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VWDC Enabling Act of the Code of Virginia	Enabling Legislation	7/1/2024
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TTB Exemption	Exemption from the requirement to obtain a Federal basic permit under the Federal Alcohol Administration Act.	1/24/2008
VWDC Board Member Terms	Official record of Board members and associated term dates	6/18/2024
Memorandum of Agreement (MOA)	This agreement between VDACS and VWDC provides the terms and conditions for VWDC's administrative and financial services.	7/1/2024
VDACS Policy and Procedure	Conduct of Board Meetings and Board Votes; Freedom of Information; Conflict of Interest, Remote and Virtual Meeting Policies	8/19/2024



VIRGINIA WINERY DISTRIBUTION COMPANY

102 Governor Street  
Richmond, VA 23219  
804-225-3662

POLICY NAME	VWDC Enabling Act of the Code of Virginia			POLICY / CODE	§ 3.2-102(B)(2) and § 4.1-206.1
EFFECTIVE DATE	April 4, 2007	DATE OF LAST REVISION	July 1, 2024	VERSION NO.	2
ADMINISTRATOR RESPONSIBLE	Staci Saunders, VWDC Operations Manager		CONTACT INFORMATION	<a href="mailto:Staci.saunders@vdacs.virginia.gov">Staci.saunders@vdacs.virginia.gov</a> (804) 225-3662	

VERSION	REVISION DATE	CHANGE SUMMARY	AUTHOR
1	April 4, 2007	Original Enabling Act Legislation, §3.1-14-01 and §4.1-207.1	General Assembly of Virginia
2	July 1, 2024	Recodified code sections. § 3.2-102(B)(2) and § 4.1-206.2	General Assembly of Virginia

## § 3.2-102. (Effective until July 1, 2024) General powers and duties of the Commissioner

A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and duties herein provided, and such other powers and duties as may be prescribed by law, including those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.

B. In addition, the Commissioner shall:

1. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products;
2. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions

to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section;

3. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) not inconsistent with the laws of Virginia necessary to carry out the provisions of Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. Such regulations may include penalties for violations; and

4. Ensure that the Department compiles and publishes the annual report relating to foreign adversary ownership of agricultural land required under § 55.1-509.

Code 1950, §§ 3-7, 3-9, 3-13; 1966, c. 702, §§ 3.1-8, 3.1-10, 3.1-14; 1971, Ex. Sess., c. 34; 1975, c. 260; 1977, c. 186; 1978, cc. 219, 540; 1982, c. 150; 1985, c. 397; 1993, c. 455; 1994, cc. 261, 370; 1995, c. 10; 1996, c. 996; 2005, c. 633; 2007, cc. 352, 870, 932, §§ 3.1-14.4, 3.1-14.01; 2008, c. 860; 2012, cc. 803, 835; 2020, cc. 1113, 1114; 2022, cc. 554, 609; 2023, cc. 765, 796.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

## § 3.2-102. (Effective July 1, 2024) General powers and duties of the Commissioner

A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and duties herein provided, and such other powers and duties as may be prescribed by law, including those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the

safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.

B. In addition, the Commissioner shall:

1. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products;
2. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section;
3. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for Virginia breweries and limited breweries. Such corporation shall provide wholesale beer distribution services for Virginia breweries and limited breweries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, (i) two of

whom shall be an owner or manager of a Virginia beer wholesale licensee, (ii) one of whom shall be an owner or manager of a brewery or limited brewery licensee, and (iii) one of whom shall be an owner or manager of a brewery or limited brewery licensee that is not served by a wholesaler at the time such owner or manager is appointed to the board of directors. In making appointments to the board of directors, the Board shall consider nominations submitted by the Virginia Beer Wholesalers Association regarding members listed in clause (i) and nominations submitted by the Virginia Craft Brewers Guild regarding members listed in clauses (ii) and (iii). At least annually, such corporation shall be required to report to the Commissioner on its activities, including reporting the quantity of beer distributed for each brewery or limited brewery licensee during the preceding year. The Commissioner shall report such information to the General Assembly. The provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section;

4. Promulgate regulations in accordance with the Administrative Process Act (§ [2.2-4000](#) et seq.) not inconsistent with the laws of Virginia necessary to carry out the provisions of Article 1.1:1 (§ [18.2-340.15](#) et seq.) of Chapter 8 of Title 18.2. Such regulations may include penalties for violations; and

5. Ensure that the Department compiles and publishes the annual report relating to foreign adversary ownership of agricultural land required under § [55.1-509](#).

Code 1950, §§ 3-7, 3-9, 3-13; 1966, c. 702, §§ 3.1-8, 3.1-10, 3.1-14; 1971, Ex. Sess., c. 34; 1975, c. 260; 1977, c. 186; 1978, cc. 219, 540; 1982, c. 150; 1985, c. 397; 1993, c. 455; 1994, cc. [261](#), [370](#); 1995, c. [10](#); 1996, c. [996](#); 2005, c. [633](#); 2007, cc. [352](#), [870](#), [932](#), §§ 3.1-14.4, 3.1-14.01; 2008, c. [860](#); 2012, cc. [803](#), [835](#); 2020, cc. [1113](#), [1114](#); 2022, cc. [554](#), [609](#); 2023, cc. [597](#), [765](#), [796](#).

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Code of Virginia

Title 4.1. Alcoholic Beverage and Cannabis Control

Subtitle I. Alcoholic Beverage Control Act

Chapter 2. Administration of Licenses

Article 2. Licenses Granted by Board; Limitations; Revocation and Suspension

## § 4.1-206.2. (Effective until July 1, 2024) Wholesale licenses

The Board may grant the following wholesale licenses:

1. Wholesale beer licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of beer and to sell and deliver or ship the beer from one or more premises identified in the license, in accordance with Board regulations, in closed containers to (i) persons licensed under this chapter to sell such beer at wholesale or retail for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

No wholesale beer licensee shall purchase beer for resale from a person outside the Commonwealth who does not hold a beer importer's license unless such wholesale beer licensee holds a beer importer's license and purchases beer for resale pursuant to the privileges of such beer importer's license.

2. Wholesale wine licenses, including those granted pursuant to subdivision 3, which shall authorize the licensee to acquire and receive deliveries and shipments of wine and to sell and deliver or ship the wine from one or more premises identified in the license, in accordance with Board regulations, in closed containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside the Commonwealth for resale outside the Commonwealth, (iii) religious congregations for use only for sacramental purposes, and (iv) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state.

No wholesale wine licensee shall purchase wine for resale from a person outside the Commonwealth who does not hold a wine importer's license unless such wholesale wine licensee holds a wine importer's license and purchases wine for resale pursuant to the privileges of such wine importer's license.

3. Restricted wholesale wine licenses, which shall authorize a nonprofit, nonstock corporation created in accordance with subdivision B 2 of § [3.2-102](#) to provide wholesale wine distribution services to winery and farm winery licensees, provided that no more than 3,000 cases of wine produced by a winery or farm winery licensee shall be distributed by the corporation in any one year. The corporation shall provide such distribution services in accordance with the terms of a written agreement approved by the corporation between it and the winery or farm winery licensee, which shall comply with the provisions of this subtitle and Board regulations. The corporation shall receive all of the privileges of, and be subject to, all laws and regulations governing wholesale wine licenses granted under subdivision 2.

2020, cc. [1113](#), [1114](#).

This section has more than one version with varying effective dates. Scroll down to see all



versions.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

## § 4.1-206.2. (Effective July 1, 2024) Wholesale licenses

The Board may grant the following wholesale licenses:

1. Wholesale beer licenses, including those granted pursuant to subdivision 2, which shall authorize the licensee to acquire and receive deliveries and shipments of beer and to sell and deliver or ship the beer from one or more premises identified in the license, in accordance with Board regulations, in closed containers to (i) persons licensed under this chapter to sell such beer at wholesale or retail for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

No wholesale beer licensee shall purchase beer for resale from a person outside the Commonwealth who does not hold a beer importer's license unless such wholesale beer licensee holds a beer importer's license and purchases beer for resale pursuant to the privileges of such beer importer's license.

2. Restricted wholesale beer licenses, which shall authorize a nonprofit, nonstock corporation created in accordance with subdivision B 3 of § 3.2-102 to provide wholesale beer distribution services to brewery and limited brewery licensees, provided that no more than 500 barrels of beer shall be distributed by the corporation to each licensee in any one calendar year. The corporation shall provide such distribution services in accordance with the terms of a written agreement with the brewery or limited brewery licensee, which shall comply with the provisions of this subtitle and Board regulations. The corporation shall receive all of the privileges of, and be subject to all laws and regulations governing, wholesale beer licenses granted under subdivision 1. The board of directors of such corporation shall develop procedures and guidelines related to the sale and delivery of beer by the corporation to holders of banquet and special events licenses when such events are located within the exclusive distribution territory of another wholesale beer licensee.

3. Wholesale wine licenses, including those granted pursuant to subdivision 4, which shall authorize the licensee to acquire and receive deliveries and shipments of wine and to sell and deliver or ship the wine from one or more premises identified in the license, in accordance with Board regulations, in closed containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside the Commonwealth for resale outside the Commonwealth, (iii) religious congregations for use only for sacramental purposes, and (iv) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state.

No wholesale wine licensee shall purchase wine for resale from a person outside the Commonwealth who does not hold a wine importer's license unless such wholesale wine licensee holds a wine importer's license and purchases wine for resale pursuant to the privileges of such wine importer's license.

4. Restricted wholesale wine licenses, which shall authorize a nonprofit, nonstock corporation created in accordance with subdivision B 2 of § 3.2-102 to provide wholesale wine distribution



services to winery and farm winery licensees, provided that no more than 3,000 cases of wine produced by a winery or farm winery licensee shall be distributed by the corporation in any one year. The corporation shall provide such distribution services in accordance with the terms of a written agreement approved by the corporation between it and the winery or farm winery licensee, which shall comply with the provisions of this subtitle and Board regulations. The corporation shall receive all of the privileges of, and be subject to, all laws and regulations governing wholesale wine licenses granted under subdivision 3.

2020, cc. [1113](#), [1114](#);2023, c. [597](#).

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## CHAPTER 932

*An Act to amend and reenact §§ [2.2-4002](#), [4.1-203](#), [4.1-207](#), [4.1-208](#), [4.1-223](#), and [4.1-231](#) of the Code of Virginia and to amend the Code of Virginia by adding sections numbered [3.1-14.01](#) and [4.1-207.1](#), relating to alcoholic beverage control; wine distribution licenses.*

[S 1413]

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ [2.2-4002](#), [4.1-203](#), [4.1-207](#), [4.1-208](#), [4.1-223](#), and [4.1-231](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered [3.1-14.01](#) and [4.1-207.1](#) as follows:

§ [2.2-4002](#). Exemptions from chapter generally.

