of abandoned property, ~~(2)~~ (ii) any costs of
723 mailing and publication in connection with any abandoned property, ~~(3)~~ (iii) operating expenses,
724 and ~~(4)~~ (iv) amounts required to make payments to other states, during the next fiscal year, through
725 reciprocity agreements.

726 **Drafting note: Technical changes.**

727 § ~~55-210.20~~ 55.1-xxx. Filing claim to property or proceeds of sale ~~thereof of such~~
728 property.

729 A. Any person claiming an interest in any property delivered to the Commonwealth under
730 this chapter may file a claim ~~thereto~~ to such property or to the proceeds from the sale ~~thereof of~~
731 such property on a form prescribed by the ~~State Treasurer~~ administrator.

732 B. Notwithstanding any other provision of law, any person claiming an interest in any
733 property delivered to the Commonwealth under this chapter for a reported owner who is deceased
734 shall submit evidence of the claimant's entitlement to payment together with a form prescribed by
735 the ~~State Treasurer~~ administrator. In order of preference, such evidence may include (i) a
736 certificate of qualification as the executor or an order of appointment as the administrator or
737 personal representative of the decedent's estate under the laws of the state of the decedent's
738 domicile; (ii) if applicable, an affidavit authorizing the claimant to be the designated successor
739 under the Virginia Small Estate Act (§ 64.2-600 et seq.), or its equivalent under the laws of the
740 state of the decedent's domicile that names the claimant as the designated successor; or (iii) the
741 order of distribution or the final accounting for a closed estate that reflects payment due in whole
742 or in part to the claimant. When, in the absence of any such evidence, (a) the death of the reported
743 owner occurred at least one year prior to filing the claim and (b) the amount claimed is ~~\$15,000~~
744 25,000 or less, exclusive of any interest owed pursuant to subsection C of § ~~55-210.21~~ 55.1-xxx,
745 the administrator may allow the claimant to submit an affidavit stating the claimant's entitlement

746 to payment in the absence of sufficient documentation, and the administrator may approve the
747 claim in his discretion, returning or paying all or the appropriate share of the deceased owner's
748 property to the claimant. The administrator may pay or deliver all of the deceased owner's property
749 to a claimant who submits the prescribed affidavit evidencing his agreement to receive and
750 distribute the property to the other rightful heirs or beneficiaries and acknowledging his
751 assumption of liability to those beneficiaries or heirs for failure to do so.

752 C. Notwithstanding any other provision of law, when paying or delivering unclaimed
753 property under subsection B to a claimant who is not authorized to represent the decedent's estate
754 as the personal representative or the designated successor or the equivalent, the administrator is
755 discharged and released to the same extent as if the administrator dealt with the authorized
756 representative or designated successor for the decedent's estate. The administrator shall deny any
757 subsequent claim to the same property. Any person subsequently claiming an equal or superior
758 right to the deceased owner's property whose claim is denied by the administrator for this reason
759 may seek redress from the claimant to whom payment was made.

760 D. The ~~State Treasurer~~ [administrator](#) shall develop and make available a plain English
761 explanation of a person's right to make a claim, in accordance with the provisions of this section,
762 for property delivered to the Commonwealth in cases where the reported owner of the property is
763 deceased. The ~~State Treasurer~~ [administrator](#) shall also post such document on ~~its~~ [the Department](#)
764 [of the Treasury's](#) website.

765 **Drafting note: Throughout the section, "State Treasurer" is replaced with the**
766 **defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. In**
767 **subsection B, \$15,000 is replaced with \$25,000 in accordance with the Virginia Small Estate**
768 **Act (§64.2-600 et seq.). Technical changes are made.**

769 § ~~55-210.21~~ [55.1-xxx](#). Consideration of and hearing on claim by ~~State Treasurer~~
770 [administrator](#); payment; interest.

771 A. The ~~State Treasurer~~ [administrator](#) shall consider any claim for property held by the
772 ~~State Treasurer~~ [administrator](#) pursuant to the provisions of this chapter that is filed under this

773 chapter and may hold a hearing and receive evidence concerning such claim. If a hearing is held,
774 he shall prepare a finding and a decision in writing on each claim filed, stating the substance of
775 any evidence heard by him and the reasons for his decision. The decision shall be a public record.

776 B. If the claim is allowed, the ~~State Treasurer~~ administrator shall make payment ~~forthwith~~
777 as soon as practical. The ~~State Treasurer~~ administrator is authorized to deduct from the claim the
778 costs for notices, sales, and other related incurred expenses.

779 C. The ~~State Treasurer~~ administrator shall add interest at the rate of five percent or such
780 lesser rate as the property earned while in the possession of the holder, compounded annually, to
781 the amount of any claim paid to the owner, if the property claimed was interest-bearing to the
782 owner while in the possession of the holder. If the holder fails to report an applicable rate of
783 interest, the interest rate will be set at five percent or such lesser rate as determined by the one-
784 year Treasury Constant Maturity Rate as published by the Board of Governors of the Federal
785 Reserve System as of November 1 of the report year. Such interest shall begin to accumulate on
786 the date the property is delivered to the ~~State Treasurer~~ administrator and shall cease on the date
787 on which payment is made to the owner. No interest shall be payable for any period prior to July
788 1, 1981.

789 **Drafting note: Throughout the section, "State Treasurer" is replaced with the**
790 **defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. A technical**
791 **change is made.**

792 § ~~55-210.22~~ 55.1-xxx. Judicial review of decision of ~~State Treasurer~~ administrator.

793 Any person aggrieved by an act or decision of the ~~State Treasurer~~ administrator with
794 respect to a claim for property held by the ~~State Treasurer~~ administrator pursuant to the provisions
795 of this chapter may commence an action in the circuit ~~or corporation~~ court of the county or city
796 wherein in which the property claimed is situated to establish his claim. The proceeding shall be
797 brought within three years after the decision of the ~~State Treasurer~~ administrator; or, if the
798 administrator fails to act, within three years from the filing of the claim ~~if the State Treasurer fails~~
799 ~~to act~~.

800 **Drafting note: Throughout the section, "State Treasurer" is replaced with the**
801 **defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. "Or**
802 **corporation" is deleted because the Commonwealth no longer has corporation courts.**
803 **Technical changes are made.**

804 § ~~55-210.23~~ 55.1-xxx. Election of ~~State Treasurer~~ administrator not to receive property or
805 to postpone taking possession of funds.

806 The ~~State Treasurer~~ administrator, after receiving reports of property deemed abandoned
807 pursuant to this chapter, may decline to receive any property reported ~~which~~ that he deems to have
808 a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable
809 because of the small sum involved, postpone taking possession until a sufficient sum accumulates.
810 Unless the holder of the property is notified to the contrary within 120 days after filing the report
811 required under § ~~55-210.12~~ 55.1-xxx, the ~~State Treasurer~~ administrator shall be deemed to have
812 elected to receive the custody of the property.

813 **Drafting note: Throughout the section, "State Treasurer" is replaced with the**
814 **defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. A technical**
815 **change is made.**

816 § ~~55-210.24~~ 55.1-xxx. Requests for verified reports and examinations of records.

817 A. Except as otherwise provided in this chapter, the administrator may require any person
818 ~~who~~ that has not filed a report to file a verified report stating whether or not the person is holding
819 any unclaimed property reportable or deliverable under this chapter.

820 B. Except as otherwise provided in this chapter, the administrator may at reasonable times
821 and upon reasonable notice examine the records of any person to determine whether the person
822 has complied with the provisions of this chapter. The administrator may conduct the examination
823 even if the person believes it is not in possession of any property reportable or deliverable under
824 this chapter. The administrator may examine all necessary records to determine the amount, if
825 any, of property that would have been reportable or deliverable under this chapter for the ~~ten~~ 10
826 years prior to the fiscal year end preceding the opening of the examination; ~~provided~~, however,

827 for any holder that has not previously filed any report under this chapter, the administrator may
828 examine property presumed abandoned for report year 1985 and subsequent years.

829 C. If a holder fails to maintain the records required by § ~~55-210.24:1~~ 55.1-xxx and the
830 records of the holder available for the periods subject to this chapter are insufficient to permit the
831 preparation of a report, the holder shall be required to report and pay such amounts as may
832 reasonably be estimated from any available records.

833 D. The ~~State Treasurer~~ administrator may contract with a person who is not an employee
834 of the Commonwealth to perform an audit or examination under this article; ~~provided~~, however,
835 with respect to any holder that is domiciled in the Commonwealth or that maintains its principal
836 place of business in the Commonwealth, no such contract shall (i) be on a contingency fee basis
837 or (ii) permit statistical estimation without the consent of the holder.

838 **Drafting note: In subsection D, "State Treasurer" is replaced with the defined term**
839 **"administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. Technical changes.**

840 § ~~55-210.24:1~~ 55.1-xxx. Retention of records.

841 A. Every holder required to file a report under § ~~55-210.12~~ 55.1-xxx, shall retain all books,
842 records, and documents necessary to establish the accuracy and compliance of such report for five
843 years after the report is filed pursuant to subsection B of § ~~55-210.12~~ 55.1-xxx. If no report is
844 filed, the holder shall retain such books, records, and documents for ~~ten~~ 10 years after the property
845 becomes reportable, except to the extent that shorter time is provided in accordance with the
846 Virginia Public Records Act (§ 42.1-76 et seq.), ~~or in in accordance with~~ subsection B ~~of this~~
847 section, or by rule of the administrator. As to any property for which it has obtained the last known
848 address of the owner, the holder shall maintain a record of the name and last known address of
849 the owner for the same retention period.

850 B. Any business association that sells in ~~this the~~ Commonwealth its ~~travelers~~ traveler's
851 checks, money orders, or other similar written instruments, other than third-party bank checks on
852 which the business association is directly liable, or that provides such instruments to others for
853 sale in ~~this the~~ Commonwealth, shall maintain a record of those instruments while they remain

854 outstanding, indicating the state and date of issue for three years after the date the property is
855 reportable.

856 **Drafting note: Technical changes.**

857 § ~~55-210.24:2~~ 55.1-xxx. Confidentiality of information and records.

858 Any information or records required to be furnished to the Division of Unclaimed Property
859 shall be confidential except as is otherwise necessary in the proper administration of this chapter.

860 **Drafting note: No change.**

861 § ~~55-210.25~~ 55.1-xxx. Enforcement of chapter.

862 The administrator may bring an action in a court of competent jurisdiction to enforce this
863 chapter. The administrator shall commence enforcement for compliance with the provisions of
864 this chapter within the period specified in § ~~55-210.17~~ 55.1-xxx. The holder may waive in writing
865 the protection of this section.

866 **Drafting note: No change.**

867 § ~~55-210.26~~. ~~Repealed.~~

868 **Drafting note: Repealed by Acts 1984, c. 121.**

869 § ~~55-210.26:1~~ 55.1-xxx. Interest and penalties.

870 A. Any person who fails to pay or deliver property within the time prescribed by this
871 chapter shall be required to pay to the administrator interest at the same annual rate as is applicable
872 to delinquent taxes under § 58.1-1812 on the property or value thereof from the date the property
873 should have been paid or delivered. Such interest rate shall vary with the rate specified in § 58.1-
874 1812.

875 B. Any person who does not exercise due diligence as defined in § ~~55-210.2~~ 55.1-xxx shall
876 pay a civil penalty not to exceed ~~fifty dollars~~ \$50 for each account upon which due diligence was
877 not performed.

878 C. Except as otherwise provided in subsection D, a holder ~~who~~ that (i) fails to report, pay,
879 or deliver property within the time prescribed by this chapter; (ii) files a false report; or (iii) fails
880 to perform other duties imposed by this chapter without good cause, shall pay to the administrator,

881 in addition to interest as provided in subsection A, a civil penalty of \$100 for each day the report,
882 payment, or delivery is withheld or the duty is not performed, up to a maximum of the lesser of
883 \$10,000 or ~~twenty-five~~ 25 percent of the value of the property that should have been but was not
884 reported.

