

# VIRGINIA FOOD LAW

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VIRGINIA DEPARTMENT  
OF  
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Office of Dairy and Foods

**Chapter 51.  
Food and Drink**

**Article 1.  
General Provisions** **Page Number**

3.2-5100	Duties of Commission	4
3.2-5101	Board authorized to adopt regulations; exception	4
3.2-5102	Commissioner to have access to factories, warehouse, and other places; examination of samples	5
3.2-5103	Standards of variability permissible to any article of food.	5
3.2-5104	Chemical work incident to execution of laws.	5

**Article 2.  
Sanitary Requirements.**

3.2-5105	Definition of term "food."	6
3.2-5106	Sanitary Condition of food establishments.	6
3.2-5107	Plastering and painting sidewalls and ceilings; interior woodwork; floors.	6
3.2-5108	Sleeping arrangements	6
3.2-5109	Washrooms and toilets	7
3.2-5110	Daily Cleaning of instruments and machinery.	7
3.2-5111	Food protected from flies, dust, and dirt	7
3.2-5112	Clothing of Employees	7
3.2-5113	Employees with contagious or infectious disease	7
3.2-5114	Smoking	7
3.2-5115	Animals	7
3.2-5116	Metal beverage containers with detachable metal pull tabs	8
3.2-5117	Penalty for violation; misdemeanor	8
3.2-5118	Sterilization of bottles and containers	8
3.2-5119	Transportation or storage under unsanitary conditions; penalty	8

**Article 3.  
Adulteration, Misbranding, and False Advertising.**

3.2-5120	Definitions	9
3.2-5121	Authority to adopt regulations; conformity with federal regulations; hearings; enforcement of article; review of regulations.	10
3.2-5122	Adulterated food.	12
3.2-5123	Misbranded food.	13
3.2-5124	Labeling as kosher and halal; penalty.	15
3.2-5125	Poisonous or deleterious substance added to food.	15
3.2-5126	Prohibited acts; exceptions; Commissioner may seek injunction; penalties.	16
3.2-5127	Removal of certain labels from meat packaging prohibited; penalty.	17

3.2-5128	Duty of attorney for the Commonwealth when violation reported; Commission to give notice	17
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**Article 4**  
**Seizures, Prosecutions, Penalties, and Enforcement**

3.2-5129	Definition of term “food.”	18
3.2-5130	Inspections required to operate food establishment	18
3.2-5131	Right to enter and take samples.	19
3.2-5132	Notice and warning to place premises in sanitary condition.	20
3.2-5133	Failure to object such notice and warning a misdemeanor	20
3.2-5134	Condemnation of unsafe food by Commissioner.	20
3.2-5133	Authority to seize food and dairy products; analysis; disposition of remainder.	20
3.2-5136	Purchase of samples for analysis.	21
3.2-5137	Proceeding for forfeiture.	21
3.2-5138	Judgment as to good seized; procedure before an appropriate court; appeal.	22
3.2-5139	Disposition of proceeds from sale of such goods.	22
3.2-5140	Attorney for the Commonwealth to render legal assistance.	22
3.2-5141	General duty of attorneys for the commonwealth; compensation.	23
3.2-5142	Punishment for hindering Commissioner.	23
3.2-5143	Enforcement against Companies.	23
3.2-5144	Exemption from civil liability in certain cases	24
3.2-5145	Punishment for failure to comply with requirements of certain chapters.	24

# **Chapter 51**

## **Food and Drink**

### **Article 1.**

#### **General Provision**

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

A. It shall be the duty of the Commissioner to 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 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. 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.

**§ 3.2-5102. Commissioner to have access to factories, warehouses, and other places; examination of samples.**

The Commissioner shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods in commerce, or any store, restaurant, or other place in which food is being offered for sale for the purpose of:

1. Inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and
2. Securing samples or specimens of any food after paying or offering to pay for such sample. It shall be the duty of the Commissioner to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

This section shall not apply to nonprofit organizations holding one-day food sales.

