

S.75

An act relating to food and lodging establishments

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. chapter 85 is amended to read:

CHAPTER 85. FOOD AND LODGING ESTABLISHMENTS

Subchapter 1. Food and Lodging Establishments Generally

§ 4301. FOOD ESTABLISHMENTS; DEFINITIONS

(a) As used in this subchapter:

(1) ~~“Food” shall include all articles used for food, drink, confectionery, or condiment, by man, whether simple, mixed, or compound, and all substances and ingredients used in the preparation thereof.~~ “Bakery” means all buildings, rooms, basements, cellars, lofts, or other premises or part thereof, used, occupied, or maintained for the purpose of producing for sale bread, cakes, pies, or other food products made either wholly or partially with flour.

(2) “Children’s camp” means any seasonal establishment operated not more than 90 days per year and offering a camping program that provides food, lodging, or both to vacationing youth or family groups.

(3) “Commissioner” means the Commissioner of Health.

(4) “Department” means the Department of Health.

(5) ~~“Establishment” shall include all buildings, rooms, basements, cellars, lofts, or other premises or part thereof, used, occupied, or maintained~~

for the purpose of manufacturing, preparing, packing, canning, bottling, keeping, storing, handling, serving, or distributing in any manner, food for sale means food manufacturing establishments, food service establishments, lodging establishments, seafood vending facilities, and shellfish reshippers and repackers.

(6) "Food" means articles of food, drink, confectionery, or condiment for human consumption, whether simple, mixed, or compound, and all substances and ingredients used in the preparation thereof.

(7) "Food manufacturing establishment" means all buildings, rooms, basements, cellars, lofts, or other premises or part thereof, used, occupied, or maintained for the purpose of manufacturing, preparing, packing, canning, bottling, keeping, storing, handling, serving, or distributing food for sale. A food manufacturing establishment shall include food processors, bakeries, distributors, and warehouses. A food manufacturing establishment shall not include a place where only maple syrup or maple products, as defined in 6 V.S.A. § 481, are prepared for human consumption.

(8) "Food service establishment" means entities that prepare, serve, and sell food to the public, including restaurants, temporary food vendors, caterers, mobile food units, and limited operations as defined in rule.

(9) "Lodging establishment" means any place where overnight accommodations are regularly provided to the transient, traveling, or

vacationing public, including hotels, motels, inns, bed and breakfasts, and children's camps. "Lodging establishment" shall not include lodging establishments renting three or fewer units to the public.

(10) "Salvage food" means any food product from which the label on the packaging has been lost or destroyed or which has been subjected to possible damage as the result of an accident, fire, flood, or other cause that prevents the product from meeting the specifications of the manufacturer or the packer, but is otherwise suitable for human consumption.

(11) "Salvage food facility" means any food vendor for which salvage food comprises 50 percent or more of gross sales.

(12) "Seafood vending facility" means a store, motor vehicle, retail stand, or similar place from which a person sells seafood for human consumption.

(13) "Shellfish reshipper and repacker" means an establishment engaging in interstate commerce of molluskan shellfish.

(b) Nothing in this ~~subchapter~~ chapter shall be construed to modify or affect laws or ~~regulations~~ rules of the ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food and Markets.

§ 4302. GENERAL REQUIREMENTS

(a) A person shall not manufacture, prepare, pack, can, bottle, keep, store, handle, serve, or distribute in any manner food for the purpose of sale, in an

unclean, unsanitary, or unhealthful establishment or under unclean, unsanitary, or unhealthful conditions.

(b) A person shall not engage in the business of conducting a lodging establishment under unclean, unsanitary, or unhealthful conditions.

§ 4303. ~~SPECIAL PROVISIONS~~ RULEMAKING

The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to establish minimum standards for the safe and sanitary operation of food and lodging establishments and their administration and enforcement. ~~Subject to the provisions of this subchapter,~~ The rules shall require that an establishment shall be constructed, maintained, and operated with strict regard for the health of the employees and for the purity and wholesomeness of the food therein produced, kept, stored, handled, served, or distributed, so far as may be reasonable and necessary in the public interest and consistent with the character of the establishment, the public pursuant to the following general requirements:

(1) The entire establishment and its immediate appertaining premises, including the fixtures and furnishings, the machinery, apparatus, implements, utensils, receptacles, vehicles, and other devices used in the production, keeping, storing, handling, serving, or distributing of the food, or the materials used in the food, shall be constructed, maintained, and operated in a clean, sanitary, and healthful manner;

(2) The food and the materials used in the food shall be protected from any foreign or injurious contamination ~~which~~ that may render them unfit for human consumption;

(3) The clothing, habits, and conduct of the employees shall be conducive to and promote cleanliness, sanitation, and healthfulness;

(4) There shall be proper, suitable, and adequate toilets and lavatories, constructed, maintained, and operated in a clean, sanitary, and healthful manner;

(5) There shall be proper, suitable, and adequate water supply, heating, light lighting, ventilation, drainage, sewage disposal, and plumbing.

