

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2032

SPONSOR: Senator Sebesta

SUBJECT: Public Food Service Establishments

DATE: April 9, 2003

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | <u>Favorable</u> |
| 2. | <u> </u> | <u> </u> | <u>CM</u> | <u> </u> |
| 3. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
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I. Summary:

The bill authorizes the Division of Hotels and Restaurants (“the division”) of the Department of Business and Professional Regulation to implement a recognition program for public food service establishments (“establishments”) to promote the responsible and safe service of food and alcoholic beverages to the public. To qualify for recognition, establishments must train and certify all managers pursuant to s. 509.039, F.S., train all food service employees pursuant to s. 509.049, F.S., and train all alcoholic beverages servers and managers pursuant to s. 561.705, F.S. Public food service establishments are eligible to apply for recognition after being in operation for 6 months.

The bill authorizes the division to adopt rules to implement its provisions. Public service establishments may use the designation in advertising and marketing. Recognized food service establishment would be inspected no more than twice a year. An establishment’s recognition is not transferable upon a change of ownership, unless an existing establishment is relicensed in the name of an entity related to the current licensee by common ownership or control.

This bill creates section 509.085, Florida Statutes.

II. Present Situation:

The Division of Hotels and Restaurants (“the division”) of the Department of Business and Professional Regulation (“the department”) is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.

Section 509.013(5), defines a public food service establishment as follows:

(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.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:
 - a. For the use of students and faculty; or
 - b. Temporarily to serve such events as fairs, carnivals, and athletic contests.
2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:
 - a. For the use of members and associates; or
 - b. Temporarily to serve such events as fairs, carnivals, or athletic contests.
3. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.
4. Any eating place maintained by a hospital, nursing home, sanitarium, assisted living facility, adult day care center, or other similar place that is regulated under s. 381.0072.
5. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.
6. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.
7. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.
8. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.
9. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.
10. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

Section 509.039, F.S., requires all food managers to be trained, tested, and certified within 90 days of hire in food safety protection standards. Section 509.049, F.S., requires that all food employees to be trained, but not tested, in minimum food safety protection standards.

Sections 561.701-561.706, F.S., constitute the "Responsible Vendor Act." Chapter 509, F.S., does not have a provision for public food service establishments that is comparable to the Responsible Vendor Act. Section 561.705, F.S., provides for qualification as a responsible vendor for persons licensed under chapters 561, 563, 564, or 565, F.S., to sell or serve alcoholic beverages. To qualify as a responsible vendor, an alcoholic beverage licensee must satisfy manager and employee training requirements as specifically set forth in s. 561.705, F.S. Qualified responsible vendors must also establish a written policy regarding the use of controlled substances on the licensed premises, maintain training records, and post signs regarding the

vendors policy against serving or selling alcoholic beverages to underaged persons or the illegal use of or trafficking in controlled substances.

Section 561.706, F.S. exempts qualified responsible vendors from revocation or suspension for an employee's illegal serving of alcoholic beverages to an underaged person or their illegal use of or trafficking in controlled substances, provided that the employee had completed the applicable training. Section 561.705, F.S., also requires that the Division of Alcoholic Beverages and Tobacco consider responsible vendor qualification in mitigation of violations related to serving or selling alcoholic beverages to underaged persons or the illegal use of or trafficking in controlled substances. The Responsible Vendor Act does not grant the Division of Alcoholic Beverages and Tobacco rule making authority to administer the provisions of the act.

Section 509.032, F.S., provides that each establishment licensed under ch. 509, F.S., shall be inspected at least every two years. However, rule 61C-1.002(8)(d), F.A.C., requires a more rigorous inspection regimen of at least three inspection per year.

The division states that it currently has 40,000 public food service establishment that could qualify for the recognition program established by this bill.

III. Effect of Proposed Changes:

The bill provides that the division may implement a recognition program for public food service establishments ("establishments") to promote the responsible and safe service of food and alcoholic beverages to the public. The bill provides that it is intended to help the public identify establishments that have demonstrated responsible and safe service. The bill is permissive and does not require that the division implement the program.

To receive recognition as a responsible program, establishments must meet the following three criteria:

1. Establishments must train and certify all managers pursuant to s. 509.039, F.S.
2. Establishments must train all food service employees pursuant to s. 509.049, F.S.
3. Establishments that serve alcoholic beverages must train all alcoholic beverages servers and managers pursuant to s. 561.705, F.S.

As regards establishments that serve alcoholic beverages, responsible vendor qualification under s. 561.705, F.S., requires training of all employees. The bill, however, only requires the training of all alcoholic beverages servers and managers as a prerequisite to recognition.

An establishment must be operating for at least 6 months before it can be eligible for the recognition program. The division is authorized to adopt rules to implement the provisions of this bill. The rules must establish the frequency of review required to maintain the recognition, and establish the circumstances under which recognition would be denied or revoked.

The designation of a recognized facility under the provisions of this bill is not transferable, unless the existing establishment is relicensed in the name of an entity related to the current establishment by common ownership or control.

Establishments awarded recognition may use the designation in their advertising and marketing. There is no prohibition in ch. 509, F.S., that would bar a food service establishment from falsely advertising that it has received the recognition.

The division must adopt rules establishing a revised schedule of inspections for recognized establishments. Recognized establishments may be inspected no more than twice a year. However, the bill provides that recognition does not prohibit the inspection of a recognized establishment to determine whether previous violations have been corrected, and in response to a documented public complaint or to a suspected outbreak of food-borne illness.

This bill would take effect on July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To qualify for recognition, public food service establishments would have to train and certify managers and employees in the manner provided in ss. 509.039, 509.049, and 561.705, F.S.

C. Government Sector Impact:

The division would have to adopt rules to implement the provisions of the bill. The recognition program may reduce the frequency and number of inspection that the division must conduct each year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
