

1 A bill to be entitled

2 An act relating to public lodging and public food
3 service establishment inspections; amending s.
4 509.032, F.S.; revising certain duties and rights of
5 the Division of Hotels and Restaurants of the
6 Department of Business and Professional Regulation;
7 revising provisions related to public lodging
8 establishment inspections; providing jurisdiction to
9 the division for public food service establishment
10 inspections; providing regulations related to public
11 food service establishment inspections; requiring a
12 public food service establishment inspector to produce
13 a written report and assign a numerical score and
14 letter grade to each establishment; authorizing a
15 public food service establishment to request a
16 reinspection under certain circumstances; requiring a
17 public food service establishment to post a letter
18 grade card and maintain a copy of the most recent
19 inspection report; authorizing a public food service
20 establishment inspector to close an establishment
21 under certain circumstances; amending s. 509.233,
22 F.S.; conforming a cross-reference; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26

27 Section 1. Subsections (1) and (2) of section 509.032,
 28 Florida Statutes, are amended, subsections (3) through (7) are
 29 renumbered as subsections (4) through (8), respectively, and a
 30 new subsection (3) is added to that section, to read:

31 509.032 Duties.—

32 (1) GENERAL.—

33 (a) The division shall perform its duties under ~~carry out~~
 34 ~~all of the provisions of this chapter pursuant to and all other~~
 35 applicable laws and rules relating to the inspection or
 36 regulation of public lodging establishments and public food
 37 service establishments for the purpose of safeguarding the
 38 public health, safety, and welfare. The division shall be
 39 responsible for ascertaining that an operator licensed under
 40 this chapter does not engage in ~~any~~ misleading advertising or
 41 unethical practices. For purposes of performing required
 42 inspections and the enforcement of this chapter, the division
 43 has the right of entry and access to public lodging
 44 establishments and public food service establishments at any
 45 reasonable time.

46 (b) The division may not establish by rule any regulation
 47 governing the design, construction, erection, alteration,
 48 modification, repair, or demolition of any public lodging
 49 establishment or public food service establishment. It is the
 50 intent of the Legislature to preempt such regulation to the
 51 Florida Building Commission and the State Fire Marshal through
 52 adoption and maintenance of the Florida Building Code and the

53 Florida Fire Prevention Code. The division shall provide
54 technical assistance to the commission in updating the
55 construction standards of the Florida Building Code which govern
56 public lodging establishments and public food service
57 establishments. Further, the division shall enforce the
58 provisions of the Florida Building Code which apply to public
59 lodging establishments and public food service establishments in
60 conducting any inspections authorized under this part. The
61 division, or its agent, shall notify the local fire safety
62 authority or the State Fire Marshal of any readily observable
63 violation of a rule adopted under chapter 633 which relates to
64 public lodging establishments or public food service
65 establishments. The identification of such violation does not
66 require a fire safety inspection certification.

67 (c)1. Relating to facility plan approvals, the division
68 may establish, by rule, fees for conducting plan reviews and may
69 grant, in hardship cases, variances from construction standards
70 which are less restrictive than the standards specified in this
71 section or the rules adopted pursuant to this section. A
72 variance may not be granted pursuant to this section until the
73 division is satisfied that:

74 a. The variance will not adversely affect the health of
75 the public.

76 b. No reasonable alternative to the required construction
77 exists.

78 c. The hardship was not caused intentionally by the action

79 of the applicant.

80 2. The division's advisory council shall review
81 applications for variances and recommend agency action. The
82 division shall expedite emergency requests for variances to
83 ensure that such requests are acted upon within 30 days after
84 receipt.

85 3. The division shall establish, by rule, fees for the
86 cost of the variance process. Such fees may not exceed \$150 for
87 routine variance requests and \$300 for emergency variance
88 requests.

89 (2) PUBLIC LODGING ESTABLISHMENT INSPECTION OF PREMISES.—

90 (a) The division has jurisdiction and is responsible for
91 all inspections of public lodging establishments conducted under
92 ~~required by~~ this chapter. The division is responsible for
93 quality assurance. The division shall inspect each licensed
94 public lodging establishment at least biannually, except for
95 transient and nontransient apartments, which shall be inspected
96 at least annually. Each public lodging establishment licensed by
97 the division shall be inspected at such other times as the
98 division determines ~~is~~ necessary to ensure the public ~~public's~~
99 health, safety, and welfare. ~~The division shall, by no later~~
100 ~~than July 1, 2014, adopt by rule a risk-based inspection~~
101 ~~frequency for each licensed public food service establishment.~~
102 ~~The rule must require at least one, but not more than four,~~
103 ~~routine inspections that must be performed annually, and may~~
104 ~~include guidelines that consider the inspection and compliance~~

105 ~~history of a public food service establishment, the type of food~~
106 ~~and food preparation, and the type of service. The division~~
107 ~~shall annually reassess the inspection frequency of all licensed~~
108 ~~public food service establishments.~~ Public lodging units
109 classified as vacation rentals or timeshare projects are exempt
110 from ~~not subject to~~ this requirement but shall be made available
111 to the division upon request. If, during the inspection of a
112 public lodging establishment ~~classified for renting to transient~~
113 ~~or nontransient tenants,~~ an inspector identifies vulnerable
114 adults who appear to be victims of neglect, as defined in s.
115 415.102, or, in the case of a building that is not equipped with
116 automatic sprinkler systems, tenants or clients who may be
117 unable to self-preserve in an emergency, the division shall
118 convene meetings to develop a plan that improves the prospects
119 for safety of affected residents and, if necessary, identifies
120 alternative living arrangements, such as facilities licensed
121 under part II of chapter 400 or chapter 429. The meetings shall
122 include representatives of ~~with~~ the following agencies as
123 appropriate to the individual situation: the Department of
124 Health, the Department of Elderly Affairs, the area agency on
125 aging, the local fire marshal, the landlord and affected tenants
126 and clients, and other relevant organizations, ~~to develop a plan~~
127 ~~that improves the prospects for safety of affected residents~~
128 ~~and, if necessary, identifies alternative living arrangements~~
129 ~~such as facilities licensed under part II of chapter 400 or~~
130 ~~under chapter 429.~~

131 ~~(b) For purposes of performing required inspections and~~
132 ~~the enforcement of this chapter, the division has the right of~~
133 ~~entry and access to public lodging establishments and public~~
134 ~~food service establishments at any reasonable time.~~

135 ~~(c) Public food service establishment inspections shall be~~
136 ~~conducted to enforce provisions of this part and to educate,~~
137 ~~inform, and promote cooperation between the division and the~~
138 ~~establishment.~~

139 ~~(d) The division shall adopt and enforce sanitation rules~~
140 ~~consistent with law to ensure the protection of the public from~~
141 ~~food-borne illness in those establishments licensed under this~~
142 ~~chapter. These rules shall provide the standards and~~
143 ~~requirements for obtaining, storing, preparing, processing,~~
144 ~~serving, or displaying food in public food service~~
145 ~~establishments, approving public food service establishment~~
146 ~~facility plans, conducting necessary public food service~~
147 ~~establishment inspections for compliance with sanitation~~
148 ~~regulations, cooperating and coordinating with the Department of~~
149 ~~Health in epidemiological investigations, and initiating~~
150 ~~enforcement actions, and for other such responsibilities deemed~~
151 ~~necessary by the division. The division may not establish by~~
152 ~~rule any regulation governing the design, construction,~~
153 ~~erection, alteration, modification, repair, or demolition of any~~
154 ~~public lodging or public food service establishment. It is the~~
155 ~~intent of the Legislature to preempt that function to the~~
156 ~~Florida Building Commission and the State Fire Marshal through~~

157 ~~adoption and maintenance of the Florida Building Code and the~~
 158 ~~Florida Fire Prevention Code. The division shall provide~~
 159 ~~technical assistance to the commission in updating the~~
 160 ~~construction standards of the Florida Building Code which govern~~
 161 ~~public lodging and public food service establishments. Further,~~
 162 ~~the division shall enforce the provisions of the Florida~~
 163 ~~Building Code which apply to public lodging and public food~~
 164 ~~service establishments in conducting any inspections authorized~~
 165 ~~by this part. The division, or its agent, shall notify the local~~
 166 ~~firesafety authority or the State Fire Marshal of any readily~~
 167 ~~observable violation of a rule adopted under chapter 633 which~~
 168 ~~relates to public lodging establishments or public food~~
 169 ~~establishments, and the identification of such violation does~~
 170 ~~not require any firesafety inspection certification.~~

171 ~~(e)1. Relating to facility plan approvals, the division~~
 172 ~~may establish, by rule, fees for conducting plan reviews and may~~
 173 ~~grant variances from construction standards in hardship cases,~~
 174 ~~which variances may be less restrictive than the provisions~~
 175 ~~specified in this section or the rules adopted under this~~
 176 ~~section. A variance may not be granted pursuant to this section~~
 177 ~~until the division is satisfied that:~~

178 ~~a. The variance shall not adversely affect the health of~~
 179 ~~the public.~~

180 ~~b. No reasonable alternative to the required construction~~
 181 ~~exists.~~

182 ~~c. The hardship was not caused intentionally by the action~~

183 ~~of the applicant.~~

184 ~~2. The division's advisory council shall review~~
185 ~~applications for variances and recommend agency action. The~~
186 ~~division shall make arrangements to expedite emergency requests~~
187 ~~for variances, to ensure that such requests are acted upon~~
188 ~~within 30 days of receipt.~~

189 ~~3. The division shall establish, by rule, a fee for the~~
190 ~~cost of the variance process. Such fee shall not exceed \$150 for~~
191 ~~routine variance requests and \$300 for emergency variance~~
192 ~~requests.~~

193 ~~(b)(f)~~ When inspecting a public lodging establishment in
194 ~~conducting inspections of establishments licensed under this~~
195 ~~chapter, the division shall determine whether any if each coin-~~
196 ~~operated amusement machine that is operated on the premises of a~~
197 ~~licensed public lodging establishment is properly registered~~
198 ~~with the Department of Revenue. Each month the division shall~~
199 ~~report to the Department of Revenue the sales tax registration~~
200 ~~number of the operator of any licensed public lodging~~
201 ~~establishment that has on its premises location a coin-operated~~
202 ~~amusement machine and that does not have an identifying~~
203 ~~certificate conspicuously displayed as required by s.~~
204 ~~212.05(1)(h).~~

205 ~~(g) In inspecting public food service establishments, the~~
206 ~~department shall provide each inspected establishment with the~~
207 ~~food-recovery brochure developed under s. 595.420.~~

208 (3) PUBLIC FOOD SERVICE ESTABLISHMENT INSPECTION.—

209 (a) The division has jurisdiction and is responsible for
210 all inspections of public food service establishments conducted
211 under this chapter. The division is responsible for quality
212 assurance. The division shall inspect each public food service
213 establishment as often as necessary to ensure compliance with
214 applicable laws and rules and at such other times as the
215 division determines necessary to ensure the public health,
216 safety, and welfare. The division shall conduct public food
217 service establishment inspections to enforce the provisions of
218 this part and to promote cooperation between the establishments
219 and the division.

220 (b) The division shall adopt and enforce sanitation rules
221 to ensure the protection of the public from food-borne illnesses
222 in public food service establishments licensed under this
223 chapter. These rules shall provide the standards and
224 requirements for obtaining, storing, preparing, processing,
225 servicing, and displaying food in public food service
226 establishments, approving public food service establishment
227 facility plans, conducting necessary public food service
228 establishment inspections for compliance with sanitation
229 requirements, cooperating and coordinating with the Department
230 of Health in epidemiological investigations, initiating
231 enforcement actions, and administering any other
232 responsibilities deemed necessary by the division.

233 (c) The division shall adopt by rule a risk-based
234 inspection frequency for each licensed public food service

235 establishment. The rule must require at least one, but not more
236 than four, routine inspections that must be performed annually,
237 and may include guidelines that consider the inspection and
238 compliance history of a public food service establishment, the
239 type of food and food preparation at the establishment, and the
240 type of service at the establishment. The division shall
241 annually reassess the inspection frequency of all licensed
242 public food service establishments.

243 (d) Upon completion of an inspection of a public food
244 service establishment under this subsection, the public food
245 service establishment inspector shall produce a written report
246 and assign a numerical score based on his or her findings.

247 Critical and noncritical violations shall be assigned a point
248 value, which shall be subtracted from a maximum score of 100
249 points. The inspector shall assign one of the following letter
250 grades to the public food service establishment:

251 1. An "A" grade, which indicates that the establishment is
252 in good operating condition and has received a numerical score
253 of at least 90 points. The inspector may have observed low-risk
254 health and safety violations during the course of the inspection
255 but may not have observed more than one noncritical or critical
256 violation.

257 2. A "B" grade, which indicates that the establishment is
258 in adequate operating condition and has received a numerical
259 score of at least 86 points but not more than 89 points. The
260 inspector must have observed one or more noncritical violations,

261 but may not have observed more than one critical violation.

262 3. A "C" grade, which indicates that the establishment
263 needs improvement and has received a numerical score of at least
264 71 points but not more than 85 points. The inspector must have
265 observed more than one noncritical violation and more than one
266 critical violation.

267 4. A "U" grade, which indicates that the establishment is
268 in poor operating condition and has received a numerical score
269 of 70 or fewer points. The inspector must have observed three or
270 more noncritical violations and more than three critical
271 violations.

272 (e)1. The operator of a public food service establishment
273 that fails to achieve a letter grade of "A" upon initial
274 inspection under this subsection may request a reinspection from
275 the division, for which the division may charge a reasonable
276 fee.

277 a. Requests for reinspection must be made within 14 days
278 after the initial inspection. The resulting grade is final
279 unless a hearing is requested.

280 b. Within 7 days after the reinspection, an operator of a
281 public food service establishment may submit a written request
282 for a hearing to contest the assigned letter grade received
283 during the reinspection and request an additional inspection.

284 2. The division may increase the frequency of inspections
285 for a public food service establishment that fails to achieve a
286 letter grade of "B" or higher during an initial or subsequent

287 inspection under this subsection.

288 (f)1. A public food service establishment shall at all
289 times post its current letter grade card in a front window; in a
290 display case on an outside wall within 5 feet of the front door;
291 on a drive-through menu board, if it operates a drive-through
292 window; or on a menu board at a market or deli. Failure to post
293 the letter grade card or an attempt to hide, camouflage, or
294 remove the letter grade card may result in a fine and suspension
295 of the establishment's license. The division shall post the
296 inspection report on the Department of Business and Professional
297 Regulation website in a form searchable by establishment name,
298 critical violations, noncritical violations, letter grade, and
299 type of establishment.

300 2. A public food service establishment operator shall
301 maintain a copy of the latest food service inspection report on
302 the premises and shall make it available to the public upon
303 request. If an operator has requested a reinspection, he or she
304 may inform the public that the current inspection results are
305 under review and that reinspection results may be obtained from
306 the division.

307 3. The division shall establish a toll-free hotline that
308 allows a public food service establishment operator to file a
309 complaint regarding an inspection, and the telephone number of
310 the hotline shall be included in a pamphlet provided by the
311 division that explains the inspection process.

312 4. The division shall appoint a consumer advocate to

313 represent the health and safety of the general public in issues
314 regarding public food service establishments.

315 (g) A public food service establishment inspector may, in
316 his or her discretion, immediately close a public food service
317 establishment that fails to achieve a letter grade of "C" or
318 higher.

319 (h) When inspecting a public food service establishment
320 licensed under this chapter, the division shall determine
321 whether any coin-operated amusement machine that is operated on
322 the premises is properly registered with the Department of
323 Revenue. Each month the division shall report to the Department
324 of Revenue the sales tax registration number of the operator of
325 a licensed public food service establishment that has on its
326 premises a coin-operated amusement machine that does not have an
327 identifying certificate conspicuously displayed as required by
328 s. 212.05(1)(h).

329 (i) When inspecting a public food service establishment,
330 the division shall provide the inspected establishment with the
331 food recovery program brochure developed under s. 595.420.

332 Section 2. Subsection (1) of section 509.233, Florida
333 Statutes, is amended to read:

334 509.233 Public food service establishment requirements;
335 local exemption for dogs in designated outdoor portions.—

336 (1) LOCAL EXEMPTION AUTHORIZED.—Notwithstanding s.
337 509.032(8) ~~s. 509.032(7)~~, the governing body of a local
338 government may establish, by ordinance, a local exemption

HB 385

2015

339 | procedure to certain provisions of the Food and Drug
340 | Administration Food Code, as currently adopted by the division,
341 | in order to allow patrons' dogs within certain designated
342 | outdoor portions of public food service establishments.

343 | Section 3. This act shall take effect July 1, 2015.