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HOUSE BILL NO. 601

Offered January 8, 2020

Prefiled January 6, 2020

A *BILL to amend and reenact § 2.2-4031 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-4007.001 and 2.2-4026.1, relating to the Administrative Process Act; review of occupational regulations.*

 Patron—Freitas

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4031 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-4007.001 and 2.2-4026.1 as follows:

§ 2.2-4007.001. Petitions for review of certain existing regulations; opportunity for public comment.

A. Any person may petition an agency to request the agency to review an existing regulation for compliance with the provisions of § 54.1-100. The petition shall state (i) the Virginia Administrative Code section the person is requesting the agency to review and (ii) the reason the person believes the regulation is not in compliance with the provisions of § 54.1-100.

B. Within 14 days of receiving a petition, the agency shall send a notice identifying the petitioner, the nature of the petitioner's request, and the agency's plan for disposition of the petition to the Registrar for publication in the Virginia Register of Regulations in accordance with the provisions of subsection A of § 2.2-4031.

C. Written public comment on the petition shall be accepted during the 21-day period immediately following the publication of the petition in the Virginia Register. The agency shall issue a written decision regarding the regulation's compliance with the provisions of § 54.1-100 within 90 days following the close of the comment period. The written decision issued by the agency shall include a statement of its reasons and shall be submitted to the Registrar for publication in the Virginia Register of Regulations. If the agency finds that the regulation is not in compliance with the provisions of § 54.1-100, the agency shall take appropriate steps to repeal such regulation. Agency decisions regarding a regulation's compliance with the provisions of § 54.1-100 shall not be subject to judicial review; however, in addition to or in lieu of the review provided for by this subsection, a person may seek declaratory judgment pursuant to § 2.2-4026.1.

§ 2.2-4026.1. Review of occupational regulations.

A. As used in this section:

"Occupational regulation" means a regulation requiring an individual to possess certain personal qualifications to use an occupational title or work in a lawful occupation. "Occupational regulation" does not include a business license, facility license, building permit, or zoning and land use regulation, except to the extent such provision regulates an individual's personal qualifications to perform a lawful occupation.

"Personal qualifications" means criteria related to an individual's personal background and characteristics, including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education.

B. Any person who is adversely affected or aggrieved by an occupational regulation that such person believes was not promulgated in accordance with the provisions of § 54.1-100 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 occupational regulation 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.

Notwithstanding the provisions of § 2.2-4026, in any court action instituted by a person under this section, the burden shall be upon the party complaining of the occupational regulation to demonstrate by a preponderance of the evidence that the challenged occupational regulation on its face or in its effect burdens the entry into or participation in an occupation. Thereafter, the burden shall be upon the agency to demonstrate by a preponderance of the evidence that the challenged occupational regulation

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59 *is necessary to protect or preserve the health, safety, and welfare of the public and otherwise complies*
60 *with the provisions of § 54.1-100. If the court finds in favor of the party complaining of the agency*
61 *action, the court shall declare the regulation null and void and remand the case to the agency for*
62 *further proceedings.*

63 **§ 2.2-4031. Publication of Virginia Register of Regulations; exceptions; notice of public hearings**
64 **of proposed regulations.**

65 A. The Registrar shall publish every two weeks a Virginia Register of Regulations that shall include
66 (i) proposed and final regulations; (ii) emergency regulations; (iii) executive orders; (iv) notices of all
67 public hearings on regulations; ~~and~~ (v) petitions for rulemaking made in accordance with § 2.2-4007;
68 *and (vi) petitions for review of existing regulations made in accordance with § 2.2-4007.001.* The entire
69 proposed regulation shall be published in the Register; however, if an existing regulation has been
70 previously published in the Virginia Administrative Code, then only those sections of regulations to be
71 amended need to be published in the Register. If the length of the regulation falls within the guidelines
72 established by the Registrar for the publication of a summary in lieu of the full text of the regulation,
73 then, after consultation with the promulgating agency, the Registrar may publish only the summary of
74 the regulation. In this event, the full text of the regulation shall be available for public inspection at the
75 office of the Registrar and the promulgating agency.

76 If a proposed regulation is adopted as published or, in the sole discretion of the Registrar of
77 Regulations, the only changes that have been made are those that can be clearly and concisely
78 explained, the adopted regulation need not be published at length. Instead, the Register shall contain a
79 notation that the proposed regulation has been adopted as published as a proposed regulation without
80 change or stating the changes made. The proposed regulation shall be clearly identified with a citation to
81 the issue and page numbers where published.

82 A copy of all reporting forms the promulgating agency anticipates will be incorporated into or be
83 used in administering the regulation shall be published with the proposed and final regulation in the
84 Register.

85 B. Each regulation shall be prefaced with a summary explaining that regulation in plain and clear
86 language. Summaries shall be prepared by the promulgating agency and approved by the Registrar prior
87 to their publication in the Register. The notice required by § 2.2-4007.03 shall include (i) a statement of
88 the date, time and place of the hearing at which the regulation is to be considered; (ii) a brief statement
89 as to the regulation under consideration; (iii) reference to the legal authority of the agency to act; and
90 (iv) the name, address, and telephone number of an individual to contact for further information about
91 that regulation. Agencies shall present their proposed regulations in a standardized format developed by
92 the Virginia Code Commission in accordance with subdivision 2 of § 2.2-4104 of the Virginia Register
93 Act (§ 2.2-4100 et seq.). Notwithstanding the exemptions allowed under § 2.2-4002, 2.2-4006 or
94 2.2-4011, the proposed and final regulations of all agencies shall be published in the Register. However,
95 proposed regulations of the Marine Resources Commission and regulations exempted by subject from
96 the provisions of this chapter by subsection B of § 2.2-4002 shall be exempt from this section.

97 C. The Virginia Register of Regulations shall be published by posting the Register on the Virginia
98 Code Commission's website. The Virginia Code Commission may arrange for the printing of the
99 Virginia Register as provided in § 30-146.