DRAFT

REPORT OF THE

COMMITTEE ON AGRICULTURE AND COMMITTEE ON HEALTH, WELFARE, AND INSTITUTIONS SUBCOMMITTEE STUDYING STATE AGENCY INSPECTION AND LICENSURE OF FOOD ESTABLISHMENTS (HJR 73)

January 1993

MEMBERS

Delegate Mitchell Van Yahres, *Chairman*
Delegate Harry R. Purkey, *Vice-Chairman*
Delegate Joseph P. Johnson, Jr.
Delegate John J. Davies III
Delegate Robert E. Nelms

STAFF

Jessica F. Bolecek, *Senior Attorney*
Frank D. Munyan, *Staff Attorney*
José A. Rosado, *Executive Secretary*
Lois Johnson, *Office of the Clerk, House of Delegates*

Authority for Study

The authority for this study is a letter from the Speaker to the chairmen of the House Committees on Agriculture and on Health, Welfare and Institutions requesting the committees to jointly study the efficacy and shared responsibility and authority of the Board of Agriculture and the State Board of Health for the inspection and licensure of food establishments in Virginia (Appendix A). The impetus for the Speaker's request was House Joint Resolution 73 (1992, Delegate Purkey) which was passed by indefinitely in the House Committee on Rules (Appendix B). However, the Speaker's letter states that a careful review and discussion of the resolution by the House Rules Committee indicated that the shared responsibility of the Board of Agriculture and Consumer Services and the State Board of Health may contribute to a duplication of efforts and unnecessary expenditure of the Commonwealth's resources, so the two standing committees were requested to study the issue.

Applicable Statutes

§ 3.1-361 et seq.	Food and Drink Generally Sanitary requirements Virginia Food Act Enforcement
§ 15.1-852	Powers of a municipal corporation
§ 15.1-853	Milk, food and food products
§ 35.1-1	Definition of restaurant
§ 35.1-5	Right of entry to inspect
§ 35.1-14	Regulations governing restaurants
§ 35.1-18	Have to have a license to operate a restaurant
§ 35.1-22	Have to inspect restaurants periodically, at least annually
§ 35.1-25	Exemptions-provisions of Title 35 that apply to restaurants shall not apply to grocery stores, including the delicatessen portion which is a part of a grocery store selling exclusively for off-premises consumption.

(Copies of these code sections appear in Appendix C.)

Background

1984--House Bill 845 (Delegate Pickett) was introduced and carried over to the 1985 General Assembly Session in the House Committee on Health, Welfare and Institutions where it was stricken from the docket. The bill required the Department of Agriculture and Consumer Services to use the Department of Health's restaurant regulations and inspection form in facilities which prepare individual portions of fresh food for on-or-off premises consumption. (Appendix D).

1989--House Joint Resolution 372 (Delegate Purkey) was stricken from the docket by the House Committee on Rules on February 4, 1989. The resolution (which was essentially the same as HJR 73 in 1992) established a joint subcommittee to examine the efficacy of the responsibility and authority shared by the State Board of Health and the Board of Agriculture and Consumer Services, regarding the inspection and licensure of certain food establishments. (Appendix E).

1989--Memorandum of Understanding. In March of 1989 a memorandum of understanding was signed between the Virginia Department of Health (VDH) and the Virginia Department of Agriculture and Consumer Services (VDACS) to clarify the responsibilities of each agency related to public health protection in food service operations in restaurants and retail food stores. The agreement is intended to minimize the duplication of inspections in food service operations in restaurants and retail food stores and to continue the cooperative working relationship between the two agencies that will promote more uniform requirements for all food service operations in Virginia. The Memorandum of Understanding basically says that the Department of Health will inspect restaurants and the Department of Agriculture and Consumer Services will inspect grocery stores as long as the retail food store does not provide facilities for on-premises consumption. If a grocery store deli has seats so that patrons may consume the food on-premises VDH inspects, if there are no seats, VDACS inspects. (Appendix F).

In addition, the following fourteen localities have ordinances that allow the local health department to inspect grocery stores: Appomattox, Arlington and Fairfax Counties and the Cities of Alexandria, Richmond, Danville, Lynchburg, Roanoke, Hampton, Hopewell, Norfolk, Newport News, Portsmouth and Petersburg. There is duplication of inspection in these localities because both VDH and VDACS inspect grocery stores (see chart below).

Grocery store No local ordinance Deli with off-premises consumption	VDACS inspects grocery and deli
Grocery store Local ordinance Deli with off-premises consumption	VDACS inspects grocery and deli VDH inspects grocery and deli
Grocery store No local ordinance Deli with on-premises consumption	VDACS inspects grocery VDH inspects deli
Grocery store Local ordinance Deli with on-premises consumption	VDH inspects grocery and deli VDACS inspects grocery

The following chart presents a comparison of the activities of the VDH and the VDACS.

Department of Health	Department of Agriculture and Consumer Services
Stautorily required to inspect restaurants; including retail store delis if on-premises consumption.	Authorized to inspect all places where food is manufactured, sold, etc., including restaurants.
Fourteen localities inspect retail stores pursuant to local ordinances.	
Restaurant regulations based on U.S.F.D.A. Model Food Service Sanitation Ordinance.	Retail food store code based on Association of Food and Drug officials/FDA Model Ordinance. Virginia food laws based in part on federal Food and Drug Cosmetic Act.
13,000 restaurant inspections annually. 6,000 inspections annually of other food facilities including grocery stores.	9,000 food establishment inspections annually.
Locally run system. Central office administrative support.	Centrally run system.
Inspectors work out of local health departments.	Inspectors work out of their homes.
Performs no other food related inspections.	Also inspects food manufacturers and food storage warehouses.
270 inspectors; also have duties related to onsite sewage treatment and disposal programs; alternative sewage discharge systems; construction of private wells, permits for tourist establishments, day care centers, schools, camps, spas, swimming pools, etc. and nuisance complaints.	25 inspectors, also inspect food manufacturing plants, food warehouses and food processors. Each inspector is assigned 250 to 300 establishments.
Does not inspect eggs.	Inspects eggs to ensure eggs are the grade marked.
Does not inspect apples.	Inspects apples to ensure proper labeling.
Does not check for out-of-date infant formula.	Checks for out-of-date infant formula.

Does not address false advertising, misbranding or product standards compliance.	Performs label reviews, collects products for standards compliance, investigates false advertising.
Does not take samples unless food-borne outbreak.	Routinely takes samples of fat content of ground beef and sausage and for pesticide residue and for filth and microbiological contamination.
Samples tested by Consolidated Labs.	Samples tested by Consolidated Labs and VDACS labs.
Frequency of inspection is pursuant to a risk assessment inspection system, usually 3-4 times a year. More frequently if problems.	Inspect twice a year, every 6 to 8 months. More frequently if problems.
Inspection form is checklist.	Inspection form is narrative.
Restaurants must obtain permits prior to operation.	Retail food stores not required to obtain permits prior to operation.
Reviews plans for new restaurants.	Does not review plans for new retail food stores.
Emphasize education during inspection process.	Emphasize education during inspection process.
Enforcement-Re-inspection visits for voluntary compliance. Notice of violation letter for non-compliance. Revocation of permit for non-compliance. APA due process including informal hearing and formal hearings if necessary. Injunctions, civil penalties and charges for violations not to exceed $10,000 for each violation. Each day a separate offense.	Enforcement-voluntary compliance is encouraged, violations are misdemeanors with monetary fines of up to $25,000 and/ or 1 year of confinement.

Committee Activities

The committee met on September 19, 1992, and elected Delegate Van Yahres chairman and Delegate Purkey vice-chairman. Delegate Purkey explained that he had introduced HJR 73 because he wants to bring inspections for food prepared on-premises under one roof. He said that states with dual inspection systems are starting to combine their inspections in one agency and that in other states the health department has been recognized as the most appropriate and efficient entity to perform inspections of food prepared on-premises.

At the end of the meeting Delegate Van Yahres requested that Delegate Purkey meet again with VDH and VDACS and other interested parties and report findings and recommendations to the committee during the first week of the 1993 General Assembly Session. A meeting was held on November 13, 1992. The testimony and discussion of the September and November meetings is summarized below.

In addition to VDH and VDACS, comments were received from the Director of the Richmond City Health Department, other local health departments, the Virginia Restaurant Association, the Virginia Food Dealers Association, the Virginia Retail Merchants Association, and Southland Corporation.