A. Although required to comply with § [2.2-4103](#) of the Virginia Register Act (§ [2.2-4100](#) et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ [2.2-4024](#), [2.2-4030](#) and [2.2-4031](#):

1. The General Assembly.
2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.
3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ [29.1-200](#) et seq.), 3 (§ [29.1-300](#) et seq.), 4 (§ [29.1-400](#) et seq.), 5 (§ [29.1-500](#) et seq.), and 7 (§ [29.1-700](#) et seq.) of Title 29.1.
4. The Virginia Housing Development Authority.
5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.
6. Educational institutions operated by the Commonwealth, provided that, with respect to § [2.2-4031](#), such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.
7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.
9. Agencies expressly exempted by any other provision of this Code.
10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § [2.2-1164](#).
11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § [23-9.6:2](#).
12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § [3.1-726](#) and in adopting regulations pursuant to § [3.1-741.6](#).
13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § [3.1-106.4](#), subsection B of § [3.1-126.12:1](#), §§ [3.1-271.1](#), [3.1-530.1](#), and [3.1-398](#), subsections B and C of § [3.1-828.4](#), and subsection A of § [3.1-884.21:1](#).
14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ [54.1-3222](#) et seq.) of Chapter 32 of Title 54.1.
15. The Virginia War Memorial Foundation.
16. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ [32.1-331.12](#) et seq.) of Chapter 10 of Title 32.1.
17. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § [22.1-203.2](#).
18. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.
19. The Virginia Small Business Financing Authority.
20. The Virginia Economic Development Partnership Authority.
21. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § [59.1-156](#).
22. The Insurance Continuing Education Board pursuant to § [38.2-1867](#).

23. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § [32.1-35](#) and in adopting, amending or repealing regulations pursuant to subsection C of § [35.1-14](#) that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.

*24. The nonprofit, nonstock corporation established by the Commissioner of Agriculture and Consumer Services pursuant to § [3.1-14.01](#).*

B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.
2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
3. The location, design, specifications or construction of public buildings or other facilities.
4. Grants of state or federal funds or property.
5. The chartering of corporations.
6. Customary military, naval or police functions.
7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
8. The conduct of elections or eligibility to vote.
9. Inmates of prisons or other such facilities or parolees therefrom.
10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
11. Traffic signs, markers or control devices.
12. Instructions for application or renewal of a license, certificate, or registration required by law.
13. Content of, or rules for the conduct of, any examination required by law.
14. The administration of pools authorized by Chapter 47 (§ [2.2-4700](#) et seq.) of this title.
15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ [28.2-803](#) et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § [32.1-283.1](#).

18. The regulations for the implementation of the Health Practitioners' Intervention Program and the activities of the Intervention Program Committee pursuant to Chapter 25.1 (§ [54.1-2515](#) et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ [51.5-12.1](#) et seq.) of Title 51.5.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ [10.1-1197.1](#) et seq.) of Chapter 11.1 of Title 10.1.

21. The Virginia Breeders Fund created pursuant to § [59.1-372](#).

22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

23. The administration of medication or other substances foreign to the natural horse.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ [2.2-4100](#) et seq.) of this title, made by the Virginia Code Commission pursuant to § [30-150](#), shall be exempt from the provisions of this chapter.

§ [3.1-14.01](#). *Power of Commissioner; nonstock corporation to assist distribution of farm winery wine.*

*A. The Commissioner of Agriculture and Consumer Services shall establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ [13.1-801](#) et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § [4.1-100](#). Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § [4.1-207](#).*

*B. The board of directors of such corporation shall be composed of the Commissioner of Agriculture and Consumer Services and four members appointed by the Board of Agriculture and Consumer Services (the Board), including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees*

*submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including, but not limited to, reporting the quantity of wine distributed for each winery and farm winery during the preceding year.*

*C. The provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section.*

§ [4.1-203](#). Separate license for each place of business; transfer or amendment; posting; expiration; carriers.

A. Each license granted by the Board shall designate the place where the business of the licensee will be carried on. ~~A~~ Except as otherwise provided in §§ [4.1-207](#) and [4.1-208](#), a separate license shall be required for each separate place of business.

B. No license shall be transferable from one person to another, or from one location to another. The Board may permit a licensee to amend the classification of an existing license without complying with the posting and publishing procedures required by § [4.1-230](#) if the effect of the amendment is to reduce materially the privileges of an existing license. However, if (i) the Board determines that the amendment is a device to evade the provisions of this chapter, (ii) a majority of the corporate stock of a retail licensee is sold to a new entity, or (iii) there is a change of business at the premises of a retail licensee, the Board may, within thirty days of receipt of written notice by the licensee of a change in ownership or a change of business, require the licensee to comply with any or all of the requirements of § [4.1-230](#). If the Board fails to exercise its authority within the thirty-day period, the licensee shall not be required to reapply for a license. The licensee shall submit such written notice to the Secretary of the Board.

C. Each license shall be posted in a location conspicuous to the public at the place where the licensee carries on the business for which the license is granted.

D. The privileges conferred by any license granted by the Board, except for temporary licenses, banquet and mixed beverage special events licenses, shall continue until the last day of the twelfth month next ensuing or the last day of the designated month of expiration, except the license may be sooner terminated for any cause for which the Board would be entitled to refuse to grant a license, by operation of law, voluntary surrender or order of the Board.

The Board may permit a licensee who fails to pay by midnight of the fifteenth day of the twelfth month or of the designated month of expiration, whichever is applicable, the required license tax covering the continuation or reissuance of his license, to pay the tax in lieu of posting and publishing notice and reapplying, provided payment of the tax is made within thirty days following that date and is accompanied by a civil penalty of twenty-five dollars or ten percent of such tax, whichever is greater.

E. Subsections A and C shall not apply to common carriers of passengers by train, boat, or airplane.

§ [4.1-207](#). Wine licenses.

The Board may grant the following licenses relating to wine:

1. Winery licenses, which shall authorize the licensee to manufacture wine and to sell and deliver or ship the wine, in accordance with Board regulations, in closed containers, to persons licensed to sell the wine so manufactured at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth. In addition, such license shall authorize the licensee to (i) operate distilling equipment on the premises of the licensee in the manufacture of spirits from fruit or fruit juices only, which shall be used only for the fortification of wine produced by the licensee, and (ii) store wine in bonded warehouses on or off the licensed premises upon permit issued by the Board.

2. Wholesale wine licenses, *including those granted pursuant to § [4.1-207.1](#)*, which shall authorize the licensee to acquire and receive deliveries and shipments of wine and to sell and deliver or ship the wine *from one or more premises identified in the license*, in accordance with Board regulations, in closed containers, to (i) persons licensed to sell such wine in the Commonwealth, (ii) persons outside the Commonwealth for resale outside the Commonwealth, (iii) religious congregations for use only for sacramental purposes, and (iv) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state.

No wholesale wine licensee shall purchase wine for resale from a person outside the Commonwealth who does not hold a wine importer's license unless such wholesale wine licensee holds a wine importer's license and purchases wine for resale pursuant to the privileges of such wine importer's license.

3. Wine importers' licenses, which shall authorize persons located within or outside the Commonwealth to sell and deliver or ship wine, in accordance with Board regulations, in closed containers, to persons in the Commonwealth licensed to sell wine at wholesale for the purpose of resale, and to persons outside the Commonwealth for resale outside the Commonwealth.

4. Retail off-premises winery licenses to persons holding winery licenses, which shall authorize the licensee to sell wine at the place of business designated in the winery license, in closed containers, for off-premises consumption.

5. Farm winery licenses, which shall authorize the licensee to manufacture wine containing 18 percent or less of alcohol by volume and to sell, deliver or ship the wine, in accordance with Board regulations, in closed containers, to (i) the Board, (ii) persons licensed to sell the wine so manufactured at wholesale for the purpose of resale, § [4.1-326](#) notwithstanding, or (iii) persons outside the Commonwealth. In addition, the licensee may (a) acquire and receive deliveries and shipments of wine manufactured by the licensee and to sell and deliver or ship this wine, in accordance with Board regulations, to persons licensed to sell wine in the Commonwealth, § [4.1-326](#) notwithstanding and (b) store wine in bonded warehouses located on or off the licensed premises upon permits issued by the Board. For the purposes of this title, a farm winery license



shall be designated either as a Class A or Class B farm winery license in accordance with the limitations set forth in § [4.1-219](#).

Such licenses shall also authorize the licensee to sell wine at retail at the places of business designated in the licenses, which may include no more than five additional retail establishments of the licensee. Wine may be sold at these business places for on-premises consumption and in closed containers for off-premises consumption.

§ [4.1-207.1](#). *Restricted wholesale wine licenses.*

*The Board may grant a wholesale wine license to a nonprofit, nonstock corporation created in accordance with § [3.1-14.01](#), which shall authorize the licensee to provide wholesale wine distribution services to winery and farm winery licensees, provided that no more than 3,000 cases of wine produced by a winery or farm winery licensee shall be distributed by the corporation in any one year. The corporation shall provide such distribution services in accordance with the terms of a written agreement approved by the corporation between it and the winery or farm winery licensee, which shall comply with the provisions of this title and Board regulations. The corporation shall receive all of the privileges of, and be subject to, all laws and regulations governing wholesale wine licenses granted under subdivision 2 of § [4.1-207](#).*

§ [4.1-208](#). Beer licenses.

The Board may grant the following licenses relating to beer:

1. Brewery licenses, which shall authorize the licensee to manufacture beer and to sell and deliver or ship the beer so manufactured, in accordance with Board regulations, in closed containers to (i) persons licensed to sell the beer at wholesale; (ii) persons licensed to sell beer at retail for the purpose of resale within a theme or amusement park owned and operated by the brewery or a parent, subsidiary or a company under common control of such brewery, or upon property of such brewery or a parent, subsidiary or a company under common control of such brewery contiguous to such premises, or in a development contiguous to such premises owned and operated by such brewery or a parent, subsidiary or a company under common control of such brewery; and (iii) persons outside the Commonwealth for resale outside the Commonwealth. Such license may also authorize individuals holding a brewery license to operate a facility designed for and utilized exclusively for the education of persons in the manufacture of beer, including sampling by such individuals of beer products, within a theme or amusement park located upon the premises occupied by such brewery, or upon property of such person contiguous to such premises, or in a development contiguous to such premises owned and operated by such person or a wholly owned subsidiary. Provided, however, that such samples may be provided only to individuals for consumption on the premises of such facility and only to individuals to whom such products may be lawfully sold.

2. Bottlers' licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of beer in closed containers and to bottle, sell and deliver or ship it, in accordance with Board regulations to (i) wholesale beer licensees for the purpose of resale, (ii) owners of

boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

3. Wholesale beer licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of beer and to sell and deliver or ship ~~the beer from one or more premises identified in the license~~, in accordance with Board regulations, in closed containers to (i) persons licensed under this chapter to sell such beer at wholesale or retail for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

No wholesale beer licensee shall purchase beer for resale from a person outside the Commonwealth who does not hold a beer importer's license unless such wholesale beer licensee holds a beer importer's license and purchases beer for resale pursuant to the privileges of such beer importer's license.

4. Beer importers' licenses, which shall authorize persons licensed within or outside the Commonwealth to sell and deliver or ship beer into the Commonwealth, in accordance with Board regulations, in closed containers, to persons in the Commonwealth licensed to sell beer at wholesale for the purpose of resale.

