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HOUSE BILL NO. 1090

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Dunnivant on March 3, 2020)

(Patrons Prior to Substitute—Delegates Hope and Hudson [HB 1489])

A BILL to amend and reenact §§ 2.2-4006, 22.1-271.2, and 32.1-46 of the Code of Virginia, relating to required immunizations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4006, 22.1-271.2, and 32.1-46 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.

2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

6. Regulations of (i) the regulatory boards served by the Department of Labor and Industry pursuant to Title 40.1 and the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 and (ii) the Board of Accountancy that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

9. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

10. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23.1-704.

11. Regulations of the Marine Resources Commission.

12. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the

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60 Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of
61 § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written
62 comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in
63 §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the
64 provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the
65 provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning
66 review by the Governor and General Assembly.

67 13. Amendments to regulations of the Board to schedule a substance pursuant to subsection D or E
68 of § 54.1-3443.

69 14. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant
70 to the State Water Control Law (§ 62.1-44.2 et seq.), including but not limited to Article 4.01
71 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides public notice in the
72 Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period,
73 forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary
74 response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the
75 provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the
76 Board shall be subject to the provisions of §§ 2.2-4013 and 2.2-4014 concerning review by the Governor
77 and General Assembly.

78 15. Regulations of the Workers' Compensation Commission adopted pursuant to § 65.2-605, including
79 regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the
80 Workers' Compensation Commission (i) utilizes a regulatory advisory panel constituted as provided in
81 subdivision F 2 of § 65.2-605 to assist in the development of such regulations and (ii) provides an
82 opportunity for public comment on the regulations prior to adoption.

83 *16. Amendments to the State Board of Health Regulations for the Immunization of School Children*
84 *pursuant to § 32.1-46.*

85 B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it
86 will receive, consider and respond to petitions by any interested person at any time with respect to
87 reconsideration or revision. The effective date of regulations adopted under this section shall be in
88 accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall
89 become effective as provided in subsection B of § 2.2-4012.

90 C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and
91 that is placed before a board or commission for consideration shall be provided at least two days in
92 advance of the board or commission meeting to members of the public that request a copy of that
93 regulation. A copy of that regulation shall be made available to the public attending such meeting.

94 **§ 22.1-271.2. Immunization requirements.**

95 A. No student shall be admitted by a school unless at the time of admission the student or his parent
96 submits documentary proof of immunization to the admitting official of the school or unless the student
97 is exempted from immunization pursuant to subsection C or is a homeless child or youth as defined in
98 subdivision A 7 of § 22.1-3. If a student does not have documentary proof of immunization, the school
99 shall notify the student or his parent (i) that it has no documentary proof of immunization for the
100 student; (ii) that it may not admit the student without proof unless the student is exempted pursuant to
101 subsection C, including any homeless child or youth as defined in subdivision A 7 of § 22.1-3; (iii) that
102 the student may be immunized and receive certification by a licensed physician, licensed nurse
103 practitioner, registered nurse or an employee of a local health department; and (iv) how to contact the
104 local health department to learn where and when it performs these services. Neither this Commonwealth
105 nor any school or admitting official shall be liable in damages to any person for complying with this
106 section.

107 Any physician, nurse practitioner, registered nurse or local health department employee performing
108 immunizations shall provide to any person who has been immunized or to his parent, upon request,
109 documentary proof of immunizations conforming with the requirements of this section.

110 B. Any student whose immunizations are incomplete may be admitted conditionally if that student
111 provides documentary proof at the time of enrollment of having received at least one dose of the
112 required immunizations accompanied by a schedule for completion of the required doses within 90
113 calendar days. If the student requires more than two doses of hepatitis B vaccine, the conditional
114 enrollment period shall be 180 calendar days.

115 The immunization record of each student admitted conditionally shall be reviewed periodically until
116 the required immunizations have been received.

117 Any student admitted conditionally and who fails to comply with his schedule for completion of the
118 required immunizations shall be excluded from school until his immunizations are resumed.

119 C. No certificate of immunization shall be required for the admission to school of any student if (i)
120 the student or his parent submits an affidavit to the admitting official stating that the administration of
121 immunizing agents conflicts with the student's religious tenets or practices; or (ii) the school has written

122 certification from a licensed physician, licensed nurse practitioner, or local health department that one or
123 more of the required immunizations may be detrimental to the student's health, indicating the specific
124 nature and probable duration of the medical condition or circumstance that contraindicates immunization.

