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HOUSE BILL NO. 552

Offered January 10, 2018

Prefiled January 8, 2018

A BILL to amend and reenact §§ 35.1-1 and 58.1-3833 of the Code of Virginia, relating to definition of restaurant; exception; bed-and-breakfast operation.

Patron—Freitas

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 35.1-1 and 58.1-3833 of the Code of Virginia is amended and reenacted as follows:

§ 35.1-1. Definitions.

As used in this title, unless the context requires otherwise or it is otherwise provided a different meaning:

1. "Bed-and-breakfast operation" means a residential-type establishment that provides (i) two or more rental accommodations for transient guests and food service to a maximum of 18 transient guests on any single day for five or more days in any calendar year or (ii) at least one rental accommodation for transient guests and food service to a maximum of 18 transient guests on any single day for 30 or more days in any calendar year.

"Board" or "State Board" means the State Board of Health.

2. "Campground" means and includes but is not limited to a travel trailer camp, recreation camp, family campground, camping resort, camping community, or any other area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements, including any travel trailer camp, recreation camp, family campground, camping resort, or camping community. "Campground" does not include mean a summer camp, migrant labor camp, or park for mobile homes as defined in this section and in §§ 32.1-203 and 36-71, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing his sanitary facilities within his property lines.

3. "Camping unit" means and includes a tent, tent trailer, travel trailer, camping trailer, pickup camper, motor home, and any other device or vehicular type structure for use as temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel, including any tent, tent trailer, travel trailer, camping trailer, pickup camper, or motor home.

4. "Campsite" means and includes any plot of ground within a campground used or intended for occupation by the camping unit.

5. "Commissioner" means the State Health Commissioner.

6. "Department" means the State Department of Health.

7. "Hotel" means any place offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels.

8. "Person" means an individual, corporation, partnership, association, or any other legal entity.

9. "Restaurant" means any one of the following:

a. 1. Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to, including lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and institutions of higher education, and kitchen areas of local correctional facilities subject to standards adopted under § 53.1-68. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

b. 2. Any place or operation which that prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to, including operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. Such mobile

3. Mobile points of service are also deemed to be restaurants to which food is distributed by a place

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59 or operation described in subdivision 2 unless the point of service and of consumption is in a private
60 residence.

61 "Restaurant" does not mean:

62 1. Any place manufacturing packaged or canned foods that are distributed to grocery stores or other
63 similar retailers for sale to the public.

64 2. Any bed-and-breakfast operation that prepares food for and offers food to guests, regardless of the
65 time the food is prepared and offered, if (i) the premises of the bed-and-breakfast operation is a home
66 that is owner occupied or owner-agent occupied, (ii) the bed-and-breakfast operation prepares food for
67 and offers food to transient guests of the bed and breakfast only, (iii) the number of guests served by
68 the bed-and-breakfast operation does not exceed 18 on any single day, and (iv) guests for whom food is
69 prepared and to whom food is offered are informed in a manner established by the Board in regulations
70 that the food is prepared in a kitchen that is not licensed as a restaurant and is not subject to
71 regulations governing restaurants.

72 10. "Summer camp" means ~~and includes~~ any building, tent, or vehicle, or group of buildings, tents,
73 or vehicles, if operated as one place or establishment, or any other place or establishment, public or
74 private, together with the land and waters adjacent thereto, ~~which that~~ is operated or used in this
75 Commonwealth for the entertainment, education, recreation, religious instruction or activities, physical
76 education, or health of persons under 18 years of age who are not related to the operator of such place
77 or establishment by blood or marriage within the third degree of consanguinity or affinity, if 12 or more
78 such persons at any one time are accommodated, gratuitously or for compensation, overnight and during
79 any portion of more than two consecutive days.

80 **§ 58.1-3833. County food and beverage tax.**

81 A. Any county is hereby authorized to levy a tax on food and beverages sold, for human
82 consumption, by a restaurant, as such term is defined in ~~subdivision 9 of § 35.1-1~~, not to exceed four
83 percent of the amount charged for such food and beverages. Such tax shall not be levied on food and
84 beverages sold through vending machines or by (i) boardinghouses that do not accommodate transients;
85 (ii) cafeterias operated by industrial plants for employees only; (iii) restaurants to their employees as part
86 of their compensation when no charge is made to the employee; (iv) volunteer fire departments and
87 volunteer emergency medical services agencies; nonprofit churches or other religious bodies; or
88 educational, charitable, fraternal, or benevolent organizations the first three times per calendar year and,
89 beginning with the fourth time, on the first \$100,000 of gross receipts per calendar year from sales of
90 food and beverages (excluding gross receipts from the first three times), as a fundraising activity, the
91 gross proceeds of which are to be used by such church, religious body or organization exclusively for
92 nonprofit educational, charitable, benevolent, or religious purposes; (v) churches that serve meals for
93 their members as a regular part of their religious observances; (vi) public or private elementary or
94 secondary schools or institutions of higher education to their students or employees; (vii) hospitals,
95 medical clinics, convalescent homes, nursing homes, or other extended care facilities to patients or
96 residents thereof; (viii) day care centers; (ix) homes for the aged, infirm, handicapped, battered women,
97 narcotic addicts, or alcoholics; or (x) age-restricted apartment complexes or residences with restaurants,
98 not open to the public, where meals are served and fees are charged for such food and beverages and
99 are included in rental fees. Also, the tax shall not be levied on food and beverages: (a) when used or
100 consumed and paid for by the Commonwealth, any political subdivision of the Commonwealth, or the
101 United States; or (b) provided by a public or private nonprofit charitable organization or establishment
102 to elderly, infirm, blind, handicapped, or needy persons in their homes, or at central locations; or (c)
103 provided by private establishments that contract with the appropriate agency of the Commonwealth to
104 offer food, food products, or beverages for immediate consumption at concession prices to elderly,
105 infirm, blind, handicapped, or needy persons in their homes or at central locations.