885 D. A holder ~~who~~ that (i) willfully fails to report, pay, or deliver property within the time
886 prescribed by this chapter; (ii) willfully fails to perform other duties imposed by this chapter
887 without good cause; or (iii) makes a fraudulent report to the administrator shall pay to the
888 administrator, in addition to interest as provided in subsection A, a civil penalty of \$1,000 for
889 each day the report, payment, or delivery is withheld or the duty is not performed, up to a
890 maximum of the lesser of \$50,000 or 100 percent of the value of the property that should have
891 been but was not reported.

892 E. The administrator for good cause may waive, in whole or in part, interest under
893 subsection A and penalties under subsections B, C, and D. All civil penalties shall be payable to
894 the State Treasurer and credited to the Literary Fund.

895 **Drafting note: In subsection E, the specific fun into which the civil penalties are paid**
896 **is added; this addition is consistent with existing § 55-210.19, which states that all funds**
897 **received under this chapter shall be deposited into the Literary Fund. Technical changes**
898 **are made.**

899 § ~~55-210.27~~ 55.1-xxx. Determinations; appeal procedures; ~~rules and~~ regulations of ~~State~~
900 Treasurer administrator.

901 A. For the purposes of this section, "jeopardized by delay" means a finding that the
902 applicant intends to undertake a wrongful act with the intent to prejudice, or to render ineffectual,
903 future proceedings to enforce this chapter.

904 B. The ~~State Treasurer administrator~~ may make adopt necessary ~~rules and~~ regulations to
905 carry out the provisions of this chapter.

906 B.C. If the ~~State Treasurer administrator~~ ascertains that any person has failed to pay or
907 deliver abandoned property in accordance with the provisions of this chapter, he shall issue a

908 written notice to such person demanding remittance of the property and payment of any penalties
909 and interest prescribed by law. Every such notice shall be accompanied by a detailed explanation
910 of the holder's right to secure an administrative or judicial review. The abandoned property,
911 together with penalties and interest, if any, shall be remitted to the ~~State Treasurer~~ administrator
912 within ~~ninety~~ 90 days from the date notice is received by the holder unless the holder requests (i)
913 an administrative review in accordance with regulations promulgated pursuant to subsection ~~C D~~
914 or (ii) a judicial review in accordance with § ~~55-210.22~~ 55.1-xxx.

915 C. D. The ~~State Treasurer~~ administrator shall promulgate regulations pursuant to which
916 any person (i) asserting ownership of property remitted to the Commonwealth under this chapter,
917 (ii) required to pay or deliver abandoned property pursuant to this chapter, or (iii) otherwise
918 aggrieved by a decision of the administrator, may file an application for administrative appeal and
919 correction of the administrator's determination.

920 D. E. On receipt of the application as provided in regulations promulgated pursuant to
921 subsection ~~C D~~, or if regulations promulgated thereunder are not in effect, on receipt of an
922 application requesting an administrative review by the State Treasurer, the administrator shall
923 suspend collection activity until a final determination is issued by the State Treasurer, unless the
924 administrator determines that collection would be jeopardized by delay. Interest shall continue to
925 accrue in accordance with the provisions of § ~~55-210.26:1~~ 55.1-xxx, but no further penalty shall
926 be imposed while collection activity is suspended. ~~The term "jeopardized by delay" means a~~
927 ~~finding that the applicant intends to undertake a wrongful act with the intent to prejudice, or to~~
928 ~~render ineffectual, future proceedings to enforce this chapter.~~

929 E. F. If the State Treasurer is satisfied, by evidence submitted or otherwise, that there has
930 been an erroneous or improper demand for the remittance of property, the State Treasurer shall
931 order that the applicant be exonerated from the remittance of ~~so much~~ such portion as is
932 erroneously or improperly demanded, if not already collected, and, ~~if collected,~~ that it be returned
933 or refunded to the applicant, if already collected. The State Treasurer shall refrain from collecting
934 a contested charge until he has made a final determination under this section unless he determines

935 that collection may be jeopardized by delay. ~~The term "jeopardized by delay" shall have the~~
936 ~~meaning set forth in subsection D.~~

937 ~~F. G.~~ Except as otherwise provided in regulations promulgated pursuant to subsection ~~C~~
938 ~~D~~, the State Treasurer shall issue a written determination to the applicant within ~~ninety~~ 90 days
939 of receipt of an application for correction, unless the applicant ~~and the administrator are~~ is notified
940 that a longer period will be required. All determinations of the State Treasurer shall include a
941 written finding of fact and supporting law, and all such determinations shall be publicly reported.

942 ~~G. H.~~ Following a determination by the State Treasurer, ~~either~~ the applicant ~~or the~~
943 ~~administrator~~ may apply (i) in the case of a claim for property by a purported owner, to the
944 appropriate circuit court pursuant to § ~~55-210.22~~ 55.1-xxx and (ii) in the case of a dispute between
945 a holder and the State Treasurer, to the Circuit Court ~~for~~ of the City of Richmond, within the time
946 period established in § ~~55-210.22~~ 55.1-xxx.

947 **Drafting note: The definition of "jeopardized by delay" is relocated to proposed**
948 **subsection A. In the catchline and proposed subsection B, "rules" is stricken because**
949 **administrative agencies adopt regulations, not rules. In proposed subsections B, C and D,**
950 **"State Treasurer" is replaced with the defined term "administrator" based on the definition**
951 **in § 55.1-xxx [§ 55-210.2]; similar changes are not made in proposed subsections E through**
952 **H, which provide for administrative review of the administrator's decision by the State**
953 **Treasurer. In proposed subsections G and H, "administrator" is stricken as unnecessary**
954 **because the administrator is the State Treasurer. Technical changes are made.**

955 § ~~55-210.27:1~~ 55.1-xxx. Agreements to locate reported property; penalty.

956 A. It is unlawful for any person to seek or receive from another person or contract with
957 another person for a fee or compensation for locating property ~~which~~ that he knows has been
958 reported or paid or delivered to the ~~State Treasurer~~ administrator pursuant to this chapter prior to
959 ~~thirty-six~~ 36 months after the date of delivery of the property by the holder to the ~~State Treasurer~~
960 administrator as required by this chapter.

961 B. No agreement entered into after ~~thirty-six~~ 36 months from the required date of delivery
962 of the property by the holder to the ~~State Treasurer~~ administrator is valid if a person thereby
963 undertakes to locate property included in a report for a fee or other compensation exceeding ~~ten~~
964 10 percent of the value of the recoverable property. Nothing in this section shall be construed to
965 prevent an owner from asserting at any time that an agreement to locate property is based upon
966 an excessive or unjust consideration.

967 C. State warrants that may be issued in payment and redemption of previously abandoned
968 property or the liquidation proceeds of previously abandoned property may be issued in the
969 discretion of the ~~State Treasurer~~ administrator directly to the person ~~or persons~~ entitled to the
970 money as the owner, heir, or legatee, or as fiduciary of the estate of the deceased owner, heir, or
971 legatee, and not to a named attorney-in-fact, agent, or assignee, or any other person regardless of
972 a written instruction to the contrary. The ~~State Treasurer~~ administrator need not recognize nor is
973 the ~~State Treasurer~~ administrator bound by any terms of a purported power of attorney or
974 assignment that may be presented as having been executed by a person as the purported owner,
975 heir, legatee, or fiduciary of the estate of a deceased owner of such abandoned property.

976 D. A person who violates subsection A or B ~~of this section shall be~~ is guilty of a
977 misdemeanor, punishable by a fine not to exceed \$1,000.

978 **Drafting note: Throughout the section, "State Treasurer" is replaced with the**
979 **defined term "administrator" based on the definition in § 55.1-xxx [§ 55-210.2]. "The person**
980 **or persons" is changed to "the person" per § 1-227, which states that a word used in the**
981 **singular includes the plural and vice versa. Technical changes are made.**

982 § ~~55-210.28~~ 55.1-xxx. Property presumed abandoned or escheated under laws of another
983 state.

984 This chapter shall not apply to any property that has been presumed abandoned or
985 escheated under the laws of another state prior to January 1, 1961.

986 **Drafting note: No change.**

987 § ~~55-210.28~~ 55.1-xxx. Property held or payable pursuant to Title 51.1.

1 CHAPTER ~~11.2~~ XX [3].

2 PROPERTY LOANED TO MUSEUMS.

3 **Drafting note: Existing Chapter 11.2, Property Loaned to Museums, is retained as**
4 **proposed Chapter XX [3].**

5 § ~~55-210.31~~ 55.1-xxx. Definitions.

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

7 "Loaned property" means all museum property deposited on or after July 1, 2002, with a
8 museum not accompanied by a transfer of title to the property.

9 "Museum" means an institution located in ~~Virginia~~ the Commonwealth and operated by a
10 nonprofit corporation or public agency whose primary purpose is educational, scientific, or
11 aesthetic, and that owns, borrows, or cares for, and studies, archives, or exhibits museum property.

12 "Museum property" means all tangible objects, animate and inanimate, under a museum's
13 care that have intrinsic value to science, history, art, or culture, except for botanical or zoological
14 specimens loaned to a museum for scientific research.

15 **Drafting note: Technical changes.**

16 § ~~55-210.32~~ 55.1-xxx. Status of loaned property; statute of limitations on recovery.

17 A. Except as may be otherwise provided in a written agreement between a lender and a
18 museum, no action shall be brought against a museum to recover loaned property when more than
19 five years have passed from (i) the receipt by the museum of written communication concerning
20 the loaned property or (ii) any display of interest in the property by the lender as evidenced by a
21 memorandum or other record on file prepared by an employee of the museum.

22 B. Loaned property shall be deemed to have been donated to the museum if no action to
23 recover the property is initiated within one year after the museum ~~gave~~ gives notice of termination
24 of the loan as provided in §§ ~~55-210.35~~ 55.1-xxx and ~~55-210.36~~ 55.1-xxx.

25 C. Loaned property shall not be delivered to the Commonwealth, and shall be exempt from
26 the provisions of Chapter ~~11.1~~ XX (§ ~~55-210.1~~ 55.1-xxx et seq.) ~~of this title~~, but shall pass to the
27 museum if no person takes action under Chapter 2 (§ 64.2-200 et seq.) of Title 64.2.

28 **Drafting note: Technical changes.**

29 § ~~55-210.33~~ 55.1-xxx. Notice to lenders of the provisions of this chapter.

30 When a museum accepts a loan of property, the museum shall inform the lender in writing
31 of the provisions of this chapter.

32 **Drafting note: No change.**

33 § ~~55-210.34~~ 55.1-xxx. Status of title to property acquired from museum.

34 Any person who purchases property from a museum acquires good title to the property if
35 the museum represents that it has acquired title to the property pursuant to § ~~55-210.32~~ 55.1-xxx.

36 **Drafting note: No change.**

37 § ~~55-210.35~~ 55.1-xxx. Notice of termination of loan; content of notice.

38 A. ~~A. If the property was loaned to the museum for an indefinite time, the~~ museum may
39 provide notice of termination of a loan of property at any time on the museum's ~~official Internet~~
40 website, ~~if any,~~ or ~~may give by providing~~ written notice of such termination ~~of a loan of property~~
41 at any time if the property was loaned to the museum for an indefinite time to the lender, if known.

42 If the property was loaned to the museum for a specified term, the museum may ~~give~~ provide
43 notice of termination of the loan in the same manner at any time after the expiration of the
44 specified term.

45 B. Notices given under this section shall contain:

- 46 1. The name and address, if known, of the lender;
- 47 2. The date of the loan;
- 48 3. The name, address, and telephone number of the appropriate office or official to be
49 contacted at the museum for information regarding the loan; and
- 50 4. Any other information deemed necessary by the museum.

51 **Drafting note: Language is updated for clarity and technical changes are made.**

52 § ~~55-210.36~~ 55.1-xxx. Procedure for giving notice of termination of a loan of property;
53 responsibility of owner of loaned property.

54 A. To give notice of termination of a loan of property, the museum shall mail a notice to
55 the lender at the most recent address of the lender as shown on the museum's records pertaining
56 to the loaned property ~~on loan~~. If the museum has no address in its records, or the museum does
57 not receive written proof of receipt of the mailed notice within ~~thirty~~ 30 days of the date the notice
58 was mailed, the museum shall cause to be published notice at least once a week for three
59 consecutive weeks in a newspaper of general circulation in the county or city in which the museum
60 is located, and in a newspaper of general circulation in the county or city of the lender's last known
61 address, if different from the county or city in which the museum is located.

