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SENATE BILL NO. 1070

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 2.2-4001 and 2.2-4007.1 of the Code of Virginia and to amend § 2.2-4007.1 of the Code of Virginia effective July 1, 2014, relating to regulatory flexibility for small businesses; periodic review of regulations.

Patrons—Edwards and McDougle

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4001 and 2.2-4007.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4001. Definitions.

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

"Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.

"Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.

"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth authorizing an agency to make regulations or decide cases or containing procedural requirements therefor.

"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007.01 and 2.2-4019 and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 in connection with case decisions.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024.

"Public assistance and social services programs" means those programs specified in § 63.2-100.

"Registrar" means the Registrar of Regulations appointed as provided in § 2.2-4102.

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.

"Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

"Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§ 2.2-4031 et seq.).

"Virginia Regulatory Town Hall" means the website operated by the Department of Planning and Budget, which has online public comment forums and displays information about regulatory actions under consideration in the Commonwealth and sends this information to registered public users.

§ 2.2-4007.1. Regulatory flexibility for small businesses; periodic review of regulations.

A. As used in this section, "small business" means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.

B. In addition to the requirements of §§ 2.2-4007 through 2.2-4007.06, prior to the adoption of any

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59 proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in
60 which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety,
61 environmental, and economic welfare, that will accomplish the objectives of applicable law while
62 minimizing the adverse impact on small businesses. The agency shall consider, at a minimum, each of
63 the following methods of reducing the effects of the proposed regulation on small businesses:

- 64 1. The establishment of less stringent compliance or reporting requirements;
- 65 2. The establishment of less stringent schedules or deadlines for compliance or reporting
66 requirements;
- 67 3. The consolidation or simplification of compliance or reporting requirements;
- 68 4. The establishment of performance standards for small businesses to replace design or operational
69 standards required in the proposed regulation; and
- 70 5. The exemption of small businesses from all or any part of the requirements contained in the
71 proposed regulation.

72 C. Prior to the adoption of any proposed regulation that may have an adverse effect on small
73 businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia
74 Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on
75 Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

76 D. In addition to the requirements of § 2.2-4017, on or before July 1, 2009, an agency shall review
77 its existing regulations to determine whether they should be continued without change or be amended or
78 repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of
79 regulations on small businesses. If an agency head determines that completion of the review of existing
80 regulations is not feasible by July 1, 2009, that agency shall publish a statement certifying that
81 determination *in the Virginia Register of Regulations and post the statement on the Virginia Regulatory*
82 *Town Hall.* An agency may extend the date required by this subsection in increments of one year, not to
83 exceed a total of five years.

84 E. In addition to other requirements of § 2.2-4017, all final regulations adopted after July 1, 2005,
85 shall be reviewed *at least every five four* years to ensure that they minimize the economic impact on
86 small businesses in a manner consistent with the stated objectives of applicable law. *If an agency head*
87 *determines that timely completion of the review required by this subsection for any final regulation*
88 *adopted between July 1, 2006, and July 1, 2010, is not feasible, that agency shall publish a statement*
89 *certifying that determination in the Virginia Register of Regulations and post the statement on the*
90 *Virginia Regulatory Town Hall.* An agency may extend the date for the review required by this
91 subsection for a maximum of one year.

92 F. The regulatory review required by this section shall include consideration of:

- 93 1. The continued need for the rule;
- 94 2. The nature of complaints or comments received concerning the regulation from the public;
- 95 3. The complexity of the regulation;
- 96 4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or
97 regulation; and
- 98 5. The length of time since the regulation has been evaluated or the degree to which technology,
99 economic conditions, or other factors have changed in the area affected by the regulation.

100 G. *Prior to commencement of the regulatory review required by subsections D and E, the agency*
101 *shall publish a notice of the review in the Virginia Register of Regulations and post the notice on the*
102 *Virginia Regulatory Town Hall. The agency shall provide a minimum of 21 days for public comment*
103 *after publication of the notice. No later than 120 days after close of the public comment period, the*
104 *agency shall publish a report of the findings of the regulatory review in the Virginia Register of*
105 *Regulations and post the report on the Virginia Regulatory Town Hall.*

106 **2. That § 2.2-4007.1 of the Code of Virginia is amended and reenacted effective July 1, 2014, as**
107 **follows:**

108 § 2.2-4007.1. Regulatory flexibility for small businesses; periodic review of regulations.

109 A. As used in this section, "small business" means a business entity, including its affiliates, that (i) is
110 independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross
111 annual sales of less than \$6 million.

112 B. In addition to the requirements of §§ 2.2-4007 through 2.2-4007.06, prior to the adoption of any
113 proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in
114 which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety,
115 environmental, and economic welfare, that will accomplish the objectives of applicable law while
116 minimizing the adverse impact on small businesses. The agency shall consider, at a minimum, each of
117 the following methods of reducing the effects of the proposed regulation on small businesses:

- 118 1. The establishment of less stringent compliance or reporting requirements;
- 119 2. The establishment of less stringent schedules or deadlines for compliance or reporting
120 requirements;

121 3. The consolidation or simplification of compliance or reporting requirements;
 122 4. The establishment of performance standards for small businesses to replace design or operational
 123 standards required in the proposed regulation; and

124 5. The exemption of small businesses from all or any part of the requirements contained in the
 125 proposed regulation.

126 C. Prior to the adoption of any proposed regulation that may have an adverse effect on small
 127 businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia
 128 Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on
 129 Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

130 D. In addition to the requirements of § 2.2-4017, on or before July 1, 2009, an agency shall review
 131 its existing regulations to determine whether they should be continued without change or be amended or
 132 repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of
 133 regulations on small businesses. If an agency head determines that completion of the review of existing
 134 regulations is not feasible by July 1, 2009, that agency shall publish a statement certifying that
 135 determination. An agency may extend the date required by this subsection in increments of one year, not
 136 to exceed a total of five years.

137 E. In addition to other requirements of § 2.2-4017, all final regulations adopted after July 1, 2005,
 138 shall be reviewed every ~~five~~ four years to ensure that they determine whether they should be continued
 139 without change or be amended or repealed, consistent with the stated objectives of applicable law, to
 140 minimize the economic impact on small businesses in a manner consistent with the stated objectives of
 141 applicable law. When a regulation has undergone a comprehensive review as part of a regulatory action
 142 that included the solicitation of public comment on the regulation, a periodic review shall not be
 143 required until four years after the effective date of the regulatory action.

144 FE. The regulatory review required by this section shall include consideration of:

- 145 1. The continued need for the rule;
- 146 2. The nature of complaints or comments received concerning the regulation from the public;
- 147 3. The complexity of the regulation;
- 148 4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or
 149 regulation; and
- 150 5. The length of time since the regulation has been evaluated or the degree to which technology,
 151 economic conditions, or other factors have changed in the area affected by the regulation.

152 F. Prior to commencement of the regulatory review required by subsection D, the agency shall
 153 publish a notice of the review in the Virginia Register of Regulations and post the notice on the Virginia
 154 Regulatory Town Hall. The agency shall provide a minimum of 21 days for public comment after
 155 publication of the notice. No later than 120 days after close of the public comment period, the agency
 156 shall publish a report of the findings of the regulatory review in the Virginia Register of Regulations
 157 and post the report on the Virginia Regulatory Town Hall.