

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 574

An Act to amend the Code of Virginia by adding in Title 3.2 a chapter numbered 51.1, consisting of sections numbered 3.2-5146 through 3.2-5156, relating to produce safety; civil penalty.

[S 1195]

Approved March 16, 2017

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 3.2 a chapter numbered 51.1, consisting of sections numbered 3.2-5146 through 3.2-5156, as follows:

CHAPTER 51.1.

PRODUCE SAFETY.

§ 3.2-5146. Covered produce; exclusion; exemption.

A. As used in this chapter, unless the context requires a different meaning, "covered produce" means food that is produce within the meaning of 21 C.F.R. Part 112 and that is a raw agricultural commodity, as defined in 21 C.F.R. § 112.3(c), unless excluded under subsection C or exempted under subsection D.

B. "Covered produce" includes all of the following:

1. Fruits and vegetables such as almonds, apples, apricots, apriums, artichokes-globe-type, Asian pears, avocados, babacos, bananas, Belgian endive, blackberries, blueberries, boysenberries, brazil nuts, broad beans, broccoli, brussels sprouts, burdock, cabbages, Chinese cabbages (bok choy, mustard, and Napa), cantaloupes, carambolas, carrots, cauliflower, celeriac, celery, chayote fruit, cherries (sweet), chestnuts, chicory (roots and tops), citrus (such as clementine, grapefruit, lemons, limes, mandarin, oranges, tangerines, tangors, and uni fruit), cowpea beans, cress-garden, cucumbers, curly endive, currants, dandelion leaves, fennel-Florence, garlic, genip, gooseberries, grapes, green beans, guavas, herbs (such as basil, chives, cilantro, oregano, and parsley), honeydew, huckleberries, Jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leek, lettuce, lychees, macadamia nuts, mangos, other melons (such as Canary, Crenshaw, and Persian), mulberries, mushrooms, mustard greens, nectarines, onions, papayas, parsnips, passion fruit, peaches, pears, peas, peas-pigeon, peppers (such as bell and hot), pine nuts, pineapples, plantains, plums, plumcots, quince, radishes, raspberries, rhubarb, rutabagas, scallions, shallots, snow peas, soursop, spinach, sprouts (such as alfalfa and mung bean), strawberries, summer squash (such as patty pan, yellow, and zucchini), sweetsop, Swiss chard, taro, tomatoes, turmeric, turnips (roots and tops), walnuts, watercress, watermelons, and yams; and

2. A mix of intact fruits and vegetables, such as a fruit basket.

C. "Covered produce" does not include:

1. Produce that is rarely consumed raw, specifically the produce on the following exhaustive list: asparagus; beans, black; beans, great Northern; beans, kidney; beans, lima; beans, navy; beans, pinto; beets, garden (roots and tops); beets, sugar; cashews; cherries, sour; chickpeas; cocoa beans; coffee beans; collards; corn, sweet; cranberries; dates; dill (seeds and weed); eggplants; figs; ginger; hazelnuts; horseradish; lentils; okra; peanuts; pecans; peppermint; potatoes; pumpkins; squash, winter; sweet potatoes; and water chestnuts;

2. Produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management; or

3. Produce that is not a raw agricultural commodity, as defined in 21 C.F.R. § 112.3(c).

D. Produce is eligible for exemption from the requirements of this chapter under the following conditions:

1. The produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance;

2. The covered farm discloses in documents accompanying the produce, in accordance with the practice of the trade, that the food is "not processed to adequately reduce the presence of microorganisms of public health significance";

3. The covered farm complies with the requirements of 21 C.F.R. § 112.2(b)(3);

4. The covered farm complies with the requirements of 21 C.F.R. § 112.2(b)(4);

5. The requirements of 21 C.F.R. § 112 Subpart A and Subpart Q apply to such produce; and

6. An entity that provides a written assurance under 21 C.F.R. § 112.2(b)(3)(i) or (ii) acts consistently with the assurance and documents its actions taken to satisfy the written assurance.