**§ 3.2-5103. Standards of variability permissible to any article of food.**

The Commissioner with the approval of the Board shall establish and publish standards or limits of variability permissible in any article of food, and these standards shall be the standards before all courts. When standards have been or may be established by the U.S. Department of Health and Human Services, they shall be accepted by the Department and published as standards for the Commonwealth, but such standards shall not go into effect until a reasonable time after publication. The Commissioner, with the approval of the Board, shall have authority to adopt uniform regulations for carrying out the provisions of this section.

**§ 3.2-5104. Chemical work incident to execution of laws.**

The chemical work incident to the execution of the provisions of this chapter shall be provided by the Division of Consolidated Laboratory Services.

## **Article 2. Sanitary Requirements**

### **§ 3.2-5105. Definition of term "food".**

The term "food" as used in this article means all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof, intended for human consumption and introduction into commerce.

### **§ 3.2-5106. Sanitary conditions of food establishments.**

A. Every place used for the preparation for sale, manufacture, packing, storage, sale, or distribution of any food shall be properly lighted, drained, plumbed, and ventilated, and shall be operated with strict regard for the purity and wholesomeness of the food produced, and with strict regard to the influence of such conditions upon the health of any worker or employee.

B. The floors, sidewalls, ceilings, furniture, receptacles, implements, and machinery of every place where food is manufactured, packed, stored, sold, or distributed, shall at all times be kept in a clean, healthful, and sanitary condition.

C. All refuse, dirt, and waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling, and distributing of food, shall be removed from the premises daily.

### **§ 3.2-5107. Plastering and painting sidewalls and ceilings; interior woodwork; floors.**

A. Any place where food is manufactured, produced, prepared, processed, packed, or exposed shall: (i) keep its sidewalls and ceilings well plastered, wainscoted, or ceiled, preferably with metal or lumber, and shall be kept oil-painted or well limewashed; and (ii) keep all interior woodwork clean and washed with soap and water.

B. Every building, room, basement, or cellar occupied or used for the preparation, manufacture, packing, storage, sale, or distribution of food, shall have an impermeable floor made of cement or tile, laid in cement, brick, wood, or other suitable nonabsorbent material that can be flushed and washed clean with water.

### **§ 3.2-5108. Sleeping arrangements.**

The sleeping places for persons employed in any food establishment shall be separate and apart from the room in which food products are manufactured or stored, and no person shall sleep in any place where flour, meal, or any manufactured products thereof are manufactured or stored.

**§ 3.2-5109. Washrooms and toilets.**

Any place where food is manufactured, prepared, exposed, or offered for sale shall have a convenient washroom and toilet of sanitary construction, but such toilet shall be entirely separate and apart from any room used for the manufacture or storage of food products.

**§ 3.2-5110. Daily cleaning of instruments and machinery.**

All trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers, and other utensils and machinery used in moving, handling, cutting, chopping, mixing, canning, and any other process, shall be thoroughly cleaned daily.

**§ 3.2-5111. Food protected from flies, dust, and dirt.**

Food in the process of manufacture, preparation, packing, storing, sale, or distribution, shall be protected from flies, dust, dirt, and all other foreign or injurious contamination.

**§ 3.2-5112. Clothing of employees.**

The clothing of any worker or employee shall be clean.

**§ 3.2-5113. Employees with contagious or infectious disease.**

No employer shall knowingly permit or require any person to work in any place where food is manufactured, produced, prepared, processed, packed, or exposed, who is afflicted with any contagious or infectious disease, or with any skin disease.

**§ 3.2-5114. Smoking.**

Smoking is prohibited in workrooms of food-producing establishments.

**§ 3.2-5115. Animals.**

No animal shall be permitted in any area used for the manufacture or storage of food products. A guard or guide animal may be allowed in some areas if the presence of the animal is unlikely to result in contamination of food, food contact surfaces, or food packaging materials.

**§ 3.2-5116. Metal beverage containers with detachable metal pull tabs.**

It is unlawful for any person to sell or offer for sale at retail within the Commonwealth any metal beverage container or any composite beverage container designed and constructed with an all metal pull tab opening device that detaches from the container when the container is opened in a manner normally used to empty the contents of the container. For the purpose of this section, the term "beverage" shall mean beer as defined in § 4.1-100, or other malt beverages and mineral waters, soda water and formulated soft drinks, with or without carbonation.