5. Retail on-premises beer licenses to:

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas.

b. Persons operating dining cars, buffet cars, and club cars of trains, which shall authorize the licensee to sell beer, either with or without meals, in the dining cars, buffet cars, and club cars so operated by them for on-premises consumption when carrying passengers.

c. Persons operating sight-seeing boats, or special or charter boats, which shall authorize the licensee to sell beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers.

d. Grocery stores located in any town or in a rural area outside the corporate limits of any city or town, which shall authorize the licensee to sell beer for on-premises consumption in such establishments. No license shall be granted unless it appears affirmatively that a substantial public demand for such licensed establishment exists and that public convenience and the purposes of this title will be promoted by granting the license.

e. Persons operating food concessions at coliseums, stadia, or similar facilities, which shall authorize the licensee to sell beer, in paper, plastic, or similar disposable containers, during the performance of professional sporting exhibitions, events or performances immediately

subsequent thereto, to patrons within all seating areas, concourses, walkways, concession areas, and additional locations designated by the Board in such coliseums, stadia, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

f. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility which has seating for more than 3,500 persons and is located in any county with a population between 65,000 and 70,000. Such license shall authorize the licensee to sell beer during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

g. Persons operating food concessions at exhibition or exposition halls, convention centers or similar facilities located in any county operating under the urban county executive form of government or any city which is completely surrounded by such county, which shall authorize the licensee to sell beer during the event, in paper, plastic or similar disposable containers to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas, and such additional locations designated by the Board in such facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license. For purposes of this subsection, "exhibition or exposition halls" and "convention centers" mean facilities conducting private or public trade shows or exhibitions in an indoor facility having in excess of 100,000 square feet of floor space.

6. Retail off-premises beer licenses, which shall authorize the licensee to sell beer in closed containers for off-premises consumption.

7. Retail off-premises brewery licenses to persons holding a brewery license which shall authorize the licensee to sell beer at the place of business designated in the brewery license, in closed containers which shall include growlers and other reusable containers, for off-premises consumption.

8. Retail on-and-off premises beer licenses to persons enumerated in subdivisions 5 a and d, which shall accord all the privileges conferred by retail on-premises beer licenses and in addition, shall authorize the licensee to sell beer in closed containers for off-premises consumption.

§ [4.1-223](#). Conditions under which Board shall refuse to grant licenses.

The Board shall refuse to grant any:

1. Wholesale beer or wine license to any person, unless such person has established or will establish a place or places of business within the Commonwealth at which will be received and

from which will be distributed all alcoholic beverages sold by such person in the Commonwealth. However, in special circumstances, the Board, subject to any regulations it may adopt, may permit alcoholic beverages to be received into or distributed from places other than established places of business.

2. Wholesale beer license or wholesale wine license to any entity that is owned, in whole or in part, by any manufacturer of alcoholic beverages, any subsidiary or affiliate of such manufacturer or any person under common control with such manufacturer. This subdivision, however, shall not apply to (i) any applicant for a wholesale beer or wine license filed pursuant to subdivision 3 b of subsection B of § [4.1-216](#) or (ii) *the nonprofit, nonstock corporation established pursuant to § [3.1-14.01](#) in exercising any privileges granted under § [4.1-207.1](#).*

As used in this subdivision, the term "manufacturer" includes any person (i) who brews, vinifies or distills alcoholic beverages for sale or (ii) engaging in business as a contract brewer, winery or distillery that owns alcoholic beverage product brand rights, but arranges the manufacture of such products by another person.

3. Mixed beverage license if the Board determines that in the licensed establishment there (i) is entertainment of a lewd, obscene or lustful nature including what is commonly called stripteasing, topless entertaining, and the like, or which has employees who are not clad both above and below the waist, or who uncommonly expose the body or (ii) are employees who solicit the sale of alcoholic beverages.

4. Wholesale wine license until the applicant has filed with the Board a bond payable to the Commonwealth, in a sum not to exceed \$10,000, upon a form approved by the Board, signed by the applicant or licensee and a surety company authorized to do business in the Commonwealth as surety, and conditioned upon such person's (i) securing wine only in a manner provided by law, (ii) remitting to the Board the proper tax thereon, (iii) keeping such records as may be required by law or Board regulations, and (iv) abiding by such other laws or Board regulations relative to the handling of wine by wholesale wine licensees. The Board may waive the requirement of both the surety and the bond in cases where the wholesaler has previously demonstrated his financial responsibility.

5. Mixed beverage license to any member, agent or employee of the Board or to any corporation or other business entity in which such member, agent or employee is a stockholder or has any other economic interest.

Whenever any other elective or appointive official of the Commonwealth or any political subdivision thereof applies for such a license or continuance thereof, he shall state on the application the official position he holds, and whenever a corporation or other business entity in which any such official is a stockholder or has any other economic interests applies for such a license, it shall state on the application the full economic interest of each such official in such corporation or other business entity.

6. License authorized by this chapter until the license tax required by § [4.1-231](#) is paid to the Board.

§ [4.1-231](#). Taxes on state licenses.

A. The annual fees on state licenses shall be as follows:

1. Alcoholic beverage licenses. For each:

a. Distiller's license, if not more than 5,000 gallons of alcohol or spirits, or both, manufactured during the year in which the license is granted, \$450; and if more than 5,000 gallons manufactured during such year, \$3,725;

b. Fruit distiller's license, \$3,725;

c. Banquet facility license or museum license, \$190;

d. Bed and breakfast establishment license, \$35;

e. Tasting license, \$40 per license granted;

f. Equine sporting event license, \$130; and

g. Motor car sporting event facility license, \$130.

2. Wine licenses. For each:

a. Winery license, if not more than 5,000 gallons of wine manufactured during the year in which the license is granted, \$189, and if more than 5,000 gallons manufactured during such year, \$3,725;

b (1). Wholesale wine license, \$185 for any wholesaler who sells 30,000 gallons of wine or less per year, \$930 for any wholesaler who sells more than 30,000 gallons per year but not more than 150,000 gallons of wine per year, \$1,430 for any wholesaler who sells more than 150,000 but not more than 300,000 gallons of wine per year, and, \$1,860 for any wholesaler who sells more than 300,000 gallons of wine per year;

*b (2). Wholesale wine license, including that granted pursuant to § [4.1-207.1](#), applicable to two or more premises, the annual state license tax shall be the amount set forth in subdivision b (1), multiplied by the number of separate locations covered by the license;*

c. Wine importer's license, \$370;

d. Retail off-premises winery license, \$145;

e. Farm winery license, \$190 for any Class A license and \$3,725 for any Class B license;

f. Wine shipper's license, \$65; and

g. Day spa license, \$100.

3. Beer licenses. For each:

a. Brewery license, if not more than 10,000 barrels of beer manufactured during the year in which the license is granted, \$2,150, and if more than 10,000 barrels manufactured during such year, \$4,300;

b. Bottler's license, \$1,430;

c (1). Wholesale beer license, \$930 for any wholesaler who sells 300,000 cases of beer a year or less, and \$1,430 for any wholesaler who sells more than 300,000 but not more than 600,000 cases of beer a year, and \$1,860 for any wholesaler who sells more than 600,000 cases of beer a year;

*c (2). Wholesale beer license applicable to two or more premises, the annual state license tax shall be the amount set forth in subdivision c (1), multiplied by the number of separate locations covered by the license;*

d. Beer importer's license, \$370;

e. Retail on-premises beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train or boat, \$145; for each such license to a common carrier of passengers by train or boat, \$145 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth;

f. Retail off-premises beer license, \$120;

g. Retail on-and-off premises beer license to a hotel, restaurant, club or grocery store located in a town or in a rural area outside the corporate limits of any city or town, \$300; and

h. Beer shipper's license, \$65.

4. Wine and beer licenses. For each:

a. Retail on-premises wine and beer license to a hotel, restaurant, club or other person, except a common carrier of passengers by train, boat or airplane, \$300; for each such license to a common carrier of passengers by train or boat, \$300 per annum for each of the average number of boats, dining cars, buffet cars or club cars operated daily in the Commonwealth, and for each such license granted to a common carrier of passengers by airplane, \$750;

b. Retail on-premises wine and beer license to a hospital, \$145;

c. Retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery store license, \$230;

- d. Retail on-and-off premises wine and beer license to a hotel, restaurant or club, \$600;
- e. Banquet license, \$40 per license granted by the Board, except for banquet licenses granted by the Board pursuant to subsection A of § [4.1-215](#) for events occurring on more than one day, which shall be \$100 per license;
- f. Gourmet brewing shop license, \$230;
- g. Wine and beer shipper's license, \$65; and
- h. Annual banquet license, \$150.

5. Mixed beverage licenses. For each:

- a. Mixed beverage restaurant license granted to persons operating restaurants, including restaurants located on premises of and operated by hotels or motels, or other persons:
  - (i) With a seating capacity at tables for up to 100 persons, \$560;
  - (ii) With a seating capacity at tables for more than 100 but not more than 150 persons, \$975; and
  - (iii) With a seating capacity at tables for more than 150 persons, \$1,430.
- b. Mixed beverage restaurant license for restaurants located on the premises of and operated by private, nonprofit clubs:
  - (i) With an average yearly membership of not more than 200 resident members, \$750;
  - (ii) With an average yearly membership of more than 200 but not more than 500 resident members, \$1,860; and
  - (iii) With an average yearly membership of more than 500 resident members, \$2,765.
- c. Mixed beverage caterer's license, \$1,860;
- d. Mixed beverage special events license, \$45 for each day of each event;
- e. Mixed beverage club events licenses, \$35 for each day of each event;
- f. Annual mixed beverage special events license, \$560;
- g. Mixed beverage carrier license:
  - (i) \$190 for each of the average number of dining cars, buffet cars or club cars operated daily in the Commonwealth by a common carrier of passengers by train;



(ii) \$560 for each common carrier of passengers by boat;

(iii) \$1,475 for each license granted to a common carrier of passengers by airplane.

h. Annual mixed beverage amphitheater license, \$560;

i. Annual mixed beverage motor sports race track license, \$560; and

j. Annual mixed beverage banquet license, \$500.

6. Temporary licenses. For each temporary license authorized by § [4.1-211](#), one-half of the tax imposed by this section on the license for which the applicant applied.

B. The tax on each such license, except banquet and mixed beverage special events licenses, shall be subject to proration to the following extent: If the license is granted in the second quarter of any year, the tax shall be decreased by one-fourth; if granted in the third quarter of any year, the tax shall be decreased by one-half; and if granted in the fourth quarter of any year, the tax shall be decreased by three-fourths.

If the license on which the tax is prorated is a distiller's license to manufacture not more than 5,000 gallons of alcohol or spirits, or both, during the year in which the license is granted, or a winery license to manufacture not more than 5,000 gallons of wine during the year in which the license is granted, the number of gallons permitted to be manufactured shall be prorated in the same manner.

Should the holder of a distiller's license or a winery license to manufacture not more than 5,000 gallons of alcohol or spirits, or both, or wine, apply during the license year for an unlimited distiller's or winery license, such person shall pay for such unlimited license a license tax equal to the amount that would have been charged had such license been applied for at the time that the license to manufacture less than 5,000 gallons of alcohol or spirits or wine, as the case may be, was granted, and such person shall be entitled to a refund of the amount of license tax previously paid on the limited license.

Notwithstanding the foregoing, the tax on each license granted or reissued for a period of less than 12 months shall be equal to one-twelfth of the taxes required by subsection A computed to the nearest cent, multiplied by the number of months in the license period.

C. Nothing in this chapter shall exempt any licensee from any state merchants' license or state restaurant license or any other state tax. Every licensee, in addition to the taxes imposed by this chapter, shall be liable to state merchants' license taxation and state restaurant license taxation and other state taxation the same as if the alcoholic beverages were nonalcoholic. In ascertaining the liability of a beer wholesaler to merchants' license taxation, however, and in computing the wholesale merchants' license tax on a beer wholesaler, the first \$163,800 of beer purchases shall be disregarded; and in ascertaining the liability of a wholesale wine distributor to merchants' license taxation, and in computing the wholesale merchants' license tax on a wholesale wine distributor, the first \$163,800 of wine purchases shall be disregarded.