106 Grocery stores and convenience stores selling prepared foods ready for human consumption at a
107 delicatessen counter shall be subject to the tax, for that portion of the grocery store or convenience store
108 selling such items.

109 This tax shall be levied only if the tax is approved in a referendum within the county which shall be
110 held in accordance with § 24.2-684 and initiated either by a resolution of the board of supervisors or on
111 the filing of a petition signed by a number of registered voters of the county equal in number to 10
112 percent of the number of voters registered in the county, as appropriate on January 1 of the year in
113 which the petition is filed with the court of such county. However, no referendum initiated by a
114 resolution of the board of supervisors shall be authorized in a county in the three calendar years
115 subsequent to the electoral defeat of any referendum held pursuant to this section in such county. The
116 clerk of the circuit court shall publish notice of the election in a newspaper of general circulation in the
117 county once a week for three consecutive weeks prior to the election. If the voters affirm the levy of a
118 local meals tax, the tax shall be effective in an amount and on such terms as the governing body may
119 by ordinance prescribe. If such resolution of the board of supervisors or such petition states for what
120 projects and/or purposes the revenues collected from the tax are to be used, then the question on the

121 ballot for the referendum shall include language stating for what projects and/or purposes the revenues
122 collected from the tax are to be used.

123 Any referendum held for the purpose of approving a county food and beverage tax pursuant to this
124 section shall, in the language of the ballot question presented to voters, contain the following text in a
125 paragraph unto itself: "If this food and beverage tax is adopted and a maximum tax rate of four percent
126 is imposed, then the total tax imposed on all prepared food and beverage shall be..." followed by the
127 total, expressed as a percentage, of all existing ad valorem taxes applicable to the transaction added to
128 the four percent county food and beverage tax to be approved by the referendum.

129 The term "beverage" as set forth herein shall mean alcoholic beverages as defined in § 4.1-100 and
130 nonalcoholic beverages served as part of a meal. The tax shall be in addition to the sales tax currently
131 imposed by the county pursuant to the authority of Chapter 6 (§ 58.1-600 et seq.). Collection of such tax
132 shall be in a manner prescribed by the governing body.

133 B. Notwithstanding the provisions of subsection A, Roanoke County, Rockbridge County, Frederick
134 County, Arlington County, and Montgomery County, are hereby authorized to levy a tax on food and
135 beverages sold for human consumption by a restaurant, as such term is defined in § 35.1-1 and as
136 modified in subsection A above and subject to the same exemptions, not to exceed four percent of the
137 amount charged for such food and beverages, provided that the governing body of the respective county
138 holds a public hearing before adopting a local food and beverage tax, and the governing body by
139 unanimous vote adopts such tax by local ordinance. The tax shall be effective in an amount and on such
140 terms as the governing body may by ordinance prescribe.

141 C. Nothing herein contained shall affect any authority heretofore granted to any county, city or town
142 to levy a meals tax. The county tax limitations imposed pursuant to § 58.1-3711 shall apply to any tax
143 levied under this section, mutatis mutandis. All food and beverage tax collections and all meals tax
144 collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax.
145 The wrongful and fraudulent use of such collections other than remittance of the same as provided by
146 law shall constitute embezzlement pursuant to § 18.2-111.

147 D. No county which has heretofore adopted an ordinance pursuant to subsection A shall be required
148 to submit an amendment to its meals tax ordinance to the voters in a referendum.

149 E. Notwithstanding any other provision of this section, no locality shall levy any tax under this
150 section upon (i) that portion of the amount paid by the purchaser as a discretionary gratuity in addition
151 to the sales price; (ii) that portion of the amount paid by the purchaser as a mandatory gratuity or
152 service charge added by the restaurant in addition to the sales price, but only to the extent that such
153 mandatory gratuity or service charge does not exceed 20 percent of the sales price; or (iii) alcoholic
154 beverages sold in factory sealed containers and purchased for off-premises consumption or food
155 purchased for human consumption as "food" is defined in the Food Stamp Act of 1977, 7 U.S.C.
156 § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items:
157 sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily
158 of an assortment of vegetables, and nonfactory sealed beverages.