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

8458

I N S E N A T E

July 30, 2010

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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. The public health law is amended by adding a new section 1352-d to read as follows:

S 1352-D. PUBLIC FOOD SERVICE GRADING SYSTEM. 1. FOR THE PURPOSES OF THIS SECTION, "PUBLIC FOOD SERVICE ESTABLISHMENT" SHALL MEAN A FOOD SERVICE ESTABLISHMENT, TEMPORARY FOOD SERVICE ESTABLISHMENT, MOBILE FOOD SERVICE ESTABLISHMENT AND PUSHCART AS DEFINED IN THE STATE SANITARY CODE. SUCH TERM SHALL ALSO INCLUDE FOOD SERVICE ESTABLISHMENTS OPERATED BY ELEMENTARY AND SECONDARY SCHOOLS, AND HOSPITALS. PUBLIC FOOD SERVICE ESTABLISHMENT SHALL ALSO MEAN A PLACE OF ENTERTAINMENT, INCLUDING ANY PRIVATELY OR PUBLICLY OWNED AND OPERATED FACILITY SUCH AS A THEATRE, STADIUM, ARENA, RACETRACK, MUSEUM, AMUSEMENT PARK, OR OTHER PLACE WHERE PERFORMANCES, CONCERTS, EXHIBITS, ATHLETIC GAMES OR CONTESTS ARE HELD FOR WHICH A DONATION IS RECOMMENDED OR REQUIRED, OR AN ENTRY FEE IS CHARGED.

2. THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR GRADING INSPECTION RESULTS FOR PUBLIC FOOD SERVICE ESTABLISHMENTS. SUCH SYSTEM SHALL USE AND POST LETTERS A, B OR C TO IDENTIFY AND REPRESENT SUCH GRADING 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 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. SUCH PUBLIC FOOD SERVICE ESTABLISHMENT SHALL CONSPICUOUSLY POST NEAR THE ENTRANCE TO SUCH ESTABLISHMENT, OR AT THE POINT OF SALE, THE LETTER GRADE IDENTIFYING AND REPRESENTING THE RESULT OF SUCH ESTABLISHMENT'S MOST RECENTLY GRADED INSPECTION BY THE LOCAL HEALTH OFFICER OR

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

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THE ENTITY RESPONSIBLE FOR SUCH INSPECTION. SUCH POSTING SHALL BE DONE IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER. FOR ANY PUBLIC FOOD SERVICE ESTABLISHMENT RECEIVING A GRADE LOWER THAN "A", THE LOCAL HEALTH OFFICER OR THE ENTITY PERFORMING THE INSPECTION SHALL ADVISE THE ESTABLISHMENT OF ITS GRADE AND THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE LOCAL HEALTH OFFICER OR THE ENTITY WHICH PERFORMED THE INITIAL INSPECTION SHALL CONDUCT A SUBSEQUENT INSPECTION OF SUCH PUBLIC 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. UPON THE CONCLUSION OF THE SUBSEQUENT INSPECTION, THE LOCAL HEALTH OFFICER OR THE ENTITY PERFORMING THE INSPECTION SHALL DELIVER FOR POSTING A LETTER GRADE TO THE PUBLIC FOOD SERVICE ESTABLISHMENT WHICH INDICATES THE GRADE FOR SUCH INSPECTION. IN ADDITION TO A LETTER GRADE, SUCH ESTABLISHMENT SHALL RECEIVE THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE PUBLIC 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 PUBLIC FOOD SERVICE ESTABLISHMENT SHALL POST THE LETTER GRADE THAT IS BEING APPEALED.

4. THE SUGGESTED INTERVAL BETWEEN REGULARLY SCHEDULED INSPECTIONS OF PUBLIC 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 PUBLIC FOOD SERVICE ESTABLISHMENT THAT REQUESTS A REINSPECTION FROM THE LOCAL HEALTH OFFICER OR THE ENTITY RESPONSIBLE FOR SUCH INSPECTIONS, SHALL PAY THE DEPARTMENT A FEE OF UP TO TWO HUNDRED FIFTY DOLLARS. PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT NEGATE THE ABILITY OF ANY LOCAL HEALTH OFFICER OR THE ENTITY RESPONSIBLE FOR SUCH INSPECTIONS TO INSPECT ANY PUBLIC 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 PUBLIC 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 WITH A LOCAL FOOD ESTABLISHMENT GRADING SYSTEM TO THE EXTENT THE LOCAL LAWS RELATING THERETO ARE NOT INCONSISTENT WITH THIS SECTION;

(D) ARE OPERATED IN OR BY A CORRECTIONAL FACILITY; OR

(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.

6. NO PROVISION OF THIS SECTION SHALL BE DEEMED TO DIMINISH OR OTHERWISE CHANGE ANY POWER OR DUTY OF ANY STATE AGENCY OR AUTHORITY.

S 2. This act shall take effect one year after it shall have become a law. 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.