

814

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. ADAMS -- 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 establishing a public food vending business grading system for cities with a population of one 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. PUBLIC FOOD VENDING BUSINESS GRADING SYSTEM. 1. FOR THE
4 PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING
5 MEANINGS:
6 A. "FOOD VENDOR" SHALL MEAN A PERSON WHO HAWKS, PEDDLES, SELLS OR
7 OFFERS FOOD FOR SALE AT RETAIL IN ANY PUBLIC SPACE;
8 B. "FOOD VENDING BUSINESS" SHALL MEAN THE BUSINESS OF SELLING OR
9 OFFERING FOOD FOR SALE AT RETAIL IN A PUBLIC SPACE;
10 C. "PUBLIC SPACE" SHALL MEAN ALL PUBLICLY OWNED PROPERTY BETWEEN THE
11 PROPERTY LINES ON A STREET AS SUCH PROPERTY LINES ARE SHOWN ON PUBLIC
12 RECORDS INCLUDING, BUT NOT LIMITED TO, A PARK, PLAZA, ROADWAYS, SHOUL-
13 DER, TREE SPACE, SIDEWALK OR PARKING SPACE BETWEEN SUCH PROPERTY LINES.
14 IT SHALL ALSO INCLUDE, BUT NOT BE LIMITED TO, PUBLICLY OWNED OR LEASED
15 LAND, BUILDINGS, PIERS, WHARFS, STADIUMS AND TERMINALS;
16 D. "PUSHCART" SHALL MEAN ANY WHEELED VEHICLE OR DEVICE USED BY A FOOD
17 VENDING BUSINESS OR FOOD VENDOR, OTHER THAN A MOTOR VEHICLE OR TRAILER,
18 WHICH MAY BE MOVED WITH OR WITHOUT THE ASSISTANCE OF A MOTOR AND WHICH
19 DOES NOT REQUIRE REGISTRATION BY THE DEPARTMENT OF MOTOR VEHICLES;
20 E. "VEHICLE" SHALL MEAN A MOTOR VEHICLE OR TRAILER, AS DEFINED IN THE
21 VEHICLE AND TRAFFIC LAW; AND

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

LBD04542-01-3

1 F. "VEND" SHALL MEAN TO HAWK, PEDDLE, SELL OR OFFER TO SELL FOOD AT
2 RETAIL IN A PUBLIC SPACE, DELIVERED IMMEDIATELY UPON CONSUMPTION OF
3 PURCHASE.

4 2. THE COMMISSIONER SHALL ESTABLISH A SYSTEM FOR GRADING INSPECTION
5 RESULTS FOR A FOOD VENDING BUSINESS OPERATING OUT OF PUSHCARTS AND VEHI-
6 CLES WHERE FOOD IS PREPARED, SOLD OR SERVED FOR CONSUMPTION BY THE
7 GENERAL PUBLIC. SUCH SYSTEM SHALL USE AND POST LETTERS A, B OR C TO
8 IDENTIFY AND REPRESENT SUCH GRADING AND CLASSIFICATION WITH ALL OTHER
9 LOWER GRADES BEING DEEMED TO BE FAILING GRADES. IN ESTABLISHING SUCH
10 SYSTEM OF GRADING, THE COMMISSIONER SHALL TAKE INTO ACCOUNT THE
11 PROVISIONS OF LOCAL LAWS RELATING TO FOOD SANITATION IN ORDER TO ESTAB-
12 LISH A GRADING SYSTEM THAT REFLECTS THE SAFETY AND SANITATION OF THE
13 PREMISES AND FOOD HANDLING PRACTICES TO ENSURE COMPLIANCE WITH STATE AND
14 LOCAL HEALTH LAWS.

15 3. SUCH FOOD VENDING PUSHCART OR VEHICLE SHALL CONSPICUOUSLY POST THE
16 LETTER GRADE IDENTIFYING AND REPRESENTING THE RESULT OF SUCH FOOD
17 VENDOR'S MOST RECENTLY GRADED INSPECTION BY THE LOCAL HEALTH OFFICER.
18 SUCH POSTING SHALL BE DONE IN ACCORDANCE WITH RULES AND REGULATIONS
19 PROMULGATED BY THE COMMISSIONER. FOR ANY FOOD VENDING BUSINESS RECEIVING
20 A GRADE LOWER THAN "A", THE LOCAL HEALTH OFFICER SHALL ADVISE THE FOOD
21 VENDOR OF ITS GRADE AND THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE
22 LOCAL HEALTH OFFICER SHALL CONDUCT A SUBSEQUENT INSPECTION OF SUCH FOOD
23 VENDING BUSINESS NO SOONER THAN SEVEN DAYS, NOR LATER THAN TWENTY-ONE
24 DAYS AFTER THE INSPECTION AT WHICH THE GRADE WAS GIVEN. IN THE INTERIM,
25 THE PREVIOUS LETTER GRADE SHALL REMAIN POSTED. UPON THE CONCLUSION OF
26 THE SUBSEQUENT INSPECTION, THE LOCAL HEALTH OFFICER SHALL DELIVER FOR
27 POSTING A LETTER TO THE FOOD VENDING BUSINESS WHICH INDICATES THE GRADE
28 FOR SUCH INSPECTION. IN ADDITION TO A LETTER GRADE, SUCH FOOD VENDOR
29 SHALL RECEIVE THE FINDINGS UPON WHICH SUCH GRADE IS BASED. THE FOOD
30 VENDING BUSINESS MAY APPEAL SUCH SUBSEQUENT ASSIGNMENT OF A LETTER GRADE
31 DESIGNATION TO THE COMMISSIONER FOR REVIEW WITHIN THIRTY DAYS OF SUCH
32 ASSIGNMENT. WHILE ANY SUCH APPEAL IS PENDING, A FOOD VENDING BUSINESS
33 SHALL POST THE LETTER GRADE THAT IS BEING APPEALED.

34 4. THE SUGGESTED INTERVAL BETWEEN REGULARLY SCHEDULED INSPECTIONS OF
35 FOOD VENDING BUSINESS MAY BE AS FOLLOWS:

36 A. FOR FOOD VENDORS WITH A GRADE OF "A", AT LEAST ONCE EVERY YEAR; AND
37 B. FOR FOOD VENDORS WITH A GRADE OF "B", AT LEAST ONCE EVERY NINE
38 MONTHS.

39 5. A FOOD VENDING BUSINESS THAT REQUESTS A REINSPECTION FROM THE LOCAL
40 HEALTH OFFICER, SHALL PAY THE DEPARTMENT A FEE OF UP TO TWO HUNDRED
41 FIFTY DOLLARS. PROVIDED HOWEVER THAT THE PROVISIONS OF THIS SUBDIVISION
42 SHALL NOT NEGATE THE ABILITY OF ANY LOCAL HEALTH OFFICER TO INSPECT ANY
43 FOOD VENDING BUSINESS ON THE BASIS OF A COMPLAINT FROM A MEMBER OF THE
44 PUBLIC.

45 6. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO A FOOD VENDING
46 BUSINESS WHICH IS NOT LOCATED IN A CITY HAVING A POPULATION OF ONE
47 MILLION OR MORE.

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