

43--A

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. PERALTA, AVELLA, ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- recommitted to the Committee on Health 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 public health law, in relation to the establishment of a letter grading system to classify inspection results for pushcarts in cities having a population of two 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-e to read as follows:

3 S 1352-E. FOOD PUSHCART SERVICE GRADING SYSTEM; CITIES OF TWO MILLION  
4 OR MORE. 1. THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR GRADING  
5 INSPECTION RESULTS FOR MOBILE FOOD SERVICE ESTABLISHMENTS AND PUSHCARTS  
6 AS DEFINED IN THE STATE SANITARY CODE, OPERATED IN CITIES WITH A POPU-  
7 LATION OF TWO MILLION OR MORE.

8 2. SUCH SYSTEM SHALL USE AND POST LETTERS A, B OR C TO IDENTIFY AND  
9 REPRESENT SUCH GRADING AND CLASSIFICATION WITH ALL OTHER LOWER GRADES  
10 BEING DEEMED TO BE FAILING GRADES. IN ESTABLISHING SUCH SYSTEM OF GRAD-  
11 ING, THE COMMISSIONER SHALL TAKE INTO ACCOUNT THE PROVISIONS OF THIS  
12 TITLE AND THE PROVISIONS OF THE SANITARY CODE TO ESTABLISH A GRADING  
13 SYSTEM THAT REFLECTS THE SAFETY AND SANITATION OF THE PREMISES AND FOOD  
14 HANDLING PRACTICES TO ENSURE COMPLIANCE WITH STATE AND LOCAL HEALTH  
15 LAWS.

16 3. EACH SUCH MOBILE FOOD SERVICE ESTABLISHMENT OR PUSHCART SHALL  
17 CONSPICUOUSLY POST AT THE POINT OF SALE THE LETTER GRADE IDENTIFYING AND  
18 REPRESENTING THE RESULT OF SUCH ESTABLISHMENT'S OR PUSHCART'S MOST  
19 RECENTLY GRADED INSPECTION BY THE LOCAL HEALTH OFFICER OR THE ENTITY  
20 RESPONSIBLE FOR SUCH INSPECTION. SUCH POSTING SHALL BE DONE IN ACCORD-

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

LBD00323-02-4

1 ANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER. FOR  
2 ANY MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSH CART RECEIVING A  
3 GRADE LOWER THAN "A", THE LOCAL HEALTH OFFICER OR THE ENTITY PERFORMING  
4 THE INSPECTION SHALL ADVISE THE ESTABLISHMENT OR PUSH CART OF ITS GRADE  
5 AND THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE LOCAL HEALTH OFFI-  
6 CER OR THE ENTITY WHICH PERFORMED THE INITIAL INSPECTION SHALL CONDUCT A  
7 SUBSEQUENT INSPECTION OF SUCH MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT  
8 OR PUSH CART NO SOONER THAN SEVEN DAYS, NOR LATER THAN TWENTY-ONE DAYS  
9 AFTER THE INSPECTION AT WHICH THE GRADE WAS GIVEN. IN THE INTERIM, THE  
10 PREVIOUS LETTER GRADE SHALL REMAIN POSTED. UPON THE CONCLUSION OF THE  
11 SUBSEQUENT INSPECTION, THE LOCAL HEALTH OFFICER OR THE ENTITY PERFORMING  
12 THE INSPECTION SHALL DELIVER FOR POSTING A LETTER GRADE TO THE MOBILE  
13 PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSH CART WHICH INDICATES THE GRADE  
14 FOR SUCH INSPECTION. IN ADDITION TO A LETTER GRADE, SUCH ESTABLISHMENT  
15 OR PUSH CART SHALL RECEIVE THE FINDINGS UPON WHICH SUCH GRADE IS BASED.  
16 THE MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSH CART MAY APPEAL SUCH  
17 SUBSEQUENT ASSIGNMENT OF A LETTER GRADE DESIGNATION TO THE COMMISSIONER  
18 FOR REVIEW WITHIN THIRTY DAYS OF SUCH ASSIGNMENT. WHILE ANY SUCH APPEAL  
19 IS PENDING, A MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSH CART SHALL  
20 POST THE LETTER GRADE THAT IS BEING APPEALED.

21 4. THE SUGGESTED INTERVAL BETWEEN REGULARLY SCHEDULED INSPECTIONS OF  
22 MOBILE PUBLIC FOOD SERVICE ESTABLISHMENTS AND PUSH CARTS MAY BE AS  
23 FOLLOWS:

24 (A) FOR ESTABLISHMENTS AND PUSH CARTS WITH A GRADE OF "A", AT LEAST  
25 ONCE EVERY YEAR;

26 (B) FOR ESTABLISHMENTS AND PUSH CARTS WITH A GRADE OF "B", AT LEAST  
27 ONCE EVERY NINE MONTHS; AND

28 (C) FOR ESTABLISHMENTS AND PUSH CARTS WITH A GRADE OF "C", AT LEAST  
29 ONCE EVERY THREE MONTHS.

30 A MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSH CART THAT REQUESTS A  
31 REINSPECTION FROM THE LOCAL HEALTH OFFICER OR THE ENTITY RESPONSIBLE FOR  
32 SUCH INSPECTIONS, SHALL PAY THE DEPARTMENT A FEE OF UP TO TWO HUNDRED  
33 FIFTY DOLLARS. PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SUBDIVI-  
34 SION SHALL NOT NEGATE THE ABILITY OF ANY LOCAL HEALTH OFFICER OR THE  
35 ENTITY RESPONSIBLE FOR SUCH INSPECTIONS TO INSPECT ANY MOBILE PUBLIC  
36 FOOD SERVICE ESTABLISHMENT OR PUSH CART ON THE BASIS OF A COMPLAINT FROM  
37 A MEMBER OF THE PUBLIC.

38 5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO MOBILE PUBLIC  
39 FOOD SERVICE ESTABLISHMENTS OR PUSH CARTS WHICH ARE SPONSORED BY A CHARI-  
40 TABLE ORGANIZATION TO OPERATE A SOUP KITCHEN OR OTHER FOOD DISTRIBUTION  
41 PROGRAM FOR THE ELDERLY, LOW INCOME INDIVIDUALS AND FAMILIES OR THE  
42 INFIRM.

43 6. NO PROVISION OF THIS SECTION SHALL BE DEEMED TO DIMINISH OR OTHER-  
44 WISE CHANGE ANY POWER OR DUTY OF ANY STATE AGENCY OR AUTHORITY.

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.