

419--D

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. KRUEGER, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Cities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report -- recommitted to the Committee on Cities in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, in relation to the use of bicycles for commercial purposes

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

1 Section 1. Section 10-157 of the administrative code of the city of
2 New York, subdivisions e and f as added and subdivisions g and h as
3 amended by local law number 9 of the city of New York for the year 2007,
4 is amended to read as follows:
5 S 10-157 Bicycles used for commercial purposes. a. [Every] FOR THE
6 PURPOSES OF THIS SECTION, THE TERM "BUSINESSES USING A BICYCLE FOR
7 COMMERCIAL PURPOSES" SHALL MEAN A person, firm, partnership, joint
8 venture, association [or], corporation OR OTHER BUSINESS ENTITY which
9 engages in the course of its business, either on behalf of itself or
10 others, in delivering packages, parcels, papers, FOOD, or articles of
11 any type by bicycle. A BUSINESS USING A BICYCLE FOR COMMERCIAL PURPOSES
12 shall provide identification of [the] SUCH business by requiring every
13 bicycle or bicycle operator to be identified by:
14 (1) affixing to the rear of each bicycle, bicycle seat or both sides
15 of the delivery basket, a metal, plastic or other sign of a type

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

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1 approved by the police commissioner, with the name of [the] SUCH busi-
2 ness and a three digit identification number which identifies the bicy-
3 cle operator in lettering and numerals so as to be plainly readable at a
4 distance of not less than ten feet and maintaining same in good condi-
5 tion thereon; and

6 (2) by requiring each bicycle operator to wear a jacket, vest, or
7 other wearing apparel on the upper part of the cyclist's body while
8 making deliveries, or otherwise riding a bicycle on behalf of [the] SUCH
9 business, the back of which shall indicate the business name and the
10 bicycle operator's individual identification number in lettering and
11 numerals so as to be plainly readable at a distance of not less than ten
12 feet.

13 b. Every [person, firm, partnership, joint venture, association or
14 corporation engaged in providing a service as authorized herein] BUSI-
15 NESS USING A BICYCLE FOR COMMERCIAL PURPOSES must issue to every bicycle
16 operator a numbered identification card which contains the name, resi-
17 dence address and photo of the bicycle operator and the name, address
18 and telephone number of the [company for whom] BUSINESS WITH WHICH the
19 bicycle operator is employed OR OTHERWISE WORKING AS AN INDEPENDENT
20 CONTRACTOR. Such identification card must be carried by the bicycle
21 operator while the [cyclist] BICYCLE OPERATOR is making deliveries[,] or
22 otherwise riding a bicycle on behalf of the business, and must be
23 produced upon the demand of a police officer or any other law enforce-
24 ment officer.

25 c. Every [person, firm, partnership, joint venture, association or
26 corporation engaged in providing a service as authorized herein] BUSI-
27 NESS USING A BICYCLE FOR COMMERCIAL PURPOSES shall maintain in a log
28 book to be kept for such purpose, the name and place of residence
29 address of every [employee operating a] bicycle OPERATOR, the date of
30 employment OR STATUS AS AN INDEPENDENT CONTRACTOR and discharge of each
31 person in said service, and every messenger or delivery person's iden-
32 tification number. The owner of any SUCH business [engaged in providing
33 a service as authorized in this section] USING A BICYCLE FOR COMMERCIAL
34 PURPOSES shall be responsible for maintaining in the log book a daily
35 trip record in which all entries shall be made legibly in ink and each
36 entry shall be dated and include the bicycle identification number, the
37 operator's name and the name and place of origin and destination for
38 each trip. No entry shall be rewritten either in whole or in part except
39 in such manner as may be provided by regulation of the commissioner; any
40 such unauthorized rewriting shall give rise to a rebuttable presumption
41 of an act of fraud, deceit or misrepresentation. Such log book shall be
42 made available for inspection during regular and usual business hours
43 upon request of an agent of the police commissioner or any police offi-
44 cer or any other person authorized by law.

45 d. The owner of any business [engaged in providing a service as
46 authorized in this section] USING A BICYCLE FOR COMMERCIAL PURPOSES
47 shall file an annual report in such form as shall be designated by the
48 police commissioner by rule or regulations. Said report shall include,
49 inter alia, the number of bicycles it owns and the number and identity
50 of any [employees it may retain] BICYCLE OPERATORS EMPLOYED BY OR OTHER-
51 WISE WORKING AS AN INDEPENDENT CONTRACTOR WITH SUCH BUSINESS. Any SUCH
52 business [engaged in providing a service as authorized in this section]
53 shall be responsible for the compliance with the provisions of this
54 section of any [employees it shall retain] BICYCLE OPERATORS EMPLOYED BY
55 OR OTHERWISE WORKING AS AN INDEPENDENT CONTRACTOR WITH SUCH BUSINESS.
56 Nothing contained in this section shall be construed as applying to

1 persons under the age of sixteen who use a bicycle to deliver daily
2 newspapers or circulars.

