

By Senator Sobel

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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.; providing that
4 the Division of Hotels and Restaurants of the
5 Department of Business and Professional Regulation
6 inspect public food service establishments as often as
7 necessary to ensure compliance; requiring a written
8 report for public food service establishment
9 inspections; specifying a grading scale used in the
10 inspection report; authorizing a public food service
11 establishment to request a reinspection under certain
12 circumstances; authorizing the division to charge a
13 reasonable fee for reinspections and to increase the
14 frequency of inspections for certain public food
15 service establishments; allowing an operator of an
16 establishment to request a hearing regarding an
17 inspection grade; requiring a public food service
18 establishment to post its current letter grade card,
19 maintain a copy of its latest inspection report, and
20 make the report available to the public upon request;
21 requiring the division to establish a toll-free
22 telephone hotline for complaints; requiring the
23 division to appoint a consumer advocate; authorizing
24 an inspector to immediately close a public food
25 service establishment under certain circumstances;
26 making technical changes; amending s. 509.233, F.S.;
27 conforming a cross-reference; providing an effective
28 date.

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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Subsections (1) and (2) of section 509.032,
33 Florida Statutes, are amended, present subsections (3) through
34 (7) of that section are redesignated as subsections (4) through
35 (8), respectively, and a new subsection (3) is added to that
36 section, to read:

37 509.032 Duties.—

38 (1) GENERAL.—

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

51 (b) The division may not establish by rule any regulation
52 governing the design, construction, erection, alteration,
53 modification, repair, or demolition of any public lodging
54 establishment or public food service establishment. It is the
55 intent of the Legislature to preempt that function to the
56 Florida Building Commission and the State Fire Marshal through
57 adoption and maintenance of the Florida Building Code and the
58 Florida Fire Prevention Code. The division shall provide

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

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

78 a. The variance will not adversely affect the health of the
79 public.

80 b. No reasonable alternative to the required construction
81 exists.

82 c. The hardship was not caused intentionally by the action
83 of the applicant.

84 2. The division's advisory council shall review
85 applications for variances and recommend agency action. The
86 division shall expedite emergency requests for variances to
87 ensure that such requests are acted upon within 30 days of

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88 receipt.

89 3. The division shall establish, by rule, a fee for the
90 cost of the variance process. Such fee may not exceed \$150 for
91 routine variance requests and \$300 for emergency variance
92 requests.

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

94 (a) The division has jurisdiction and is responsible for
95 all inspections of public lodging establishments conducted under
96 ~~required by~~ this chapter. The division is responsible for
97 quality assurance. The division shall inspect each licensed
98 public lodging establishment at least biannually, except for
99 transient and nontransient apartments, which shall be inspected
100 at least annually. Each establishment licensed by the division
101 shall be inspected at such other times as the division
102 determines is necessary to ensure the public ~~public's~~ health,
103 safety, and welfare. ~~The division shall adopt by rule a risk-~~
104 ~~based inspection frequency for each licensed public food service~~
105 ~~establishment. The rule must require at least one, but not more~~
106 ~~than four, routine inspections that must be performed annually,~~
107 ~~and may include guidelines that consider the inspection and~~
108 ~~compliance history of a public food service establishment, the~~
109 ~~type of food and food preparation, and the type of service. The~~
110 ~~division shall reassess the inspection frequency of all licensed~~
111 ~~public food service establishments at least annually.~~ Public
112 lodging units classified as vacation rentals or timeshare
113 projects are exempt from ~~not subject to~~ this requirement but
114 shall be made available to the division upon request. If, during
115 the inspection of a public lodging establishment ~~classified for~~
116 ~~renting to transient or nontransient tenants,~~ an inspector

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117 identifies vulnerable adults who appear to be victims of
118 neglect, as defined in s. 415.102, or, in the case of a building
119 that is not equipped with automatic sprinkler systems, tenants
120 or clients who may be unable to self-preserve in an emergency,
121 the division shall convene meetings to develop a plan that
122 improves the prospects for safety of affected residents and, if
123 necessary, identifies alternative living arrangements, such as
124 facilities licensed under part II of chapter 400 or under
125 chapter 429. The meetings shall include representatives of with
126 the following agencies as appropriate to the individual
127 situation: the Department of Health, the Department of Elderly
128 Affairs, the area agency on aging, the local fire marshal, the
129 landlord and affected tenants and clients, and other relevant
130 organizations, ~~to develop a plan that improves the prospects for~~
131 ~~safety of affected residents and, if necessary, identifies~~
132 ~~alternative living arrangements such as facilities licensed~~
133 ~~under part II of chapter 400 or under chapter 429.~~