2. That an emergency exists and this act is in force from its passage.
3. That the Commissioner of Agriculture and Consumer Services shall implement the provisions of this act consistent with an opinion of the Attorney General dated April 28, 2006, within 90 days of the effective date of this act.
4. That the Alcoholic Beverage Control Board shall assist the Commissioner of Agriculture and Consumer Services in the formation and operation of the nonprofit, nonstock corporation established pursuant to § [3.1-14.01](#) of this act.

[illegible]

**ARTICLES OF INCORPORATION  
VIRGINIA WINERY DISTRIBUTION COMPANY**

**Article I  
Name**

The name of the Corporation is VIRGINIA WINERY DISTRIBUTION COMPANY ("VWDC").

**Article II  
Purpose**

The VWDC is organized as a nonprofit, nonstock corporation created under Section 13.1-801 of Title 13.1 (the "Non-Stock Corporation Act") of the Code of Virginia of 1950, as amended (the "Code"), pursuant to Section 3.1-14.01 of Chapter 3 of Title 3.1 (the "Enabling Act") of the Code. The VWDC is established as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries by providing wholesale wine distribution services.

**Article III  
Registered Office and Agent**

The initial registered office is located in the City of Richmond, Virginia, at 102 Governor Street, Richmond, Virginia 23219. The initial registered agent is the Commissioner of Agriculture and Consumer Services, whose business address is the same as the initial registered office, and who is a resident of Virginia and an officer and *ex officio* member of the Board of Directors of the Corporation.

**Article IV  
Members**

The VWDC shall have no members.

**Article V  
Board of Directors**

The powers of the VWDC shall be exercised by a board of directors ("Board") comprised of the Virginia Commissioner of Agriculture and Consumer Services, who shall serve *ex officio*, and four other members appointed by the Virginia Board of Agriculture and Consumer Services including one owner or manager of a winery or farm winery licensee, provided that the initial appointee to this position shall not own or manage a winery or farm winery that is served by a wholesaler at the time of his appointment; one owner or manager of a winery or farm winery licensee that produces no

more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees, and as further provided in the Bylaws.

#### **Article VI** **Indemnification**

The VWDC shall indemnify its directors and officers whether such directors or officers are serving the VWDC or, at its request, any other entity, to the extent and under the procedures permitted by the laws of the Commonwealth of Virginia now or hereafter in force. The VWDC shall indemnify its other employees and agents to the extent and under the procedures authorized by the Board of the VWDC and provided by law. The foregoing shall not be construed to create rights of indemnification other than those expressly provided by law, and all procedures required by law to be complied with as a condition to such indemnification rights shall be complied with in full. The Board may take such action as is necessary to carry out these indemnification provisions and is expressly empowered to adopt, approve and amend from time to time such resolutions or contracts implementing such provisions as may be permitted by law.

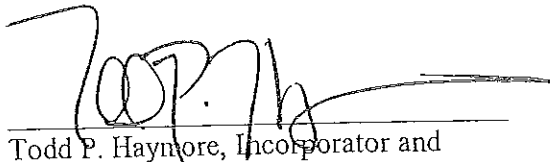
#### **Article VII** **Elimination of Liability**

To the maximum extent permitted by Virginia Code § 13.1-870.1 or any successor provision thereto, or any other statutory or decisional law, no officer or director of the Corporation shall be liable for any amount in excess of \$10.00 in any proceeding brought by or in the right of the Corporation against such officer or director.

No amendment to or repeal of this Article shall limit or eliminate the benefits provided to directors and officers of the Corporation hereunder with respect to any act or omission, which occurred prior to such amendment or repeal.

#### **Article VIII** **Dissolution**

In the event of the dissolution of the VWDC, all remaining funds of the VWDC shall be returned promptly to the Virginia Department of Agriculture and Consumer Services in a manner consistent with these Articles and the Bylaws of the VWDC and shall be used to further the purposes set forth in Article II hereof.



Todd P. Haymore, Incorporator and  
Virginia Commissioner of Agriculture and Consumer Services

Dated: August 27, 2007



VIRGINIA WINERY DISTRIBUTION COMPANY

102 Governor Street  
Richmond, VA 23219  
804-225-3662

<b>POLICY NAME</b>	VWDC Bylaws			<b>POLICY / CODE</b>	
<b>EFFECTIVE DATE</b>	April 4, 2007	<b>DATE OF LAST REVISION</b>	September 18, 2024	<b>VERSION NO.</b>	2
<b>ADMINISTRATOR RESPONSIBLE</b>	Staci Saunders, VWDC Operations Manager	<b>CONTACT INFORMATION</b>	<a href="mailto:Staci.saunders@vdacs.virginia.gov">Staci.saunders@vdacs.virginia.gov</a> (804) 225-3662		

VERSION	REVISION DATE	CHANGE SUMMARY	AUTHOR
1	November 5, 2007	Original Bylaws	Todd P. Haymore, Commissioner of Agriculture and Consumer Services & Secretary, Virginia Winery Distribution Company
2	July 1, 2024	Overall review by Office of the Attorney General. Revisions to applicable Virginia Code references, language, and process for policy updates.	Joseph Guthrie, Commissioner of Agriculture and Consumer Services & Secretary, Virginia Winery Distribution Company

# BYLAWS OF VIRGINIA WINERY DISTRIBUTION COMPANY

## ARTICLE I FORMATION AND PURPOSE

As provided in the Articles of Incorporation, the Virginia Winery Distribution Company (“Company”) has been incorporated by the Commissioner of Agriculture and Consumer Services (“Commissioner”) in accordance with § 3.2-102(B)(2) (“Enabling Act”) of the Code of Virginia of 1950, as amended (“Code”). The Company has been formed to provide wholesale wine distribution services for Virginia wineries and farm wineries licensed in accordance with § 4.1-206.1 of the Code, and the Company is a “public body” within the meaning of Code § 2.2-3701. This document contains the bylaws (“Bylaws”) of the Company and supersedes any previous version of the Bylaws.

## ARTICLE II BOARD OF DIRECTORS

1. **Board of Directors.** The Company shall be headed by a Board of Directors. The Board of Directors shall execute the duties of the Company as set out in the Enabling Act and § 4.1-206.1 of the Code (as reenacted and made effective July 1, 2024) to the best of its abilities.
2. **Appointment.** The Board of Directors shall consist of the Commissioner, who shall serve *ex officio*, and four other Board members who shall be appointed by the Virginia Board of Agriculture and Consumer Services (“VDACS Board”) in accordance with the Enabling Act and the Articles of Incorporation of the Company. In making the appointments, the VDACS Board will give consideration to nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association in accordance with nomination procedures adopted by the VDACS Board.
3. **Terms.** The Directors of the Company shall hold office until their successors are appointed and take office. An office shall be declared vacant if the Director resigns, is removed, or is otherwise unable to serve. Any vacancy occurring on the Board shall be filled by the VDACS Board at a future meeting. Members of the initial Board shall serve for initial terms as follows: one owner or manager of a winery or farm winery licensee (a “Winery Member”) and one owner or manager of a wine wholesaler licensee (a “Wholesaler Member”) shall each serve an initial term of four years; and one Winery Member and one Wholesaler Member shall each serve an initial term of two years. After the initial terms, all succeeding terms for Directors shall be for four years, except that appointments to full vacancies shall be for the unexpired terms pursuant to the Holdover Doctrine. The Holdover Doctrine, as construed in accordance with Virginia law shall apply to terms of the Directors. Directors may be reappointed for an unlimited number of additional four-year terms. No Director shall be appointed without his or her prior consent.



4. **Number of Votes.** At all meetings of the Board, each Director, including the Commissioner, shall have one vote.
5. **Resignation.** A Director may resign his or her office at any time by giving written notice to the Chair of the Board of Directors of the Company and to the Commissioner of VDACS. Unless otherwise specified in the notice, the resignation shall take effect immediately upon receipt, and the acceptance of the resignation shall not be necessary to make it effective.
6. **Regular Meetings.** Regular meetings of the Board shall be held, and notice thereof given, in compliance with the Virginia Freedom of Information Act (“FOIA”), § 2.2-3700, *et seq.*, of the Code, as amended from time to time. The Board may change the date, time, or place of any regular meeting at any preceding meeting and may adjourn any meeting from time to time to a new place upon three (3) days’ notice to each Board member and simultaneous notice to the public in the manner prescribed in § 2.2-3707.
7. **Special Meetings.** Special meetings may be called by the Chair or by any two Directors in response to an emergency, upon forty-eight (48) hours’ notice to all Directors, in writing or by telephone, of the time, place, and purpose of the special meeting. For this purpose, an emergency is an unforeseen circumstance rendering the notice required by § 2.2-3707 of the Code for regular meetings impossible or impracticable and which circumstance requires immediate action, all within the meaning of Code § 2.2-3701. As prescribed in § 2.2-3707(E) of the Code, notice, reasonable under the circumstance, of special, emergency, or continued meetings shall be given to the public contemporaneously with the notice provided to the Directors.
8. **Annual Meeting.** The first regular meeting of each fiscal year shall be the annual meeting of Company.
9. **Quorum.** A majority of the Board shall constitute a quorum for the transaction of business. The act of the majority of the Directors present at a meeting at which a quorum is present shall be an act of the Board.
10. **Waiver of Notice by Attendance.** The attendance of any Director at a special meeting of the Board without protesting the inadequacy or lack of notice at the beginning of such meeting shall constitute a waiver of such inadequacy or lack of notice by such Director. Such waiver shall be equivalent to the giving of the required notice.
11. **Compensation.** Directors of the Company shall receive no compensation for their services, but may be reimbursed for reasonable and necessary actual expenditures incurred in attending

meetings or acting in an official capacity for the Company, provided that such expenditures have been approved by the Board and are in keeping with any applicable state policies.

### **ARTICLE III COMMITTEES**

The Board may establish standing and/or special committees composed of Directors, staff, and members of the public for the handling of particular duties of the Company as the Board deems advisable. The Board may dissolve a committee at any time with a vote taken at a meeting or may designate that the committee shall dissolve at the completion of its duty. The term and membership as well as authority of such committees shall be defined at the time they are established. All committee meetings shall be held in accordance with the provisions of FOIA and these Bylaws, which also shall pertain to committees.

### **ARTICLE IV OFFICERS**

1. **Officers.** The Chair shall be elected from among the members of the Board of Directors, and the Commissioner shall serve as Secretary.
2. **Elections.** The Chair shall be elected by majority vote of the members of the Board present and voting at any meeting called for such purpose.
3. **Terms.** The Officers shall hold office until their successors are chosen and take office. An office shall be declared vacant if the Officer resigns, is removed, or is otherwise unable to serve.
4. **Resignation and Removal.** Any Officer may resign at any time by giving written notice to the Chair of the Board or the Secretary of the Company and the VDACS Board. Unless otherwise specified in the notice, the resignation shall take effect immediately upon receipt, and the acceptance of the resignation shall not be necessary to make it effective.
5. **Replacement of Chair.** If a vacancy occurs in the office of Chair of the Company by removal, resignation, incapacitation, or otherwise, the Directors shall promptly fill such vacancy with another active Board member. Until a new Chair can be qualified and at the next meeting, the Secretary can designate a temporary Chair.
6. **Chair.** The Chair of the Board shall preside at all meetings of the Board; provided, however, that if the Chair is not in attendance at any meeting, then the Directors present shall elect one of their number to preside at such meeting. The Chair shall have the power to carry into effect all legal directions of the Board.

