

STATE OF NEW YORK

419--C

Cal. No. 1128

2011-2012 Regular Sessions

IN SENATE

(Prefiled)

January 5, 2011

Introduced by Sens. KRUEGER, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Cities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

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:

1 Section 1. Section 10-157 of the administrative code of the city of
2 New York, subdivisions e and f as added and subdivisions g and h as
3 amended by local law number 9 of the city of New York for the year 2007,
4 is amended to read as follows:
5 § 10-157 Bicycles used for commercial purposes. a. ~~Every~~ For the
6 purposes of this section, the term "businesses using a bicycle for
7 commercial purposes" shall mean a person, firm, partnership, joint
8 venture, association ~~or~~, corporation or entity which engages in the
9 course of its business, either on behalf of itself or others, in deliv-
10 ering packages, parcels, papers or articles of any type by bicycle. A
11 business using a bicycle for commercial purposes shall provide identifi-
12 cation of ~~the~~ such business by requiring every bicycle or bicycle
13 operator to be identified by:
14 (1) affixing to the rear of each bicycle, bicycle seat or both sides
15 of the delivery basket, a metal plastic or other sign of a type approved
16 by the police commissioner, with the name of ~~the~~ such business and a
17 three digit identification number which identifies the bicycle operator
18 in lettering and numerals so as to be plainly readable at a distance of

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

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1 not less than ten feet and maintaining same in good condition thereon;
2 and

3 (2) by requiring each bicycle operator to wear a jacket, vest, or
4 other wearing apparel on the upper part of the cyclist's body while
5 making deliveries, or otherwise riding a bicycle on behalf of ~~the~~ such
6 business, the back of which shall indicate the business name and the
7 bicycle operator's individual identification number in lettering and
8 numerals so as to be plainly readable at a distance of not less than ten
9 feet.

10 b. Every ~~[person, firm, partnership, joint venture, association or~~
11 ~~corporation engaged in providing a service as authorized herein]~~ busi-
12 ness using a bicycle for commercial purposes must issue to every bicycle
13 operator a numbered identification card which contains the name, resi-
14 dence address and photo of the bicycle operator and the name, address
15 and telephone number of the ~~[company for whom]~~ entity with which the
16 bicycle operator is employed or affiliated. Such identification card
17 must be carried by the bicycle operator while the cyclist is making
18 deliveries, or otherwise riding a bicycle on behalf of the business, and
19 must be produced upon the demand of a police officer or any other law
20 enforcement officer.

21 c. Every ~~[person, firm, partnership, joint venture, association or~~
22 ~~corporation engaged in providing a service as authorized herein]~~ busi-
23 ness using a bicycle for commercial purposes shall maintain in a log
24 book to be kept for such purpose, the name and place of residence
25 address of every employee operating a bicycle, the date of employment
26 and discharge of each person in said service, and every messenger or
27 delivery person's identification number. The owner of any such business
28 engaged in providing a service as authorized in this section shall be
29 responsible for maintaining in the log book a daily trip record in which
30 all entries shall be made legibly in ink and each entry shall be dated
31 and include the bicycle identification number, the operator's name and
32 the name and place of origin and destination for each trip. No entry
33 shall be rewritten either in whole or in part except in such manner as
34 may be provided by regulation of the commissioner; any such unauthorized
35 rewriting shall give rise to a rebuttable presumption of an act of
36 fraud, deceit or misrepresentation. Such log book shall be made avail-
37 able for inspection during regular and usual business hours upon request
38 of an agent of the police commissioner or any police officer or any
39 other person authorized by law.

40 d. The owner of any business ~~[engaged in providing a service as~~
41 ~~authorized in this section]~~ using a bicycle for commercial purposes
42 shall file an annual report in such form as shall be designated by the
43 police commissioner by rule or regulations. Said report shall include,
44 inter alia, the number of bicycles it owns and the number and identity
45 of any ~~[employees it may retain]~~ bicycle operators employed by or other-
46 wise affiliated with such business. Any such business ~~[engaged in~~
47 ~~providing a service as authorized in this section]~~ shall be responsible
48 for the compliance with the provisions of this section of any ~~[employees~~
49 ~~it shall retain]~~ bicycle operators employed by or otherwise affiliated
50 with such business. Nothing contained in this section shall be
51 construed as applying to persons under the age of sixteen who use a
52 bicycle to deliver daily newspapers or circulars.

53 e. (1) The owner of any business ~~[engaged in providing a service as~~
54 ~~authorized in this section]~~ using a bicycle for commercial purposes
55 shall provide, at its own expense, protective headgear suitable for each
56 bicycle operator. Such headgear shall:

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1 (i) meet the standards set forth by the consumer product safety
2 commission in title 16, part 1203 of the code of federal regulations;

3 (ii) be readily available at each employment site for use by each
4 bicycle operator; and

5 (iii) be replaced if such headgear is no longer in good condition.
6 Headgear is no longer in good condition if it is missing any of its
7 component parts or is otherwise damaged so as to impair its functionali-
8 ty.

9 (2) Each bicycle operator shall wear protective headgear that meets
10 the requirements of paragraph [±] one of this subdivision while making
11 deliveries or otherwise operating a bicycle on behalf of such business.
12 The term "wear such protective headgear" means having the headgear
13 fastened securely upon the head with the headgear straps.

14 f. The owner of any business [~~engaged in providing a service as~~
15 ~~authorized in this section~~] using a bicycle for commercial purposes,
16 notwithstanding that a bicycle may be provided by an employee or associ-
17 ate thereof, shall provide at its own expense and ensure that each bicy-
18 cle is equipped with a lamp; a bell or other device capable of giving an
19 audible signal; brakes; reflective tires or, alternately, a reflex
20 reflector mounted on the spokes of each wheel; as well as other reflec-
21 tive devices or material, in accordance with section [±236] one thousand
22 two hundred thirty-six of the vehicle and traffic law.