62 B. For purposes of this section, if the loan of property was made to a branch of the
63 museum, the museum shall be deemed to be located in the county or city ~~or county~~ where the
64 branch is located. In all other cases, the museum shall be deemed to be located in the county or
65 city ~~or county~~ in which its principal place of business ~~is~~ is located.

66 C. The owner of property loaned to a museum shall notify the museum promptly in writing
67 of any change of address or change in ownership of the property.

68 **Drafting note: Language in the section catchline is amended for clarity and technical**
69 **changes are made.**

70 § ~~55-210.37~~ 55.1-xxx. Acquiring title to undocumented property.

71 A. A museum shall have the authority to acquire legal title to undocumented property if
72 the museum can verify through written records that it has held such property for five years or
73 longer, during which period no valid claim to the property has been asserted and no person has
74 contacted the museum regarding the property, by complying with the following procedure:

75 1. The museum shall cause to be published a notice once a week for two consecutive weeks
76 in a newspaper of general circulation in the county or city in which the museum is located, and in
77 a newspaper of general circulation in the county or city of the lender's last known address, if
78 different from the county or city in which the museum is located. The notice shall include:

79 a. A brief and general description of the undocumented property;

80 b. The date or approximate date of the loan or acquisition of the property by the museum,
81 if known;

82 c. Notice of the museum's intent to claim title to the property if no valid claims are made
83 within ~~sixty five~~ 65 days following the date of the first publication of the notice under this
84 subdivision 1;

85 d. The name, address₂ and telephone number of the representative of the museum to
86 contact for more information or to make a claim; and

87 e. If known, the name and last known address of the lender.

88 2. If no valid claims have been made by the end of the ~~sixty five day~~ 65-day period
89 following the date of the first publication of the notice under subdivision 1 ~~c-of this subsection~~,
90 the museum shall cause to be published a second notice once a week for two consecutive weeks
91 in a newspaper of general circulation in the county or city in which the museum is located~~;~~ and in
92 a newspaper of general circulation in the county or city of the lender's last known address~~;~~ if
93 different from the county or city in which the museum is located. The second notice shall include:

94 a. A brief and general description of the undocumented property;

95 b. The date or approximate date of the loan or acquisition of the property by the museum,
96 if known;

97 c. Notice that the museum claims title to the property as of the date of the end of the ~~sixty~~
98 ~~five day~~ 65-day period following the date of the first publication of the notice under subdivision
99 ~~1-of this subsection~~; and

100 d. If known, the name and last known address of the lender.

101 B. Upon compliance with the requirements set forth in subsection A, clear and unrestricted
102 title is transferred, as of the date specified in subdivision A 1 ~~c-of this section~~, to the museum and
103 not to the Commonwealth.

104 **Drafting note: Technical changes.**

105 § ~~55-210.38~~ 55.1-xxx. Status of property loaned to or deposited with museum prior to July
106 1, 2002.

1 CHAPTER ~~11~~ XX [4].

2 ~~ESTRAYS AND~~ DRIFT PROPERTY.

3 **Drafting note: Existing Chapter 11, Estrays and Drift Property, is retained as**
4 **proposed Chapter XX [4] and renamed. Existing §§ 55-202 through 55-206 are proposed to**
5 **be repealed as obsolete. (According to the dictionary, the common meaning of the term**
6 **"estray" is a stray domesticated animal of unknown ownership.) Existing Chapter 11**
7 **describes a procedure by which a property owner who finds a stray animal on his land or a**
8 **boat or vessel adrift may notify a court of such finding and three freeholders shall appraise**
9 **the value of such property. There are other procedures in the Code and common law that**
10 **cover these situations according to modern practice. For stray animals, a humane**
11 **investigator, law-enforcement officer, or animal control officer, who may lawfully impound**
12 **the animal under § 3.2-6569. For stray companion animals, a property owner who (i)**
13 **provides care or safekeeping or (ii) retains the companion animal in such a manner as to**
14 **control its activities, has certain restrictions on his actions pursuant to § 3.2-6551. For**
15 **abandoned watercraft, the procedure by which an individual may claim title is set out in §**
16 **29.1-733.25.**

17 ~~§ 55-202. Estray, or boat adrift, to be valued and described.~~

18 ~~Any person may take up an estray found on his land or a boat or vessel adrift. He shall~~
19 ~~immediately inform the court not of record, or clerk thereof, of his county or corporation, who~~
20 ~~shall issue warrants to three freeholders, requiring them under oath to view and appraise such~~
21 ~~estray or boat or vessel, and certify the result, with a description of the kind, marks, brand, stature,~~
22 ~~color and age of the animal, or kind, burden and build of the boat or vessel.~~

23 **Drafting note: Repealed as obsolete.**

24 ~~§ 55-203. Valuation, etc., to be recorded and posted.~~

25 ~~The freeholders shall return their certificate, with the warrant, to the clerk of the circuit~~
26 ~~court of the county, or clerk of the corporation court of the city, who shall record the same in a~~

27 ~~book kept for that purpose and post a copy thereof at the front door of his courthouse on the first~~
28 ~~day of two terms of court next after receiving the certificate.~~

29 **Drafting note: Repealed as obsolete.**

30 ~~§ 55-204. When landowner, etc., entitled to the property.~~

31 ~~If the owner of such property has not then appeared and the valuation thereof be under~~
32 ~~five dollars, or if such valuation is as much as five dollars and the owner shall not have appeared~~
33 ~~after the certificate has been published as aforesaid and also three times in some newspaper~~
34 ~~published nearest to the place where such property was taken up, it shall belong in either case to~~
35 ~~the owner of the land on which it was so taken, if an estray, or to the person taking it up in the~~
36 ~~case of a boat or vessel.~~

37 **Drafting note: Repealed as obsolete.**

38 ~~§ 55-205. Right of recovery by former owner.~~

39 ~~The former owner may at any time after recover the valuation money except the amount~~
40 ~~of the clerk's and printer's fees and such compensation for keeping the property as shall be certified~~
41 ~~under oath by any two freeholders in the county or corporation where the property was valued to~~
42 ~~be reasonable, and also fees of the freeholders for services rendered by them.~~

43 **Drafting note: Repealed as obsolete.**

44 ~~§ 55-206. When landowner, etc., not liable.~~

45 ~~If such estray die or any such property be lost to the owner of the land or person taking it~~
46 ~~up, without his fault, he shall not be liable for the same or its valuation.~~

47 **Drafting note: Repealed as obsolete.**

48 ~~§ 55-207. 55.1-xxx. Who is entitled to drift property.~~

49 ~~When any property, not mentioned in § 55-202 is other than abandoned watercraft has~~
50 ~~drifted on any of the waters of this the Commonwealth and is deposited and left on the lands of~~
51 ~~any person other than the owner of such property, and there is no indicia of ownership, the owner~~
52 ~~of such land shall, as against all persons other than the owner of such property, be deemed and~~

53 treated, and have the same rights and remedies relating thereto, as such owner ~~thereof~~ of such
54 property.

55 **Drafting note: The term "abandoned watercraft" is used for consistency with § 29.1-**
56 **733.25, which described the procedure by which a landowner may claim title to watercraft**
57 **that is abandoned on his land or the water immediately adjacent to his land. Because the**
58 **existing preceding sections outline the procedure for claiming title to boats and vessels adrift**
59 **is proposed for repeal due to the procedures set out in Title 29.1, it is appropriate to use the**
60 **Title 29.1 term here. The phrase "and there is no indicia of ownership" is added to reflect**
61 **that the land owner may have a duty under common law to attempt to contact the owner of**
62 **the drift property if it is clear who the owner of such property is. Technical changes are**
63 **made.**

64 § ~~55-208~~ 55.1-xxx. Conditions on which owner may remove ~~it~~ drift property.

65 The owner of ~~such~~ property described in § 55.1-xxx [§ 55-207], after he ~~shall have~~ has
66 paid to the owner of the land a just compensation for any proper care, labor, or expense bestowed,
67 done, or incurred by him ~~about~~ for such property, ~~but not before~~, may enter upon the land and,
68 doing as little injury as possible ~~thereto~~, remove the property ~~therefrom~~, but shall pay the owner
69 of the land for any damage caused to him by such entry and removal.

70 **Drafting note: Language is added for clarity. Technical changes are made.**

71 § ~~55-209~~ 55.1-xxx. When owner of land may sell drift property; owner of property entitled
72 to proceeds after payment of expenses, etc.

73 If the owner of ~~the property shall~~ drift property described in § 55.1-xxx [§ 55-207] does
74 not, within three months from the time the ~~same~~ property was so deposited, remove or demand
75 the property from the owner of the land, the owner of the land may sell the property or otherwise
76 convert it to his own use; ~~but,~~ provided that the owner of the land, after deducting a just
77 compensation for any proper care, labor, or expense bestowed, done, or incurred by him ~~about~~ for
78 the property from the amount received by him as the price thereof, or the actual value thereof at
79 the time of such sale or other conversion, shall pay to the owner of the property, if he ~~shall elect~~

80 elects to receive it, the residue of the price or of the actual value, as the case may be. The owner
81 of the property, after he ~~shall have~~ has demanded such residue, and proved by the affidavit of
82 some other person, or by a competent witness, his right thereto, or offered to prove such right,
83 and if the owner of the land ~~shall have~~ has refused or declined to inspect or hear the evidence
84 thereof, ~~but not before,~~ (i) may recover such residue, when the property has been sold, as money
85 received for his use, ~~or;~~ (ii) may recover such residue, when the property has not been sold, as
86 the price of goods sold by the owner of the property to the owner of the land, ~~or he~~ (iii) may have
87 his action of trover to the extent of such residue.

88 **Drafting note: Language is added for clarity, and technical changes are made.**

89 ~~§ 55-210~~ § 55.1-xxx. Right of property to be proved.

90 In any action, ~~suit, prosecution or controversy about~~ relating to the ownership of any ~~such~~
91 property described in § 55.1-xxx [§ 55-207], the person, other than the owner of such land,
92 claiming to be the owner of the property, must prove his ownership in order to sustain his claim.

93 **Drafting note: Language used in the old equitable pleading practice, including**
94 **"suit," "prosecution," and "controversy" is deleted in favor of using the modern term**
95 **"action." Technical changes are made.**

96 #

1 CHAPTER ~~18~~ XX [5].

2 TRESPASSES; FENCES.

3 **Drafting note: Existing Chapter 18, Trespasses; Fences, is retained as proposed**
4 **Chapter XX [5].**

5 Article 1.

6 Electric Fences.

7 **Drafting note: Existing Article 1, containing provisions relating to electric fences, is**
8 **retained as proposed Article 1.**

9 ~~§ 55-298. Repealed.~~

10 **Drafting note: Repealed by Acts 1982, c. 280.**

11 ~~§ 55-298.4 55.1-xxx.~~ Definition.

12 As used in this article, "electric fence" means a fence designed to conduct electric current
13 along one or more wires ~~thereof of such fence~~ so that a person or animal touching any such wire
14 or wires will receive an electric shock.

15 **Drafting note: Existing § 55-298.4, containing a definition, is relocated to the**
16 **beginning of the article. Technical change.**

17 ~~§ 55-298.1 55.1-xxx.~~ Unlawful to sell, distribute, construct, install, maintain, or use certain
18 electric fences upon agricultural land ~~except as provided in § 55-298.2.~~

19 A. It ~~shall be~~ is unlawful for any person to sell, distribute, construct, install, maintain, or
20 use upon any land used for agricultural purposes, or, for any person exercising supervision or
21 control over any such land, to permit any other person to construct, install, maintain, or use any
22 electric fence energized with an electric charge unless the charge is regulated by a controlling
23 device. Except as otherwise provided in this article, such controlling device shall display the
24 approved label of and shall ~~meet~~ conform to the safety standards promulgated by the Underwriters
25 Laboratories, Inc., in its publication number UL69, dated ~~August 31, 1977~~ June 30, 2009, and
26 entitled "Standard for Safety for Electric-Fence Controllers," as the same may from time to time
27 be supplemented, or shall display the approved label of and meet the safety standards promulgated

28 by the International ~~Commission for Conformity Certification of Electrical Equipment~~
29 ~~Electrotechnical Commission~~ in its publication ~~number 5, Second Edition, approved April, 1979,~~
30 ~~and entitled "Specification for Mains Operated Electric Fence Controllers," IEC 60335-2-76,~~
31 ~~second edition (BS EN 69335-2-76),~~ as the same may from time to time be supplemented.