7. **Secretary.** The Secretary shall be the clerk of the Board and shall give or cause to be given, for all meetings of the Board, any notice required by law or by these Bylaws. The Secretary shall record or have recorded the proceedings of all meetings of the Board as an appropriate record of the Company and shall keep the Seal of the Company and all other documents of the office.

## **ARTICLE V FINANCES AND PAYMENTS**

1. **Finances and Payments.** The finances of the Company shall be administered pursuant to a Memorandum of Agreement between the Company and the Virginia Departments of Treasury and Agriculture and Consumer Services. Income of the Company designated as State receipts shall be deposited promptly into a non-interest-bearing bank account in a public depository in good standing under the Virginia Security for Public Deposits Act. All payments (with the exception of those from petty cash) shall be made by checks, drafts, or electronic transfer. Checks, drafts, and electronic transfers shall be signed in the name of the Company by the Chair or the Chair's designee or, in the absence of both the Chair and a designee, by the Secretary.
2. **Audits.** The Board, at the end of each fiscal year, shall cause to be made an annual audit of its books and records by an independent certified public accountant, or by the Auditor of Public Accounts. A certified copy of same shall be filed within three (3) months thereof with VDACS.

## **ARTICLE VI MISCELLANEOUS PROVISIONS**

1. **Fiscal Year.** The fiscal year of the Company shall commence on July 1 of each year and shall terminate on the following June 30.
2. **Non-Discrimination.** The Company shall pursue its purposes and functions within the limits of its resources and without regard to the sex, race, national origin, or creed of those it serves.
3. **Books and Records.** All of the books and records of the Company shall be kept at VDACS and made available to the public as required by FOIA, the Virginia Public Records Act, and other applicable law.
4. **Annual Report.** The Board shall report to the Commissioner in writing at least annually on its activities including, but not limited to, reporting on the quantity of wine distributed for each participating winery and farm winery during the preceding year.
5. **Amendment of Bylaws.** The Bylaws may be amended at any time by a majority vote of the Board in a meeting following written notice to each Director stating the purpose and intent of the

meeting. The notice must be given ten (10) days in advance of the meeting and state the time and place as well as the text of the proposed amendments. Proposed amendments must also be provided to the Office of the Attorney General for review and comment.

**6. Policies.**

The Board may adopt policies to serve as guidelines for the operation of the Company. Adoption, amendment, and repeal of a policy may be approved by a simple majority vote of the Board. Potential policies to be considered for adoption may be recommended by the Chair, or to the Chair by any other Director in a writing to the Chair, at any time. Potential policies will be considered for adoption at a future meeting of the Board as directed by the Chair, and notice that the potential policy will be considered for adoption shall appear in the agenda of such future meeting. The Chair may task a committee, standing or ad hoc, with developing a potential policy into a final version. Staff for the Company shall keep a record of the policies of the Board and, to the extent practicable, such policies may be published on the Company's principal website.

**7. Rules of Order.** Roberts Rules of Order shall act as guidelines for all matters of procedure not specifically set forth in these Bylaws or the Enabling Act as permitted by law. Actions shall not be considered void for not strictly adhering to Roberts Rules of Order.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of the Bylaws of the Virginia Winery Distribution Company, a nonprofit nonstock corporation of the Commonwealth of Virginia, as in effect on the date hereof.

  
\_\_\_\_\_  
**Joseph Guthrie**  
**Commissioner of Agriculture and**  
**Consumer Services & Secretary, Virginia**  
**Winery Distribution Company**

**Date** December 16, 2024



## VIRGINIA WINERY DISTRIBUTION COMPANY

102 Governor Street

Richmond, VA 23219

804-225-3662

POLICY NAME	VWDC TTB Exemption			POLICY / CODE	
EFFECTIVE DATE	January 24, 2008	DATE OF LAST REVISION	n/a	VERSION NO.	1
ADMINISTRATOR RESPONSIBLE	Staci Saunders, VWDC Operations Manager	CONTACT INFORMATION	<a href="mailto:Staci.saunders@vdacs.virginia.gov">Staci.saunders@vdacs.virginia.gov</a> (804) 225-3662		

[illegible]



DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

8002 FEDERAL OFFICE BUILDING  
550 MAIN STREET  
CINCINNATI, OHIO 45202

**JAN 24 2008**

5020211;REA

5100

Terri Cofer Belrne, Esq., Counsel for  
Virginia Winery Distribution Company  
102 Governor Street  
Richmond, Virginia 23219

Dear Ms. Beirne:

We are writing in response to your letter and the application for a basic permit filed on December 18, 2007, by the Virginia Winery Distribution Company (VWDC). In the letter you requested an opinion from the Alcohol and Tobacco Tax and Trade Bureau (TTB) as to whether the VWDC must obtain a Federal basic permit under the Federal Alcohol Administration (FAA) Act, 27 U.S.C. Chapter 8.

We reviewed the representations you have made to TTB regarding the VWDC and how the VWDC is treated by Virginia law. For the reasons set forth below, we have determined that the VWDC is a State agency for purposes of the FAA Act, and as such, does not need to obtain a Federal basic permit from TTB.

FAA Act Basic Permit Issue

Section 103 of the FAA Act (27 U.S.C. § 203) requires a basic permit to engage in the business of purchasing wine for resale at wholesale. However, section 103 also excludes State agencies from this requirement.

§ 103. Unlawful businesses without permit; application to State agency:

...  
(c) It shall be unlawful, except pursuant to a basic permit issued under this subchapter by the Secretary of the Treasury —

- (1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or
- (2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

...  
This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this subchapter.

**TTB**

*A proud past... A focused future*

Terri Cofer Beirne, Esq.

The VWDC is a nonstock, nonprofit corporation created by the Virginia Department of Agriculture and Consumer Services (VDACS) in response to Va. Code § 3.1-14.01, a provision passed by the Virginia General Assembly in 2007. Paragraph A of § 3.1-14.01 states that the Commissioner of the VDACS "shall establish and operate a nonprofit, nonstock corporation... as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries... [emphasis added] Such corporation shall provide wholesale wine distribution services for [licensed Virginia] wineries and farm wineries" for up to 3,000 cases the winery produces per year (see Va. Code § 4.1-207.1).

Most significant to our determination that the VWDC is a State agency is the fact that the Virginia General Assembly established the VWDC as "a public instrumentality exercising public and essential governmental functions..." (Va. Code § 3.12-14.01 A). It is our understanding that several other provisions of Virginia law encompass the VWDC in their definitions of a government agency of the Commonwealth. First, the legislation establishing the VWDC expressly makes the VWDC subject to the Virginia Register Act (Va. Code § 2.2-4100 et seq.), and that act defines agencies that are subject to it as "any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth with express or implied authority to issue regulations..." (Va. Code § 2.2-4101). Second, we understand that Virginia's Deputy Attorney General gave his opinion that the VWDC must follow the provisions of the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.), as it is captured by the definition of a "public body" in Va. Code § 2.2-3701. Third, the Deputy Attorney General also concluded that the VWDC will enjoy sovereign immunity under the Virginia Tort Claims Act (Va. Code § 8.01-195.1 et seq.), as it falls within the definition of "agency" in that Act, meaning "any department, institution, authority, instrumentality, board or other administrative agency of the government of the Commonwealth of Virginia..." (Va. Code § 8.01-195.2).

It is our understanding from your letter that the VWDC is funded primarily by funds appropriated by the Virginia legislature. The 2007 Virginia General Assembly allocated \$280,000 from the Commonwealth's general fund revenues to be used to establish and operate the VWDC. As we understand, VWDC employees are employees of the Commonwealth of Virginia whose paychecks come from VDACS accounts. We also note that the VWDC's Articles of Incorporation provide in the event of dissolution, all funds of the VWDC shall be returned to the VDACS. As we understand, the VWDC plans to charge a processing fee to wineries using their services, but only as needed to cover costs not covered by the General Assembly appropriation. The VWDC currently estimates the fees for its services to be \$5 per transaction.

We understand that the VWDC is exempt from several laws pertaining to Virginia government entities, including the Virginia Personnel Act (Va. Code § 2.2-2900 et seq.), the State Grievance Procedure (Va. Code § 2.2-3000 et seq.), the Virginia Administrative Process Act (Va. Code § 2.2-4002 A.24), and the Virginia Public Procurement Act (Va. Code § 2.2-4300 et seq.; see § 3.1-14.01 C). However, the fact that the VWDC is exempt from these provisions of law is not unusual for government agencies in the Commonwealth and does not indicate that the Commonwealth of



Terri Cofer Beirne, Esq.

Virginia considers the VWDC to be a private entity. The employees and officers of many other Commonwealth agencies are also exempt from the Virginia Personnel Act and State Grievance Procedure, including the Office of the Attorney General, the Virginia Workers' Compensation Commission, the Virginia Retirement System, and the State Lottery Department, among others (see Va. Code § 2.2-2905 and 2.2-3002). Several agencies are not subject to the Virginia Administrative Process Act, including the Virginia Housing Authority, the Virginia War Memorial Fund, and the Virginia Small Business Financing Authority (see § 2.2-4002). Similarly, while many Commonwealth agencies are subject to the Public Procurement Act, some agencies and transactions are exempt from its provisions (see §§ 2.2-4343 – 2.2-4346).

Based on the Commonwealth of Virginia's treatment of the VWDC as a governmental entity, we have concluded that it is rightfully classified as a State agency for purposes of the FAA Act.

#### Other FAA Act Compliance Issues

Because the VWDC is a State agency for purposes of the FAA Act, it does not require a basic permit under 27 U.S.C. § 203; nor is it subject to the trade practice provisions in § 205(a)-(c), relating to exclusive outlet, tied-house, and commercial bribery, respectively. The penultimate paragraph of 27 U.S.C. § 205 states: "The provisions of subsections (a), (b), and (c) of this section shall not apply to any act done by an agency of a State or political subdivision thereof, or by any officer or employee of such agency." However, you should be aware that the VWDC is subject to the trade practice prohibitions related to consignment sales in § 205(d). Moreover, the wineries using the VWDC's services are subject to all § 205 trade practice provisions.

We particularly want to caution you about the consignment sale provisions in the FAA Act, 27 U.S.C. § 205(d), because of the VWDC's business model. Section 205(d) applies to consignment sales, conditional sales, other than bona fide sales, or sales with the privilege of return between a producer and a wholesaler. As we understand it, the VWDC plans to operate as a "virtual wholesaler," meaning the wine sold by the VWDC will physically remain at or in close proximity to the producing winery and will be delivered from the winery premises directly to the retail customer by the vintner. The winery will be required to have the portion of its premises leased to the VWDC physically segregated from the rest of its premises. The wine that will be sold through the VWDC must "come to rest" in this area for at least a short period of time. Legal title to the wine will pass from the winery to the VWDC when the wine enters this area and will remain with VWDC until the retail customer takes possession. However, though legal title to the wine passes, VWDC employees never take actual possession of the wine. Instead, the vintner or the winery employee, acting as an agent of the VWDC, solicits orders for wine from retailers, markets wine to retailers, places wine in the "come to rest" area, and then delivers wine to the retailer. The VWDC and its employees will process transactional paperwork for the sale and resale of the wine, including the purchase orders and invoices. The VWDC and its employees will also collect payments and remit taxes to the Commonwealth of Virginia.

