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HOUSE BILL NO. 619

Offered January 13, 2016

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A BILL to amend and reenact §§ 3.2-5101, 3.2-5130, 3.2-5206, 15.2-2288.6, and 28.2-803 of the Code of Virginia, relating to home food operations.

Patrons—Bell, Robert B., Anderson, Cline, Cole, Freitas, Pogge and Ware

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-5101, 3.2-5130, 3.2-5206, 15.2-2288.6, and 28.2-803 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-5101. Board authorized to adopt regulations; exception.

A. Whenever in the judgment of the Commissioner action will promote honesty and fair dealing in the interest of consumers, the Board shall adopt regulations fixing and establishing for any food or class of food: labeling requirements; a reasonable definition and standard of identity; and a reasonable standard of quality and fill of container, or tolerances or limits of variability. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Board shall, for the purpose of promoting honesty and fair dealing in the interest of the consumers, designate the optional ingredients that shall be named on the label. The definitions and standards so adopted may conform so far as practicable to the definitions and standards promulgated by the Secretary of Health and Human Services under authority conferred by Section 401 of the federal act.

B. Any regulations adopted pertaining to this section shall not apply to nonprofit organizations holding one-day food sales. The Commissioner may disseminate to nonprofit organizations educational materials related to the safe preparation of food for human consumption.

C. The provisions of this section and regulations adopted pursuant thereto shall not apply to any food prepared or processed in a private home and curtilage or farm by the resident or owner of the private home and curtilage or farm or his designee, provided that such food is sold directly to the end consumer and labeled with the producer's name, producer's address, and product ingredients and the following disclosure: "NOT FOR RESALE - PROCESSED AND PREPARED WITHOUT STATE INSPECTION."

§ 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~~ *subsection* 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, dried fruits, dry herbs, dry seasonings, dry mixtures, coated and uncoated nuts, vinegars and flavored vinegars, popcorn, popcorn balls, cotton candy, dried pasta, dry baking mixes, roasted coffee, dried tea, cereals, trail mixes, granola, 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; (iii) not offered for sale to be used in or offered for consumption in retail food establishments; (iv) not offered for sale over the Internet or in interstate commerce; and (v) affixed with a label displaying the name, physical address, and telephone number 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" shall be placed on the principal display panel. 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 pickles and other acidified vegetables that have an equilibrium pH value of 4.6 or lower 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; (iii) not offered for sale to be used in or offered for consumption in retail food establishments; (iv) not offered for sale over the Internet or in interstate commerce; (v) affixed with a label displaying the name, physical address, and telephone number of the person preparing the food product, the date the food product was processed, and the statement "NOT FOR RESALE — PROCESSED AND PREPARED WITHOUT~~

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~~STATE INSPECTION" shall be placed on the principal display panel; and (vi) not exceeding $3,000 in gross sales in a calendar year. Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102;~~

~~5.~~ 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 subdivisions 3 and 4;~~, (iii) the product complies with the other provisions of this chapter~~;~~, and (iv) the product is labeled "PROCESSED AND PREPARED WITHOUT STATE INSPECTION. WARNING: Do Not Feed Honey to Infants Under One Year Old." Nothing in this subdivision shall increase or diminish the authority of the Commissioner under § 3.2-5102; ~~and~~

~~6.~~ *4.* 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 subdivision~~.~~*; and*

5. A private home and curtilage or farm where the resident or owner or his designee processes or prepares any food, except as described in subdivision 3, provided that such food is sold directly to the end consumer and labeled with the producer's name, producer's address, and product ingredients and the following disclosure: "NOT FOR RESALE - PROCESSED AND PREPARED WITHOUT STATE INSPECTION."

B. Nonprofit organizations, private homes *and curtilage or farms*, and retail establishments that qualify for an exception under subsection A shall be exempt from inspection and the inspection fees. Nothing in this section shall prevent the Department from inspecting any nonprofit organization, private home *and curtilage or farm*, or retail establishment if a consumer complaint is received.

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

§ 3.2-5206. Board authorized to establish standards and adopt regulations; guidance of State Health Commissioner.

A. The Board is authorized to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, market milk, market milk products, and those products manufactured or sold in semblance to or as substitutes for milk, milk products, market milk, market milk products. Regulations concerning the processing and distributing of Grade A market milk and Grade A market milk products shall be adopted with the advice and guidance of the State Health Commissioner. The Board shall adopt regulations for the issuance of the permits referred to in § 3.2-5208. The Board may require permits in addition to those prescribed by the terms of this article, and shall adopt regulations concerning the conditions under which any additional permits shall be issued.