32 B. No metallicly continuous fence or set of electrically connected fences shall be
33 supplied by more than one controlling device.

34 C. Any controlling device shall be suitably grounded when placed in service.

35 **Drafting note: References to the safety standards are updated. Technical changes are**
36 **made.**

37 § ~~55-298.2~~ 55.1-xxx. Unlawful to sell other controlling devices unless they meet certain
38 standards.

39 A. A controlling device ~~which that~~ does not conform to the requirements of § ~~55-298.1~~
40 55.1-xxx may not be sold, distributed, constructed, installed, maintained, or used unless it meets
41 the following standards:

42 1. A peak-discharge-output type controlling device ~~which that~~ delivers intermittent current
43 of a value not in excess of four milliamperes-seconds for a maximum "on" period of two-tenths
44 second and a minimum "off" period of three-quarters second. The mean value of the peak output
45 from such device shall progressively decrease from four milliamperes-seconds at maximum "on"
46 periods of both two-tenths and one-tenth second to three and two-tenths milliamperes-seconds at
47 six-hundredths second, one and nine-tenths milliamperes-seconds at three-hundredths second, and
48 consequently to shorter "on" periods as output current increases.

49 2. A sinusoidal-output type controlling device ~~which that~~ delivers an intermittent current
50 of a value not in excess of five milliamperes for a maximum "on" period of two-tenths second and
51 a minimum "off" period of nine-tenths second. The effective value of the output from such device
52 may increase as the "on" period decreases, increasing from ~~forty~~ 40 milliamperes for one-tenth
53 second to ~~fifty-seven~~ 57 milliamperes for five-hundredths second, and ~~sixty-five~~ 65 milliamperes
54 for twenty-seven thousandths second.

55 3. Any other type of controlling device ~~which that~~ delivers a maximum intermittent current
56 output of a value not in excess of four milliampere-seconds for a maximum "on" period of two-
57 tenths second and a minimum "off" period of nine-tenths second.

58 ~~§ 55-298.3. Exceptions to § 55-298.2.~~

59 B. Notwithstanding the provisions of ~~§ 55-298.2 subsection A~~, no electric fence
60 controlling device shall be sold, distributed, constructed, installed, maintained, or used ~~which that~~
61 will permit for longer than one second an uninterrupted electric current on the fence with an
62 effective value in excess of ~~5~~ five milliamperes when the load, including the measuring device, is
63 not less than 450 ohms nor more than 550 ohms.

64 **Drafting note: Existing § 55-298.2, which provides the general rule for electric fence**
65 **controlling devices, and existing § 55-298.3, which provides the exception to the general rule,**
66 **are combined into this proposed section. Technical changes are made.**

67 ~~§ 55-298.5 55.1-xxx.~~ Penalty.

68 ~~Punishment for violation of Any person who violates~~ any provision of this article ~~shall be~~
69 ~~as prescribed by § 18.2-324.1 is guilty of a Class 1 misdemeanor.~~

70 **Drafting note: The provisions of § 18.2-324.1, which provide that a violation of**
71 **existing §§ 55-298.1 through 55-298.5 is a Class 1 misdemeanor, are moved to this proposed**
72 **section. There are no other substantive provisions in § 18.2-324.1, so it is recommended for**
73 **repeal in this report.**

74 Article 2.

75 What Constitutes Lawful Fence.

76 **Drafting note: Existing Article 2, containing provisions relating to what constitutes**
77 **a lawful fence, is retained as proposed Article 2.**

78 ~~§ 55-299 55.1-xxx.~~ Definition Description of lawful fence.

79 Every fence shall be deemed a lawful fence as to any domesticated livestock ~~named in §~~
80 ~~55-306, which that~~ could not ~~creep pass~~ through ~~the same~~ such fence, if it is:

81 ~~(1) Five~~ 1. At least five feet high, including, if the fence ~~be is~~ on a mound, the mound to
82 the bottom of the ditch;

83 ~~(2) Of~~ 2. Made of barbed wire, at least 42 inches high, consisting of at least four strands
84 of barbed wire, firmly fixed to posts, trees, or other supports substantially set in the ground, spaced
85 no farther than 12 feet apart unless a substantial stay or brace is installed halfway between such
86 posts, trees, or other supports to which such wires ~~shall be~~ are also fixed;

87 ~~(3) Of~~ 3. Made of boards, planks, or rails, at least 42 inches high, consisting of at least
88 three boards firmly attached to posts, trees, or other supports substantially set in the ground;

89 ~~(4) Three~~ 4. At least three feet high, if such fence is within the limits of any ~~incorporated~~
90 town whose charter ~~does not prescribe~~ neither prescribes, nor ~~give~~ gives to the town council
91 thereof power ~~of prescribing to prescribe~~, what shall constitute a lawful fence within such
92 corporate limits; or

93 ~~(5) 5.~~ Any other fence ~~of any kind whatsoever~~, except as otherwise described in this
94 section, ~~and except in the case of incorporated towns as set forth in subdivision (4), which shall~~
95 ~~be if it is:~~

96 a. At least 42 inches high;

97 b. Constructed from materials sold for fencing or consisting of systems or devices based
98 on technology generally accepted as appropriate for the confinement or restriction of domesticated
99 livestock ~~named in § 55-306~~; and

100 c. Installed pursuant to generally acceptable standards so that applicable domesticated
101 livestock ~~named in § 55-306~~ cannot ~~creep pass~~ through the same.

102 A cattle guard reasonably sufficient to turn all kinds of livestock shall also be deemed a
103 lawful fence as to any domesticated livestock ~~mentioned in § 55-306~~.

104 Nothing contained in this section shall affect the right of any such town to regulate or
105 forbid the running at large of cattle and other domestic animals within its corporate limits.

106 The Board of Agriculture and Consumer Services may adopt ~~rules and~~ regulations
107 regarding lawful fencing consistent with this section to provide greater specificity as to the

108 requirements of lawful fencing. The absence of any such ~~rule or~~ regulation shall not affect the
109 validity or applicability of this section as it relates to what constitutes lawful fencing.

110 **Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man,"**
111 **which in this proposed section is changed to "domesticated livestock"; all references**
112 **throughout this chapter to "any livestock mentioned in § 55-306" are updated to**
113 **"domesticated livestock" for clarity and consistency. The phrase "at least" is logically**
114 **added as necessary throughout the section. Since all towns in the Commonwealth are**
115 **incorporated, "incorporated" is removed in subdivision 4. In subdivision 5, the phrase "and**
116 **except in the case of incorporated towns as set forth in subdivision (4)" is deleted as**
117 **unnecessary because such exception is included in the general exception language ("except**
118 **as otherwise described in this section"). The word "rule" is deleted in to instances prior to**
119 **"regulation" because administrative agencies adopt regulations, not rules. Technical**
120 **changes are made.**

121 § ~~55-300~~ 55.1-xxx. ~~Court may~~ Proceeding to declare stream of water or canal a lawful
122 fence; ~~proceeding therefor~~.

123 A. The circuit court of any county, upon a petition of any ~~proprietor~~ owner or tenant of
124 lands on any stream of water or canal, may, ~~in its discretion~~, declare and establish ~~the same~~ such
125 stream or canal, or any part of either within the limits and jurisdiction of the county, a lawful
126 fence as to any ~~of the stock named in § 55-306~~ domesticated livestock. Notice of the application
127 shall be given by posting a copy of the petition at the front door of the courthouse and at two or
128 more public places at or near the stream or canal, ~~to the part whereof to which~~ the petition applies,
129 for ~~thirty~~ 30 days, and by publishing ~~the same~~ such notice once a week for four successive weeks
130 in a newspaper, ~~if one is published in the county of general circulation in such county~~. At or before
131 the trial of the cause, any person interested may enter himself a defendant ~~thereto, and the same~~
132 ~~shall thereafter be proceeded in as other causes~~.

133 § ~~55-301~~. ~~Revocation of order~~.

134 ~~Such~~ B. The court may, upon ~~like~~ petition and notice of any person interested, revoke or
135 alter any order made under ~~§ 55-300; subsection A,~~ but such order shall not be made within one
136 year from the date of the original, and shall not take effect until six months after it is made.

137 **Drafting note: Because they are closely related, existing §§ 55-300 and 55-301 are**
138 **combined into one new section with subsection designations. The phrase "in its discretion"**
139 **is deleted following the word "may" because it is unnecessary. Existing § 55-306 uses the**
140 **term "any livestock domesticated by man," which in this proposed § 55.1-xxx section is**
141 **changed to "domesticated livestock;" livestock"; all references throughout this chapter to**
142 **"any livestock mentioned in § 55-306," are updated to "domesticated livestock" for clarity**
143 **and consistency. Language regarding the publication of notice in a newspaper is added for**
144 **consistency throughout the Code. The phrase "and the same shall thereafter be proceeded**
145 **in as other causes" is deleted as unnecessary. Technical changes are made.**

146 ~~§ 55-302~~ 55.1-xxx. Boundary lines of certain low grounds on James River a lawful fence.
147 The owners and occupants of low grounds on either side of the James River in the Counties
148 of ~~Buckingham,~~ Albemarle, Buckingham, and Goochland, enclosed by lawful fences on the back
149 and hill lands, need not keep up any fence on the boundary lines running across the low grounds
150 to the river, and such boundary lines shall be deemed a lawful fence, except where public roads
151 cross the river or run parallel with its banks.

152 **Drafting note: Technical changes.**

153 ~~§ 55-303~~ 55.1-xxx. Statutes declaring watercourses lawful fences continued.

154 All acts declaring any river, stream, or watercourse, or any part thereof, or any boundary
155 in any county, a lawful fence, or authorizing any court so to declare the same, or enacting a special
156 fence law for any county or any part thereof, and all acts relating to the making or repairing of
157 division fences in any county or in any part thereof ~~which~~ that may be in force on the day before
158 the Code of 1887 took effect, shall continue in force.

159 **Drafting note: Technical change.**

160 Article 3.

161 Cattle Guards and Gates Across Rights-of-Way.

162 **Drafting note: Existing Article 3, containing provisions relating to cattle guards and**
163 **gates across rights-of-way, is retained as proposed Article 3.**

164 § ~~55-304~~ 55.1-xxx. Property owner may place cattle guards or gates across right-of-way.

165 Any owner of property on which there is a road or way, not a public road, a highway, a
166 street, or an alley, over which an easement exists for ingress and egress of others may place cattle
167 guards or gates across such way when required for the protection of livestock.

168 **Drafting note: Technical change.**

169 § ~~55-305~~ 55.1-xxx. Persons having easement may replace gate with cattle guard;
170 maintenance and use thereof; deemed lawful gate.

171 Any person having an easement of right-of-way across the lands of another, may, at his
172 own expense, replace any gate thereon with a substantial cattle guard sufficient to turn livestock.
173 These Such cattle guards shall be maintained by the owner of the easement, who shall be
174 responsible for keeping such cattle guards at all times in sufficient condition to turn livestock. If
175 a cattle guard is rendered inoperative by inclement weather, the easement owner shall utilize and
176 maintain any reasonable alternative method sufficient to turn livestock from the inoperative cattle
177 guard until such cattle guard is rendered operative again. If the gate to be replaced is needed or
178 used for the orderly ingress and egress of equipment or animals thereover, then such persons
179 acting under the authority of this section shall construct such cattle guards so as to allow such
180 ingress and egress or, if such easement is of sufficient width, may place such cattle guard adjacent
181 to such gate.

