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SENATE BILL NO. 1276

Offered January 14, 2013

A *BILL to amend and reenact §§ 2.2-904.1 and 12.1-19 of the Code of Virginia, relating to participation by the clerk of the State Corporation Commission in the Virginia Business One Stop electronic portal for seamless processing of the Commonwealth's small business formation, registration, and business-related professional credentials, licenses, certificates, and related permits.*

Patron—Stanley

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-904.1 and 12.1-19 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-904.1. **Virginia Business One Stop electronic portal program.**

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

"Business Permitting Center" or "Center" means the business registration and permitting center established by this section and located in and under the administrative control of the Department.

"Business entity" means a corporation, limited liability company, business trust, or limited partnership that will be operated as a small business.

"Clerk's office" means the office of the clerk of the State Corporation Commission established pursuant to § 12.1-18.

"Comprehensive application" means a an electronic document incorporating pertinent data that can be seamlessly processed by the State Corporation Commission's eFile and the BOS from existing applications for business formation and registration and permits covered under this section.

"Comprehensive permit" means the single electronic document designed for public display issued by the Business Permitting Center BOS that certifies state agency permit approval and that incorporates the endorsements for individual permits included in the comprehensive permitting program.

"Comprehensive permitting program" or "Program" means the mechanism by which comprehensive permits are issued and renewed, permit and regulatory information is disseminated, and account data are exchanged by state agencies.

"Department" means the Department of Business Assistance or any participating state agency or any division of the Department participating in the BOS program to which the Director has delegated or assigned the duties and responsibilities of administering the comprehensive permitting program.

"Organizational documents" means the articles of incorporation of a corporation, articles of organization of a limited liability company, articles of trust of a business trust, and certificate of limited partnership of a limited partnership.

"Permit" means the whole or part of any state agency permit, license, certificate, approval, registration, or charter, or any form or permission required by law, to engage in activity associated with or involving the establishment of a small business or to perform professional services involving an established small business in the Commonwealth.

"Permit information packet" means a collection of information about permitting requirements and application procedures custom assembled for each request.

"Regulatory" means all permitting and other governmental or statutory requirements establishing a small business or professional activities associated with establishing a small business.

"Regulatory agency" means any state agency, board, commission, or division that regulates one or more professions, occupations, industries, businesses, or activities.

"Renewal application" means a document used to collect pertinent data for renewal of permits covered under this section.

"Small business" means an independently owned and operated business that, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years.

"Veteran" means an individual who has served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable.

"Virginia Business One Stop" or "BOS" means the business registration and permitting center established by this section and located in and under the administrative control of the Department.

B. There is created within the Department the comprehensive permitting program (the Program) BOS. The Program BOS is established to serve as a single access point to aid entrepreneurs in filling out the various permit applications associated with establishing a small business in Virginia. The BOS shall provide seamless integration and conversion of pertinent data required to register or form a new small

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59 *business in the Commonwealth, to submit business-related permits and license applications as required*
60 *by state agencies in the Commonwealth, and to transition from paper forms to electronic processing.*
61 The ~~Program~~ BOS in no way supersedes or supplants any regulatory authority granted to any state
62 agency with permits covered by this section. As part of the Program, the Department shall coordinate
63 with the regulatory agency, and the regulatory agency shall determine consistent with applicable law,
64 what types of permits are appropriate for inclusion in the Program as well as the rules governing the
65 submission of and payment for those permits. *The clerk's office shall coordinate with the Department to*
66 *ensure that, by January 1, 2014, the BOS permits entrepreneurs seeking to establish a small business in*
67 *Virginia to prepare and seamlessly submit electronic business registration applications and*
68 *organizational documents, fees, and information required to be filed with the clerk's office pursuant to*
69 *Title 13.1 or Title 50 that are related to the formation of a business entity to the clerk's office through*
70 *the BOS website of the Department. Submissions to the clerk's office through the BOS website of the*
71 *Department shall permit entrepreneurs to complete and transmit the organizational documents and*
72 *required information via the Internet, and shall allow the electronic payment of fees, without requiring*
73 *the printing and mailing of paper forms or other materials.* The website of the Department shall provide
74 access to information regarding the ~~Program~~ BOS. The State Corporation Commission's eFile website
75 shall provide the BOS user a seamless electronic transition to accept common BOS data elements from
76 the BOS website. The Department shall have the power and duty to:

77 1. Create a comprehensive *electronic application with seamless common data handling and data*
78 *exchange with the State Corporation Commission's eFile* that will allow an entrepreneur, or an agent
79 thereof, seeking to establish a small business, to create accounts that will allow ~~them~~ him to acquire the
80 appropriate permits required in the Commonwealth. The comprehensive application shall:

81 a. Allow the business owner to choose a business type and to provide common information, such as
82 name, address, and telephone number, on the front page, eliminating the need to repeatedly provide
83 common information on each permit application;

84 b. Allow the business owner to preview and answer questions related to the operation of the
85 business;

86 c. Provide business owners with a customized to-do agency checklist, which checklist shall provide
87 the permit applications pertinent to each business type and provide the rules, regulations, and general
88 laws applicable to each business type as well as local licensing information;

89 d. Allow the business owner to submit permit applications by electronic means as authorized by
90 § 59.1-496 and to affix thereto his electronic signature as defined in § 59.1-480;

91 e. Allow the business owner to check on the status of applications online and to receive information
92 from the permitting agencies electronically; and

93 f. Allow a business owner to submit electronic payment for application or permitting fees for
94 applications that have been accepted by the permitting agency.

