

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 317

An Act to amend and reenact §§ 3.2-4300, 3.2-4302 through 3.2-4306, 3.2-4308, 3.2-4312 through 3.2-4318, and 3.2-4320 of the Code of Virginia, relating to the Department of Agriculture and Consumer Services; Division of Marketing.

[H 1349]

Approved March 12, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-4300, 3.2-4302 through 3.2-4306, 3.2-4308, 3.2-4312 through 3.2-4318, and 3.2-4320 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-4300. Definition.

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

"~~Agricultural~~, "agricultural product" means any horticultural, viticulture, dairy, livestock, poultry, bee, or other farm or garden product.

"~~Director~~" means the ~~Director of the Division of Marketing of the Department.~~

§ 3.2-4302. Establishment of grades, marks, and brands.

The ~~Director~~, with the approval of the Commissioner, may adopt regulations governing the voluntary use of grades, trademarks, brands, and other markings for agricultural products produced, packed, or marked in the Commonwealth. The regulations shall prescribe the: (i) grade, classification, quality, condition, size, variety, quantity, or other characteristics of such products; and (ii) marks identifying the party responsible for the grading and marking of such products.

§ 3.2-4303. Grades recommended by U.S. Department of Agriculture.

The ~~Director~~ ~~Commissioner~~, in carrying out the provisions of § 3.2-4302, shall adopt grades recommended or adopted by the U.S. Department of Agriculture if they are suitable for use in Virginia. If there is a demand for additional or different grades or standards by those persons in the Commonwealth producing and handling such products, the ~~Director~~ ~~Commissioner~~ may establish and adopt grades or standards that are additional to or different from those recommended or adopted by the U.S. Department of Agriculture.

§ 3.2-4304. When special grades, marks, and brands allowed; filing a certificate.

Any person desiring to pack, mark, sell, or offer for sale any agricultural product under any grade, trademark, brand, or other markings relating to grade, quality or size, not established and adopted by the ~~Director~~ ~~Commissioner~~, may file with the ~~Director~~ ~~Commissioner~~ a certificate describing the special grade, trademark, brand, or other markings. If, the ~~Director~~, with the approval of the Commissioner: (i) approves of the completeness of definitions of such special grade, trademark, brand, or other markings described in the certificate; (ii) finds that such grade terminology, trademark, brand, other markings, or definitions are in no way deceptive; and (iii) determines that definitions used to describe grade, classifications, quality, condition, size, variety, or other characteristics of agricultural products clearly document where they differ from the official grades, the special grade, trademark, brand, or other markings may thereafter be used by the person filing the certificate. For the purpose of this section a brand, trademark, or other markings may represent a grade.

§ 3.2-4305. Unclassified products.

This article shall not prevent the use of any trademark or brand not established and adopted, or *not* approved by the ~~Director~~ ~~Commissioner~~, on or in connection with any agricultural product, if, as a part of such trademark or brand, or immediately adjacent thereto, there is printed in letters not less than one-half inch in height the word "unclassified."

§ 3.2-4306. Enforcement powers of Commissioner.

The ~~Director~~, with the approval of the Commissioner, shall enforce the provisions of this article and is empowered to:

1. Enter and inspect every place where agricultural products are produced, packed, stored for sale, shipped, delivered for shipment, in transit or offered for sale; and to inspect such places and any or all agricultural products, containing markings of any kind that indicate grade, classification, quality, condition, size, variety and quantity, and containers or equipment found at or in such places. It is unlawful for anyone to prevent, hinder or interfere with the ~~Director~~ ~~Commissioner~~ or his agent in the exercise of any power under this subdivision;

2. To approve, superintend, control and discharge such inspectors, subordinate inspectors and agents as in his discretion may be deemed necessary for the purpose of enforcing the provisions of this article; and to prescribe their duties and fix their compensation;

3. Prohibit the movement of any agricultural product found to be marked in violation of any of the provisions of this article, prior to the product being accepted by a common carrier for shipment in

interstate transit. Such product shall be repacked or remarked. A lot of any agricultural product shall not be considered accepted by a common carrier until the common carrier is loaded, sealed, and the bill of lading issued; and

4. Cause to be instituted through the attorney for the Commonwealth prosecutions for violations of this article.

§ 3.2-4308. Grades and brands shall be used in accordance with regulations.

