

2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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Introduced by M. of A. PAULIN, CYMBROWITZ, HOOPER, PHEFFER -- read once  
and referred to the Committee on Health

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 ESTABLISHMENT GRADING SYSTEM. 1. THE  
4     COMMISSIONER SHALL ESTABLISH A SYSTEM FOR GRADING INSPECTION RESULTS FOR  
5     PUBLIC FOOD SERVICE ESTABLISHMENTS, AS DEFINED IN THE STATE SANITARY  
6     CODE, INCLUDING, BUT NOT LIMITED TO, RESTAURANTS, DINING ROOMS, DELIS,  
7     BAKERIES OR ANY OTHER PLACE WHERE FOOD IS PREPARED, SOLD OR SERVED FOR  
8     CONSUMPTION BY THE GENERAL PUBLIC. SUCH SYSTEM SHALL USE AND POST  
9     LETTERS A, B OR C TO IDENTIFY AND REPRESENT SUCH GRADING AND CLASSIFICA-  
10    TION WITH ALL OTHER LOWER GRADES BEING DEEMED TO BE FAILING GRADES. IN  
11    ESTABLISHING SUCH SYSTEM OF GRADING, THE COMMISSIONER SHALL TAKE INTO  
12    ACCOUNT THE PROVISIONS OF THIS TITLE AND THE PROVISIONS OF THE SANITARY  
13    CODE TO ESTABLISH A GRADING SYSTEM THAT REFLECTS THE SAFETY AND SANITA-  
14    TION OF THE PREMISES AND FOOD HANDLING PRACTICES TO ENSURE COMPLIANCE  
15    WITH STATE AND LOCAL HEALTH LAWS.  
16    2. SUCH PUBLIC FOOD SERVICE ESTABLISHMENT SHALL CONSPICUOUSLY POST  
17    NEAR THE ENTRANCE TO SUCH ESTABLISHMENT THE LETTER GRADE IDENTIFYING AND  
18    REPRESENTING THE RESULT OF SUCH ESTABLISHMENT'S MOST RECENTLY GRADED  
19    INSPECTION BY THE LOCAL HEALTH OFFICER. SUCH POSTING SHALL BE DONE IN  
20    ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER.  
21    FOR ANY FOOD SERVICE ESTABLISHMENT RECEIVING A GRADE LOWER THAN "A", THE  
22    LOCAL HEALTH OFFICER SHALL ADVISE THE ESTABLISHMENT OF ITS GRADE AND THE  
23    FINDINGS UPON WHICH SUCH GRADE IS BASED. THE LOCAL HEALTH OFFICER SHALL

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

LBD00925-01-1

1 CONDUCT A SUBSEQUENT INSPECTION OF SUCH FOOD SERVICE ESTABLISHMENT NO  
2 SOONER THAN SEVEN DAYS, NOR LATER THAN TWENTY-ONE DAYS AFTER THE  
3 INSPECTION AT WHICH THE GRADE WAS GIVEN. IN THE INTERIM, THE PREVIOUS  
4 LETTER GRADE SHALL REMAIN POSTED. UPON THE CONCLUSION OF THE SUBSEQUENT  
5 INSPECTION, THE LOCAL HEALTH OFFICER SHALL DELIVER FOR POSTING A LETTER  
6 TO THE FOOD SERVICE ESTABLISHMENT WHICH INDICATES THE GRADE FOR SUCH  
7 INSPECTION. IN ADDITION TO A LETTER GRADE, SUCH ESTABLISHMENT SHALL  
8 RECEIVE THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE FOOD SERVICE  
9 ESTABLISHMENT MAY APPEAL SUCH SUBSEQUENT ASSIGNMENT OF A LETTER GRADE  
10 DESIGNATION TO THE COMMISSIONER FOR REVIEW WITHIN THIRTY DAYS OF SUCH  
11 ASSIGNMENT. WHILE ANY SUCH APPEAL IS PENDING, A FOOD SERVICE ESTABLISH-  
12 MENT SHALL POST THE LETTER GRADE THAT IS BEING APPEALED.

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

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

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

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

25 4. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO FOOD SERVICE  
26 ESTABLISHMENTS WHICH:

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

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

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

34 (D) ARE OPERATED IN OR BY A PRIMARY OR SECONDARY SCHOOL, OR A CORREC-  
35 TIONAL FACILITY;

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

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

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