

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 497

An Act to amend the Code of Virginia by adding in Title 3.1 a chapter numbered 4.8, containing articles numbered 1 through 3, consisting of sections numbered 3.1-22.53 through 3.1-22.77, and to repeal Chapter 4.7 (§§ 3.1-22.38 through 3.1-22.51) of Title 3.1 of the Code of Virginia, relating to the Horse Industry Board; penalty.

[S 1009]

Approved March 22, 2005

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 3.1 a chapter numbered 4.8, containing articles numbered 1 through 3, consisting of sections numbered 3.1-22.53 through 3.1-22.77, as follows:

CHAPTER 4.8.

HORSE INDUSTRY BOARD ACT.

Article 1.

Horse Industry Board.

§ 3.1-22.53. Definitions.

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

"Board" means the Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of Agriculture and Consumer Services.

"Department" means the Department of Agriculture and Consumer Services.

§ 3.1-22.54. Horse Industry Board; composition and appointment of members; quorum.

The Horse Industry Board, established by the passage of a referendum held pursuant to Chapters 790 and 805 of the 1993 Acts of Assembly, is continued within the Department. The Horse Industry Board shall consist of 12 members representing the horse industry, industry support services, education, and equine health. Four members shall be the presidents of the following industry organizations: the Virginia Horse Council, Inc., the Virginia Thoroughbred Association, the Virginia Horse Shows Association, and the Virginia Quarter Horse Association. Four members shall serve at large, to be appointed by the Governor from nominations made by the remaining statewide horse breed or use organizations. The Governor shall also appoint two members from recommendations submitted by the Virginia horse industry: one shall be a representative of the horse industry support services or professional community (feed manufacturing or sales, pharmaceutical sales, horseshoeing, marketing, veterinary services, etc.) and the other shall be an individual commercially involved in the horse industry (manager, trainer, etc.).

The extension horse specialist from Virginia Polytechnic Institute and State University shall serve as a voting member of the Horse Industry Board. The Commissioner shall serve as a nonvoting member.

Seven members shall constitute a quorum for the transaction of business.

The presidents of the Virginia Horse Council, Inc., the Virginia Thoroughbred Association, the Virginia Horse Shows Association, and the Virginia Quarter Horse Association may each designate in writing a member of his organization as an alternate who may attend meetings in his place and be counted as a member of the Horse Industry Board for the purposes of a quorum and for voting.

§ 3.1-22.55. Horse Industry Board membership terms.

The terms for appointments to the Horse Industry Board shall be for three years, with no at-large member serving more than two consecutive terms.

§ 3.1-22.56. Horse Industry Board officers and compensation.

A. The Horse Industry Board shall elect from its membership a chairman, a vice chairman, and such other officers as it deems appropriate.

B. Members of the Horse Industry Board not representing agencies of the Commonwealth shall be reimbursed from the Virginia Horse Industry Promotion and Development Fund for all reasonable and necessary expenses incurred by them in the performance of their duties on behalf of the Horse Industry Board.

§ 3.1-22.57. Powers and duties of Horse Industry Board.

A. The Horse Industry Board shall be responsible for the promotion and economic development of the equine industry in the Commonwealth. To accomplish this function the Horse Industry Board is authorized to:

- 1. Produce economic reports;*
- 2. Develop a horse industry directory;*
- 3. Provide funding for educational programs;*
- 4. Provide funding for research;*

5. Engage in media liaison;
6. Collect and analyze data on the horse industry;
7. Disseminate industry-related data; and
8. Enter into contracts and agreements to accomplish the purposes of this chapter.

B. The chairman of the Horse Industry Board shall make an annual report to the Horse Industry Board including a statement of the total receipts and disbursements for the year and shall file a copy of such report with the Commissioner.

§ 3.1-22.58. Virginia Horse Industry Promotion and Development Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Horse Industry Promotion and Development Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All assessments collected pursuant to 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 or be transferred to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of carrying out the provisions of this chapter.

