

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:

- 1 Section 1. The public health law is amended by adding a new section
2 1352-d to read as follows:
3 S 1352-D. PUBLIC FOOD SERVICE GRADING SYSTEM. 1. FOR THE PURPOSES OF
4 THIS SECTION, "PUBLIC FOOD SERVICE ESTABLISHMENT" SHALL MEAN A FOOD
5 SERVICE ESTABLISHMENT, TEMPORARY FOOD SERVICE ESTABLISHMENT, MOBILE FOOD
6 SERVICE ESTABLISHMENT AND PUSHCART AS DEFINED IN THE STATE SANITARY
7 CODE. SUCH TERM SHALL ALSO INCLUDE FOOD SERVICE ESTABLISHMENTS OPERATED
8 BY ELEMENTARY AND SECONDARY SCHOOLS, AND HOSPITALS. PUBLIC FOOD SERVICE
9 ESTABLISHMENT SHALL ALSO MEAN A PLACE OF ENTERTAINMENT, INCLUDING ANY
10 PRIVATELY OR PUBLICLY OWNED AND OPERATED FACILITY SUCH AS A THEATRE,
11 STADIUM, ARENA, RACETRACK, MUSEUM, AMUSEMENT PARK, OR OTHER PLACE WHERE
12 PERFORMANCES, CONCERTS, EXHIBITS, ATHLETIC GAMES OR CONTESTS ARE HELD
13 FOR WHICH A DONATION IS RECOMMENDED OR REQUIRED, OR AN ENTRY FEE IS
14 CHARGED.
15 2. THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR GRADING INSPECTION
16 RESULTS FOR PUBLIC FOOD SERVICE ESTABLISHMENTS. SUCH SYSTEM SHALL USE
17 AND POST LETTERS A, B OR C TO IDENTIFY AND REPRESENT SUCH GRADING AND
18 CLASSIFICATION WITH ALL OTHER LOWER GRADES BEING DEEMED TO BE FAILING
19 GRADES. IN ESTABLISHING SUCH SYSTEM OF GRADING, THE COMMISSIONER SHALL
20 TAKE INTO ACCOUNT THE PROVISIONS OF THIS TITLE AND THE PROVISIONS OF THE
21 SANITARY CODE TO ESTABLISH A GRADING SYSTEM THAT REFLECTS THE SAFETY AND
22 SANITATION OF THE PREMISES AND FOOD HANDLING PRACTICES TO ENSURE COMPLI-
23 ANCE WITH STATE AND LOCAL HEALTH LAWS.
24 3. SUCH PUBLIC FOOD SERVICE ESTABLISHMENT SHALL CONSPICUOUSLY POST
25 NEAR THE ENTRANCE TO SUCH ESTABLISHMENT, OR AT THE POINT OF SALE, THE
26 LETTER GRADE IDENTIFYING AND REPRESENTING THE RESULT OF SUCH ESTABLISH-
27 MENT'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.

LBD02911-18-0

1 THE ENTITY RESPONSIBLE FOR SUCH INSPECTION. SUCH POSTING SHALL BE DONE
2 IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSION-
3 ER. FOR ANY PUBLIC FOOD SERVICE ESTABLISHMENT RECEIVING A GRADE LOWER
4 THAN "A", THE LOCAL HEALTH OFFICER OR THE ENTITY PERFORMING THE
5 INSPECTION SHALL ADVISE THE ESTABLISHMENT OF ITS GRADE AND THE FINDINGS
6 UPON WHICH SUCH GRADE IS BASED. THE LOCAL HEALTH OFFICER OR THE ENTITY
7 WHICH PERFORMED THE INITIAL INSPECTION SHALL CONDUCT A SUBSEQUENT
8 INSPECTION OF SUCH PUBLIC FOOD SERVICE ESTABLISHMENT NO SOONER THAN
9 SEVEN DAYS, NOR LATER THAN TWENTY-ONE DAYS AFTER THE INSPECTION AT WHICH
10 THE GRADE WAS GIVEN. IN THE INTERIM, THE PREVIOUS LETTER GRADE SHALL
11 REMAIN POSTED. UPON THE CONCLUSION OF THE SUBSEQUENT INSPECTION, THE
12 LOCAL HEALTH OFFICER OR THE ENTITY PERFORMING THE INSPECTION SHALL
13 DELIVER FOR POSTING A LETTER GRADE TO THE PUBLIC FOOD SERVICE ESTABLISH-
14 MENT WHICH INDICATES THE GRADE FOR SUCH INSPECTION. IN ADDITION TO A
15 LETTER GRADE, SUCH ESTABLISHMENT SHALL RECEIVE THE FINDINGS UPON WHICH
16 SUCH GRADE IS BASED. THE PUBLIC FOOD SERVICE ESTABLISHMENT MAY APPEAL
17 SUCH SUBSEQUENT ASSIGNMENT OF A LETTER GRADE DESIGNATION TO THE COMMIS-
18 SIONER FOR REVIEW WITHIN THIRTY DAYS OF SUCH ASSIGNMENT. WHILE ANY SUCH
19 APPEAL IS PENDING, A PUBLIC FOOD SERVICE ESTABLISHMENT SHALL POST THE
20 LETTER GRADE THAT IS BEING APPEALED.

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

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

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

27 A PUBLIC FOOD SERVICE ESTABLISHMENT THAT REQUESTS A REINSPECTION FROM
28 THE LOCAL HEALTH OFFICER OR THE ENTITY RESPONSIBLE FOR SUCH INSPECTIONS,
29 SHALL PAY THE DEPARTMENT A FEE OF UP TO TWO HUNDRED FIFTY DOLLARS.
30 PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT
31 NEGATE THE ABILITY OF ANY LOCAL HEALTH OFFICER OR THE ENTITY RESPONSIBLE
32 FOR SUCH INSPECTIONS TO INSPECT ANY PUBLIC FOOD SERVICE ESTABLISHMENT ON
33 THE BASIS OF A COMPLAINT FROM A MEMBER OF THE PUBLIC.

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

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

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

42 (C) ARE LOCATED IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE
43 WITH A LOCAL FOOD ESTABLISHMENT GRADING SYSTEM TO THE EXTENT THE LOCAL
44 LAWS RELATING THERETO ARE NOT INCONSISTENT WITH THIS SECTION;

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

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

49 6. NO PROVISION OF THIS SECTION SHALL BE DEEMED TO DIMINISH OR OTHER-
50 WISE CHANGE ANY POWER OR DUTY OF ANY STATE AGENCY OR AUTHORITY.

51 S 2. This act shall take effect one year after it shall have become a
52 law. Provided, however, that effective immediately, any rules and regu-
53 lations necessary to implement the provisions of this act on its effec-
54 tive date are authorized and directed to be completed on or before such
55 date.