95 2. Develop and administer a computerized system program capable of storing, retrieving, and
96 exchanging permit information, while protecting the confidentiality of information submitted to the
97 Department to the extent allowable by law. Information submitted to the Department shall be subject to
98 the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) as the same would apply
99 were the information submitted directly to the Department or to any permitting agency.

100 3. Issue and renew comprehensive permits in an efficient manner.

101 4. Identify the types of permits appropriate for inclusion in the ~~Program~~ BOS. The Department shall
102 coordinate with the regulatory agency, and the regulatory agency shall determine consistent with
103 applicable law, what types of permits are appropriate for inclusion in the ~~Program~~ BOS.

104 5. Incorporate permits into the ~~Program~~ BOS.

105 6. *Remit organizational documents, fees, and information to the clerk's office in connection with the*
106 *formation of a business entity.*

107 7. Do all acts necessary or convenient to carry out the purposes of this chapter.

108 C. The ~~Business Permitting Center~~ BOS shall compile information regarding the regulatory programs
109 associated with each of the permits obtainable under the Program *and the requirements for submitting*
110 *organizational documents, fees, and information in connection with the formation of a business entity.*
111 This information shall include, at a minimum, a listing of the statutes and administrative rules requiring
112 the permits and pertaining to the regulatory programs that are directly related to the permit. The ~~Center~~
113 BOS shall provide information governed by this section to any person requesting it. Materials used by
114 the ~~Center~~ BOS to describe the services provided by the Center shall indicate that this information is
115 available upon request.

116 D. Each state agency and the State Corporation Commission shall cooperate and provide reasonable
117 assistance to the Department in the implementation of this section.

118 E. *The State Corporation Commission shall fully integrate processes and forms into the BOS and*
119 *shall process all forms within 48 business hours from the time the applicant submits the form*
120 *electronically.*

F. Any person requiring permits that have been incorporated into the Program may submit a comprehensive application to the Department requesting the issuance of the permits. The comprehensive application form shall contain in consolidated form information necessary for the issuance of the permits.

~~F.~~ G. The applicant, if not a veteran, shall include with the application the handling fee established by the Department. An applicant who is a veteran shall be exempt from payment of the handling fee prescribed by this subsection. The amount of the handling fee assessed against the applicant shall be set by the Department at a level necessary to cover the costs of administering the comprehensive permitting program.

~~G.~~ H. The authority for approving the issuance and renewal of any requested permit that requires an investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally authorized to issue the permit shall remain with that agency. The Center may issue those permits for which proper fee payment and a completed application form have been received and for which no approval action is required by the regulatory agency.

~~H.~~ I. Upon receipt of the application, and proper fee payment for any permit for which issuance is subject to regulatory agency action under subsection ~~G~~ H, the Department shall immediately notify the *State Corporation Commission or the* regulatory agency with authority to approve the permit issuance or renewal requested by the applicant. ~~Each~~ *The State Corporation Commission or the* regulatory agency shall advise the Department within a reasonable time after receiving the notice of one of the following:

1. That the *State Corporation Commission or the* regulatory agency approves the issuance of the requested permit and will advise the applicant of any specific conditions required for issuing the permit;

2. That the *State Corporation Commission or the* regulatory agency denies the issuance of the permit and gives the applicant reasons for the denial;

3. That the application is pending; or

4. That the application is incomplete and further information from or action by the applicant is necessary.

~~I.~~ J. The Department shall issue a comprehensive permit endorsed for all the approved permits to the applicant and advise the applicant of the status of other requested permits. The applicant shall be responsible for contesting any decision regarding conditions imposed or permits denied through the normal process established by statute or by *the State Corporation Commission or the* regulatory agency with the authority for approving the issuance of the permit.

~~J.~~ K. Regulatory agencies *and the clerk's office* shall be provided information from the comprehensive application for their permitting and regulatory functions.

~~K.~~ L. The Department shall be responsible for directing the applicant to make all payments for applicable fees established by the regulatory agency *or the clerk's office* directly to the proper agency.

