

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 993

An Act to amend and reenact § 3.1-533 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3.1 of Chapter 21 of Title 3.1 a section numbered 3.1-530.10 and in Article 4 of Chapter 21 of Title 3.1 a section numbered 3.1-545.1, relating to milk and milk products; penalty.

[S 674]

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That § 3.1-533 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 3.1 of Chapter 21 of Title 3.1 a section numbered 3.1-530.10 and in Article 4 of Chapter 21 of Title 3.1 a section numbered 3.1-545.1 as follows:

§ 3.1-530.10. Civil penalties.

A. In addition to the penalties prescribed in § 3.1-530.9, any person violating any provision of this article or regulation adopted thereunder may be assessed a civil penalty by the Commissioner for each violation in an amount not to exceed \$1,000; provided, however, that any civil penalty which the Commissioner assesses against a person as a consequence of a positive test for animal-drug residues in milk shall not exceed \$100. Any civil penalty may be in lieu of suspension of a permit issued pursuant to § 3.1-530.1. In determining the amount of any civil penalty, the Commissioner shall give due consideration to (i) the previous violations committed by the person; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with this article or regulation adopted thereunder after notification of the violation. Any civil penalty shall be in addition to any payment which may be required for the wholesale value of all milk and milk products which must be destroyed as a consequence of such violation.

B. A civil penalty may be assessed by the Commissioner only after the Commissioner has given the person charged with a violation an opportunity for a public hearing. Where such a public hearing has been held, the Commissioner shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Commissioner shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Commissioner after the Commissioner determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Civil penalties assessed under this section shall be paid into the general fund of the state treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

D. Final orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

E. Nothing in this section shall require the Commissioner to institute proceedings for the imposition of civil penalties if the Commissioner considers the violations of this article to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing when he believes that the public interest will be served by so doing.

§ 3.1-533. Manipulators of machines to procure certificates; renewal of certificate; revocation by Commissioner.

No inspector of milk or cream, and no person in any milk inspection laboratory, shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition of milk or cream for purposes of inspection without first obtaining a certificate from the Commissioner that he is competent to perform such work. No person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, or other place in this Commonwealth shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition or value of milk or cream, or shall take samples or weigh milk or cream, as a basis for payment in buying or selling, without first obtaining a certificate from the Commissioner that he is competent to perform such work. All such certificates shall be renewed annually without further examination at the discretion of the Commissioner upon application. Unless a person holding a valid tester's, weigher's and sampler's certificate renews said certificate within one year after its expiration date, he shall be required to pass

the applicable examination before a new certificate shall be issued. If any holder of a certificate is notified by the Commissioner, his assistants or agents to correct his use of a Babcock or other centrifugal machine, or his method of sampling or weighing, and such person or holder of a certificate so notified fails to comply with the notice and correct his use of a Babcock or other centrifugal machine, or his methods of sampling or weighing, he shall be deemed guilty of a violation of the provisions of this article, and the Commissioner may forfeit his certificate *or assess a civil penalty as provided in § 3.1-545.1*. No holder of a certificate whose authority to manipulate a Babcock or other centrifugal machine or to sample or weigh milk or cream has been revoked by the Commissioner shall thereafter manipulate in this Commonwealth any centrifugal machine or sample or weigh milk or cream for the purposes herein specified until his certificate has been renewed.

§ 3.1-545.1. Civil penalties.

A. In addition to the penalties prescribed in § 3.1-540 or § 3.1-544, any person violating any provision of this article or regulation adopted thereunder may be assessed a civil penalty by the Commissioner for each violation in an amount not to exceed \$15,000. In determining the amount of any civil penalty, the Commissioner shall give due consideration to (i) the previous violations committed by the person; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with this article or regulation adopted thereunder after notification of the violation. Any civil penalty shall be in addition to any payment which may be required for the wholesale value of all milk and milk products which must be destroyed as a consequence of such violation.

B. A civil penalty may be assessed by the Commissioner only after the Commissioner has given the person charged with a violation an opportunity for a public hearing. Where such a public hearing has been held, the Commissioner shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Commissioner shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Commissioner after the Commissioner determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Civil penalties assessed under this section shall be paid into the general fund of the state treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

D. Final orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

E. Nothing in this section shall require the Commissioner to institute proceedings for the imposition of civil penalties if the Commissioner considers the violations of this article to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing when he believes that the public interest will be served by so doing.