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HOUSE BILL NO. 2368

Offered January 16, 2017

A *BILL to amend and reenact § 3.2-5206 of the Code of Virginia, relating to milk production requirements; exemptions.*

Patron—Morris

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 3.2-5206 of the Code of Virginia is amended and reenacted as follows:****§ 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

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

64 *E. No provision of Chapter 32 (§ 3.2-3200 et seq.) or this chapter or any regulation adopted*
65 *pursuant thereto shall apply to any person who owns no more than three milking cows or three goats,*
66 *as long as the milk produced from such animals is sold directly to consumers and is labeled with the*
67 *owner's name and address and the following disclosure on the container label: "NOT FOR RESALE -*
68 *PROCESSED AND PREPARED WITHOUT STATE INSPECTION. CONSUME AT YOUR OWN RISK."*