

CS/HB 445

2009

1 A bill to be entitled  
2 An act relating to the Department of Business and  
3 Professional Regulation; amending s. 20.165, F.S.;  
4 establishing the Division of Service Operations within the  
5 department; amending s. 455.217, F.S.; transferring  
6 certain duties of the Division of Technology relating to  
7 examinations to the Division of Service Operations;  
8 requiring the department to use outside qualified testing  
9 vendors under certain conditions; deleting a requirement  
10 that the appropriate board approve the department's use of  
11 professional testing services; amending s. 509.233, F.S.;  
12 authorizing local governments to establish, by ordinance,  
13 local exemption procedures to allow patrons' dogs within  
14 certain designated outdoor portions of public food service  
15 establishments; deleting provisions for a pilot program  
16 that limits the authority for such local exemption  
17 procedures to a specified time; deleting a provision that  
18 provides for the future review and repeal of such pilot  
19 program; providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Paragraph (k) is added to subsection (2) of  
24 section 20.165, Florida Statutes, to read:

25 20.165 Department of Business and Professional  
26 Regulation.--There is created a Department of Business and  
27 Professional Regulation.

28 (2) The following divisions of the Department of Business  
 29 and Professional Regulation are established:

30 (k) Division of Service Operations.

31 Section 2. Subsection (1) of section 455.217, Florida  
 32 Statutes, is amended to read:

33 455.217 Examinations.--This section shall be read in  
 34 conjunction with the appropriate practice act associated with  
 35 each regulated profession under this chapter.

36 (1) The Division of Service Operations ~~Technology~~ of the  
 37 Department of Business and Professional Regulation shall  
 38 provide, contract, or approve services for the development,  
 39 preparation, administration, scoring, score reporting, and  
 40 evaluation of all examinations. The division shall seek the  
 41 advice of the appropriate board in providing such services.

42 (a) The department, acting in conjunction with the  
 43 Division of Service Operations ~~Technology~~ and the Division of  
 44 Real Estate, as appropriate, shall ensure that examinations  
 45 adequately and reliably measure an applicant's ability to  
 46 practice the profession regulated by the department. After an  
 47 examination developed or approved by the department has been  
 48 administered, the board or department may reject any question  
 49 which does not reliably measure the general areas of competency  
 50 specified in the rules of the board or department, when there is  
 51 no board. The department shall use outside qualified  
 52 ~~professional~~ testing vendors ~~services~~ for the development,  
 53 preparation, and evaluation of examinations, when the use of  
 54 such vendors is economically and viably ~~services~~ are available  
 55 and ~~approved by the board.~~

56 (b) For each examination developed by the department or  
57 contracted vendor, to the extent not otherwise specified by  
58 statute, the board or the department when there is no board,  
59 shall by rule specify the general areas of competency to be  
60 covered by the examination, the relative weight to be assigned  
61 in grading each area tested, the score necessary to achieve a  
62 passing grade, and the fees, where applicable, to cover the  
63 actual cost for any purchase, development, and administration of  
64 the required examination. However, statutory fee caps in each  
65 practice act shall apply. This subsection does not apply to  
66 national examinations approved and administered pursuant to  
67 paragraph (d).

68 (c) If a practical examination is deemed to be necessary,  
69 rules shall specify the criteria by which examiners are to be  
70 selected, the grading criteria to be used by the examiner, the  
71 relative weight to be assigned in grading each criterion, and  
72 the score necessary to achieve a passing grade. When a mandatory  
73 standardization exercise for a practical examination is required  
74 by law, the board may conduct such exercise. Therefore, board  
75 members may serve as examiners at a practical examination with  
76 the consent of the board.

77 (d) A board, or the department when there is no board, may  
78 approve by rule the use of any national examination which the  
79 department has certified as meeting requirements of national  
80 examinations and generally accepted testing standards pursuant  
81 to department rules. Providers of examinations, which may be  
82 either profit or nonprofit entities, seeking certification by  
83 the department shall pay the actual costs incurred by the

84 department in making a determination regarding the  
85 certification. The department shall use any national examination  
86 which is available, certified by the department, and approved by  
87 the board. The name and number of a candidate may be provided to  
88 a national contractor for the limited purpose of preparing the  
89 grade tape and information to be returned to the board or  
90 department or, to the extent otherwise specified by rule, the  
91 candidate may apply directly to the vendor of the national  
92 examination. The department may delegate to the board the duty  
93 to provide and administer the examination. Any national  
94 examination approved by a board, or the department when there is  
95 no board, prior to October 1, 1997, is deemed certified under  
96 this paragraph. Any licensing or certification examination that  
97 is not developed or administered by the department in-house or  
98 provided as a national examination shall be competitively bid.

