

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. PERALTA -- 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 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-d to read as follows:

3 S 1352-D. 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-  
21 ANCE WITH RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER. FOR  
22 ANY MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSHCART RECEIVING A  
23 GRADE LOWER THAN "A", THE LOCAL HEALTH OFFICER OR THE ENTITY PERFORMING

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

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

18 4. THE SUGGESTED INTERVAL BETWEEN REGULARLY SCHEDULED INSPECTIONS OF  
19 MOBILE PUBLIC FOOD SERVICE ESTABLISHMENTS AND PUSHCARTS MAY BE AS  
20 FOLLOWS:

21 (A) FOR ESTABLISHMENTS AND PUSHCARTS WITH A GRADE OF "A", AT LEAST  
22 ONCE EVERY YEAR;

23 (B) FOR ESTABLISHMENTS AND PUSHCARTS WITH A GRADE OF "B", AT LEAST  
24 ONCE EVERY NINE MONTHS; AND

25 (C) FOR ESTABLISHMENTS AND PUSHCARTS WITH A GRADE OF "C", AT LEAST  
26 ONCE EVERY THREE MONTHS.

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

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

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

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