

THE VIRGINIA FOOD FREEDOM ACT
Phase 1

Prepared for
Virginia Food Freedom

by
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Introduction

The Rutherford Institute is a non-profit civil liberties organization headquartered in Charlottesville, Virginia. The Institute's mission is to educate the public about a broad range of current civil liberties and human rights issues and to provide free legal representation to individuals whose civil rights have been threatened or infringed.

In recent years, we have witnessed a frightening trend: the transformation of our once freedom-loving society into a police state. This tendency is manifested in a number of ways, one of which strikes at a most basic, fundamental right—the right to raise and produce food, and to exchange that food with others for valuable goods or currency. It is in the interest of protecting this basic human right that The Rutherford Institute presents the enclosed draft legislation to The Virginia Food Freedom organization.

While it is understandable and desirable for government agencies to enact regulations to protect consumers from potential health hazards, these regulations should not deprive individuals of the basic liberty to buy and sell food products raised, processed, or produced on local farms or in neighbors' home kitchens. Indeed, the protection of such small, local food economies promotes healthy living.

Detailed, invasive regulations may well be appropriate for large-scale agricultural or food production operations, but they are decidedly inappropriate for small farms or suburban kitchens, the products of which are sold directly to the local, end consumer, who is fully informed about any risks associated with the lack of government inspection and chooses to take those risks.

Members of a free society should always remain free to earn a living from the fruits of their own labors and to obtain fresh, local foods grown or produced by those they know and trust. It is our hope that the following draft bills, developed through collaboration with concerned citizens, will bring Virginia nearer to this end.

Executive Summary of “Raw Milk Bill”

The attached bill would amend Virginia law by exempting small producers of raw milk from all existing milk regulations, including the pasteurization requirement. The exemption would apply only where sales and delivery take place on the farm itself, and where the raw milk is labeled, “RAW MILK, NOT FOR RESALE, PRODUCED WITHOUT STATE LICENSING AND INSPECTION. MAY CONTAIN ORGANISMS INJURIOUS TO YOUR HEALTH.”

A BILL to amend and reenact §§ 3.2-5206, 3.2-5207, and 3.2-5208 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 3.2-5100.1, relating to the sale of raw milk under certain circumstances.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-5206, 3.2-5207 and 3.2-5208 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 3.2-5100.1 as follows:

§ 3.2-5100.1. Exception to Chapter.

This Chapter shall not apply to raw milk or raw milk products encompassed by § 3.2-5206(E).

§ 3.2-5206. Board authorized to establish standards and adopt regulations; guidance of State Health Commissioner

A. The Board is authorized to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, market milk, market milk products, and those products manufactured or sold in semblance to or as substitutes for milk, milk products, market milk, market milk products. Regulations concerning the processing and distributing of Grade A market milk and Grade A market milk products shall be adopted with the advice and guidance of the State Health Commissioner. The Board shall adopt regulations for the issuance of the permits referred to in § 3.2-5208. The Board may require permits in addition to those prescribed by the terms of this article, and shall adopt regulations concerning the conditions under which any additional permits shall be issued.

B. In adopting any regulation pursuant to this section, the Board may adopt by reference:

1. Any regulation or part thereof under federal law that pertains to milk or milk products, amending the federal regulation as necessary for intrastate application.
2. Any model ordinance or regulation issued under federal law, including the Pasteurized Milk Ordinance (Public Health Service/Food and Drug Administration Publication Number 229) and the U.S. Department of Agriculture's Milk for Manufacturing Purposes and its Production and Processing Recommended Requirements (hereafter the USDA Recommended Requirements), amending it as necessary for intrastate application and to: (i) require milk on each dairy farm to be cooled and stored at a temperature of 40 degrees Fahrenheit or less, but not frozen; (ii) require the use of recording thermometers and interval timers on every milk storage tank installed on a permitted Grade A milk dairy farm; (iii) specify the design, fabrication, installation, inspection, and record keeping necessary for the proper use of such thermometers and timers; (iv) establish a definition for small-scale

processors of cheese under the dairy plant processing requirements contained in the USDA Recommended Requirements; and (v) create exemptions for small-scale processors of cheese from the USDA Recommended Requirements regarding processing requirements for dairy plants, provided such exemptions do not compromise food safety.

3. Any reference, standard, or part thereof relating to milk, milk products, or milk production published by the American Society of Agricultural Engineers, the American Public Health Association, the American Society of Mechanical Engineers, or the International Association of Food Protection.

