

CHAPTER 2016-120

Committee Substitute for Committee Substitute for House Bill No. 249

An act relating to culinary education programs; amending s. 381.0072, F.S.; providing for the applicability of Department of Health sanitation rules to a licensed culinary education program; defining the term “culinary education program”; including certain culinary education programs under the definition of “food service establishment” and providing for the applicability of food service protection requirements thereto; conforming provisions; amending s. 509.013, F.S.; revising the definition of the term “public food service establishment” to include a culinary education program; amending s. 561.20, F.S.; permitting a culinary education program with a public food service establishment license to obtain an alcoholic beverage license under certain conditions; authorizing the Division of Alcoholic Beverages and Tobacco to adopt rules to administer such licenses; providing an effective date.

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

Section 1. Section 381.0072, Florida Statutes, is amended to read:

381.0072 Food service protection.—

(1) DEPARTMENT OF HEALTH; SANITATION RULES.—

(a) It shall be the duty of the Department of Health to adopt and enforce sanitation rules consistent with law to ensure the protection of the public from food-borne illness. These rules shall provide the standards and requirements for the storage, preparation, serving, or display of food in food service establishments as defined in this section and which are not permitted or licensed under chapter 500 or chapter 509.

(b) A food service establishment is subject to the sanitation rules adopted and enforced by the department. This section does not apply to a food service establishment permitted or licensed under chapter 500 or a public food service establishment licensed under chapter 509 unless the public food service establishment is a culinary education program licensed under chapter 509.

(2)(1) DEFINITIONS.—As used in this section, the term:

(a) “Culinary education program” means a program that:

1. Educates enrolled students in the culinary arts, including the preparation, cooking, and presentation of food, or provides education and experience in culinary arts-related businesses;

2. Is provided by:

- a. A state university as defined in s. 1000.21;
- b. A Florida College System institution as defined in s. 1000.21;
- c. A career center as defined in s. 1001.44;
- d. A charter technical career center as defined in s. 1002.34;
- e. A nonprofit independent college or university that is located and chartered in this state and accredited by the Commission on Colleges of the Southern Association of Colleges and Schools to grant baccalaureate degrees, that is under the jurisdiction of the Department of Education, and that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program; or
- f. A nonpublic postsecondary educational institution licensed pursuant to part III of chapter 1005; and

3. Is inspected by any state agency or agencies for compliance with sanitation standards.

~~(b)~~(a) “Department” means the Department of Health or its representative county health department.

~~(c)~~(b) “Food service establishment” means detention facilities, public or private schools, migrant labor camps, assisted living facilities, facilities participating in the United States Department of Agriculture Afterschool Meal Program that are located at a facility or site that is not inspected by another state agency for compliance with sanitation standards, adult family-care homes, adult day care centers, short-term residential treatment centers, residential treatment facilities, homes for special services, transitional living facilities, crisis stabilization units, hospices, prescribed pediatric extended care centers, intermediate care facilities for persons with developmental disabilities, boarding schools, civic or fraternal organizations, bars and lounges, vending machines that dispense potentially hazardous foods at facilities expressly named in this paragraph, and facilities used as temporary food events or mobile food units at any facility expressly named in this paragraph, where food is prepared and intended for individual portion service, including the site at which individual portions are provided, regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes a culinary education program where food is prepared and intended for individual portion service, regardless of whether there is a charge for the food or whether the program is inspected by another state agency for compliance with sanitation standards. The term does not include any entity not expressly named in this paragraph; nor does the term include a domestic violence center certified by the Department of Children and Families and monitored by the Florida Coalition Against Domestic Violence under part XII of chapter 39 if the center does not prepare and serve food to its residents and does not advertise food or drink for public consumption.

(d)(e) “Operator” means the owner, operator, keeper, proprietor, lessee, manager, assistant manager, agent, or employee of a food service establishment.

(3)(2) DUTIES.—

(a) The department may advise and consult with the Agency for Health Care Administration, the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, and the Department of Children and Families concerning procedures related to the storage, preparation, serving, or display of food at any building, structure, or facility not expressly included in this section that is inspected, licensed, or regulated by those agencies.

(b) The department shall adopt rules, including definitions of terms which are consistent with law prescribing minimum sanitation standards and manager certification requirements as prescribed in s. 509.039, and which shall be enforced in food service establishments as defined in this section. The sanitation standards must address the construction, operation, and maintenance of the establishment; lighting, ventilation, laundry rooms, lockers, use and storage of toxic materials and cleaning compounds, and first-aid supplies; plan review; design, construction, installation, location, maintenance, sanitation, and storage of food equipment and utensils; employee training, health, hygiene, and work practices; food supplies, preparation, storage, transportation, and service, including access to the areas where food is stored or prepared; and sanitary facilities and controls, including water supply and sewage disposal; plumbing and toilet facilities; garbage and refuse collection, storage, and disposal; and vermin control. Public and private schools, if the food service is operated by school employees, bars and lounges, civic organizations, and any other facility that is not regulated under this section are exempt from the rules developed for manager certification. The department shall administer a comprehensive inspection, monitoring, and sampling program to ensure such standards are maintained. With respect to food service establishments permitted or licensed under chapter 500 or chapter 509, the department shall assist the Division of Hotels and Restaurants of the Department of Business and Professional Regulation and the Department of Agriculture and Consumer Services with rulemaking by providing technical information.

(c) The department shall carry out all provisions of this chapter and all other applicable laws and rules relating to the inspection or regulation of food service establishments as defined in this section, for the purpose of safeguarding the public’s health, safety, and welfare.