The Virginia Restaurant Association testified that its members would like to have a uniform code, which operates like the Uniform Statewide Building Code, that applies to all food prepared on-premises for consumption so that requirements would be consistent across the Commonwealth. The market has evolved so that there is no longer a clear delineation between restaurants and grocery stores. For some restaurants the major competition, especially for lunch business, is no longer other restaurants but grocery and convenience stores. Whether the food is eaten seated or standing and whether there are chairs or not do not make a difference in the safety of the food.

Representatives of chain establishments, both restaurants and grocery stores, expressed frustration with regulations that differ from locality to locality and with uneven application and interpretation of the same regulations. It was noted that VDACS conducts a central operation with consistent regulations and that problems arise in some jurisdictions because local health departments inspect grocery stores according to their own regulations. Restaurants are subject to a uniform set of regulations but more stringent local health department requirements can interfere with uniform application across the Commonwealth.

There was considerable discussion of the fact that 14 localities have ordinances allowing local health departments to inspect grocery stores. Although the

ordinances exist in only 14 of Virginia's 124 localities, a significant proportion of the population in Virginia is covered by local ordinances. The cost of grocery store inspections performed pursuant to a local ordinance is split between the state and the locality. Although the percentages vary depending on the locality, the split is approximately 59% state funds and 41% local funds. The Department of Health did a comparison of local grocery ordinances and found that there is uniformity in about 80% of the localities, although only two sets of the ordinances are identical. Four localities have provisions stricter than the state code. The 14 localities with local ordinances have 118 inspectors.

The Director of the Richmond City Health Department opined that the local health department is the appropriate entity to inspect all places that serve food because it has more local identity and accountability than VDACS. He noted that the majority of places inspected are profit making businesses and recommended that local government be given the option to charge a fee for the inspections. Currently no fees are charged.

The following issues were identified:

- There is duplication in the inspection of grocery stores in the 14 jurisdictions that have local ordinances.

- There is no routine communication of information between VDACS and VDH regarding the inspection of individual grocery stores that are inspected by both agencies, including stores that have compliance problems.

- Because VDACS does not require grocery store permits, there is no official notification process when a new grocery store begins operation and VDACS may not immediately learn of a new store's operation.

- Entities that are inspected would like to be subject to uniform standards and the uniform application and interpretation of standards.

- Whether prepared foods are consumed on-premises or off-premises does not effect their safety. There appears to be no rational basis for treating food prepared on-premises for consumption differently depending on where it is consumed.

- Although joint inspections were conducted in the first year that the Memorandum of Understanding was effective, joint inspections between field service personnel of VDH and VDACS which are supposed to be done periodically in restaurants and retail food stores have not been conducted regularly as required by the Memorandum of Understanding.

- Management personnel from VDH and VDACS have not met annually to review their programs and regulations that apply to food service operations and to work

toward making requirements as uniform as possible, as required by the Memorandum of Understanding. However, there is a representative from VDACS on the VDH Food Service Advisory Committee which meets two or three times annually to advise the Commissioner of Health on changes to regulations and policies effecting food service regulations. In addition the VDH has been represented on ad hoc advisory committees established by VDACS regarding VDACS's regulations.

- No significant progress has been made in encouraging localities performing local ordinance inspections in retail food stores to review current retail store activities to determine if local resources might not be used to address other public health needs. According to the Memorandum of Understanding, the VDH is supposed to encourage and coordinate VDH and VDACS meetings with these localities to facilitate their understanding of VDACS retail store inspection programs. However, this process was hampered by VDACS budget cuts and in addition it may not be realistic to expect localities to relinquish this authority.

Possible recommendations:

° Evaluate the extent of duplication of inspections in grocery stores that are inspected by VDACS and by VDH pursuant to a local ordinance.

° Repeal local government authority to regulate the inspection of food establishments.

° Require grocery store permits, or some notification process, so that VDACS is aware of all new grocery stores that it would be responsible for inspecting.

° Require VDACS and VDH to report to the House Committees Agriculture and on Health, Welfare and Institutions on the implementation of the requirements of the Memorandum of Understanding.

° Develop one inspection process for all foods prepared on-premises for consumption.

° Introduce a resolution establishing a joint subcommittee study of these issues.

° Encourage localities to adopt a food managers' certification program. Nine localities have mandated food managers' certification. (Arlington, Alexandria, Chesapeake, Fairfax, Gloucester, Hampton, Newport News, Norfolk and Virginia Beach)

APPENDICES

Appendix A

COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

THOMAS W. MOSS, JR.
SPEAKER
SPEAKER'S ROOM
STATE CAPITOL
RICHMOND, VIRGINIA 23219
EIGHTY-EIGHTH DISTRICT

COMMITTEE ASSIGNMENTS:
RULES (CHAIRMAN)

May 11, 1992

The Honorable Mitchell Van Yahres
Chairman, House Committee on Agriculture
408 Altamont Circle
Charlottesville, Virginia 22901

Re: HJR 73

Dear Delegate Van Yahres:

During the 1992 Session of the General Assembly, the House Committee on Rules considered House Joint Resolution No. 73, which would establish a joint subcommittee to study the possible duplication of efforts resulting from dual state agency inspection and licensure of food establishments in the Commonwealth. Currently, the State Board of Health and the Board of Agriculture and Consumer Services share this role.

The Committee determined after a careful review and discussion of the issues that the shared responsibility and authority of the State Board of Health and the Board of Agriculture and Consumer Services for such inspections and licensure may contribute to duplication of efforts and unnecessary expenditures of the Commonwealth's resources. Therefore, the House Committees on Agriculture and on Health, Welfare and Institutions are requested to study jointly the efficacy of shared responsibility and authority of such state agencies for the inspection and licensure of food establishments in Virginia and to recommend ways to prevent the duplication of efforts and costs. The Committees shall report their findings and recommendations to the House Rules Committee by December 1, 1992.

Your consideration and cooperation in this matter would be appreciated.

Sincerely,

Thomas W. Moss, Jr.
Speaker of the House

enclosure
cc: The Honorable David G. Brickley
The Honorable Harry R. Purkey
The Honorable Glenn R. Croshaw
E. M. Miller, Jr.

LD4094412

HOUSE JOINT RESOLUTION NO. 73

Offered January 17, 1992

Requesting a joint subcommittee to examine the efficacy of the responsibility and authority shared by the State Board of Health and the Board of Agriculture and Consumer Services, regarding the inspection and licensure of certain food establishments.

Patrons—Purkey and Croshaw

Referred to the Committee on Rules

WHEREAS, pursuant to § 35.1-5 of the Code of Virginia, the State Health Commissioner may, upon presentation of credentials and upon consent of the owner, enter at any reasonable time onto the premises of restaurants and other establishments "to inspect, investigate, evaluate, conduct tests... as he reasonably deems necessary" in order to determine whether any law, regulation, order or condition of licensure is being violated; and

WHEREAS, pursuant to §§ 35.1-11 and 35.1-14, the State Board of Health may adopt regulations governing restaurants in order to promote certain standards of "health, hygiene, sanitation, safety, and physical plant management"; and

WHEREAS, for the purposes of Title 35.1 of the Code of Virginia, the Board's authority to license and inspect a "restaurant" includes certain cafeterias, lunchrooms, taverns, delicatessens and other dining accommodations but specifically excludes, among other entities, food establishments selling foods exclusively for off-premises consumption; and

WHEREAS, pursuant to § 3.1-399, the Commissioner of Agriculture and Consumer Services is, also, authorized to enter and inspect certain restaurants and establishments in which foods are being offered for sale; and

WHEREAS, this shared responsibility and authority of the State Board of Health and the Board of Agriculture and Consumer Services for the inspection and licensure of certain food establishments may contribute to duplication of efforts and unnecessary expenditures of the Commonwealth's resources; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the efficacy of the responsibility and authority currently shared by the State Board of Health and the Board of Agriculture and Consumer Services regarding the inspection and licensure of certain food establishments. The joint subcommittee shall be composed of seven members to be appointed as follows: four members from the House of Delegates to be appointed by the Speaker of the House and three members from the Senate to be appointed by the Senate Committee on Privileges and Elections.

All agencies of the Commonwealth shall provide assistance upon request as the joint subcommittee deems appropriate.