**§ 3.2-5117. Penalty for violation; misdemeanor.**

Any person violating any of the provisions of §§ 3.2-5106 through 3.2-5116 is guilty of a Class 3 misdemeanor.

**§ 3.2-5118. Sterilization of bottles and containers.**

A. All bottles, jugs, cans, barrels, and containers used in the packing, bottling, storage, distribution, and sale of nonalcoholic beverage and drink products shall be sterilized by one of the following methods before using:

1. By sterilization with boiling water or live steam; or
2. By soaking in a hot caustic solution that shall contain not less than three percent alkali, of which not less than 60 percent is caustic, or its equivalent in cleansing or germicidal effectiveness as such solutions are commonly used in the soaker-type washing and sterilizing equipment.

If other equally efficient methods of sterilization are developed, the Commissioner may approve those methods of sterilization.

B. Any violation of this section is a Class 1 misdemeanor.

**§ 3.2-5119. Transportation or storage under unsanitary conditions; penalty.**

A. It shall be unlawful for any person or any common carrier to permit unsanitary conditions to exist in the transportation or storage of an article of food intended for introduction into commerce, if the unsanitary conditions may contaminate the article of food.

B. Any person who violates any of the provisions of this section is guilty of a Class 2 misdemeanor.

C. The Commissioner is empowered to enter and inspect all stores, warehouses, and any and all means or places of transportation or storage of articles of food. Any person who hinders or obstructs the Commissioner in the discharge of the authority or duty imposed upon him by the provisions of this section, is guilty of a Class 2 misdemeanor.

D. Whenever any article of food is transported or stored under unsanitary conditions, the proceedings for the enforcement of this section may be instituted and maintained in any county or city through which or in which such article of food has been or is so transported or stored under unsanitary conditions.

### **Article 3. Adulteration, Misbranding, and False Advertising**

#### **§ 3.2-5120. Definitions.**

As used in this article, unless the context requires a different meaning:

"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food.

"Butter" means the food product generally known as butter, which is made exclusively from milk or cream, or both, with or without common salt, and with or without coloring matter, and containing not less than 80 percent by weight of milk fat, having allowed for all tolerances.

"Contaminated with filth" applies to any food not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

"Federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. § 301 et seq.).

"Food" means all articles used for food, drink, confectionery, or condiment, for humans or other animals, whether simple, mixed, or compound, and all substances or ingredients used in the preparation thereof.

"Immediate container" does not mean package liners.

"Label" means a display of written, printed, or graphic matter upon the immediate container of any article.

"Labeling" means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying such article.

"Selling of food" means the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; the sale of any such article; and the supplying of any such articles in the conduct of any food establishment.

**§ 3.2-5121. Authority to adopt regulations; conformity with federal regulations; hearings; enforcement of article; review of regulations.**

A. The Board is authorized to adopt regulations for the efficient enforcement of this article, unless that authority is specifically granted to the Commissioner. The Board may make the regulations adopted under this article conform, insofar as practicable with those adopted under the federal act. Notwithstanding any other requirement under the Administrative Process Act (§ 2.2-4000 et seq.) to the contrary, the Commissioner may adopt any regulation under the federal act without public hearing. Such regulation shall be effective upon filing with the Registrar of Regulations. The Board, at its next regular meeting, shall adopt the regulation after notice but without public hearing unless a petition is filed in accordance with subsection F.

B. The Board may adopt any edition of the Food and Drug Administration's Food Code, or supplement thereto, or any portion thereof, as regulations, with any amendments as it deems appropriate. In addition, the Board may repeal or amend any regulation adopted pursuant to this subsection. No regulations adopted or amended by the Board pursuant to this subsection shall establish requirements for any license, permit or inspection unless such license, permit or inspection is otherwise provided for in this title. The provisions of the Food and Drug Administration's Food Code shall not apply to farmers selling their own farm-produced products directly to consumers for their personal use, whether such sales occur on such farmer's farm or at a farmers' market, unless such provisions are adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

C. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the adoption of any regulation pursuant to subsection B if the Board of Health adopts the same edition of the Food and Drug Administration's Food Code, or the same portions thereof, pursuant to subsection C of § 35.1-14 and the regulations adopted by the Board and the Board of Health have the same effective date. In the event that the Board of Health adopts regulations pursuant to § 2.2-4012.1, the effective date of the Board's regulations may be any date on or after the effective date of the regulations adopted by the Board of Health.

