

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 § 3.2-5130 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 § 3.2-5130 of the Code of Virginia is amended 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 if such products are (i) those that do not require time or temperature control after preparation; (ii) 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; (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 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~~; (iv) not offered for sale to be used in or offered for consumption in retail food establishments; and (v) 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;

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 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 establishments; (iv) affixed with a label placed on the principal display panel 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"; and (v) not exceeding \$9,000 in gross sales in a calendar year. Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102 or shall prohibit a resident selling a food product in accordance with this subdivision from advertising such food product on the Internet;

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

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

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

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

2. That the Department of Agriculture and Consumer Services (the Department) shall convene the Home Food Processing Operator Work Group (the Work Group) for the purpose of examining structural, equipment, and facility standards for those private homes in the Commonwealth producing products that do not meet the exemptions from the inspection and permitting requirements in § 3.2-5130 of the Code of Virginia, as amended by this act, pursuant to subdivisions C 3 and 4 of § 3.2-5130 of the Code of Virginia, as amended by this act. The Work Group shall consist of representatives from the Department, a representative from the Department of Health, a representative of the Institute for Justice, and any other relevant stakeholders as determined by the Department. The Work Group shall complete its meetings by November 1, 2026, and report its findings and recommendations to the Chairs of the Senate Committee on Agriculture, Conservation and Natural Resources and the House Committee on Agriculture, Chesapeake and Natural Resources by the first day of the 2027 Regular Session of the General Assembly.