(6) There shall be proper operation and maintenance of pools, recreation water facilities, spas, and related facilities within lodging establishments.

(7) The Commissioner may adopt any other minimum conditions that he or she deems necessary for the operation and maintenance of a food or lodging establishment in a safe and sanitary manner.

§ 4304. EMPLOYEES

(a) An employer shall not ~~require, permit, or suffer any~~ allow a person affected with any contagious, infectious, or other disease or physical ailment ~~which~~ that may render ~~such~~ employment detrimental to the public health to work in ~~such~~ an establishment, and a person so affected shall not work in ~~any~~ such an establishment subject to the provisions of this ~~subchapter~~ chapter.

(b) The Commissioner may require a person employed in an establishment subject to the provisions of this chapter to undergo medical testing or an examination necessary for the purpose of determining whether the person is affected by a contagious, infectious, or other disease or physical ailment that may render his or her employment detrimental to public health. The Commissioner may prohibit a person from working in an establishment pursuant to section 127 of this title if the person refuses to submit to medical testing or an examination.

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§ 4305. ~~POWERS AND DUTIES OF STATE BOARD OF HEALTH~~

~~The board may require a person proposing to work or working in an establishment subject to the provisions of this subchapter, to undergo a physical examination for the purpose of ascertaining whether such person is affected with any contagious, infectious, or other disease or physical ailment, which may render his or her employment detrimental to the public health. The examination shall be made at the time and pursuant to conditions which shall be prescribed by the board. A person who refuses to submit to such examination shall not work or be required, permitted, or suffered to work in any such establishment. [Repealed.]~~

§ 4306. INSPECTION

(a) It shall be the duty of the ~~board~~ Commissioner to enforce the provisions of this ~~subchapter~~ chapter and of 6 V.S.A. § 3312(d), and ~~it~~ he or she shall be permitted to inspect through ~~its~~ his or her duly authorized officers, inspectors, agents, or assistants, at all reasonable times, an establishment ~~and, an~~ establishment's records, and a salvage food facility subject to the provisions of this ~~subchapter~~ chapter.

(b) Whenever an inspection demonstrates that the establishment or salvage food facility is not operated in accordance with the provision of this chapter, the officer, inspector, agent, or assistant shall notify the licensee of the conditions found and direct necessary changes.

§ 4307. HEARING; ORDERS

When ~~it appears upon such an~~ inspection reveals that ~~any an~~ an establishment is being maintained or operated in violation of the provisions of this ~~subchapter~~ chapter or any related rules, the ~~board~~ Commissioner shall ~~cause~~ provide written notice ~~thereof~~, together with an order commanding ~~an~~ both abatement of ~~such~~ the violation and ~~a~~ compliance with this ~~subchapter~~ chapter within a reasonable period of time to be fixed in the order, ~~to be served by a proper officer upon the person violating such provisions.~~ Under ~~such~~ any related rules ~~and regulations as may be prescribed~~ adopted by the ~~board~~ Commissioner, a person upon whom ~~such~~ the notice and order are served shall be given an

opportunity to be heard and to show cause as to why ~~such~~ the order should be vacated or amended. When, upon ~~such~~ a hearing, it appears that the provisions of this ~~subchapter~~ chapter have not been violated, the ~~board~~ Commissioner shall immediately vacate ~~such~~ the order, but without prejudice. When, however, it appears that ~~such~~ the provisions have been violated and ~~such~~ the person fails to comply with an order issued by the ~~board~~ Commissioner under the provisions of this section, the ~~board~~ Commissioner shall, ~~forthwith,~~ certify the facts to the proper prosecuting office revoke, modify, suspend, or enforce a civil penalty.

§ 4308. REGULATIONS

~~The board shall make uniform and necessary rules and regulations for carrying out the provisions of this subchapter. [Repealed.]~~

§ 4309. PENALTY

A person who violates a provision of this ~~subchapter~~ chapter or 6 V.S.A. § 3312(d), ~~for which no other penalty is provided, shall be fined not more than \$300.00 for the first offense and, for each subsequent offense, not more than \$500.00~~ shall be fined a civil penalty not to exceed \$10,000.00 for each violation. In the case of a continuing violation, each subsequent day in violation may be deemed a separate violation.

