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HOUSE BILL NO. 2048

Offered January 12, 2011

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A *BILL to amend the Code of Virginia by adding in Title 3.2 a chapter numbered 55.2, consisting of sections numbered 3.2-5517 through 3.2-5533, relating to the manufacture and sale of ice; fees; penalties.*

 Patron—Ebbin

 Referred to Committee on Agriculture, Chesapeake and Natural Resources

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 55.2, consisting of sections numbered 3.2-5517 through 3.2-5533, as follows:

CHAPTER 55.2.**PACKAGED ICE.****§ 3.2-5517. Definitions.**

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

"Ice" means food intended for human consumption that is formed from drinking water by freezing to a solid state.

"Ice vending machine" means a self-service machine that acts as a stand-alone packaged ice plant and packaged ice dealer with no continual on-site personnel.

"Packaged ice" means ice that is enclosed in a container and is offered for sale for human consumption.

"Packaged ice dealer" means any business establishment that sells or offers to sell packaged ice at retail for human consumption, and includes an operator of an ice vending machine.

"Packaged ice plant" means any facility or part of a facility in which packaged ice is manufactured or processed, including an ice vending machine.

§ 3.2-5518. License required.

A. After September 1, 2011, it shall be unlawful for any person to establish, maintain, or operate a packaged ice plant, or to engage in the business of a packaged ice dealer, without a valid license to do so issued by the Commissioner. Each location at which a person establishes, maintains, or operates a packaged ice plant or engages in the business of a packaged ice dealer shall obtain a separate license. The license shall be conspicuously posted at each location at which such activities are conducted.

B. Licenses shall expire on December 31 annually. Licenses may be revoked at any time by the Commissioner for good cause.

C. Application forms shall be provided by the Commissioner and shall be completed and returned with the fee required pursuant to § 3.2-5519.

D. The Commissioner may issue a combined license to qualified applicants who, at a single location, both (i) establish, maintain, or operate a packaged ice plant and (ii) engage in the business of a packaged ice dealer.

E. A license shall be issued annually upon compliance by the applicant with all statutory and regulatory requirements for the issuance of a license and payment of the required fee.

§ 3.2-5519. License fees.

A. Each operator of a packaged ice plant shall pay the Department, upon applying for a license required pursuant to § 3.2-5518, an annual nonrefundable fee of \$10 for each license for a location at which it establishes, maintains, or operates a packaged ice plant.

B. Each packaged ice dealer shall pay the Department, upon applying for a license required pursuant to § 3.2-5518, an annual nonrefundable fee of \$10 for each license for a location at which it engages in the business of a packaged ice dealer.

C. Each packaged ice plant operator who is also a packaged ice dealer shall pay the Department, upon applying for a combined license pursuant to subsection D of § 3.2-5518, an annual nonrefundable fee of \$10 for the combined license for each location at which it both establishes, maintains, or operates a packaged ice plant and engages in the business of a packaged ice dealer, which fee shall be in lieu of the fees described in subsections A and B.

D. Fees charged to applicants for new licenses shall be prorated with the applicant paying one-twelfth of the applicable fee for each month remaining in the calendar year, including the month of application.

§ 3.2-5520. Requirements applicable to operators of packaged ice plants.

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59 *In addition to the requirements established pursuant to Chapter 51 (§ 3.2-5100 et seq.), persons*
60 *operating a packaged ice plant shall comply with the following:*

61 *1. Ice shall be manufactured, processed, and packaged using methods that preclude contamination of*
62 *the ice;*

63 *2. Air used for water agitation shall be filtered or otherwise treated to render it free of oil, dust,*
64 *dirt, insects, and extraneous material;*

65 *3. Manual packaging of ice shall be performed in a manner that precludes contamination of the*
66 *packaging material, utensils, and the product;*

67 *4. Any ice or packaging spillage created during manufacture, packaging, transportation, or storage*
68 *shall be disposed of and shall not be used as packaging, packaged, or re-packaged for sale for human*
69 *consumption;*

70 *5. Ice packaging material shall be of food grade quality and closures shall be designed to adequately*
71 *protect its contents by creating a tight seal. Only pin holes or a butterfly vent that does not exceed*
72 *one-fourth inch in diameter shall be used in ice packaging material. Pin holes or butterfly vents shall be*
73 *located in the upper one-third portion of the bag;*

74 *6. Packaging material shall be protected from contamination during storage and handling;*

75 *7. Packaged ice shall be stored above the floor protected from splash and shall not be located in*
76 *areas susceptible to overhead dripping;*

77 *8. Wooden platforms or pallets shall not be used for the purpose of transporting ice or storing ice*
78 *above the floor unless platforms or pallets have been designed or covered with surfaces that protect the*
79 *product from splintering or contamination. Between uses these surfaces shall be cleaned and sanitized*
80 *or replaced;*

81 *9. Product shall be transported in an enclosed facility designed and equipped to protect the product*
82 *from contamination and shall be maintained in a clean condition;*

83 *10. Packaged ice shall be handled in such a manner to preclude contamination during transportation*
84 *and delivery. At no time during transport or delivery may the packaged ice product come into contact*
85 *with the floor or ground; and*

