S T A T E O F N E W Y O R K

2853--A

2013-2014 Regular Sessions

I N S E N A T E

January 24, 2013

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to the establishment of a letter grading system to classify inspection results for public food service establishments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1352-d of the public health law, as added by chapter 529 of the laws of 2013, is amended to read as follows:

S 1352-d. Public food service establishment inspection results AND LETTER GRADING SYSTEM. 1. (a) The department shall make available and prominently post on its website: (I) all public food service establishment inspection results for the most recent three years for which data is available, which shall include the determination concerning any alleged violation of this title, AND (II) LETTER GRADING INSPECTION RESULTS AS PROVIDED FOR PURSUANT TO THIS SECTION.

(b) As used in this section, "its website" means a website or a portion of a website maintained by an entity of state government on which the department regularly posts departmental information.

(c) If a county department of health or local board of health maintains a website, it shall post a link to the department's website where the food service establishment inspection results are available.

2. [A city with a population over one million shall be exempted from the provisions of this section.] THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR THE LETTER GRADING OF INSPECTION RESULTS FOR PUBLIC FOOD SERVICE ESTABLISHMENTS, AS DEFINED IN THE STATE SANITARY CODE. SUCH SYSTEM SHALL MAKE AVAILABLE AND PROMINENTLY POST ON THE DEPARTMENT'S INTERNET WEBSITE LETTERS A, B OR C TO IDENTIFY AND REPRESENT SUCH GRAD-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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ING AND CLASSIFICATION WITH ALL OTHER LOWER GRADES BEING DEEMED TO BE FAILING GRADES. IN ESTABLISHING SUCH SYSTEM OF GRADING, THE COMMISSIONER SHALL TAKE INTO ACCOUNT THE PROVISIONS OF THIS TITLE AND THE PROVISIONS OF THE SANITARY CODE TO ESTABLISH A LETTER GRADING SYSTEM THAT REFLECTS THE SAFETY AND SANITATION OF THE PREMISES AND FOOD HANDLING PRACTICES TO ENSURE COMPLIANCE WITH STATE AND LOCAL HEALTH LAWS.

3. FOR ANY FOOD SERVICE ESTABLISHMENT RECEIVING A LETTER GRADE LOWER THAN "A", THE LOCAL HEALTH OFFICER SHALL ADVISE THE ESTABLISHMENT OF ITS GRADE AND THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE LOCAL HEALTH OFFICER SHALL CONDUCT A SUBSEQUENT INSPECTION OF SUCH FOOD SERVICE ESTABLISHMENT NO SOONER THAN SEVEN DAYS, NOR LATER THAN TWENTY-ONE DAYS AFTER THE INSPECTION AT WHICH THE GRADE WAS GIVEN. IN THE INTERIM, THE PREVIOUS LETTER GRADE SHALL REMAIN POSTED ON THE DEPARTMENT WEBSITE. UPON THE CONCLUSION OF THE SUBSEQUENT INSPECTION, THE COMMISSIONER SHALL POST A LETTER GRADE FOR THE FOOD SERVICE ESTABLISHMENT WHICH INDICATES THE GRADE FOR SUCH INSPECTION ON THE DEPARTMENT'S WEBSITE. IN ADDITION TO A LETTER GRADE, SUCH ESTABLISHMENT SHALL RECEIVE THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE FOOD SERVICE ESTABLISHMENT MAY APPEAL SUCH SUBSEQUENT ASSIGNMENT OF A LETTER GRADE DESIGNATION TO THE COMMISSIONER FOR REVIEW WITHIN THIRTY DAYS OF SUCH ASSIGNMENT. WHILE ANY SUCH APPEAL IS PENDING, A FOOD SERVICE ESTABLISHMENT GRADE SHALL REMAIN POSTED ON THE DEPARTMENT'S WEBSITE WHILE SUCH LETTER GRADE IS BEING APPEALED.

4. THE SUGGESTED INTERVAL BETWEEN REGULARLY SCHEDULED INSPECTIONS OF FOOD SERVICE ESTABLISHMENTS MAY BE AS FOLLOWS:

(A) FOR ESTABLISHMENTS WITH A GRADE OF "A", AT LEAST ONCE EVERY YEAR; AND

(B) FOR ESTABLISHMENTS WITH A GRADE OF "B", AT LEAST ONCE EVERY NINE MONTHS.

A FOOD SERVICE ESTABLISHMENT THAT REQUESTS A REINSPECTION FROM THE LOCAL HEALTH OFFICER, SHALL PAY THE DEPARTMENT A FEE OF UP TO ONE HUNDRED DOLLARS. PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT NEGATE THE ABILITY OF ANY LOCAL HEALTH OFFICER TO INSPECT ANY FOOD SERVICE ESTABLISHMENT ON THE BASIS OF A COMPLAINT FROM A MEMBER OF THE PUBLIC.

5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO FOOD SERVICE ESTABLISHMENTS WHICH:

(A) ARE PREMISES LICENSED FOR ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES PURSUANT TO THE ALCOHOLIC BEVERAGE CONTROL LAW WHEN LESS THAN TEN PERCENT OF THE GROSS SALES OF SUCH ESTABLISHMENT IS DERIVED FROM THE RETAIL SALE OF FOOD FOR ON-PREMISES CONSUMPTION;

(B) DO NOT ENGAGE IN THE RETAIL SALE OF FOOD FOR ON-PREMISES OR OFF-PREMISES CONSUMPTION FROM SUCH ESTABLISHMENT;

(C) ARE LOCATED IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE;

(D) ARE OPERATED IN OR BY A PRIMARY OR SECONDARY SCHOOL, OR A CORRECTIONAL FACILITY;

(E) ARE SPONSORED BY A CHARITABLE ORGANIZATION TO OPERATE A SOUP KITCHEN OR OTHER FOOD DISTRIBUTION PROGRAM FOR THE ELDERLY, LOW INCOME INDIVIDUALS AND FAMILIES OR THE INFIRM; OR

(F) ARE MOBILE FOOD VENDING UNITS, MOBILE FOOD VENDING COMMISSARIES OR TEMPORARY FOOD SERVICE ESTABLISHMENTS.

S 2. This act shall take effect 18 months after it shall have become a law, or on the same date and in the same manner as chapter 529 of the laws of 2013 takes effect, whichever is later. Provided, however, that effective immediately, any rules and regulations necessary to implement

the provisions of this act on its effective date are authorized and directed to be completed on or before such date.