§ 3.2-5147. Covered farm; exemption.

A. Except as provided in subsection B, a farm, as defined in 21 C.F.R. § 112.3(c), or farm mixed-type facility, as defined in 21 C.F.R. § 112.3(c), with an average annual monetary value of produce, as defined in 21 C.F.R. § 112.3(c), sold during the previous three-year period of more than \$25,000 on a

rolling basis, adjusted for inflation using 2011 as the baseline year for calculating the adjustment, is a "covered farm" as used in this chapter, unless the context requires a different meaning. A covered farm shall comply with all applicable requirements of 21 C.F.R. Part 21, this chapter, or any provision of a regulation of the Board adopted pursuant to § 3.2-5148 when conducting a covered activity, as defined in 21 C.F.R. § 112.3(c), on covered produce.

B. A farm is not subject to this chapter if it satisfies the requirements in 21 C.F.R. § 112.5, and the U.S. Food and Drug Administration has not withdrawn the farm's exemption in accordance with the requirements of 21 C.F.R. § 112 Subpart R.

C. A farm is eligible for a qualified exemption and associated modified requirements in a calendar year if:

1. During the previous three-year period preceding the applicable calendar year, the average annual monetary value of the food, as defined in 21 C.F.R. § 112.3(c), the farm sold directly to qualified end-users, as defined in 21 C.F.R. § 112.3(c), during such period exceeded the average annual monetary value of the food the farm sold to all other buyers during that period; and

2. The average annual monetary value of all food, as defined in 21 C.F.R. § 112.3(c), the farm sold during the three-year period preceding the applicable calendar year was less than \$500,000, adjusted for inflation, using 2011 as the baseline year for calculating the adjustment for inflation.

D. If a farm is eligible for a qualified exemption in accordance with 21 C.F.R. § 112.5, the farm is subject to the requirements of 21 C.F.R. § 112 Subparts A, O, Q, and R.

E. If a farm is eligible for a qualified exemption in accordance with 21 C.F.R. § 112.5, the farm is subject to the modified requirements established in 21 C.F.R. § 112.6(b).

§ 3.2-5148. Regulations.

The Board may adopt, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), regulations necessary or convenient to carry out the purposes of this chapter.

§ 3.2-5149. Commissioner to have access to certain farms.

The Commissioner shall have access only at reasonable hours to any covered farm or any farm eligible for a qualified exemption in accordance with 21 C.F.R. § 112.5 for the purpose of (i) inspecting such farm to determine if any provision of this chapter or 21 C.F.R. Part 112 is being violated and (ii) securing samples or specimens to determine if any provision of this chapter or 21 C.F.R. Part 112 is being violated. The Commissioner shall make or cause to be made examinations of samples or specimens secured pursuant to this section to determine whether any provision of this chapter or 21 C.F.R. Part 112 is being violated.

§ 3.2-5150. Authority to seize covered produce.

If the Commissioner believes any covered produce on a covered farm that is being grown, kept, or exposed for sale or held in possession or under the control of any person to be in violation of any provision of 21 C.F.R. Part 112, this chapter, or regulations of the Board adopted pursuant to § 3.2-5148, the Commissioner is authorized to seize or take possession of such covered produce.

§ 3.2-5151. Authority to condemn or destroy covered produce.

A. If the Commissioner believes any covered produce on a covered farm that is being grown, kept, or exposed for sale or held in possession or under the control of any person to be in violation of any provision of 21 C.F.R. Part 112, this chapter, or regulations of the Board adopted pursuant to § 3.2-5148, the Commissioner is authorized to condemn, destroy, or require the destruction of such covered produce.

B. Prior to condemning, destroying, or requiring the destruction of covered produce pursuant to subsection A, the Commissioner shall seize the covered produce in accordance with § 3.2-5150 and either:

1. Secure written agreement to the condemnation or destruction, on a form to be provided by the Commissioner, from the person from whom the covered produce was seized; or
2. Make complaint before a magistrate pursuant to § 3.2-5152.