The joint subcommittee shall complete its work in time to submit its findings to the Governor and the 1993 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

The indirect costs of this study are estimated to be $13,465; the direct costs of this study shall not exceed $6,300.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of this study.

Title 35.1.

Hotels, Restaurants, Summer Camps, and Campgrounds.

CHAPTER 1.

General Provisions.

§ 35.1-1. Definitions. — As used in this title unless the context requires otherwise or it is otherwise provided:

1. *"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. "Campground" does not include a summer camp, migrant labor camp, or park for mobile homes as defined in this section and in §§ 32.1-203 and 36-71 of the Code of Virginia, 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.

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. 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 lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, and dining accommodations of public and private schools and colleges. 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. Any place or operation which 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 operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

10. *"Summer camp"* means and includes 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, which is operated or used in this Commonwealth for the entertainment, education, recreation, religious instruction or activities, physical education, or health of persons under eighteen 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 twelve 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. (Code 1950, §§ 35-1, 35-25, 35-43, 35-54; 1960, c. 186; 1964, c. 327; 1981, c. 468.)

Cross references. — As to the applicability of subdivision ordinances to mobile homes, see § 15.1-466.1. For provisions as to membership camping, see § 59.1-311 et seq.

Editor's note. — Section 36-71, referred to in the paragraph defining "Campground," was repealed by Acts 1986, c. 37. For definitions of terms used in Charter 4 of Title 36, see § 36-71.1.

In response to a resolution of the State Board of Health to the Virginia Code Commission, the 1979 General Assembly enacted House Joint Resolution 198, requesting the Code Commission to study and recodify Title 35 of the Code. In January of 1981, the Commission sent to the Governor and General Assembly its report containing a proposed provision of Title 35, Hotels, Restaurants and Camps, of the Code. This report, which was published as House Document No. 11 of the 1981 session, contains reviser's notes and other explanatory matter which, while valuable, are too lengthy for inclusion here. The Commission's draft of the revision of Title 35, as amended by the General Assembly, became c. 468 of the Acts of 1981. Effective October 1, 1981, it repeals Title 35 of the Code and enacts in lieu thereof a new Title 35.1.

Transition provisions. — Acts 1981, c. 468, cls. 5 and 6 provide:

"5. That wherever any of the conditions, requirements, provisions, or contents of any section, article, or chapter of Title 35, or any other title of this Code as such titles existed prior to October one, nineteen hundred eighty-one, are transferred in the same or in modified form to a new section, article, or chapter of this title or any other title of this Code and whenever any such former section, article, or chapter is given a new number in this or any other title, all references to any such former section, article, or chapter of Title 35 or other title appearing in this Code shall be construed to apply to the new or renumbered section, article, or chapter containing such conditions, requirements, provisions, or contents or portion thereof."

"6. That the regulations of the State Board of Health in effect on the effective date of this act [Oct. 1, 1981] shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations promulgated under this act."

§ 35.1-2. Enforcement. — This title shall be enforced by the State Board of Health and the State Health Commissioner as executive officer of the Board, acting through duly designated officers. (Code 1950, §§ 35-5, 35-17, 35-28; 1981, c. 468.)

§ 35.1-3. Commissioner vested with Board's authority. — The Commissioner shall be vested with all the authority of the Board pursuant to this title when it is not in session, subject to such rules and regulations as may be prescribed by the Board. (1981, c. 468.)

§ 35.1-4. Applicability of Administrative Process Act. — The Administrative Process Act (§ 9-6.14:1) shall govern the procedures for rendering all case decisions, as defined in § 9-6.14:4, and for issuing all orders and regulations promulgated pursuant to the authority of this title. (Code 1950, §§ 35-24, 35-42, 35-52; 1970, c. 273; 1981, c. 468.)

§ 35.1-5. Right of entry to inspect, etc.; warrants. — Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Commissioner or his designee shall have the right to enter at any reasonable time onto the premises of any hotel, restaurant, summer camp, or campground to inspect, investigate, evaluate, conduct tests, or take samples for testing as he reasonably deems necessary in order to determine whether any provision of this title, any regulation of the Board, any order of the Board or Commissioner, or any condition in a license issued by the Board or Commissioner pursuant to this title is being violated. If the Commissioner or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing, or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2 of the Code of Virginia. (Code 1950, §§ 35-4, 35-20, 35-27, 35-30; 1981, c. 468.)

§ 35.1-6. Orders. — The Board is authorized to issue orders to require any person to comply with the provisions of this title or any regulations promulgated by the Board, or to comply with any case decision, as defined in § 9-6.14:4, of the Board or Commissioner. Any such order shall be issued only after a hearing with at least thirty days notice to the affected person of the time, place, and purpose thereof. Such order shall become effective not less than fifteen days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the Board to issue separate orders and regulations to meet any emergency as provided in § 35.1-12. (1981, c. 468.)

§ 35.1-7. Penalties, injunctions, civil penalties and charges for violations. — A. Any person willfully violating, or refusing, failing, or neglecting to comply with any regulation or order of the Board or Commissioner, or any provision of this title, shall be guilty of a Class 3 misdemeanor unless a different penalty is specified. Each day of violation shall constitute a separate offense.

B. Any person violating, or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or Commissioner, or any provision of this title, may be compelled in a proceeding instituted in an appropriate court by the Board or Commissioner to obey and comply with such regulation, order, or provision of this title. The proceeding may be by injunction, mandamus, or other appropriate remedy.

C. Without limiting the remedies which may be obtained pursuant to subsection B, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection B shall be subject, in the discretion of the court, to a civil penalty not to exceed $10,000 for each violation. Each day of violation shall constitute a separate offense.

D. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board or Commissioner or any provision of this title, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit set forth in subsection C. Such civil charges shall be in place of any appropriate civil penalty which could be imposed under subsection C. (Code 1950, §§ 35-7, 35-21, 35-41, 35-53; 1981, c. 468.)

Cross references. — As to punishment for Class 3 misdemeanors, see § 18.2-11.

§ 35.1-8: Repealed by Acts 1989, c. 258.

§ 35.1-9. Local ordinance superseded; exceptions. — This title and the regulations of the Board shall supersede all local ordinances regulating hotels, restaurants, summer camps, and campgrounds other than those adopted pursuant to the provisions of § 35.1-26, except that any locality may adopt ordinances regarding (i) the sale, preparation, and handling of food; (ii) swimming pools, saunas and other similar facilities; (iii) the keeping of guest registers by hotels; and (iv) the display of signs alongside or in plain view of any public roadway to preclude false or misleading advertising thereon to the extent prohibited by § 18.2-217, provided such ordinances are equivalent to or more stringent than the provisions of this title or Title 18.2 in the case of the display of signs alongside or in plain view of any public roadway to preclude false or misleading advertising thereon to the extent prohibited by § 18.2-217, and the regulations of the Board. Nothing in this section shall be construed to limit or affect in any way the powers given to localities under Title 15.1 of the Code of Virginia, or under any city charter, or under any other general or special act. (1981, c. 468; 1983, c. 242.)

§ 35.1-10. Measures to prevent transmission of disease. — Nothing in this title applicable to restaurants shall prevent the Commissioner from taking whatever action he deems necessary to control the spread of preventable diseases as set forth in Title 32.1 of this Code, including but not limited to the exclusion of employees, the examination of any employee, the immediate closing of a hotel, restaurant, summer camp, or campground, and the taking of samples for testing. (Code 1950, §§ 35-31, 35-40; 1971, Ex. Sess., c. 155; 1981, c. 468.)

CHAPTER 2.

REGULATIONS.

§ 35.1-11. Regulations generally. — The Board shall make, adopt, promulgate, and enforce regulations necessary to carry out the provisions of this title and to protect the public health and safety. In promulgating regulations, the Board shall consider the accepted standards of health, hygiene, sanitation, safety, and physical plant management. (1981, c. 468.)

§ 35.1-12. Emergency orders and regulations; Commissioner vested with authority of Board. — The Board may make separate orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases. (1981, c. 468.)

