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## HOUSE BILL NO. 1625

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources  
on January 19, 2011)

(Patron Prior to Substitute—Delegate Knight)

A *BILL to amend and reenact § 10.1-1308 of the Code of Virginia, relating to the exemption of qualified fumigation facilities from air regulations.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 10.1-1308 of the Code of Virginia is amended and reenacted as follows:**

§ 10.1-1308. Regulations.

A. The Board, after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. No such regulation, shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

B. Any regulation that prohibits the selling of any consumer product shall not restrict the continued sale of the product by retailers of any existing inventories in stock at the time the regulation is promulgated.

C. Any regulation requiring the use of stage 1 vapor recovery equipment at gasoline dispensing facilities may be applicable only in areas that have been designated at any time by the U.S. Environmental Protection Agency as nonattainment for the pollutant ozone. For purposes of this section, gasoline dispensing facility means any site where gasoline is dispensed to motor vehicle tanks from storage tanks.

D. *No regulation of the Board shall require permits for the construction or operation of qualified fumigation facilities. Operators of qualified fumigation facilities shall provide written notice to the Department prior to conducting fumigation activity at the facility of the following:*

1. *Exact physical location at the facility of the particular fumigation operation and distance from the facility's property line;*

2. *Object being fumigated (rail car, truck container, warehouse, bin, storage silo, open pallet of product, etc.);*

3. *Product being fumigated;*

4. *Number of objects and quantity of product being fumigated;*

5. *Containment system (tarp, sealed container, etc.);*

6. *Fumigant used;*

7. *Quantity of fumigant used;*

8. *Duration of fumigation;*

9. *Time required to degas; and*

10. *Material safety data sheet (MSDS) for fumigant.*

E. *For the purposes of this section, "qualified fumigation facility" means a facility at a location that:*  
1. *Conducts phytosanitary fumigation required by U.S. Department of Agriculture Animal and Plant Health Inspection Service regulations, U.S. Food and Drug Administration regulations, or other international, federal, or state regulations or requirements;*

2. *Has the potential to emit less than 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants regulated by the Board pursuant to Articles 4 (9 VAC 5-60-200 et seq.) and 5 (9 VAC 5-60-300 et seq.) of 9 VAC 5-60 or is not otherwise subject to regulation under the provisions of the federal Clean Air Act (42 U.S.C. § 7401 et seq.) related to hazardous air pollutants;*

3. *Conducts fumigation activities in buildings or locations within the facility that are no closer than 300 feet from any common property line with adjacent parcels of land;*

4. *Posts signs at least 24 hours prior to any fumigation operation at the site that comply with this*

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60 section, are visible and legible from the public right-of-way in both directions of travel, and conform to  
61 the specifications herein. The sign shall remain in place for at least 24 hours after the completion of the  
62 aeration process. If the site is located adjacent to a public right-of-way, signs shall be posted along  
63 each road frontage beside the location where the fumigation operation takes place. If the site is not  
64 located adjacent to a public right-of-way, the sign shall be posted at or near the intersection of the  
65 public right-of-way and the main site access road or driveway to the site. The Department may grant a  
66 waiver to the requirements in this section, or require alternative posting options, due to extenuating  
67 circumstances or to be consistent with local government ordinances and other requirements regulating  
68 the use of signs. The sign shall be made of weather-resistant materials and shall be sturdily mounted so  
69 as to be capable of remaining in place and legible throughout the period that the sign is required at the  
70 site. Signs required by this section shall be temporary, nonilluminated, and four square feet or more in  
71 area and shall only contain the following information:

- 72 a. The word "WARNING," in letters at least two inches in height;
- 73 b. The words "FUMIGATION OPERATION SITE";
- 74 c. The symbol of a circle at least eight inches in diameter with a diagonal slash over an adult, child,  
75 and dog;
- 76 d. The date fumigation operations commence;
- 77 e. The name of fumigant and its active ingredient;
- 78 f. Contact information for the fumigator to receive complaints and inquiries; and
- 79 g. Contact information for the Department, including a telephone number for complaints and  
80 inquiries.

81 The fumigator shall make a good faith effort to replace or repair any sign that has been removed  
82 from a fumigation operation site or that has been damaged so as to render any of its required  
83 information illegible prior to 24 hours after the completion of the aeration process. This provision shall  
84 apply only if fumigation activities are conducted within 500 feet of any public right-of way; and

85 5. Operates in compliance with all federal and state regulations for licensing and operation of  
86 fumigation facilities and licensing of fumigant applicators.

87 **2. That by July 1, 2013, the Department of Environmental Quality shall conduct enhanced air**  
88 **monitoring at fumigation sites and make its findings available to the Virginia Department of**  
89 **Health. The Virginia Department of Health shall assess air monitoring data, determine if health**  
90 **concerns exist at fumigation sites, and make recommendations to the fumigator and the**  
91 **Department of Environmental Quality as to whether preventative measures should be taken to**  
92 **protect public health.**