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## HOUSE BILL NO. 2743

Offered January 21, 1999

A BILL to amend and reenact §§ 3.1-381, 3.1-383, 3.1-384, 3.1-385, 3.1-385.7, 3.1-388.1, 3.1-390, 3.1-407, 3.1-416, and 3.1-418 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 20 of Title 3.1 sections numbered 3.1-419.1, 3.1-419.2, and 3.1-419.3, relating to food and drink; penalties.

Patrons—Hall, Armstrong, Bennett, Bloxom, Councill, Deeds, Hamilton, Hull, Ingram, Johnson, McEachin, Shuler and Stump; Senators: Bolling, Hanger, Hawkins, Martin, Ticer, Watkins, Whipple and Woods

Referred to Committee on Agriculture

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 3.1-381, 3.1-383, 3.1-384, 3.1-385, 3.1-385.7, 3.1-388.1, 3.1-390, 3.1-407, 3.1-416, and 3.1-418 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 4 of Chapter 20 of Title 3.1 sections numbered 3.1-419.1, 3.1-419.2, and 3.1-419.3 as follows:

§ 3.1-381. Penalty for violation of preceding sections.

Any person, firm, corporation or association violating any of the provisions of the preceding sections of this article shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$300. *In lieu of the penalty prescribed in this section, a civil penalty may be assessed, as provided in § 3.1-419.1.*

§ 3.1-383. Food forbidden to be sold; seizure; prosecution and punishment; inspection.

It shall be unlawful for any person, firm or corporation to sell or to offer or expose for sale for human food any article which has been prepared, handled or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious, or otherwise unfit for human food, or which consists in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter.

The Commissioner, his agents or assistants, and all peace and health officers shall have the power and are required to seize any and all articles which are offered or exposed for sale for human food, which have been prepared, handled or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious or otherwise unfit for human food, or which consist in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter; and shall deliver the same forthwith to and before the nearest justice of the peace, or other officer authorized to issue such warrants, together with all information obtained, and the justice or other officer shall, upon sworn complaint being filed, issue a warrant, for the arrest of any person charged in any such complaint with a violation of the provisions of this section, returnable before the trial justice of the city or county, who shall proceed to try the case. Any person, firm or corporation who shall violate any of the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$10 nor more than \$100, and the article or articles of food in question shall be destroyed. *In lieu of the penalty prescribed in this section, a civil penalty may be assessed, as provided in § 3.1-419.1.*

The Commissioner, his agents or assistants, and all peace and health officers in the execution of the provisions of this section, shall have full right to enter and inspect all places in which any articles of human food are stored, offered or exposed for sale; and any person, firm or corporation who shall hinder or obstruct any of the officers in the discharge of the authority or duty imposed by the provisions of this section shall be guilty of a violation of the same.

§ 3.1-384. Selling unsound provisions, how punished.

If any person knowingly sell any diseased, corrupted, or unwholesome food, whether meat or drink, intended for human consumption, without making the same known to the buyer, he shall be fined not exceeding \$100 or confined in jail not exceeding six months, or both. *In lieu of the penalty prescribed in this section, a civil penalty may be assessed, as provided in § 3.1-419.1.* The meat of any animal which has developed the disease of actinomycosis or lumpy jaw shall be deemed diseased, corrupted, and unwholesome and within the provisions of this section.

§ 3.1-385. Transportation or storage under insanitary conditions.

It shall be unlawful for any person, firm or corporation, or for any transportation company, express company, railroad company or steamboat company or any common carrier to permit insanitary conditions to exist in the transportation or storage of an article of food, whereby such article of food may become contaminated from being so transported or stored in insanitary surroundings.

Any person, firm or corporation who shall violate any of the provisions of this section shall be guilty

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60 of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$5 nor more than  
61 \$100, and costs of prosecution, or by imprisonment in the county or city jail not to exceed ninety days,  
62 or until such fine and costs are paid, or by both fine and imprisonment at the discretion of the court. *In*  
63 *lieu of the penalty prescribed in this section, a civil penalty may be assessed, as provided in*  
64 *§ 3.1-419.1.*

65 The Commissioner is charged with the enforcement of this section, and he and his assistants or  
66 agents shall have full right to enter and inspect all stores, warehouses, freight or express cars,  
67 steamboats or steamships, trucks, dray wagons, and any and all means or places of transportation or  
68 storage of articles of food; and any person, firm or corporation who shall hinder or obstruct the  
69 Commissioner, his assistants or agents in the discharge of the authority or duty imposed upon him or  
70 them by the provisions of this section, shall be guilty of a violation of the same.

71 Whenever any article of food is transported or stored under insanitary conditions, the proceedings for  
72 the enforcement of the penalties and punishments fixed for violations of this section may be instituted  
73 and maintained in any county or city through which or in which such article of food has been or is so  
74 transported or stored under insanitary conditions as aforesaid.

75 § 3.1-385.7. Violations and penalties; applicability; exclusion.

76 A. Any food or agricultural product that is labeled or represented in connection with a commercial  
77 transaction to be organic, but which fails to satisfy the requirements of § 3.1-385.2 shall be deemed to  
78 be misbranded pursuant to the provisions of § 3.1-396. Any food or agricultural product that is not  
79 labeled properly pursuant to the provisions of § 3.1-385.3 shall also be deemed to be misbranded.

80 B. Any person who is found guilty of willfully misbranding pursuant to this section shall be guilty of  
81 a Class 1 misdemeanor, *and may, in lieu thereof, be assessed a civil penalty, as provided in § 3.1-419.1.*

82 C. The good faith reliance upon any label or representation made by any person concerning the  
83 organic nature of food or agricultural products shall be a defense to any criminal action brought  
84 pursuant to the provisions of this section, or to any civil action brought hereunder.