§ 35.1-13. Regulations governing hotels. — Regulations of the Board governing hotels shall provide minimum standards for, but shall not be limited to: (i) food preparation and handling; (ii) physical plant sanitation; (iii) the provision, storage, and cleansing of linens and towels; (iv) general housekeeping and maintenance practices; (v) requirements for approved water supply and sewage disposal systems; (vi) vector and pest control; (vii) swimming pools, saunas, and other similar facilities, including personnel standards for the operation thereof; (viii) ice machines and dispensers of perishable food items; and (ix) a procedure for obtaining a license. (Code 1950, §§ 35-8, 35-9, 35-16, 35-16.1, 35-18; 1956, c. 394; 1964, c. 499; 1970, c. 435; 1981, c. 468.)

§ 35.1-14. Regulations governing restaurants; advisory standards for exempt entities. — A. Regulations of the Board governing restaurants shall include but not be limited to the following subjects: (i) a procedure for obtaining a license; (ii) the safe and sanitary maintenance, storage, operation, and use of equipment; (iii) the sanitary maintenance and use of a restaurant's physical plant; (iv) the safe preparation, handling, protection, and preservation of food, including necessary refrigeration or heating methods; (v) procedures for vector and pest control; (vi) requirements for toilet and cleansing facilities for employees and customers; (vii) requirements for appropriate lighting and ventilation not otherwise provided for in the Uniform Statewide Building Code; and (viii) requirements for an approved water supply and sewage disposal system.

B. In its regulations, the Board may classify restaurants by type and specify different requirements for each classification.

C. The Board may issue advisory standards for the safe preparation, handling, protection, and preservation of food by entities exempt from the provisions of this title pursuant to § 35.1-25 or § 35.1-26. (Code 1950, §§ 35-28, 35-32, 35-33, 35-34, 35-35, 35-36, 35-37; 1981, c. 468.)

§ 35.1-14.1. Certain uses of sulfiting agents prohibited. — The use of sulfiting agents as preservatives on raw fruits and vegetables is prohibited. No restaurant licensed under this title shall direct or allow its employees or agents to apply sulfiting agents on raw fruits and vegetables prepared for or served to the public. (1986, c. 200.)

§ 35.1-14.2. Donations of food to charitable organizations. — A. Any restaurant, licensed by the Department of Health pursuant to this title and any processor, distributor, wholesaler or retailer of food inspected by the Department of Agriculture and Consumer Services pursuant to Chapter 20 (§ 3.1-361 et seq.) and Chapter 21 (§ 3.1-420 et seq.) of Title 3.1, may donate unserved excess foods to any charity organization which is exempt from taxation under 26 U.S.C. § 501 (c) (3), and to political subdivisions for distribution to needy persons. Charitable organizations engaged in food distribution programs for needy persons shall notify the local political subdivision of their programs. Upon the notification of such food distribution programs by such charitable organizations, the local political subdivision shall provide a list of such charitable organizations within its jurisdiction to those restaurants and other food suppliers who request such information. Organizations engaged in such food distribution programs shall be exempt from civil liability as provided in § 3.1-418.1.

B. Charitable organizations prior to engaging in food distribution programs for needy persons shall comply with the applicable regulations adopted pursuant to §§ 35.1-11 and 35.1-14 and with the provisions of §§ 35.1-18 and 35.1-21. (1990, c. 755.)

§ 35.1-15. Training materials. — The Commissioner shall cause to be written materials designed to provide information on training for the prevention of disease transmission, symptoms of communicable disease, personal hygiene practices, hazards in food preparation, and any other matter deemed appropriate by the Commissioner for the training of restaurant personnel. The Commissioner may, if he desires, provide personnel for the training of employees of restaurants in the handling of food. (1981, c. 468.)

§ 35.1-16. Regulations governing summer camps. — The regulations of the Board governing summer camps shall include, but not be limited to: (i) an approved drinking water supply; (ii) an approved sewage disposal system; (iii) an approved solid waste disposal system; (iv) the adequate and sanitary preparation, handling, protection and preservation of food; (v) the proper maintenance of buildings, grounds, and equipment; (vi) vector and pest control; (vii) toilet, swimming, and bathing facilities, including shower facilities; (viii) a procedure for obtaining a license. (Code 1950, §§ 35-45, 35-46, 35-47, 35-48, 35-49; 1981, c. 468.)

§ 35.1-17. Regulations governing campgrounds. — A. The regulations of the Board governing campgrounds shall include minimum standards for (i) an approved drinking water supply; (ii) an approved sewage disposal system; (iii) an approved solid waste disposal system; (iv) the proper maintenance of buildings, grounds, and equipment; (v) vector and pest control; (vi) toilet, swimming, and bathing facilities, including shower facilities; (vii) effective measures for the control of animals and pets; (viii) appropriate procedures and safeguards for hazardous situations, including specifically the maintenance and sale of propane gas or other explosives and combustibles; and (ix) a procedure for obtaining a license.

B. The Board may in its sole discretion prescribe regulations for classes of campgrounds and different requirements for each class. (Code 1950, § 35-55; 1981, c. 468.)

Cross references. — For provisions as to membership camping, see § 59.1-311 et seq.

CHAPTER 3.

LICENSES; INSPECTIONS.

§ 35.1-18. License required; name in which issued; not assignable or transferable. — No person shall own, establish, conduct, maintain, manage, or operate any hotel, restaurant, summer camp, or campground in this Commonwealth unless the hotel, restaurant, summer camp, or campground is licensed as provided in this chapter. The license shall be in the name of the owner or lessee. No license issued hereunder shall be assignable or transferable. (Code 1950, §§ 35-22, 35-26, 35-44; 1981, c. 468.)

Cross references. — As to the applicability of subdivision ordinances to mobile homes, see § 15.1-466.1.

Section does not authorize state officials to control management of restaurant. — This section is obviously designed to protect the health of the community but it does not authorize state officials to control the management of the business or to dictate what persons shall be served. Williams v. Howard Johnson's Restaurant, 268 F.2d 845 (4th Cir. 1959), decided under former § 35-26.

§ 35.1-19. Person deemed responsible for campground. — In the event that the Commissioner or his designee cannot establish which person is responsible for a campground, the owner of the parcel of land upon which the campground lies shall be deemed to be the person responsible for obtaining a license and meeting the requirements of this title and the applicable rules and regulations for retaining a license. (1981, c. 468.)

§ 35.1-20. Issuance and denial of licenses. — The Commissioner shall issue a license for each hotel, restaurant, summer camp, and campground which, after inspection, is found to be in compliance with all applicable regulations and provisions of this title. The Commissioner shall notify by certified mail any applicant denied a license of the reasons for such denial. (1981, c. 468.)

§ 35.1-21. Display of restaurant and summer camp licenses. — The license of each hotel, restaurant, summer camp, and campground issued pursuant to this chapter shall be prominently displayed. (Code 1950, § 35-26; 1981, c. 468.)

§ 35.1-22. Periodic inspections. — The Commissioner shall cause each hotel, restaurant, summer camp, and campground in the Commonwealth to be inspected periodically, but not less often than annually, in accordance with applicable provisions of this title and the regulations of the Board. If at any time the Commissioner finds that a hotel, restaurant, summer camp, or

campground is not in compliance with applicable provisions of this title or regulations of the Board, he may revoke or suspend the license of that hotel, restaurant, summer camp, or campground. (Code 1950, §§ 35-4, 35-6, 35-7, 35-15, 35-23, 35-46, 35-47, 35-51, 35-56; 1981, c. 468.)

§ 35.1-23. State institutions with dining accommodations to request inspections. — The head of every state institution with dining accommodations shall request the Commissioner to inspect such dining accommodations not less often than annually. Upon receipt of any such request, the Commissioner shall cause the dining accommodations to be so inspected and a report to be filed with the institution. (1981, c. 468.)

§ 35.1-24. Advice and assistance to applicants for hotel and restaurant licenses. — The Commissioner may provide for consultative advice and assistance, within such limitations and restrictions as he deems proper, to any person who applies for a license provided for in this chapter. (1981, c. 468.)

CHAPTER 4.

EXEMPTIONS.

§ 35.1-25. Exemptions. — 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 and social organizations, and volunteer fire departments and rescue squads which hold occasional dinners and bazaars of one or two days duration, at which food prepared in the homes of members or in the kitchen of the church or organization is offered for sale to the public;
4. Grocery stores, including the delicatessen portion which is a part of a grocery store selling exclusively for off-premises consumption, and places manufacturing or selling packaged or canned goods;
5. Churches which serve meals for their members as a regular part of their religious observances. (Code 1950, § 35-38; 1962, c. 629; 1972, c. 493; 1981, c. 468; 1982, c. 51.)