99 (e) The department shall adopt rules regarding the  
100 security and monitoring of examinations. In order to maintain  
101 the security of examinations, the department may employ the  
102 procedures set forth in s. 455.228 to seek fines and injunctive  
103 relief against an examinee who violates the provisions of s.  
104 455.2175 or the rules adopted pursuant to this paragraph. The  
105 department, or any agent thereof, may, for the purposes of  
106 investigation, confiscate any written, photographic, or  
107 recording material or device in the possession of the examinee  
108 at the examination site which the department deems necessary to  
109 enforce such provisions or rules.

110 (f) If the professional board with jurisdiction over an  
111 examination concurs, the department may, for a fee, share with

112 any other state's licensing authority an examination developed  
 113 by or for the department unless prohibited by a contract entered  
 114 into by the department for development or purchase of the  
 115 examination. The department, with the concurrence of the  
 116 appropriate board, shall establish guidelines that ensure  
 117 security of a shared exam and shall require that any other  
 118 state's licensing authority comply with those guidelines. Those  
 119 guidelines shall be approved by the appropriate professional  
 120 board. All fees paid by the user shall be applied to the  
 121 department's examination and development program for professions  
 122 regulated by this chapter. All fees paid by the user for  
 123 professions not regulated by this chapter shall be applied to  
 124 offset the fees for the development and administration of that  
 125 profession's examination. If both a written and a practical  
 126 examination are given, an applicant shall be required to retake  
 127 only the portion of the examination for which he or she failed  
 128 to achieve a passing grade, if he or she successfully passes  
 129 that portion within a reasonable time of his or her passing the  
 130 other portion.

131 Section 3. Section 509.233, Florida Statutes, is amended  
 132 to read:

133 509.233 Public food service establishment requirements;  
 134 local exemption for dogs in designated outdoor portions; ~~pilot~~  
 135 ~~program.~~--

136 ~~(1) INTENT. It is the intent of the Legislature by this~~  
 137 ~~section to establish a 3-year pilot program for local~~  
 138 ~~governments to allow patrons' dogs within certain designated~~  
 139 ~~outdoor portions of public food service establishments.~~

140            (1)~~(2)~~ LOCAL EXEMPTION AUTHORIZED.--Notwithstanding s.  
 141 509.032(7), the governing body of a local government may  
 142 ~~participating in the pilot program is authorized to~~ establish,  
 143 by ordinance, a local exemption procedure to certain provisions  
 144 of the Food and Drug Administration Food Code, as currently  
 145 adopted by the division, in order to allow patrons' dogs within  
 146 certain designated outdoor portions of public food service  
 147 establishments.

148            (2)~~(3)~~ LOCAL DISCRETION; CODIFICATION.--

149            (a) The adoption of the local exemption procedure shall be  
 150 at the sole discretion of the governing body of a participating  
 151 local government. Nothing in this section shall be construed to  
 152 require or compel a local governing body to adopt an ordinance  
 153 pursuant to this section.

154            (b) Any ordinance adopted pursuant to this section shall  
 155 provide for codification within the land development code of a  
 156 participating local government.

157            (3)~~(4)~~ LIMITATIONS ON EXEMPTION; PERMIT REQUIREMENTS.--

158            (a) Any local exemption procedure adopted pursuant to this  
 159 section shall only provide a variance to those portions of the  
 160 currently adopted Food and Drug Administration Food Code in  
 161 order to allow patrons' dogs within certain designated outdoor  
 162 portions of public food service establishments.

163            (b) In order to protect the health, safety, and general  
 164 welfare of the public, the local exemption procedure shall  
 165 require participating public food service establishments to  
 166 apply for and receive a permit from the governing body of the  
 167 local government before allowing patrons' dogs on their

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168 premises. The local government shall require from the applicant  
169 such information as the local government deems reasonably  
170 necessary to enforce the provisions of this section, but shall  
171 require, at a minimum, the following information:

172 1. The name, location, and mailing address of the public  
173 food service establishment.

174 2. The name, mailing address, and telephone contact  
175 information of the permit applicant.

