

HOUSE BILL NO. 402

AMENDMENT IN THE NATURE OF A SUBSTITUTE

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

(Patron Prior to Substitute—Delegate Callsen)

A BILL to amend and reenact §§ 3.2-5100 and 3.2-5130 of the Code of Virginia, relating to cottage food laws; sale of certain food over phone and internet.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-5100 and 3.2-5130 of the Code of Virginia are amended as follows:

§ 3.2-5100. Duties of Commissioner.

A. The Commissioner shall inquire into the dairy and food and drink products, and the articles that are food or drinks, or the necessary constituents of the food or drinks, that are manufactured, sold, exposed, or offered for sale in the Commonwealth.

B. The Commissioner may procure samples of the dairy and food products covered by this chapter and may have the samples analyzed.

C. The Commissioner shall issue a permit to any food manufacturer, food storage warehouse, or retail food establishment that, after inspection, is determined to be in compliance with all applicable provisions of this chapter and any regulations adopted thereunder. Any person that intends to manufacture, store, sell, or offer for sale an industrial hemp extract, as defined in § 3.2-5145.1, or food containing an industrial hemp extract (i) shall be subject to such permit requirement and (ii) shall indicate the person's intent to manufacture, store, sell, or offer for sale an industrial hemp extract or food containing an industrial hemp extract on its permit application. The Commissioner shall notify any applicant denied a permit of the reason for such denial. Any food manufacturer, food storage warehouse, or retail food establishment issued a permit pursuant to this subsection shall be exempt from any other license, permit, or inspection required for the sale, preparation, or handling of food unless such food manufacturer, food storage warehouse, or retail food establishment is operating as (a) a restaurant as defined in Title 35.1, as jointly determined by the State Health Commissioner and the Commissioner; (b) a plant that processes and distributes Grade A milk as referenced in this title, as determined by the State Health Commissioner; or (c) a shellfish establishment as defined in Title 28.2, as determined by the State Health Commissioner.

D. The Commissioner shall make a complaint against the manufacturer or vendor of any food or drink or dairy products that are adulterated, impure, or unwholesome, in contravention of the laws of the

Commonwealth, and furnish all evidence to obtain a conviction of the offense charged. The Commissioner may make complaint and cause proceedings to be commenced against any person for enforcement of the laws relative to adulteration, impure, or unwholesome food or drink, and in such cases he shall not be obliged to furnish security for costs.

E. The Commissioner may develop criteria to determine if food manufacturers that are operating in a building deemed, in consultation with the Director of the Department of Historic Resources, to be historic are producing food products that are low risk of being adulterated. If, pursuant to such criteria, any such manufacturer is producing food products that are deemed to be low risk, the Commissioner may exempt the food manufacturer from specified provisions of this chapter, or regulations adopted thereunder, that pertain to the structure of the building, provided that the Commissioner determines that such exemption is unlikely to result in the preparation for sale, manufacture, packing, storage, sale, or distribution of any food that is adulterated, as defined in § 3.2-5122.

F. Notwithstanding any other provision of this chapter, the Commissioner shall not require a food manufacturer operating in a private home to comply with any additional structural, equipment, or facility standards.

§ 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 if such products are (i) those that do not require time or temperature control after preparation; (ii) sold *(a) in person in the Commonwealth at any location, through the internet, or by phone and delivered in person, through an agent, or by mail to an individual for his own consumption and not or (b) for resale or consignment by a third-party vendor if such vendor displays the products separately from a licensed food establishment's food and clearly indicates the information required in clause (iii); (iii) sold at the private home, at a temporary event that operates for a period of no more than 14 consecutive days, or at a farmers market; (iv) not offered for sale to be used in or offered for consumption in retail food establishments; and (v) and (iii) affixed with a label placed on the principal display panel or, for a product in packaging not large enough to bear such a label, offered for sale with a sign displaying the name, physical address or post office box number, 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."* Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102 or shall prohibit a resident selling a food product in accordance with this subdivision from advertising such food product on the ~~Internet~~ internet;

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 ~~in person in the Commonwealth at any location, through the internet, or by phone~~ to an individual *in the Commonwealth* for his own consumption and not for resale or consignment; (ii) sold at the private home, at a temporary event that operates for a period of no more than 14 consecutive days, or at a farmers market *and delivered in person, by mail, or by delivery service to an individual in the Commonwealth for his own consumption and not for resale or consignment;* (iii) not offered for sale to be used in or offered for consumption in retail food

94 establishments; (iv) affixed with a label placed on the principal display panel displaying the name, physical
95 address *or post office box number*, and telephone number of the person preparing the food product, the date
96 the food product was processed, and the statement "NOT FOR RESALE — PROCESSED AND PREPARED
97 WITHOUT STATE INSPECTION"; and (v) not exceeding \$9,000 in gross sales in a calendar year. Nothing
98 in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102 or shall
99 prohibit a resident selling a food product in accordance with this subdivision from advertising such food
100 product on the ~~Internet~~ *internet*;

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

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

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

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

116 **2. That the Department of Agriculture and Consumer Services (the Department) shall convene the**
117 **Home Food Processing Operator Work Group (the Work Group) for the purpose of examining**
118 **structural, equipment, and facility standards for private homes in the Commonwealth producing**
119 **products that do not meet the exemptions from the inspection and permitting requirements in**
120 **§ 3.2-5130 of the Code of Virginia, as amended by this act, pursuant to subdivisions C 3 and 4 of**
121 **§ 3.2-5130 of the Code of Virginia, as amended by this act. The Work Group shall consist of**
122 **representatives from the Department, a representative from the Department of Health, a**
123 **representative from the Institute for Justice, and any other relevant stakeholders as determined by the**
124 **Department. The Work Group shall complete its meetings by November 1, 2026, and report its**

125 findings and recommendations to the Chairs of the Senate Committee on Agriculture, Conservation
126 and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources
127 by the first day of the 2027 Regular Session of the General Assembly.