

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 359

An Act to amend and reenact § 2.2-4026 of the Code of Virginia, relating to the Administrative Process Act; judicial review of certain regulations.

[H 644]

Approved March 11, 2016

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4026 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4026. Right, forms, venue; date of adoption or readoption for purposes of appeal.

A. Any person affected by and claiming the unlawfulness of any regulation or party aggrieved by and claiming unlawfulness of a case decision and whether exempted from the procedural requirements of Article 2 (§ 2.2-4006 et seq.) or 3 (§ 2.2-4018 et seq.) shall have a right to the direct review thereof by an appropriate and timely court action against the agency or its officers or agents in the manner provided by the Rules of Supreme Court of Virginia. Actions may be instituted in any court of competent jurisdiction as provided in § 2.2-4003, and the judgments of the courts of original jurisdiction shall be subject to appeal to or review by higher courts as in other cases unless otherwise provided by law. In addition, when any regulation or case decision is the subject of an enforcement action in court, it shall also be reviewable by the court as a defense to the action, and the judgment or decree therein shall be appealable as in other cases.

B. *In any court action under this section by a person affected by and claiming the unlawfulness of any regulation on the basis that an agency failed to follow any procedure for the promulgation or adoption of a regulation specified in this chapter or in such agency's basic law, the burden shall be upon the party complaining of the agency action to designate and demonstrate the unlawfulness of the regulation by a preponderance of the evidence. If the court finds in favor of the party complaining of the agency action, the court shall declare the regulation null and void and remand the case to the agency for further proceedings.*

C. Notwithstanding any other provision of law or of any executive order issued under this chapter, with respect to any challenge of a regulation subject to judicial review under this chapter, the date of adoption or readoption of the regulation pursuant to § 2.2-4015 for purposes of appeal under the Rules of Supreme Court shall be the date of publication in the Register of Regulations.