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SENATE BILL NO. 1195

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 3.2 an article numbered 4, consisting of a section numbered 3.2-116, and by adding in Title 3.2 a chapter numbered 51.1, consisting of sections numbered 3.2-5146 through 3.2-5153, relating to produce safety; Agriculture Civil Penalty Fund; penalties.

Patron—Stuart

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 3.2 an article numbered 4, consisting of a section numbered 3.2-116, and by adding in Title 3.2 a chapter numbered 51.1, consisting of sections numbered 3.2-5146 through 3.2-5153, as follows:

*Article 4.**Agriculture Civil Penalty Fund.***§ 3.2-116. Agriculture Civil Penalty Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Agriculture Civil Penalty Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All civil penalties collected pursuant to § 3.2-5153 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of carrying out the Department's responsibilities under this title. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner or his designee.

CHAPTER 51.1.**PRODUCE SAFETY.****§ 3.2-5146. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Covered produce" refers to the harvestable or harvested part of the crop and means produce that is subject to the requirements of 21 C.F.R. Part 112, as provided in 21 C.F.R. § 112.1 and 21 C.F.R. § 112.2.

"Farm" means an operation subject to the requirements of 21 C.F.R. Part 112.

§ 3.2-5147. 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.

§ 3.2-5148. Commissioner to have access to certain farms.

The Commissioner shall have free access at all reasonable hours to any farm 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 or not any provision of this chapter or 21 C.F.R. Part 112 is being violated.

§ 3.2-5149. Authority to seize covered produce; analysis; disposition of remainder.

The Commissioner is authorized at all times to seize, take possession of, condemn, destroy, or require the destruction of any covered produce on a farm that is being grown, kept, or exposed for sale or held in possession or under the control of any person and that the Commissioner believes to be in violation of any provision of 21 C.F.R. Part 112, this chapter, or regulations of the Board adopted pursuant to § 3.2-5147.

§ 3.2-5150. Adulterated produce.

No farm shall violate any provision of 21 C.F.R. Part 112 or any provision of a regulation of the Board adopted pursuant to § 3.2-5147.

§ 3.2-5151. Impeding Commissioner; penalty.

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. A person who violates this section is guilty of a Class 2 misdemeanor.

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59 § 3.2-5152. Penalty for violation.

60 Notwithstanding the provisions of § 3.2-5151, any person who violates any provision of this chapter
61 or regulation of the Board adopted pursuant to § 3.2-5147 is guilty of a Class 1 misdemeanor.

62 § 3.2-5153. Civil penalty.

63 In lieu of any criminal penalty established pursuant to § 3.2-5151 or 3.2-5152, the Board may assess
64 a civil penalty in an amount not to exceed \$1,000 per violation. In determining the amount of any civil
65 penalty, the Board shall give due consideration to (i) the history of the person's previous violations, (ii)
66 the seriousness of the violation, and (iii) the demonstrated good faith of the person charged in
67 attempting to achieve compliance with this chapter after being notified of the violation. Such civil
68 penalties shall be deposited into the Agriculture Civil Penalty Fund established in § 3.2-116.