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I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. KAVANAGH, STEVENSON -- read once and referred to the Committee on Cities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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. This act shall be known and may be cited as the "Commercial Bicycle Safety Act".

S 2. Section 10-157 of the administrative code of the city of New York, as amended by local law number 56 of the city of New York for the year 2012, paragraph 3 of subdivision e as added by local law number 54 of the city of New York for the year 2012, subdivision i as added by local law number 52 of the city of New York for the year 2012, and subdivision j as added by local law number 55 of the city of New York for the year 2012, is amended to read as follows:

S 10-157 Bicycles used for commercial purposes. a. For purposes of this section, the following terms shall have the following meanings:

(1) "bicycle" shall have the same meaning as in section 19-176 of this code, and shall also mean any wheeled device propelled exclusively by human power as well as any motor-assisted device that is not capable of being registered by the New York state department of motor vehicles;

(2) "business using a bicycle for commercial purposes" shall mean a person, firm, partnership, joint venture, association, corporation, or other entity which engages in the course of its business, either on behalf of itself or others, in delivering packages, parcels, papers, FOOD, GROCERIES, or articles of any type by bicycle. Nothing contained in this section shall be construed as applying to persons under the age

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

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of sixteen who use a bicycle only to deliver daily newspapers or circulars[.];

(3) "BICYCLE OPERATOR" SHALL MEAN A PERSON WHO RIDES A BICYCLE ON BEHALF OF A BUSINESS USING A BICYCLE FOR COMMERCIAL PURPOSES, AND IS AN EMPLOYEE OF SUCH BUSINESS OR RECEIVES DIRECT COMPENSATION OR PAYMENT FROM SUCH BUSINESS AS AN INDEPENDENT CONTRACTOR.

b. A business using a bicycle for commercial purposes shall provide identification of such business by requiring every bicycle to be identified by affixing to the rear of each bicycle, bicycle seat or both sides of the delivery basket, a metal or plastic sign measuring no less than three inches by five inches, with the name of [the] SUCH business and an identification number unique to that particular bicycle in lettering and numerals no less than one inch in height so as to be plainly readable at a distance of not less than ten feet and maintaining same in good condition thereon. A sign 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.

c. Every business using a bicycle for commercial purposes must assign to every bicycle operator [employed by such business] a three digit identification number. Such business must issue to every bicycle operator an identification card which contains the name, three digit identification number and photo of the bicycle operator and the name, address and telephone number of [the] SUCH business [by which the bicycle operator is employed]. Such business shall ensure that such identification card is carried by the bicycle operator while such bicycle operator is making deliveries, or otherwise riding a bicycle on behalf of the business, and such bicycle operator shall carry such identification card while [operating] RIDING a bicycle on behalf of such business. Such bicycle operator shall be required to produce such identification upon the demand of an authorized employee of the police department or department of transportation or any other person authorized by law.

d. Every business using a bicycle for commercial purposes shall maintain a roster of EVERY bicycle [operators employed by] OPERATOR WHO RIDES A BICYCLE ON BEHALF OF such business. Such roster shall include the name and place of residence address of every [employee operating a bicycle on behalf of such business] SUCH BICYCLE OPERATOR, the date [of employment and discharge of each such] SUCH BICYCLE OPERATOR BEGINS AND ENDS RIDING A BICYCLE ON BEHALF OF SUCH BUSINESS WHETHER AS AN employee OR INDEPENDENT CONTRACTOR, every such [employee's] BICYCLE OPERATOR'S three digit identification number, and whether such [employee] BICYCLE OPERATOR has completed the bicycle safety course required by paragraph 3 of subdivision e of this section. The owner of any business using a bicycle for commercial purposes shall be responsible for maintaining such roster. Such roster shall be made available for inspection during regular and usual business hours or any other [such] time that such entity is open for business upon request of an authorized employee of the police department or department of transportation or any other person authorized by law.

e. (1) The owner of any business 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 site of the business using a bicycle for commercial purposes 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 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.

(3) Each bicycle operator shall be required to complete a bicycle safety course. For purposes of this section, "bicycle safety course" shall mean information provided by the department of transportation, regarding safe bicycling and adherence to traffic and commercial bicycle laws. Such requirement shall include, but not be limited to, the following:

(i) Each bicycle operator shall complete a bicycle safety course prior to operating a bicycle on behalf of a business using a bicycle for commercial purposes;

(ii) Each business using a bicycle for commercial purposes shall indicate on the roster required to be maintained by subdivision d of this section that each bicycle operator [employed by such business] has completed such bicycle safety course;