B. The Auditor of Public Accounts shall audit all the accounts of the Horse Industry Board as provided in § 30-133.

C. Expenditures and disbursements from the Fund shall be made by the Horse Industry Board on warrants issued by the Comptroller upon written request signed by a duly authorized officer of the Horse Industry Board.

§ 3.1-22.59. Rules governing conduct of referendum.

The Board shall adopt rules governing the ballots to be used in any referendum, the conduct of the referendum, the canvassing of the results thereof, and the declaration of the results of any referendum provided for in this chapter. The Board shall fix the date, hours, and voting places with respect to the holding of any referendum provided for in this chapter and may provide for voting by mail.

§ 3.1-22.60. Management of referendum; Commissioner's duties; notice.

A. The Commissioner shall arrange for and manage any referendum conducted under this chapter.

B. The Commissioner shall, at least 60 days before the date upon which a referendum is to be held, mail notice to the clerk of the circuit court in each county where those eligible to vote in the referendum reside. The clerk of the circuit court shall post the notice and rules and regulations on the front door or public bulletin board of the courthouse and certify the posting to the Commissioner. The Commissioner shall give general notice of the referendum in a newspaper of general circulation in Richmond, Virginia, and shall send a notice of the referendum to a newspaper of general circulation for each area where members of the horse industry reside, at least 60 days prior to the holding of any referendum under this chapter.

The notice shall contain (i) the date, hours, polling place, and method of voting in such referendum; (ii) the amount of assessment to be collected, means by which such assessment shall be collected, and general purposes for which the assessments will be used; and (iii) the rules adopted by the Board pursuant to § 3.1-22.59.

C. The Commissioner shall prepare and distribute in advance of such referendum all necessary ballots, certificates, and supplies required for such referendum and shall, under regulations adopted and promulgated by the Board, arrange for the use of polling places, if necessary.

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 the Board.

§ 3.1-22.61. Commissioner to maintain referenda results.

The Commissioner shall maintain records of the number of eligible persons who voted in any referendum authorized under this chapter.

Article 2.

Equine Infectious Anemia Test Fee.

§ 3.1-22.62. Fees to be assessed; State Veterinarian to collect.

A fee of \$1.50 shall be assessed on each equine infectious anemia test performed on samples collected in the Commonwealth. Such fees shall be collected by the State Veterinarian for deposit into the Virginia Horse Industry Promotion and Development Fund established by § 3.1-22.58.

§ 3.1-22.63. Subsequent referenda.

The Board, upon petition by members of the horse industry representing at least 10 percent of the number of members of the horse industry who voted in the preceding referendum, or as determined by the Commissioner, may provide for a referendum on the continuation of the equine infectious anemia test assessment in accordance with the provisions of §§ 3.1-22.59 and 3.1-22.60. The Board shall not act on such a petition for conducting such a referendum until at least five years have passed since the last referendum. If the Governor determines that a simple majority is not in favor of the assessment, the Board shall hold no new referendum for at least one year after the Governor has declared his findings. The cost of conducting any such referendum under this section shall be from the Virginia Horse Industry Promotion and Development Fund.

§ 3.1-22.64. *Question to be printed on ballots.*

The question to be printed on the ballots used in any referendum held under this article shall be as follows:

"Do you favor additional market development, education, publicity, research, and promotion of the Virginia horse industry and continuation of the levy of an assessment of \$1.50 on each equine infectious anemia test performed on samples collected in Virginia in accordance with the provisions of the Horse Industry Board law?

- Yes*
- No."*

§ 3.1-22.65. *Persons eligible to vote.*

Each member of the horse industry who has paid for the administering of the equine infectious anemia test during the previous fiscal year shall be eligible to vote in a subsequent referendum, provided that he certifies on forms approved by the Board that he has paid for such a test. Any person meeting such requirements shall be eligible to vote in the referendum, but no person shall be required to be a qualified voter in other respects. Any person who is not an individual shall vote by its authorized representative.