Notwithstanding any exemption to the contrary, a regulation adopted pursuant to subsection B shall be subject to the requirements set out in §§ 2.2-4007.03, 2.2-4007.04, and 2.2-4007.05, and shall be published in the Virginia Register of Regulations. After the close of the 60-day comment period, the Board may adopt a final regulation, with or without changes. Such regulation shall become effective 15 days after publication in the Virginia Register, unless the Board has withdrawn or suspended the regulation, or a later date has been set by the Board. The Board shall also hold at least one public hearing on the proposed regulation during the 60-day comment period. The notice for such public hearing shall include the date, time and place of the hearing.

D. Hearings authorized or required by this article shall be conducted by the Board, the Commissioner or such officer, agent, or employee as the Board may designate for the purpose.

E. The Commissioner shall coordinate enforcement of this article with the applicable federal agencies charged with enforcement of the federal act, in order to avoid unnecessary or unjustified conflict between enforcement of this article and the federal act as to Virginia food manufacturers, processors, packers, and retailers.

F. The Board or Commissioner shall from time to time for good cause shown to review the regulations and enforcement guidelines adopted pursuant to this article. If the Commissioner finds that any federal regulation or enforcement guideline that includes any tolerance or action level that does not protect the health and welfare of the citizens of the Commonwealth, he shall petition the appropriate federal agency to change the federal regulation or enforcement guideline.

G. The Commissioner or any interested party for good cause shown may request the Board to hold a public hearing concerning any regulation or enforcement guideline. If the Board after hearing finds that the regulation or enforcement guideline does not protect the health and welfare of the citizens of the Commonwealth, it shall adopt a new regulation or enforcement guideline. Within the limits of personnel and funds available all state agencies and institutions shall cooperate and assist in furnishing information and data as to whether the regulations or enforcement guidelines in question protect the health and welfare of the citizens of the Commonwealth.

**§ 3.2-5122. Adulterated food.**

A food shall be deemed to be adulterated if:

1. It bears or contains any poisonous or deleterious substance that may render it injurious to health; but if the substance is not an added substance the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health;
2. It bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of § 3.2-5125;
3. It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;
4. It has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;
5. It is the product of a diseased animal, an animal that has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse;
6. Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;
7. Any valuable constituent has been, in whole or in part, omitted or abstracted;
8. Any substance has been substituted in whole or in part for a valuable constituent;
9. Damage or inferiority has been concealed in any manner;
10. Any substance has been added or mixed or packed with the food so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;
11. It is confectionery and it bears or contains any alcohol or nonnutritive article or substance, except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, harmless natural gum, and pectin. In addition, any confectionery that: (i) contains five percent or less by volume of alcohol or; (ii) any chewing gum that contains harmless nonnutritive masticatory substances, shall not be deemed adulterated; or
12. It bears or contains a coal-tar color other than one from a batch that has been certified by the U.S. Department of Health and Human Services.

**§ 3.2-5123. Misbranded food.**

A. A food shall be deemed to be misbranded:

1. If its labeling is false or misleading in any particular.
  2. If any word, statement, or other information appearing on the label does not also appear on the outside container or wrapper, if present, of the retail package of such article, or is not easily legible through the outside container or wrapper.
  3. If any word, statement, or other information required by this article is not prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
  4. Unless its label bears:
    - a. The common or usual name of the food, if there is any;
    - b. When the food is fabricated from two or more ingredients, the common or usual name of each ingredient. Spices, flavorings, and colors not required to be certified under section 721 (c) of the federal act, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; and
    - c. When the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of such fruit or vegetable juice contained in the food.
- To the extent that the Commissioner believes that compliance with the requirements of subdivision 4 b is impractical or results in deception or unfair competition, exemptions shall be established by the Commissioner. The requirements of subdivision 4 b shall not apply to any carbonated beverages, ingredients of which have been fully and correctly disclosed to the extent prescribed by subdivision 4 b to the Commissioner in an affidavit.
5. If it is offered for sale under the name of another food.
  6. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and immediately thereafter, the name of the food imitated.
  7. If its container is made, formed, or filled as to be misleading.

