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HOUSE BILL NO. 1753

Offered January 12, 2005

Prefiled January 3, 2005

A BILL to amend and reenact § 2.2-4002 of the Code of Virginia, relating to the Administrative Process Act; exemption for Department of Medical Assistance Services.

 Patron—Janis

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-4002 of the Code of Virginia is 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 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.

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.

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59 20. The Virginia Economic Development Partnership Authority.

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

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

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

67 24. *The Department of Medical Assistance Services in withholding payments in cases of alleged*
68 *fraud and willful misrepresentation by Medicaid providers.*

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

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

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

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

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

75 5. The chartering of corporations.

76 6. Customary military, naval or police functions.

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

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

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

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

83 11. Traffic signs, markers or control devices.

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

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

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

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

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

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

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

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

99 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4
100 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

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

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

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

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