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*** Current through the 2014 Regular Session and amendments approved at the November 4, 2014 General Election ***

Title 68 Health, Safety and Environmental Protection
Health
Chapter 14 Hotels, Food Service Establishments and Swimming Pools
Part 5 Bed and Breakfast Establishment Inspection Act of 1990

68-14-501. Short title.

This part shall be known and may be cited as the "Bed and Breakfast Establishment Inspection Act of 1990."

HISTORY: Acts 1990, ch. 884, § 2.

68-14-502. Part definitions.

As used in this part, unless the context otherwise requires:

(1) (A) "Bed and breakfast establishment," referred to in this part as the "establishment," means a private home, inn or other unique residential facility offering bed and breakfast accommodations and one (1) daily meal and having four (4), but not more than twelve (12), guest rooms furnished for pay, with guests staying not more than fourteen (14) days, and where the innkeeper resides on the premises or property or immediately adjacent to it. Guest rooms shall be established and maintained distinct and separate from the innkeeper's quarters;

(B) "Bed and breakfast homestay," referred to in this part as the "homestay," means a private home, inn or other unique residential facility offering bed and breakfast accommodations and one (1) daily meal and having less than four (4) guest rooms furnished for pay, with guests staying not more than fourteen (14) days, and where the innkeeper resides on the premises or property or immediately adjacent to it. Guest rooms shall be established and maintained distinct and separate from the innkeeper's quarters;

(2) "Commissioner" means the commissioner of health, the commissioner's duly authorized representative, and in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner;

(3) "Critical items" means those aspects of operation or conditions of facilities or equipment that, if in violation, constitute the greatest hazards to health and safety, including imminent health hazards. These include:

(A) Approved food sources with no spoilage;

(B) Approved temperatures for potentially hazardous food;

(C) Facilities to maintain proper food temperature;

(D) No reservice of unwrapped or potentially hazardous food;

(E) Restriction of employees with infection;

(F) Proper cleanliness and good hygiene practices of employees;

(G) Proper sanitizing of utensils and equipment;

(H) Approved water supply, hot and cold running water under pressure;

(I) Sewage, liquid waste disposal;

(J) No cross connection or backsiphonage;

(K) Toilet and handwashing facilities for employees;

(L) Insects and rodents;

(M) Toxic items properly stored and labeled; and

(N) Fire safety;

(4) "Department" means the department of health;

(5) "Imminent health hazard" means any condition, deficiency or practice that, if not corrected, is very likely to result in illness, injury or loss of life to any person; and

(6) "Person" means any individual, partnership, firm, corporation, agency, municipality, state or political subdivision.

HISTORY: Acts 1990, ch. 884, § 3; 1994, ch. 646, § 1.

68-14-503. Authority of commissioner -- Bed and breakfast homestay exemptions.

The commissioner is authorized to:

(1) Carry out or cause to be carried out all provisions of this part;

(2) Collect all fees provided for in this part and apply the fees in accordance with the procedures of the department of finance and administration to the necessary and incidental costs of administration of this part. Nothing in this part shall be construed to prohibit the department of health from receiving by way of general appropriation such sums as may be required to fund adequately the implementation of this part, as recommended in the annual budget by the governor to the general assembly;

(3) (A) Prescribe rules and regulations governing the alteration, construction, sanitation, safety and operation of establishments, as may be necessary to protect the health and safety of the public, and to require every bed and breakfast establishment to comply with these rules and regulations; provided, that the commissioner shall not prescribe any such rules and regulations in conflict with the minimum statewide building construction standards established by the state fire marshal pursuant to § 68-120-101;

(B) (i) Homestays shall be exempt from the rules and regulations applicable to bed and breakfast establishments, and the commissioner shall not be required to inspect or issue permits for such facilities. Homestays shall be regulated by the state fire marshal in accordance with the minimum statewide building construction standards applicable to residential property composed of one- and two-family units, in the same manner as such property would be regulated if it were not used as a bed and breakfast homestay;