23 g. Except as otherwise provided in subdivision h of this section, the
24 violation of any of the provisions of this section, or of any of the
25 rules or regulations that may be promulgated pursuant hereto, shall be a
26 violation triable by a judge of the criminal court of the city of New
27 York and upon conviction thereof shall be punishable by a fine of not
28 less than one hundred dollars nor more than two hundred and fifty
29 dollars or imprisonment for not more than fifteen days or both such fine
30 and imprisonment. In addition, any person or entity violating this
31 section or any of the rules or regulations promulgated pursuant hereto
32 shall be subject to a civil penalty of not less than one hundred dollars
33 and not more than two hundred fifty dollars for each violation. Such
34 civil penalty shall be in addition to any criminal penalty that may be
35 imposed, and shall be recoverable against a bicycle operator and against
36 a business using a bicycle for commercial purposes in a proceeding
37 before the environmental control board.

38 h. Any person who makes deliveries or otherwise operates a bicycle on
39 behalf of a business using a bicycle for commercial purposes without
40 carrying the identification required by subdivision b of this section or
41 who fails to produce such identification upon demand as required by such
42 subdivision, or who fails to wear protective headgear required by subdivi-
43 sion e of this section, shall be guilty of a traffic infraction and
44 upon conviction thereof shall be liable for a fine of not less than
45 twenty-five dollars nor more than fifty dollars. It shall be an affirma-
46 tive defense to such traffic infraction that [~~the~~] such business did not
47 provide the protective headgear required by subdivision e of this
48 section. Such traffic infraction may be adjudicated by such an adminis-
49 trative tribunal as is authorized under article two-A of the vehicle and
50 traffic law.

51 i. In any prosecution of a business using a bicycle for commercial
52 purposes for a violation of this section such business shall be vicari-
53 ously liable for the acts of any bicycle operators employed by or other-
54 wise affiliated with such business.

55 j. For the purposes of this section, a bicycle operator shall only be
56 considered to be employed or affiliated with an entity business using a

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1 bicycle for commercial purposes when such entity provides direct compen-
2 sation to that bicycle operator, either as an employee or contractor.
3 Persons or entities that hire other firms to provide delivery and
4 messenger services are not subject to the provisions of this section.
5 § 2. This act shall take effect on the first of November next succeed-
6 ing the date on which it shall have become a law.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S419C

REVISED 06/16/11

SPONSOR: KRUEGER

TITLE OF BILL:

An act to amend the administrative code of the city of New York, in relation to the use of bicycles for commercial purposes

PURPOSE:

Provides that a commercial bicycle operator and the business affiliated with such operator utilizing or arranging for the delivery of their products shall be liable for such bicyclist's violation(s) of section 10-157 of the Administrative Code.

SUMMARY OF PROVISIONS:

This bill amends section 10-157 of the Administrative Code to facilitate enforcement by authorities for commercial bicyclists and businesses knowingly in violation of this section.

The definition of a business using a bicycle for commercial purposes is expanded to include all commercial cyclists who provide a delivery service for a business, not limiting it to those who are actually employed by the establishment, subject to the provisions of this section.

Section 2, subdivision g individuals who break the traffic code to be held liable for a civil penalty and such proceedings will take place before the environmental control board. This penalty is in addition to a criminal penalty.

Section 2, subdivision i states that the business utilizing or arranging for the services of the commercial bicycle operator is vicariously liable for the actions of its employee.

Section 2, subdivision j clarifies that this section shall not apply to those businesses which hire a messenger service.

EXISTING LAW:

The New York City Administrative Code prohibits the operation of bicycles on sidewalks due to the danger bicycles pose to pedestrians in the event of a collision.

Section 10-157 of the Administrative Code applies to bicycles used for commercial purposes. This section was created to enable the authorities to enforce the prohibition of delivery bicycles traveling recklessly on sidewalks by assigning liability to the business providing for, or arranging for delivery service. This section requires the business provide identification for the cyclist, with the use of an identification card. Additionally, an obvious visual means of identification with

the name of the establishment or a registered number identified solely with a particular business address must be supplied to the commercial cyclist.

JUSTIFICATION:

Bicycle delivery employees have been the cause of numerous accidents causing serious injury or death. This problem has been exacerbated by the difficulty experienced in enforcing the current statutory provisions which regulate this activity, and assigning liability to the business

utilizing or arranging for the commercial bicycle delivery operator to complete delivery.

Section 10-157 requires identification to be provided by the business utilizing the services of delivery cyclists for both the bicycle and rider, but until now has not been readily enforced. First, a violation of this section will may be brought before the environmental control board for ease of prosecution in addition to the criminal court. Secondly, this proposal will create a vicarious liability for any business utilizing the services of the cyclist for the actions of that cyclist. This will subject to a fine from \$100 to \$250.

By making the business liable for the actions of the cyclists used for delivery of their product, it will promote an interest for the business to only associate with commercial cyclists who adhere to the requirements currently in place in the Administrative Code. By clarifying who is responsible for violations and enabling pedestrians to identify a reckless cyclist and associate the cyclist with the business that they are affiliated with, will facilitate enforcement by the authorities, thereby protecting the pedestrians. The bill also allows an additional penalty to be imposed on the rider in addition to the penalty on the business.

FISCAL IMPLICATIONS:

Some increased revenue for the City through the imposition of fines to those in violation.

EFFECTIVE DATE:

Shall take effect on the first of November next succeeding the date on which is shall become law.