8. If in package form, unless it bears a label containing: (i) the name and place of business of the manufacturer, packer, or distributor; (ii) the name of the article; (iii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (iii) of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board.

9. If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 3.2-5101 unless: (i) it conforms to such definition and standard; and (ii) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food.

10. If it purports to be or is represented as:

a. A food for which a standard of quality has been prescribed by regulations as provided by § 3.2-5101 and its quality falls below such standard unless its label bears, in such manner and form as regulations specify, a statement that it falls below such standards; or

b. A food for which a standard or standards of fill of container have been prescribed by regulations as provided by § 3.2-5101, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

11. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board requires through regulation to fully inform purchasers as to its value for such uses.

12. If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that the Commissioner believes that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by the Commissioner; provided, that the provisions of this subdivision and of subdivisions 4 and 9 with respect to artificial colorings shall not apply in the case of butter, cheese or ice cream.

13. If it is a food intended for human consumption, it is offered for sale, and its label and labeling do not comply with the requirements of Section 403 (q) of the federal act pertaining to nutrition information.

14. If it is a food intended for human consumption, it is offered for sale, and its label and labeling do not comply with the requirements of Section 403 (r) of the federal act pertaining to nutrient content claims and health claims.

B. If an article is alleged to be misbranded because the label is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under such conditions of use as are customary or usual.

**§ 3.2-5124. Labeling as kosher and halal; penalty.**

It is unlawful to label any repackaged food or food product or display or offer for sale any unwrapped food or food product that represents the food or food product as kosher or halal without indicating the person or entity authorizing such designation by providing the name or symbol of the authority or providing a phone number or website to access the information.

Any person who knowingly violates any provision of this section is guilty of a Class 3 misdemeanor.

**§ 3.2-5125. Poisonous or deleterious substance added to food.**

Any poisonous or deleterious substance added to any food, except if it is required in the production of the food or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of subdivision 2 of § 3.2-5122; but when any poisonous or deleterious substance is required or cannot be avoided, the Board shall adopt regulations limiting the quantity to such extent as it finds necessary for the protection of public health. Any quantity exceeding the limits established by the Board shall also be deemed to be unsafe for purposes of the application of subdivision 2 of § 3.2-5122. While such regulation is in effect limiting the quantity of any poisonous or deleterious substance in any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of subdivision 1 of § 3.2-5122 if the added amount is not in excess of the limits established by the Board. In determining the quantity of any added substance to be tolerated in or on different articles of food, the Board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each article, and

the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

**§ 3.2-5126. Prohibited acts; exceptions; Commissioner may seek injunction; penalties.**

A. The following acts and causing the following acts within the Commonwealth are unlawful:

1. The manufacture, sale, or delivery, holding or offering for sale of any food that is adulterated or misbranded.

2. The adulteration or misbranding of any food.

3. The receipt in commerce of any food that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

4. The dissemination of any false advertisement.

5. The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by § 3.2-5102.

6. The giving of a guaranty or undertaking concerning a food, which guaranty or undertaking is false.

7. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the performing of any other act with respect to a food, if such act is done while an article is held for sale and results in the article being misbranded.

8. Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other means of identification authorized or required by regulations adopted under the provisions of this article.

9. The use of sulfiting agents as preservatives on raw fruits and vegetables being offered for sale to the public for human consumption.

B. Any person who violates any of the provisions of subsection A is guilty of a Class 1 misdemeanor.

C. A wholesale or retail merchant who purchases food or drink in a closed container from a reputable manufacturer shall not be in violation of subsection A unless such person knowingly violated the provisions of subsection A. It shall not be a violation of subdivision A 1, A 3 or A 6, if a person can establish that he relied upon a guaranty or undertaking signed by the individual from or through whom he received any food in good faith, to the effect that such food is not adulterated or misbranded. The guaranty or undertaking shall contain the name and address of

the person who provided the guaranty or undertaking, or a place of business, or an agent or representative on whom process may be served, in the Commonwealth.