3 e. (1) The owner of any business [engaged in providing a service as
4 authorized in this section] USING A BICYCLE FOR COMMERCIAL PURPOSES
5 shall provide, at its own expense, protective headgear suitable for each
6 bicycle operator. Such headgear shall:

7 (i) meet the standards set forth by the consumer product safety
8 commission in title 16, part 1203 of the code of federal regulations;
9 (ii) be readily available at each employment site for use by each
10 bicycle operator; and
11 (iii) be replaced if such headgear is no longer in good condition.
12 Headgear is no longer in good condition if it is missing any of its
13 component parts or is otherwise damaged so as to impair its functional-
14 ty.

15 (2) Each bicycle operator shall wear protective headgear that meets
16 the requirements of paragraph [1] ONE of this subdivision while making
17 deliveries or otherwise operating a bicycle on behalf of such business.
18 The term "wear such protective headgear" means having the headgear
19 fastened securely upon the head with the headgear straps.

20 f. The owner of any business [engaged in providing a service as
21 authorized in this section] USING A BICYCLE FOR COMMERCIAL PURPOSES,
22 notwithstanding that a bicycle may be provided by an employee OR INDE-
23 PENDENT CONTRACTOR, OR BY AN ASSOCIATE thereof, shall provide at its own
24 expense and ensure that each bicycle is equipped with a lamp; a bell or
25 other device capable of giving an audible signal; brakes; reflective
26 tires or, alternately, a reflex reflector mounted on the spokes of each
27 wheel; as well as other reflective devices or material, in accordance
28 with section [1236] ONE THOUSAND TWO HUNDRED THIRTY-SIX of the vehicle
29 and traffic law.

30 g. [Except as otherwise provided in subdivision h of this section, the
31 violation of] A PERSON OR BUSINESS USING A BICYCLE FOR COMMERCIAL
32 PURPOSES THAT VIOLATES any of the provisions of this section, or [of]
33 any of the rules or regulations that may be promulgated pursuant hereto,
34 shall be [a violation triable by a judge of the criminal court of the
35 city of New York and upon conviction thereof shall be punishable by a
36 fine] LIABLE FOR A CIVIL PENALTY of not less than one hundred dollars
37 [nor] AND NOT more than two hundred [and] fifty dollars [or imprisonment
38 for not more than fifteen days or both such fine and imprisonment] WHICH
39 MAY BE RECOVERED AGAINST A BICYCLE OPERATOR OR AGAINST A BUSINESS USING
40 A BICYCLE FOR COMMERCIAL PURPOSES IN A PROCEEDING BEFORE THE ENVIRON-
41 MENTAL CONTROL BOARD.

42 h. [Any person who makes deliveries or otherwise operates a bicycle on
43 behalf of a business without carrying the identification required by
44 subdivision b of this section or who fails to produce such identifica-
45 tion upon demand as required by such subdivision, or who fails to wear
46 protective headgear required by subdivision e of this section, shall be
47 guilty of a traffic infraction and upon conviction thereof shall be
48 liable for a fine of not less than twenty-five dollars nor more than
49 fifty dollars. It shall be an affirmative defense to such traffic
50 infraction that the business did not provide the protective headgear
51 required by subdivision e of this section. Such traffic infraction may
52 be adjudicated by such an administrative tribunal as is authorized under
53 article two-A of the vehicle and traffic law.] ANY BUSINESS USING A
54 BICYCLE FOR COMMERCIAL PURPOSES SHALL BE VICARIOUSLY LIABLE FOR ANY
55 CIVIL PENALTY IMPOSED ON ANY BICYCLE OPERATOR EMPLOYED BY OR OTHERWISE
56 WORKING AS AN INDEPENDENT CONTRACTOR WITH SUCH BUSINESS WHEN SUCH PENAL-

1 TY IS THE RESULT OF A VIOLATION OF ANY PROVISION OF THIS SECTION,
2 SECTION 19-176 OF THIS CODE, OR SECTION ONE THOUSAND ONE HUNDRED ELEVEN,
3 SECTION ONE THOUSAND ONE HUNDRED TWENTY-SEVEN, SECTION ONE THOUSAND TWO
4 HUNDRED THIRTY-SIX, SECTION ONE THOUSAND TWO HUNDRED FORTY, SECTION ONE
5 THOUSAND TWO HUNDRED FORTY-ONE OF THE VEHICLE AND TRAFFIC LAW.
6 I. FOR THE PURPOSES OF THIS SECTION, A BICYCLE OPERATOR SHALL ONLY BE
7 CONSIDERED TO BE EMPLOYED OR OTHERWISE WORKING AS AN INDEPENDENT
8 CONTRACTOR WITH A BUSINESS USING A BICYCLE FOR COMMERCIAL PURPOSES WHEN
9 SUCH BUSINESS PROVIDES DIRECT COMPENSATION TO THAT BICYCLE OPERATOR,
10 EITHER AS AN EMPLOYEE OR CONTRACTOR. PERSONS OR ENTITIES THAT HIRE OTHER
11 FIRMS TO PROVIDE DELIVERY AND MESSENGER SERVICES SHALL NOT BE SUBJECT TO
12 THE PROVISIONS OF THIS SECTION.
13 S 2. This act shall take effect on the one hundred fiftieth day after
14 it shall have become a law.