§ 3.1-22.66. *Subsequent referendum results; action of Governor.*

If the Governor finds any subsequent referendum in order, and that at least a simple majority of those voting are in opposition to the continuation of the equine infectious anemia test assessment, he shall so proclaim and upon such proclamation the assessment shall be discontinued. If the Governor finds that at least a simple majority of those voting are in favor of the continuation of the assessment, the Governor shall not so proclaim.

Article 3. Equine Feed Assessment.

§ 3.1-22.67. *Definitions.*

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

"Manufactured equine feed" means a commercial feed as defined by § 3.1-828.2 that is intended for consumption by horses or other equine.

"Manufacturer" means any person who manufactures equine feed and is licensed to conduct business in the Commonwealth under § 3.1-828.6.

§ 3.1-22.68. *Petition for referendum on question of assessment; action of Board and Commissioner; amount of assessment.*

The Board, upon a joint petition requesting a referendum being filed with it by at least three of the following: the Virginia Horse Council, Inc., the Virginia Thoroughbred Association, the Virginia Horse Shows Association, the Virginia Quarter Horse Association, the Virginia Farm Bureau Federation, or the Virginia Agribusiness Council, and upon finding that sufficient interest exists among the members of the equine owners in the Commonwealth to justify a referendum, shall authorize the holding of a referendum as set forth in this article.

The Commissioner shall thereupon be fully empowered and directed to hold and conduct a referendum, in accordance with the provisions of §§ 3.1-22.59 and 3.1-22.60, on the question of whether or not equine owners in the Commonwealth are of the opinion that additional market development, education, publicity, research, and promotion of the equine industry are required. If approved in the referendum authorized by this section, an assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed shall be established. The cost of conducting a referendum under this section shall be paid from the Virginia Horse Industry Promotion and Development Fund.

§ 3.1-22.69. *Persons eligible to vote.*

Any person who owns an equine in the Commonwealth shall be eligible to vote in a referendum held under this article if he executes and submits to the Commissioner an affidavit on forms and methods approved by the Board verifying Virginia residency, legal voting age, and at least one of the following to confirm equine ownership:

- 1. Current breed or discipline registration for an equine owned in the Commonwealth.*
- 2. Receipt of a valid Virginia equine infectious anemia test within the last 12 months indicating an ownership interest in an equine.*
- 3. A lease purchase agreement, contract, bill of sale, or other legal document showing current ownership or lease interest in an equine stabled or pastured in the Commonwealth.*

Completed forms shall include the full name of the person submitting the form along with an associated farm name, if applicable, mailing address, and phone number. Any person who is not an individual shall vote by its authorized representative.

§ 3.1-22.70. *Question to be printed on ballots.*

The question to be printed on the ballots used in the initial referendum held pursuant to § 3.1-22.68, shall be as follows:

"Do you favor additional market development, education, publicity, research, and promotion of the Virginia equine industry and the levy of an assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed sold in the Commonwealth of Virginia in accordance with the provisions of

the Horse Industry Board law?

- Yes*
- No."*

§ 3.1-22.71. Action of Governor if a simple majority of voters favors assessment.

If the Governor finds the referendum in order and that at least a simple majority of those voting are in favor of the assessment for the purpose of conducting additional programs in market development, education, publicity, research, and promotion of the equine industry, he shall so proclaim and an assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed shall be established within 180 days of such proclamation and collected as set forth in this chapter.

§ 3.1-22.72. Action of Governor if referendum found out of order or less than a simple majority of voters favors assessment.

If the Governor finds the referendum out of order, or that at least a simple majority of those voting are not in favor of the assessment for the purpose of conducting additional programs of market development, education, publicity, research, and promotion of the equine industry, he shall so proclaim and an assessment on manufactured equine feed shall not be established.

§ 3.1-22.73. Subsequent referenda.

