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SENATE BILL NO. 268

Offered January 13, 2016

Prefiled January 7, 2016

A BILL to amend and reenact §§ 3.2-6023 and 3.2-6034 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 60 of Title 3.2 an article numbered 5, consisting of sections numbered 3.2-6043, 3.2-6044, and 3.2-6045; and to repeal §§ 3.2-6018 and 3.2-6042 of the Code of Virginia, relating to criminal and civil penalties for animal disease violations.

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Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-6023 and 3.2-6034 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 60 of Title 3.2 an article numbered 5, consisting of sections numbered 3.2-6043, 3.2-6044, and 3.2-6045, as follows:

§ 3.2-6023. Prevention and control measures; penalty.

A. The Commissioner may adopt regulations to prevent and control avian influenza in the live-bird marketing system and is authorized to participate in the federal Live Bird Marketing Program of the U.S. Department of Agriculture, as it may be amended from time to time. In adopting such regulations, the Commissioner shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) and from public participation guidelines adopted pursuant thereto. The State Veterinarian and his representatives are authorized and empowered to enter the premises of any entity within the live-bird marketing system to carry out the provisions of any regulations adopted pursuant to this section. Any regulations adopted pursuant to this section shall, unless a later effective date is specified, take effect upon filing with the Registrar of Regulations, who shall publish the regulations as final regulations in the Virginia Register of Regulations, except that no requirement authorized by subsection B that a person be registered or licensed may take effect any sooner than 90 days after the promulgation date of the regulations containing such requirement, the promulgation date being the date of publication in the Virginia Register of Regulations of the final regulations containing such requirement. The regulations shall contain a preamble stating that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of such regulations.

B. The Commissioner shall establish by regulation a registration or licensing system to regulate the live-bird marketing system in Virginia. As a part of such registration or licensing system, the Commissioner shall register or license all persons who participate in any component of the live-bird marketing system. Such registration or licensing system may include the granting, denial, suspension, or revocation of any registration or license, including governing: (i) the grounds for granting such registration or license; and (ii) the grounds for the denial, suspension, or revocation of such registration or license.

C. Any person violating any regulation adopted pursuant to this section may be assessed a civil penalty by the Commissioner in an amount not to exceed \$2,500 per day per violation. In determining the amount of any civil penalty, the Commissioner shall give due consideration to: (i) the history of the person's previous violations; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with the regulation after notification of the violation. Civil penalties assessed under this section shall be paid into a special fund in the state treasury to the credit of the Department to be used in carrying out the purposes of this section or any regulations adopted hereunder the Livestock and Poultry Disease Fund established in § 3.2-6045. The Commissioner shall prescribe procedures for payment of uncontested penalties. The procedure shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation. Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

D. For the purposes of this section: (i) "live-bird marketing system" includes live-bird markets and the production and distribution units that supply live-bird markets with birds; (ii) "live-bird markets" includes any facility that receives live poultry to be resold or slaughtered and sold onsite, not including any producer or grower that prior to the sale of his own birds slaughters or processes them onsite or at an approved slaughter facility or any producer or grower that sells live birds grown exclusively on his premises and is not a "production unit" or "distribution unit" as defined herein; (iii) "production unit"

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59 includes a production facility or farm that is the origin of or participates in the production of poultry
60 offered for sale in a live-bird market; and (iv) "distribution unit" includes a person or business such as a
61 wholesaler, dealer, hauler, and auction market engaged in the transportation or sale of poultry within the
62 live-bird market system.

63 **§ 3.2-6034. Commissioner to enjoin violations.**

64 Any person who violates any provision of this article is guilty of a Class 1 misdemeanor. Each day
65 upon which such violation occurs is a separate offense. In addition to the penalties herein provided, such
66 person may be enjoined from continuing such violation. The Commissioner may bring an action to
67 enjoin the violation of any provision of this article in the circuit court of the county or city where such
68 violation occurs.

69 *Article 5.*

70 *Violations and Penalties.*

71 **§ 3.2-6043. Violations; criminal penalties.**

72 A. It is unlawful for any person to violate any of the (i) provisions of this chapter or (ii) regulations
73 adopted or quarantines established under this chapter. Any person who violates such provisions or
74 regulations is guilty of a Class 1 misdemeanor.

75 B. It is unlawful for any person to fail to allow the State Veterinarian or his representative to do or
76 to perform any duty required of him pursuant to this chapter. Any person who fails to allow the State
77 Veterinarian or his representative to do or to perform any duty required of him pursuant this chapter is
78 guilty of a Class 1 misdemeanor.

79 C. In addition to the penalties provided in subsections A and B each day of violation of any
80 provision of Article 3 (§ 3.2-6031 et seq.) shall constitute a separate offense.

81 **§ 3.2-6044. Civil penalty.**

82 Except as provided in § 3.2-6023, in lieu of any criminal penalty established pursuant to § 3.2-6043,
83 the Board may assess a civil penalty in an amount not to exceed \$1,000 per violation. In determining
84 the amount of any civil penalty, the Board shall give due consideration to the (i) history of the person's
85 previous violations, (ii) seriousness of the violation, and (iii) demonstrated good faith of the person
86 charged in attempting to achieve compliance with this chapter after notification of the violation. Such
87 civil penalties shall be deposited into the Livestock and Poultry Disease Fund established in § 3.2-6045.
88 The provisions of this section shall not apply to § 3.2-6023.

89 **§ 3.2-6045. Livestock and Poultry Disease Fund.**

90 There is hereby created in the state treasury a special nonreverting fund to be known as the
91 Livestock and Poultry Disease Fund, referred to in this section as "the Fund." The Fund shall be
92 established on the books of the Comptroller. All civil penalties assessed pursuant to this chapter shall
93 be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall
94 remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon,
95 at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys
96 in the Fund shall be used to carry out the purposes of this chapter. Expenditures and disbursements
97 from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written
98 request signed by the Commissioner.

99 **2. That §§ 3.2-6018 and 3.2-6042 of the Code of Virginia are repealed.**