Chapter 12. Apple Board.

§ 3.2-1200. Definitions.
As used in this chapter, unless the context requires a different meaning:

"District" means one of the districts set forth in § 3.2-1205.

"Member" means a member of the Apple Board.

"Producer" means any person who, in a calendar year, grows or causes to be grown within the Commonwealth, for sale, a minimum of 5,000 tree run bushels of apples.

"Tree run bushel" means a container, with a content of not less than 2,140 cubic inches or more than 2,500 cubic inches, of apples that have not yet been graded or sized.


§ 3.2-1201. Apple Board; composition and appointment of members.
A. The Apple Board is continued within the Department. The Apple Board shall consist of six members, with two members representing each district. Each member shall be a citizen of the Commonwealth and engaged in producing apples in the Commonwealth with a majority of his apple production occurring in the district he represents.

B. The Commissioner shall hold a special election in each district to elect each member of the Apple Board. The special election shall be held by secret ballot at least 30 days but not more than 90 days before the expiration of the term of office of any member. The Commissioner shall appoint the candidate receiving the highest number of votes in the special election as a member. The Apple Board may adopt and enforce regulations governing the conduct of special elections and voting therein. Such regulations shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. A producer shall be eligible to vote only in the district where the majority of his apple production occurs.


§ 3.2-1202. Apple Board membership.
If a vacancy occurs before the expiration of any term of office, the Commissioner shall fill such vacancy within 30 days after the vacancy by a special election held to elect a member for the unexpired term.


§ 3.2-1203. Repealed.

§ 3.2-1204. Powers and duties of Apple Board; report.
A. The Apple Board may:
1. Administer, manage and make expenditures from the Apple Fund;

2. Plan and conduct campaigns of research, education, publicity, and industry development for the purpose of enhancing the viability and profitability of the Virginia apple industry;

3. Make contracts to accomplish the purposes of this chapter;

4. Cooperate with other state, regional, national, and international organizations in research concerning education on promotion of apples, and expend moneys of the Apple Fund for such purposes;

5. Establish committees of the Apple Board to address horticultural and such other issues as the Apple Board deems pertinent to the Virginia apple industry; and

6. Do whatever else may be necessary to effectuate the purposes of this chapter.

B. The chairman shall make a report at least annually, furnishing Apple Board members with a statement of total receipts and disbursements of the Apple Board for the year. The chairman shall annually file with the Commissioner a copy of the report and audit that is required under the Apple Fund.


§ 3.2-1205. Commercial apple-producing districts designated.
The commercial apple-producing districts of the Commonwealth are as follows:

Area I. Northern Virginia District -- Clarke, Fairfax, Frederick, and Loudoun Counties and the City of Winchester.


Whenever the commercial production of apples begins in any locality not included in this section, such locality shall become a part of the nearest district that has the lowest commercial apple production according to production records of the Department.


§ 3.2-1206. Apple Fund established.
There is hereby created in the state treasury a special nonreverting fund to be known as the Apple Fund, hereafter referred to as “the Fund.” The Fund shall be established on the books of the Comptroller. All moneys levied and collected under the provisions of this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest
thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of administration and enforcement of this chapter, including the payment for personal services and expenses of agents of the Apple Board and the payment of rent, services, materials, and supplies necessary to effectuate the purposes and objects of this chapter, or as specifically provided in any referendum ratified pursuant to this chapter. Expenditures and disbursements from the Fund shall be made by the Apple Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Apple Board. The Auditor of Public Accounts shall audit all the accounts of the Apple Board as provided for in § 30-135.


§ 3.2-1207. Repealed.

§ 3.2-1208. Referendum on question of levying apple excise tax.
The Board shall authorize the holding of a referendum as set forth in this article. The Commissioner shall be fully empowered and directed to hold and conduct a referendum on the question of whether or not the producers of apples in the Commonwealth are willing to pay an excise tax on apples to support additional research, education, publicity, and industry development of the apple industry. The amount of tax to be voted upon in the referendum shall be 2.5 cents ($0.025) per tree run bushel of apples grown by producers in the Commonwealth. The cost of conducting a referendum under this section shall be paid by the Virginia State Horticultural Society.

2005, cc. 864, 875, § 3.1-636.1; 2008, c. 860.

§ 3.2-1209. Management of referenda; Commissioner’s duties; notice.
A. The Commissioner shall, under the regulations adopted by the Board pursuant to § 3.2-112, arrange for the use of any polling places if necessary.

B. The Commissioner shall, at least 60 days before the date on which a referendum is to be held, mail notice to the clerk of the circuit court in each locality where apples are produced. The clerk of the court shall post the notice on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall, at least 60 days prior to the holding of any referendum under this article, publish notice of the referendum in a newspaper of daily general circulation in Richmond, Virginia, and send a notice of the referendum to a newspaper of general circulation in each locality where apples are produced.

The notice shall contain the date, hours, voting places, and method of voting in the referendum; the amount of assessment to be collected, the means by which the assessment will be collected, and the general purposes for which the assessment will be used; and the regulations adopted by the Board pursuant to § 3.2-112.

C. The Commissioner shall prepare and distribute in advance of the referendum all necessary ballots, certificates, and supplies required for the referendum.

