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SENATE BILL NO. 1546

Offered January 26, 2023

A *BILL to amend and reenact § 3.2-5130 of the Code of Virginia, relating to Department of Agriculture food establishment permits; exemptions; restaurants; schools and day care centers.*

Patron—Ebbin

Unanimous consent to introduce

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That § 3.2-5130 of the Code of Virginia is amended and reenacted as follows:****§ 3.2-5130. Inspections required to operate food establishment.**

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

64 6. Retail establishments that (i) do not prepare or serve food; (ii) sell only food or beverages that are
65 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; *and*

68 7. *Any establishment or operation that has a restaurant license from the State Department of Health*
69 *that supplies food to any school or day care center that has a restaurant license from the State*
70 *Department of Health.*

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

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