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SENATE BILL NO. 565

Offered January 25, 1994

A BILL to amend and reenact § 9-6.14:4.1 of the Code of Virginia, relating to exempting federal regulations from the Administrative Process Act.

Patrons—Woods, Benedetti, Norment, Stolle and Wampler; Delegates: Cantor and Sherwood

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 9-6.14:4.1 of the Code of Virginia is amended and reenacted as follows:

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency which 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.

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, except for those created under Chapter 27 (§ 15.1-1228 et seq.) of Title 15.1.

6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which 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' license and base, (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 Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13. [Repealed.]

14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of the Department of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsection A of § 3.1-884.21:1.

18. The Board of Medicine when specifying therapeutic pharmaceutical agents for the treatment of certain conditions of the human eye and its adnexa by certified optometrists pursuant to § 54.1-2957.2.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

21. The Virginia War Memorial Foundation.

22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

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- 60 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
- 61 3. The location, design, specifications or construction of public buildings or other facilities.
- 62 4. Grants of state or federal funds or property.
- 63 5. The chartering of corporations.
- 64 6. Customary military, naval or police functions.
- 65 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of
66 the Commonwealth.
- 67 8. The conduct of elections or eligibility to vote.
- 68 9. Inmates of prisons or other such facilities or parolees therefrom.
- 69 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as
70 well as the treatment, supervision, or discharge of such persons.
- 71 11. Traffic signs, markers or control devices.
- 72 12. Instructions for application or renewal of a license, certificate, or registration required by law.
- 73 13. Content of, or rules for the conduct of, any examination required by law.
- 74 14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter
75 14 of Title 2.1.
- 76 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
77 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
78 published and posted.
- 79 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
80 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, Title 28.2.
- 81 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia
82 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:
 - 83 1. Agency orders or regulations fixing rates or prices.
 - 84 2. Regulations which establish or prescribe agency organization, internal practice or procedures,
85 including delegations of authority.
 - 86 3. Regulations which consist only of changes in style or form or corrections of technical errors. Each
87 promulgating agency shall review all references to sections of the Code of Virginia within their
88 regulations each time a new supplement or replacement volume to the Code of Virginia is published to
89 ensure the accuracy of each section or section subdivision identification listed.
 - 90 4. Regulations which:
 - 91 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no
92 agency discretion is involved;
 - 93 (b) Are required by order of any state or federal court of competent jurisdiction where no agency
94 discretion is involved; or
 - 95 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations
96 do not differ materially from those required by federal law or regulation, and the Registrar has so
97 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above
98 determination shall be published in the Virginia Register not less than thirty days prior to the effective
99 date thereof.
 - 100 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of
101 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public
102 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law
103 *or federal regulation* requires that a regulation shall be effective in 280 days or less from enactment of
104 the law or the appropriation act *or the effective date of the federal regulation* and the regulation is not
105 exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in
106 writing the nature of the emergency and of the necessity for such action and may adopt such regulations
107 with the prior approval of the Governor. Such regulations shall be limited to no more than twelve
108 months in duration. During the twelve-month period, an agency may issue additional emergency
109 regulations as needed addressing the subject matter of the initial emergency regulation, but any such
110 additional emergency regulations shall not be effective beyond the twelve-month period from the
111 effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject
112 matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace
113 the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this
114 chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be
115 published within sixty days of the effective date of the emergency regulation, and the proposed
116 replacement regulation shall be published within 180 days after the effective date of the emergency
117 regulation.
 - 118 6. [Repealed.]
 - 119 7. Preliminary program permit fees of the Department of Air Pollution Control assessed pursuant to
120 subsection C of § 10.1-1322.2.
 - 121 Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that

122 it will receive, consider and respond to petitions by any interested person at any time with respect to
123 reconsideration or revision. The effective date of regulations adopted under this subsection shall be in
124 accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall
125 become effective as provided in § 9-6.14:9 A.

126 D. The following agency actions otherwise subject to this chapter are excluded from the operation of
127 Article 3 (§ 9-6.14:11 et seq.) of this chapter:

- 128 1. The assessment of taxes or penalties under the tax laws.
- 129 2. The award or denial of claims for workers' compensation.
- 130 3. The grant or denial of public assistance.
- 131 4. Temporary injunctive or summary orders authorized by law.
- 132 5. The determination of claims for unemployment compensation or special unemployment.
- 133 6. The award or denial of individual student loans by the Virginia Education Loan Authority.
- 134 7. The determination of applications for guaranty of individual student loans or the determination of
135 default claims by the State Education Assistance Authority.

136 E. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia
137 Register Act, is excluded from the operation of subsection C of this section and of Article 2
138 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for
139 activity undertaken pursuant to Title 62.1 by the Marine Resources Commission shall be in accordance
140 with the provisions of this chapter.

141 F. A regulation for which an exemption is claimed under this section and which is placed before a
142 board or commission for consideration shall be provided at least two days in advance of the board or
143 commission meeting to members of the public that request a copy of that regulation. A copy of that
144 regulation shall be made available to the public attending such meeting.

145 G. The Joint Legislative Audit and Review Commission shall conduct a review periodically of
146 exemptions and exclusions authorized by this section. The purpose of this review shall be to assess
147 whether there are any exemptions or exclusions which should be discontinued or modified.

148 H. Minor changes to regulations being published in the Virginia Administrative Code under the
149 Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code
150 Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.