

3583

2011-2012 Regular Sessions

I N   S E N A T E

February 25, 2011

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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:

1     Section 1. The public health law is amended by adding a new section  
2     1352-d to read as follows:  
3     S 1352-D. PUBLIC FOOD VENDING BUSINESS GRADING SYSTEM.     1. FOR THE  
4     PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING  
5     MEANINGS:  
6     A. "FOOD VENDOR" SHALL MEAN A PERSON WHO HAWKS, PEDDLES, SELLS OR  
7     OFFERS FOOD FOR SALE AT RETAIL IN ANY PUBLIC SPACE;  
8     B. "FOOD VENDING BUSINESS" SHALL MEAN THE BUSINESS OF SELLING OR  
9     OFFERING FOOD FOR SALE AT RETAIL IN A PUBLIC SPACE;  
10    C. "PUBLIC SPACE" SHALL MEAN ALL PUBLICLY OWNED PROPERTY BETWEEN THE  
11    PROPERTY LINES ON A STREET AS SUCH PROPERTY LINES ARE SHOWN ON PUBLIC  
12    RECORDS INCLUDING, BUT NOT LIMITED TO, A PARK, PLAZA, ROADWAYS, SHOUL-  
13    DER, TREE SPACE, SIDEWALK OR PARKING SPACE BETWEEN SUCH PROPERTY LINES.  
14    IT SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, PUBLICLY OWNED OR LEASED  
15    LAND, BUILDINGS, PIERS, WHARFS, STADIUMS AND TERMINALS;  
16    D. "PUSHCART" SHALL MEAN ANY WHEELED VEHICLE OR DEVICE USED BY A FOOD  
17    VENDING BUSINESS OR FOOD VENDOR, OTHER THAN A MOTOR VEHICLE OR TRAILER,  
18    WHICH MAY BE MOVED WITH OR WITHOUT THE ASSISTANCE OF A MOTOR AND WHICH  
19    DOES NOT REQUIRE REGISTRATION BY THE DEPARTMENT OF MOTOR VEHICLES;  
20    E. "VEHICLE" SHALL MEAN A MOTOR VEHICLE OR TRAILER, AS DEFINED IN THE  
21    VEHICLE AND TRAFFIC LAW; AND  
22    F. "VEND" SHALL MEAN TO HAWK, PEDDLE, SELL OR OFFER TO SELL FOOD AT  
23    RETAIL IN A PUBLIC SPACE, DELIVERED IMMEDIATELY UPON CONSUMMATION OF  
24    PURCHASE.

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

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1 2. THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR GRADING INSPECTION  
2 RESULTS FOR A FOOD VENDING BUSINESS OPERATING OUT OF PUSHCARTS AND VEHI-  
3 CLES WHERE FOOD IS PREPARED, SOLD OR SERVED FOR CONSUMPTION BY THE  
4 GENERAL PUBLIC. SUCH SYSTEM SHALL USE AND POST LETTERS A, B OR C TO  
5 IDENTIFY AND REPRESENT SUCH GRADING AND CLASSIFICATION WITH ALL OTHER  
6 LOWER GRADES BEING DEEMED TO BE FAILING GRADES. IN ESTABLISHING SUCH  
7 SYSTEM OF GRADING, THE COMMISSIONER SHALL TAKE INTO ACCOUNT THE  
8 PROVISIONS OF LOCAL LAWS RELATING TO FOOD SANITATION IN ORDER TO ESTAB-  
9 LISH A GRADING SYSTEM THAT REFLECTS THE SAFETY AND SANITATION OF THE  
10 PREMISES AND FOOD HANDLING PRACTICES TO ENSURE COMPLIANCE WITH STATE AND  
11 LOCAL HEALTH LAWS.

12 3. SUCH FOOD VENDING PUSH CART OR VEHICLE SHALL CONSPICUOUSLY POST THE  
13 LETTER GRADE IDENTIFYING AND REPRESENTING THE RESULT OF SUCH FOOD  
14 VENDOR'S MOST RECENTLY GRADED INSPECTION BY THE LOCAL HEALTH OFFICER.  
15 SUCH POSTING SHALL BE DONE IN ACCORDANCE WITH RULES AND REGULATIONS  
16 PROMULGATED BY THE COMMISSIONER. FOR ANY FOOD VENDING BUSINESS RECEIVING  
17 A GRADE LOWER THAN "A", THE LOCAL HEALTH OFFICER SHALL ADVISE THE FOOD  
18 VENDOR OF ITS GRADE AND THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE  
19 LOCAL HEALTH OFFICER SHALL CONDUCT A SUBSEQUENT INSPECTION OF SUCH FOOD  
20 VENDING BUSINESS NO SOONER THAN SEVEN DAYS, NOR LATER THAN TWENTY-ONE  
21 DAYS AFTER THE INSPECTION AT WHICH THE GRADE WAS GIVEN. IN THE INTERIM,  
22 THE PREVIOUS LETTER GRADE SHALL REMAIN POSTED. UPON THE CONCLUSION OF  
23 THE SUBSEQUENT INSPECTION, THE LOCAL HEALTH OFFICER SHALL DELIVER FOR  
24 POSTING A LETTER TO THE FOOD VENDING BUSINESS WHICH INDICATES THE GRADE  
25 FOR SUCH INSPECTION. IN ADDITION TO A LETTER GRADE, SUCH FOOD VENDOR  
26 SHALL RECEIVE THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE FOOD  
27 VENDING BUSINESS MAY APPEAL SUCH SUBSEQUENT ASSIGNMENT OF A LETTER GRADE  
28 DESIGNATION TO THE COMMISSIONER FOR REVIEW WITHIN THIRTY DAYS OF SUCH  
29 ASSIGNMENT. WHILE ANY SUCH APPEAL IS PENDING, A FOOD VENDING BUSINESS  
30 SHALL POST THE LETTER GRADE THAT IS BEING APPEALED.

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

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

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

36 5. A FOOD VENDING BUSINESS THAT REQUESTS A REINSPECTION FROM THE LOCAL  
37 HEALTH OFFICER, SHALL PAY THE DEPARTMENT A FEE OF UP TO TWO HUNDRED  
38 FIFTY DOLLARS. PROVIDED HOWEVER THAT THE PROVISIONS OF THIS SUBDIVISION  
39 SHALL NOT NEGATE THE ABILITY OF ANY LOCAL HEALTH OFFICER TO INSPECT ANY  
40 FOOD VENDING BUSINESS ON THE BASIS OF A COMPLAINT FROM A MEMBER OF THE  
41 PUBLIC.

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

45 S 2. This act shall take effect one year after it shall have become a  
46 law. Provided, however, that effective immediately, any rules and regu-  
47 lations necessary to implement the provisions of this act on its effec-  
48 tive date are authorized and directed to be completed on or before such  
49 date.