Terri Cofer Beirne, Esq.

We have, in our past experience, seen problems of compliance with § 205(d) and 27 C.F.R. Part 11 when a warehouse area is the shared dominion of both agents of a wholesaler and agents of a producer. The VWDC should be mindful of and may wish to inform wineries using its services of the types of returns from this "come to rest" area back to the non-taxpaid areas that are prohibited by § 205(d) and the regulations in 27 C.F.R. Part 11.

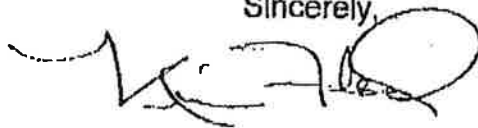
#### Internal Revenue Code Issues


Several other matters should be noted regarding continued compliance with the Internal Revenue Code of 1986, 26 U.S.C. Chapter 51 (IRC). The wineries using the VWDC's services must remain properly qualified and bonded under the IRC. This means that each winery using the VWDC's wholesale services needs to inform TTB of changes to its bonded facilities. If the winery, when creating this "come to rest" area changes the description of the winery premises or the description of the use of those premises in a manner that affects the accuracy of the application to establish and operate wine premises, it must submit a notice to TTB before making that change (27 C.F.R. §§ 24.111, 24.120, 24.131). Furthermore, TTB will require this "come to rest" area to be designated as a Federal taxpaid area because once wine moves into this area it has been removed from the bonded winery premises for sale (26 U.S.C. § 5041(a)). The winery must distinguish between its bonded premises and this and other taxpaid areas pursuant to 27 C.F.R. § 24.296.

#### Conclusion

A basic permit is not required for the VWDC to begin its wholesale activities. Accordingly, we are returning the permit application and accompanying materials filed on December 18, 2007, by the VWDC and taking no action on the application. If you have any questions about this letter, please contact Bob Adams, Industry Specialist for the National Revenue Center at (513) 684-2791 or [Robert.Adams@ttb.gov](mailto:Robert.Adams@ttb.gov).

Sincerely,



 Roger Bowling  
Director, National Revenue Center

cc: Wine Technical Advisor, San Francisco, California  
Wine Unit, National Revenue Center, Cincinnati, Ohio



VIRGINIA WINERY DISTRIBUTION COMPANY

102 Governor Street  
Richmond, VA 23219  
804-225-3662

POLICY NAME	VWDC Board Member Terms			POLICY / CODE	
EFFECTIVE DATE	June 18, 2024	DATE OF LAST REVISION	n/a	VERSION NO.	2
ADMINISTRATOR RESPONSIBLE	Staci Saunders, VWDC Operations Manager	CONTACT INFORMATION	<a href="mailto:Staci.saunders@vdacs.virginia.gov">Staci.saunders@vdacs.virginia.gov</a> (804) 225-3662		

VERSION	REVISION DATE	CHANGE SUMMARY	AUTHOR
1	February 23, 2024	n/a	Kevin Schmidt, Director, VDACS Office of Policy, Planning, and Research
2	June 18, 2024	Updated to replace Doug Zerbst with Ken Tambaschi	Kevin Schmidt, Director, VDACS Office of Policy, Planning, and Research

## **Virginia Winery Distribution Company Board Appointments**

*Updated June 18, 2024*

**Name:** Stan Joynes, Chief Executive Officer and owner of Valley Roads Vineyards, LLC  
**Position:** Owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the Board of Directors of the VWDC  
**Term:** July 1, 2023, through June 30, 2027  
**BACS:** May 18, 2023

**Name:** David Drillock, Fifty-Third Winery & Vineyard  
**Position:** Owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year  
**Term:** July 1, 2021, through June 30, 2025  
**BACS:** March 23, 2023 (filling unexpired term)

**Name:** Jay W. Colston, III, Virginia Imports  
**Position:** Owner or manager of a wine wholesaler licensee  
**Term:** July 1, 2021, through June 30, 2025  
**BACS:** May 20, 2021

**Name:** Ken Tambaschi, Republic National Distribution Company  
**Position:** Owner or manager of a wine wholesaler licensee  
**Term:** July 1, 2023, through June 30, 2027  
**BACS:** March 21, 2024 (filling unexpired term)  
**Notes:** Doug Zerbst was appointed by BACS in May 2019 to fill Gary Archuleta's unexpired term through June 30, 2020; Zerbst should have been appointed to fill Archuleta's unexpired term through June 30, 2019, and then been reappointed to fill a four-year term from July 1, 2019 – June 30, 2023. Instead, Zerbst was reappointed by BACS in May 2021 to a four-year term from July 1, 2021 – June 30, 2025. Counsel has advised that BACS cannot appoint a VWDC member outside of the terms established for the VWDC by statute, guidance document, or bylaws. Based on this guidance, BACS will consider Zerbst's term to be July 1, 2023 – June 30, 2027, and any replacement filled to be for an unexpired term to end June 30, 2027. Doug Zerbst resigned effective March 22, 2024, and BACS appointed Ken Tambaschi, Republic National Distribution Company, effective March 22, 2024, to fill the remainder of Doug Zerbst's unexpired term through June 30, 2027.



VIRGINIA WINERY DISTRIBUTION COMPANY

102 Governor Street  
Richmond, VA 23219  
804-225-3662

<b>POLICY NAME</b>	VWDC / VDACS Memorandum of Agreement			<b>POLICY / CODE</b>	
<b>EFFECTIVE DATE</b>	April 7, 2009	<b>DATE OF LAST REVISION</b>	July 1, 2024	<b>VERSION NO.</b>	4
<b>ADMINISTRATOR RESPONSIBLE</b>	Staci Saunders, VWDC Operations Manager	<b>CONTACT INFORMATION</b>	<a href="mailto:Staci.saunders@vdacs.virginia.gov">Staci.saunders@vdacs.virginia.gov</a> (804) 225-3662		

VERSION	REVISION DATE	CHANGE SUMMARY	AUTHOR
1	April 7, 2009	Original	Todd Haymore, VDACS Commissioner, and David King, VWDC Chairman
2	July 1, 2013	Updated to increase VDACS administrative and financial services support for VWDC.	Matthew Lohr, VDACS Commissioner, and Randy Phillips, VWDC Chairman
3	July 1, 2022	Updated to reduce VDACS administrative and financial services support for VWDC.	Charles Green, VDACS Deputy Commissioner, and Courtney Mailey, VWDC Chairman
4	July 1, 2024	Renewed effective July 1, 2024 through June 30, 2025	Charles Green, VDACS Deputy Commissioner, and Stan Joynes, VWDC Chairman

# **MEMORANDUM OF AGREEMENT**

**Between the**

**Virginia Department of Agriculture and Consumer Services**

**And the**

**Virginia Winery Distribution Company**

This agreement is made this 7th day of April, 2009 by and between the Virginia Department of Agriculture and Consumer Services ("VDACS") and the Virginia Winery Distribution Company ("VWDC") provides the terms and conditions with regard to administrative and financial services for the VWDC. The parties to this agreement agree to the following:

1. Scope of Services: VDACS will provide the following services:
  - Budget preparation
  - Monthly budget vs. actual expenditures review
  - Compliance with state accounting policies and procedures
  - Invoice and documentation review and payment
  - Review of monthly revenue statements from Virginia Distributing
  - Virginia Distributing procedures guidance and contract compliance
  - Contract review and submission to the Office of Attorney General as required
  - Renew liability insurance from Treasury
  - Provide financial reporting information to Department of Accounts
  - Review and apply any legislative changes
  - Process payments to the Department of Alcoholic Beverage Control
  - Coordination of audits
  - Provide media support
  - Post meeting notices
  - Attend Board meetings
  - Prepare draft and final minutes
  - Work with the Office of the Attorney General to secure ABC licenses for wineries, renew ABC licenses, and develop and post advertisements.
2. Agreement Period: The agreement shall be for the period of July 1, 2009 through June 30, 2010 and may be extended to additional one year periods to co-inside with the Commonwealth's fiscal years.
3. Payment Terms: Upon Board approval and execution of the agreement, VDACS will transfer \$20,000 from the VWDC budget to VDACS administrative services at the beginning of the contract fiscal year.

4. Availability of Funds: It is understood and agreed that this agreement will be void if the General Assembly fails to appropriate funding and VWDC has no additional funds generated by its operation that would allow for its continued operation.

*In witness whereof:* the parties hereby execute this Memorandum of Agreement this 7<sup>th</sup> of April, 2009.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

By \_\_\_\_\_ Commissioner  
Todd P. Haymore

VIRGINIA WINE DISTRIBUTION COMPANY

By \_\_\_\_\_ Chairman  
David King

# **MEMORANDUM OF AGREEMENT**

**Between the**

**Virginia Department of Agriculture and Consumer Services**

**And the**

**Virginia Winery Distribution Company**

This agreement is made this 1st day of July, 2013 by and between the Virginia Department of Agriculture and Consumer Services (“VDACS”) and the Virginia Winery Distribution Company (“VWDC”) provides the terms and conditions with regard to administrative and financial services for the VWDC. The parties to this agreement agree to the following:

1. Scope of Services: VDACS will provide the following services:

- Budget preparation
- Compliance with state accounting policies and procedures
- Process invoices and payment issuance, including winery license and application fees
- Contract review and submission to the Office of Attorney General as required
- Renew liability insurance from Treasury
- Review financial statements and reporting information to Department of Accounts
- Prepare GAAP based financial statements as required by Department of Accounts
- Review and apply any legislative changes
- Review payments to the Department of Alcoholic Beverage Control and wineries
- Review VWDC bank account monthly reconciliation and assist with lock box or other banking requirements
- Coordination of audits
- Provide media support
- Post meeting notices
- Attend board meetings
- Prepare draft and final minutes
- Provide records retention and management
- Provide online system guidance and risk assessments by VDACS IS staff
- Provide payroll services and supervision for the VWDC Operations Manager
- Provide facilities and equipment maintenance for VWDC Operations Manager
- Administers credit card and reviews/approves monthly credit card expenditures
- Administrative support and supplies



2. Agreement Period: The agreement shall be for the period of July 1, 2013 through June 30, 2014 and may be extended to additional one year periods to coincide with the Commonwealth's fiscal years.
3. Payment Terms: Upon Board approval and execution of the agreement, VDACS will transfer \$40,000 from the VWDC budget to VDACS administrative services. In any subsequent periods, the transfer will take place immediately after VWDC Board approval.
4. Availability of Funds: It is understood and agreed that this agreement will be void if the General Assembly fails to appropriate funding and VWDC has no additional funds generated by its operation that would allow for its continued operation.

