

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 PUSH CART 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 PUSH CART 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 PUSH CART WHICH INDICATES THE GRADE
11 FOR SUCH INSPECTION. IN ADDITION TO A LETTER GRADE, SUCH ESTABLISHMENT
12 OR PUSH CART SHALL RECEIVE THE FINDINGS UPON WHICH SUCH GRADE IS BASED.
13 THE MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSH CART 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 PUSH CART 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 PUSH CARTS MAY BE AS
20 FOLLOWS:

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

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

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

27 A MOBILE PUBLIC FOOD SERVICE ESTABLISHMENT OR PUSH CART 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 PUSH CART 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 PUSH CARTS 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.