182 Such a cattle guard shall be deemed a lawful gate and not an interference with such
183 easement.

184 **Drafting note: Technical change.**

185 Article 4.

186 Trespass in Crossing Lawful Fence.

187 **Drafting note: Existing Article 4, containing provisions relating to trespass in**
188 **crossing a lawful fence, is retained as proposed Article 4.**

189 § ~~55-306~~ 55.1-xxx. Damages for trespass by animals; punitive and double damages.

190 A. If any domesticated livestock ~~domesticated by man shall enter~~ enters into any grounds
191 enclosed by a lawful fence, as defined in §§ ~~55-299~~ 55.1-xxx through ~~55-303~~ 55.1-xxx, the owner
192 or manager of any such animal shall be liable for the actual damages sustained.

193 ~~When punitive~~ B. Punitive damages ~~are awarded, the same may be awarded but~~ shall not
194 exceed ~~twenty dollars~~ \$20 in any case.

195 C. For every succeeding trespass, the owner or manager of such animal shall be liable for
196 double damages, both actual and punitive.

197 **Drafting note: Subsection designations are added for clarity. The phrase "any**
198 **livestock domesticated by man" is replaced with the term "domesticated livestock" because**
199 **many existing sections throughout this chapter refer to the livestock named in existing § 55-**
200 **306, and using a term instead provides clarity to those other sections. Technical changes are**
201 **made.**

202 § ~~55-307~~ 55.1-xxx. Lien on animals.

203 ~~After a judgment of~~ If the court enters judgment for the owner or tenant of the grounds
204 enclosed by a lawful fence pursuant to § 55.1-xxx [§ 55-306], the landowner shall have a lien
205 upon such animal ~~shall enure for the benefit of the owner or tenant of such enclosed ground, and~~
206 ~~execution shall thereupon issue from the court rendering the judgment~~ Upon entry of the
207 judgment, the court shall issue a writ of fieri facias pursuant to § 8.01-478, and the animal ~~or~~
208 animals so trespassing found to have trespassed shall be levied upon by the officer to whom ~~the~~
209 such execution was issued, who shall sell ~~the same~~ such animal, as provided ~~by statute in Chapter~~
210 18 (§ 8.01-466 et seq.) of Title 8.01.

211 **Drafting note: Language is updated to reflect modern practice, including the use of**
212 **a writ of fieri facias to initiate the proceeding for the execution of the judgment, and for**

213 clarity. The plural "animals" is stricken on the basis of § 1-227, which states that throughout
214 the Code any word used in the singular includes the plural and vice versa.

215 § ~~55-308~~ 55.1-xxx. Impounding animals.

216 Whenever any ~~such~~ animal is found trespassing upon any ~~such~~ enclosed ~~ground~~ grounds
217 enclosed by a lawful fence, the owner or tenant of such enclosed grounds shall have the right to
218 take up and impound such animal ~~and impound the same~~ until the damages provided for ~~by the~~
219 ~~preceding sections shall~~ pursuant to this article have been paid, or until ~~the same are~~ such animal
220 is taken under execution by the officer as ~~hereinbefore~~ provided, ~~and the~~ by § 55.1-xxx [§ 55-
221 307]. The costs of taking up and impounding such animal shall be estimated as a part of the actual
222 damage.

223 **Drafting note: Technical changes.**

224 § ~~55-309~~ 55.1-xxx. Duty to issue warrant when animal impounded.

225 ~~It shall be the duty of such~~ An owner or tenant of ~~such~~ lands ~~so~~ trespassed upon, ~~within~~
226 ~~three days after the taking up and impounding such animal unless the damages be otherwise~~
227 ~~settled, to apply to a person authorized to issue warrants of the county or city in which such land~~
228 ~~is situated for a warrant for the amount of damages so claimed by him, and such court, or the clerk~~
229 ~~thereof, shall issue the same, to be made returnable at as early a date, not less than three days~~
230 ~~thereafter, as shall be deemed best by him; and upon the hearing of the case the judge shall give~~
231 ~~such judgment as is deemed just and right~~ by any domesticated livestock may recover damages
232 for taking up and impounding such animal by filing a warrant in debt pursuant to § 16.1-79 for
233 the amount of damages claimed.

234 **Drafting note: Language is updated to reflect modern practice in general district**
235 **courts and for clarity.**

236 Article 5.

237 No-Fence Law.

238 **Drafting note: Existing Article 5, containing provisions relating to no-fence law, is**
239 **retained as proposed Article 5.**

240 § ~~55-310~~ 55.1-xxx. How governing body of county may make local fence law.
241 The board of supervisors or other governing body in any county ~~in this State,~~ after ~~posting~~
242 publishing notice ~~of the time and place of meeting thirty days at the front door of the courthouse,~~
243 ~~and at each voting place in the county, and by publishing the same once a week for four successive~~
244 ~~weeks in some newspaper of such county, if any be published therein, and if none be published~~
245 ~~therein, in some newspaper having a general circulation therein, a majority of the board being~~
246 present and concurring as required by subsection F of § 15.2-1427, may, by ordinance, declare
247 the boundary line of each lot or tract of land, or any stream in such county, ~~or~~ any magisterial
248 district ~~thereof of such county~~, or any selected portion of such county, to be a lawful fence as to
249 any or all ~~of the animals mentioned in § 55-306~~ domesticated livestock, or may declare any other
250 kind of fence for such county, magisterial district, or selected portion of the county than as
251 prescribed by § ~~55-299~~ 55.1-xxx to be a lawful fence, as to any or all of such animals.

252 **Drafting note: Language is updated to provide that the county must act by ordinance**
253 **and a cross-reference to the notification requirements for adopting an ordinance is added;**
254 **the current language is not clear as to the process needed for the declaration since, pursuant**
255 **to § 15.2-1425, counties may only act by ordinances, resolutions, and motions. Existing § 55-**
256 **306 uses the term "any livestock domesticated by man," which in proposed § 55.1-xxx is**
257 **changed to "domesticated livestock"; all references throughout this chapter to "the animals**
258 **mentioned in § 55-306," are updated to "domesticated livestock" for clarity and consistency.**
259 **Technical changes are made.**

260 § ~~55-311~~ 55.1-xxx. Effect of such law on certain fences.
261 ~~Such A~~ declaration made by ordinance adopted pursuant to § 55.1-xxx [§ 55-310] shall
262 not ~~be construed as applying and shall not~~ apply to relieve the adjoining landowners from making
263 and maintaining their division fences, as defined by § ~~55-299, but as to such division fences, §§~~
264 55-317 to 55-322, inclusive, 55.1-xxx; however, Article 6 (§ 55.1-xxx et seq.) shall ~~be applicable~~
265 apply to such division fences.

266 **Drafting note: Language is updated to reflect that localities must act by ordinance.**

267 **Language is updated for clarity. Technical changes are made.**

268 § ~~55-312~~ 55.1-xxx. Application to railroad companies.

269 No action taken under the provisions of § ~~55-310~~ 55.1-xxx shall relieve any railroad
270 company of any duty or obligation imposed on every such company by § 56-429, or imposed by
271 any other statute now in force, in reference to fencing their lines of railway, and rights-of-way.

272 **Drafting note: Technical change.**

273 § ~~55-313~~ 55.1-xxx. No authority to adopt more stringent fence laws.

274 Nothing in § ~~55-310~~ 55.1-xxx shall authorize or require the boards of supervisors or other
275 governing bodies of counties to declare a more stringent fence as a lawful fence for any county,
276 magisterial district, or selected portion of any county, than as prescribed by § ~~55-299~~ 55.1-xxx.

277 **Drafting note: No change.**

278 § ~~55-314~~ 55.1-xxx. Effect on existing fence laws or no-fence laws.

279 Nothing in § ~~55-310~~ 55.1-xxx shall repeal the existing fence laws in any county,
280 magisterial district, or selected portion of any county, until changed by the board of supervisors
281 or other governing body, by ordinance and in accordance with the provisions thereof, nor shall
282 the provisions of ~~such section~~ § 55.1-xxx [§ 55-310] apply to any county, magisterial district, or
283 selected portion of any county, in which the no-fence law is now in force, if such no-fence law
284 exists otherwise than ~~under an order of~~ in an ordinance adopted by the board of supervisors or
285 other governing body of such county entered pursuant to ~~such section~~ § 55.1-xxx [§ 55-310].

286 **Drafting note: Language is updated to reflect that localities must act by ordinance.**

287 **Technical changes are made.**

288 § ~~55-315~~ 55.1-xxx. Lands under quarantine.

289 The boundary line of each lot or tract of land in any county in ~~this the~~ Commonwealth
290 which that is under quarantine shall be a lawful fence as to any and all ~~of the animals mentioned~~
291 in § 55-316 domesticated livestock.

292 **Drafting note: The existing cross-reference to § 55-316 is an error. Existing § 55-306**
293 **uses the term "any livestock domesticated by man," which in proposed § 55.1-xxx is changed**
294 **to "domesticated livestock"; all references throughout this chapter to "the animals**
295 **mentioned in § 55-306" are updated to "domesticated livestock" for clarity and consistency.**
296 **Technical changes are made.**

297 § ~~55-316~~ 55.1-xxx. When unlawful for animals to run at large.

298 It ~~shall be is~~ unlawful for the owner or manager of any ~~animal or type of animal described~~
299 ~~in § 55-306~~ domesticated livestock to permit any such animal, as to which the boundaries of lots
300 or tracts of land have been or may be constituted a lawful fence, to run at large beyond the limits
301 of his own lands within the county, magisterial district, or portion of such county ~~wherein~~ in which
302 such boundaries have been constituted and ~~shall be~~ are a lawful fence.

303 **Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man,"**
304 **which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references**
305 **throughout this chapter to "any livestock mentioned in § 55-306" are updated to**
306 **"domesticated livestock" for clarity and consistency. A technical change is made.**

307 Article 6.

308 Division Fences.

309 **Drafting note: Existing Article 6, containing provisions relating to division fences, is**
310 **retained as proposed Article 6.**

311 § ~~55-317~~ 55.1-xxx. Obligation to provide division fences.

312 Adjoining landowners shall build and maintain, at their joint and equal expense, division
313 fences between their lands, unless one of them ~~shall choose~~ chooses to let his land lie open or
314 unless they ~~shall otherwise~~ agree ~~between themselves~~ otherwise.

315 **Drafting note: Technical changes.**

316 § ~~55-318~~ 55.1-xxx. When no division fence has been built.

317 ~~When-If~~ no division fence has been built, either one of the adjoining ~~owners~~ landowners
318 may give notice in writing of his desire and intention to build such fence to the ~~owner~~ landowner

319 of the adjoining land, or to his agent, and require him to ~~come forward and~~ build his half ~~thereof~~
320 of such fence. The ~~owner~~ landowner so notified may, within ~~ten~~ 10 days after receiving such
321 notice, give notice in writing to the person so desiring to build such fence, or to his agent, of his
322 intention to let his land lie open, ~~in which event, and if, If~~ the ~~one~~ landowner giving the original
323 notice ~~shall build~~ subsequently builds such division fence and the ~~one~~ landowner who has so
324 chosen to let his land lie open, or his successors in title, ~~shall afterwards enclose it~~ subsequently
325 encloses his land, he, or ~~they, as the case may be~~ his successors, shall be liable to the ~~one~~
326 landowner who built such fence, or to his successors in title, for one-half of the value of such
327 fence at the time such land ~~shall be~~ was so enclosed, and such fence shall thereafter be deemed a
328 division fence between such lands.

329 If, however, the person so notified ~~shall fail~~ fails to give notice of his intention to let his
330 land lie open, ~~as hereinabove provided~~, and ~~shall fail~~ fails to ~~come forward~~ agree, within ~~thirty~~ 30
331 days after being so notified, ~~and to~~ build his half of such fence, he shall be liable to the person
332 who builds the ~~same fence~~ for one-half of the expense ~~thereof~~, and such fence shall thereafter be
333 deemed a division fence between such lands.

334 Notwithstanding the provisions of this section, no successor in title shall be liable for any
335 amount prior to the recordation and proper indexing recordation of the ~~original~~ notice in the clerk's
336 office of the county in which the land is located.