(ii) This subdivision (3)(B) shall only apply to homestays located in a structure of historical significance. For the purposes of this subdivision (3)(B), a "structure of historical significance" is a structure listed on the National Register of Historic Places, or is determined by the state historical

commission to be eligible to be placed on the National Register of Historic Places, or is a structure that is within an area designated by the local governing body as a historical or conservation district;

(4) Inspect or cause to be inspected at least once every six (6) months, or as often as the commissioner deems necessary, every establishment in the state to determine compliance with this part and rules and regulations;

(5) Issue or cause to be issued, suspend and revoke permits to operate establishments as provided in this part;

(6) Notify the owner, proprietor or agent in charge of any establishment of the changes or alterations that may be necessary to effect complete compliance with this part and rules and regulations governing the construction, alteration and operation of the facilities, and to close the facilities for failure to comply within specified times as provided in this part and rules and regulations; and

(7) Enter into an agreement or contract with county health departments whereby the departments would implement this part or its equivalent in their respective areas of jurisdiction if the commissioner deems it to be appropriate; provided, that the following conditions shall apply:

(A) State reporting requirements shall be met by the county health department or departments;

(B) The county health department's program standards shall be at least as stringent as those of the state law and regulations;

(C) The commissioner shall retain the right to exercise oversight and evaluation of performance of the county health department or departments and to terminate the agreement or contract for cause immediately, or otherwise upon reasonable notice;

(D) The commissioner may set such other fiscal, administrative or program requirements as the commissioner deems necessary to maintain consistency and integrity of the statewide program; and

(E) Staffing and resources shall be adequate to implement and enforce the program in the local jurisdiction.

HISTORY: Acts 1990, ch. 884, § 4; 1994, ch. 646, § 2.

68-14-504. Permit required -- Expiration -- Transfer -- Posting.

(a) No person shall operate an establishment who does not hold a valid permit issued to the person by the commissioner on or before July 1 of each year. Every person, now engaged in the business of operating an establishment, and every person, who shall thereafter engage in such a business, shall procure a permit from the commissioner for each establishment so operated or proposed to be operated.

(b) Each permit for bed and breakfast establishments shall expire on June 30 next following its issuance.

(c) No permit shall be transferred from one (1) location or individual to another.

(d) Permits shall be posted in a conspicuous manner.

HISTORY: Acts 1990, ch. 884, § 5.

68-14-505. Permit application -- Inspection -- Renewal.

(a) (1) Any person planning to operate a bed and breakfast establishment shall make written application for a permit on forms provided by the department.

(2) Such applications shall be completed and returned to the department with the proper permit fee.

(3) Prior to approval of the application for a permit, the commissioner shall inspect the proposed facility to determine compliance with requirements of this part and rules and regulations.

(4) The commissioner shall issue a permit to the applicant if the inspection reveals that the facility is in compliance with the requirements of this part and rules and regulations.

(b) Applications for renewal of permits for existing establishments shall be mailed to the operators prior to July 1 of each year. When completed applications and the proper permit fees are returned, the commissioner shall issue new permits to applicants.

HISTORY: Acts 1990, ch. 884, § 6.

68-14-506. Suspension of permit -- Hearing.

(a) The commissioner has the authority to suspend any permit to operate a bed and breakfast establishment issued pursuant to this part, if the commissioner has reasonable cause to believe that the permittee is not in compliance with this part; provided, that the permittee shall be given opportunity to correct violations as provided in § 68-14-507.

(b) Suspension of permits shall be of two (2) types, one (1) with an opportunity for a hearing prior to the effective time, and one (1) to be effective immediately with an opportunity for a hearing afterward.

(c) Notice of either type of suspension may be given by an environmentalist on the environmentalist's regular inspection form or by letter from the commissioner.

(d) When a permit suspension is effective, all operations must cease.

(e) (1) Suspensions to be effective immediately upon receipt of notice prior to any hearing may only be made if an imminent health hazard exists.

(2) A written request for a hearing on either type of suspension must be filed by the permittee within ten (10) days of receipt of notice.