If the Governor issues a proclamation under § 3.1-22.71, then no other referendum shall be held on the equine industry that was the subject of the proclamation except that after the expiration of five years from the date of the imposition of the assessment on manufactured equine feed, another referendum may be held in the manner herein prescribed to determine whether the assessment shall be continued or adjusted. The Board, upon petition by members of the equine industry representing at least 10 percent of the number of members of the equine industry who voted in the preceding referendum, or as determined by the Commissioner, may provide for a referendum on the continuation or adjustment of the assessment. The Board shall not act on such a petition for conducting such a referendum until at least five years have passed from the time the manufactured equine feed assessment was established or until at least five years have passed since the last referendum.

If the Governor determines that a simple majority is not in favor of the assessment, the Board shall hold no new referendum for at least one year after the Governor has declared his findings, but, at the expiration of one year and upon petition by 10 percent of the members of the Commonwealth's equine industry that voted in the most recent referendum, the Board may provide for a referendum. The cost of conducting any referendum under this section may be paid from the Virginia Horse Industry Promotion and Development Fund.

§ 3.1-22.74. Collection and disposition of assessment by manufacturer; report.

A. Every manufacturer shall collect an assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed he sells in the Commonwealth and on any manufactured equine feed he imports for sale in the Commonwealth and shall remit such assessment to the Department annually. The Department shall promptly pay the assessments into the state treasury to the credit of the Virginia Horse Industry Promotion and Development Fund.

B. Every manufacturer shall complete, on forms furnished by the Department, an annual report of the total tonnage of manufactured equine feed he sold and imported into the Commonwealth. Such reports shall be submitted to the Department along with the assessments submitted pursuant to subsection A. The reporting year for manufactured equine feed shall be January 1 through December 31.

C. All assessments collected under this section shall be paid to the Department by February 1 for the preceding calendar year.

§ 3.1-22.75. Records to be kept by manufacturer.

Any manufacturer who is required to collect the equine feed assessment under this article shall maintain such records as may be necessary or required by the Commissioner to accurately indicate the tonnage of manufactured equine feed that he has sold or imported for sale in the Commonwealth. The manufacturer shall maintain such records for a period of not less than three years from the time the manufactured equine feed was sold. Such records shall be open to the inspection of the Commissioner or his duly authorized agent.

§ 3.1-22.76. Collection of delinquent assessments; civil action.

Any manufacturer who is required to collect the equine feed assessment under this article and who has not paid the assessment to the Commissioner within 15 working days following the due date of February 1 shall pay to the Commissioner a late fee of 10 percent of the amount due or \$50, whichever is greater, in addition to the amount of assessment owed. The appraisal of this late fee shall not prevent the Commissioner from taking other action, as provided for in this chapter. If any person is delinquent in any payment of the money due, then the amount shall be collected by civil action in the name of the Commonwealth at the direction of the Commissioner, and any person adjudged to be in default shall pay the cost of such action. The Attorney General, at the request of the Commissioner, shall institute action in a court of competent jurisdiction for the collection of any money due, including interest thereon.

§ 3.1-22.77. Falsification of records; misdemeanor.

It shall be a Class 1 misdemeanor:

- 1. For any manufacturer to fail to submit to the Department any report required pursuant to § 3.1-22.74 within 60 days after the time such report is due.*
- 2. For any manufacturer knowingly to report falsely to the Department any information required pursuant to this article.*
- 2. That the provisions of this act that levy an assessment of \$3 per ton or \$0.075 per 50-pound bag of manufactured equine feed shall be effective only after a referendum as provided for in Article 3 of Chapter 4.8 of Title 3.1 has passed.**
- 3. That this act shall not be construed to affect existing appointments to the Horse Industry Board.**
- 4. That Chapter 4.7 (§§ 3.1-22.38 through 3.1-22.51) of Title 3.1 of the Code of Virginia is repealed.**