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SENATE BILL NO. 324

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact § 2.2-4002 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.2 a chapter numbered 41.2, consisting of sections numbered 2.2-4120 through 2.2-4123, relating to the Limitation on Administrative Actions Relating to Firearms Act; limitations on certain administrative actions.

Patrons—Carrico and Garrett

Referred to Committee for Courts of Justice

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 Title 2.2 a chapter numbered 41.2, consisting of sections numbered 2.2-4120 through 2.2-4123, 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.), and subject to the provisions of Chapter 41.2, 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 Virginia War Memorial Foundation.

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 in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual

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- live horse racing at race meetings licensed by the Commission.
18. The Virginia Small Business Financing Authority.
19. The Virginia Economic Development Partnership Authority.
20. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.
21. The Insurance Continuing Education Board pursuant to § 38.2-1867.
22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.
23. (Expires January 1, 2014) The Secretary of Natural Resources in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2.
24. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § 54.1-3314.1.
- B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:
1. Money or damage claims against the Commonwealth or agencies thereof.
 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
 3. The location, design, specifications or construction of public buildings or other facilities.
 4. Grants of state or federal funds or property.
 5. The chartering of corporations.
 6. Customary military, militia, naval or police functions.
 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
 8. The conduct of elections or eligibility to vote.
 9. Inmates of prisons or other such facilities or parolees therefrom.
 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
 11. Traffic signs, markers or control devices.
 12. Instructions for application or renewal of a license, certificate, or registration required by law.
 13. Content of, or rules for the conduct of, any examination required by law.
 14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.) of this title.
 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.
 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.
 17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.
 18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.
 19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5.
 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.
 21. The Virginia Breeders Fund created pursuant to § 59.1-372.
 22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.
 23. The administration of medication or other substances foreign to the natural horse.
- C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of this title, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of this chapter.

CHAPTER 41.2.

LIMITATION ON ADMINISTRATIVE ACTIONS RELATING TO FIREARMS ACT.

§ 2.2-4120. Legislative intent.

The General Assembly finds that the regulation of firearms, ammunition, or components or combination thereof is a matter of statewide concern, therefore it is the intent of the legislature to occupy the entire field of regulation in this area and to preempt the ability of any administrative body to take any administrative action that has the direct or indirect effect of governing the purchase, possession, transfer, ownership, carrying, storage, or transporting of firearms, ammunition, or components or combination thereof unless such administrative body has been expressly granted the

authority by statute. This article shall be liberally construed in conformity with these intentions.

§ 2.2-4121. Definitions.

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

"Administrative action" means any action taken by an administrative body that affects the rights or conduct of any person, including but not limited to, formal and informal rulemaking, issuance and enforcement of policies or interpretive rules, and any adjudicative action.

"Administrative body" means any authority, joint federal-state authority, instrumentality, officer, board, or other unit of the government of the Commonwealth, or a private actor exercising power traditionally reserved exclusively to the Commonwealth.

§ 2.2-4122. Limitations on administrative actions; current administrative actions invalid; court costs.

A. No administrative body shall take any administrative action that has the direct or indirect effect of governing the purchase, possession, transfer, ownership, carrying, storage or transporting of firearms, ammunition, or components or combination thereof other than those expressly authorized by statute. For purposes of this chapter, a statute that does not refer to firearms, ammunition, or components or combination thereof, shall not be construed to provide express authorization.

B. Nothing in this section shall prohibit (i) an administrative body from adopting workplace rules relating to terms and conditions of employment of the workforce, or (ii) a law-enforcement officer, as defined in § 9.1-101, from acting within the scope of his duties.

C. Any administrative action taken prior to the effective date of this act that has direct or indirect effect of governing the purchase, possession, transfer, ownership, carrying, or transporting of firearms, ammunition, or components or combination thereof, other than those expressly authorized by statute, is invalid.

D. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action challenging an administrative action taken in bad faith as being in conflict with this section.

§ 2.2-4123. Exemptions.

The following administrative bodies shall be exempted from the provisions of this chapter:

1. The Department of Game and Inland Fisheries and the Board of Game and Inland Fisheries in promulgating regulations and regarding the use of firearms in taking game subject to the limitations in subdivision B 6 of § 18.2-308.

2. The Department of Corrections, Department of Juvenile Justice, Department of Correctional Education, Department of Criminal Justice Services, Department of Forensic Science, and the Virginia Parole Board in promulgating regulations regarding the administration of prisons, jails, detention facilities, halfway houses, and parolee conduct.

3. The Department of State Police in promulgating regulations regarding the administration of the criminal history record information check required for the transfer of certain firearms pursuant to § 18.2-308.2:2 or the multiple handgun purchase permit pursuant to § 18.2-308.2:2.

4. Educational institutions operated by the Commonwealth in the promulgating regulations regarding the carry of firearms inside campus buildings by those not legally permitted to carry concealed handguns.

2. That any administrative action of an administrative body contrary to the provisions of the first enactment of this act shall be unenforceable. The administrative body shall take appropriate action to bring any contrary administrative action into compliance with the provisions of the first enactment of this act.