86 *11. Each bag shall be properly labeled in accordance with the requirements of 21 C.F.R. Part 101.5*
87 *and shall include a date or lot code to enable the traceability of the product.*

88 *§ 3.2-5521. Source water.*

89 *A. Only potable water or water received from a public water system or from a nonpublic system that*
90 *meets state drinking water quality standards, including any applicable sampling and testing*
91 *requirements, may be used to manufacture ice that is intended for human consumption. Water from a*
92 *public water system shall comply with (i) the provisions of the National Primary Drinking Water*
93 *Regulations set forth in 40 C.F.R. Part 141 and (ii) any drinking water quality standards established by*
94 *an agency of the Commonwealth. If water is received from a nonpublic system, the most recent sample*
95 *report showing that the water meets state drinking water quality standards shall be maintained at the*
96 *licensed location.*

97 *B. Packaged ice dealers importing ice into the Commonwealth shall submit to the Department a copy*
98 *of the current source certification or a letter from the agency in the state where the ice is manufactured*
99 *and packaged with jurisdiction for approval of drinking water supplies. This information shall be*
100 *submitted to the Department with each annual license application.*

101 *C. In the event of contamination of water used in making ice at a licensed location, the location's*
102 *drinking water system shall be tested and approved for use by the applicable public or nonpublic water*
103 *authority. The operator shall flush water lines thoroughly following emergency events or after*
104 *construction, repair or modifications before returning cleaned and sanitized equipment to service.*

105 *§ 3.2-5522. Product testing and controls.*

106 *A. Operators of packaged ice plants shall:*

107 *1. Submit a sample of each type of finished product quarterly to an approved laboratory for*
108 *microbiological analysis; and*

109 *2. Maintain records of each quarterly analysis conducted pursuant to subdivision 1 for not less than*
110 *two years and make these records available to the Department upon request.*

111 *B. Each quarterly laboratory analysis conducted pursuant to subdivision A 1 shall include testing for*
112 *fecal and total coliform organisms and heterotrophic plate count (HPC). Total coliforms shall not be*
113 *greater than 2.2 organisms/100 ml. using the most probable number method or not greater than 1*
114 *organism/100 ml. using the membrane filtration method. The HPC shall not exceed 500 colonies/ml.*
115 *Packaged ice shall not have any fecal coliform-positive samples.*

116 *C. If finished product samples exceed the acceptable standards provided for in subsection B, the*
117 *operator of the packaged ice plant shall submit samples to an approved laboratory on a weekly basis*
118 *until two consecutive acceptable samples are obtained. Copies of weekly sample analyses shall be*
119 *submitted to the Department upon receipt by the operator of the packaged ice plant.*

120 *D. The Department periodically shall collect and analyze samples of source water and finished*

product to determine if the source water, finished product, or both, meet quality standards established by this chapter. When indicated by reason of complaint or illness, the Department may obtain and analyze or require the packaged ice plant to obtain and have analyzed, by an approved laboratory, samples of source water, finished product, or both.

E. Any operator of a packaged ice plant or packaged ice dealer who knows or should know that a primary maximum contaminant level has been exceeded or believes or has reason to believe that circumstances exist such as source contamination, spills, accidents, natural disasters, breakdowns in the sanitary processing of ice, or other similar problems that may adversely affect the safety of the packaged ice, shall immediately notify the Department thereof.

§ 3.2-5523. Recall procedures.

A. If the Commissioner determines, based upon results of representative sample tests and risk analysis that an immediate hazard to the health, safety, and welfare of the public is present in any packaged ice product, the Commissioner shall order the operator of the packaged ice plant or packaged ice dealer to initiate a product recall in order to effectively avoid or significantly minimize the threat to the public's health and, if the Commissioner finds it appropriate, issue a notification to customers of the packaged ice plant or business establishment that sells ice at retail. The plant or dealer shall be responsible for disseminating the notice in a manner designed to inform customers who may be affected by the problem.

B. When a laboratory report reveals a maximum contaminant level (MCL) has been exceeded, but when investigation indicates that the condition causing the MCL to be exceeded was promptly corrected and that previously distributed product will not cause illness nor present any significant health hazard, a company recall or media notification shall not be necessary. In circumstances where a recall or media notification is not necessary but consumer complaints indicate problems regarding product taste or odor, the Department shall order the plant to communicate the exceedence of the MCL and the implementation of corrective measures by direct communication to affected customers.

§ 3.2-5524. Ice vending machines.

