S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 11, 2012

Introduced by M. of A. MOYA -- 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 push-carts in cities having a population of two million or more

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public health law is amended by adding a new section 1352-d to read as follows:

S 1352-D. FOOD PUSHCART SERVICE GRADING SYSTEM; CITIES OF TWO MILLION OR MORE. 1. THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR GRADING INSPECTION RESULTS FOR MOBILE FOOD SERVICE ESTABLISHMENTS AND PUSHCARTS AS DEFINED IN THE STATE SANITARY CODE, OPERATED IN CITIES WITH A POPULATION OF TWO MILLION OR MORE.

2. SUCH SYSTEM SHALL USE AND POST LETTERS A, B OR C TO IDENTIFY AND REPRESENT SUCH GRADING AND CLASSIFICATION WITH ALL OTHER LOWER GRADES BEING DEEMED TO BE FAILING GRADES. IN ESTABLISHING SUCH SYSTEM OF GRADING, THE COMMISSIONER SHALL TAKE INTO ACCOUNT THE PROVISIONS OF THIS TITLE AND THE PROVISIONS OF THE SANITARY CODE TO ESTABLISH A GRADING SYSTEM THAT REFLECTS THE SAFETY AND SANITATION OF THE PREMISES AND FOOD HANDLING PRACTICES TO ENSURE COMPLIANCE WITH STATE AND LOCAL HEALTH LAWS.

3. EACH SUCH MOBILE FOOD SERVICE ESTABLISHMENT OR PUSHCART SHALL CONSPICUOUSLY POST AT THE POINT OF SALE THE LETTER GRADE IDENTIFYING AND REPRESENTING THE RESULT OF SUCH ESTABLISHMENT'S OR PUSHCART'S MOST RECENTLY GRADED INSPECTION BY THE LOCAL HEALTH OFFICER OR THE ENTITY RESPONSIBLE FOR SUCH INSPECTION. SUCH POSTING SHALL BE DONE IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER. FOR ANY MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSHCART RECEIVING A GRADE LOWER THAN "A", THE LOCAL HEALTH OFFICER OR THE ENTITY PERFORMING THE INSPECTION SHALL ADVISE THE ESTABLISHMENT OR PUSHCART OF ITS GRADE AND THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE LOCAL HEALTH OFFICER OR THE ENTITY WHICH PERFORMED THE INITIAL INSPECTION SHALL CONDUCT A SUBSEQUENT INSPECTION OF SUCH MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT

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

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OR PUSHCART NO SOONER THAN SEVEN DAYS, NOR LATER THAN TWENTY-ONE DAYS AFTER THE INSPECTION AT WHICH THE GRADE WAS GIVEN. IN THE INTERIM, THE PREVIOUS LETTER GRADE SHALL REMAIN POSTED. UPON THE CONCLUSION OF THE SUBSEQUENT INSPECTION, THE LOCAL HEALTH OFFICER OR THE ENTITY PERFORMING THE INSPECTION SHALL DELIVER FOR POSTING A LETTER GRADE TO THE MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSHCART WHICH INDICATES THE GRADE FOR SUCH INSPECTION. IN ADDITION TO A LETTER GRADE, SUCH ESTABLISHMENT OR PUSHCART SHALL RECEIVE THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSHCART MAY APPEAL SUCH SUBSEQUENT ASSIGNMENT OF A LETTER GRADE DESIGNATION TO THE COMMISSIONER FOR REVIEW WITHIN THIRTY DAYS OF SUCH ASSIGNMENT. WHILE ANY SUCH APPEAL IS PENDING, A MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSHCART SHALL POST THE LETTER GRADE THAT IS BEING APPEALED.

4. THE SUGGESTED INTERVAL BETWEEN REGULARLY SCHEDULED INSPECTIONS OF MOBILE PUBLIC FOOD SERVICE ESTABLISHMENTS AND PUSHCARTS MAY BE AS FOLLOWS:

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

(B) FOR ESTABLISHMENTS AND PUSHCARTS WITH A GRADE OF "B", AT LEAST ONCE EVERY NINE MONTHS; AND

(C) FOR ESTABLISHMENTS AND PUSHCARTS WITH A GRADE OF "C", AT LEAST ONCE EVERY THREE MONTHS.

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

5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO MOBILE PUBLIC FOOD SERVICE ESTABLISHMENTS OR PUSHCARTS WHICH ARE SPONSORED BY A CHARITABLE ORGANIZATION TO OPERATE A SOUP KITCHEN OR OTHER FOOD DISTRIBUTION PROGRAM FOR THE ELDERLY, LOW INCOME INDIVIDUALS AND FAMILIES OR THE INFIRM.

6. NO PROVISION OF THIS SECTION SHALL BE DEEMED TO DIMINISH OR OTHERWISE CHANGE ANY POWER OR DUTY OF ANY STATE AGENCY OR AUTHORITY.

S 2. This act shall take effect one year after it shall have become a law. Provided, however, that effective immediately, any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.