



A Legislator's Guide to the Commissioner of Health's Authority over Restaurants, Hotels, Summer Camps and Campgrounds During a Public Health Crisis

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Introduction

Under Title 35.1 (§ 35.1-1 et seq.) of the Code of Virginia, the Board of Health (the Board) and the State Health Commissioner (the Commissioner) possess the authority to take immediate action regarding the operation of licensed restaurants, hotels, summer camps, and campgrounds during a public health crisis.

Emergency Measures Available to the Board of Health and State Health Commissioner

The Board, and the Commissioner acting with all the authority of the Board, may issue emergency regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases (§§ 35.1-3 and 35.1-12). In determining the scope of emergency regulations, the Board or Commissioner must consider accepted standards of health, including the use of precautions to prevent the transmission of communicable diseases, the promotion of hygiene, sanitation, safety, and the governance of physical plant management (§ 35.1-11). Some of the actions the Commissioner may take include (i) the exclusion of employees; (ii) the medical examination of any employee; (iii) the immediate closing of a hotel, restaurant, summer camp, or campground; and (iv) obtaining samples for testing. Further emergency regulations may cover (i) the 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 (§ 36-97 et seq. of the Code of Virginia); (viii) requirements for an approved water supply and sewage disposal system; (ix) personal hygiene standards for employees, particularly those engaged in food handling; (x) the appropriate use of precautions to prevent the transmission of communicable diseases; and (xi) training standards that address food safety and food allergy awareness and safety. Ultimately, pursuant to § 35.1-10, the Commissioner has the discretion to determine what actions are necessary, including ordering the immediate closure of a hotel, restaurant, summer camp, or campground, to control the spread of preventable diseases as set forth in Title 32.1 (Health).

Enforcement

In the event of an emergency, the Board or Commissioner has the authority to issue regulations governing restaurants to prevent the transmission of communicable diseases (§ 35.1-14). Any orders issued by the Commissioner in emergency conditions do not require the normal 30-day notice of a hearing to the affected person or business (§ 35.1-6). Restaurant owners violating any lawful order are guilty of a Class 3 misdemeanor, with each day of violation constituting a separate offense (§ 35.1-7). Additionally, the Commissioner may institute a proceeding in the appropriate court seeking an injunction, mandamus, or other appropriate remedy. Any person violating the court's remedy is subject to a civil penalty not to exceed \$10,000 for each violation, with each day of violation constituting a separate offense (§ 35.1-7).

Periodic Inspections and Right of Entry

The Commissioner has the power to authorize periodic inspections of each restaurant, summer camp, campground, or hotel to protect the health and safety of the public (§ 35.1-22). Absent consent of the owner or custodian of a hotel, restaurant, summer camp, or campground to enter the premises, the Commissioner must apply to the appropriate circuit court for an inspection warrant to ensure compliance with an order issued by the Commissioner (§ 35.1-5).

Local Ordinances Superseded

During emergency efforts, a Commissioner's actions supersede all local ordinances regulating hotels, restaurants, summer camps, and campgrounds (§ 35.1-9). Localities may impose more stringent 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 where goods or services are offered for sale with intent not to sell or with intent not to sell at the price or terms advertised (§ 35.1-9).

Exemptions from Provisions Applicable to Restaurants

Not all facilities that serve food are considered restaurants and while such facilities may fall outside the scope of a general order issued by the Commissioner regarding all restaurants, emergency regulations could incorporate exempt facilities. Pursuant to § 35.1-25, entities that are exempt from provisions applicable to restaurants under Title 35.1 include the following: (i) cafeterias operated for employees only; (ii) churches, fraternal or school organizations, and § 501(c)(3) organizations; (iii) grocery stores, including delis inside grocery stores; (iv) convenience stores or gas stations with 15 or fewer seats at which food is served to the public and that are not associated with a national chain; and (v) bed and breakfast operations. Additionally, charitable food distribution organizations that distribute food to needy persons are exempt from state and local regulations that govern food service and preparation. Thus, such organizations may accept food prepared by employees or volunteers in unlicensed facilities (§ 35.1-14.2). Any actions affecting the operation of these facilities would need to originate from the Commissioner's authority to control the spread of preventable diseases as set forth in Article 3 (32.1-42 et seq.) of Chapter 2 of Title 32.1. While some facilities operating as restaurants could be exempt from being considered restaurants, these facilities would still be subject to any emergency orders issued by the Governor.



Conclusion

The Board and the Commissioner may issue emergency regulations regarding the operation of licensed restaurants, hotels, summer camps, and campgrounds during a public health crisis. The scope of regulations spans any action the Board or the Commissioner believes will suppress communicable, contagious, and infectious diseases and includes but is not limited to the promotion of hygiene, sanitation, and safety. In the event of an emergency, any regulations issued by the Board or the Commissioner would become lawful orders that go into effect immediately. These regulations would supersede any local ordinances. Any businesses or persons violating the newly issued orders are guilty of a Class 3 misdemeanor, with each day of violation constituting a separate offense. Because Executive Order Fifty-Five (2020), the temporary statewide stay at home order issued by the Governor on March 30, 2020, prohibits public gatherings of 10 or more individuals, it is likely that exemptions based on what constitutes a restaurant would be irrelevant.

For additional information on the Board and Commissioner's authority with regard to the operation of licensed restaurants, hotels, summer camps, and campgrounds during a public health crisis, please contact Hassan Abdelhalim (habelhalim@dls.virginia.gov) at the Division of Legislative Services.