§ 35.1-26. Cities, counties, and towns may by ordinance exempt certain fairs and youth athletic activities. — The governing body of any county, city, or town may provide by ordinance that this title shall not apply to:

1. Food booths at fairs, if such booths are promoted or sponsored by any political subdivision of the Commonwealth or by any charitable nonprofit organization or group thereof.
2. Concession stands at youth athletic activities, if such stands are promoted or sponsored by either a youth athletic association or by any charitable nonprofit organization or group thereof which 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.

The ordinance shall provide that the health officer of the county, city, or town in which the fair or activity is held, or a qualified person designated by him, shall exercise such supervision of the sale of food as the ordinance may prescribe. (Code 1950, § 35-38.1; 1964, c. 462; 1981, c. 468; 1983, c. 251.)

CHAPTER 5.

Posting Hotel Rates; Hotel Liability.

Sec.
35.1-27. Posting of rates.
35.1-28. Liability.

§ 35.1-27. Posting of rates. — Every hotel shall post in a conspicuous place in its office a list of the ranges of the charges for its rooms and shall post in each guest's room the maximum charge for that room. If the hotel is operated on the American or modified American plan, the notice shall contain the maximum charge for the room and the number of meals provided. (Code 1950, § 35-2; 1981, c. 468.)

§ 35.1-28. Liability. — A. It shall be the duty of any person owning or operating a hotel to exercise due care and diligence in providing honest and competent employees and to take reasonable precautions to protect the persons and property of the guests of the hotel. No hotel shall be held liable in a sum greater than $300 for the loss of any wearing apparel, baggage, or other property not hereinafter mentioned belonging to a guest when such loss takes place from the room or rooms occupied by the guest. Unless the loss shall take place from the office of the hotel after the valuables are deposited there, no hotel shall be liable for any loss by any guest of jewelry, money, or other valuables of like nature belonging to any guest if the hotel shall have posted in the room or rooms of the guest in a conspicuous place, and in the office of the hotel, a notice stating that jewelry, money, and other valuables of like nature must be deposited in the office of the hotel. The hotel shall not be obligated to receive from any 1 guest for deposit in such office any property hereinbefore described exceeding a total value of $500.

B. Each guest's room shall have suitable locks on its doors and windows unless permanently secured. If a guest fails to lock the doors or windows of his room, the hotel shall not be liable for any property taken from the room in consequence of such failure on the part of the guest. The burden of proof shall be upon the operator of the hotel to show that he complied with the provisions of this section and that the guest failed to comply with these requirements.

C. In the case of loss by fire or overwhelming disaster, a hotel shall exercise ordinary and reasonable care in the custody of the baggage or other property of its guests, but in no case shall the hotel's liability exceed $250 to any 1 guest unless the negligence of the hotel was the cause of the fire or overwhelming disaster.

D. No liability shall attach to any hotel for the baggage, hats, umbrellas, coats, or other wearing apparel of a guest until the same is placed by the guest in the actual custody of an employee of the hotel. The mere depositing of such baggage, hats, umbrellas, coats, or other wearing apparel inside the hotel shall not be construed as putting in actual custody until taken in charge by the hotel or its employee, or properly placed in a room or rooms assigned to the guest.

E. Nothing contained in this section shall be construed so as to change or alter the principles of law concerning a hotel's liability to a guest or other

ARTICLE 3.

Adulteration, Misbranding and False Advertising in General.

§ 3.1-386. Title. — This article may be known, designated and cited as the Virginia Food Act. (Code 1950, § 3-306; 1966, c. 702.)

Law Review. — For article discussing issues relating to toxic substances litigation, focusing on the Fourth Circuit, see 16 U. Rich. L. Rev. 247 (1982).

Violation of act as negligence per se. — The majority of American courts which have passed on the question of whether violation of food and drug acts is negligence per se, in cases arising under state laws resembling the federal act, have held such violations to be negligence per se. Orthopedic Equip. Co. v. Eutsler, 276 F.2d 455, 79 A.L.R.2d 390 (4th Cir. 1960).

§ 3.1-387. Definitions. — For the purpose of this article:

(1) The term *"Commissioner"* means the Commissioner of Agriculture and Consumer Services. The term *"Board"* means the Board of Agriculture and Consumer Services.

(2) The term *"person"* includes an individual, partnership, corporation and association.

(3) The term *"food"* means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(4) The term *"label"* means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(5) The term *"immediate container"* does not include package liners.

(6) The term *"labeling"* means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(7) 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 which 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 thereof or under such conditions of use as are customary or usual.

(8) The term *"advertisement"* means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food.

(9) The term *"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.

(10) The provisions of this article regarding the *selling* of food shall be considered to include 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.

(11) The term *"federal act"* means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(12) For the purposes of this article, *"butter"* shall be understood to mean 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 eighty per centum by weight of milk fat, all tolerances having been allowed for. (Code 1950, § 3-307; 1966, c. 702.)

§ 3.1-388. Prohibited acts. — The following acts and the causing thereof within the Commonwealth are hereby prohibited:

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

(b) The adulteration or misbranding of any food.

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

(d) The dissemination of any false advertisement.

(e) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by § 3.1-399.

(f) The giving of a guaranty or undertaking concerning a food, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing, or having a place of business, or an agent or representative on whom process may be served, in the Commonwealth, from or through whom he received the food in good faith.

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

(h) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this article.

(i) The use of sulfiting agents as preservatives on raw fruits and vegetables being offered for sale to the public for human consumption. (Code 1950, § 3-308; 1966, c. 702; 1986, c. 200.)

The 1986 amendment added subdivision (i) and substituted "Commonwealth" for "State" in the introductory paragraph and in subdivision (f).

§ 3.1-389. Injunctions to prevent violations; exceptions as to certain publications. — In addition to the remedies hereinafter provided the Commissioner is authorized to apply to any court of record having general chancery jurisdiction in this State 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 § 3.1-388, irrespective of whether or not there exists an adequate remedy at law. But whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals, (1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (2) that 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. (Code 1950, § 3-309; 1966, c. 702.)

§ 3.1-390. Penalties; exceptions as to certain persons. — (a) Any person who violates any of the provisions of § 3.1-388 shall be guilty of a misdemeanor and shall on conviction thereof be punished in the manner provided by law for the punishment of misdemeanors. Provided, however, that no wholesale or retail merchant who purchases food or drink in a closed container from a reputable manufacturer shall be found guilty under this section unless such person knowingly violated the provisions of § 3.1-388.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated subsections (a) or (c) of § 3.1-388 if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing, or having a place of business, or an agent or representative on whom process may be served, in the State, from or through whom he received in good faith any food, to the effect that such food is not adulterated or misbranded within the meaning of this article, designating this article.

(c) No publisher, radio-broadcast licensee, 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 State who caused him to disseminate such advertisement. (Code 1950, § 3-310; 1956, c. 529; 1966, c. 702.)

§ 3.1-391. Condemnation of unsafe food by Commissioner. — Whenever the Commissioner acting through any of his authorized agents shall find 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, the same being hereby declared to be a nuisance, the Commissioner acting through any of his authorized agents, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. (Code 1950, § 3-311; 1966, c. 702.)

§ 3.1-392. Duty of Commonwealth's attorney when violation reported; notice before such report. — It shall be the duty of each Commonwealth's attorney, to whom the Commissioner reports any violation of this article, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this article is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding. (Code 1950, § 3-312; 1966, c. 702.)

§ 3.1-393. Notice or warning as to minor violation. — Nothing in this article shall be construed as requiring the Commissioner to report for the institution of proceedings under this article, minor violations of this article, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (Code 1950, § 3-313; 1966, c. 702.)

§ 3.1-394. Commissioner authorized to make regulations as to food definition and standard of identity, standard of quality, fill of container and tolerances. — Whenever in the judgment of the Commissioner such action will promote honesty and fair dealing in the interest of consumers, the Board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, reasonable standard of quality, 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 which shall be named on the label. The definitions and standards so promulgated may conform so far as practicable to the definitions and standards promulgated by the Secretary of the United States Department of Agriculture under authority conferred by section 401 of the federal act. (Code 1950, § 3-314; 1966, c. 702.)

