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HOUSE BILL NO. 1840

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 2.2-4002, 28.2-204.1, 28.2-402, and 28.2-1000.2 of the Code of Virginia; to amend the Code of Virginia by adding in Article 1 of Chapter 10 of Title 28.2 sections numbered 28.2-1000.3, 28.2-1000.4, and 28.2-1000.5; and to repeal the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by Chapters 178 and 728 of the Acts of Assembly of 2010, relating to the menhaden fishery; penalty.

Patrons—Ware, R.L. and Knight

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4002, 28.2-204.1, 28.2-402, and 28.2-1000.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 10 of Title 28.2 sections numbered 28.2-1000.3, 28.2-1000.4, and 28.2-1000.5 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 § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.
13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection A of § 3.2-5406.
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 Commissioner of the Department of Veterans Services in adopting regulations pursuant to subdivision 18 of § 2.2-2004.
16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.
17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or

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59 in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual
60 live horse racing at race meetings licensed by the Commission.

61 18. The Virginia Small Business Financing Authority.

62 19. The Virginia Economic Development Partnership Authority.

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

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

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

70 23. (Expires January 1, 2014) The ~~Secretary of Natural Resources~~ *Marine Resources Commission* in
71 setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction
72 purposes pursuant to § 28.2-1000.2.

73 24. The Board of Pharmacy when specifying special subject requirements for continuing education
74 for pharmacists pursuant to § 54.1-3314.1.

75 25. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant
76 to § 58.1-3219.7.

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

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

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

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

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

83 5. The chartering of corporations.

84 6. Customary military, militia, naval or police functions.

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

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

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

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

91 11. Traffic signs, markers or control devices.

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

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

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

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

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

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

102 18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the
103 activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1
104 (§ 54.1-2515 et seq.) of Title 54.1.

105 19. The process of reviewing and ranking grant applications submitted to the Commonwealth
106 Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title
107 51.5.

108 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4
109 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

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

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

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

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

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117 **§ 28.2-204.1. Limited sale of gear licenses and permits; regulations.**

118 A. The Commission may limit the number of gear licenses or permits to fish, ~~except those licenses~~
119 ~~issued pursuant to § 28.2-402,~~ issued for use in a specific fishery. The Commission may, despite any
120 such limits, issue such gear licenses or permits to fish to any person who has resided for at least five

years on an island in the Commonwealth that is at least three miles from the mainland.

B. The Commission is authorized to promulgate regulations to carry out the provisions of this section. In determining whether to limit the sale of gear licenses or permits to fish, and determining who receives licenses, the Commission shall consider all factors relevant to the Commonwealth's fishery management policy, including but not limited to:

1. Economic and social consequences;
2. Food production;
3. Dependence on the fishery by licensees;
4. Efficiency of gear used in the fishery;
5. Impact on species and fisheries; and
6. Abundance of the resource.

§ 28.2-402. License fee to take menhaden with purse nets.

Any person desiring to take or catch menhaden with purse nets shall pay to the officer or agent a license fee as follows or as subsequently revised by the Commission pursuant to § 28.2-201:

1. On each boat or vessel ~~under seventy gross tons~~ fishing with purse net, ~~\$3 for the harvest of menhaden to be sold as bait, \$5 per gross ton, but not more than \$150.~~
2. On each vessel ~~over seventy gross tons~~ fishing with purse net ~~for the harvest of menhaden for reduction, \$5 per gross ton, provided the maximum license fee for such vessels shall not be more than \$600.~~

The officer or agent shall thereupon grant a license to use such net or other device and state in the license the name or names of the person or persons who shall use the same and the amount of the license fee.

§ 28.2-1000.2. (Expires January 1, 2014) Definition; annual closure of the reduction fishery for Atlantic menhaden.

~~A. For the purpose of this section As used in this article, unless the context requires a different meaning:~~

"Chesapeake Bay" means the territorial waters of the Commonwealth lying west of the Chesapeake Bay Bridge-Tunnel.

"~~Purse seine~~ Reduction fishery for Atlantic menhaden" means those vessels licensed pursuant to § 28.2-402 that harvest menhaden for the purpose of manufacturing them into fertilizer, fish meal, or oil.

B. ~~Upon notification by the National Marine Fisheries Service The Commission shall give timely notice to the reduction fishery for Atlantic menhaden of the date on which the purse seine reduction fishery for Atlantic menhaden meets the annual menhaden harvest cap in the Chesapeake Bay; the Secretary of Natural Resources shall promptly publish a notice in the Virginia Register announcing the date of closure. The Secretary of Natural Resources shall also notify the operators of the purse seine fishery for Atlantic menhaden by the most convenient and expeditious means available. The date of closure shall be based on mandatory daily catch reports submitted to the National Marine Fisheries Service Commission by the purse seine reduction fishery for Atlantic menhaden.~~

C. The annual menhaden harvest cap in the Chesapeake Bay for the ~~purse seine reduction~~ fishery for Atlantic menhaden shall be ~~109,020~~ 87,216 metric tons, subject to annual adjustment for underages or overages as specified in subsection D. In no event, however, shall the harvest of this fishery exceed ~~122,740~~ 98,192 metric tons in any one year.

