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HOUSE BILL NO. 2030

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact §§ 3.2-5101, 3.2-5130, 3.2-5206, and 15.2-2288.6 of the Code of Virginia, relating to food sales directly to consumers.

Patrons—Freitas and Marshall, R.G.

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, and 15.2-2288.6 of the Code of Virginia are amended and reenacted as follows:

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

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~~:

1. *Nonprofit organizations holding one-day food sales; or*

2. *Producers selling food by face-to-face sales directly to end consumers in Virginia at farmers markets or through farm-based or home-based sales. Food sold by such transaction shall be intended only for home consumption and shall contain no uninspected meat other than poultry. The producer shall inform the end consumer that the food is not certified, regulated, or inspected. Nothing in this subsection shall be construed to allow food so sold, except for raw, unprocessed fruits or vegetables, to be used in any food establishment or food processing plant.*

Nothing in this subsection shall be construed to restrict the Department in any investigation of foodborne disease or outbreak. The Commissioner may disseminate to such nonprofit organizations and food producers educational materials related to the safe preparation of food for human consumption.

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

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; 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,

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59 and telephone number of the person preparing the food product, the date the food product was
60 processed, and the statement "NOT FOR RESALE — PROCESSED AND PREPARED WITHOUT
61 STATE INSPECTION" shall be placed on the principal display panel; and (vi) not exceeding \$3,000 in
62 gross sales in a calendar year. Nothing in this subdivision shall create or diminish the authority of the
63 Commissioner under § 3.2-5102;

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

71 6. *Producers selling food by face-to-face sales directly to end consumers in Virginia at farmers*
72 *markets or through farm-based or home-based sales. Food sold by such transaction shall be intended*
73 *only for home consumption and shall contain no uninspected meat other than poultry. The producer*
74 *shall inform the end consumer that the food is not certified, regulated, or inspected. Nothing in this*
75 *subsection shall be construed to allow food so sold, except for raw, unprocessed fruits or vegetables, to*
76 *be used in any food establishment or food processing plant.*

77 4. Retail establishments that (i) do not prepare or serve food; (ii) sell only food or beverages that are
78 sealed in packaging by the manufacturer and have been officially inspected in the manufacturing
79 process; (iii) do not sell infant formulas; (iv) do not sell salvaged foods; and (v) certify to the
80 Department that they meet the provisions of this subdivision.

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

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

86 **§ 3.2-5206. Board authorized to establish standards and adopt regulations; guidance of State**
87 **Health Commissioner.**

88 A. The Board is authorized to establish definitions, standards of quality and identity, and to adopt
89 and enforce regulations dealing with the issuance of permits, production, importation, processing,
90 grading, labeling, and sanitary standards for milk, milk products, market milk, market milk products, and
91 those products manufactured or sold in semblance to or as substitutes for milk, milk products, market
92 milk, market milk products. Regulations concerning the processing and distributing of Grade A market
93 milk and Grade A market milk products shall be adopted with the advice and guidance of the State
94 Health Commissioner. The Board shall adopt regulations for the issuance of the permits referred to in
95 § 3.2-5208. The Board may require permits in addition to those prescribed by the terms of this article,
96 and shall adopt regulations concerning the conditions under which any additional permits shall be issued.

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

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

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

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

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

119 C. Any regulation adopted pursuant to this section shall, unless a later effective date is specified in
120 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. *No provision of this chapter or regulation adopted pursuant thereto that applies to milk or any food made from milk shall apply to milk or any food made from milk that is processed or prepared by a private home or a farm that qualifies for an exception under subdivision A 3 of § 3.2-5130.*

§ 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;
3. The preparation, processing, or sale of food products in compliance with ~~subdivisions A 3, 4, and 5~~ *subdivision A 3 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.