125 However, if a student is a homeless child or youth as defined in subdivision A 7 of § 22.1-3 and (a)
126 does not have documentary proof of necessary immunizations or has incomplete immunizations and (b)
127 is not exempted from immunization pursuant to clauses (i) or (ii) of this subsection, the school division
128 shall immediately admit such student and shall immediately refer the student to the local school division
129 liaison, as described in the federal McKinney-Vento Homeless Education Assistance Improvements Act
130 of 2001, as amended (42 U.S.C. § 11431 et seq.)(the Act), who shall assist in obtaining the documentary
131 proof of, or completing, immunization and other services required by such Act.

132 D. The admitting official of a school shall exclude from the school any student for whom he does
133 not have documentary proof of immunization or notice of exemption pursuant to subsection C, including
134 notice that such student is a homeless child or youth as defined in subdivision A 7 of § 22.1-3.

135 E. Every school shall record each student's immunizations on the school immunization record. The
136 school immunization record shall be a standardized form provided by the State Department of Health,
137 which shall be a part of the mandatory permanent student record. Such record shall be open to
138 inspection by officials of the State Department of Health and the local health departments.

139 The school immunization record shall be transferred by the school whenever the school transfers any
140 student's permanent academic or scholastic records.

141 Within 30 calendar days after the beginning of each school year or entrance of a student, each
142 admitting official shall file a report with the local health department. The report shall be filed on forms
143 prepared by the State Department of Health and shall state the number of students admitted to school
144 with documentary proof of immunization, the number of students who have been admitted with a
145 medical or religious exemption and the number of students who have been conditionally admitted,
146 including those students who are homeless children or youths as defined in subdivision A 7 of § 22.1-3.

147 F. The requirement for Haemophilus Influenzae Type b immunization as provided in § 32.1-46 shall
148 not apply to any child admitted to any grade level, kindergarten through grade 12.

149 G. The Board of Health shall promulgate rules and regulations for the implementation of this section
150 in congruence with rules and regulations of the Board of Health promulgated under § 32.1-46 and in
151 cooperation with the Board of Education.

152 **§ 32.1-46. Immunization of patients against certain diseases.**

153 A. The parent, guardian or person standing in loco parentis of each child within this Commonwealth
154 shall cause such child to be immunized in accordance with the Immunization Schedule developed and
155 published by the Centers for Disease Control and Prevention (CDC), Advisory Committee on
156 Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American
157 Academy of Family Physicians (AAFP). The required immunizations for attendance at a public or
158 private elementary, middle or secondary school, child care center, nursery school, family day care home
159 or developmental center shall be those set forth in the State Board of Health Regulations for the
160 Immunization of School Children. The Board's regulations shall at a minimum require:

- 161 1. A minimum of three properly spaced doses of hepatitis B vaccine (HepB).
- 162 2. A minimum of three or more properly spaced doses of diphtheria toxoid. One dose shall be
163 administered on or after the fourth birthday.
- 164 3. A minimum of three or more properly spaced doses of tetanus toxoid. One dose shall be
165 administered on or after the fourth birthday.
- 166 4. A minimum of three or more properly spaced doses of acellular pertussis vaccine. One dose shall
167 be administered on or after the fourth birthday. A booster dose shall be administered prior to entry into
168 the seventh grade.
- 169 5. Two or three primary doses of Haemophilus influenzae type b (Hib) vaccine, depending on the
170 manufacturer, for children up to 60 months of age.
- 171 6. Two properly spaced doses of live attenuated measles (rubeola) vaccine. The first dose shall be
172 administered at age 12 months or older.
- 173 7. One dose of live attenuated rubella vaccine shall be administered at age 12 months or older.
- 174 8. One dose of live attenuated mumps vaccine shall be administered at age 12 months or older.
- 175 9. All children born on and after January 1, 1997, shall be required to have one dose of varicella
176 vaccine on or after 12 months.
- 177 10. Three or more properly spaced doses of oral polio vaccine (OPV) or inactivated polio vaccine
178 (IPV). One dose shall be administered on or after the fourth birthday. A fourth dose shall be required if
179 the three dose primary series consisted of a combination of OPV and IPV.
- 180 11. One to four doses, dependent on age at first dose, of properly spaced pneumococcal conjugate
181 (PCV) vaccine for children up to 60 months of age.
- 182 12. Three doses of properly spaced human papillomavirus (HPV) vaccine for females. The first dose

183 shall be administered before the child enters the sixth grade.