§ 3.1-395. When food deemed adulterated. — A food shall be deemed to be adulterated:

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 3.1-397; (3) if 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) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; (5) if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; (2) if any substance has been substituted wholly or in a part therefor; (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith 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.

(c) If 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; provided, that this paragraph shall not apply to any confectionery by reason of its containing five percent or less by volume of alcohol or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(d) If it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture. (Code 1950, § 3-315; 1966, c. 702; 1988, c. 110.)

The 1988 amendment, in subsection (c), substituted "percent" for "per centum," substituted "five percent or less" for "less than one-half of one per centum" and deleted "derived solely from the use of flavoring extracts" following "volume of alcohol."

§ 3.1-396. When food deemed misbranded. — A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) 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.

(d) If its container is so made, formed, or filled as to be misleading.

(e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) the name of the article; (3) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (3) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board.

(f) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon 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.

(g) 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 § 3.1-394 unless (1) it conforms to such definition and standard, and (2) 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.

(h) If it purports to be or is represented as—

(1) A food for which a standard of quality has been prescribed by regulations as provided by § 3.1-394 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

(2) A food for which a standard or standards of fill of container have been prescribed by regulations as provided by § 3.1-394, 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.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided, that to the extent that the Commissioner believes that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by the Commissioner; provided further that the requirements of clause (2) of this paragraph shall not apply to any carbonated beverages, ingredients of which have been fully and correctly disclosed to the extent prescribed by clause (2) to the Commissioner in an affidavit.

(j) 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 determines to be, and by regulations prescribes, as necessary in order fully to inform purchasers as to its value for such uses.

(k) 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 paragraph is impracticable, exemptions shall be established by the Commissioner; provided, that the provisions of this paragraph and of paragraphs (g) and (i) with respect to artificial colorings shall not apply in the case of butter, cheese or ice cream. (Code 1950, § 3-316; 1966, c. 702.)

§ 3.1-397. Food to which poisonous or deleterious substance added. — Any poisonous or deleterious substance added to any food except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of subsection (a) of § 3.1-395; but when such substance is so required or cannot be so avoided, the Board shall promulgate regulations limiting the quantity therein or thereon to such extent as it finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of subsection (a) of § 3.1-395. While such a regulation is in effect limiting the quantity of any substance in the case of 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 clause (1) of subsection (a) of § 3.1-395 if such added amount is not in excess of the limits fixed by the Board as hereinabove provided. In determining the quantity of such 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 such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (Code 1950, § 3-317; 1966, c. 702.)

§ 3.1-398. Authority to make regulations; conformity with federal regulations; hearings; enforcement of article; review of regulations. —

(a) The authority to promulgate regulations for the efficient enforcement of this article is hereby vested in the Board, unless specially conferred on the Commissioner. The Board is hereby authorized to make the regulations promulgated under this article conform, insofar as practicable with those promulgated under the federal act. Notwithstanding any other requirement under the Administrative Process Act (§§ 9-6.14:1 through 9-6.14:20 of the Code) 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 subparagraph (d).

(b) 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.

(c) It shall be the duty of the Commissioner to 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.

(d) It shall be the duty of the Board or Commissioner from time to time for good cause shown to review the regulations and enforcement guidelines promulgated pursuant to this article. If the Commissioner finds that any federal regulation or enforcement guideline which shall include any tolerance or action level is not in consonance with the health and welfare of the citizens of this State, he shall petition the appropriate federal agency or agencies to change the federal regulation or enforcement guideline.

(e) 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 is not in consonance with the health and welfare of the citizens of this State, it shall adopt a new regulation or enforcement guideline which is in consonance with the health and welfare of the citizens of this State. 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 are in consonance with the health and welfare of the citizens of this State. (Code 1950, § 3-318; 1966, c. 702; 1977, c. 440.)

§ 3.1-399. Commissioner to have access to factories, warehouses and other places; examination of samples. — The Commissioner, acting through his duly authorized agents, 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:

(1) Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this article are being violated; and

(2) Of 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 article is being violated. (Code 1950, § 3-319; 1966, c. 702.)

§ 3.1-400. Publication of reports as to judgments, decrees and court orders and analyses of samples. — The Commissioner shall cause to be published from time to time reports summarizing all judgments, decrees, and

court orders which have been rendered under this article, including the nature of the charge and the disposition thereof, and shall also publish results of analyses of samples of foods, with the names of the manufacturers or sponsors, and also of the persons from whom the samples were obtained. (Code 1950, § 3-320; 1966, c. 702.)

§ 3.1-401. Judges to charge grand juries; Commonwealth's attorney to forward samples for analysis; his fees. — For the purpose of a more rigid enforcement of the law prohibiting the sale of adulterated and misbranded foods in the State, it shall be the duty of the judge of the circuit or the corporation court for each county and city of this State to bring this article to the attention of the grand juries of his county or city, and upon the finding of an indictment against the manufacturer or vender of such adulterated or misbranded food, beverages, or condiments. At any time prior thereto, the Commonwealth's attorney may, if he deem it proper, forward a sample of the same to the Commissioner, who shall have it analyzed or examined, and render a report thereon to the Commonwealth's attorney, which report may be used in evidence before such grand jury or at the trial of the person so indicted. For each conviction hereunder, the Commonwealth's attorney shall be entitled to a fee of ten dollars, which shall be paid by the city or county in which the conviction was had upon an order from the judge of the court, and the fee shall be paid, notwithstanding the provisions of any law to the contrary limiting the salary or fees of Commonwealth's attorneys. The fee shall be taxed as a part of the costs against the defendant and when collected shall be paid into the treasury of the county or city. (Code 1950, § 3-321; 1966, c. 702; 1972, c. 741.)

ARTICLE 4.

Seizures, Prosecutions and Penalties and Enforcement Generally.

§ 3.1-402. Duty of Commissioner in general. — It shall be the duty of the Commissioner to inquire carefully into the dairy and food and drink products, and the several articles which are food or drinks, or the necessary constituents of the food or drinks, which are manufactured or sold, or exposed or offered for sale in this State. (Code 1950, § 3-323; 1966, c. 702.)

§ 3.1-403. Duty of Commissioner as to procuring and having samples analyzed. — The Commissioner may, in a lawful manner, procure and have analyzed samples of the dairy and food products covered by this chapter. (Code 1950, § 3-324; 1966, c. 702; 1972, c. 741.)

§ 3.1-404. Duty of Commissioner to make complaints against manufacturers or venders. — It shall be the duty of the Commissioner to make a complaint against the manufacturer or vender of any such food or drink or dairy products as are adulterated, impure or unwholesome, in contravention of the laws of this State, and furnish all evidence thereof to obtain a conviction of the offense charged. The Commissioner, or any person appointed by him for that purpose, 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. (Code 1950, § 3-325; 1966, c. 702.)

§ 3.1-405. Right to enter and take samples. — The Commissioner shall have power, in the performance of his duties, to enter into any creamery, factory, store, salesroom, drugstore or laboratory, or 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 thereof, and take therefrom samples for analysis. The person making such inspection shall take such samples of such article or produce in the presence of at least one witness, and he shall, in the presence of the witness, mark or seal such sample, and shall tender at the time of taking to the manufacturer or vender of such product, or to the person having the custody of the same, the value thereof, and the statement in writing for the taking of such sample. (Code 1950, § 3-326; 1966, c. 702.)

§ 3.1-406. Notice and warning to place premises in sanitary condition. — Whenever it is determined by the Commissioner, or assistants, that filthy or unsanitary conditions exist or are permitted to exist in the operation of any bakery, confectionery, or ice cream plant, or at any place where any food or drink products are manufactured, stored or deposited, or sold for any purpose whatever, the proprietor or proprietors, owner or owners of such bakery, confectionery or ice cream plant, or any person or persons owning or operating any plant where any food or drink products are manufactured, stored, deposited or sold, shall be first notified and warned by the Commissioner, or his assistants, to place such bakery, confectionery, or ice cream plant, or any place where any food or drink products are manufactured, stored, deposited or sold, in a sanitary condition within a reasonable length of time. After the first notice and warning of a violation has been issued no notice and warning of the same violation occurring within ninety days after the first notice and warning has been given as provided under § 3.1-407 shall be required; provided that notice and warning shall be required as to any violation occurring more than ninety days after notice and warning has been given as to a violation. (Code 1950, § 3-327; 1956, c. 528; 1966, c. 702.)