D. The Commissioner shall, within 10 days after the referendum, canvass and publicly declare the results thereof and certify the same to the Governor and shall notify, by mail, each member of the Board of the results.
§ 3.2-1210. Questions to be printed on ballots.
The question to be printed on the ballots used in the referendum held under § 3.2-1208, shall be:

"Do you favor the levy of an excise tax of 2.5 cents ($0.025) per tree run bushel of ungraded apples grown in the Commonwealth for sale by producers of at least 5,000 tree run bushels per calendar year, to be paid into the Apple Fund and distributed as follows: up to 40 percent paid to the U.S. Apple Association for publicity and industry development; up to 20 percent paid to the Virginia State Horticultural Society for education and industry development; up to 20 percent paid to the Virginia Apple Research Program for research; up to 10 percent to be used for administration of this article; and up to 10 percent to be held in the Apple Fund as a reserve with: (i) a maximum amount of $125,000; and (ii) a requirement that any appropriation from the reserve receive at least two-thirds of the votes of the members of the Apple Board? If the maximum amount of the reserve fund is met, then the amount of that 10 percent distribution that exceeds the reserve fund shall be divided equally among the U.S. Apple Association, the Virginia State Horticultural Society, and the Virginia Apple Research Program.

_____ Yes
_____ No."

2005, cc. 864, 875, § 3.1-636.4; 2008, c. 860.

§ 3.2-1211. Persons eligible to vote.
Any producer in the year preceding the date of the referendum held pursuant to this article shall be eligible to vote in such referendum if he so certifies on forms approved by the Commissioner. Any person who meets these requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in any other respect. Such person may vote provided that he is a resident of the Commonwealth or qualified to do business in the Commonwealth. Any person who is not an individual shall vote by its authorized representative.

2005, cc. 864, 875, § 3.1-636.5; 2008, c. 860.

§ 3.2-1212. Referenda results; action of Governor.
If the Governor finds the referendum in order and that more than one-half of those voting are in favor of the excise tax on apples pursuant to § 3.2-1210, then the Governor shall so proclaim. Upon such proclamation by the Governor, the excise tax on apples shall be established. If the Governor finds that more than one-half of those voting are in opposition to the excise tax on apples pursuant to § 3.2-1210, then the Governor shall not so proclaim and the excise tax on apples shall not be established.

2005, cc. 864, 875, § 3.1-636.6; 2008, c. 860.

§ 3.2-1213. Referenda.
The Board, upon petition by at least 10 percent of the producers in the Commonwealth as determined by the Commissioner, shall provide for a referendum on the continuation of the Apple Board or amending the excise tax on apples if established pursuant to § 3.2-1208. The Board shall not act on such a petition for conducting a referendum until at least five years have passed since the last referendum. Any referendum held under this section shall be conducted in
accordance with this chapter.

2005, cc. 864, 875, § 3.1-636.7; 2008, c. 860.

§ 3.2-1214. Referenda results; action of Governor.
If the Governor finds any referenda held pursuant to this article in order and that more than one-half of those voting are in opposition to the continuation of the Apple Board, then the Governor shall so proclaim and upon such proclamation the Apple Board shall be discontinued. If the Governor finds that more than one-half of those voting are in favor of the continuation of the Apple Board, then the Governor shall not so proclaim and the Apple Board shall continue.

If the Governor finds that more than one-half of those voting are in favor of amending the excise tax on apples, then he shall so proclaim and upon such proclamation the excise tax shall be amended as stated in the referendum. If the Governor finds that more than one-half of those voting are in opposition to amending the excise tax on apples, then he shall not so proclaim and the excise tax on apples shall not be amended.

2005, cc. 864, 875, § 3.1-636.8; 2008, c. 860.

§ 3.2-1215. Disposition of excise tax by producer; reports.
A. Every producer shall submit to the Tax Commissioner the excise tax levied on apples grown in the Commonwealth in a calendar year by January 31 of the following year. The Tax Commissioner shall promptly pay the assessments into the Virginia state treasury to the credit of the Apple Fund.

B. Every producer shall complete reports on forms furnished by the Tax Commissioner, submit such reports to the Tax Commissioner along with the excise tax submitted pursuant to subsection A, and keep copies of the reports for a period of not less than three years from the time the report was produced. Notwithstanding the provisions of § 58.1-3, upon request, the Tax Commissioner shall provide to the Apple Board or the Commissioner copies of reports submitted pursuant to this section.

2005, cc. 864, 875, § 3.1-636.9; 2008, c. 860.

§ 3.2-1216. Records to be kept by producer.
Every producer shall maintain a complete record of the apples grown by him and shall preserve the records for at least three years from the time such apples are grown. The records shall be established and maintained as required by the Tax Commissioner and shall be open to the inspection of the Tax Commissioner.


§ 3.2-1217. Falsification of records; misdemeanor.
It is a Class 1 misdemeanor:

1. For any producer to fail to submit to the Tax Commissioner any report required under this article within 60 days after the time such report is required to be submitted.

2. For any producer knowingly to report falsely to the Tax Commissioner any information required under this article.

3. For any producer to fail to keep a complete record of the apples grown by him or to not
preserve such records for a period of at least three years from the time such apples are grown. 2005, cc. 864, 875, § 3.1-636.12; 2008, c. 860.