~~L.~~ M. There is hereby created in the state treasury a special nonreverting fund to be known as the Comprehensive Permitting Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of all moneys collected from the handling fee established by the Department pursuant to subsection ~~F~~ G and such other funds as may be appropriated by the General Assembly. 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 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to administer the Program. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by Director of the Department.

~~M.~~ N. Unless otherwise directed by the regulatory agency, the Department shall not issue or renew a comprehensive permit to any person under any of the following circumstances:

1. The person does not have a valid tax registration, if required.

2. The person is a corporation, limited liability company, business trust, limited partnership or registered limited liability partnership that (i) is delinquent in the payment of fees or penalties collected by the State Corporation Commission pursuant to the business entity statutes it administers; (ii) does not exist; or (iii) is not authorized to transact business in the Commonwealth pursuant to one of the business entity statutes administered by the State Corporation Commission.

3. The person has not submitted the sum of all fees and deposits required for the requested individual permit endorsements, any outstanding comprehensive permit delinquency fee, or other fees and penalties to be collected through the comprehensive permitting program.

~~N.~~ O. The Department may adopt regulations in accordance with § 2.2-901 as may be necessary to carry out the purposes of this section.

§ 12.1-19. Duties of clerk; records; copies; personal identifiable information.

A. The clerk of the Commission shall:

1. Keep a record of all the proceedings, orders, findings, and judgments of the public sessions of the

Commission, and the minutes of the proceedings of each day's public session shall be read and approved by the Commission and signed by its chairman, or acting chairman;

2. Subject to the supervision and control of the Commission, have custody of and preserve all of the records, documents, papers, and files of the Commission, or which may be filed before it in any complaint, proceeding, contest, or controversy, and such records, documents, papers, and files shall be open to public examination in the office of the clerk to the same extent as the records and files of the courts of this Commonwealth;

3. When requested, make and certify copies from any record, document, paper, or file in his office, and if required, affix the seal of the Commission (or a facsimile thereof) thereto, and otherwise furnish and certify information from the Commission records by any means the Commission may deem suitable; and, except when made at the instance of the Commission or on behalf of the Commonwealth, a political subdivision of the Commonwealth, or the government of the United States, he shall charge and collect the fees fixed by §§ 12.1-21.1 and 12.1-21.2; and any such copy or information, so certified, shall have the same faith, credit, and legal effect as copies made and certified by the clerks of the courts of this Commonwealth from the records and files thereof;

4. Certify all allowances made by the Commission to be paid out of the public treasury for witness fees, service of process, or other expenses;

5. Issue all notices, writs, processes, or orders awarded by the Commission, or authorized by law, or by the rules of the Commission;

6. Receive all fines and penalties imposed by the Commission, all moneys collected on judgments, all registration fees and franchise taxes required by law to be paid by corporations, including delinquencies thereof and all other fees collected by the Commission, and shall keep an accurate account of the same and the disposition of such receipts and shall, at least once in every thirty days during his term of office, render a statement of all such receipts and collections to the Comptroller, and pay the same into the treasury of the Commonwealth, and shall keep all such other accounts of such collections and disbursements, and shall make all such other reports thereof as may be required by law or by the regulations prescribed by the Comptroller; and

7. Generally have the powers, discharge the functions, and perform the duties of a clerk of a court of record in all matters within the jurisdiction of the Commission. The Commission may designate one or more deputies or assistants of the clerk who may discharge any of his official duties during his continuance in office; and

8. *Ensure that by January 1, 2014, the Commission's eFile electronic registration system is capable of accepting common data elements and provide a seamless transition from the BOS established pursuant to § 2.2-904.1, in order that an entrepreneur or his agent may submit electronically any organizational documents, fees, and information required in connection with the formation of a corporation, limited liability company, business trust, or limited partnership to the clerk's office via the BOS operated by the Department of Business Assistance.*

B. A person who prepares or submits to the office of the clerk of the Commission a document or any information for filing with the Commission pursuant to Title 8.9A, Title 13.1, or Title 50 is responsible for ensuring that the document or information does not contain any personal identifiable information, unless such information is otherwise publicly available or is required or authorized by law to be included in the document or information provided. For purposes of this subsection, "personal identifiable information" means (i) a social security number or any other numbers appearing on driver's licenses, (ii) information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems, (iii) a date of birth identified with a particular individual, (iv) the maiden name of an individual's parent, or (v) any financial account number. Any person who prepares or submits to the office of the clerk a document for filing that contains personal identifiable information shall be deemed to have authorized the clerk or any member of his staff to remove, delete, or obliterate, without prior notice, such information prior or subsequent to recording or filing the document in the office of the clerk. Nothing in this subsection shall be deemed to require the clerk to alter any document submitted for filing. The clerk may refuse to accept for filing any document that includes personal identifiable information and return it for modification or explanation. The Commission, its members, the clerk of the Commission, and any member of his staff are immune from liability in any proceeding arising from any acts or omissions in the implementation of this subsection. This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity that exists under statutory or common law.