

972553826

**SENATE BILL NO. 815**

Offered January 9, 1997

*A BILL to amend and reenact §§ 9-6.14:4.1, 46.2-1988, 46.2-1992.82, and 46.2-1993.79 of the Code of Virginia, relating to Administrative Process Act exemptions.*

Patrons—Reasor and Gartlan; Delegates: DeBoer and Murphy

Referred to the Committee on General Laws

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

**1. That §§ 9-6.14:4.1, 46.2-1988, 46.2-1992.82 and 46.2-1993.79 of the Code of Virginia are amended and reenacted as follows:**

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.

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

3. The Department of Game and Inland Fisheries 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.

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 § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which 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' license and base, (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 Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13, 14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

18. 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.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

21. The Virginia War Memorial Foundation.

22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to

INTRODUCED

SB815

60 the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage  
61 pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

62 23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to  
63 § 22.1-280.3.

64 24. The Virginia Student Assistance Authorities.

65 25. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in  
66 matters related to any specific race meeting.

67 26. The Virginia Small Business Financing Authority.

68 27. The Virginia Economic Development Partnership Authority.

69 28. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations  
70 pursuant to clause A (ii) of § 59.1-156.

71 29. *The Insurance Continuing Education Board pursuant to § 38.2-1867.*

72 B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

73 1. Money or damage claims against the Commonwealth or agencies thereof.

74 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

75 3. The location, design, specifications or construction of public buildings or other facilities.

76 4. Grants of state or federal funds or property.

77 5. The chartering of corporations.

78 6. Customary military, naval or police functions.

79 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of  
80 the Commonwealth.

81 8. The conduct of elections or eligibility to vote.

82 9. Inmates of prisons or other such facilities or parolees therefrom.

83 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as  
84 well as the treatment, supervision, or discharge of such persons.

85 11. Traffic signs, markers or control devices.

86 12. Instructions for application or renewal of a license, certificate, or registration required by law.

87 13. Content of, or rules for the conduct of, any examination required by law.

88 14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter  
89 14 of Title 2.1.

90 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent  
91 with duly adopted regulations of the State Lottery Board, and provided that such regulations are  
92 published and posted.

93 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,  
94 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

95 17. Any operating procedures for review of child deaths developed by the State Child Fatality  
96 Review Team pursuant to § 32.1-283.1.

97 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia  
98 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

99 1. Agency orders or regulations fixing rates or prices.

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

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

106 4. Regulations which:

107 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no  
108 agency discretion is involved;

109 (b) Are required by order of any state or federal court of competent jurisdiction where no agency  
110 discretion is involved; or

111 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations  
112 do not differ materially from those required by federal law or regulation, and the Registrar has so  
113 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above  
114 determination shall be published in the Virginia Register not less than thirty days prior to the effective  
115 date thereof.

116 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of  
117 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public  
118 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law  
119 or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of  
120 the law or the appropriation act or the effective date of the federal regulation, and the regulation is not  
121 exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in

writing the nature of the emergency and of the necessity for such action and may adopt such regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be published within sixty days of the effective date of the emergency regulation, and the proposed replacement regulation shall be published within 180 days after the effective date of the emergency regulation.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

9. Regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

10. 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.

11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.), of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty 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 subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

12. General permits issued by the 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 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty 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 subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

13. *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.*

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.

183 F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia  
184 Register Act, is excluded from the operation of subsection C of this section and of Article 2  
185 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for  
186 activity undertaken pursuant to Title 28.2 by the Marine Resources Commission shall be in accordance  
187 with the provisions of this chapter.

188 G. A regulation for which an exemption is claimed under this section and which is placed before a  
189 board or commission for consideration shall be provided at least two days in advance of the board or  
190 commission meeting to members of the public that request a copy of that regulation. A copy of that  
191 regulation shall be made available to the public attending such meeting.

192 H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of  
193 exemptions and exclusions authorized by this section. The purpose of this review shall be to assess  
194 whether there are any exemptions or exclusions which should be discontinued or modified.

195 I. Minor changes to regulations being published in the Virginia Administrative Code under the  
196 Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code  
197 Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

198 § 46.2-1988. Appeals to Court of Appeals; bond.

199 Either party may appeal from the decision of the court under § 46.2-1987 to the Court of Appeals.  
200 These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by  
201 law in other cases appealed as a matter of right to the Court of Appeals.

202 No appeal shall be taken on behalf of the person whose license or certificate of registration or  
203 qualification was suspended or revoked until the person enters into a proper bond with surety approved  
204 by the trial court in an amount determined by the trial court, not to exceed \$5,000, to observe the motor  
205 vehicle laws of the Commonwealth, including the provisions of this chapter, until final judgment of the  
206 Court of Appeals.

207 § 46.2-1992.82. Appeals to Court of Appeals; bond.

208 Either party may appeal from the decision of the court under § 46.2-1992.81 to the Court of Appeals.  
209 These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by  
210 law in other cases appealed as a matter of right to the Court of Appeals.

211 No appeal shall be taken on behalf of the person whose license or certificate of registration or  
212 qualification was suspended or revoked until the person enters into a proper bond with surety approved  
213 by the trial court in an amount determined by the trial court, not to exceed \$5,000, to observe the motor  
214 vehicle laws of the Commonwealth, including the provisions of this chapter, until final judgment of the  
215 Court of Appeals.

216 § 46.2-1993.79. Appeals to Court of Appeals; bond.

217 Either party may appeal from the decision of the court under § 46.2-1993.78 to the Court of Appeals.  
218 These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by  
219 law in other cases appealed as a matter of right to the Court of Appeals.

220 No appeal shall be taken on behalf of the person whose license or certificate of registration or  
221 qualification was suspended or revoked until the person enters into a proper bond with surety approved  
222 by the trial court in an amount determined by the trial court, not to exceed \$5,000, to observe the motor  
223 vehicle laws of the Commonwealth, including the provisions of this chapter, until final judgment of the  
224 Court of Appeals.