337 **Drafting note: The term "owner" is replaced with "landowner" for consistency**
338 **throughout the article. Language is rewritten for clarity and modern usage. Technical**
339 **changes are made.**

340 § ~~55-319~~ 55.1-xxx. When division fence already built.

341 When any fence ~~which (i) that~~ has been built and used by adjoining landowners as a
342 division fence, or any fence ~~which that~~ has been built by one, landowner and the other landowner
343 is afterwards required to pay half of the value, or expense ~~thereof, of such fence~~ under the
344 provisions ~~hereinbefore~~ contained in this article, and ~~which (ii) that~~ has thereby become a division
345 fence between such lands, ~~shall become~~ becomes out of repair to the extent that it is no longer a

346 lawful fence, either one of such adjoining landowners may give written notice to the other, or to
347 his agent, of his desire and intention to repair such fence, and require him to ~~come forward and~~
348 repair his half ~~thereof, and if he shall fail to do so of such fence. If the landowner receiving written~~
349 notice fails to repair his half within ~~thirty~~ 30 days after being so notified, the one giving such
350 notice may then repair the entire fence so as to make it a lawful fence, and the other shall be liable
351 to him for one-half of the expense ~~thereof of such repairs~~.

352 **Drafting note: Language is rewritten for clarity. Technical changes are made.**

353 § ~~55-320~~ 55.1-xxx. Recovery of amount due in connection with division fence.

354 Any sum ~~which that~~ may be due and payable by one adjoining landowner to another in
355 pursuance of any of the provisions of §§ ~~55-318~~ 55.1-xxx and ~~55-319~~ 55.1-xxx may be recovered
356 by ~~motion~~, action or warrant in debt, according to the jurisdictional amount.

357 **Drafting note: Language is updated to reflect modern practice. Technical changes**
358 **are made.**

359 § ~~55-321~~ 55.1-xxx. Requirements for agreement to bind successors in title; subsequent
360 owners.

361 No agreement made between adjoining landowners, with respect to the construction or
362 maintenance of the division fence between their lands, shall be binding on their successors in title,
363 unless it ~~be~~ (i) is in writing and specifically so state, ~~and be~~ (ii) is recorded in the deed book in
364 the clerk's office of the county in which the land is located, and (iii) is properly indexed as deeds
365 are required by law to be indexed.

366 If any notice, as required by § ~~55-318~~ 55.1-xxx or § ~~55-319~~ 55.1-xxx is recorded in the
367 deed book in the clerk's office of the county in which the land is located and is properly indexed
368 as deeds are required by law to be indexed, then any subsequent owners of such land shall be
369 liable for any sum ~~which that~~ may be due pursuant to § ~~55-320~~ 55.1-xxx.

370 **Drafting note: Technical changes.**

371 § ~~55-322~~ 55.1-xxx. How notice given.

372 Any notice ~~herein provided~~ required to be given pursuant to this article shall be given to
373 the ~~owner of the land~~ landowner, if he ~~reside~~ resides in the county in which the land lies;
374 otherwise, it may be given to such person as, under the laws of ~~this~~ the Commonwealth, would be
375 his agent; or to any person occupying such land as tenant of the ~~owner~~ landowner, who shall, for
376 the purposes of this article, be deemed the agent of such ~~owner~~ landowner.

377 **Drafting note: The term "owner" is replaced with "landowner" for consistency**
378 **throughout the article. Technical changes are made.**

379 Article 7.

380 Special Provisions for Unincorporated Communities.

381 **Drafting note: Existing Article 7, containing special provisions for unincorporated**
382 **communities, is retained as proposed Article 7.**

383 § ~~55-323~~ 55.1-xxx. Courts to fix boundaries of villages to prevent animals from running
384 at large.

385 The circuit court of any county in which is situated any village or unincorporated
386 community having within defined boundaries a population of 300 or more, shall have jurisdiction
387 ~~as herein provided~~, to fix the boundaries of such village or unincorporated community for the
388 purpose of preventing ~~those animals specified in § 55-306~~ domesticated livestock from running
389 at large within such boundaries.

390 **Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man,"**
391 **which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references**
392 **throughout this chapter to "those animals specified in § 55-306" are updated to**
393 **"domesticated livestock" for clarity and consistency. Technical changes are made.**

394 § ~~55-324~~ 55.1-xxx. Petition for action ~~under § 55-323~~ to fix boundaries of villages.

395 Twenty or more ~~freeholders~~ landowners residing within the boundaries referred to in § ~~55-~~
396 ~~323~~ 55.1-xxx may ~~present to such court~~ file a petition signed by them ~~praying~~ requesting that the
397 boundaries of such village or unincorporated community be fixed for the purposes of § ~~55-323~~;
398 ~~notice~~ 55.1-xxx. Notice of the intention to ~~present~~ file such petition, stating the date on which the

399 same petition will be ~~presented filed,~~ and such notice shall be posted at the front door of the
400 courthouse of such county, and at three or more conspicuous places within such boundaries, at
401 least ten days before the day on which such petition is to be presented and published once a week
402 for four successive weeks in a newspaper having general circulation in such county where the
403 village is located. Such petition shall state with reasonable certainty the boundaries within which
404 it is desired to prohibit such animals from running at large, ~~and shall also state~~ that at least 300
405 persons reside within such boundaries, and that a majority of the freeholders landowners residing
406 therein are in favor of prohibiting such animals from running at large.

407 **Drafting note: A requirement to publish notice in a newspaper of general circulation**
408 **is added for consistency throughout the chapter. Language is updated for modern usage.**
409 **Technical changes are made.**

410 § ~~55-325~~ 55.1-xxx. Entry of order if petition not contested.

411 ~~The petitions referred to in~~ A petition filed pursuant to § ~~55-324~~ 55.1-xxx, if verified by
412 the oath of one or more of the petitioners, shall be prima facie evidence of the facts stated therein,
413 and the court without further evidence shall proceed to enter the order ~~herein provided for fixing~~
414 the boundaries of the village or unincorporated community unless such petition ~~be is~~ contested.

415 **Drafting note: Language is added for clarity. Technical changes are made.**

416 § ~~55-326~~ 55.1-xxx. Procedure in case of contest.

417 Any person having a lawful interest in any land within the boundaries referred to in any
418 petition ~~as provided for in § ~~55-324~~ to fix the boundaries of a village or unincorporated community~~
419 who wishes to contest such petition may ~~have himself entered~~ intervene in such action as a ~~party~~
420 defendant ~~thereto~~. In case of such contest, the ~~court, without a jury,~~ judge shall hear the evidence,
421 and, if in doubt as to the facts, may appoint one or more persons to canvass such community and
422 report to the court the number of persons residing within such boundaries, ~~and also~~ the names of
423 all the freeholders landowners residing therein, and whether ~~the latter~~ such landowners are for or
424 against the petition.

425 **Drafting note: Language is updated for modern usage and clarity. Technical changes**
426 **are made.**

427 § ~~55-327~~ 55.1-xxx. Order of court.

428 ~~If~~ The court shall enter an order fixing the boundaries of any village or unincorporated
429 community having within defined boundaries a population of 300 or more for the purpose of
430 preventing domesticated livestock from running at large within such boundaries (i) if, in the case
431 of a contested petition, it appears from the evidence or from ~~such a~~ report, if any ~~be made is~~
432 required pursuant to § 55.1-xxx [§ 55-326], that ~~as many as three hundred~~ at least 300 persons
433 reside within ~~such the~~ boundaries referred to in a petition filed pursuant to § 55.1-xxx [§ 55-324]
434 and that a majority of the ~~freeholders~~ landowners residing therein are in favor of prohibiting ~~those~~
435 animals specified in § 55-306 domesticated livestock from running at large; ~~and, or (ii)~~ in case of
436 an uncontested petition, ~~without other~~ on the basis of the evidence ~~than presented in~~ the petition
437 itself; ~~such court shall enter an order fixing such boundaries as aforesaid.~~

438 **Drafting note: Proposed § 55.1-xxx is rewritten for modern usage and clarity.**
439 **Existing § 55-306 uses the term "any livestock domesticated by man," which in proposed §**
440 **55.1-xxx is changed to "domesticated livestock"; all references throughout this chapter to**
441 **"those animals specified in § 55-306" are updated to "domesticated livestock" for clarity**
442 **and consistency.**

443 § ~~55-328~~ 55.1-xxx. Animals may not run at large after entry of order.

444 After the expiration of ~~ten~~ 10 days from the date of entering ~~such an~~ order pursuant to §
445 55.1-xxx [§ 55-327], it ~~shall be is~~ unlawful for any ~~animal specified in § 55-306 domesticated~~
446 livestock to run at large within such boundaries, and any person owning or having charge of any
447 such animal who ~~shall permit the same~~ permits such livestock to run at large within such
448 boundaries ~~shall be is~~ guilty of a Class 4 misdemeanor; ~~each.~~ Each day such animal is permitted
449 to run at large ~~to constitute~~ constitutes a separate offense; ~~and~~ any such animal found running at
450 large upon any street, alley, road, or other public ground within such boundaries may be taken up

451 and impounded by any person who may retain such animal in his custody until the expense of
452 keeping such animal ~~shall have been~~ is paid.

453 **Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man,"**
454 **which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references**
455 **throughout this chapter to "any animal specified in § 55-306" are updated to "domesticated**
456 **livestock" for clarity and consistency. Technical changes are made.**

457 ~~§ 55-329 55.1-xxx. Costs; by whom fines imposed.~~

458 If the petition ~~be is~~ uncontested, the costs ~~thereof~~ shall be borne by the ~~petitioners~~
459 petitioner; if it ~~be is~~ contested, costs shall be awarded to the prevailing party ~~prevailing~~. ~~The fine~~
460 ~~provided for by § 55-328 may be imposed by the general district court of the county within which~~
461 ~~such village or unincorporated community is located.~~

462 **Drafting note: The last sentence of proposed § 55.1-xxx is deleted because there is no**
463 **fine provided for in existing § 55-328. A Class 4 misdemeanor is provided for in existing §**
464 **55-328, but the normal laws of jurisdiction will dictate what court may impose such a**
465 **penalty. Technical changes are made.**

466 ~~§ 55-330 55.1-xxx. Owner of animals domesticated livestock~~ liable for trespasses.

467 If any ~~of the animals specified in § 55-306 domesticated livestock~~, as to which the
468 boundaries of the lots or tracts of land in any county, ~~or~~ magisterial district ~~thereof~~, or ~~in any~~
469 selected portion of such county; constitute a lawful fence, ~~shall be~~ are found going at large within
470 such county, district, or portion of such county, or upon the lands of any person other than the
471 owner, the owner or manager of such animals shall be liable for all damage or injury done by such
472 animals to the owner of the crops or lands upon which they ~~may~~ trespass, whether the animals
473 wander from the premises of their owner in the county in which the trespass was committed; or
474 from another county; ~~;~~ provided; that when the boundaries of lots or tracts of land in only one of
475 two adjoining counties ~~shall constitute~~ constitutes a lawful fence, and any of such animals ~~shall~~
476 escape escapes across the line or boundary of the two counties, the owner of such animal shall not
477 be liable to the fine imposed by ~~the second paragraph subsection B~~ of ~~§ 55-306 55.1-xxx~~, nor for

478 any trespass committed by such animal upon the lands lying next to such line or boundary, nor to
479 a forfeiture of the animal, unless the land upon which the trespass is alleged to have been
480 committed ~~shall be~~ is enclosed, as provided in § ~~55-299~~ 55.1-xxx.

481 **Drafting note: Existing § 55-306 uses the term "any livestock domesticated by man,"**
482 **which in proposed § 55.1-xxx is changed to "domesticated livestock"; all references**
483 **throughout this chapter to "animals specified in § 55-306" are updated to "domesticated**
484 **livestock" for clarity and consistency. Technical changes are made.**

485 Article 8.

486 Cutting Timber.

487 **Drafting note: Existing Article 8, containing provisions relating to cutting timber, is**
488 **retained as proposed Article 8.**

489 § ~~55-331~~ 55.1-xxx. Damages recoverable for timber cutting.

490 If any person, firm, or corporation, encroaches and cuts timber, except when acting
491 prudently and under bona fide claim of right, the owner ~~thereof~~ of such timber shall, in addition
492 to all other remedies afforded by law, have the benefit of a right to, and a summary remedy for
493 recovery of, damages in an amount as ~~hereinafter~~ specified in this article and recovered as
494 ~~hereinafter~~ provided for in this article.

495 If the trespass is proven, the defendant shall have the burden of proving that he acted
496 prudently and under a bona fide claim of right.

497 **Drafting note: Technical changes.**

498 § ~~55-332~~ 55.1-xxx. Procedure for determination of damage.

499 A. The owner of the land on which ~~such a~~ trespass as described in § 55.1-xxx [§ 55-331]
500 was committed shall have the right, within 30 days after the discovery of such trespass and the
501 identity of the trespasser, to notify the trespasser and to appoint an experienced timber estimator
502 to determine the amount of damages. For the purposes of determining damages, the value of the
503 timber cut shall be calculated by first determining the value of the timber on the stump. Within
504 30 days after receiving notice of the alleged trespass and of the appointment of such estimator,

505 the alleged trespasser, if he does not deny the fact of trespass, shall appoint an experienced timber
506 estimator to participate with the one already so appointed in the estimation of damages. If the two
507 estimators cannot agree, they shall select a third person, experienced and disinterested, ~~and the~~
508 who shall make a decision ~~thereafter made that~~ shall be final and conclusive and not subject to
509 appeal. The estimation of damages and the rendition of statement must be effected within 30 days
510 from the receipt of notice of appointment, by the trespasser, of an estimator.

511 If the alleged trespasser fails to appoint an estimator within the prescribed time, or to
512 notify, within such time, that the allegation of the fact of trespass is disputed, the estimator
513 appointed by the injured party may make an estimate, and collection or recovery may be had
514 accordingly.

515 B. Any person who (i) severs or removes any timber from the land of another without legal
516 right or permission or (ii) authorizes or directs the severing or removal of timber or trees from the
517 land of another without legal right or permission shall be liable to pay to the rightful owner of the
518 timber three times the value of the timber on the stump and shall pay to the rightful owner of the
519 property the reforestation costs incurred not to exceed \$450 per acre, the costs of ascertaining the
520 value of the timber, any directly associated legal costs, and reasonable attorney fees incurred by
521 the owner of the timber as a result of the trespass.

522 **Drafting note: Technical changes.**

523 ~~§ 55-333. Repealed.~~

524 **Drafting note: Repealed by Acts 2004, cc. 604 and 615.**

525 ~~§ 55-334~~ 55.1-xxx. When person damaged may proceed in court.

526 If the amount specified in subsection B of § ~~55-332~~ 55.1-xxx is not paid within 30 days
527 after rendition of statement, the person upon whose land the trespass occurred may proceed for
528 judgment in the amount of payment as specified in § ~~55-332~~ 55.1-xxx.

529 If, upon receiving notice of the alleged trespass and of the appointment of an estimator,
530 the person so receiving notice does not admit the fact of trespass, he may decline to appoint an

531 estimator and notify the other party to such effect, together with his reason for refusing to appoint
532 an estimator, and in such case the aggrieved party may proceed in the appropriate court.

533 **Drafting note: No change.**

534 § ~~55-334.1~~ 55.1-xxx. Larceny of timber; penalty.

535 A. Any person who knowingly and willfully takes, steals, and removes from the lands of
536 another any timber growing, standing, or lying on the lands ~~shall be~~ is guilty of larceny. Any
537 person so convicted shall be ordered to pay restitution calculated pursuant to § ~~55-332~~ 55.1-xxx.

538 B. In a criminal prosecution pursuant to subsection A, it shall be prima facie evidence of
539 the intent to steal the timber if the timber was harvested or removed from property marked with
540 readily visible paint marks not more than 100 feet apart on trees or posts along the property line,
541 where the paint marks were vertical lines at least two inches in width and at least eight inches in
542 length and the center of the mark was ~~no~~ not less than three feet ~~or~~ nor more than six feet from
543 the ground or normal water surface.

544 **Drafting note: Technical changes.**

545 § ~~55-335~~ 55.1-xxx. Effect of article.

546 Nothing in this article shall have the effect of precluding any compromise or agreed
547 settlement that the parties in dispute may effect as to the civil remedies provided by this article,
548 nor of barring any other remedy provided for by law.

549 **Drafting note: No change.**

550 #

1 CHAPTER ~~23~~ XX [6].

2 VIRGINIA SELF-SERVICE STORAGE ACT.

3 **Drafting note: Existing Chapter 23, Virginia Self-Service Storage Act, is retained as**
4 **proposed Chapter XX [6].**

5 ~~§ 55-416. Short title.~~

6 ~~This chapter shall be known as the "Virginia Self-Service Storage Act."~~

7 **Drafting note: Existing § 55-416 is recommended for repeal on the basis of § 1-244,**
8 **which states that the caption of a subtitle, chapter, or article operates as a short title citation.**
9 **The short title citation is retained in the title of the chapter.**

10 ~~§ 55-417~~ 55.1-xxx. Definitions.

11 As used in this chapter, unless the context ~~clearly~~ requires ~~otherwise~~ a different meaning:

12 ~~1. "Self-service storage facility" means any real property designed and used for renting or~~
13 ~~leasing individual storage spaces, other than storage spaces which are leased or rented as an~~
14 ~~incident to the lease or rental of residential property or dwelling units, to which the occupants~~
15 ~~thereof have access for storing or removing their personal property. No occupant shall use a self-~~
16 ~~service storage facility for residential purposes.~~

17 ~~2. "Owner" means the owner, operator, lessor, or sublessor of a self-service storage~~
18 ~~facility, his agent, or any other person authorized to manage the facility or to receive rent from~~
19 ~~any occupant under a rental agreement.~~

20 ~~The owner of a self-service storage facility is not a warehouseman as defined in § 8.7-102,~~
21 ~~unless the owner issues a warehouse receipt, bill of lading, or other document of title for the~~
22 ~~personal property stored, in which event, the owner and the occupant are subject to the provisions~~
23 ~~of Title 8.7 dealing with warehousemen.~~

24 ~~3. "Occupant" means a person, his sublessee, successor, or assign, entitled to the use of a~~
25 ~~leased space at a self-service storage facility under a rental agreement.~~

26 ~~4. "Rental agreement" means any agreement or lease that establishes or modifies the terms,~~
27 ~~conditions, or rules concerning the use and occupancy of a self-service storage facility.~~

28 ~~5. "Leased space" means the individual storage space at the self-service facility which is~~
29 ~~leased or rented to an occupant pursuant to a rental agreement.~~

30 ~~6. "Personal property" means movable property, not affixed to land and includes, but is~~
31 ~~not limited to, goods, wares, merchandise, and household items and furnishings.~~

32 ~~7. "Default" means the failure to perform on time any obligation or duty set forth in the~~
33 ~~rental agreement or this chapter.~~

34 ~~8. "Last known address" means that address or electronic mail address provided by the~~
35 ~~occupant in the rental agreement or the address or electronic mail address provided by the~~
36 ~~occupant in a subsequent written notice of a change of address.~~

37 ~~9. "Verified mail" means any method of mailing that is offered by the United States Postal~~
38 ~~Service or private delivery service that provides evidence of mailing.~~

39 "Default" means the failure to perform on time any obligation or duty set forth in the rental
40 agreement or this chapter.

41 "Last known address" means that address or electronic mail address provided by the
42 occupant in the rental agreement or the address or electronic mail address provided by the
43 occupant in a subsequent written notice of a change of address.

44 "Leased space" means the individual storage space at the self-service facility that is leased
45 or rented to an occupant pursuant to a rental agreement.

46 "Occupant" means a person, his sublessee, successor, or assign, entitled to the use of a
47 leased space at a self-service storage facility under a rental agreement.

48 "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility,
49 his agent, or any other person authorized to manage the facility or to receive rent from any
50 occupant under a rental agreement.

51 The owner of a self-service storage facility is not a warehouseman as defined in § 8.7-102,
52 unless the owner issues a warehouse receipt, bill of lading, or other document of title for the
53 personal property stored, in which event, the owner and the occupant are subject to the provisions
54 of Title 8.7 dealing with warehousemen.

55 "Personal property" means movable property not affixed to land and includes goods,
56 wares, merchandise, and household items and furnishings.

57 "Rental agreement" means any agreement or lease that establishes or modifies the terms,
58 conditions, or rules concerning the use and occupancy of a self-service storage facility.

59 "Self-service storage facility" means any real property designed and used for renting or
60 leasing individual storage spaces, other than storage spaces that are leased or rented as an incident
61 to the lease or rental of residential property or dwelling units, to which the occupants thereof have
62 access for storing or removing their personal property. No occupant shall use a self-service storage
63 facility for residential purposes.

64 "Verified mail" means any method of mailing that is offered by the United States Postal
65 Service or private delivery service that provides evidence of mailing.

66 **Drafting note: Definitions have been unnumbered and reordered alphabetically,**
67 **consistent with Code style. In the definition of "personal property," the phrase "but is not**
68 **limited to" is deleted on the basis of § 1-218, which states that throughout the Code**
69 **"'Includes' means includes, but not limited to." Technical changes are made.**

70 § ~~55-418~~ 55.1-xxx. Lien on personal property stored within a leased space.

71 A. The owner shall have a lien on all personal property stored within each leased space
72 for rent, labor, or other charges, and for expenses reasonably incurred in its sale pursuant to this
73 chapter. Such lien shall attach as of the date the personal property is stored within each leased
74 space, and, to the extent that the property remains stored within such leased space, as ~~hereinafter~~
75 provided in this subsection, shall be superior to any other existing liens or security interests to the
76 extent of \$250 or, if the leased space is a climate-controlled facility, \$500. In addition, such lien
77 shall extend to the proceeds, if any, remaining after the satisfaction of any perfected liens, and the
78 owner may retain possession of such proceeds until the balance, if any, of such charges is paid.

79 B. In the case of any watercraft ~~which~~ that is subject to a lien, previously recorded on the
80 certificate of title, the owner, so long as the watercraft remains stored within such leased space,
81 shall have a lien on such watercraft as provided ~~for herein~~ in this subsection to the extent of \$250

82 or ~~\$500~~, if the leased space is a climate-controlled facility, \$500. In addition, such lien shall extend
83 to the proceeds, if any, remaining after the satisfaction of any recorded liens, and the owner may
84 retain possession of such proceeds until the balance, if any, of such charges is paid.

85 C. The rental agreement shall contain a statement, in bold type, advising the occupant of
86 the existence of such lien, and that the personal property stored within the leased space may be
87 sold to satisfy the lien if the occupant is in default.

88 D. In the case of any motor vehicle that is subject to a lien, previously recorded on the
89 certificate of title, the owner, so long as the motor vehicle remains stored within such leased space,
90 shall have a lien on such vehicle in accordance with § 46.2-644.01.

91 **Drafting note: Language is added to the catchline for clarity. Technical changes are**
92 **made.**

93 § ~~55-419~~ 55.1-xxx. Enforcement of lien.

94 A. 1. If any occupant is in default under a rental agreement, the owner shall notify the
95 occupant of such default by regular mail at his last known address, or, if expressly provided for
96 in the rental agreement, such notice may be given by electronic means. If such default is not cured
97 within 10 days after its occurrence, then the owner may proceed to enforce such lien by selling
98 the contents of the occupant's unit at public auction, for cash, and apply the proceeds to
99 satisfaction of the lien, with the surplus, if any, to be disbursed as ~~hereinafter~~ provided in this
100 section. Before conducting such a public auction, the owner shall notify the occupant as prescribed
101 in subsection C and shall advertise the time, place, and terms ~~thereof of such auction~~ in such
102 manner as to give ~~publicity thereto~~ the public notice.

103 2. In the case of personal property having a fair market value in excess of \$1,000, and
104 against which a creditor has filed a financing statement in the name of the occupant at the State
105 Corporation Commission or in the county or city ~~or county~~ where the self-service storage facility
106 is located or in the county or city ~~or county~~ in ~~Virginia~~ the Commonwealth shown as the last
107 known address of the occupant, or if such personal property is a watercraft required by the laws
108 of ~~Virginia~~ the Commonwealth to be registered and the Department of Game and Inland Fisheries

109 shows a lien on the certificate of title, the owner shall notify the lienholder of record, by certified
110 mail, at the address on the financing statement or certificate of title, at least 10 days prior to the
111 time and place of the proposed public auction.

