

009228432

SENATE BILL NO. 674

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture
on March 6, 2000)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 3.1-530.9, 3.1-533, 3.1-540, and 3.1-544 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-530.9, 3.1-533, 3.1-540, and 3.1-544 of the Code of Virginia are 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:

§ 3.1-530.9. Penalties.

Any violation of the provisions of this article, or the regulations adopted thereunder, or failure to comply with such provisions or regulations shall be a misdemeanor and punished as provided by law *or may, in lieu thereof, be assessed as a civil penalty, as provided in § 3.1-530.10.* Each day of such failure or violation shall be a separate offense and shall be punished as such.

§ 3.1-530.10. Civil penalties.

A. Any person violating any provision of this article or regulation adopted pursuant to § 3.1-530.1 may be assessed a civil penalty, in lieu of suspension of a permit issued pursuant to § 3.1-530.1, by the Board for each violation in an amount not to exceed the wholesale value of all milk and milk products involved in the violation, including the costs of disposing of the milk and milk products involved in the violation, or up to \$1,000. The Board shall not assess a civil penalty in excess of \$100 to any milk producer whose milk sample tests positive for animal-drug residues if the load of milk containing milk from which the positive sample was taken is destroyed. In determining whether to report the violation for criminal prosecution or to assess a civil penalty, the Board shall give due consideration to (i) 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 any regulation adopted pursuant to § 3.1-530.1 after notification of the violation.

B. 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 which are not contested by persons. The procedures shall include provisions for a person to consent to abatement of the alleged violation and to pay a civil penalty or negotiated sum in lieu of a civil penalty without admission of civil liability arising from such alleged violation.

C. Final orders of the Board may be recorded, enforced and satisfied upon certification of such orders by the secretary of the Board. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

D. Nothing in this article shall be construed as requiring the Board to report for prosecution or to institute proceedings for the imposition of civil penalties where the Board considers the violations of this article to be minor. In such cases, the Board may serve a suitable notice of warning in writing when it believes that the public interest will be best 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.

§ 3.1-540. False manipulation and reading of tests.

Any person who shall by himself or as the officer, servant, agent or employee of any person, firm or corporation, falsely manipulate or underread or overread the Babcock test or any other contrivance used for the purpose of determining the amount of milk fat in milk or cream, or who shall make any false determination of any test or contrivance used for the purpose of determining the amount of milk fat in any dairy products, shall be guilty of a misdemeanor *or may, in lieu thereof, be assessed a civil penalty as provided in § 3.1-545.1*.

§ 3.1-544. Obstructing Commissioner; violations of article.

Any person who shall hinder or obstruct the Commissioner, his assistants or agents in the discharge of the authority or duty imposed upon him or them by this article, and any person, firm or corporation violating any of their provisions shall (i) be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, and costs of prosecution, or by imprisonment in the county or city jail not to exceed ninety days or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court, *or (ii) be assessed, in lieu of criminal sanctions, a civil penalty as provided in § 3.1-545.1*.

§ 3.1-545.1. Civil penalties.

A. Any person violating any provision of this article or regulation adopted thereunder may be assessed a civil penalty by the Board for each violation in an amount not to exceed the wholesale value of all milk and milk products involved in the violation, including the costs of disposing of the milk or milk products involved in the violation, or up to \$15,000. In determining whether to report the violation for criminal prosecution or to assess a civil penalty, the Board shall give due consideration to (i) 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 any regulation adopted pursuant to §§ 3.1-531.1, 3.1-535, or 3.1-535.1 after notification of the violation.

B. 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 uncontested civil penalties that shall include provisions for a person to consent to abatement of the alleged violation and to pay a civil penalty, or in lieu of a civil penalty, to pay a negotiated sum without admission of civil liability arising from such alleged violation.

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

D. Nothing in this article shall be construed as requiring the Board to report for prosecution or to institute proceedings for the imposition of civil penalties where the Board considers the violations of the article to be minor. In such cases, the Board may serve a suitable notice of warning in writing, when it believes that the public interest will be best served by so doing.