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**HOUSE BILL NO. 425**

Offered January 9, 2002

Prefiled January 8, 2002

*A BILL to amend and reenact §§ 2.2-4002, 3.1-388, 3.1-398 and 35.1-14 of the Code of Virginia, relating to restaurant and retail establishment inspections; public disclosure statements.*

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 Patron—McQuigg

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 Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-4002, 3.1-388, 3.1-398 and 35.1-14 of the Code of Virginia are amended and reenacted 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 Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.

12. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

13. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

14. 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.

15. 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.

16. [Repealed.]

17. The Virginia War Memorial Foundation.

18. 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.

19. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.

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59 20. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or  
60 in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual  
61 live horse racing at race meetings licensed by the Commission.

62 21. The Virginia Small Business Financing Authority.

63 22. The Virginia Economic Development Partnership Authority.

64 23. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations  
65 pursuant to subsection A (ii) of § 59.1-156.

66 24. The Insurance Continuing Education Board pursuant to § 38.2-1867.

67 25. The Board of Health in promulgating the list of diseases that shall be reported to the Department  
68 of Health pursuant to § 32.1-35 *and in promulgating regulations for a public disclosure system pursuant*  
69 *to § 35.1-14.*

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

72 1. Money or damage claims against the Commonwealth or agencies thereof.

73 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

74 3. The location, design, specifications or construction of public buildings or other facilities.

75 4. Grants of state or federal funds or property.

76 5. The chartering of corporations.

77 6. Customary military, naval or police functions.

78 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of  
79 the Commonwealth.

80 8. The conduct of elections or eligibility to vote.

81 9. Inmates of prisons or other such facilities or parolees therefrom.

82 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as  
83 well as the treatment, supervision, or discharge of such persons.

84 11. Traffic signs, markers or control devices.

85 12. Instructions for application or renewal of a license, certificate, or registration required by law.

86 13. Content of, or rules for the conduct of, any examination required by law.

87 14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.) of this title.

88 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent  
89 with duly adopted regulations of the State Lottery Board, and provided that such regulations are  
90 published and posted.

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

93 17. Any operating procedures for review of child deaths developed by the State Child Fatality  
94 Review Team pursuant to § 32.1-283.1.

95 18. The regulations for the implementation of the Health Practitioners' Intervention Program and the  
96 activities of the Intervention Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title  
97 54.1.

98 19. The process of reviewing and ranking grant applications submitted to the Commonwealth  
99 Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title  
100 32.1.

101 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4  
102 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

103 21. The Virginia Breeders Fund created pursuant to § 59.1-372.

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

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

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

109 § 3.1-388. Prohibited acts.

110 The following acts and the causing thereof within the Commonwealth are hereby prohibited:

111 (a) The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or  
112 misbranded.

113 (b) The adulteration or misbranding of any food.

114 (c) The receipt in commerce of any food that is adulterated or misbranded, and the delivery or  
115 proffered delivery thereof for pay or otherwise.

116 (d) The dissemination of any false advertisement.

117 (e) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by  
118 § 3.1-399.

119 (f) The giving of a guaranty or undertaking concerning a food, which guaranty or undertaking is  
120 false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and

containing the name and address of the person residing, or having a place of business, or an agent or representative on whom process may be served, in the Commonwealth, from or through whom he received the food in good faith.

(g) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, if such act is done while such article is held for sale and results in such article being misbranded.

(h) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this article.

(i) The use of sulfiting agents as preservatives on raw fruits and vegetables being offered for sale to the public for human consumption.

*(j) The unauthorized removal of a public disclosure statement required to be posted by clause (h) of § 3.1-398.*

§ 3.1-398. Authority to make regulations; conformity with federal regulations; hearings; enforcement of article; review of regulations.

(a) The authority to promulgate regulations for the efficient enforcement of this article is hereby vested in the Board, unless specially conferred on the Commissioner. The Board is hereby authorized to make the regulations promulgated under this article conform, insofar as practicable with those promulgated under the federal act. Notwithstanding any other requirement under the Administrative Process Act (§ 2.2-4000 et seq.) to the contrary, the Commissioner may adopt any regulation under the federal act without public hearing. Such regulation shall be effective upon filing with the Registrar of Regulations. The Board, at its next regular meeting, shall adopt the regulation after notice but without public hearing unless a petition is filed in accordance with subsection ~~(d)~~(f).

*(b) The Board may adopt by reference the FDA Food Code, or portions thereof, amending it as necessary.*

*(c) The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the adoption of any regulation pursuant to this section.*

*Prior to adopting any regulation pursuant to clause (b) of this section, the Board shall publish in the Virginia Register of Regulations a notice of opportunity to comment on the proposed regulation. The notice of opportunity to comment shall contain (i) a summary of the proposed regulation; (ii) instructions on how to obtain the complete text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. The notice of opportunity to comment shall be made at least sixty days in advance of the last date prescribed in the notice for submittals of public comment. The Board shall consider and keep on file all comments received during the sixty-day comment period for any regulation adopted pursuant to clause (b) of this section. Any regulation adopted pursuant to clause (b) of this section shall, unless a later effective date is specified in the regulation, be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations.*

~~(b)~~ (d) Hearings authorized or required by this article shall be conducted by the Board, the Commissioner or such officer, agent, or employee as the Board may designate for the purpose.

