

1 SENATE BILL NO. 1438

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources

4 on January 31, 2023)

5 (Patron Prior to Substitute--Senator Stuart)

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

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

10 **1. That § 3.2-102 of the Code of Virginia is amended and reenacted and that the Code of Virginia is**  
11 **amended by adding in Title 55.1 a chapter numbered 5.1, consisting of sections numbered 55.1-507,**  
12 **55.1-508, and 55.1-509, as follows:**

13 **§ 3.2-102. General powers and duties of the Commissioner.**

14 A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers  
15 and duties herein provided, and such other powers and duties as may be prescribed by law, including those  
16 prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are  
17 carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor  
18 expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the  
19 agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain  
20 programs within the Department including those that promote the development and marketing of the  
21 Commonwealth's agricultural products in domestic and international markets, including promotions,  
22 market development and research, marketing assistance, market information, and product grading and  
23 certification; promote the creation of new agribusiness including new crops, biotechnology and new uses  
24 of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop,  
25 promote, and maintain consumer protection programs that protect the safety and quality of the  
26 Commonwealth's food supply through food and dairy inspection activities, industry and consumer

27 education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal  
28 health and protect the Commonwealth's livestock industries through disease control and surveillance,  
29 maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of  
30 animals; protect public health and the environment through regulation and proper handling of pesticides,  
31 agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant  
32 health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans  
33 and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal  
34 diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to  
35 natural disasters; develop and implement programs and inspection activities to ensure that the  
36 Commonwealth's agricultural products move freely in trade domestically and internationally; and enter  
37 into agreements with federal, state, and local governments, land grant universities, and other organizations  
38 that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.

39 B. In addition, the Commissioner shall:

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

46 2. Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.)  
47 of Title 13.1 as a public instrumentality exercising public and essential governmental functions to  
48 promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in §  
49 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm  
50 wineries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be  
51 composed of the Commissioner and four members appointed by the Board, including one owner or  
52 manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager  
53 is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no

54 more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making  
 55 appointments to the board of directors, the Board shall consider nominations of winery and farm winery  
 56 licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the  
 57 Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to  
 58 him at least annually on its activities, including reporting the quantity of wine distributed for each winery  
 59 and farm winery during the preceding year. The provisions of the Virginia Public Procurement Act shall  
 60 not apply to the establishment of such corporation nor to the exercise of any of its powers granted under  
 61 this section; ~~and~~

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

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

67 CHAPTER 5.1.

68 FOREIGN ENTITIES AND PROPERTY OWNERSHIP.

69 § 55.1-507. Definitions.

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

71 "Agricultural land" means real estate used for an agricultural operation in the Commonwealth.

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

76 "Controlling interest" means either possession of more than 50 percent of the ownership interests  
 77 in an entity or a percentage ownership in an entity of 50 percent or less if such owner directs the business  
 78 and affairs of such entity without the requirement or consent of any other party.

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

80 "Foreign adversary" means any foreign government or nongovernment person determined by the  
81 U.S. 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.

84 "Interest" means any estate, remainder, or reversion, or portion of the estate, remainder, or  
85 reversion, or an option pursuant to which one party has a right to cause legal or equitable title to  
86 agricultural land to be transferred.

87 **§ 55.1-508. Foreign adversary acquisition of agricultural land prohibited.**

88 A. Notwithstanding any other provision of law, on and after January 1, 2023, no foreign adversary  
89 shall acquire or transfer any interest in agricultural land in the Commonwealth.

90 B. This section shall not apply to (i) any interest in agricultural land held by a foreign adversary  
91 prior to January 1, 2023, or (ii) any federally recognized Indian tribe or its government units and  
92 enterprises.

93 C. Any transfer of an interest in land in violation of this section shall be void.

94 D. This section shall not be applied in a manner inconsistent with any provision of any treaty  
95 between the United States and another country.

96 **§ 55.1-509. Reporting requirements.**

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

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

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

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

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

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

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

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