Subchapter 2. Licensing Food and Lodging Establishments

§ 4351. LICENSE FROM DEPARTMENT OF HEALTH

(a) A person shall not operate or maintain a ~~hotel, inn, restaurant, tourist camp~~ food manufacturing facility, retail food establishment, lodging establishment, seafood vending facility, or any other place in which food is prepared and served, ~~or lodgings provided or furnished to the transient traveling or vacationing public, or a seafood vending facility,~~ unless he or she ~~shall have first obtained and holds~~ obtains and holds from the ~~department~~ Commissioner a license authorizing such operation. ~~The secretary may prescribe rules or conditions within which he or she may issue a temporary license for a period not to exceed 60 days. The license shall state the rules or conditions under which it is issued. However, nothing herein shall apply to any person who occasionally prepares and serves meals or provides occasional lodgings. The license shall be displayed in such a way as to be easily viewed by the patrons.~~ All licenses shall be displayed in a manner as to be easily viewed by the public.

(b) ~~For purposes of this section, "seafood vending facility" includes a store, motor vehicle, stand, or similar place from which a person sells seafood for consumption at another location.~~

(1) A person shall not knowingly and willingly sell or offer for sale a bulk product manufactured by a bakery, regardless of whether the bakery is

located in or outside the State, unless the operator of the bakery holds a valid license from the Commissioner.

(2) The Commissioner shall not grant a license to a bakery located outside the State unless:

(A) the person operating the bakery:

(i) has consented in writing to the Department's inspection and paid the required fee; or

(ii) has presented to the Department satisfactory evidence of inspection and approval from the proper authority in his or her state and paid the required fee; and

(B) inspection of the bakery confirms that it meets the laws and rules of this State.

(c) The Commissioner may issue a temporary license for no more than 90 days. The temporary license shall state the conditions under which it is issued.

(d) If the Commissioner does not renew a license, he or she shall provide written notice to the licensee. The notice shall specify any changes necessary to conform with State rules and shall state that if compliance is achieved within the time designated in the notice, the license shall be renewed. If the licensee fails to achieve compliance within the prescribed time, the licensee shall have an opportunity for a hearing.

(e) Any licensee or perspective licensee aggrieved by a decision or order of the Commissioner may appeal to the Board of Health within 30 days of that decision. Hearings by the Board under this section shall be subject to the provisions of 3 V.S.A. chapter 25 relating to contested cases. The Board shall consider the matter de novo and all persons, parties, and interests may appear and be heard. The Board shall issue an order within 30 days following the conclusion of the hearing.

(f) If a licensee fails to renew his or her license within 60 days of its expiration date, a licensee shall apply for a new license and meet all licensure requirements anew.

§ 4352. APPLICATION

A person desiring to operate ~~a place~~ an establishment in which food is prepared and served or in which lodging is offered to the public shall apply to the ~~board~~ Commissioner upon forms supplied by the ~~board~~ Department and shall pay a license fee as provided by section 4353 of this title. An application for licensure shall be submitted no fewer than 30 days prior to the opening of a food or lodging establishment. Upon receipt of such license fee and when satisfied that the premises are sanitary and healthful in accordance with the provisions of this chapter and related rules, the ~~board~~ Commissioner shall issue a license to the applicant with respect to the premises described therein.

§ 4353. FEES

(a) The Commissioner may establish by rule any requirement the Department needs to determine the applicable license fee category or any license exemption. The following fees shall be paid annually to the Board at the time of making the application according to the following schedules:

- (1) Restaurant I—Seating capacity of 0 to 25; \$105.00
 - II—Seating capacity of 26 to 50; \$180.00
 - III—Seating capacity of 51 to 100; \$300.00
 - IV—Seating capacity of 101 to 200; \$385.00
 - V—Seating capacity of 201 to 599; \$450.00
 - VI—Seating capacity 600 and over; \$1,000.00
 - VII—Home Caterer; \$155.00
 - VIII—Commercial Caterer; \$260.00
 - IX—Limited Operations; \$140.00
 - X—Fair Stand; \$125.00; if operating for four or more days per year; \$230.00
- (2) Lodging establishments
 - I—Lodging capacity of 1 to 10; \$130.00
 - II—Lodging capacity of 11 to 20; \$185.00
 - III—Lodging capacity of 21 to 50; \$250.00
 - IV—Lodging capacity of 51 to 200; \$390.00