184 The parent, guardian or person standing in loco parentis may have such child immunized by a
 185 physician, physician assistant, nurse practitioner, registered nurse, or licensed practical nurse, or a
 186 pharmacist who administers pursuant to a valid prescription, or may present the child to the appropriate
 187 local health department, which shall administer the vaccines required by the State Board of Health
 188 Regulations for the Immunization of School Children without charge to the parent of or person standing
 189 in loco parentis to the child if (i) the child is eligible for the Vaccines for Children Program or (ii) the
 190 child is eligible for coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C.
 191 § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid),
 192 Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), or 10 U.S.C. § 1071 et seq.
 193 (CHAMPUS). In all cases in which a child is covered by a health carrier, Medicare, Medicaid, CHIP, or
 194 CHAMPUS, the Department shall seek reimbursement from the health carrier, Medicare, Medicaid, CHIP, or
 195 CHAMPUS for all allowable costs associated with the provision of the vaccine. For the
 196 purposes of this section, the Department shall be deemed a participating provider with a managed care
 197 health insurance plan as defined in § 32.1-137.1.

198 B. A physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse,
 199 pharmacist, or local health department administering a vaccine required by this section shall provide to
 200 the person who presents the child for immunizations a certificate that shall state the diseases for which
 201 the child has been immunized, the numbers of doses given, the dates when administered and any further
 202 immunizations indicated.

203 C. The vaccines required by this section shall meet the standards prescribed in, and be administered
 204 in accordance with, regulations of the Board. *The State Board of Health shall amend the State Board of*
 205 *Health Regulations for the Immunization of School Children as necessary to maintain conformity with*
 206 *evidence-based routinely recommended vaccinations for children. The adoption of such regulations shall*
 207 *be exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.). However, the*
 208 *Department shall (i) provide a Notice of Intended Regulatory Action and (ii) provide for a 60-day public*
 209 *comment period prior to the Board's adoption of the regulations.*

210 D. The provisions of this section shall not apply if:

211 1. The parent or guardian of the child objects thereto on the grounds that the administration of
 212 immunizing agents conflicts with his religious tenets or practices, unless an emergency or epidemic of
 213 disease has been declared by the Board;

214 2. The parent or guardian presents a statement from a physician licensed to practice medicine in
 215 Virginia, a licensed nurse practitioner, or a local health department that states that the physical condition
 216 of the child is such that the administration of one or more of the required immunizing agents would be
 217 detrimental to the health of the child; or

218 3. Because the human papillomavirus is not communicable in a school setting, a parent or guardian,
 219 at the parent's or guardian's sole discretion, may elect for the parent's or guardian's child not to receive
 220 the human papillomavirus vaccine, after having reviewed materials describing the link between the
 221 human papillomavirus and cervical cancer approved for such use by the Board.

222 E. For the purpose of protecting the public health by ensuring that each child receives
 223 age-appropriate immunizations, any physician, physician assistant, nurse practitioner, licensed
 224 institutional health care provider, local or district health department, the Virginia Immunization
 225 Information System, and the Department of Health may share immunization and patient locator
 226 information without parental authorization, including, but not limited to, the month, day, and year of
 227 each administered immunization; the patient's name, address, telephone number, birth date, and social
 228 security number; and the parents' names. The immunization information; the patient's name, address,
 229 telephone number, birth date, and social security number; and the parents' names shall be confidential
 230 and shall only be shared for the purposes set out in this subsection.

231 F. ~~The State Board of Health shall review this section annually and make recommendations for~~
 232 ~~revision by September 1 to the Governor, the General Assembly, and the Joint Commission on Health~~
 233 ~~Care.~~

234 **2. That the Commissioner of Health shall annually report to the House Committee on Health,**
 235 **Welfare and Institutions and the Senate Committee on Education and Health on the**
 236 **implementation of § 32.1-46 of the Code of Virginia, as amended by this act. In making this**
 237 **report, the Commissioner shall identify, for the pertinent year, (i) any immunization added to the**
 238 **schedule of required immunizations, (ii) childhood immunization coverage rates, (iii) the number**
 239 **of religious and medical exemptions granted and the ratio of the exempted population, (iv) any**
 240 **immunization removed from the State Board of Health Regulations for the Immunization of**
 241 **School Children, and (v) any required immunization for which the U.S. Food and Drug**
 242 **Administration approval is retracted.**

243 **3. That the Department of Health and the Department of Education shall jointly review**
 244 **§§ 22.1-271.2 and 32.1-46 of the Code of Virginia, as amended by this act, and report to the House**

245 Committee on Health, Welfare and Institutions and the Senate Committee on Education and
246 Health on the effectiveness of the required vaccination program in promoting public health by
247 December 1, 2021.
248 4. That the Department of Health shall amend the State Board of Health Regulations for the
249 Immunization of School Children to include hepatitis A vaccine (HAV), human papillomavirus
250 vaccine (HPV) for males, meningococcal conjugate vaccine (MenACWY), and rotavirus vaccine.