(iii) The owner of any business using a bicycle for commercial purposes shall ensure that all bicycle operators [employed by such business] shall complete such bicycle safety course prior to operating a bicycle on behalf of such business, shall maintain records of such operators' completion of such bicycle safety course, and shall make such records available for inspection during regular business hours or any other time such business is open for business upon request of an authorized employee of the police department or department of transportation or any other person authorized by law; and

(iv) The commissioner of transportation shall post on the department of transportation's website the content of the bicycle safety course required by this section on or before the effective date of this section.

f. The owner of any business using a bicycle for commercial purposes, notwithstanding that a bicycle may be provided by [an employee thereof] A BICYCLE OPERATOR, 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 from a distance of at least one hundred feet, provided however that a siren or whistle shall not be used; brakes; reflective tires or, alternately, a reflex reflector mounted on the spokes of each wheel; as well as other devices or material in accordance with section 1236 of the vehicle and traffic law.

g. Any business using a bicycle for commercial purposes shall be responsible for the compliance with the provisions of this section, SECTION 19-176 OF THIS CODE, AND SECTIONS ELEVEN HUNDRED ELEVEN, ELEVEN HUNDRED TWENTY-SEVEN, TWELVE HUNDRED THIRTY-SIX, TWELVE HUNDRED FORTY, AND TWELVE HUNDRED FORTY-ONE OF THE VEHICLE AND TRAFFIC LAW of any [employees] BICYCLE OPERATORS it shall retain. Violation of any of the provisions of this section by any such business, 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 of not less than one hundred dollars [nor] AND NOT more than two hundred fifty dollars [or imprisonment for not more than fifteen days or both such

fine and imprisonment]. In addition, any business using a bicycle for commercial purposes that violates any of the provisions of this section or any of the rules promulgated pursuant hereto shall be subject to a civil penalty of one hundred dollars. Any such business that violates a provision of this section or rule promulgated pursuant hereto more than thirty days AND NOT MORE THAN TWO YEARS after such business has already violated the same provision or rule shall be subject to an additional civil penalty of two hundred fifty dollars. Such civil penalties may be in addition to any criminal penalty imposed, and shall be recoverable against such business in an action or proceeding in any court or tribunal of competent jurisdiction or the environmental control board. IT SHALL BE AN AFFIRMATIVE DEFENSE TO A VIOLATION OF THIS SECTION BY A PERSON, FIRM, PARTNERSHIP, JOINT VENTURE, ASSOCIATION, CORPORATION, OR OTHER ENTITY AS TO ANY PROVISION APPLICABLE TO A BUSINESS USING A BICYCLE FOR COMMERCIAL PURPOSES, THAT SUCH PERSON OR ENTITY DID NOT EMPLOY OR PROVIDE DIRECT COMPENSATION TO A BICYCLE OPERATOR, BUT RATHER CONTRACTED WITH A BUSINESS OTHER THAN SUCH BICYCLE OPERATOR TO PROVIDE DELIVERY SERVICES.

h. Any [person who makes deliveries or otherwise] BICYCLE OPERATOR WHO operates a bicycle [on behalf of a business using a bicycle for commercial purposes] without carrying the identification sign required by subdivision b of this section or without carrying the identification card required by subdivision c of this section or who fails to produce such identification sign or card upon demand pursuant to such subdivisions, or who fails to wear protective headgear required by subdivision e of this section or the retro-reflective apparel required by subdivision i 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 such business did not provide the protective headgear, the identification or the retro-reflective apparel required by subdivisions b, c, e or i 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.

i. A business using a bicycle for commercial purposes shall provide for and require each bicycle operator [employed by such business] to wear and each such bicycle operator shall wear a retro-reflective jacket, vest, or other wearing apparel on the upper part of such operator's body as the outermost garment while making deliveries, or otherwise riding a bicycle on behalf of such business, the back of which shall indicate such business' name and such bicycle operator's individual identification number as assigned pursuant to subdivision c of this section in lettering and numerals not less than one inch in height so as to be plainly readable at a distance of not less than ten feet.

j. The provisions of this section shall be enforceable by an authorized employee of the police department or department of transportation or any other person authorized by law.

S 3. Paragraph 1 of subdivision a of section 19-176 of the administrative code of the city of New York, as added by local law number 6 of the city of New York for the year 1996, is amended to read as follows:

(1) The term "bicycle" shall mean a two or three wheeled device upon which a person or persons may ride, propelled by human power through a belt, a chain or gears, with such wheels in a tandem or tricycle, AND SHALL ALSO MEAN ANY WHEELED MOTOR-ASSISTED DEVICE WHICH A PERSON OR PERSONS MAY RIDE THAT IS NOT CAPABLE OF BEING REGISTERED BY THE NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, except that it shall not include

such a device having solid tires and intended for use only on a sidewalk by a child.

S 4. This act shall take effect on the one hundred fiftieth day after it shall have become a law.