*In witness whereof:* the parties hereby execute this Memorandum of Agreement this 25th of June, 2013.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

By \_\_\_\_\_ Commissioner  
Matthew J. Lohr

VIRGINIA WINE DISTRIBUTION COMPANY

By \_\_\_\_\_ Chairman  
Randy Phillips

# **MEMORANDUM OF AGREEMENT**

**Between the**

**Virginia Department of Agriculture and Consumer Services**

**And the**


**Virginia Winery Distribution Company**

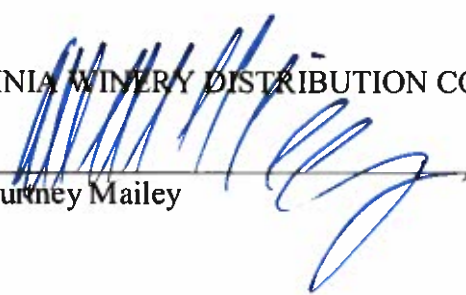
This agreement is made this 01 day of July, 2022 by and between the Virginia Department of Agriculture and Consumer Services ("VDACS") and the Virginia Winery Distribution Company ("VWDC") provides the terms and conditions with regard to administrative and financial services for the VWDC. The parties to this agreement agree to the following:

1. Scope of Services: VDACS will provide the following services:
  - Budget submission and monitoring
  - Compliance with state accounting policies and procedures including preparation of GAPP based financial statements as required by the Department of Accounts
  - Invoice and documentation review and payment through the Commonwealth accounting system
  - Contract review and submission to the Office of Attorney General as required
  - Renew liability insurance from Treasury
  - Process payments to the Department of Alcoholic Beverage Control
  - Coordination of audits
  - Coordination of media support
  - Official posting of meeting notices and meeting minutes
  - Attend Board meetings
  - Work with the Office of the Attorney General to secure ABC licenses for wineries, renew ABC licenses, and develop and post required advertisements.
2. Agreement Period: The agreement shall be for the period of July 1, 2022 through June 30, 2023 and will be extended for additional one year periods to correspond with the Commonwealth's fiscal years until modified by agreement of both parties.
3. Payment Terms: Upon Board approval and execution of the agreement, VDACS will transfer ten percent of the general fund appropriation not to exceed \$25,000 each fiscal year from the VWDC.
4. Availability of Funds: It is understood and agreed that this agreement will be void if the General Assembly fails to appropriate funding and VWDC has no additional funds generated by its operation that would allow for its continued operation.

*In witness whereof:* the parties hereby execute this Memorandum of Agreement this 01 of July, 2022.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

By  Deputy Commissioner  
Charles Green

VIRGINIA WINERY DISTRIBUTION COMPANY  
By  Chairman  
Courtney Mailey

## **MEMORANDUM OF AGREEMENT**

**Between the**

**Virginia Department of Agriculture and Consumer Services**

**And the**

**Virginia Winery Distribution Company**

This agreement is made this 01 day of July 2024 by and between the Virginia Department of Agriculture and Consumer Services ("VDACS") and the Virginia Winery Distribution Company ("VWDC") provides the terms and conditions with regard to administrative and financial services for the VWDC. The parties to this agreement agree to the following:

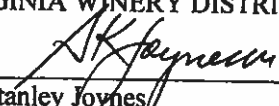
1. **Scope of Services:** VDACS will provide the following services:
    - Budget submission and monitoring
    - Compliance with state accounting policies and procedures including preparation of GAAP based financial statements as required by the Department of Accounts
    - Invoice and documentation review and payment through the Commonwealth accounting system
    - Contract review and submission to the Office of Attorney General as required
    - Renew liability insurance from Treasury
    - Process payments to the Department of Alcoholic Beverage Control
    - Coordination of audits
    - Coordination of media support
    - Official posting of meeting notices and meeting minutes
    - Attend Board meetings
    - Work with the Office of the Attorney General to secure ABC licenses for wineries, renew ABC licenses, and develop and post required advertisements.
  2. **Agreement Period:** The agreement shall be for the period of July 1, 2024, through June 30, 2025 and will be extended for additional one year periods to correspond with the Commonwealth's fiscal years until modified by agreement of both parties.
  3. **Payment Terms:** Upon Board approval and execution of the agreement, VDACS will transfer ten percent of the general fund appropriation not to exceed \$25,000 each fiscal year from the VWDC.
  4. **Availability of Funds:** It is understood and agreed that this agreement will be void if the General Assembly fails to appropriate funding and VWDC has no additional funds generated by its operation that would allow for its continued operation.
-

*In witness whereof:* the parties hereby execute this Memorandum of Agreement this 01 of July 2024.

VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

By  Deputy Commissioner  
Charles Green

VIRGINIA WINERY DISTRIBUTION COMPANY

By  Chairman  
Stanley J. Jones



VIRGINIA WINERY DISTRIBUTION COMPANY

102 Governor Street  
Richmond, VA 23219  
804-225-3662

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VERSION	REVISION DATE	CHANGE SUMMARY	AUTHOR
1	December 13, 2022	Original	VDACS Office of Policy, Planning, and Research
2	August 19, 2024	VWDC adoption of VDACS Policy. VDACS Policy Revised to reflect statutory amendments to electronic meeting requirements from Chapters 56 and 129 of the 2024 Acts of Assembly, signed by Joseph Guthrie	VDACS Office of Policy, Planning, and Research

# Policy and Procedure

Virginia Department of Agriculture and Consumer Services

**Number: 2.3**

**SUBJECT: Conduct of Board Meetings and  
Board Votes; Freedom of  
Information; Conflict of Interest**

**Date:** February 1990

**Revision:** August 19, 2024

This revision supersedes the August 31, 2022, revision of Policy 2.3.

**Effective:** August 19, 2024

**APPROVAL:** Joseph W. Guthrie

## **OBJECTIVE AND INTENT**

To establish guidelines to ensure that the Board of Agriculture and Consumer Services; any other state board, council, or commission within the Department of Agriculture and Consumer Services; and any committee of any state board, council, or commission within the Department of Agriculture and Consumer Services complies with provisions of the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.) and the State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 et seq.).

## **DEFINITIONS**

“Board” means the Board of Agriculture and Consumer Services; any other state board, council, or commission within the Department of Agriculture and Consumer Services; and any committee of any state board, council, or commission within the Department of Agriculture and Consumer Services.

“Commissioner” means the Commissioner of Agriculture and Consumer Services.

“Secretary” means the secretary of a board.

## **PROCEDURES**

### **I. FREEDOM OF INFORMATION**

#### **A. DEFINITIONS**

“All-virtual public meeting” means a public meeting (i) conducted by a board, except those boards with the authority to deny, revoke, or suspend a

professional or occupational license, using electronic communications means, (ii) during which all members of the board who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

“Closed meeting” means a meeting from which the public is excluded.

“Electronic communication” means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

“Emergency” means an unforeseen circumstance rendering the notice required by the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.) impossible or impracticable and which circumstance requires immediate action.

“Open meeting” or “public meeting” means a meeting at which the public may be present.

“Remote participation” means participation by an individual member of a board by electronic communication means in a public meeting where a quorum of the board is otherwise physically assembled.

## B. PUBLIC MEETINGS

Except as specifically provided by this policy, all meetings of a board shall be public meetings, including meetings of committees and work sessions, even if no votes are cast or no decisions are made.

### MEETING

A meeting occurs when a board sits physically, regardless of location, as an entity or gathers through electronic communication. A meeting is also an informal assemblage of three or more members of a board or a quorum of the membership of the board, if said quorum is less than three, wherever held, with or without minutes being taken, whether or not votes are cast, and at which the members discuss public business of the board.

An email exchange between three or more board members or a quorum of the membership of the board, if said quorum is less than three, that occurs within a time period short enough to be considered a simultaneous assemblage of the board is considered a meeting of the board.

The gathering of employees of a board or the gathering or attendance of two or more members of a board at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of



any public business and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the board shall not be deemed a public meeting.

#### NOTICE

The secretary shall provide notice including the time, date, and location of each meeting. Notice must be posted at least three working days prior to a board meeting. Notice must be posted in two physical locations: (i) a prominent public location at which notices are regularly posted and (ii) in the office of the clerk of the board or, if the board has no clerk, in the office of the Deputy Commissioner. Notice must also be posted on (i) the agency's website and (ii) a central electronic calendar maintained by the Commonwealth.

The secretary shall submit meeting notices to the Office of Policy, Planning, and Research for posting on a central electronic calendar maintained by the Commonwealth and to the Office of Communications for inclusion on the agency website.

Any person may annually file a written request for notification with a board. The request shall include the requester's name; address; zip code; daytime telephone number; electronic mail address, if available; and organization, if any. The secretary of a board receiving such a request shall provide notice of all meetings directly to each requestor.

Notice, reasonable under the circumstances, of special, emergency, or continued meetings shall be given contemporaneously with the notice provided members of the board.

#### CONDUCT OF MEETINGS AND MEETING MINUTES

At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of the board for a meeting shall be made available for public inspection at the same time the documents are furnished to the members of the board. The proposed agenda for a meeting of a board on which there is at least one member appointed by the Governor shall state whether public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

Any person may photograph, film, record, or otherwise reproduce any portion of a meeting required to be open. The board may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting to prevent interference with the proceedings.

No vote shall be taken by secret or written ballot in an open meeting.

Minutes shall be taken at all open meetings. Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the members of the board recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated, or decided and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with Va. Code § 2.2-3708.2 or § 2.2-3708.3, board minutes shall include (i) the identity of the members of the board who participated in the meeting through electronic communication means, (ii) the identity of the board members who were physically assembled at one physical location, and (iii) the identity of the members of the board who were not present at such physical location but who monitored such meeting through electronic communication means.

The secretary shall ensure that the draft minutes of each meeting are posted on the board's official public government website and on a central electronic calendar maintained by the Commonwealth no later than 10 working days after the conclusion of the meeting. The secretary shall ensure that final approved minutes are posted within three working days of final approval of the minutes. The secretary shall submit minutes to the Office of Policy, Planning, and Research for posting on a central electronic calendar maintained by the Commonwealth. The secretary should work with the Office of Communications to post minutes of a board's meeting on the agency's official public government website.

Each board is encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods.

#### C. MEETINGS BY ELECTRONIC COMMUNICATION MEANS

There are three ways in which board members may participate in a meeting by electronic communication means: (i) pursuant to Va. Code § 2.2-3708.2 when the Governor has declared a state of emergency in accordance with Va. Code § 44-146.17, (ii) pursuant to Va. Code § 2.2-3708.3 regarding remote participation by individual members, and (iii) pursuant to Va. Code § 2.2-3708.3 allowing the meeting to be noticed as an all-virtual public meeting.

PARTICIPATION WHEN THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY  
(VA. CODE § 2.2-3708.2)

The board may meet by electronic communication means without a quorum of the board physically assembled at one location when the Governor has declared a state of emergency in accordance with Va. Code § 44-146.17, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the board or the discharge of its lawful purpose, duties, and responsibilities. In such circumstances, the secretary shall (i) give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the board conducting the meeting; (ii) make arrangements for public access to such meeting through electronic communications means, including videoconferencing if already used by the board; (iii) provide the public with the opportunity to comment at those meetings of the board when public comment is customarily received; and (iv) otherwise comply with the provisions of the Virginia Freedom of Information Act.

The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communications means by which the meeting was held shall be stated in the minutes. The board's authority to hold a meeting pursuant to this section shall be applicable only for the duration of the Governor's declared emergency.

#### PARTICIPATION OTHER THAN WHEN THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY (VA. CODE § 2.2-3708.3)

##### REMOTE PARTICIPATION BY INDIVIDUAL BOARD MEMBERS

An individual board member may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the board has adopted a policy, by recorded vote at a public meeting, that shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting. The policy shall (i) describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the board will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests and (ii) fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limitations set forth in subdivisions (B)(4) and (C)(9) of Va. Code § 2.2-3708.3.