(3) This ten-day period may run concurrently with the ten-day period set forth in § 68-14-507.

(4) If a hearing is requested, it shall be commenced within a reasonable time of the request.

(5) If no request for a hearing is made within ten (10) days of receipt of notice, the suspension becomes final and not subject to review.

(f) The commissioner may end the suspension at any time if reasons for suspension no longer exist.

HISTORY: Acts 1990, ch. 884, § 7.

68-14-507. Revocation of permit.

(a) The commissioner may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of the requirements of this part or for interference with the commissioner in the performance of the commissioner's duty.

(b) (1) Prior to revocation, the commissioner shall notify the permittee, in writing, of the specific reason or reasons for which the permit is to be revoked, and that the permit shall be revoked at the end of ten (10) days following service of such notice, unless a written request for a hearing is filed with the commissioner within such ten-day period.

(2) If no request for hearing is filed within the ten-day period, the revocation of the permit becomes final.

HISTORY: Acts 1990, ch. 884, § 8.

68-14-508. Required notice.

(a) A notice provided for in this part is properly served when it is delivered to the permittee or person in charge, or when it is sent by certified mail, return receipt requested, to the last known address of the permittee.

(b) A copy of the notice shall be filed in the records of the department.

HISTORY: Acts 1990, ch. 884, § 9.

68-14-509. Hearing and appeal procedure.

(a) The hearings provided for in this part shall be conducted by the commissioner in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Appeals from any final decision after a hearing shall be pursued in accordance with the Uniform Administrative Procedures Act.

(c) Subsections (a) and (b) do not apply to a county whose health department is operating a program under § 68-14-503(7) that meets the minimum requirements of due process; provided, that appeals from final decisions made under such programs may be made to the commissioner, for the limited purpose of determining whether a material error of law was made at the county level. Such appeal to the commissioner shall not be de novo, but shall be limited to a review of the record of the hearing at the county level.

HISTORY: Acts 1990, ch. 884, § 10.

68-14-510. Application for new permit after revocation.

Whenever revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit.

HISTORY: Acts 1990, ch. 884, § 11.

68-14-511. Permit fee -- Delinquency -- Display of permit.

(a) The permit fee to operate a bed and breakfast establishment shall be one hundred forty dollars ($140).

(b) If the permit fee is delinquent for more than thirty (30) calendar days, a penalty of one half (1/2) the permit fee shall be added to the permit fee. If a check is returned for any reason, a penalty of one half (1/2) the permit fee shall be added to the permit fee. The permit fee plus any penalty must be paid to the commissioner before the permit is issued.

(c) Ninety-five percent (95%) of permit fees, fines, and penalties collected within a contract county pursuant to this part shall be conveyed by contract to the respective county health department to assist such county health department in implementing the program in the local jurisdiction. This amount shall be calculated based upon fees collected in the contract county during the state's fiscal year multiplied by ninety-five percent (95%).

(d) The permit shall be kept and displayed, in a conspicuous manner, in the office or lobby of the establishment for which it is issued.

HISTORY: Acts 1990, ch. 884, § 12; 2001, ch. 311, §§ 19-22.

68-14-512. Permit fee -- Reduced rate.

When application is made for a permit to operate any bed and breakfast establishment after January 1 of any year, the fee charged for such permit shall be one half (1/2) the annual rate. However, where the bed and breakfast establishment was subject to permit requirements prior to January 1 of any year, no such fractional rate shall be allowed.

HISTORY: Acts 1990, ch. 884, § 13.

68-14-513. Inspection report -- Rating score -- Posting.

(a) Inspection results for establishments shall be recorded on standard departmental forms that summarize the requirements of the law and rules and regulations.

(b) The rating score of the facilities shall be the total of the weighted point values for all violations subtracted from one hundred (100).

(c) A copy of the completed inspection report shall be furnished to the person in charge of the facility at the conclusion of the inspection.

(d) The most current inspection report furnished to the operator or person in charge of the establishment shall be posted in a conspicuous place at the facility.

HISTORY: Acts 1990, ch. 884, § 14.