D. No publisher, broadcaster, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the Commissioner to furnish the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the Commonwealth who caused him to disseminate such advertisement.

E. The Commissioner may apply to an appropriate court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of subsection A, regardless of whether or not an adequate remedy at law exists. But whenever it appears to the satisfaction of the court in the case of a newspaper, periodical, or other publication that: (i) restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue; and (ii) such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction.

**§ 3.2-5127. Removal of certain labels from meat packaging prohibited; penalty.**

It is unlawful for any person holding or offering for retail sale any meat, poultry, or seafood in packaged form who affixes to such food a label containing a date by which such food is to be sold, to willfully remove, alter, mutilate, destroy, or obscure the dated portion of the label on the package, unless the dated portion of the label is removed in connection with the repackaging of such food, or to correct bona fide typographical errors. If the dated portion of the label is removed and a replacement label is attached when such food is repackaged, the replacement label shall bear the original date by which the food is to be sold or an earlier date. Any person who violates any provision of this section is guilty of a Class 3 misdemeanor.

This section shall not apply to meat, poultry, or seafood that is canned or cured.

**§ 3.2-5128. Duty of attorney for the Commonwealth when violation reported; Commissioner to give notice.**

A. If the Commissioner institutes criminal proceedings against any person for any violation pursuant to this article, then: (i) he shall give appropriate notice to the person and give an opportunity for the person to present his views before the Commissioner, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding, and (ii) he may report the violation to an attorney for the Commonwealth.

B. It shall be the duty of each attorney for the Commonwealth, to whom the Commissioner reports any violation of this article, to cause appropriate proceedings to be instituted in the appropriate courts without delay and to be prosecuted in the manner required by law.

C. Nothing in this article shall require the Commissioner to report minor violations of this article to the attorney for the Commonwealth, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

#### **Article 4. Seizures, Prosecutions, Penalties, and Enforcement**

##### **§ 3.2-5129. Definition of term "food".**

The term "food" as used in this article means all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof, intended for human consumption and introduction into commerce.

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

A. It is unlawful to operate a food manufacturing plant, food storage warehouse, or retail food store until it has been inspected by the Commissioner. This section shall not apply to:

1. Food manufacturing plants 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. Nonprofit organizations, private homes, and retail establishments that qualify for an exception under subsection A shall be exempt from inspection 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. Any person who violates any provision of this section is guilty of a Class 1 misdemeanor.

**§ 3.2-5131. Right to enter and take samples.**

The Commissioner is empowered, in the performance of his duties, to enter into any place where he has reason to believe food or drink is made, stored, sold, or offered for sale, and open any cask, tub, jar, bottle, or package containing or supposed to contain, any article of food or drink, and examine or cause to be examined the contents, and take samples for analysis. The person making such inspection shall take samples of the article or produce in the presence of at least one witness, and shall, in the presence of the witness, mark or seal the sample. The inspector shall tender at the time of taking to the manufacturer or vendor of the product, or to the person having the custody of the product, the value thereof, and the statement in writing for the taking of the sample.

**§ 3.2-5132. Notice and warning to place premises in sanitary condition.**

Whenever it is determined by the Commissioner that filthy or unsanitary conditions exist or are permitted to exist in the operation of any place where any food or drink products are manufactured, stored, deposited, or sold for any purpose, the proprietor or owner of the place, or any person owning or operating any place where any food or drink products are manufactured, stored, deposited, or sold, shall first be notified and warned by the Commissioner to establish in a sanitary condition within a reasonable length of time such place. After the first notice and warning of a violation has been issued no notice and warning of the same violation occurring within 90 days after the first notice and warning has been given as provided under § 3.2-5133 shall be required; provided that notice and warning shall be required as to any violation occurring more than 90 days after notice and warning has been given as to a violation.

**§ 3.2-5133. Failure to obey such notice and warning a misdemeanor.**

Any person owning or operating any place where any food or drink products are manufactured, stored, deposited, or sold, failing to obey such notice and warning, or permitting filthy or unsanitary conditions to exist after a notice of previous violation has been issued, provided the violation occurred within 90 days after notice and warning has been issued, is guilty of a Class 1 misdemeanor.

