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SENATE BILL NO. 1348

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact § 2.2-4002 of the Code of Virginia, relating to Administrative Process Act; Department of Wildlife Resources; exemptions not to extend to agency actions regarding certain wildlife.*

Patron—Mason

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4002 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4002. Exemptions from chapter generally.

A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Wildlife Resources in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1, *except that such regulations and case decisions (a) of Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 shall not be exempted pursuant to this section; or (b) related to the take of wildlife incidental to but not as the purpose of an otherwise lawful activity.*

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.

6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such educational institutions shall be exempt from the publication requirements only with respect to regulations that 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' licenses and bases, (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 Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.

11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23.1-207.

12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.

13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection A of § 3.2-5406.

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant to § 2.2-2001.3.

16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.

17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.

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- 59 18. The Virginia Small Business Financing Authority.
60 19. The Virginia Economic Development Partnership Authority.
61 20. The Board of Agriculture and Consumer Services in adopting, amending, or repealing regulations
62 pursuant to subsection A (ii) of § 59.1-156.
63 21. The Insurance Continuing Education Board pursuant to § 38.2-1867.
64 22. The Board of Health in promulgating the list of diseases that shall be reported to the Department
65 of Health pursuant to § 32.1-35 and in adopting, amending, or repealing regulations pursuant to
66 subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to
67 restaurants or food service.
68 23. The Board of Pharmacy when specifying special subject requirements for continuing education
69 for pharmacists pursuant to § 54.1-3314.1.
70 24. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant
71 to § 58.1-3219.7 or 58.1-3219.11.
72 25. The Virginia Department of Criminal Justice Services when developing, issuing, or revising any
73 training standards established by the Criminal Justice Services Board under § 9.1-102, provided such
74 actions are authorized by the Governor in the interest of public safety.
75 B. Agency action relating to the following subjects shall be exempted from the provisions of this
76 chapter:
77 1. Money or damage claims against the Commonwealth or agencies thereof.
78 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
79 3. The location, design, specifications, or construction of public buildings or other facilities.
80 4. Grants of state or federal funds or property.
81 5. The chartering of corporations.
82 6. Customary military, militia, naval, or police functions.
83 7. The selection, tenure, dismissal, direction, or control of any officer or employee of an agency of
84 the Commonwealth.
85 8. The conduct of elections or eligibility to vote.
86 9. Inmates of prisons or other such facilities or parolees therefrom.
87 10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other
88 state institutions as well as the treatment, supervision, or discharge of such persons.
89 11. Traffic signs, markers, or control devices.
90 12. Instructions for application or renewal of a license, certificate, or registration required by law.
91 13. Content of, or rules for the conduct of, any examination required by law.
92 14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.).
93 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
94 with duly adopted regulations of the Virginia Lottery Board, and provided that such regulations are
95 published and posted.
96 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
97 finfish, or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.
98 17. Any operating procedures for review of child deaths developed by the State Child Fatality
99 Review Team pursuant to § 32.1-283.1, any operating procedures for review of adult deaths developed
100 by the Adult Fatality Review Team pursuant to § 32.1-283.5, any operating procedures for review of
101 adult deaths developed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, and any
102 operating procedures for review of the deaths of persons with a developmental disability developed by
103 the Developmental Disabilities Mortality Review Committee pursuant to § 37.2-314.1.
104 18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the
105 activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§
106 54.1-2515 et seq.) of Title 54.1.
107 19. The process of reviewing and ranking grant applications submitted to the Commonwealth
108 Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title
109 51.5.
110 20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4
111 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.
112 21. The Virginia Breeders Fund created pursuant to § 59.1-372.
113 22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.
114 23. The administration of medication or other substances foreign to the natural horse.
115 24. Any rules adopted by the Department of Agriculture and Consumer Services for the approval and
116 conduct of game variations for the conduct of raffles, bingo, network bingo, and instant bingo games,
117 provided that such rules are (i) consistent with Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title
118 18.2 and (ii) published and posted.
119 C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia
120 Register Act (§ 2.2-4100 et seq.), made by the Virginia Code Commission pursuant to § 30-150, shall be

121 exempt from the provisions of this chapter.

122 2. That guidance documents developed prior to the effective date of this act pursuant to Article 6
123 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia or guidance documents
124 developed and used by the Department of Wildlife Resources in making comments or providing
125 consultation to the Department of Environmental Quality or the Virginia Marine Resources
126 Commission during such agencies' decision-making processes and in use by the Department of
127 Wildlife Resources as of the effective date of this act shall expire on December 31, 2023, unless
128 such documents are filed for publication with the Virginia Registrar of Regulations by August 1,
129 2023, and made available for public comment as prescribed in § 2.2-4002.1 of the Code of Virginia
130 by December 31, 2023.