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

3583

2011-2012 Regular Sessions

I N S E N A T E

February 25, 2011

Introduced by Sen. ADAMS -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to establishing a public food vending business grading system for cities with a population of one 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. PUBLIC FOOD VENDING BUSINESS GRADING SYSTEM. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "FOOD VENDOR" SHALL MEAN A PERSON WHO HAWKS, PEDDLES, SELLS OR OFFERS FOOD FOR SALE AT RETAIL IN ANY PUBLIC SPACE;

B. "FOOD VENDING BUSINESS" SHALL MEAN THE BUSINESS OF SELLING OR OFFERING FOOD FOR SALE AT RETAIL IN A PUBLIC SPACE;

C. "PUBLIC SPACE" SHALL MEAN ALL PUBLICLY OWNED PROPERTY BETWEEN THE PROPERTY LINES ON A STREET AS SUCH PROPERTY LINES ARE SHOWN ON PUBLIC RECORDS INCLUDING, BUT NOT LIMITED TO, A PARK, PLAZA, ROADWAYS, SHOULDER, TREE SPACE, SIDEWALK OR PARKING SPACE BETWEEN SUCH PROPERTY LINES. IT SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, PUBLICLY OWNED OR LEASED LAND, BUILDINGS, PIERS, WHARFS, STADIUMS AND TERMINALS;

D. "PUSHCART" SHALL MEAN ANY WHEELED VEHICLE OR DEVICE USED BY A FOOD VENDING BUSINESS OR FOOD VENDOR, OTHER THAN A MOTOR VEHICLE OR TRAILER, WHICH MAY BE MOVED WITH OR WITHOUT THE ASSISTANCE OF A MOTOR AND WHICH DOES NOT REQUIRE REGISTRATION BY THE DEPARTMENT OF MOTOR VEHICLES;

E. "VEHICLE" SHALL MEAN A MOTOR VEHICLE OR TRAILER, AS DEFINED IN THE VEHICLE AND TRAFFIC LAW; AND

F. "VEND" SHALL MEAN TO HAWK, PEDDLE, SELL OR OFFER TO SELL FOOD AT RETAIL IN A PUBLIC SPACE, DELIVERED IMMEDIATELY UPON CONSUMMATION OF PURCHASE.

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

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2. THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR GRADING INSPECTION RESULTS FOR A FOOD VENDING BUSINESS OPERATING OUT OF PUSHCARTS AND VEHICLES WHERE FOOD IS PREPARED, SOLD OR SERVED FOR CONSUMPTION BY THE GENERAL PUBLIC. 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 LOCAL LAWS RELATING TO FOOD SANITATION IN ORDER 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. SUCH FOOD VENDING PUSHCART OR VEHICLE SHALL CONSPICUOUSLY POST THE LETTER GRADE IDENTIFYING AND REPRESENTING THE RESULT OF SUCH FOOD VENDOR'S MOST RECENTLY GRADED INSPECTION BY THE LOCAL HEALTH OFFICER. SUCH POSTING SHALL BE DONE IN ACCORDANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER. FOR ANY FOOD VENDING BUSINESS RECEIVING A GRADE LOWER THAN "A", THE LOCAL HEALTH OFFICER SHALL ADVISE THE FOOD VENDOR OF ITS GRADE AND THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE LOCAL HEALTH OFFICER SHALL CONDUCT A SUBSEQUENT INSPECTION OF SUCH FOOD VENDING BUSINESS 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 SHALL DELIVER FOR POSTING A LETTER TO THE FOOD VENDING BUSINESS WHICH INDICATES THE GRADE FOR SUCH INSPECTION. IN ADDITION TO A LETTER GRADE, SUCH FOOD VENDOR SHALL RECEIVE THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE FOOD VENDING BUSINESS 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 FOOD VENDING BUSINESS SHALL POST THE LETTER GRADE THAT IS BEING APPEALED.

4. THE SUGGESTED INTERVAL BETWEEN REGULARLY SCHEDULED INSPECTIONS OF FOOD VENDING BUSINESS MAY BE AS FOLLOWS:

A. FOR FOOD VENDORS WITH A GRADE OF "A", AT LEAST ONCE EVERY YEAR; AND

B. FOR FOOD VENDORS WITH A GRADE OF "B", AT LEAST ONCE EVERY NINE MONTHS.

5. A FOOD VENDING BUSINESS THAT REQUESTS A REINSPECTION FROM THE LOCAL HEALTH OFFICER, 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 TO INSPECT ANY FOOD VENDING BUSINESS ON THE BASIS OF A COMPLAINT FROM A MEMBER OF THE PUBLIC.

6. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO A FOOD VENDING BUSINESS WHICH IS NOT LOCATED IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE.

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.