112 If the owner of the personal property cannot be ascertained, the name of "John Doe" shall
113 be substituted in the proceedings ~~hereunder~~ [provided for in this section](#) and no written notice shall
114 be required. Whenever a watercraft is sold ~~hereunder~~ [pursuant to this subsection](#), the Department
115 of Game and Inland Fisheries shall issue a certificate of title and registration to the purchaser
116 [thereof of such watercraft](#) upon his application containing the serial or motor number of the
117 watercraft purchased, together with an affidavit by the lienholder, or by the person conducting the
118 public auction, evidencing compliance with the provisions ~~hereof~~ [of this subsection](#).

119 B. Whenever the occupant is in default, the owner shall have the right to deny the occupant
120 access to the leased space.

121 C. After the occupant has been in default for a period of 10 days, and before the owner
122 can sell the occupant's personal property in accordance with this chapter, the owner shall send a
123 further notice of default, by verified mail, postage prepaid, to the occupant at his last known
124 address, or, if expressly provided for in the rental agreement, such notice may be given by
125 electronic means, provided that the sender retains sufficient proof of the electronic delivery, which
126 may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or
127 a certificate of service prepared by the sender confirming the electronic delivery. Such notice of
128 default shall include:

129 1. An itemized statement of the owner's claim, indicating the charges due on the date of
130 the notice and the date when the charges became due;

131 2. A demand for payment of the charges due within a specified time not less than 20 days
132 after the date of the notice;

133 3. A statement that the contents of the occupant's leased space are subject to the owner's
134 lien;

135 4. A conspicuous statement that unless the claim is paid within the time stated, the contents
136 of the occupant's space will be sold at public auction at a specified time and place; and

137 5. The name, street address, and telephone number of the owner or his designated agent
138 whom the occupant may contact to respond to the notice.

139 D. At any time prior to the public auction pursuant to this section, the occupant may pay
140 the amount necessary to satisfy the lien and thereby redeem the personal property.

141 E. In the event of a public auction pursuant to this section, the owner may satisfy his lien
142 from the proceeds of the public auction, and shall hold the balance, if any, for delivery on demand
143 to the occupant or other lienholder referred to in this chapter. However, the owner shall not be
144 obligated to hold any balance for a lienholder of record notified pursuant to subdivision A 2, or
145 any other lien creditor, that fails to claim an interest in the balance within 30 days of the public
146 auction. So long as the owner complies with the provisions of this chapter, the owner's liability to
147 the occupant under this chapter shall be limited to the net proceeds received from the public
148 auction of any personal property, and, as to other lienholders, shall be limited to the net proceeds
149 received from the public auction of any personal property covered by such superior lien.

150 F. Any public auction of the personal property shall be held at the self-service storage
151 facility or at the nearest suitable place to where the personal property is held or stored. An
152 advertisement shall be published in a newspaper of general circulation in the ~~county, city or town~~
153 locality in which the public auction is to be held at least once prior to the public auction. The
154 advertisement ~~must~~ shall state (i) the fact that it is a public auction; (ii) the date, time, and location
155 of the public auction; and (iii) the form of payment that will be accepted.

156 G. A purchaser in good faith of any personal property sold or otherwise disposed of
157 pursuant to this chapter takes such property free and clear of any rights of persons against whom
158 the lien was valid.

159 H. Any notice made pursuant to this section shall be presumed delivered when it is (i)
160 deposited with the United States Postal Service and properly addressed to the occupant's last
161 known address with postage prepaid or (ii) sent by electronic means, provided that the sender

162 retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery,
163 a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the
164 sender confirming the electronic delivery. In the event of a dispute, the sender shall have the
165 burden to demonstrate delivery of the notice of default.

166 I. In the case of any motor vehicle, so long as the motor vehicle remains stored within such
167 leased space, the owner shall have a lien on such vehicle in accordance with § 46.2-644.01.

168 **Drafting note: In subsection F, "county, city, or town" is replaced with "locality" on**
169 **the basis of § 1-221, which states that throughout the Code "'locality' means a county, city,**
170 **or town." Also in subsection F, the word "must" is replaced with "shall," consistent with**
171 **Code style. Technical changes are made.**

172 ~~§ 55-419.1~~ 55.1-xxx. Other legal remedies may be used.

173 The provisions of this chapter shall not preempt or limit the owner's use of any additional
174 remedy otherwise allowed by law.

175 **Drafting note: No change.**

176 ~~§ 55-420~~ 55.1-xxx. Care, custody, and control of property.

177 Unless the rental agreement specifically provides otherwise, the exclusive care, custody,
178 and control of all personal property stored in the leased space shall remain vested in the occupant.

179 **Drafting note: No change.**

180 ~~§ 55-421. Savings clause.~~

181 ~~All rental agreements, entered into prior to July 1, 1981, which have not been extended or~~
182 ~~renewed after that date, shall remain valid and may be enforced or terminated in accordance with~~
183 ~~their terms or as permitted by any other statute or law of this Commonwealth.~~

184 **Drafting note: Repealed as obsolete.**

185 ~~§ 55-422. Repealed.~~

186 **Drafting note: Repealed by Acts 2015, c. 709, cl. 2.**

187 ~~§ 55-423~~ 55.1-xxx. Effective date and application of chapter.

2018 Session of the General Assembly

Legislation Recommended by the Virginia Code Commission			
Subject	Description	Status	Patron
Higher education: recodification cleanup; appointed and qualified	Clarifies that nonlegislative citizen members of the State Council of Higher Education for Virginia and the Eastern Virginia Medical School Board of Visitors shall continue to hold office until their successors have been appointed and qualified. Under current law, such members continue to hold office until their successors have been appointed and confirmed.	<u>Chapter 202</u> (SB 411)	McDougle
Title 24.2 (Elections) obsolete laws review	Repeals and revises several obsolete elections-related statutes.	<u>Chapter 464</u> (SB 130)	Edwards
Venue in criminal cases; concurrent jurisdiction; obsolete provisions	Provides that the courts of a locality have concurrent jurisdiction with the courts of any other adjoining locality over criminal offenses committed in or upon the premises, buildings, rooms, or offices owned or occupied by such locality or any officer, agency, or department thereof that are located in the adjoining locality and repeals an existing statute that provides such concurrent jurisdiction for certain enumerated localities. The bill also deletes references to corporation courts, which no longer exist, and repeals several obsolete provisions involving courts not of record that ceased to be applicable in 1980.	<u>Chapter 164</u> (HB 77)	Habeeb (McDougle SB 416; identical bill; left on table)
Employment; notification of withholding order	Repeals the requirement, enacted in 1993, that an employer request that each new employee disclose whether the employee has an income withholding order. This requirement has been superseded in practice by requirements that an employer submit information about new hires to the Virginia New Hire Reporting Center within 20 days of the employee's hire date. Under the current system, relevant data in the State Directory of New Hires and the National Directory of New Hires is used by the Division of Child Support Enforcement to issue orders enforcing child support obligations.	<u>Chapter 457</u> (SB 51)	Edwards

2018 Session of the General Assembly

Legislation Recommended by the Virginia Code Commission			
Subject	Description	Status	Patron
Same-sex marriages; civil unions	Repeals the statutory prohibitions on same-sex marriages and civil unions or other arrangements between persons of the same sex purporting to bestow the privileges and obligations of marriage. These prohibitions have been rendered obsolete by the United States Supreme Court decision in <u>Obergefell v. Hodges</u> , 576 U.S. ____ (June 26, 2015).	SB 50 Incorporated with SB 3 (Ebbin) Continued to 2019 in Senate Courts of Justice	Edwards
Administrative Process Act; hearing officer's report	Modifies the time frame for completion of a hearing officer's report to align with federal requirements.	Chapter 613 (SB 154)	Edwards

Code Commission Related Bills			
Subject	Description	Status	Patron
Virginia Code Commission; duties.	Limits the Code Commission's duties relating to the codification of laws enacted by the General Assembly. Beginning with the 2018 Regular Session of the General Assembly, the Commission will arrange for (i) the printing or (ii) the publication on a legislative branch agency website of all enactments of a chapter of the acts of assembly if any provision of the chapter is codified as a law. Such enactments will be printed or published on a legislative branch agency website as they appear in the chapter of the acts of assembly. Currently, the Commission may codify laws for which the title of the related bill did not provide for any change to the Code (Section 1 bills and certain final enactment clauses) and may exclude from the Code laws for which the title of the related bill actually provided for changes to the Code.	HB 246 Continued to 2019 in Senate Rules	Habeeb

2018 Session of the General Assembly

Code Commission Related Bills			
Subject	Description	Status	Patron
Adoption; gender-neutral terms.	Makes parenting and marriage terminology gender-neutral in the relevant law regarding adoption so that it is applicable to both same-sex and opposite-sex married couples to comport with the United States Supreme Court decision in Obergefell v. Hodges, 576 U.S. ____ (June 26, 2015).	<u>HB 413</u> Left in House Courts of Justice	Simon
Same-sex marriage; gender-neutral terms.	Repeals the statutory prohibitions on same-sex marriages and civil unions or other arrangements between persons of the same sex purporting to bestow the privileges and obligations of marriage. These prohibitions are no longer valid due to the United States Supreme Court decision in Obergefell v. Hodges, 576 U.S. ____ (June 26, 2015). The bill also makes conforming changes to various laws involving married individuals and their rights stemming from marriage and makes the laws addressing the property rights of married women applicable to all spouses, removing any sex-based classifications	<u>SB 603</u> Continued to 2019 in Senate Courts of Justice	Ebbin

DRAFT - Presented May 7, 2018

2018 CODE COMMISSION WORK PLAN

CONTINUING

- **Recodification of Title 55, Property and Conveyances** (DLS Staff: Amigo Wade, Kristen Walsh, Britt Olwine)
- **Bill referred from prior sessions** - SJR 216 (2017 - Ebbin) to amend Constitution; Code Commission continued decision until May 2018 meeting.
- **Obsolete laws and "Not Set Out" sections** (DLS Staff: Jeff Sharp) - The 2017 Work Plan included a review of "not set out/obsolete" sections in Title 15.2. This review did not occur in 2017 and is on the 2018 Work Plan for a determination whether to set out the full text of those sections that are not obsolete. Additional sections in other titles may be presented for review.

Background: Section 30-151 requires review of acts and statutes to identify obsolete provisions no less than every 4 years. The Code Commission conducts this study and makes recommendations to the General Assembly through legislation. In addition, the Code Commission has been reviewing Code of Virginia sections labeled "Not set out" to establish which sections should be set out, not set out, repealed, or amended. Approximately 40 "not set out" sections will be left after completion of the Title 15.2 review and the recodification of Title 45.1 (Mines and Minerals). The obsolete laws and not set out projects were combined in 2017.

- **Recodification of Title 45.1, Mines and Mining** (DLS Staff: Scott Meacham) - Staff anticipates presenting proposed members of the work group.
- **Cybersecurity & hacking - law portal, ethics filings system, Legislative Information System (LIS), etc.** - The Division of Legislative Automated Systems will address this issue.

MONITORING

- **Administrative Law Advisory Committee** - *Established to assist the Code Commission with oversight authority over the operation and effectiveness of the regulation promulgation process pursuant to the Virginia Administrative Process Act and Virginia Register Act.*

Reappointment of ALAC members in May and November

- **Rules of evidence** (DLS Staff: David Cotter) - *monitor updates to Virginia Supreme Court Rules and modify Code of Virginia catchlines when necessary*

CONTRACT EXPIRATION DATES:

- **Code of Virginia** (LexisNexis): expires August 31, 2020.
- **Virginia Administrative Code** (West): expires April 30, 2020.
- **Virginia Register of Regulations** (LexisNexis): expires June 2, 2018 (presented for renewal at May 2018 meeting).
- **Code of Virginia Publishers Forum Access Agreement** (West and LexisNexis): expires November 21, 2018.