An individual board member wishing to use remote participation instead of attending a public meeting in person must also notify the board chair, in advance of the public meeting that: (i) the member has a temporary or permanent disability or other medical condition that prevents the member's

physical attendance; (ii) a family member's medical condition requires the member to provide care for such family member, thereby preventing the member's physical attendance; (iii) the member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or (iv) the member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. A member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

If remote participation by an individual board member is approved, the board shall record in its minutes the remote location from which the member participated, which need not be open to the public and may be identified in the minutes by a general description. If such remote participation is approved pursuant to clause (i) or (ii) above, the board shall also record in its minutes the fact that the member participated through electronic communication means due to (a) a temporary or permanent disability or other medical condition that prevented the member's physical attendance or (b) a family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If such remote participation is approved pursuant to clause (iii) above, the board shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If such remote participation is approved pursuant to clause (iv) above, the board shall also include in its minutes the specific nature of the personal matter cited by the member.

If a member's participation from a remote location due to a personal matter is disapproved because such participation would violate the board's adopted policy, such disapproval shall be recorded in the minutes with specificity.

#### ALL-VIRTUAL PUBLIC MEETING PARTICIPATION BY BOARD MEMBERS

With the exception of those boards with the authority to deny, revoke, or suspend a professional or occupational license, any board may hold all-virtual public meetings, provided that the board complies with the other requirements in this policy for meetings, the board has adopted a policy at least once annually as required pursuant to subsection D of Va. Code § 2.2-3708.3, and the board meets the following requirements:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice along with a statement notifying the public that the method by which the board chooses to meet shall not be changed unless the board provides a new meeting notice in accordance with the provisions of § 2.2-3707;

2. Public access to the all-virtual public meeting is provided via electronic communication means;
3. The electronic communication means used allows the public to hear all members of the board in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the board as well. When audio-visual technology is available, a member of a board shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails;
4. A phone number or other live contact information is provided to alert the board if the audio or video transmission of the meeting provided by the board fails, the board monitors such designated means of communication during the meeting, and the board takes a recess until public access is restored if the transmission fails for the public;
5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a board for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the board;
6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;
7. No more than two members of the board are together in any one remote location unless that remote location is open to the public to physically access it;
8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the board votes to certify the closed meeting as required by subsection D of § 2.2-3712;
9. The board does not convene an all-virtual public meeting (i) more than two times per calendar year or 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and

10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a board member's participation from a remote location pursuant to the allowance for an all-virtual public meeting is disapproved because such participation would violate the policy adopted pursuant to subsection D of Va. Code § 2.2-3708.3, such disapproval shall be recorded in the minutes with specificity.

#### **D. CLOSED MEETINGS**

Section 2.2-3711 of the Code of Virginia establishes the specific circumstances under which a board may hold a closed meeting.

Except as specifically authorized by law, in no event will the board take action on matters discussed in any closed meeting, except at an open meeting for which notice was given.

To convene a closed meeting, the board shall, in open meeting, take an affirmative recorded vote approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting, and (iii) makes specific reference to the applicable statutory exemption from open meeting requirements. The secretary shall ensure that matters contained in such motion be set forth in detail in the minutes of the open meeting. A general reference to authorized exemptions from open meeting requirements or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for a closed meeting. (See Appendix A for a sample motion to convene a closed meeting.)

The board shall restrict its discussion during the closed meeting only to those matters specifically exempted from open meeting requirements and identified in the motion made in the open meeting.

The board may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the board in its consideration of a topic that is a subject of the meeting.

Minutes may be taken during a closed meeting of the board but shall not be required. If minutes are taken, they shall not be subject to mandatory public disclosure.

When the board determines that it has concluded its deliberations in a closed meeting, it shall make a motion in the closed meeting to end the closed meeting. (See Appendix B for a sample motion to end a closed meeting.)

At the conclusion of any closed meeting, the board shall immediately reconvene in an open meeting and take a roll call or other recorded vote to be included in the minutes, certifying to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed, or considered in the meeting. Any member who believes that there was a departure from the requirements of clauses (i) and (ii) shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the board's minutes. (See Appendix C for a sample certification of a closed meeting.)

The board may then take action in the open meeting on any matters heard, discussed, or considered in the closed meeting. No resolution, ordinance, rule, contract, regulation, or motion adopted, passed, or agreed to in a closed meeting shall become effective unless the board, following the closed meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

## **II. CONFLICT OF INTEREST**

### **A. DEFINITIONS**

"Officer" means any person appointed or elected to any governmental or advisory agency, including local school boards, whether or not he receives compensation or other emolument of office.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv) above.

“Personal interest in a transaction” means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.

“Transaction” means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

## B. VOTES

Any member of a board who has a personal interest in a transaction:

1. Shall disqualify himself from participating in that transaction if the transaction has application solely to property or a business in which he has a personal interest. He shall make known his personal interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the written minutes or on a signed written declaration, either of which shall be kept on file for five years in the Commissioner’s office. If the board member is unable to participate pursuant to items 2 or 3 below, he shall disqualify himself, and his disclosure shall be reflected in the written minutes or on a signed written declaration, either of which shall be kept on file for five years in the Commissioner’s office. (See Appendix D for a declaration statement for such a circumstance.)
2. May participate in the transaction if he is a member of a business, profession, occupation, or group of three or more persons, the members of which are affected by the transaction, and he complies with the declaration requirements prescribed in Va. Code § 2.2-3114(F). The board member shall either make his declaration orally to be recorded in the written minutes of the board or file a signed written declaration with the Commissioner, who shall retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with this requirement prior to participating in the transaction, the board member shall prepare and file the required declaration by the end of the next business day. (See Appendix E for a disclosure form for such a circumstance.)



3. May participate in the transaction when a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements prescribed in Va. Code § 2.2-3114(G). The board member shall either make his declaration orally to be recorded in the written minutes of the board or file a signed written declaration with the Commissioner, who shall retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with this requirement prior to participating in the transaction, the board member shall prepare and file the required declaration by the end of the next business day. (See Appendix F for a disclosure form for such a circumstance.)
4. May participate in a vote on that transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by the transaction.

### III. AUTHORITY

This policy is issued by the Commissioner of Agriculture and Consumer Services, pursuant to Section 2.2-3700 *et seq.* and Section 2.2-3100 *et seq.* of the Code of Virginia (1950), as amended.

### VI. INTERPRETATION

The Commissioner with the advice of the Assistant Attorney General assigned to the board will be responsible for the interpretation of this policy.

Version History		
Version	Date	Change Summary
1	12/1/2010	Original
2	12/28/2016	Revised to reflect changes to state law, signed by Sandra Adams
3	10/29/2021	Revised to reflect statutory amendments to electronic meeting requirements, signed by Bradley Copenhaver
4	8/31/2022	Revised to reflect statutory amendments to electronic meeting requirements from Chapter 597 of the 2022 Acts of Assembly, signed by Joseph Guthrie
5	8/19/2024	Revised to reflect statutory amendments to electronic meeting requirements from Chapters 56 and 129 of the 2024 Acts of Assembly, signed by Joseph Guthrie

MOTION: Identify the board member who makes the motion

SECOND: Identify the board member who seconds the motions

MEETING DATE:

MOTION TO CONVENE A CLOSED MEETING

Mr. President, pursuant to Section \_\_\_\_\_ of the Code of Virginia, I hereby move that the \_\_\_\_\_ (*identify the board*) convene a closed meeting for the purpose of discussing \_\_\_\_\_  
(*state the specific purpose for which the meeting is convened, including a reference, when applicable, to the agenda item involved*).

VOTE

AYES:

NAYS:

ABSENT DURING VOTING:

ABSENT DURING MEETING:

\_\_\_\_\_  
Clerk/Secretary of (*identify the board*)

MOTION: Identify the board member who makes the motion

SECOND: Identify the board member who seconds the motions

MEETING DATE:

MOTION TO END CLOSED MEETING

Mr. President, the \_\_\_\_\_ (*identify the board*) has completed business in closed meeting. I hereby move that the \_\_\_\_\_ (*identify the board*) end its closed meeting.

VOTE

AYES:

NAYS:

ABSENT DURING VOTING:

ABSENT DURING MEETING:

\_\_\_\_\_  
Clerk/Secretary of (*identify the board*)

MOTION: Identify the board member who makes the motion

SECOND: Identify the board member who seconds the motions

MEETING DATE:

CERTIFICATION OF CLOSED MEETING

WHEREAS, the \_\_\_\_\_ (*identify the board*) convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712(D) of the Code of Virginia requires a certification by the \_\_\_\_\_ (*identify the board*) that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the \_\_\_\_\_ (*identify the board*) hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the \_\_\_\_\_ (*identify the board*).

VOTE

AYES:

NAYS:

(For each nay vote, the substance of the departure from the requirements of clauses (i) and (ii) above must be described prior to the vote.)

ABSENT DURING VOTE:

ABSENT DURING MEETING:

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Clerk/Secretary of (*identify the board*)

DECLARATION OF PERSONAL INTEREST IN A BOARD VOTE  
FROM WHICH THE MEMBER MUST DISQUALIFY HIMSELF FROM VOTING

I \_\_\_\_\_ (*name of board member*) hereby disqualify myself from voting on the transaction in question, because:

\_\_\_\_\_ The transaction has application solely to property or a business in which I have a personal interest or a business that has a parent-subsiidiary or affiliated business entity relationship with the business in which I have a personal interest;

The full name and address of the business (or the address or parcel number for the real estate) are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ (other; specify) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

(This disclosure shall be reflected in the public record of the agency and kept on file in the Commissioner's Office for a period of five years.)

DISCLOSURE STATEMENT OF PERSONAL INTEREST

WHEN A BOARD MEMBER IS A MEMBER OF A BUSINESS, PROFESSION, OCCUPATION, OR  
GROUP OF THREE OR MORE PERSONS AFFECTED BY THE TRANSACTION AND THE MEMBER  
CHOOSES TO VOTE

I \_\_\_\_\_ (*name of public body member*)  
acknowledge that I may have a personal interest in \_\_\_\_\_  
(*identify the transaction involved*). The nature of my personal interest is as follows:  
\_\_\_\_\_. I am a member of  
a business, profession, occupation, or group of three or more persons affected by the  
transaction. I am nevertheless able to vote fairly, objectively, and in the public interest.

\_\_\_\_\_  
(signature of board member)

\_\_\_\_\_  
(date)

(This declaration is to be made orally and recorded in the written minutes of the board or is to be signed and filed with the secretary, who shall retain and make it available for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with this requirement prior to participating in the transaction, the board member shall prepare and file the required declaration by the end of the next business day.)

DISCLOSURE STATEMENT OF PERSONAL INTEREST

WHEN A PARTY TO THE TRANSACTION IS A CLIENT OF THE BOARD MEMBER'S FIRM AND THE BOARD MEMBER DOES NOT PERSONALLY REPRESENT OR PROVIDE SERVICES TO SUCH CLIENT AND THE BOARD MEMBER CHOOSES TO VOTE

I \_\_\_\_\_ (*name of board member*)  
acknowledge that I may have a personal interest in \_\_\_\_\_  
(*identify the transaction involved*). \_\_\_\_\_ (*identify the party to the*  
*transaction*) is a client of my firm. I do not personally represent or provide services to  
\_\_\_\_\_ (*identify the party to the transaction*). I am able to vote fairly,  
objectively, and in the public interest.

\_\_\_\_\_  
(signature of board member)

\_\_\_\_\_  
(date)

(This declaration is to be made orally and recorded in the written minutes of the board or is to be signed and filed with the Secretary, who shall retain and make it available for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with this requirement prior to participating in the transaction, the board member shall prepare and file the required declaration by the end of the next business day.)