

# VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

## CHAPTER 204

*An Act to amend and reenact §§ 3.2-5100, 3.2-5101, 3.2-5130, and 15.2-2288.6 of the Code of Virginia, relating to food and drink law; permitting requirements.*

[H 837]

Approved April 8, 2022

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.2-5100, 3.2-5101, 3.2-5130, and 15.2-2288.6 of the Code of Virginia are amended and reenacted as follows:**

**§ 3.2-5100. Duties of Commissioner.**

A. ~~It shall be the duty of the~~ *The Commissioner to 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. 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 (i) a restaurant as defined in Title 35.1, as jointly determined by the State Health Commissioner and the Commissioner; (ii) a plant that processes and distributes Grade A milk as referenced in this title, as determined by the State Health Commissioner; or (iii) 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.

**§ 3.2-5101. Board authorized to adopt regulations; exception.**

A. Whenever in the judgment of the Commissioner action will promote honesty and fair dealing in the interest of consumers, the Board shall adopt regulations fixing and establishing for any food or class of food: labeling requirements; a reasonable definition and standard of identity; and a reasonable standard of quality and fill of container, or tolerances or limits of variability. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Board shall, for the purpose of promoting honesty and fair dealing in the interest of the consumers, designate the optional ingredients that shall be named on the label. The definitions and standards so adopted may conform so far as practicable to the definitions and standards promulgated by the Secretary of Health and Human Services under authority conferred by Section 401 of the federal act.

B. *The Board may adopt regulations for the efficient administration of subsection C of § 3.2-5100 in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).*

C. Any regulations adopted pertaining to this section shall not apply to nonprofit organizations holding one-day food sales. The Commissioner may disseminate to nonprofit organizations educational materials related to the safe preparation of food for human consumption.

**§ 3.2-5130. Inspections required to operate food establishment.**

A. It is unlawful to operate as a food ~~manufacturing plant manufacturer~~, food storage warehouse, or retail food ~~store establishment~~ until it (i) *such food manufacturer, food storage warehouse, or retail food establishment has been inspected by the Commissioner. This section* 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 ~~manufacturing plants~~ *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 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.

~~B.~~ *D.* Nonprofit organizations, private homes, and retail establishments that qualify for an exception under subsection ~~A~~ *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.

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

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

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

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

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

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

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

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

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

the public.

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

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

**2. That beginning July 1, 2022, the Commissioner of Agriculture and Consumer Services (the Commissioner) shall issue a permit to any food manufacturer, food storage warehouse, or retail food establishment legally operating on that date that satisfactorily completed its most recent food safety inspection by the Commissioner. A food manufacturer, food storage warehouse, or retail food establishment that receives a permit pursuant to this enactment shall not be exempt from future food safety inspections by the Commissioner.**

**3. That by July 1, 2022, the Commissioner of Agriculture and Consumer Services shall develop a written appeal process for any food manufacturer, food storage warehouse, or retail food establishment to utilize in the event a permit is suspended.**

**4. That the provisions of this act shall not apply until January 1, 2023, to any food manufacturer, food storage warehouse, or retail food establishment located in a locality that adopted a local food inspection or permitting ordinance prior to January 1, 2022.**

**5. That the Virginia Department of Agriculture and Consumer Services shall work with localities that adopted a local food inspection or permitting ordinance prior to January 1, 2022, to address concerns regarding the implementation of this act prior to the January 1, 2023, implementation in such localities as set forth in the fourth enactment of this act.**