D. If the harvest of the ~~purse seine reduction~~ fishery for Atlantic menhaden in the Chesapeake Bay does not exceed ~~109,020~~ 87,216 metric tons in any year to which the harvest cap applies, then the difference between the actual harvest and the harvest cap shall be applied as a credit applicable to the allowable harvest for the ~~purse seine reduction~~ fishery for Atlantic menhaden in the Chesapeake Bay for the following year. The credit may be used only for the subsequent annual harvest and shall not be spread over multiple years. Any annual harvest in excess of the harvest cap shall be deducted from the harvest cap, as modified pursuant to this subsection and subsection C for the subsequent annual harvest.

E. ~~The 2007 harvest cap for the purse seine fishery for Atlantic menhaden shall be adjusted for any underage or overage, as specified in subsection D, from the actual 2006 harvest of the purse seine fishery for Atlantic menhaden.~~

F. No person shall take Atlantic menhaden by purse seine for reduction purposes from the Chesapeake Bay after the later of the date of closure implemented pursuant to subsection B or the date that actual notice is provided of such closure pursuant to subsection B. Any person violating this provision ~~shall be~~ is guilty of a Class 1 misdemeanor.

§ 28.2-1000.3. Total allowable catch for Atlantic menhaden landed in Virginia; annual closure of the Atlantic menhaden fishery.

A. The annual total allowable catch for Atlantic menhaden landed in Virginia shall be 144,272.84 metric tons, unless modified pursuant to subsection E or F. The reduction fishery for Atlantic menhaden is authorized to land 80 percent of the total allowable catch. All other menhaden fisheries are

182 authorized to land a total of 20 percent of the annual total allowable catch pursuant to an allocation
183 among gear types and vessels prescribed by the Commission.

184 B. The Commission shall give timely notice to the Atlantic menhaden industry of the date on which
185 the menhaden fishery for Atlantic menhaden landed in Virginia meets the total allowable catch pursuant
186 to subsection A. The date of closure shall be based on mandatory catch reports submitted to the
187 Commission by the Atlantic menhaden fisheries.

188 C. Except as provided in regulations adopted pursuant to § 28.2-1000.4, any annual harvest in
189 excess of the total allowable catch for Atlantic menhaden as specified in subsection A shall be deducted
190 from the total allowable catch for Atlantic menhaden landed in Virginia for the subsequent year.

191 D. Except as provided in § 28.2-1000.4, no person shall land menhaden in Virginia after the date of
192 closure implemented pursuant to subsection B or the date that actual notice is provided of such closure
193 pursuant to subsection B. Any person violating this provision is guilty of a Class 1 misdemeanor.

194 E. The Commission shall adopt regulations consistent with Amendment 2 of the Atlantic Menhaden
195 Fishery Management Plan and this article to provide for an increase in the total allowable catch for
196 Atlantic menhaden landed in Virginia if Virginia acquires all or a portion of the total allowable catch
197 for Atlantic menhaden assigned to another state by the Atlantic States Marine Fisheries Commission.
198 Any increase in the total allowable catch for Atlantic menhaden landed in Virginia acquired pursuant to
199 such regulations shall be allocated among the menhaden fisheries according to the percentages stated in
200 subsection A and any allocation among gear types and vessels made by regulation of the Commission
201 pursuant to § 28.2-1000.4.

202 F. If any portion of the coastwide total allowable catch set aside by the Atlantic States Marine
203 Fisheries Commission for episodic events is unused and allocated to the various states, then the
204 Commission shall increase the total allowable catch for Atlantic menhaden landed in Virginia by such
205 amount as the Atlantic States Marine Fisheries Commission may allocate to Virginia.

206 **§ 28.2-1000.4. Commission to adopt regulations.**

207 A. The Commission no later than September 1, 2013, shall adopt regulations that:

208 1. Establish a control date and limit the sale of licenses for the management of the Atlantic
209 menhaden fisheries in Virginia;

210 2. Allocate 20 percent of the total allowable catch for Atlantic menhaden landed in Virginia among
211 menhaden fisheries other than the reduction fishery for Atlantic menhaden;

212 3. Prescribe procedures for the accurate and regular reporting to the Commission and to the
213 Atlantic States Marine Fisheries Commission of the menhaden catch landed in Virginia;

214 4. Establish procedures consistent with Amendment 2 of the Atlantic Menhaden Fishery Management
215 Plan of the Atlantic States Marine Fisheries Commission regulating the menhaden bycatch landed in
216 Virginia; and

217 5. Establish procedures for the conduct of biological sampling programs to support improved stock
218 assessments and related objectives consistent with Amendment 2 of the Atlantic Menhaden Fishery
219 Management Plan of the Atlantic States Marine Fisheries Commission.

220 **§ 28.1-1000.5. Commission to review actions by Atlantic States Marine Fisheries Commission.**

221 The Commission shall review actions by the Atlantic States Marine Fisheries Commission regarding
222 Atlantic menhaden and make recommendations to the General Assembly.

223 2. That the second enactment of Chapter 41 of the Acts of Assembly of 2007, as amended by
224 Chapters 178 and 728 of the Acts of Assembly of 2010, is repealed.