§ 3.1-407. Failure to obey such notice and warning a misdemeanor. — Any person owning or operating any bakery, confectionery or ice cream plant, or 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 ninety days after notice and warning has been issued, shall be guilty of a misdemeanor. (Code 1950, § 3-328; 1956, c. 528; 1966, c. 702.)

§ 3.1-408. Authority to seize food and dairy products. — The Commissioner, or any person by the Commissioner duly appointed for that purpose, is authorized at all times to seize and take possession of any and all food and dairy products, substitutes therefor, or imitation thereof kept for sale, exposed for sale, or held in possession or under the control of any person which in the opinion of the Commissioner, or his deputy, or such person by him duly appointed, shall be contrary to the provisions of laws which now exist or which may be hereafter enacted. (Code 1950, § 3-329; 1966, c. 702.)

Applied in Commonwealth v. Stratford Packing Co., 200 Va. 11, 104 S.E.2d 32 (1958).

§ 3.1-409. Sample of goods seized to be taken for analysis; disposition of remainder. — The person so making such seizure, shall take from such goods as seized a sample for the purpose of analysis and shall cause the remainder to be boxed and sealed and shall leave the same in the possession of the person from whom they were seized, subject to such disposition as shall hereafter be made thereof. (Code 1950, § 3-330; 1966, c. 702.)

§ 3.1-410. Samples forwarded to Division of Consolidated Laboratory Services and qualified analysts; certification of analysis. — The person so making such seizure shall forward the sample so taken to the Division of Consolidated Laboratory Services who shall turn over the same to a qualified analyst and such analyst shall certify the results of such analysis, which certificate shall be prima facie evidence of the fact or facts therein certified to, in any court where the same may be offered in evidence. (Code 1950, § 3-331; 1966, c. 702; 1978, c. 702.)

§ 3.1-411. Proceeding for forfeiture before trial justice. — If upon such analysis it shall appear that the food or dairy products are adulterated, substituted, misbranded, or imitated within the meaning of this chapter, the Commissioner, or his deputy, or any person by him duly authorized may make complaint before any justice of the peace, or other officer authorized to issue such summons, having jurisdiction where such goods were seized, and thereupon the justice of the peace or other officer shall issue his summons to the person from whom such goods were seized, directing him to appear before the trial justice in such jurisdiction not less than six nor more than twelve 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, 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 the trial justice 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. (Code 1950, § 3-332; 1966, c. 702.)

§ 3.1-412. Judgment as to goods seized; procedure before trial justice; appeal. — Unless cause to the contrary thereof is shown, or if the goods shall be found upon trial to be in violation of any of the provisions of this chapter or other laws which now exist or which may be hereafter enacted, it shall be the duty of the trial justice to render judgment that the seized property be forfeited to the State, 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 trial justice shall be the same, as near as may be in civil proceedings. Either party may appeal to the circuit or corporation courts as appeals are taken from the trial justices' courts, but it shall not be necessary for the Commonwealth to give any appeal bond. (Code 1950, § 3-333; 1966, c. 702.)

Applied in Commonwealth v. Stratford Packing Co., 200 Va. 11, 104 S.E.2d 32 (1958).

§ 3.1-413. Disposition of proceeds from sale of such goods. — The proceeds arising from any such sale shall be paid into the state treasury and credited to the general fund; provided, that if the owner or party claiming the property or goods so declared forfeited can produce and prove a written guaranty of purity, signed by the wholesaler, jobber, manufacturers, or other party residing within this State from whom the articles were purchased, then the proceeds of the sale of such articles, over and above the costs of seizure, forfeiture and sale, shall be paid over to such owner or claimant to reimburse him, to the extent of such surplus, for his actual loss resulting from such seizure and forfeiture as shown by the invoice. (Code 1950, § 3-334; 1966, c. 702.)

§ 3.1-414. Prosecuting attorney to render legal assistance. — It shall be the duty of the prosecuting attorney when called upon by the Commissioner, or by any person by him authorized as aforesaid, to render any legal assistance in his power in proceeding under the foregoing provisions of this article. (Code 1950, § 3-335; 1966, c. 702.)

§ 3.1-415. General duty of Commonwealth's attorneys; 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 Commonwealth's attorney it shall be the duty of the Commonwealth's attorney to whom any such violation is so reported by the Commissioner, to cause the proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed and upon the termination of such proceedings to report in detail to the Commissioner, the results of the same.

For every conviction in any case instituted by any Commonwealth's attorney upon the complaint of the Commissioner, the Commonwealth's attorney prosecuting any such case, after he has reported the results of the same to the Commissioner as hereinabove provided, shall be entitled to a fee of five dollars, which shall be taxed as a part of the costs in the case, as costs are taxed in other criminal cases, and execution issued therefor against the defendant; and the fee shall be paid notwithstanding any law to the contrary limiting or prescribing the compensation and fees of Commonwealth's attorneys.

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, firm or corporation making such sale or delivery, may be prosecuted either in the county or city in which such sale or delivery originated, or in the county or city in which the illegal goods may be found by the Commissioner, or his agents or assistants. (Code 1950, § 3-336; 1966, c. 702.)

§ 3.1-416. Punishment for hindering Commissioner. — Any person who shall willfully hinder or obstruct the Commissioner, or other persons or assistants by him duly authorized, in the exercise of the powers conferred upon him by this chapter, shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not less than $10 nor more than $100, or by imprisonment in the county or city jail for not less than 10 days nor more than 90 days, or both such fine and imprisonment in the discretion of the court. (Code 1950, § 3-337; 1966, c. 702.)

§ 3.1-417. Purchase of samples for analysis. — Every 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 any person duly authorized to secure the same, and who shall apply to such manufacturer or vendor or person delivering such food to a purchaser for such sample in sufficient quantity for the analysis of such article or articles 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 article, and the other shall be held under seal by the Commissioner. (Code 1950, § 3-338; 1966, c. 702.)

§ 3.1-418. Punishment for failure to comply with requirements of title. — Any manufacturer, dealer or person who refuses to comply upon demand with the requirements of Chapters 20 (§ 3.1-361 et seq.), 21 (§ 3.1-420 et seq.), 30 (§ 3.1-867 et seq.), and 33 (§ 3.1-907 et seq.) of this title or who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist inspector or other person in the performance of his duty in connection with such chapters, shall be guilty of a misdemeanor, and, unless otherwise specified, upon conviction be fined not less than $10 nor more than $100, or be imprisoned not more than 100 days, or both, in the discretion of the court; and such fines, less the legal costs, shall be paid into the state treasury. (Code 1950, § 3-339; 1966, c. 702.)

§ 3.1-418.1. Exemption from civil liability in certain cases. — A. Any farmer, processor, distributor, wholesaler, food service establishment, restaurant, or retailer of food who donates food to any food bank or any second harvest certified food bank or food bank member charity which is exempt from taxation under 26 U.S.C. § 501 (c) (3), which maintains a food storage facility certified by the Department of Agriculture and Consumer Services and, where required by local 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. However, 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 State 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. Nothing contained herein shall limit liability on the part of any donee nonprofit charitable or religious organization which accepts items of food under this section.

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. However, 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. (1980, c. 516; 1987, c. 322; 1990, cc. 211, 255, 303.)

The 1987 amendment divided the former first sentence of this section into the present first and second sentences; in the present first sentence inserted "or any second harvest certified food bank or food bank member charity" and deleted "and which clearly affixes to each item of food received by donation, a stamp or label containing the word 'donated' or the words 'not for resale'"; substituted "However" for "provided that" at the beginning of the present second sentence; and substituted "shall not apply if" for "shall not apply in the event that" in the second sentence.

The 1990 amendments. — The 1990 amendment by c. 211, in subsection A, inserted "food service establishment, restaurant" in the first sentence, and added a third sentence identical to the third sentence added by Acts

§ 3.1-419. Enforcement against companies. — When construing and enforcing the provisions of Chapters 20 (§ 3.1-361 et seq.), 21 (§ 3.1-420 et seq.), 30 (§ 3.1-867 et seq.), and 33 (§ 3.1-907 et seq.) of this title, 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. (Code 1950, § 3-340; 1966, c. 702.)

LD2162546

HOUSE BILL NO. 845

Offered January 24, 1984

A BILL to amend and reenact § 35.1-25 of the Code of Virginia, relating to inspection of food establishments.