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

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

142 ~~(d) The division shall adopt and enforce sanitation rules~~
143 ~~consistent with law to ensure the protection of the public from~~
144 ~~food-borne illness in those establishments licensed under this~~
145 ~~chapter. These rules shall provide the standards and~~

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

174 ~~(e)1. Relating to facility plan approvals, the division may~~

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175 ~~establish, by rule, fees for conducting plan reviews and may~~
176 ~~grant variances from construction standards in hardship cases,~~
177 ~~which variances may be less restrictive than the provisions~~
178 ~~specified in this section or the rules adopted under this~~
179 ~~section. A variance may not be granted pursuant to this section~~
180 ~~until the division is satisfied that:~~

181 ~~a. The variance shall not adversely affect the health of~~
182 ~~the public.~~

183 ~~b. No reasonable alternative to the required construction~~
184 ~~exists.~~

185 ~~c. The hardship was not caused intentionally by the action~~
186 ~~of the applicant.~~

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

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

196 ~~(b)(f)~~ In conducting inspections of an establishment
197 ~~establishments~~ licensed under this chapter, the division shall
198 determine whether ~~if~~ each coin-operated amusement machine that
199 is operated on the premises of a licensed establishment is
200 properly registered with the Department of Revenue. Each month
201 the division shall report to the Department of Revenue the sales
202 tax registration number of the operator of any licensed
203 establishment that has on its premises ~~location~~ a coin-operated

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204 amusement machine and that does not have an identifying
205 certificate conspicuously displayed as required by s.
206 212.05(1)(h).

207 ~~(g) In inspecting public food service establishments, the~~
208 ~~department shall notify each inspected establishment of the~~
209 ~~availability of the food recovery brochure developed under s.~~
210 ~~595.420.~~

211 (3) PUBLIC FOOD SERVICE ESTABLISHMENT INSPECTION.—

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

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

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233 initiating enforcement actions, and administering other such
234 responsibilities as deemed necessary by the division.

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

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

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

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

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262 3. A "C" grade, which indicates that the establishment
263 needs improvement and received a numerical score of at least 71
264 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 received a numerical score of 70
269 or fewer points. The inspector must have observed three or more
270 noncritical violations and more than three critical violations.

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

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

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

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

287 (f)1. A public food service establishment shall at all
288 times post its current letter grade card in a front window; in a
289 display case on an outside wall within 5 feet of the front door;
290 on a drive-through menu board, if it operates a drive-through

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291 window; or on a menu board at a market or deli. Failure to post
292 the letter grade card or an attempt to hide, camouflage, or
293 remove the letter grade card may result in a fine and the
294 suspension of the establishment's license. The division shall
295 post the inspection report on the Department of Business and
296 Professional Regulation website in a form searchable by
297 establishment name, critical violations, noncritical violations,
298 letter grade, and type of establishment.

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

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

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

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

317 (h) In conducting inspections of an establishment licensed
318 under this chapter, the division shall determine whether each
319 coin-operated amusement machine that is operated on the premises

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320 is properly registered with the Department of Revenue. Each
321 month the division shall report to the Department of Revenue the
322 sales tax registration number of the operator of any licensed
323 establishment that has on its premises a coin-operated amusement
324 machine that does not have an identifying certificate
325 conspicuously displayed as required by s. 212.05(1)(h).

326 (i) When inspecting public food service establishments, the
327 division shall provide each inspected establishment with the
328 food recovery program brochure developed under s. 595.420.

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

331 509.233 Public food service establishment requirements;
332 local exemption for dogs in designated outdoor portions.—

333 (1) LOCAL EXEMPTION AUTHORIZED.—Notwithstanding s.
334 509.032(8) ~~s. 509.032(7)~~, the governing body of a local
335 government may establish, by ordinance, a local exemption
336 procedure to certain provisions of the Food and Drug
337 Administration Food Code, as currently adopted by the division,
338 in order to allow patrons' dogs within certain designated
339 outdoor portions of public food service establishments.

340 Section 3. This act shall take effect July 1, 2016.