A. Each operator of an ice vending machine in the Commonwealth shall comply with the following requirements:

1. The facility in which the ice vending machine is operated shall meet all applicable building, plumbing, electrical, and fire code requirements;

2. The floors, walls, and ceiling of the facility shall be smooth, nonabsorbent, easily cleanable, and kept clean and free of vermin;

3. Potable water provided at the facility shall be from an approved source;

4. The ice vending machine shall drain adequately by a floor drain or other system that does not permit water to pool inside the machine;

5. An adequate system shall be maintained for disposing of wastewater and chemicals used to clean the facility's floor; to wash, rinse, and sanitize the ice machine's ice bin; to clean dispensing devices; and for handwashing and similar purposes. All wastewater shall be drained to a wastewater disposal system approved by the Department;

6. The ice machine shall provide backflow prevention as required generally pursuant to applicable law for facilities at which food is prepared or sold;

7. Surfaces of the ice machine that are intended to come in contact with ice or water used to produce ice shall be (i) smooth, nonabsorbent, safe, durable, easily cleanable, and kept clean; (ii) made of corrosion-resistant material; (iii) free of lubricants, gears, bearings, and welds that are not of food grade; (iv) able to withstand repeated washing, rinsing, and sanitizing; and (v) comply with the requirements of § 4-204.13 of the 2001 Food Code issued by the U.S. Food and Drug Administration regarding the protection of delivery tubes, chutes, and orifices used in dispensing self-service bulk ice;

8. Surfaces of the ice machine that are not intended to come in contact with ice or water used to produce ice shall be constructed of corrosion-resistant, nonabsorbent, easily cleanable and smooth material if exposed to splash, spray, or condensate;

9. The facility in which the ice vending machine is operated shall:

a. Include a handwashing sink with running water under pressure and at which a hand sanitizer shall be provided;

b. Provide a cleaning system with running water under pressure and provide a sanitizer rated for ambient temperature water;

c. Provide toilet facilities if the facility generally has full-time service personnel on site for purposes other than to clean or maintain the ice vending machine;

d. Provide storage for single-service bags or like articles in order that they are protected and are stored at least six inches off the floor;

e. Provide that an ice shovel, if used, is protected and at kept least six inches off the floor;

f. Provide that chemicals for cleaning and maintaining the facility or the ice machine are stored in

182 order to prevent contamination of water, ice, ice-making equipment, and single-service bags or like
183 articles; and

184 g. Store cleaning items, mops, and brooms off the floor; and

185 10. Each bag in which ice is enclosed shall be properly labeled in accordance with the requirements
186 of 21 C.F.R. Part 101.5.

187 B. Once each calendar quarter, the operator of an ice vending machine shall conduct a
188 microbiological analysis on a sample of each type of finished product sold at the ice vending machine.
189 A license shall not be issued pursuant to § 3.2-5518 for an ice vending machine unless the applicant
190 provides with his application proof of negative results from the analysis conducted within the preceding
191 30 days with respect to the finished product to be sold at the ice vending machine for which licensure is
192 sought. A licensee shall maintain records of such analyses and make the records available to the
193 Department upon request.

194 § 3.2-5525. Imported ice.

195 Ice transported into the Commonwealth and packaged either before or after importation into the
196 Commonwealth shall meet the requirements of §§ 3.2-5520, 3.2-5521, and 3.2-5522 regarding the
197 packaging, labeling, handling, and processing of ice.

198 § 3.2-5526. Application of other requirements.

199 Nothing in this chapter or in any regulations of the Board pursuant to this chapter shall be
200 construed to exempt any persons or premises from the application of any laws otherwise applicable and
201 relating to the operation of establishments or facilities for the storing, transporting, sale, distribution,
202 preparation, or serving of food.

203 § 3.2-5527. Right of entry.

204 The Commissioner may enter during normal business hours on or into any premises or any vehicle
205 wherein ice is manufactured, processed, or offered for sale, or wherein the Commissioner has reason to
206 believe that any such activity is carried on, in order to inspect and examine ice, ice containers, any
207 equipment, facilities or records pertinent to the conduct of activities subject to this chapter or
208 regulations implementing the same, or to ascertain the state of compliance with any order issued by the
209 Department pursuant to this chapter. Nothing in this subdivision shall create or diminish the authority
210 of the Commissioner under § 3.2-5102.

211 § 3.2-5528. Adopting regulations.

212 The Board may adopt regulations to administer this chapter.

213 § 3.2-5529. Suspension or revocation of license.

214 A. The Commissioner may suspend or revoke a license at any time if, in his discretion, the licensee
215 has violated any provision of this chapter or any regulation issued pursuant thereto.

216 B. For purposes of this section, the term "licensee" also includes any person who holds more than a
217 five percent equity, ownership, or debt liability in the person to whom a license was issued.

218 § 3.2-5530. Injunction.

219 The Department acting by the Attorney General may enforce any provision of this chapter or any
220 regulation issued pursuant thereto by injunction.

221 § 3.2-5531. Civil and criminal penalties.

222 A. The Commissioner may assess a civil penalty of not more than \$5,000 for any violation of a
223 provision of this chapter.

224 B. Any person required to obtain a license pursuant to § 3.2-5518 who fails to do so is guilty of a
225 Class 3 misdemeanor.

226 § 3.2-5532. Review.

227 The Commissioner's suspension or revocation of a license, or the imposition of a civil penalty, shall
228 be reviewable in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

229 § 3.2-5533. Remedies not exclusive.

230 The institution of proceedings for the application of any remedy, or the issuance of any order on
231 account thereof, or the imposition of any civil penalty pursuant to this chapter shall not operate as a
232 bar or limitation to the application of any other remedy available pursuant to this chapter or any other
233 applicable law.