V—Lodging capacity of over 200; \$1,000.00

VI—Children’s camps; \$150.00

(3) Food ~~processor~~ manufacturing establishment—a fee for any person or persons that process food for resale to restaurants, stores, or individuals according to the following schedule:

(A) Food manufacturing establishments; nonbakeries

I—Gross receipts of \$10,001.00 to \$50,000.00;

\$175.00

~~(B)~~ II—Gross receipts of over \$50,000.00;

\$275.00

III—Gross receipts of \$10,000.00 or less are

exempt pursuant to section 4358 of this title

(B) Food manufacturing establishments; bakeries

I—Home bakery; \$100.00

II—Small commercial; \$200.00

III—Large commercial; \$350.00

(4) Seafood vending facility—\$200.00, unless operating pursuant to another license issued by the Department of Health and generating less than \$40,000.00 in seafood gross receipts annually. If generating more than \$40,000.00 in seafood gross receipts annually, the fee is to be paid regardless

of whether the facility is operating pursuant to another license issued by the Department of Health.

(5) Shellfish reshippers and repackers—\$375.00.

(b) The Commissioner of Health ~~will~~ shall be the final authority on definition of categories contained herein.

(c) All fees received by the ~~Board~~ Department under this section shall be credited to a special fund and shall be available to the Department to offset the cost of providing the services.

§ 4354. TERM OF LICENSE

Licenses shall expire annually on a date established by the ~~department~~ Department and ~~shall be renewable~~ may be renewed upon the payment of a new license fee if the licensee is in good standing with the Department.

§ 4355. REGULATIONS; REPORTS

~~(a) The board may prescribe such rules and regulations as may be necessary to ensure the operation in a sanitary and healthful manner of places in which food is prepared and served to the public or in which lodgings are provided. All reports which such board may require shall be on forms prescribed by it.~~

~~(b) The board shall not adopt any rule requiring food establishments that operate less than six months of the year and provide outdoor seating for no~~

~~more than 16 people to provide toilet facilities to patrons, and any such rule or portion thereof now in effect is repealed. [Repealed.]~~

§ 4356. ~~INSPECTION, REVOCATION~~

~~The members of the board and any person in its employ and by its direction, at reasonable times, may enter any place operated under the provisions of sections 4351-4355 of this title, so far as may be necessary in the discharge of its duties. Whenever upon such inspection it is found that the premises are not being conducted in accordance with the provisions of the above named sections or the regulations adopted in accordance therewith, such board shall notify the licensee of the conditions found and direct such changes as are necessary. If such licensee shall fail within a reasonable time to comply with such orders, rules, or regulations adopted under the provisions of such sections, the board shall revoke the license. [Repealed.]~~

§ 4357. ~~PENALTY~~

~~A person who violates any provision of this subchapter shall be fined not more than \$500.00. [Repealed.]~~

§ 4358. EXEMPTIONS

(a) The provisions of this subchapter shall apply only to ~~such~~ those hotels, inns, restaurants, tourist camps, and other places as that solicit the patronage of the public by advertising by means of signs, notices, placards, radio, electronic communications, or printed announcements.

(b) The provisions of this subchapter shall not apply to an individual manufacturing and selling bakery products from his or her own home kitchen whose average gross retail sales do not exceed \$125.00 per week.

(c) Any food manufacturing establishment claiming a licensing exemption shall provide documentation as required by rule.

(d) The Commissioner shall not adopt a rule requiring food establishments that operate less than six months of the year and provide outdoor seating for less than 16 people at one time to provide toilet and hand washing facilities for patrons.

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Subchapter 4. Bakeries

§ 4441. BAKERY PRODUCTS; DEFINITION

For the purposes of this subchapter,

(1) The word "bakery" is defined as a building or part of a building wherein is carried on as a principal occupation the production of bread, cakes, pies, or other food products made either wholly or in part of flour and intended for sale.

(2) The word "person" shall extend and be applied to bodies corporate, and to partnerships and unincorporated associations. [Repealed.]

§ 4442. ~~RULES AND INSPECTION BY STATE BOARD OF HEALTH~~

~~The Board shall adopt and enforce rules as the public health may require in respect to the sanitary conditions of bakeries as defined herein. The Board is hereby authorized to inspect any such bakery at all reasonable times through its duly appointed officers, inspectors, agents, or assistants. [Repealed.]~~

§ 4443. ~~SLEEPING ROOMS SEPARATE~~

~~The sleeping rooms for persons employed in a bakery shall be separated from the rooms where food products or any ingredient thereof are manufactured or stored. [Repealed.]~~