B. In adopting any regulation pursuant to this section, the Board may adopt by reference:

1. Any regulation or part thereof under federal law that pertains to milk or milk products, amending the federal regulation as necessary for intrastate application.

2. Any model ordinance or regulation issued under federal law, including the Pasteurized Milk Ordinance (Public Health Service/Food and Drug Administration Publication Number 229) and the U.S. Department of Agriculture's Milk for Manufacturing Purposes and its Production and Processing Recommended Requirements (hereafter the USDA Recommended Requirements), amending it as necessary for intrastate application and to: (i) require milk on each dairy farm to be cooled and stored at a temperature of 40 degrees Fahrenheit or less, but not frozen; (ii) require the use of recording thermometers and interval timers on every milk storage tank installed on a permitted Grade A milk dairy farm; (iii) specify the design, fabrication, installation, inspection, and record keeping necessary for the proper use of such thermometers and timers; (iv) establish a definition for small-scale processors of cheese under the dairy plant processing requirements contained in the USDA Recommended Requirements; and (v) create exemptions for small-scale processors of cheese from the USDA Recommended Requirements regarding processing requirements for dairy plants, provided such exemptions do not compromise food safety.

3. Any reference, standard, or part thereof relating to milk, milk products, or milk production published by the American Society of Agricultural Engineers, the American Public Health Association, the American Society of Mechanical Engineers, or the International Association of Food Protection.

4. Any method of analysis relating to milk or milk products including any method of analysis published by the United States Public Health Service, the Association of Official Analytical Chemists, or the American Public Health Association.

C. Any regulation adopted pursuant to this section shall, unless a later effective date is specified in the regulation, be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption of any regulation pursuant to this section. Prior to adopting any

regulation pursuant to this section, the Board shall publish a notice of opportunity to comment in the Virginia Register of Regulations. The notice of opportunity to comment shall contain: (i) a summary of the proposed regulation; (ii) instructions on how to obtain the complete text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. The notice of opportunity to comment shall be made at least 90 days in advance of the last date prescribed in the notice for submittals of public comment. The legislative review provisions of § 2.2-4014 shall apply to the promulgation or final adoption process of regulations under this section. The Board shall consider and keep on file all public comments received for any regulation adopted pursuant to this section.

D. Notwithstanding the provisions of subsections B and C, any permits that may be issued or regulations that may be adopted for the sale or manufacture of cheese from milk from any species not required to be permitted or regulated in intrastate commerce prior to July 1, 2001, under this article, shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such regulations or permits apply to persons who manufacture less than 1,000 pounds of such cheese annually.

E. The provisions of this chapter and regulations adopted pursuant thereto that apply to milk or any food made from milk shall not apply to milk or food made from milk that is processed or prepared in a private home and curtilage or farm by the resident or owner of the private home and curtilage or farm or his designee, provided that such food is sold directly to the end consumer and labeled with the producer's name, producer's address, and product ingredients and the following disclosure: "NOT FOR RESALE - PROCESSED AND PREPARED WITHOUT STATE INSPECTION."

§ 15.2-2288.6. Agricultural operations; local regulation of certain activities.

A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public:

1. Agritourism activities as defined in § 3.2-6400;

2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation; *or*

3. ~~The preparation, processing, or sale of food products in compliance with subdivisions A 3, 4, and 5 of § 3.2-5130 or related state laws and regulations; or~~

~~4.~~ Other activities or events that are usual and customary at Virginia agricultural operations.

Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.

B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.

C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.

D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2 (§ 4.1-200 et seq.) of Title 4.1. Nothing in this section shall be construed to affect the provisions of Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to alter the provisions of § 15.2-2288.3, or to restrict the authority of any locality under Title 58.1.

§ 28.2-803. Examination, analysis and inspection.

A. The State Health Commissioner may in his discretion, or shall at the request of the Governor, the Marine Resources Commission, or the Commissioner of Marine Resources, conduct an examination or analysis of crustacea, finfish and shellfish, whether on the planting grounds, in an establishment, or in any other place in this Commonwealth, from which the products are to be taken or sold for food purposes.

B. The State Health Commissioner in making such examination may analyze the water and bottom sediment in and adjacent to the crustacea, finfish, or shellfish growing areas for evidence of pollution, and he may survey the sanitary conditions and pollution hazards adjacent to shellfish growing areas, both in the water and on shore.

C. The State Health Commissioner in conducting his analysis shall examine the establishments in which crustacea, finfish and shellfish are handled and the sanitary conditions surrounding the establishment, *except that no such examination shall occur in a private home and curtilage or farm exempted from Board of Agriculture and Consumer Services regulations as provided under subsection C of § 3.2-5101.* At that time, he may analyze the crustacea, finfish and shellfish in the establishment.