**§ 3.2-5134. Condemnation of unsafe food by Commissioner.**

If the Commissioner finds in any room, building, vehicle of transportation, or other structure, any meat, seafood, poultry, vegetable, fruit, or other perishable articles of food, which are unsound or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, then the articles of food shall be declared to be a nuisance, and the

Commissioner shall condemn or destroy the unsafe articles of food or render the unsafe articles of food to be unsalable as human food.

**§ 3.2-5135. Authority to seize food and dairy products; analysis; disposition of remainder.**

A. The Commissioner is authorized at all times to seize and take possession of any and all food and dairy products, substitutes, or imitations kept for sale, exposed for sale, or held in possession or under the control of any person that in the opinion of the Commissioner are believed to be in violation of any provision of law.

B. When the Commissioner seizes any goods pursuant to subsection A, he shall take a sample from the goods for the purpose of analysis, box and seal the remainder, and leave the remainder in the possession of the person from whom they were seized, subject to the determined disposition.

C. Any person making a seizure under this section shall forward the sample taken to the Division of Consolidated Laboratory Services. The Division of Consolidated Laboratory Services shall turn over the sample to a qualified analyst who shall certify the results of the analysis. Their certificate shall be prima facie evidence of the facts certified to, in an appropriate court where the sample may be offered in evidence.

**§ 3.2-5136. Purchase of samples for analysis.**

Any person who exposes or offers for sale or delivers to a purchaser any food shall furnish within business hours and upon tender and full payment of the selling price, a sample of such food, to the Commissioner, and who shall apply to such manufacturer or vendor or person delivering such food to a purchaser for a sample in sufficient quantity for the analysis of the article in his possession. Samples may be purchased on the open market and shall be representative samples; the collector shall also note the name of the vendor and agent through whom the sale was actually made, together with date of purchase, and all samples not taken in unbroken and sealed original packages shall be sealed by the collector in the presence of the vendor with a seal provided for the purpose.

When possible, samples shall be unbroken and sealed original packages, or taken out of unbroken and sealed original packages. Three like samples shall be obtained where the article is in the original package, or if not in the original package the sample obtained shall be divided into three equal parts and each part shall be labeled with the marks, brands, or tags upon the package, carton, container, wrapper, or accompanying printed or written matter. One sample shall be delivered to the party from whom purchased, or to the party guaranteeing such merchandise; two

samples shall be sent to the Commissioner, one of which is to be analyzed, as provided in this chapter, and the other shall be held under seal by the Commissioner.

**§ 3.2-5137. Proceeding for forfeiture.**

If upon laboratory analysis it appears that the food or dairy products are adulterated, substituted, misbranded, or imitated within the meaning of this chapter, the Commissioner may make complaint before a magistrate, or other officer authorized to issue summons, having jurisdiction where the goods were seized. The magistrate or other officer shall issue his summons to the person from whom the goods were seized, directing him to appear before an appropriate court in such jurisdiction not less than six nor more than 12 days from the date of issuing the summons and show cause why the goods should not be condemned and disposed of. If the person from whom the goods were seized cannot be found, then the summons shall be served upon the person then in possession of the goods. The summons shall be served at least six days before the time of appearance mentioned therein. If the person from whom the goods were seized cannot be found, and no one can be found in possession of the goods, and the defendant shall not appear on the return day, then an appropriate court shall proceed in the cause in the same manner as where a writ of attachment is returned not personally served upon any of the defendants and none of the defendants shall appear upon the return day.

**§ 3.2-5138. Judgment as to goods seized; procedure before an appropriate court; appeal.**

Unless otherwise shown, or if the goods are found upon trial to be in violation of any of the provisions of this chapter or other laws, it shall be the duty of the general district court to render judgment that the seized property be forfeited to the Commonwealth, and that the goods be destroyed or sold by the Commissioner for any purpose other than to be used for food. The mode of procedure before the general district court shall be the same, as near as may be in civil proceedings. Either party may appeal to the circuit court as appeals are taken from the general district court, but it shall not be necessary for the Commonwealth to give any appeal bond.