It is unlawful to use:

1. Any grade, trademark, brand, or other markings established and adopted by the ~~Director~~ *Commissioner* on or in connection with marking any agricultural product that is not in accordance with regulations established and adopted by the ~~Director~~ *Commissioner*.

2. Any grade, trademark, brand, or other markings indicating grade, classification, quality, condition or size, for any agricultural product for which official grades, trademarks, brands, or other markings have not been established and adopted by the ~~Director~~ *Commissioner* or are not in accordance with the provisions of § 3.2-4304.

§ 3.2-4312. Definitions.

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

"Agricultural and food product" means any horticultural, viticulture, dairy, livestock, poultry, bee, other farm or garden product, fish or fishery product, and other foods.

"Continuous official inspection" means that an employee or a licensed representative of the ~~Division of Marketing Department~~ or of the U.S. Department of Agriculture, or employees of either, shall regularly and continuously examine the commodity as it is being packed.

"~~Director~~" means the ~~Director of the Division of Marketing of the Department~~.

"~~Division~~" means the ~~Division of Marketing of the Department of Agriculture and Consumer Services~~.

§ 3.2-4313. Use of Virginia Quality Label to designate inspected products.

The ~~Director, with the approval of the Commissioner,~~ may use an outline of Virginia impressed upon the labels, tags, seals, or containers of any agricultural or food product that has been subject to the continuous official inspection service indicating that the product is of such quality and description as shown on the label, tag, seal, or container. Such outline map when made use of pursuant to the provisions of this article shall be known as the "Virginia Quality Label."

§ 3.2-4314. Collaboration with United States authorities.

In any instance when an authorized department, agent or officer of the United States collaborates with the ~~Division Department~~ in the inspection of any agricultural or food product, the Virginia Quality Label may, with the consent of the appropriate department, agency or officer of the United States, be used together with the shield of the United States on any label, tag, seal, or container, thus indicating continuous inspectional collaboration between the ~~Division Department~~ and a department, agency, or officer of the United States.

§ 3.2-4315. Department may prepare and distribute labels, tags, and seals with Virginia Quality Label.

The ~~Division Department~~ may prepare labels, tags and seals impressed with the Virginia Quality Label and the shield of the United States. The ~~Division Department~~ may furnish the labels, tags, and seals at reasonable prices to any producer, processor, packer, or dresser whose agricultural and food product has been subject to such continuous official state or federal-state inspection service.

§ 3.2-4316. Preparation and use of Label by producer; design to be determined by Commissioner.

The ~~Director~~ *Commissioner* may adopt regulations that permit any producer, processor, packer, or dresser to make or prepare, or to cause to be made or prepared, the labels, tags, or seals to be placed on his own product, or to print, stamp, or otherwise place or cause to be placed the Virginia Quality Label and the shield of the United States upon such products or containers that have been subject to continuous state or federal-state inspection, so long as the ~~Director, with the approval of the Commissioner,~~ determines the design of the label, tag, seal, stamp, or other device.

§ 3.2-4317. Virginia Quality Label Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Quality Label Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Moneys in the Fund shall be used solely for the purposes set forth in this chapter. All moneys derived from the furnishing of labels, tags, and seals, or from permitting the use of the Virginia Quality Label or the label with the shield of the United States 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 by the ~~Division Department~~ to defray the cost of preparing, furnishing, and publicizing the labels, tags, and seals.

§ 3.2-4318. Jurisdiction to enjoin unlawful use of Label.

A. Any circuit court in the Commonwealth shall have jurisdiction to enjoin the use of the Virginia

Quality Label, a label with the shield of the United States, or any imitation or counterfeit likeness used in violation of this article.

B. The ~~Director, with the approval of the~~ Commissioner, may apply for and an appropriate court may grant a temporary or permanent injunction restraining any person from using the labels described in subsection A.

§ 3.2-4320. Restrictions as to use of Label.

It is unlawful to use the Virginia Quality Label or a label with the shield of the United States, except in accordance with regulations prescribed by the ~~Director with the approval of the~~ Commissioner, and in no case shall it be used upon the label, tag, seal, or container of the product of any farm, factory, mill or of any other producing, processing, packing, preparing, or dressing establishment unless such product is processed, packed, prepared, or dressed under continuous official state or federal-state inspection.

2. That the regulations of the Director of the Division of Marketing of the Department of Agriculture and Consumer Services shall be administered by the Commissioner of Agriculture and Consumer Services and shall remain in full force and effect until the Commissioner of Agriculture and Consumer Services promulgates regulations pursuant to this act.