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SENATE BILL NO. 1438

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on March 27, 2023)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact § 3.2-102 of the Code of Virginia and to amend the Code of Virginia by adding in Title 55.1 a chapter numbered 5.1, consisting of sections numbered 55.1-507, 55.1-508, and 55.1-509, relating to agricultural land; ownership by foreign adversaries prohibited.

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-102 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 55.1 a chapter numbered 5.1, consisting of sections numbered 55.1-507, 55.1-508, and 55.1-509, as follows:

§ 3.2-102. General powers and duties of the Commissioner.

A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and duties herein provided, and such other powers and duties as may be prescribed by law, including those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.

B. In addition, the Commissioner shall:

1. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products;

2. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each

60 winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement
61 Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers
62 granted under this section; and

63 3. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) not
64 inconsistent with the laws of Virginia necessary to carry out the provisions of Article 1.1:1
65 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. Such regulations may include penalties for violations;
66 and

67 4. Ensure that the Department compiles and publishes the annual report relating to foreign
68 adversary ownership of agricultural land required under § 55.1-509.

69 CHAPTER 5.1.

70 FOREIGN ENTITIES AND PROPERTY OWNERSHIP.

71 § 55.1-507. Definitions.

72 As used in this chapter, unless the context requires a different meaning:

73 "Agricultural land" means real estate in the Commonwealth used or zoned in a manner that would
74 permit the use of the real estate for an agricultural operation.

75 "Agricultural operation" means any operation devoted to the bona fide production of crops, animals,
76 or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry
77 products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from
78 silvicultural activity.

79 "Department" means the Department of Agriculture and Consumer Services.

80 "Foreign adversary" means any foreign government or nongovernment person determined by the U.S.
81 Secretary of Commerce to have engaged in a long-term pattern or serious instances of conduct
82 significantly adverse to the national security of the United States or security and safety of United States
83 persons, as set forth in 15 C.F.R. § 7.4 or such successor regulation, declaration, or statute as may
84 exist from time to time.

85 "Interest in agricultural land" means any right, title, or interest, direct or indirect, in and to (i)
86 agricultural land or (ii) any entity or other organization that holds any right, title, or interest, direct or
87 indirect, in and to agricultural land. For purposes of this definition, any interest that taken on its own
88 or together with any other interest held in common or under common control does not give the holder
89 of the interest the ability to possess or occupy the agricultural land in any manner or the power or
90 authority to direct the conduct of the agricultural operation being conducted on the agricultural land.

91 § 55.1-508. Foreign adversary acquisition of agricultural land prohibited.

92 A. Notwithstanding any other provision of law, in order to protect the health, safety, and welfare of
93 all citizens of the Commonwealth, on and after July 1, 2023, no foreign adversary shall acquire any
94 interest in agricultural land in the Commonwealth.

95 B. Any acquisition of any interest in agricultural land in violation of this section shall be void, and
96 title to such interest in agricultural land shall be deemed to have vested as of the date of such
97 purported acquisition in the name of the Commonwealth without any payment of consideration of any
98 kind by the Commonwealth. The foreign adversary purporting to acquire such interest in agricultural
99 land shall be barred from making a claim against any party for restitution of the purchase price paid by
100 such foreign adversary in connection with such interest in agricultural land or for any other kind of
101 payment relating to the foreign adversary's loss or lack of title to such interest in agricultural land. Any
102 lien that has attached to such interest in agricultural land during the foreign adversary's purported
103 acquisition or ownership shall remain a valid lien against the interest during such time as the interest is
104 held by the Commonwealth except that such lien shall not be subject to foreclosure during the period of
105 the Commonwealth's ownership nor shall the Commonwealth be subject to the terms of any agreement
106 giving rise to the lien. The Commonwealth may hold or dispose of such interest in agricultural land in
107 any proper manner.

108 C. Notwithstanding the provisions in subsection B, if the foreign adversary has subsequently sold or
109 transferred the interest in agricultural land to a person or entity that is not a foreign adversary, title to
110 such interest in agricultural land shall be vested in the subsequent non-foreign adversary purchaser or
111 transferee and shall be valid as if the purported acquisition of such interest in agricultural land by a
112 foreign adversary has not occurred.

113 D. If an interest in agricultural land has been acquired in violation of this section, a county, city, or
114 town attorney for the locality in which the agricultural land is located, the Attorney General, or any
115 non-foreign adversary person that was a party to the void transaction or is a subsequent holder of such
116 interest may file an action (i) to eject the foreign adversary from possession, (ii) to quiet title to such
117 property, or (iii) for any other appropriate action to ratify the nullification of the transaction. Any
118 action brought pursuant to this subsection shall be filed in the circuit court where the subject property
119 is located.

120 E. This section shall not be applied in a manner inconsistent with any provision of any treaty
121 between the United States and another country.

§ 55.1-509. Reporting requirements.

A. Based on the reports submitted to it pursuant to the federal Agricultural Foreign Investment Disclosure Act, 7 U.S.C. § 3501 et seq., and other information the Department, at its discretion, deems appropriate, the Department shall compile an annual report in consultation with the appropriate state agencies and boards for each calendar year containing all of the following, if available:

1. The total amount of agricultural land that is under foreign ownership;

2. The percentage change in foreign ownership of agricultural land in the Commonwealth for each year over the prior 10 years;

3. The purpose for which foreign-owned agricultural land in the Commonwealth is being used currently. To the extent such information is available, the Department shall also include any significant recent changes or trends in the uses of foreign-owned agricultural land in the Commonwealth;

4. With the assistance of relevant state agencies, information regarding the extent of, and any recent changes in, foreign ownership of energy production, storage, or distribution facilities in the Commonwealth to the extent such information is available; and

5. Any legislative, regulatory, or administrative policy changes the Department recommends in light of the information in this report.

B. The Department shall publish its inaugural report pursuant to subsection A on its website no later than July 1, 2023, and each subsequent report pursuant to subsection A no later than July 1 of each following year. The Department shall also deliver copies of such report to the Governor, the General Assembly, and the Chairmen of the Senate Committee on Agriculture, Conservation and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources.