

By Senator Sobel

33-00558-15

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1                                   A bill to be entitled  
2       An act relating to public food service establishment  
3       inspections; amending s. 509.032, F.S.; requiring a  
4       report for public food service establishment  
5       inspections; specifying a grading scale used in the  
6       inspection report; authorizing a public food service  
7       establishment to request a reinspection under certain  
8       circumstances; authorizing the Department of Health to  
9       increase inspections and charge a reasonable fee for  
10      such inspections for repeat offenses; requiring a  
11      public food service establishment to immediately post  
12      a letter grade card, maintain a copy of the most  
13      recent inspection report, and make such report  
14      available to the public upon request; requiring the  
15      department to establish a toll-free hotline for  
16      complaints; requiring the department to establish a  
17      consumer advocate position; authorizing a health  
18      inspector to immediately close a public food service  
19      establishment under certain circumstances; amending s.  
20      509.233, F.S.; conforming a cross-reference; providing  
21      an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25       Section 1. Subsections (1) and (2) of section 509.032,  
26       Florida Statutes, are amended, present subsections (3) through  
27       (7) of that section are redesignated as subsections (4) through  
28       (8), respectively, and a new subsection (3) is added to that  
29       section, to read:

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30 509.032 Duties.—

31 (1) GENERAL.—

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

44 (b) The division may not establish by rule any regulation  
45 governing the design, construction, erection, alteration,  
46 modification, repair, or demolition of any public lodging  
47 establishment or public food service establishment. It is the  
48 intent of the Legislature to preempt that function to the  
49 Florida Building Commission and the State Fire Marshal through  
50 adoption and maintenance of the Florida Building Code and the  
51 Florida Fire Prevention Code. The division shall provide  
52 technical assistance to the commission in updating the  
53 construction standards of the Florida Building Code which govern  
54 public lodging establishments and public food service  
55 establishments. Further, the division shall enforce the  
56 provisions of the Florida Building Code which apply to public  
57 lodging establishments and public food service establishments in  
58 conducting any inspections authorized under this part. The

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59 division, or its agent, shall notify the local fire safety  
60 authority or the State Fire Marshal of any readily observable  
61 violation of a rule adopted under chapter 633 which relates to  
62 public lodging establishments or public food establishments. The  
63 identification of such violation does not require a fire safety  
64 inspection certification.

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

71 a. The variance will not adversely affect the health of the  
72 public.

73 b. No reasonable alternative to the required construction  
74 exists.

75 c. The hardship was not caused intentionally by the action  
76 of the applicant.

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

82 3. The division shall establish, by rule, a fee for the  
83 cost of the variance process. Such fee may not exceed \$150 for  
84 routine variance requests and \$300 for emergency variance  
85 requests.

86 (2) PUBLIC LODGING ESTABLISHMENT INSPECTION OF PREMISES.-

87 (a) The division has jurisdiction and is responsible for

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88 all inspections of public lodging establishments conducted under  
89 ~~required by~~ this chapter. The division is responsible for  
90 quality assurance. The division shall inspect each licensed  
91 public lodging establishment at least biannually, except for  
92 transient and nontransient apartments, which shall be inspected  
93 at least annually. Each establishment licensed by the division  
94 shall be inspected at such other times as the division  
95 determines ~~is~~ necessary to ensure the public ~~public's~~ health,  
96 safety, and welfare. ~~The division shall, by no later than July~~  
97 ~~1, 2014, adopt by rule a risk-based inspection frequency for~~  
98 ~~each licensed public food service establishment. The rule must~~  
99 ~~require at least one, but not more than four, routine~~  
100 ~~inspections that must be performed annually, and may include~~  
101 ~~guidelines that consider the inspection and compliance history~~  
102 ~~of a public food service establishment, the type of food and~~  
103 ~~food preparation, and the type of service. The division shall~~  
104 ~~annually reassess the inspection frequency of all licensed~~  
105 ~~public food service establishments. Public lodging units~~  
106 classified as vacation rentals or timeshare projects are exempt  
107 from ~~not subject to~~ this requirement but shall be made available  
108 to the division upon request. If, during the inspection of a  
109 public lodging establishment ~~classified for renting to transient~~  
110 ~~or nontransient tenants~~, an inspector identifies vulnerable  
111 adults who appear to be victims of neglect, as defined in s.  
112 415.102, or, in the case of a building that is not equipped with  
113 automatic sprinkler systems, tenants or clients who may be  
114 unable to self-preserve in an emergency, the division shall  
115 convene meetings to develop a plan that improves the prospects  
116 for safety of affected residents and, if necessary, identifies

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117 alternative living arrangements, such as facilities licensed  
118 under part II of chapter 400 or under chapter 429. The meetings  
119 shall include representatives of ~~with~~ the following agencies as  
120 appropriate to the individual situation: the Department of  
121 Health, the Department of Elderly Affairs, the area agency on  
122 aging, the local fire marshal, the landlord and affected tenants  
123 and clients, and other relevant organizations, ~~to develop a plan~~  
124 ~~that improves the prospects for safety of affected residents~~  
125 ~~and, if necessary, identifies alternative living arrangements~~  
126 ~~such as facilities licensed under part II of chapter 400 or~~  
127 ~~under chapter 429.~~

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

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

136 ~~(d) The division shall adopt and enforce sanitation rules~~  
137 ~~consistent with law to ensure the protection of the public from~~  
138 ~~food-borne illness in those establishments licensed under this~~  
139 ~~chapter. These rules shall provide the standards and~~  
140 ~~requirements for obtaining, storing, preparing, processing,~~  
141 ~~serving, or displaying food in public food service~~  
142 ~~establishments, approving public food service establishment~~  
143 ~~facility plans, conducting necessary public food service~~  
144 ~~establishment inspections for compliance with sanitation~~  
145 ~~regulations, cooperating and coordinating with the Department of~~

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146 ~~Health in epidemiological investigations, and initiating~~  
147 ~~enforcement actions, and for other such responsibilities deemed~~  
148 ~~necessary by the division. The division may not establish by~~  
149 ~~rule any regulation governing the design, construction,~~  
150 ~~erection, alteration, modification, repair, or demolition of any~~  
151 ~~public lodging or public food service establishment. It is the~~  
152 ~~intent of the Legislature to preempt that function to the~~  
153 ~~Florida Building Commission and the State Fire Marshal through~~  
154 ~~adoption and maintenance of the Florida Building Code and the~~  
155 ~~Florida Fire Prevention Code. The division shall provide~~  
156 ~~technical assistance to the commission in updating the~~  
157 ~~construction standards of the Florida Building Code which govern~~  
158 ~~public lodging and public food service establishments. Further,~~  
159 ~~the division shall enforce the provisions of the Florida~~  
160 ~~Building Code which apply to public lodging and public food~~  
161 ~~service establishments in conducting any inspections authorized~~  
162 ~~by this part. The division, or its agent, shall notify the local~~  
163 ~~firesafety authority or the State Fire Marshal of any readily~~  
164 ~~observable violation of a rule adopted under chapter 633 which~~  
165 ~~relates to public lodging establishments or public food~~  
166 ~~establishments, and the identification of such violation does~~  
167 ~~not require any firesafety inspection certification.~~

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

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175 ~~a. The variance shall not adversely affect the health of~~  
176 ~~the public.~~

177 ~~b. No reasonable alternative to the required construction~~  
178 ~~exists.~~

179 ~~c. The hardship was not caused intentionally by the action~~  
180 ~~of the applicant.~~

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

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

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

201 ~~(g) In inspecting public food service establishments, the~~  
202 ~~department shall provide each inspected establishment with the~~  
203 ~~food recovery brochure developed under s. 595.420.~~

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204 (3) PUBLIC FOOD SERVICE ESTABLISHMENT INSPECTION.—

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

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

229 (c) The division shall adopt by rule a risk-based  
230 inspection frequency for each licensed public food service  
231 establishment. The rule must require at least one, but not more  
232 than four, routine inspections that must be performed annually,



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233 and may include guidelines that consider the inspection and  
234 compliance history of a public food service establishment, the  
235 type of food and food preparation, and the type of service. The  
236 division shall annually reassess the inspection frequency of all  
237 licensed public food service establishments.

238 (d) Upon completion of an inspection of an establishment  
239 under this section, the public food service establishment  
240 inspector shall produce a written report and assign a numerical  
241 score based on his or her findings. Critical and noncritical  
242 violations shall be assigned a point value, which shall be  
243 subtracted from a maximum score of 100 points. The inspector  
244 shall assign one of the following letter grades to the public  
245 food service establishment:

246 1. An "A" grade, which indicates that the establishment is  
247 in good operating condition and received a numerical score of at  
248 least 90 points. The inspector may have observed low-risk health  
249 and safety violations during the course of the inspection but  
250 did not observe more than one noncritical or critical violation.

251 2. A "B" grade, which indicates that the establishment is  
252 in adequate operating condition and received a numerical score  
253 of at least 86 points but not more than 89 points. The inspector  
254 must have observed one or more noncritical violations, but did  
255 not observe more than one critical violation.

256 3. A "C" grade, which indicates that the establishment  
257 needs improvement and received a numerical score of at least 71  
258 points but not more than 85 points. The inspector must have  
259 observed more than one noncritical violation and more than one  
260 critical violation.

261 4. A "U" grade, which indicates that the establishment is

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262 in poor operating condition and received a numerical score of 70  
263 or fewer points. The inspector must have observed three or more  
264 noncritical violations and more than three critical violations.

265 (e)1. The operator of a public food service establishment  
266 that fails to achieve a letter grade of "A" upon initial  
267 inspection under this subsection may request a reinspection from  
268 the division, for which the division may charge a reasonable  
269 fee.

270 a. Requests for reinspection must be made within 14 days  
271 after the initial inspection. The resulting grade is final  
272 unless a hearing is requested.

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

277 2. The division may increase the frequency of inspections  
278 for a public food service establishment that fails to achieve a  
279 letter grade of "B" or higher during an initial or subsequent  
280 inspection under this subsection.

281 (f)1. A public food service establishment shall at all  
282 times post its current letter grade card in a front window; in a  
283 display case on an outside wall within 5 feet of the front door;  
284 on a drive-through menu board, if it operates a drive-through  
285 window; or on a menu board at a market or deli. Failure to post  
286 the letter grade card or an attempt to hide, camouflage, or  
287 remove the letter grade card may result in a fine and the  
288 suspension of the establishment's license. The division shall  
289 post the inspection report on the Department of Business and  
290 Professional Regulation website in a form searchable by

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291 establishment name, critical violations, noncritical violations,  
292 letter grade, and type of establishment.

293 2. An operator of a public food service establishment shall  
294 maintain a copy of the latest food service inspection report on  
295 the premises and shall make it available to the public upon  
296 request. If an operator has requested a reinspection, he or she  
297 may inform the public that the current inspection results are  
298 under review and that reinspection results may be obtained from  
299 the division.

300 3. The division shall establish a toll-free telephone  
301 hotline that allows an operator to file a complaint regarding an  
302 inspection, and the number of the hotline shall be included in a  
303 pamphlet provided by the division that explains the inspection  
304 process.

305 4. The division shall appoint a consumer advocate to  
306 represent the health and safety of the general public in issues  
307 regarding public food service establishments.

308 (g) An inspector may, in his or her discretion, immediately  
309 close a public food service establishment that fails to achieve  
310 a letter grade of "C" or higher.

311 (h) In conducting inspections of an establishment licensed  
312 under this chapter, the division shall determine whether each  
313 coin-operated amusement machine that is operated on the premises  
314 is properly registered with the Department of Revenue. Each  
315 month the division shall report to the Department of Revenue the  
316 sales tax registration number of the operator of any licensed  
317 establishment that has on its premises a coin-operated amusement  
318 machine that does not have an identifying certificate  
319 conspicuously displayed as required by s. 212.05(1)(h).

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320       (i) When inspecting public food service establishments, the  
321 division shall provide each inspected establishment with the  
322 food recovery brochure developed under s. 595.420.

323       Section 2. Subsection (1) of Section 509.233, Florida  
324 Statutes, is amended to read:

325       509.233 Public food service establishment requirements;  
326 local exemption for dogs in designated outdoor portions.-

327       (1) LOCAL EXEMPTION AUTHORIZED.-Notwithstanding s.  
328 509.032(8) ~~s. 509.032(7)~~, the governing body of a local  
329 government may establish, by ordinance, a local exemption  
330 procedure to certain provisions of the Food and Drug  
331 Administration Food Code, as currently adopted by the division,  
332 in order to allow patrons' dogs within certain designated  
333 outdoor portions of public food service establishments.

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