68-14-514. Notice and correction of violations.

The completed inspection report shall specify a reasonable period of time for correction of violations found. Correction of violations shall be accomplished within the period specified in accordance with the following:

(1) If an imminent health hazard exists, such as sewage back-up into the facility or contaminated water supply, the facility shall immediately cease operations until authorized to reopen by the commissioner;

(2) All violations of critical items shall be corrected as soon as possible and in any event, within ten (10) days following inspection. Within fifteen (15) days after inspection, the permittee shall notify the commissioner stating that critical item violations have been corrected. A follow-up inspection may be made for confirmation;

(3) All other items should be corrected as soon as possible; and

(4) (A) When the overall rating score of any facility is less than seventy (70) on forms prepared pursuant to § 68-14-513, the facility shall initiate corrective action on all identified violations within forty-eight (48) hours. One (1) or more inspections shall be conducted at reasonable intervals to assure

corrections.

(B) The inspection report shall state that failure to comply with any time limits specified by the commissioner for correction may result in cessation of operations. An opportunity for hearing on the ordered corrective action shall be provided if a written request is filed with the commissioner within ten (10) days following cessation of operations. If a request for a hearing is received, a hearing shall be held within a reasonable time after receipt of the request.

(C) Whenever a facility is required under this section to cease operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

HISTORY: Acts 1990, ch. 884, § 15.

68-14-515. Construction, remodeling or conversion -- Approval required.

(a) Whenever a bed and breakfast establishment is constructed, extensively remodeled and whenever an existing structure is converted to use as an establishment, plans and specifications shall be submitted to the commissioner for review and approval before construction, remodeling or conversion is begun.

(b) The plans and specifications shall indicate the proposed layout, arrangement, and mechanical plans, and construction materials and work areas, and the type and model of proposed fixed equipment and facilities.

(c) The commissioner shall approve the plans and specifications, if they meet the requirements of this part and rules and regulations.

(d) No bed and breakfast establishment shall be constructed, extensively remodeled or converted except in accordance with plans and specifications approved by the commissioner.

HISTORY: Acts 1990, ch. 884, § 16.

68-14-516. Containment of disease transmission by employees.

(a) When the commissioner has reasonable cause to suspect possible disease transmission by an employee of the facility, the commissioner may secure a morbidity history of the employee or make other investigations as may be indicated.

(b) The commissioner may require any of the following:

(1) The immediate exclusion of the employee from employment in the establishment;

(2) The immediate closing of the facility until in the commissioner's opinion no further danger of disease outbreak exists;

(3) Restricting the employee's service to some area of the facility where there would be little likelihood of transmitting disease; or

(4) Adequate medical and laboratory examinations of the employee and of other employees.

HISTORY: Acts 1990, ch. 884, § 17.

68-14-517. Penalties.

Any person operating an establishment who fails or refuses to comply with any of the provisions of this part or rules and regulations, or obstructs or hinders the regulatory authority in the discharge of its duties, or otherwise operates a bed and breakfast establishment in violation of this part or rules and regulations,

commits a Class C misdemeanor for each offense. Each day after sufficient notice has been given constitutes a separate offense.

HISTORY: Acts 1990, ch. 884, § 18; 1989, ch. 591, §§ 1, 6.

68-14-518. Injunctive relief.

When the commissioner has reason to believe that a person is causing or is about to cause or has caused a violation of this part or the rules and regulations promulgated under this part, the commissioner may initiate proceedings in either the chancery court of Davidson County or the chancery court of the county where the violation is occurring for injunctive relief to prevent the continuance of such violation or to correct the conditions resulting in, or about to result in, such violation.

HISTORY: Acts 1990, ch. 884, § 19.

68-14-519. Applicability of chapter to this part.

(a) The provisions of part 3 of this chapter that pertain to food service establishments and hotels do not apply to this part.

(b) The provisions of parts 3 and 4 of this chapter that pertain to public swimming pools do apply to this part.

HISTORY: Acts 1990, ch. 884, § 21.