4. Any method of analysis relating to milk or milk products including any method of analysis published by the United States Public Health Service, the Association of Official Analytical Chemists, or the American Public Health Association.

C. Any regulation adopted pursuant to this section shall, unless a later effective date is specified in the regulation, be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption of any regulation pursuant to this section. Prior to adopting any regulation pursuant to this section, the Board shall publish a notice of opportunity to comment in the Virginia Register of Regulations. The notice of opportunity to comment shall contain: (i) a summary of the proposed regulation; (ii) instructions on how to obtain the complete text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. The notice of opportunity to comment shall be made at least 90 days in advance of the last date prescribed in the notice for submittals of public comment. The legislative review provisions of § 2.2-4014 shall apply to the promulgation or final adoption process of regulations under this section. The Board shall consider and keep on file all public comments received for any regulation adopted pursuant to this section.

D. Notwithstanding the provisions of subsections B and C, any permits that may be issued or regulations that may be adopted for the sale or manufacture of cheese from milk from any species not required to be permitted or regulated in intrastate commerce prior to July 1, 2001, under this article, shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such regulations or permits apply to persons who manufacture less than 1,000 pounds of such cheese annually.

E. The provisions of this section and any regulations currently in effect pursuant to the authority conferred herein shall not apply to raw milk or raw milk products sold and delivered to the final consumer on the farm by a producer owning no more than 3 milk-producing cows or 9 milk-producing goats, provided that each container of milk or each raw milk product is labeled with the producer's name and address and the statement, "RAW MILK, NOT FOR RESALE, PRODUCED WITHOUT STATE LICENSING OR INSPECTION. MAY CONTAIN ORGANISMS INJURIOUS TO YOUR HEALTH."

§ 3.2-5207. Powers and duties of Commissioner; obstruction unlawful

The Commissioner shall administer and enforce the regulations adopted pursuant to § 3.2-5206 except as provided in § 3.2-5208. He is empowered, in the performance of his duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article, or the regulations adopted hereunder. *Provided however, that this section shall not confer upon the Commissioner any authority with regard to the production of raw milk or raw milk products as specified in § 3.2-5206(E) unless the Commissioner receives and documents a consumer complaint against the raw milk producer.* It shall be unlawful for any person to hinder, obstruct, or interfere with the Commissioner in the performance of his duties under this article or under the regulations adopted pursuant to this article.

§ 3.2-5208. Powers and duties of State Health Commissioner; obstruction unlawful

The State Health Commissioner, pursuant to the regulations adopted pursuant to § 3.2-5206, shall issue permits to all plants that process and distribute Grade A market milk and Grade A market milk products. The State Health Commissioner shall also enforce the regulations adopted under § 3.2-5206 in all plants from the point of delivery at the plant to the consumer. He is empowered, in the performance of his duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article, or the regulations adopted hereunder, pertaining to the processing and distribution of Grade A market milk, Grade A market milk products, ungraded milk products, and those products manufactured in semblance to or as substitutes in Grade A market milk and Grade A market milk products plants from the point of delivery at the plant to the consumer. *Provided however, that this section shall not confer upon the Commissioner any authority with regard to the production of raw milk or raw milk products as specified in § 3.2-5206(E) unless the Commissioner receives and documents a consumer complaint against the raw milk producer.* It shall be unlawful for any person to hinder, obstruct, or interfere with the State Health Commissioner in the performance of his duties under this article or under the regulations adopted hereunder.

Executive Summary of “Home and Farm Exemption Bill”

The attached “Home and Farm Exemption Bill” exempts “homes and farms” from Virginia’s statutory regulations of food sales. The idea is to exempt homes and farms from the burdensome regulations and inspection requirements, regardless of what food product they are producing. The bill ensures, however, that any food products including meats or other substances that are subject to specific (and in some cases, federal) regulations must use substances that have been legally obtained and/or processed.

A BILL to amend and reenact §§ 3.2-5101.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-5101 of the Code of Virginia is amended and reenacted as follows:

§ 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.
- C. *The provisions of this chapter and regulations adopted pursuant hereto shall not apply to private homes or farms where the residents or owners process and/or prepare any food product made from fruit, vegetable, seafood, poultry, meat or milk that has otherwise been processed or obtained in accordance with existing law, provided that such products are sold to a direct end consumer and labeled with the producer's name, producer's address, product ingredients and the following disclosure: "This product is not subject to Virginia's food safety laws or regulations."*