§ 4444. ~~LICENSE~~

~~(a) No person shall operate a bakery in this state without having obtained from the department a license describing the building used as a bakery, including the post office address of the same, which license shall be posted by the owner or operator of such bakery in a conspicuous place in the shop described in such license or in the sales room connected therewith.~~

~~(b) No person shall knowingly and willfully sell or offer for sale in this state any bulk product manufactured by a bakery, whether such a bakery is located within or without the state, unless the operator of such bakery shall hold a valid license, as prescribed, from the department, which license shall in no case be granted covering a bakery located outside the state unless the person operating such bakery shall have consented in writing to its inspection and paid~~

~~the fee as herein provided, or shall have paid the fee and received a license after presenting to the department satisfactory evidence of inspection and approval from the proper authority of his or her own state, and such bakery shall have been found by the inspection to meet the requirements of the laws of this state and rules and regulations of the secretary relating thereto.~~

[Repealed.]

§ 4445. ~~RENEWAL OF LICENSE~~

~~The holder of such a license who desires to continue to operate a bakery shall annually, commencing on or before January 31, 1974, and thereafter on or before January 31, renew his or her license, pay the renewal fee, and receive a new license provided the licensee is entitled thereto. [Repealed.]~~

§ 4446. ~~FEE~~

~~(a) A person owning or conducting a bakery as specified in sections 4441 and 4444 of this title shall pay to the Board a fee for each certificate and renewal thereof in accordance with the following schedule:~~

~~Bakery I—Home Bakery; \$100.00~~

~~II—Small Commercial; \$200.00~~

~~III—Large Commercial; \$350.00~~

~~IV—Camps; \$150.00~~

~~(b) The Commissioner of Health will be the final authority on definition of categories contained herein.~~

~~(c) All fees received by the Board under this section shall be credited to a special fund and shall be available to the Department to offset the cost of providing the services. [Repealed.]~~

§ 4447. ~~REVOCATION~~

~~Such license may be suspended or revoked by the board for cause after hearing. [Repealed.]~~

§ 4448. ~~NEW BAKERY~~

~~No person shall open a new bakery in this state without having given at least 15 days' notice to the department of intention to open such bakery which notice shall contain a description and location of the building proposed to be used as such bakery. Upon receipt of such notice, the department shall cause such premises to be examined and, if found to comply with the provisions and statutes relating to bakeries and the rules and regulations prescribed by the secretary, a license shall be issued upon payment of the fee as herein provided. [Repealed.]~~

§ 4449. ~~LOCAL REGULATIONS~~

~~The provisions of this subchapter shall not prevent local health authorities from making and enforcing orders or regulations concerning the sanitary condition of bakeries and the sale of bakery products, except that such orders and regulations shall be suspended to the extent necessary to give effect to the~~

~~provisions of this subchapter and the rules and regulations prescribed pursuant thereto. [Repealed.]~~

§ 4450. ~~PENALTY~~

~~A person who violates any provisions of this subchapter shall be fined not more than \$500.00. [Repealed.]~~

§ 4451. ~~EXCEPTIONS~~

~~The provisions of this subchapter shall not apply to individuals manufacturing in and selling from their own private home kitchens bread, cakes, pies, or other food products made either wholly or in part from flour whose average gross retail sales of such products do not exceed \$125.00 a week, nor to restaurants, inns, or hotels subject to the provisions of subchapter 2 of this chapter, nor to church, fraternal, or charitable food sales. [Repealed.]~~

~~Subchapter 5. Salvage Food Facilities~~

§ 4461. ~~DEFINITIONS~~

~~For the purposes of this subchapter:~~

~~(1) "Salvage food" means any food product from which the label on the packaging has been lost or destroyed or which has been subjected to possible damage as the result of accident, fire, flood, or other cause which may prevent the product from meeting the specifications of the manufacturer or the packer, but is otherwise suitable for human consumption.~~

~~(2) “Salvage food facility” means a food vendor for which salvage foods comprise 50 percent or more of gross sales. [Repealed.]~~

~~§ 4462. REGULATIONS AND INSPECTION~~

~~The state board of health is authorized to inspect any salvage food facility at all reasonable times through its officers, inspectors, agents, or assistants.~~

~~[Repealed.]~~

~~Subchapter 6. Temporary Outdoor Seating~~

~~§ 4465. LIMITED FOOD ESTABLISHMENTS; TEMPORARY OUTDOOR SEATING~~

~~A food establishment that prepares and serves food for off premises uses may provide temporary outdoor seating for up to 16 persons from May 1 to October 31 without providing patron toilet or handwashing facilities.~~

~~[Repealed.]~~

~~Sec. 2. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2016.~~