Patrons--Pickett and Smith

Referred to the Committee on Health, Welfare and Institutions

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Be it enacted by the General Assembly of Virginia:

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

§ 35.1-25. Exemptions form and regulations required for certain inspections by the Department of Agriculture and consumer Services.– *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 and social organizations, and volunteer fire departments and rescue squads which hold occasional dinners and bazaars of one or two days duration, at which food prepared in the homes of members or in the kitchen of the church or organization is offered for sale to the public;

4. Grocery stores, including the delicatessen portion which is a part of a grocery store selling exclusively for off-premises consumption, and places manufacturing or selling packaged or canned goods;

5. Churches which serve meals for their members as a regular part of their religious observances.

B. In any facility, or part of a facility, established after July 1, 1984, which prepares individual portions of fresh food for on-premise or off-premise consumption, the Department of Agriculture and Consumer Services shall require their personnel to use the same inspection form and follow the same regulations as promulgated by the Board of Health for restaurants pursuant to this Title.

Carried over to 1985 in Health, Welfare and Institutions and stricken from the docket

Official Use By Clerks	
Passed By The House of Delegates	Passed By The Senate
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

LD9138549

HOUSE JOINT RESOLUTION NO. 372

Offered January 24, 1989

Establishing a joint subcommittee to examine the efficacy of the responsibility and authority shared by the State Board of Health and the Board of Agriculture and Consumer Services, regarding the inspection and licensure of certain food establishments.

Patrons--Purkey, McClanan, Heilig, Hargrove, Croshaw, Callahan, Cunningham, R. K., Andrews, Rollison, Rollins and Parrish; Senators: Stallings, Holland, C. A. and Joannou

Referred to the Committee on Rules

WHEREAS, pursuant to § 35.1-5 of the Code of Virginia the State Health Commissioner may, upon presentation of credentials and upon consent of the owner, enter at any reasonable time onto the premises of restaurants and other establishments "to inspect, investigate, evaluate, conduct tests... as he reasonably deems necessary" in order to determine whether any law, regulation, order or condition of licensure is being violated; and

WHEREAS, pursuant to §§ 35.1-11 and 35.1-14, the State Board of Health may adopt regulations governing restaurants in order to promote certain standards of "health, hygiene, sanitation, safety, and physical plant management"; and

WHEREAS, for the purposes of Title 35.1 of the Code of Virginia, the Board's authority to license and inspect a "restaurant" includes certain cafeterias, lunchrooms, taverns, delicatessens and other dining accommodations but specifically excludes, among other entities, food establishments selling foods exclusively for off-premises consumption; and

WHEREAS, pursuant to § 3.1-399, the Commissioner of Agriculture and Consumer Services is also authorized to enter and inspect certain restaurants and establishments in which foods are being offered for sale; and

WHEREAS, this shared responsibility and authority of the State Board of Health and the Board of Agriculture and Consumer Services for the inspection and licensure of certain food establishments may contribute to duplication of efforts and unnecessary expenditures of the Commonwealth's resources; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the efficacy of the responsibility and authority currently shared by the State Board of Health and the Board of Agriculture and Consumer Services regarding the inspection and licensure of certain food establishments. The joint subcommittee shall be composed of seven members to be appointed as follows: two members from the House Committee on Agriculture and two members from the House Committee on Health, Welfare and Institutions, to be appointed by the Speaker of the House; and two members from the Senate Committee on Education and Health and one member from the Senate Committee on Agriculture, Conservation and Natural Resources, to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee may make recommendations to modify such laws as its deems appropriate.

All agencies of the Commonwealth shall provide assistance upon request as the joint subcommittee deems appropriate.

The joint subcommittee shall complete its work by December 1, 1989, and submit its findings to the Governor and the 1990 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

The indirect costs of this study are estimated to be $13,465; the direct costs of this study shall not exceed $6,300.

FOOD SERVICE
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE VIRGINIA DEPARTMENT OF HEALTH
&
THE VIRGINIA DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES

BACKGROUND

Purpose

The purpose of this agreement between the Virginia Department of Health (herein designated as VDH) and the Virginia Department of Agriculture & Consumer Services (herein designated as VDACS) is to maintain the highest level of public health protection in food service operations in restaurants and retail food stores and to maximize the efficient use of resources by both agencies, while clarifying the responsibilities of each agency as they relate to such operations. In addition, this agreement is intended to eliminate, to the greatest extent possible, any duplication of inspections in food service operations in restaurants and retail food stores and to continue the cooperative working relationship between the two agencies that will promote more uniform requirements for all food service operations in Virginia.

Statutory Authority

Title 3.1 of the Code of Virginia gives the Department of Agriculture & Consumer Services the responsibility of inspecting all establishments that manufacture, hold or offer food products for sale. Title 35.1 of the Code of Virginia gives the responsibility for inspecting food service operations in restaurants to the Virginia Department of Health. In addition, § 35.1-25 of the Code states that the provisions of that title applicable to restaurants shall not apply to " Grocery stores, including the delicatessen portion which is a part of a grocery store selling exclusively for off-premises consumption, and places manufacturing or selling packaged or canned goods".

Existing Agreement

On the basis of the above Code sections, the Virginia Department of Health and the Department of Agriculture & Consumer Services have an established policy that VDH inspects restaurants and VDACS inspects food service operations in retail food stores, as long as the retail food store does not provide facilities for on-premises consumption. If the retail store provides facilities for on-premises consumption, the food service operation is considered to be a restaurant and is inspected by VDH. Notwithstanding this policy, there is some duplication of inspections in thirteen localities where local health departments are inspecting portions of retail food stores under local ordinances.

THE AGREEMENT

The Virginia Department of Health and the Virginia Department of Agriculture & Consumer Services do hereby agree to the following:

Inspections

Inspections of restaurants shall continue to be the responsibility of the VDH. Restaurants performing food manufacturing operations or restaurants renting their facilities for the production of products to be sold wholesale will also be subject to VDACS inspection.

Inspections of food service operations in retail food stores, where there are no seating or on-premises consumption facilities, shall continue to be the responsibility of VDACS. Food service operations in retail food stores, that do provide seating or other on-premises consumption facilities for customers, will be the responsibility of VDH. All other areas and operations in retail food stores will be the responsibility of VDACS. Retail food stores that conduct off-premises catering operations will be subject to both VDACS and VDH inspection. If questions arise concerning which agency is responsible for inspecting a food service operation, then both agencies shall meet to determine the responsible agency.

Uniformity

While recognizing that both programs provide equal public health protection, VDH and VDACS, in an effort to promote increased uniformity and effectiveness in the regulation of food service operations in the Commonwealth, will conduct joint inspections of such operations periodically. These joint inspections will be carried out in restaurants and retail food stores. The purpose of these inspections will be to familiarize each agency's field personnel with the requirements and procedures of the other.

illness.

If VDACS becomes aware of actual or probable cases of foodborne illness in food service operations under its jurisdiction, it shall report such cases by telephone without delay to the local health department having jurisdiction for that locality. VDACS will conduct the initial investigation in such cases and coordinate any additional epidemiologic work with the local health department as soon as possible. Copies of the completed reports will be forwarded to the Division of Sanitarian Services and VDACS' Food Inspection Office in Richmond.

If a local health department becomes aware of actual or probable cases of foodborne illness related to the food service operations in a retail food store, VDH shall report such cases by telephone without delay to VDACS' Food Inspection Office in Richmond. VDH will investigate those cases that occur in retail food store food service operations designated as VDH's responsibility under this MOU and send a copy of the completed investigation report to the VDACS' Food Inspection Office and VDH's Division of Sanitarian Services in Richmond.

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This agreement shall be effective upon signature by the Commissioner of Agriculture & Consumer Services and the State Health Commissioner and shall remain in effect until modified or terminated by mutual agreement of the agency heads. This memorandum of understanding supersedes all previous versions.

Either agency may terminate their participation in this agreement by notifying the other of their intent, in writing, thirty days prior to such termination.

This memorandum of understanding is for the purpose of facilitating cooperation between two agencies of the Commonwealth. It does not intend to create, nor does it create, any rights in any third party.

C. M. G. Buttery, M.D., M.P.H.
State Health Commissioner
Virginia Department of Health

3-2-89
DATE

S. Mason Carbaugh
Commissioner
Virginia Department of Agriculture & Consumer Services

3/8/89
DATE