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HOUSE BILL NO. 1700

House Amendments in [ ] — January 23, 2003

A BILL to amend and reenact §§ 2.2-4002, 3.1-398 and 35.1-14 of the Code of Virginia, relating to adoption of regulations for restaurant and retail food establishments.

Patron Prior to Engrossment—Delegate McQuigg

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4002, 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.

20. 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.

21. The Virginia Small Business Financing Authority.

22. The Virginia Economic Development Partnership Authority.

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

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

25. 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 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*.

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.

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

~~(a)~~ *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 the Food and Drug Administration's Food Code, or portions thereof, amending it as necessary, within 280 days of the release of the most current Food Code, or any amendments thereto, issued by the Food and Drug Administration. No regulations adopted by the Board pursuant to this subsection, however, shall establish requirements for any license, permit or inspection

unless such license, permit or inspection is otherwise provided for in this title. [*The provisions of the Food and Drug Administration's Food Code shall not apply to farmers selling their own farm-produced products directly to consumers for their personal use, whether such sales occur on such farmer's farm or at a farmers' market, unless such provisions are adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).*]

C. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the adoption of any regulation pursuant to subsection B if the Board of Health, within the same 280-day period, adopts the same edition of the Food Code, or the same portions thereof, pursuant to subsection C of § 35.1-14.

Prior to adopting any regulation pursuant to subsection B, 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 60 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 60-day comment period for any regulation adopted pursuant to subsection B. Any regulation adopted pursuant to subsection B 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.

~~(c)~~ *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.

~~(d)~~ *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~~ *the* Commonwealth, he shall petition the appropriate federal agency or agencies to change the federal regulation or enforcement guideline.

~~(e)~~ *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~~ *that* 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.

§ 35.1-14. Regulations governing restaurants; advisory standards for exempt entities.

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

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

C. *The Board may adopt the Food and Drug Administration's Food Code, or portions thereof, amending or modifying it as necessary, within 280 days of the release of the most current Food Code, or any amendments thereto, issued by the Food and Drug Administration. No regulations adopted by the Board pursuant to this subsection, however, shall establish requirements for any license, permit or inspection unless such license, permit or inspection is otherwise provided for in this title.* [*The provisions of the Food and Drug Administration's Food Code shall not apply to farmers selling their own farm-produced products directly to consumers for their personal use, whether such sales occur on such farmer's farm or at a farmers' market, unless such provisions are adopted in accordance with the*

Administrative Process Act (§ 2.2-4000 et seq.).]

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

E. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the adoption of any regulation pursuant to subsection C if the Board of Agriculture and Consumer Services, within the same 280-day period, adopts the same edition of the Food Code, or the same portions thereof, pursuant to subsection B of § 3.1-398.

Prior to adopting any regulation pursuant to 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 60 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 60-day comment period for any regulation adopted pursuant to this section. Any regulation adopted pursuant to 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.