176 3. A diagram and description of the outdoor area to be  
177 designated as available to patrons' dogs, including dimensions  
178 of the designated area; a depiction of the number and placement  
179 of tables, chairs, and restaurant equipment, if any; the  
180 entryways and exits to the designated outdoor area; the  
181 boundaries of the designated area and of other areas of outdoor  
182 dining not available for patrons' dogs; any fences or other  
183 barriers; surrounding property lines and public rights-of-way,  
184 including sidewalks and common pathways; and such other  
185 information reasonably required by the permitting authority. The  
186 diagram or plan shall be accurate and to scale but need not be  
187 prepared by a licensed design professional.

188 4. A description of the days of the week and hours of  
189 operation that patrons' dogs will be permitted in the designated  
190 outdoor area.

191 (c) In order to protect the health, safety, and general  
192 welfare of the public, the local exemption ordinance shall  
193 include such regulations and limitations as deemed necessary by  
194 the participating local government and shall include, but not be  
195 limited to, the following requirements:

196           1. All public food service establishment employees shall  
197 wash their hands promptly after touching, petting, or otherwise  
198 handling dogs. Employees shall be prohibited from touching,  
199 petting, or otherwise handling dogs while serving food or  
200 beverages or handling tableware or before entering other parts  
201 of the public food service establishment.

202           2. Patrons in a designated outdoor area shall be advised  
203 that they should wash their hands before eating. Waterless hand  
204 sanitizer shall be provided at all tables in the designated  
205 outdoor area.

206           3. Employees and patrons shall be instructed that they  
207 shall not allow dogs to come into contact with serving dishes,  
208 utensils, tableware, linens, paper products, or any other items  
209 involved in food service operations.

210           4. Patrons shall keep their dogs on a leash at all times  
211 and shall keep their dogs under reasonable control.

212           5. Dogs shall not be allowed on chairs, tables, or other  
213 furnishings.

214           6. All table and chair surfaces shall be cleaned and  
215 sanitized with an approved product between seating of patrons.  
216 Spilled food and drink shall be removed from the floor or ground  
217 between seating of patrons.

218           7. Accidents involving dog waste shall be cleaned  
219 immediately and the area sanitized with an approved product. A  
220 kit with the appropriate materials for this purpose shall be  
221 kept near the designated outdoor area.

222           8. A sign or signs reminding employees of the applicable  
223 rules shall be posted on premises in a manner and place as



224 determined by the local permitting authority.

225 9. A sign or signs reminding patrons of the applicable  
 226 rules shall be posted on premises in a manner and place as  
 227 determined by the local permitting authority.

228 10. A sign or signs shall be posted in a manner and place  
 229 as determined by the local permitting authority that places the  
 230 public on notice that the designated outdoor area is available  
 231 for the use of patrons and patrons' dogs.

232 11. Dogs shall not be permitted to travel through indoor  
 233 or nondesignated outdoor portions of the public food service  
 234 establishment, and ingress and egress to the designated outdoor  
 235 portions of the public food service establishment must not  
 236 require entrance into or passage through any indoor area of the  
 237 food establishment.

238 (d) A permit issued pursuant to this section shall not be  
 239 transferred to a subsequent owner upon the sale of a public food  
 240 service establishment but shall expire automatically upon the  
 241 sale of the establishment. The subsequent owner shall be  
 242 required to reapply for a permit pursuant to this section if the  
 243 subsequent owner wishes to continue to accommodate patrons'  
 244 dogs.

245 (4)~~(5)~~ POWERS; ENFORCEMENT.--Participating local  
 246 governments shall have such powers as are reasonably necessary  
 247 to regulate and enforce the provisions of this section.

248 (5)~~(6)~~ STATE AND LOCAL COOPERATION.--The division shall  
 249 provide reasonable assistance to participating local governments  
 250 in the development of enforcement procedures and regulations,  
 251 and participating local governments shall monitor permitholders

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252 for compliance in cooperation with the division. At a minimum,  
253 participating local governments shall establish a procedure to  
254 accept, document, and respond to complaints and to timely report  
255 to the division all such complaints and the participating local  
256 governments' enforcement responses to such complaints. A  
257 participating local government shall provide the division with a  
258 copy of all approved applications and permits issued, and the  
259 participating local government shall require that all  
260 applications, permits, and other related materials contain the  
261 appropriate division-issued license number for each public food  
262 service establishment.

263 ~~(7) FUTURE REVIEW AND REPEAL. This section shall expire~~  
264 ~~July 1, 2009, unless reviewed and saved from repeal through~~  
265 ~~reenactment by the Legislature.~~

266 Section 4. This act shall take effect July 1, 2009.