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

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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:

Section 1. Section 10-157 of the administrative code of the city of New York, subdivisions e and f as added and subdivisions g and h as amended by local law number 9 of the city of New York for the year 2007, is amended to read as follows:

S 10-157 Bicycles used for commercial purposes. a. [Every] FOR THE PURPOSES OF THIS SECTION, THE TERM "BUSINESSES USING A BICYCLE FOR COMMERCIAL PURPOSES" SHALL MEAN A person, firm, partnership, joint venture, association [or], corporation OR OTHER BUSINESS ENTITY which engages in the course of its business, either on behalf of itself or others, in delivering packages, parcels, papers, FOOD, or articles of any type by bicycle. A BUSINESS USING A BICYCLE FOR COMMERCIAL PURPOSES shall provide identification of [the] SUCH business by requiring every bicycle or bicycle operator to be identified by:

(1) affixing to the rear of each bicycle, bicycle seat or both sides 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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approved by the police commissioner, with the name of [the] SUCH business and a three digit identification number which identifies the bicycle operator in lettering and numerals so as to be plainly readable at a distance of not less than ten feet and maintaining same in good condition thereon; and

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

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

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

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

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

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

(i) meet the standards set forth by the consumer product safety commission in title 16, part 1203 of the code of federal regulations;

(ii) be readily available at each employment site for use by each bicycle operator; and

(iii) be replaced if such headgear is no longer in good condition. Headgear is no longer in good condition if it is missing any of its component parts or is otherwise damaged so as to impair its functionality.

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

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

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

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

TY IS THE RESULT OF A VIOLATION OF ANY PROVISION OF THIS SECTION, SECTION 19-176 OF THIS CODE, OR SECTION ONE THOUSAND ONE HUNDRED ELEVEN, SECTION ONE THOUSAND ONE HUNDRED TWENTY-SEVEN, SECTION ONE THOUSAND TWO HUNDRED THIRTY-SIX, SECTION ONE THOUSAND TWO HUNDRED FORTY, SECTION ONE THOUSAND TWO HUNDRED FORTY-ONE OF THE VEHICLE AND TRAFFIC LAW.

I. FOR THE PURPOSES OF THIS SECTION, A BICYCLE OPERATOR SHALL ONLY BE CONSIDERED TO BE EMPLOYED OR OTHERWISE WORKING AS AN INDEPENDENT CONTRACTOR WITH A BUSINESS USING A BICYCLE FOR COMMERCIAL PURPOSES WHEN SUCH BUSINESS PROVIDES DIRECT COMPENSATION TO THAT BICYCLE OPERATOR, EITHER AS AN EMPLOYEE OR CONTRACTOR. PERSONS OR ENTITIES THAT HIRE OTHER FIRMS TO PROVIDE DELIVERY AND MESSENGER SERVICES SHALL NOT BE SUBJECT TO THE PROVISIONS OF THIS SECTION.

S 2. This act shall take effect on the one hundred fiftieth day after it shall have become a law.