**§ 3.2-5139. Disposition of proceeds from sale of such goods.**

The proceeds arising from any sale of seized property or goods shall be disposed of in accordance with § 19.2-386.14. If the owner or party claiming the property or goods can produce and prove a written guaranty of purity, signed by the wholesaler, jobber, manufacturers, or other party residing within the Commonwealth from whom the articles were purchased, then the proceeds of the sale, over and above the costs of seizure, forfeiture and sale, shall be paid to the owner or claimant to reimburse him, to the extent of such surplus, for his actual loss resulting from the seizure and forfeiture as shown by the invoice.

**§ 3.2-5140. Attorney for the Commonwealth to render legal assistance.**

It shall be the duty of the attorney for the Commonwealth when called upon by the Commissioner to render any legal assistance in his power in proceeding under the provisions of this chapter.

**§ 3.2-5141. General duty of attorneys for the Commonwealth; compensation.**

Whenever a violation of any laws governing the manufacture and preparation for sale, storage, and sale of articles used as food or condiment by human beings or animals, commonly known as the "pure food" and "feeding stuffs laws," is reported by the Commissioner to any attorney for the Commonwealth it shall be the duty of the attorney for the Commonwealth to commence proceedings and prosecute without delay for the fines and penalties in cases prescribed and upon the termination of such proceedings to report in detail to the Commissioner, the results.

For every conviction in any case instituted by any attorney for the Commonwealth upon the complaint of the Commissioner, the attorney for the Commonwealth prosecuting any such case, after he has reported the results to the Commissioner, shall be entitled to a fee of \$10 that shall be taxed as a part of the costs in the case, as costs are taxed in other criminal cases, and execution issued therefore against the defendant; and the fee shall be paid notwithstanding any law to the contrary limiting or prescribing the compensation and fees of attorneys for the Commonwealth.

In any case of a sale or delivery of goods in violation of the provisions of the pure food or feeding stuffs laws, the person making such sale or delivery, may be prosecuted either in the county or city where the sale or delivery originated, or in the county or city where the illegal goods were found by the Commissioner.

**§ 3.2-5142. Punishment for hindering Commissioner.**

Any person who shall willfully hinder or obstruct the Commissioner in the exercise of the powers conferred upon him by this chapter is guilty of a Class 2 misdemeanor.

**§ 3.2-5143. Enforcement against companies.**

When construing and enforcing the provisions of this chapter and Chapters 52 (§ 3.2-5200 et seq.) and 54 (§ 3.2-5400 et seq.), the act, omission, or failure of any officer, agent, or other individual acting for or employed by any partnership, corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed the act, omission, or failure of such partnership, corporation, company, society, or association, as well as that of the individual.

**§ 3.2-5144. Exemption from civil liability in certain cases.**

A. Any farmer, processor, distributor, wholesaler, food service establishment, restaurant, or retailer of food, including a grocery, convenience, or other store selling food or food products, who donates food to any food bank or any second harvest certified food bank or food bank member charity that is exempt from taxation under 26 U.S.C. § 501 (c) (3), which maintains a food storage facility certified by the Department and, where required by ordinance, by the State Department of Health, for use or distribution by the organization shall be exempt from civil liability arising from any injury or death resulting from the nature, age, condition, or packaging of the donated food. The exemption of this section shall not apply if the injury or death directly results from the gross negligence or intentional act of the donor. If the donor is a food service establishment or a restaurant, such donor shall comply with the regulations of the Board of Health with respect to the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods, pursuant to the provisions of § 35.1-14.

B. Any farmer who gratuitously allows persons to enter upon his own land for purposes of removing any crops remaining in his fields following the harvesting thereof, shall be exempt from civil liability arising out of any injury or death resulting from the nature or condition of such land or the nature, age, or condition of any such crop. The exemption of this section shall not apply if the injury or death directly results from the gross negligence or intentional act of the farmer.

**§ 3.2-5145. Punishment for failure to comply with requirements of certain chapters.**

Any person who refuses to comply upon demand with the requirements of this chapter and Chapters 52 (§ 3.2-5200 et seq.) and 54 (§ 3.2-5400 et seq.) who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any inspector or other person in the performance of his duty in connection with such chapters, is guilty of a Class 2 misdemeanor, unless otherwise specified, and such fines, less the legal costs, shall be paid into the state treasury.