~~(e)~~ (e) It shall be the duty of the Commissioner to coordinate enforcement of this article with the applicable federal agencies charged with enforcement of the federal act, in order to avoid unnecessary or unjustified conflict between enforcement of this article and the federal act as to Virginia food manufacturers, processors, packers and retailers.

~~(f)~~ (f) It shall be the duty of the Board or Commissioner from time to time for good cause shown to review the regulations and enforcement guidelines promulgated pursuant to this article. If the Commissioner finds that any federal regulation or enforcement guideline which shall include any tolerance or action level is not in consonance with the health and welfare of the citizens of this Commonwealth, he shall petition the appropriate federal agency or agencies to change the federal regulation or enforcement guideline.

~~(g)~~ (g) The Commissioner or any interested party for good cause shown may request the Board to hold a public hearing concerning any regulation or enforcement guideline. If the Board after hearing finds that the regulation or enforcement guideline is not in consonance with the health and welfare of the citizens of this Commonwealth, it shall adopt a new regulation or enforcement guideline which is in consonance with the health and welfare of the citizens of this Commonwealth. Within the limits of personnel and funds available all state agencies and institutions shall cooperate and assist in furnishing information and data as to whether the regulations or enforcement guidelines in question are in consonance with the health and welfare of the citizens of this Commonwealth.

*(h) The Board shall adopt regulations implementing a public disclosure system that requires retail food stores to post public disclosure statements in conspicuous places within each store that indicate that: (i) the retail food store, at the most recent inspection, was found to be in substantial compliance*

182 *with Chapter 20 (§ 3.1-361 et seq.) of Title 3.1 and any regulations adopted pursuant thereto; or (ii) the*  
183 *retail food store is under administrative review by the Commissioner.*

184 § 35.1-14. Regulations governing restaurants; advisory standards for exempt entities; posting of  
185 compliance placards.

186 A. Regulations of the Board governing restaurants shall include but not be limited to the following  
187 subjects: (i) a procedure for obtaining a license; (ii) the safe and sanitary maintenance, storage,  
188 operation, and use of equipment; (iii) the sanitary maintenance and use of a restaurant's physical plant;  
189 (iv) the safe preparation, handling, protection, and preservation of food, including necessary refrigeration  
190 or heating methods; (v) procedures for vector and pest control; (vi) requirements for toilet and cleansing  
191 facilities for employees and customers; (vii) requirements for appropriate lighting and ventilation not  
192 otherwise provided for in the Uniform Statewide Building Code; (viii) requirements for an approved  
193 water supply and sewage disposal system; (ix) personal hygiene standards for employees, particularly  
194 those engaged in food handling; and (x) the appropriate use of precautions to prevent the transmission of  
195 communicable diseases.

196 B. In its regulations, the Board may classify restaurants by type and specify different requirements  
197 for each classification.

198 C. *In adopting any regulation pursuant to this section, the Board may incorporate by reference (i)*  
199 *any federal regulation or part thereof that pertains to restaurants or food service, and, in so*  
200 *incorporating such regulation, may adopt requirements more stringent than the federal regulation; and*  
201 *(ii) any model ordinance or model regulation issued pursuant to federal law, including the Food and*  
202 *Drug Administration Model Food Code, or portions thereof, and, in so incorporating such model*  
203 *ordinance or regulation, may modify any requirements set forth in such model.*

204 D. The Board may issue advisory standards for the safe preparation, handling, protection, and  
205 preservation of food by entities exempt from the provisions of this title pursuant to § 35.1-25 or  
206 § 35.1-26.

207 E. *The Board shall develop and implement a public disclosure system that requires restaurants to*  
208 *post placards, adjacent to their posted licenses to operate a restaurant, that indicate either that (i) the*  
209 *restaurant is in compliance with the regulations promulgated pursuant to this section; (ii) the*  
210 *restaurant's license to operate is under administrative review by the Department; or (iii) the restaurant's*  
211 *license has been suspended or revoked.*

212 F. *The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the*  
213 *adoption of any regulation pursuant this section. Prior to adopting any regulation pursuant to this*  
214 *section, the Board shall publish in the Virginia Register of Regulations a notice of opportunity to*  
215 *comment on the proposed regulation. The notice of opportunity to comment shall contain (i) a summary*  
216 *of the proposed regulation; (ii) instructions on how to obtain the complete text of the proposed*  
217 *regulation; and (iii) the name, address, and telephone number of the agency contact person responsible*  
218 *for receiving public comments. The notice of opportunity to comment shall be made at least sixty days*  
219 *in advance of the last date prescribed in the notice for submittals of public comment. The Board shall*  
220 *consider and keep on file all comments received during the sixty-day comment period for any regulation*  
221 *adopted pursuant to this section. Any regulation adopted pursuant to this section shall, unless a later*  
222 *effective date is specified in the regulation, be effective upon filing with the Registrar of Regulations,*  
223 *who shall publish the regulation as a final regulation in the Virginia Register of Regulations.*