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I N S E N A T E

February 4, 2010

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to frozen desserts made with wine

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Subdivisions 14 and 15 of section 200 of the agriculture
2 and markets law, as added by chapter 189 of the laws of 2008, the open-
3 ing paragraph of subparagraph (iii) of paragraph (a) of subdivision 15
4 as amended by chapter 341 of the laws of 2009, is amended to read as
5 follows:
- 6 14. If it is ice cream OR OTHER FROZEN DESSERTS made with wine bearing
7 or containing more than five percent of alcohol by volume.
- 8 15. With respect to the manufacture and sale of ice cream OR OTHER
9 FROZEN DESSERTS made with wine bearing or containing more than one-half
10 of one percent, but not more than five percent of alcohol by volume:
- 11 (a) No person shall sell at retail packages of ice cream OR OTHER
12 FROZEN DESSERTS made with wine for consumption off the premises where
13 sold unless:
- 14 (i) each package is a sealed package containing at least one pint, as
15 received from the manufacturer or distributor;
- 16 (ii) each sealed package containing at least one pint, as received
17 from the manufacturer or distributor, in a format to be established or
18 approved by the commissioner, prominently bears the following state-
19 ments:
- 20 (A) The sale of this product to individuals under the age of twenty-
21 one years is prohibited.
- 22 (B) This product is made with wine and contains alcohol up to five
23 percent by volume.
- 24 (C) Notice. This product contains alcohol used as a flavoring and, as
25 with any product that contains alcohol:
- 26 (1) women should not consume alcohol during pregnancy because of the
27 risk of birth defects, and

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

LBD15489-04-0

(2) consumption of alcohol impairs your ability to drive a car or operate machinery, and may cause health problems.

(iii) the following advisory, on a sign or poster not less than seven inches by five inches, in a format to be established or approved by the commissioner, is displayed prominently at each location where packages of [wine] ice cream OR OTHER FROZEN DESSERTS MADE WITH WINE are made available to the public:

"THIS AREA CONTAINS WINE ICE CREAM AND OTHER FROZEN DESSERTS
MADE WITH WINE

The sale of WINE ICE CREAM OR OTHER FROZEN DESSERTS MADE WITH WINE to individuals under the age of twenty-one years is prohibited.

WINE ICE CREAM [contains] OR OTHER FROZEN DESSERTS MADE WITH WINE CONTAIN alcohol up to five percent by volume.

NOTICE: WINE ICE CREAM [contains] OR OTHER FROZEN DESSERTS MADE WITH WINE CONTAIN alcohol used as a flavoring and, as with any product that contains alcohol:

(1) women should not consume alcohol during pregnancy because of the risk of birth defects, and

(2) consumption of alcohol impairs your ability to drive a car or operate machinery, and may cause health problems.

IT IS A VIOLATION PUNISHABLE UNDER LAW FOR ANY PERSON UNDER THE AGE OF TWENTY-ONE TO PRESENT ANY WRITTEN EVIDENCE OF AGE WHICH IS FALSE, FRAUDULENT OR NOT ACTUALLY HIS OWN FOR THE PURPOSE OF ATTEMPTING TO PURCHASE WINE ICE CREAM OR OTHER FROZEN DESSERTS MADE WITH WINE."

(b) No manufacturer and/or distributor of ice cream OR OTHER FROZEN DESSERTS made with wine shall sell such product:

(i) to a person intending to sell at retail individual servings of [wine] ice cream OR OTHER FROZEN DESSERTS MADE WITH WINE, unless, with each shipment, such manufacturer and/or distributor provides:

(A) a written notice that individual servings of wine ice cream OR OTHER FROZEN DESSERTS MADE WITH WINE may be sold at retail only where the retailer complies with all of the requirements set forth in paragraph (a) of this subdivision, and

(B) a written copy of such requirements; and

(ii) to a person intending to sell at retail packages of wine ice cream OR OTHER FROZEN DESSERTS MADE WITH WINE for consumption off the premises, unless, with each shipment, such manufacturer and/or distributor provides:

(A) a written notice that packages of wine ice cream OR OTHER FROZEN DESSERTS MADE WITH WINE may be sold at retail only where the retailer complies with all of the requirements set forth in paragraph (a) of this subdivision, and

(B) a written copy of such requirements.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.