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**HOUSE BILL NO. 2186**

Offered January 12, 2011

Prefiled January 12, 2011

*A BILL to amend and reenact § 3.2-5123 of the Code of Virginia, relating to the labeling of Chesapeake Bay crab meat.*

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Patron—Lewis

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

**Be it enacted by the General Assembly of Virginia:****1. That § 3.2-5123 of the Code of Virginia is amended and reenacted as follows:**

§ 3.2-5123. Misbranded food.

A. A food shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.

2. If any word, statement, or other information appearing on the label does not also appear on the outside container or wrapper, if present, of the retail package of such article, or is not easily legible through the outside container or wrapper.

3. If any word, statement, or other information required by this article is not prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

4. Unless its label bears:

a. The common or usual name of the food, if there is any;

b. When the food is fabricated from two or more ingredients, the common or usual name of each ingredient. Spices, flavorings, and colors not required to be certified under section 721 (c) of the federal act, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; and

c. When the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of such fruit or vegetable juice contained in the food.

To the extent that the Commissioner believes that compliance with the requirements of subdivision 4 b is impractical or results in deception or unfair competition, exemptions shall be established by the Commissioner. The requirements of subdivision 4 b shall not apply to any carbonated beverages, ingredients of which have been fully and correctly disclosed to the extent prescribed by subdivision 4 b to the Commissioner in an affidavit.

5. If it is offered for sale under the name of another food.

6. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and immediately thereafter, the name of the food imitated.

7. If its container is made, formed, or filled as to be misleading.

8. If in package form, unless it bears a label containing: (i) the name and place of business of the manufacturer, packer, or distributor; (ii) the name of the article; (iii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (iii) of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board.

9. If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 3.2-5101 unless: (i) it conforms to such definition and standard; and (ii) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

10. If it purports to be or is represented as:

a. A food for which a standard of quality has been prescribed by regulations as provided by § 3.2-5101 and its quality falls below such standard unless its label bears, in such manner and form as regulations specify, a statement that it falls below such standards; or

b. A food for which a standard or standards of fill of container have been prescribed by regulations as provided by § 3.2-5101, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

c. *Chesapeake Bay crab meat, and less than 51 percent of the contents of the container by weight*

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59 *consists of meat from crabs taken from or caught in the Chesapeake Bay or the content is not in*  
60 *compliance with the Department of Health's Regulations for the Repacking of Crab Meat*  
61 *(12VAC5-165-10 et seq.).*

62 11. If it purports to be or is represented for special dietary uses, unless its label bears such  
63 information concerning its vitamin, mineral, and other dietary properties as the Board requires through  
64 regulation to fully inform purchasers as to its value for such uses.

65 12. If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it  
66 bears labeling stating that fact; provided that to the extent that the Commissioner believes that  
67 compliance with the requirements of this subdivision is impracticable, exemptions shall be established by  
68 the Commissioner; provided, that the provisions of this subdivision and of subdivisions 4 and 9 with  
69 respect to artificial colorings shall not apply in the case of butter, cheese or ice cream.

70 13. If it is a food intended for human consumption, it is offered for sale, and its label and labeling  
71 do not comply with the requirements of Section 403 (q) of the federal act pertaining to nutrition  
72 information.

73 14. If it is a food intended for human consumption, it is offered for sale, and its label and labeling  
74 do not comply with the requirements of Section 403 (r) of the federal act pertaining to nutrient content  
75 claims and health claims.

76 B. If an article is alleged to be misbranded because the label is misleading, or if an advertisement is  
77 alleged to be false because it is misleading, then in determining whether the labeling or advertisement is  
78 misleading, there shall be taken into account, among other things, not only representations made or  
79 suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent  
80 to which the labeling or advertisement fails to reveal facts material in the light of such representations  
81 or material with respect to consequences that may result from the use of the article to which the labeling  
82 or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under  
83 such conditions of use as are customary or usual.