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HOUSE BILL NO. 982**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Agriculture Conservation and Natural Resources
on February 20, 2006)

(Patron Prior to Substitute—Delegate Lewis)

A BILL to amend and reenact § 2.2-4002 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 27 of Title 3.1 an article numbered 1.2, consisting of a section numbered 3.1-741.6, relating to regulation of the live-bird marketing system; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4002 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 27 of Title 3.1 an article numbered 1.2, consisting of a section numbered 3.1-741.6, 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 and in adopting regulations pursuant to § 3.1-741.6.

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.

- 60 20. The Virginia Economic Development Partnership Authority.
61 21. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations
62 pursuant to subsection A (ii) of § 59.1-156.
63 22. The Insurance Continuing Education Board pursuant to § 38.2-1867.
64 23. The Board of Health in promulgating the list of diseases that shall be reported to the Department
65 of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to
66 subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to
67 restaurants or food service.
- 68 B. Agency action relating to the following subjects shall be exempted from the provisions of this
69 chapter:
- 70 1. Money or damage claims against the Commonwealth or agencies thereof.
71 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
72 3. The location, design, specifications or construction of public buildings or other facilities.
73 4. Grants of state or federal funds or property.
74 5. The chartering of corporations.
75 6. Customary military, naval or police functions.
76 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of
77 the Commonwealth.
78 8. The conduct of elections or eligibility to vote.
79 9. Inmates of prisons or other such facilities or parolees therefrom.
80 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as
81 well as the treatment, supervision, or discharge of such persons.
82 11. Traffic signs, markers or control devices.
83 12. Instructions for application or renewal of a license, certificate, or registration required by law.
84 13. Content of, or rules for the conduct of, any examination required by law.
85 14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.) of this title.
86 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
87 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
88 published and posted.
89 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
90 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.
91 17. Any operating procedures for review of child deaths developed by the State Child Fatality
92 Review Team pursuant to § 32.1-283.1.
93 18. The regulations for the implementation of the Health Practitioners' Intervention Program and the
94 activities of the Intervention Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title
95 54.1.
96 19. The process of reviewing and ranking grant applications submitted to the Commonwealth
97 Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5.
98 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4
99 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.
100 21. The Virginia Breeders Fund created pursuant to § 59.1-372.
101 22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.
102 23. The administration of medication or other substances foreign to the natural horse.
- 103 C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia
104 Register Act, Chapter 41 (§ 2.2-4100 et seq.) of this title, made by the Virginia Code Commission
105 pursuant to § 30-150, shall be exempt from the provisions of this chapter.

106 *Article 1.2.*

107 *Control of Avian Influenza.*

108 *§ 3.1-741.6. Prevention and Control Measures; penalty.*

109 A. The Commissioner may adopt regulations to prevent and control avian influenza in the live-bird
110 marketing system and is authorized to participate in the federal Live Bird Marketing Program of the
111 United States Department of Agriculture, as it may be amended from time to time. In adopting such
112 regulations, the Commissioner shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.)
113 and from public participation guidelines adopted pursuant thereto. The State Veterinarian and his
114 representatives are authorized and empowered to enter the premises of any entity within the live-bird
115 marketing system to carry out the provisions of any regulations adopted pursuant to this section. Any
116 regulations adopted pursuant to this section shall, unless a later effective date is specified, take effect
117 upon filing with the Registrar of Regulations, who shall publish the regulations as final regulations in
118 The Virginia Register of Regulations, except that no requirement authorized by subsection B that a
119 person be registered or licensed may take effect any sooner than 90 days after the promulgation date of
120 the regulations containing such requirement, the promulgation date being the date of publication in The
121 Virginia Register of Regulations of the final regulations containing such requirement. The regulation

shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulation.

B. The Commissioner shall establish by regulation a registration or licensing system to regulate the live-bird marketing system in Virginia. As a part of such registration or licensing system, the Commissioner shall register or license all persons who participate in any component of the live-bird marketing system. Such registration or licensing system may include, but not be limited to, the granting, denial, suspension, or revocation of any registration or license, including governing: (i) the grounds for granting such registration or license and (ii) the grounds for the denial, suspension, or revocation of such registration or license.

C. Any person violating any regulation adopted pursuant to this section may be assessed a civil penalty by the Commissioner in an amount not to exceed \$2,500 per day per violation. In determining the amount of any civil penalty, the Commissioner shall give due consideration to (i) the history of the person's previous violations, (ii) the seriousness of the violation, and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with the regulation after notification of the violation. Civil penalties assessed under this section shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the purposes of this section or any regulations adopted thereunder. The Commissioner shall prescribe procedures for payment of uncontested penalties. The procedure shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation. Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.)

D. For the purposes of this section, (i) "live-bird marketing system" includes live-bird markets and the production and distribution units that supply live-bird markets with birds; (ii) "live-bird markets" includes any facility that receives live poultry to be resold or slaughtered and sold onsite, not including any producer or grower that prior to the sale of his own birds slaughters or processes them onsite or at an approved slaughter facility or any producer or grower that sells live birds grown exclusively on his premises and is not a "production unit" or distribution unit" as defined herein; (iii) "production unit" includes a production facility or farm that is the origin of or participates in the production of poultry offered for sale in a live-bird market; and (iv) "distribution unit" includes a person or business such as a wholesaler, dealer, hauler and auction market engaged in the transportation or sale of poultry within the live-bird market system.

2. That an emergency exists and this act is in force from its passage.