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HOUSE BILL NO. 2123

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 3.2-5130 and 15.2-2288.6 of the Code of Virginia, relating to food inspections; private homes; pickles and acidified vegetables; gross sales.

Patron—Hudson

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

**1. That §§ 3.2-5130 and 15.2-2288.6 of the Code of Virginia are amended and reenacted as follows:
§ 3.2-5130. Inspections required to operate food establishment; penalty.**

A. It is unlawful to operate as a food manufacturer, food storage warehouse, or retail food establishment until (i) such food manufacturer, food storage warehouse, or retail food establishment has been inspected by the Commissioner and (ii) the Commissioner has issued a permit pursuant to subsection C of § 3.2-5100 for the operation of the food manufacturer, food storage warehouse, or retail food establishment. If the inspection finds no significant health hazards to the public, any food manufacturer, food storage warehouse, or retail food establishment may operate until receipt of the permit. Such permit shall be processed within 30 days of the inspection date.

B. If the Commissioner determines that conditions exist in a food manufacturer, food storage warehouse, or retail food establishment that would render such entity significantly out of compliance with an applicable provision of this chapter or regulation adopted pursuant to this chapter, the Commissioner may, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), deny, suspend, or revoke the permit of such entity. If the Commissioner determines that conditions exist in a food manufacturer, food storage warehouse, or retail food establishment that present a significant and immediate public health hazard, the Commissioner may suspend the permit of such entity and shall seek an expedited informal fact-finding proceeding pursuant to § 2.2-4019.

C. The provisions of subsections A and B shall not apply to:

1. Food manufacturers operating under a grant of inspection from the Office of Meat and Poultry Services or a permit from the Office of Dairy and Foods in the Department; and Grade A fluid milk manufacturing plants and shellfish and crustacea processing plants operating under a permit from the Virginia Department of Health;

2. Nonprofit organizations holding one-day food sales;

3. Private homes where the resident processes and prepares candies, jams, and jellies not considered to be low-acid or acidified low-acid food products, dried fruits, dry herbs, dry seasonings, dry mixtures, coated and uncoated nuts, vinegars and flavored vinegars, popcorn, popcorn balls, cotton candy, dried pasta, dry baking mixes, roasted coffee, dried tea, cereals, trail mixes, granola, pickles and other acidified vegetables that have an equilibrium pH value of 4.6 or lower, and baked goods that do not require time or temperature control after preparation if such products are: (i) sold to an individual for his own consumption and not for resale; (ii) sold at the private home or at farmers markets; (iii) not offered for sale to be used in or offered for consumption in retail food establishments; (iv) not offered for sale over the Internet or in interstate commerce; and (v) affixed with a label displaying the name, physical address, and telephone number of the person preparing the food product, the date the food product was processed, and the statement "NOT FOR RESALE — PROCESSED AND PREPARED WITHOUT STATE INSPECTION" shall be placed on the principal display panel. Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102;

4. Private homes where the resident processes and prepares pickles and other acidified vegetables that have an equilibrium pH value of 4.6 or lower if such products are (i) sold to an individual for his own consumption and not for resale; (ii) sold at the private home or at farmers markets; (iii) not offered for sale to be used in or offered for consumption in retail food establishments; (iv) not offered for sale over the Internet or in interstate commerce; (v) affixed with a label displaying the name, physical address, and telephone number of the person preparing the food product, the date the food product was processed, and the statement "NOT FOR RESALE — PROCESSED AND PREPARED WITHOUT STATE INSPECTION" shall be placed on the principal display panel; and (vi) not exceeding \$3,000 in gross sales in a calendar year. Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102;

5. Private homes where the resident processes and prepares honey produced by his own hives, if: (i) the resident sells less than 250 gallons of honey annually; (ii) the resident does not process and sell

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59 other food products in addition to honey, except as allowed by ~~subdivisions~~ *subdivision 3 and 4*; (iii) the
60 product complies with the other provisions of this chapter; and (iv) the product is labeled "PROCESSED
61 AND PREPARED WITHOUT STATE INSPECTION. WARNING: Do Not Feed Honey to Infants
62 Under One Year Old." Nothing in this subdivision shall increase or diminish the authority of the
63 Commissioner under § 3.2-5102; and

64 6. 5. Retail establishments that (i) do not prepare or serve food; (ii) sell only food or beverages that
65 are sealed in packaging by the manufacturer and have been officially inspected in the manufacturing
66 process; (iii) do not sell infant formulas; (iv) do not sell salvaged foods; and (v) certify to the
67 Department that they meet the provisions of this subdivision.

68 D. Nonprofit organizations, private homes, and retail establishments that qualify for an exception
69 under subsection C shall be exempt from the permit and inspection requirements of this chapter and the
70 inspection fees. Nothing in this section shall prevent the Department from inspecting any nonprofit
71 organization, private home, or retail establishment if a consumer complaint is received.

72 E. Any person who violates any provision of this section is guilty of a Class 1 misdemeanor.

73 **§ 15.2-2288.6. Agricultural operations; local regulation of certain activities.**

74 A. No locality shall regulate the carrying out of any of the following activities at an agricultural
75 operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general
76 welfare of the public:

77 1. Agritourism activities as defined in § 3.2-6400;

78 2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or
79 silvicultural-related items incidental to the agricultural operation;

80 3. The preparation, processing, or sale of food products in compliance with subdivisions C 3, *and 4*,
81 *and 5* of § 3.2-5130 or related state laws and regulations; or

82 4. Other activities or events that are usual and customary at Virginia agricultural operations.

83 Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take
84 into account the economic impact of the restriction on the agricultural operation and the agricultural
85 nature of the activity.

86 B. No locality shall require a special exception, administrative permit not required by state law, or
87 special use permit for any activity listed in subsection A on property that is zoned as an agricultural
88 district or classification unless there is a substantial impact on the health, safety, or general welfare of
89 the public.

90 C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating
91 the sound generated by any activity listed in subsection A shall be more restrictive than the general
92 noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the
93 locality shall consider the effect on adjoining property owners and nearby residents.

94 D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2
95 (§ 4.1-200 et seq.) of Title 4.1. Nothing in this section shall be construed to affect the provisions of
96 Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to alter the provisions of § 15.2-2288.3, or to restrict the
97 authority of any locality under Title 58.1.