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SENATE BILL NO. 1438

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 31, 2023)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact § 3.2-102 of the Code of Virginia and to amend the Code of Virginia by adding in Title 55.1 a chapter numbered 5.1, consisting of sections numbered 55.1-507, 55.1-508, and 55.1-509, relating to agricultural land; ownership by foreign adversaries prohibited.

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-102 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 55.1 a chapter numbered 5.1, consisting of sections numbered 55.1-507, 55.1-508, and 55.1-509, as follows:

§ 3.2-102. General powers and duties of the Commissioner.

A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and duties herein provided, and such other powers and duties as may be prescribed by law, including those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.

B. In addition, the Commissioner shall:

1. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products;

2. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each

60 winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement
61 Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers
62 granted under this section; and

63 3. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) not
64 inconsistent with the laws of Virginia necessary to carry out the provisions of Article 1.1:1
65 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. Such regulations may include penalties for violations;
66 and

67 4. Ensure that the Department compiles and publishes the annual report relating to foreign
68 adversary ownership of agricultural land required under § 55.1-509.

69 CHAPTER 5.1.

70 FOREIGN ENTITIES AND PROPERTY OWNERSHIP.

71 § 55.1-507. Definitions.

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

73 "Agricultural land" means real estate used for an agricultural operation in the Commonwealth.

74 "Agricultural operation" means any operation devoted to the bona fide production of crops, animals,
75 or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry
76 products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from
77 silvicultural activity.

78 "Controlling interest" means either possession of more than 50 percent of the ownership interests in
79 an entity or a percentage ownership in an entity of 50 percent or less if such owner directs the business
80 and affairs of such entity without the requirement or consent of any other party.

81 "Department" means the Department of Agriculture and Consumer Services.

82 "Foreign adversary" means any foreign government or nongovernment person determined by the U.S.
83 Secretary of Commerce to have engaged in a long-term pattern or serious instances of conduct
84 significantly adverse to the national security of the United States or security and safety of United States
85 persons.

86 "Interest" means any estate, remainder, or reversion, or portion of the estate, remainder, or
87 reversion, or an option pursuant to which one party has a right to cause legal or equitable title to
88 agricultural land to be transferred.

89 § 55.1-508. Foreign adversary acquisition of agricultural land prohibited.

90 A. Notwithstanding any other provision of law, on and after January 1, 2023, no foreign adversary
91 shall acquire or transfer any interest in agricultural land in the Commonwealth.

92 B. This section shall not apply to (i) any interest in agricultural land held by a foreign adversary
93 prior to January 1, 2023, or (ii) any federally recognized Indian tribe or its government units and
94 enterprises.

95 C. Any transfer of an interest in land in violation of this section shall be void.

96 D. This section shall not be applied in a manner inconsistent with any provision of any treaty
97 between the United States and another country.

98 § 55.1-509. Reporting requirements.

99 A. Based on the reports submitted to it pursuant to the federal Agricultural Foreign Investment
100 Disclosure Act, 7 U.S.C. § 3501 et seq., and other information the Department, at its discretion, deems
101 appropriate, the Department shall compile an annual report in consultation with the appropriate state
102 agencies and boards for each calendar year containing all of the following, if available:

103 1. The total amount of agricultural land that is under foreign ownership;

104 2. The percentage change in foreign ownership of agricultural land in the Commonwealth for each
105 year over the prior 10 years;

106 3. The purpose for which foreign-owned agricultural land in the Commonwealth is being used
107 currently. To the extent such information is available, the Department shall also include any significant
108 recent changes or trends in the uses of foreign-owned agricultural land in the Commonwealth;

109 4. With the assistance of relevant state agencies, information regarding the extent of, and any recent
110 changes in, foreign ownership of energy production, storage, or distribution facilities in the
111 Commonwealth to the extent such information is available; and

112 5. Any legislative, regulatory, or administrative policy changes the Department recommends in light
113 of the information in this report.

114 B. The Department shall publish its inaugural report pursuant to subsection A on its website no later
115 than July 1, 2023, and each subsequent report pursuant to subsection A no later than July 1 of each
116 following year. The Department shall also deliver copies of such report to the Governor, the General
117 Assembly, and the Chairmen of the Senate Committee on Agriculture, Conservation and Natural
118 Resources and the House Committee on Agriculture, Chesapeake and Natural Resources.