§ 3.2-5152. Proceeding for condemnation or destruction.

If unable to secure the written agreement to the condemnation or destruction in accordance with subdivision B 1 of § 3.2-5151, the Commissioner shall make complaint before a magistrate, or other officer authorized to issue summons, having jurisdiction where the covered produce was seized. The magistrate or other officer shall issue his summons to the person from whom the covered produce was seized, directing him to appear before an appropriate court in such jurisdiction not less than six nor more than 12 days from the date of issuing the summons and show cause why the covered produce should not be condemned or destroyed. If the person from whom the covered produce was seized cannot be found, then the summons shall be served upon the person then in possession of the covered produce. The summons shall be served at least six days before the time of appearance mentioned therein. If the person from whom the covered produce was seized cannot be found, and no one can be found in possession of the covered produce, and the defendant does not appear on the return day, then an appropriate court shall proceed in the cause in the same manner as where a writ of attachment is returned not personally served upon any of the defendants and none of the defendants appears upon the return day.

§ 3.2-5153. Judgment as to covered produce to be condemned or destroyed; procedure before an appropriate court; appeal; proceeds.

A. Unless otherwise shown or if the covered produce to be condemned or destroyed pursuant to § 3.2-5151 is found upon trial to be in violation of any provision of 21 C.F.R. Part 112, this chapter, or regulations of the Board adopted pursuant to § 3.2-5148, it shall be the duty of the general district court to render judgment that the covered produce be forfeited to the Commonwealth and that the goods be destroyed or sold by the Commissioner for any purpose other than to be used for food, as defined in § 3.2-5129. The mode of procedure before the general district court shall be the same, as near as may be in civil proceedings. Either party may appeal to the circuit court as appeals are taken from the general district court, but it shall not be necessary for the Commonwealth to give any appeal bond.

B. The proceeds arising from any sale ordered pursuant to subsection A shall be disposed of in accordance with § 19.2-386.14.

§ 3.2-5154. Violations.

No covered farm or farm eligible for a qualified exemption in accordance with 21 C.F.R. § 112.5 shall violate any provision of 21 C.F.R. Part 112 or any provision of a regulation of the Board adopted pursuant to § 3.2-5148.

§ 3.2-5155. Impeding Commissioner.

No person shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the Commissioner, an inspector, or any other person in the performance of his duty in connection with this chapter.

§ 3.2-5156. Civil penalty.

Any person who violates any provision of this chapter or regulation of the Board adopted pursuant to § 3.2-5148 is subject to a civil penalty in an amount not to exceed \$1,000 per violation. In determining the amount of any civil penalty, the Board shall give due consideration to (i) the history of the person's previous violations, (ii) the seriousness of the violation, and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with this chapter after being notified of the violation. Such penalty shall be collected by the Commissioner and the proceeds shall be deposited into the state treasury and credited to the Virginia Natural Resources Commitment Fund created pursuant to § 10.1-2128.1.

2. That Chapter 51.1 (§ 3.2-5146 et seq.) of Title 3.2 of the Code of Virginia, as created by this act, shall expire upon the effective date of the repeal of 21 C.F.R. Part 112 or on July 1, 2022, whichever occurs sooner.

3. That any exemption to the requirements of 21 C.F.R. Part 112 as established in 21 C.F.R. Part 112 also shall apply to Chapter 51.1 (§ 3.2-5146 et seq.) of Title 3.2 of the Code of Virginia, as created by this act.

4. That Chapter 51.1 (§ 3.2-5146 et seq.) of Title 3.2 of the Code of Virginia, as created by this act, shall expire if the federal government declines to award funds to the Commonwealth to implement the provisions of federal law embodied in this act or the federal funds awarded are exhausted, whichever is later.