

# VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

## CHAPTER 275

*An Act to amend and reenact §§ 35.1-1 and 35.1-25 of the Code of Virginia, relating to restaurants; certified food protection managers; exemptions.*

[H 1663]

Approved March 8, 2019

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

**1. That §§ 35.1-1 and 35.1-25 of the Code of Virginia are amended and reenacted as follows:**

**§ 35.1-1. Definitions.**

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

"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.

"Campground" means any 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 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.

"Camping unit" means any 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.

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

*"Certified food protection manager" means a person who has demonstrated proficiency in food safety issues, regulations, and techniques in maintaining a safe-food environment by passing a test and receiving a certification as part of a program that is accredited by the Board.*

"Commissioner" means the State Health Commissioner.

"Department" means the State Department of Health.

"Hotel" means any place offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels.

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

"Restaurant" means:

1. Any place where food is prepared for service to the public on or off the premises, or any place where food is served, 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.

2. Any place or operation 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, including operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service.

3. Mobile points of service to which food is distributed by a place or operation described in subdivision 2 unless the point of service and of consumption is in a private residence.

"Restaurant" does not include any place manufacturing packaged or canned foods that are distributed to grocery stores or other similar retailers for sale to the public.

"Summer camp" means any building, tent, or vehicle, or group of buildings, tents, or vehicles, if operated as one place or establishment, or any other place or establishment, public or private, together with the land and waters adjacent thereto, that is operated or used in this Commonwealth for the entertainment, education, recreation, religious instruction or activities, physical education, or health of persons under 18 years of age who are not related to the operator of such place or establishment by

blood or marriage within the third degree of consanguinity or affinity, if 12 or more such persons at any one time are accommodated, gratuitously or for compensation, overnight and during any portion of more than two consecutive days.

**§ 35.1-25. Exemptions.**

A. The provisions of this title applicable to restaurants shall not apply to:

1. Boardinghouses that do not accommodate transients;
2. Cafeterias operated by industrial plants for employees only;
3. Churches; fraternal or school organizations; organizations that are exempt from taxation under § 501(c)(3) of the Internal Revenue Code; and volunteer fire departments and volunteer emergency medical services agencies that hold occasional dinners, bazaars, and other fund-raisers of one or two days' duration, at which food (i) prepared in the homes of members; (ii) prepared in the kitchen of the church, school, or organization; or (iii) purchased or donated from a restaurant licensed pursuant to Chapter 3 (§ 35.1-18 et seq.) is offered for sale to the public. Restaurants licensed pursuant to Chapter 3 that donate or sell food to the entities identified in this subdivision shall not be required to apply for any additional permits from, or pay any additional permit application fees to, the Department for the proposed occasional dinner, bazaar, or other fundraiser;
4. Grocery stores, including the delicatessen portion that is a part of a grocery store selling exclusively for off-premises consumption, and places manufacturing or selling packaged or canned goods;
5. Churches that serve meals consisting of food prepared in the homes of members or in the kitchen of the church or purchased or donated from a restaurant licensed pursuant to Chapter 3 (§ 35.1-18 et seq.) for their members or their invited guests;
6. Convenience stores or gas stations that are subject to the Department of Agriculture and Consumer Services' Retail Food Establishment Regulations or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax;
7. Concession stands at youth athletic activities, if such stands are promoted or sponsored by a youth athletic association or by any charitable nonprofit organization or group thereof that has been recognized as being a part of the recreational program of the political subdivision where the association or organization is located by an ordinance or resolution of such political subdivision; or
8. Any bed-and-breakfast operation that prepares food for and offers food to guests, regardless of the time the food is prepared and offered, if (i) the premises of the bed-and-breakfast operation is a home that is owner occupied or owner-agent occupied, (ii) the bed-and-breakfast operation prepares food for and offers food to transient guests of the bed and breakfast only, (iii) the number of guests served by the bed-and-breakfast operation does not exceed 18 on any single day, and (iv) guests for whom food is prepared and to whom food is offered are informed in a manner established by the Board in regulations that the food is prepared in a kitchen that is not licensed as a restaurant and is not subject to regulations governing restaurants.

*B. No regulation issued by the Board shall require any restaurant that is operated by (i) a nonprofit civic service organization, (ii) a volunteer fire department, or (iii) a volunteer emergency medical services agency to employ a certified food protection manager.*