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## HOUSE BILL NO. 1349

Offered January 8, 2020

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A BILL 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.

Patron—Tyler

Referred to Committee on Agriculture, Chesapeake and Natural Resources

**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

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HB1349

59 as in his discretion may be deemed necessary for the purpose of enforcing the provisions of this article;  
60 and to prescribe their duties and fix their compensation;

61 3. Prohibit the movement of any agricultural product found to be marked in violation of any of the  
62 provisions of this article, prior to the product being accepted by a common carrier for shipment in  
63 interstate transit. Such product shall be repacked or remarked. A lot of any agricultural product shall not  
64 be considered accepted by a common carrier until the common carrier is loaded, sealed, and the bill of  
65 lading issued; and

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

68 **§ 3.2-4308. Grades and brands shall be used in accordance with regulations.**

69 It is unlawful to use:

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

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

77 **§ 3.2-4312. Definitions.**

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

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

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

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

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

87 **§ 3.2-4313. Use of Virginia Quality Label to designate inspected products.**

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

93 **§ 3.2-4314. Collaboration with United States authorities.**

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

100 **§ 3.2-4315. Department may prepare and distribute labels, tags, and seals with Virginia Quality**  
101 **Label.**

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

106 **§ 3.2-4316. Preparation and use of Label by producer; design to be determined by**  
107 **Commissioner.**

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

114 **§ 3.2-4317. Virginia Quality Label Fund established.**

115 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia  
116 Quality Label Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of  
117 the Comptroller. Moneys in the Fund shall be used solely for the purposes set forth in this chapter. All  
118 moneys derived from the furnishing of labels, tags, and seals, or from permitting the use of the Virginia  
119 Quality Label or the label with the shield of the United States shall be paid into the state treasury and  
120 credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to

121 it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not  
122 revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used by the  
123 ~~Division~~ *Department* to defray the cost of preparing, furnishing, and publicizing the labels, tags, and  
124 seals.

125 **§ 3.2-4318. Jurisdiction to enjoin unlawful use of Label.**

126 A. Any circuit court in the Commonwealth shall have jurisdiction to enjoin the use of the Virginia  
127 Quality Label, a label with the shield of the United States, or any imitation or counterfeit likeness used  
128 in violation of this article.

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

132 **§ 3.2-4320. Restrictions as to use of Label.**

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

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