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HOUSE BILL NO. 1852

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 3.2-5123 and 3.2-5130 of the Code of Virginia, relating to direct sale of home-processed food.

Patron—Orrock

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-5123 and 3.2-5130 of the Code of Virginia are 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 . To the extent that the Commissioner believes that compliance with the requirements of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by the Commissioner. The requirements of this subdivision shall not apply to any carbonated beverages, ingredients of which have been fully and correctly disclosed to the extent prescribed by this subdivision to the Commissioner in an affidavit;

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; and

d. The following statement: "THE FOOD ESTABLISHMENT PROCESSING AND PRODUCING THIS PRODUCT HAS BEEN INSPECTED BY THE VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES."

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

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§ 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.

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

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

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

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

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

§ 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; *a food product, not including meat and dairy products, (i) for sale directly to consumers and (iii) labeled (ii) with an affixed label displaying the name and address of the person preparing the food product, the date the food product was processed, and the statement "NOT FOR RESALE - PROCESSED AND PREPARED WITHOUT STATE INSPECTION."* Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102;

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

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

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