85 D. The provisions of Chapter 20 (§ 3.1-361 et seq.) of this title shall apply to this article, mutatis  
86 mutandis.

87 § 3.1-388.1. Removal of certain labels from meat packaging prohibited; penalty.

88 If any person holding or offering for retail sale any meat, poultry or seafood in packaged form  
89 affixes to such food a label containing a date by which such food is to be sold, it shall be unlawful to  
90 willfully remove, alter, mutilate, destroy, or obscure the dated portion of the label on the package,  
91 unless the dated portion of the label is removed in connection with the repackaging of such food, or to  
92 correct bona fide typographical errors. If the dated portion of the label is removed and a replacement  
93 label is attached when such food is repackaged, the replacement label shall bear the original date by  
94 which the food is to be sold or an earlier date. Any person who violates any provision of this section  
95 shall be guilty of a Class 3 misdemeanor, *and may, in lieu thereof, be assessed a civil penalty, as*  
96 *provided in § 3.1-419.1.*

97 This section shall not apply to meat, poultry and seafood that is canned or cured.

98 § 3.1-390. Penalties; exceptions as to certain persons.

99 (a) A. Any person who violates any of the provisions of § 3.1-388 shall be guilty of a misdemeanor  
100 and shall on conviction thereof be punished in the manner provided by law for the punishment of  
101 misdemeanors. Provided, however, that no wholesale or retail merchant who purchases food or drink in  
102 a closed container from a reputable manufacturer shall be found guilty under this section unless such  
103 person knowingly violated the provisions of § 3.1-388. *In lieu of the penalty prescribed in this section, a*  
104 *civil penalty may be assessed, as provided in § 3.1-419.1.*

105 (b) B. No person shall be subject to the penalties of subsection (a) of this section A, for having  
106 violated subsections (a) or (c) of § 3.1-388 if he establishes a guaranty or undertaking signed by, and  
107 containing the name and address of, the person residing, or having a place of business, or an agent or  
108 representative on whom process may be served, in the Commonwealth, from or through whom he  
109 received in good faith any food, to the effect that such food is not adulterated or misbranded within the  
110 meaning of this article, designating this article.

111 (c) C. No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an  
112 advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false  
113 advertisement relates, shall be liable under this section by reason of the dissemination by him of such  
114 false advertisement, unless he has refused, on the request of the Commissioner to furnish the name and  
115 post-office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the  
116 State who caused him to disseminate such advertisement.

117 § 3.1-407. Failure to obey such notice and warning a misdemeanor.

118 Any person owning or operating any bakery, confectionery or ice cream plant, or any place where  
119 any food or drink products are manufactured, stored, deposited or sold, failing to obey such notice and  
120 warning, or permitting filthy or unsanitary conditions to exist after a notice of previous violation has  
121 been issued, provided the violation occurred within ninety days after notice and warning has been

issued, shall be guilty of a misdemeanor. *In lieu of the penalty prescribed in this section, a civil penalty may be assessed, as provided in § 3.1-419.1.*

§ 3.1-416. Punishment for hindering Commissioner.

Any person who shall willfully hinder or obstruct the Commissioner, or other persons or assistants by him duly authorized, in the exercise of the powers conferred upon him by this chapter, shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not less than \$10 nor more than \$100, or by imprisonment in the county or city jail for not less than ten days nor more than ninety days, or both such fine and imprisonment in the discretion of the court. *In lieu of the penalty prescribed in this section, a civil penalty may be assessed, as provided in § 3.1-419.1.*

§ 3.1-418. Punishment for failure to comply with requirements of title.

Any manufacturer, dealer or person who refuses to comply upon demand with the requirements of Chapters 20 (§ 3.1-361 et seq.), 21 (§ 3.1-420 et seq.), 30 (§ 3.1-867 et seq.), and 33 (§ 3.1-907 et seq.) of this title or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist inspector or other person in the performance of his duty in connection with such chapters, shall be guilty of a misdemeanor, and, unless otherwise specified, upon conviction be fined not less than \$10 nor more than \$100, or be imprisoned not more than 100 days, or both, in the discretion of the court; and such fines, less the legal costs, shall be paid into the state treasury. *In lieu of the penalties prescribed in this section, a civil penalty may be assessed, as provided in § 3.1-419.1.*

§ 3.1-419.1. Civil penalties.

A. Any person violating any provision of this chapter or regulations promulgated thereunder may be assessed a civil penalty by the Commissioner in an amount not to exceed \$1,000 per violation. In deciding whether to assess a civil penalty or pursue criminal prosecution and in determining the amount of any civil penalty, the Commissioner shall give due consideration to (i) the history of previous violations of the person, (ii) the seriousness of the violation, and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with the chapter after notification of the violation.

B. Civil penalties assessed under this section shall be paid into the Food Safety Fund as established by § 3.1-419.2. The Commissioner shall prescribe procedures for payment of uncontested penalties. The procedures shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

C. Final orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 3.1-419.2. Food Safety Fund established; purpose.

There is hereby established in the state treasury a special fund to be designated the "Food Safety Fund." This Fund shall consist of civil penalties assessed pursuant to this chapter, and any gifts, grants, fees and contributions which are specifically designated for inclusion in the Fund. The income and principal of this Fund shall be used only for the purposes of administering and enforcing this chapter.

§ 3.1-419.3. Warning instead of report of violation.

Nothing in this chapter shall be construed as requiring the Commissioner to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.