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SENATE BILL NO. 221

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 3.2-5120 and 3.2-5130 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 51 of Title 3.2 a section numbered 3.2-5146, relating to cottage food production operations.

Patron—Black

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-5120 and 3.2-5130 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 51 of Title 3.2 a section numbered 3.2-5146 as follows:

§ 3.2-5120. Definitions.

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

"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food.

"Baked good" means an item that is prepared by baking in an oven and does not require time or temperature control after preparation, including a cookie, bread, Danish, donut, pastry, pie, or other item. A baked good does not include a potentially hazardous food item as defined by Board regulations.

"Butter" means the food product generally known as butter, which is made exclusively from milk or cream, or both, with or without common salt, and with or without coloring matter, and containing not less than 80 percent by weight of milk fat, having allowed for all tolerances.

"Contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

"Cottage food production operation" means an individual, operating out of the individual's home, who produces a baked good, a canned jam or jelly not considered to be a low-acid or acidified low-acid food product, or a dried herb or herb mix for sale directly to consumers. A cottage food production operation shall have an annual gross income of \$50,000 or less from the sale of the foods it produces. For purposes of this chapter, "cottage food production operation" does not mean a food manufacturing plant, food storage warehouse, or retail food store.

"Federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. § 301 et seq.).

"Food" means all articles used for food, drink, confectionery, or condiment, for humans or other animals, whether simple, mixed, or compound, and all substances or ingredients used in the preparation thereof.

"Immediate container" does not mean package liners.

"Label" means a display of written, printed, or graphic matter upon the immediate container of any article.

"Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

"Selling of food" means the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; the sale of any such article; and the supplying of any such articles in the conduct of any food establishment.

§ 3.2-5130. Inspections required to operate food establishment.

A. It is unlawful to operate a food manufacturing plant, food storage warehouse, or retail food store until it has been inspected by the Commissioner. This section shall not apply to:

1. Food manufacturing plants operating under a grant of inspection from the Office of Meat and Poultry Services or a permit from the Office of Dairy and Foods in the Department; and Grade A fluid milk manufacturing plants and shellfish and crustacea processing plants operating under a permit from the Virginia Department of Health;

2. Nonprofit organizations holding one-day food sales;

3. Private homes where the resident processes and prepares candies, jams, and jellies not considered to be low-acid or acidified low-acid food products and baked goods that do not require time or temperature control after preparation if such products are: (i) sold to an individual for his own consumption and not for resale; (ii) sold at the private home or at farmers markets; and (iii) labeled "NOT FOR RESALE - PROCESSED AND PREPARED WITHOUT STATE INSPECTION." Nothing

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SB221

59 in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102 Cottage
60 food production operations as defined in § 3.2-5120;

61 4. Private homes where the resident processes and prepares honey produced by his own hives, if: (i)
62 the resident sells less than 250 gallons of honey annually; (ii) the resident does not process and sell
63 other food products in addition to honey, except as allowed by subdivision A 3; (iii) the product
64 complies with the other provisions of this chapter; (iv) the product is labeled "PROCESSED AND
65 PREPARED WITHOUT STATE INSPECTION. WARNING: Do Not Feed Honey to Infants Under One
66 Year Old."; and (v) the resident certifies in writing annually to the Department that he meets the
67 requirements of this subdivision. Nothing in this subdivision shall increase or diminish the authority of
68 the Commissioner under § 3.2-5102; and

69 5. Retail establishments that: (i) do not prepare or serve food; (ii) sell only food or beverages that
70 are sealed in packaging by the manufacturer and have been officially inspected in the manufacturing
71 process; (iii) do not sell infant formulas; (iv) do not sell salvaged foods; and (v) certify to the
72 Department that they meet the provisions of this section. Retail establishments that meet the provisions
73 of this subdivision shall be exempt from inspection and the inspection fees. Nothing in this section shall
74 prevent the Department from inspecting any retail establishment if a consumer complaint is received.

75 B. Any person who violates any provision of this section is guilty of a Class 1 misdemeanor.

76 § 3.2-5146. Cottage food production operations.

77 A. Each food produced by a cottage food production operation as defined in § 3.2-5120 must bear or
78 be accompanied by a label that includes the name and address of the cottage food production operation
79 and the statement "NOT FOR RESALE - PROCESSED AND PREPARED WITHOUT STATE
80 INSPECTION."

81 B. A cottage food production operation may sell its foods only directly to an individual consumer for
82 his own consumption and not for resale or use in commercial food preparation. The food sales of the
83 cottage food production operation shall take place only at the operator's home or at a farmers market.
84 A cottage food production operation shall not sell its foods by mail order or through the Internet.

85 C. No local health department shall regulate the production of food at a cottage food production
86 operation. The local health department and the Board shall maintain a record of each complaint made
87 by a person against a cottage food production operation. Nothing in this section shall create or
88 diminish the authority of the Commissioner under § 3.2-5102.