(d) The department shall inspect each food service establishment as often as necessary to ensure compliance with applicable laws and rules. The department shall have the right of entry and access to these food service establishments at any reasonable time. In inspecting food service establishments under this section, the department shall provide each inspected establishment with the food recovery brochure developed under s. 595.420.

(e) The department or other appropriate regulatory entity may inspect theaters ~~exempted in subsection (1)~~ to ensure compliance with applicable laws and rules pertaining to minimum sanitation standards. A fee for inspection shall be prescribed by rule, but the aggregate amount charged per year per theater establishment shall not exceed \$300, regardless of the entity providing the inspection.

~~(4)(3)~~ LICENSES REQUIRED.—

(a) Licenses; annual renewals.—Each food service establishment regulated under this section shall obtain a license from the department annually. Food service establishment licenses shall expire annually and are not transferable from one place or individual to another. However, those facilities licensed by the department’s Office of Licensure and Certification, the Child Care Services Program Office, or the Agency for Persons with Disabilities are exempt from this subsection. It shall be a misdemeanor of the second degree, punishable as provided in s. 381.0061, s. 775.082, or s. 775.083, for such an establishment to operate without this license. The department may refuse a license, or a renewal thereof, to any establishment that is not constructed or maintained in accordance with law and with the rules of the department. Annual application for renewal is not required.

(b) Application for license.—Each person who plans to open a food service establishment regulated under this section and not regulated under chapter 500 or chapter 509 shall apply for and receive a license prior to the commencement of operation.

~~(5)(4)~~ LICENSE; INSPECTION; FEES.—

(a) The department is authorized to collect fees from establishments licensed under this section and from those facilities exempted from licensure under paragraph ~~(4)(a)~~ ~~(3)(a)~~. It is the intent of the Legislature that the total fees assessed under this section be in an amount sufficient to meet the cost of carrying out the provisions of this section.

(b) The fee schedule for food service establishments licensed under this section shall be prescribed by rule, but the aggregate license fee per establishment shall not exceed \$300.

(c) The license fees shall be prorated on a quarterly basis. Annual licenses shall be renewed as prescribed by rule.

~~(6)(5)~~ FINES; SUSPENSION OR REVOCATION OF LICENSES; PROCEDURE.—

(a) The department may impose fines against the establishment or operator regulated under this section for violations of sanitary standards, in accordance with s. 381.0061. All amounts collected shall be deposited to the credit of the County Health Department Trust Fund administered by the department.

(b) The department may suspend or revoke the license of any food service establishment licensed under this section that has operated or is operating in violation of any of the provisions of this section or the rules adopted under this section. Such food service establishment shall remain closed when its license is suspended or revoked.

(c) The department may suspend or revoke the license of any food service establishment licensed under this section when such establishment has been deemed by the department to be an imminent danger to the public's health for failure to meet sanitation standards or other applicable regulatory standards.

(d) No license shall be suspended under this section for a period of more than 12 months. At the end of such period of suspension, the establishment may apply for reinstatement or renewal of the license. A food service establishment which has had its license revoked may not apply for another license for that location prior to the date on which the revoked license would have expired.

(7)~~(6)~~ IMMEDIATE DANGERS; STOP-SALE ORDERS.—

(a) In the course of epidemiological investigations or for those establishments regulated by the department under this chapter, the department, to protect the public from food that is unwholesome or otherwise unfit for human consumption, may examine, sample, seize, and stop the sale or use of food to determine its condition. The department may stop the sale and supervise the proper destruction of food when the State Health Officer or his or her designee determines that such food represents a threat to the public health.

(b) The department may determine that a food service establishment regulated under this section is an imminent danger to the public health and require its immediate closure when such establishment fails to comply with applicable sanitary and safety standards and, because of such failure, presents an imminent threat to the public's health, safety, and welfare. The department may accept inspection results from state and local building and firesafety officials and other regulatory agencies as justification for such actions. Any facility so deemed and closed shall remain closed until allowed by the department or by judicial order to reopen.

(8)~~(7)~~ MISREPRESENTING FOOD OR FOOD PRODUCTS.—No operator of any food service establishment regulated under this section shall knowingly and willfully misrepresent the identity of any food or food product to any of the patrons of such establishment. Food used by food establishments shall be identified, labeled, and advertised in accordance with the provisions of chapter 500.

Section 2. Paragraph (a) of subsection (5) of section 509.013, Florida Statutes, is amended to read:

509.013 Definitions.—As used in this chapter, the term:

(5)(a) “Public food service establishment” means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

Section 3. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) No such limitation of the number of licenses as herein provided shall henceforth prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(21), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(21), in a municipality that on the effective date of this act has a population, according to the University of Florida’s Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that the provisions of this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under the provisions of chapter 509, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under the provisions of chapter 509, and which is located in any county

having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation which operates the hotel or motel operation and not to the association of condominium owners;

4. Any restaurant having 2,500 square feet of service area and equipped to serve 150 persons full course meals at tables at one time, and deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages; however, no restaurant granted a special license on or after January 1, 1958, pursuant to general or special law shall operate as a package store, nor shall intoxicating beverages be sold under such license after the hours of serving food have elapsed; or

5. Any caterer, deriving at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any other provision of law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this subparagraph, including licensed vendor receipts for the purchase of alcoholic beverages and records identifying each customer and the location and date of each catered event. Notwithstanding any provision of law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which

the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first \$300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072.

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any other provision of law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that

holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under the provisions of this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under the provisions of this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 4. This act shall take effect July 1, 2016.

Approved by the Governor March 25, 2016.

Filed in Office Secretary of State March 25, 2016.