

HOUSE BILL NO. 1802

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources

on _____)

(Patron Prior to Substitute--Delegate Freitas)

A BILL to amend and reenact § 3.2-5130 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.2-5202.1 and 3.2-5403.1, relating to food products; milk and milk products; livestock products and poultry products; exemptions for direct to consumer sales.

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-5130 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.2-5202.1 and 3.2-5403.1 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

26 hazard, the Commissioner may suspend the permit of such entity and shall seek an expedited informal
27 fact-finding proceeding pursuant to § 2.2-4019.

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

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

33 2. Nonprofit organizations holding one-day food sales;

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

46 4. Private homes where the resident processes and prepares pickles and other acidified vegetables
47 that have an equilibrium pH value of 4.6 or lower if such products are (i) sold to an individual for his own
48 consumption and not for resale; (ii) sold at the private home or at farmers markets; (iii) not offered for
49 sale to be used in or offered for consumption in retail food establishments; (iv) not offered for sale over
50 the Internet or in interstate commerce; (v) affixed with a label displaying the name, physical address, and
51 telephone number of the person preparing the food product, the date the food product was processed, and
52 the statement "NOT FOR RESALE — PROCESSED AND PREPARED WITHOUT STATE

53 INSPECTION" shall be placed on the principal display panel; and (vi) not exceeding \$3,000 in gross sales
54 in a calendar year. Nothing in this subdivision shall create or diminish the authority of the Commissioner
55 under § 3.2-5102;

56 5. Private homes where the resident processes and prepares honey produced by his own hives, if:
57 (i) the resident sells less than 250 gallons of honey annually; (ii) the resident does not process and sell
58 other food products in addition to honey, except as allowed by subdivisions 3 and 4; (iii) the product
59 complies with the other provisions of this chapter; and (iv) the product is labeled "PROCESSED AND
60 PREPARED WITHOUT STATE INSPECTION. WARNING: Do Not Feed Honey to Infants Under One
61 Year Old." Nothing in this subdivision shall increase or diminish the authority of the Commissioner under
62 § 3.2-5102; and

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

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

71 E. Notwithstanding any other provision of law, the permit and inspection requirements of this
72 chapter and any inspection fees shall not apply to any food product that is otherwise permitted by state
73 law and is sold directly to a consumer either (i) on the premises where such product was grown or produced
74 or (ii) at a farmers market. A consumer purchasing a food product pursuant to this subsection shall sign a
75 waiver to be provided by a seller of such food product. Such waiver shall be maintained by a seller of such
76 food product for no less than one year from the date of the transaction, and a copy of such waiver shall be
77 provided at the time of the transaction to a consumer purchasing such food product. Such waiver shall
78 include the following information:

79 1. The name, address, and telephone number of the grower or producer of such product;

- 80 2. The common or usual name of such product;
- 81 3. The ingredients of such product in descending order of predominance; and
- 82 4. The following statement: "This product is exempt from state licensing and inspection
- 83 requirements and has not been inspected by the Virginia Department of Agriculture and Consumer
- 84 Services. NOT FOR RESALE."

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

86 **§ 3.2-5202.1. Exemptions for direct to consumer sales; waivers.**

87 Notwithstanding any other provision of law, the permit and inspection requirements of this chapter

88 and any inspection fees shall not apply to any milk or milk product, including raw or unpasteurized milk,

89 that is sold directly to a consumer either (i) on the premises where such milk or milk product was produced

90 or (ii) at a farmers market. A consumer purchasing milk or a milk product pursuant to this section shall

91 sign a waiver to be provided by a seller of such milk or milk product. Such waiver shall be maintained by

92 a seller of such milk or milk product for no less than one year from the date of the transaction, and a copy

93 of such waiver shall be provided at the time of the transaction to a consumer purchasing such milk or milk

94 product. Such waiver shall include the following information:

- 95 1. The name, address, and telephone number of the producer of such milk or milk product;
- 96 2. The common or usual name of such milk or milk product;
- 97 3. The ingredients of such milk or milk product in descending order of predominance; and
- 98 4. The following statement: "This product is exempt from state licensing and inspection
- 99 requirements and has not been inspected by the Virginia Department of Agriculture and Consumer
- 100 Services. NOT FOR RESALE."

101 **§ 3.2-5403.1. Exemptions for direct to consumer sales; waivers.**

102 Notwithstanding any other provision of law, the permit and inspection requirements of this chapter

103 and any inspection fees shall not apply to any livestock product or poultry product that is sold directly to

104 a consumer either (i) on the premises where such product was grown or produced or (ii) at a farmers

105 market. A consumer purchasing a livestock product or poultry product pursuant to this section shall sign

106 a waiver to be provided by a seller of such product. Such waiver shall be maintained by a seller of such

107 livestock product or poultry product for no less than one year from the date of the transaction, and a copy
108 of such waiver shall be provided at the time of the transaction to a consumer purchasing such product.
109 Such waiver shall include the following information:
110 1. The name, address, and telephone number of the grower or producer of such livestock product
111 or poultry product;
112 2. The common or usual name of such livestock product or poultry product;
113 3. The ingredients of such livestock product or poultry product in descending order of
114 predominance; and
115 4. The following statement: "This product is exempt from state licensing and inspection
116 requirements and has not been inspected by the Virginia Department of Agriculture and Consumer
117 Services. NOT FOR RESALE."

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