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I N   S E N A T E

February 26, 2016

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Introduced by Sen. AVELLA -- 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 misbranding of certain fish species

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

1     Section 1. The agriculture and markets law is amended by adding a new  
2     section 201-i to read as follows:  
3     S 201-I. MISBRANDING OF CERTAIN FISH SPECIES. 1. AS USED IN THIS  
4     SECTION: (A) "ESCOLAR" SHALL MEAN ANY VARIETY OF FISH KNOWN AS ESCOLAR,  
5     WALU, SNAKE MACKEREL, OR ANY OTHER COMMON NAME OF THE SCIENTIFIC SPECIES  
6     NAME LEPIDOCYBIUM FLAVORBRUNNEUM.  
7     (B) "OILFISH" SHALL MEAN ANY VARIETY OF FISH KNOWN AS OILFISH OR ANY  
8     OTHER COMMON NAME OF THE SCIENTIFIC SPECIES NAME RUVETTUS PRETIOSUS.  
9     (C) "WHITE TUNA" SHALL MEAN THE FISH SPECIES KNOWN AS ALBACORE TUNA,  
10    LONG FIN TUNA, OR THE SCIENTIFIC SPECIES NAME THUNNUS ALALUNGA.  
11    2. NO PERSON, RETAIL OR PUBLIC FOOD SERVICE ESTABLISHMENT AS DEFINED  
12    IN SECTION SEVENTY-ONE-Y OF THIS CHAPTER, SHALL SELL, OFFER FOR SALE,  
13    DISTRIBUTE, IMPORT, OR EXPORT THE SPECIES OF FISH COMMONLY KNOWN AS  
14    ESCOLAR OR OILFISH UNDER THE NAME TUNA, ALBACORE TUNA, WHITE TUNA, OR  
15    ANY OTHER SPECIES NAME, COMMON OR SCIENTIFIC, OTHER THAN THE RECOGNIZED  
16    COMMON OR SCIENTIFIC SPECIES NAMES FOR SUCH SPECIES DEFINED IN SUBDIVI-  
17    SION ONE OF THIS SECTION.  
18    S 2. Section 39 of the agriculture and markets law, as amended by  
19    section 1 of part Q of chapter 59 of the laws of 2009, is amended to  
20    read as follows:  
21    S 39. Penalties for violation of chapter or other laws. Every person  
22    violating any of the provisions of this chapter, or of any other law the  
23    enforcement of which is within the jurisdiction of the department shall,  
24    except where other penalties are hereinafter prescribed, be subject to a  
25    penalty in the sum of not more than six hundred dollars for the first  
26    violation, nor more than one thousand two hundred dollars for the second  
27    and each subsequent violation and provided further, however, that for a  
28    violation of subdivision thirteen or fifteen of section two hundred of

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

LBD06132-01-5

1 this chapter, the minimum penalty shall be five hundred dollars and the  
2 maximum penalty shall be one thousand dollars and that for the second  
3 and subsequent offenses such person may also be subject to an adminis-  
4 trative order suspending the manufacture and/or sale of such confection-  
5 ery for a period of time up to three months for each such violation; AND  
6 PROVIDED FURTHER, HOWEVER, THAT FOR A VIOLATION OF SUBDIVISION TWO OF  
7 SECTION TWO HUNDRED ONE-I OF THIS CHAPTER, THE MINIMUM PENALTY SHALL BE  
8 ONE THOUSAND DOLLARS AND A MAXIMUM OF TWO THOUSAND DOLLARS FOR THE FIRST  
9 OFFENSE AND FOR THE SECOND AND SUBSEQUENT OFFENSES ANY PERSON, RETAIL,  
10 OR FOOD SERVICE ESTABLISHMENT FOUND TO BE IN VIOLATION MAY BE SUBJECT TO  
11 AN ADMINISTRATIVE ORDER SUSPENDING THE SALE, OFFER FOR SALE, DISTRIB-  
12 UTION, IMPORT, OR EXPORT OF SUCH FISH SPECIES FOR A PERIOD OF TIME UP TO  
13 THREE MONTHS FOR EACH VIOLATION. When such violation consists of the  
14 manufacture or production of any prohibited article, each day during  
15 which or any part of which such manufacture or production is carried on  
16 or continued, shall be deemed a separate violation. When the violation  
17 consists of the sale, or the offering or exposing for sale or exchange  
18 of any prohibited article or substance, the sale of each one of several  
19 packages shall constitute a separate violation, and each day on which  
20 any such article or substance is offered or exposed for sale or exchange  
21 shall constitute a separate violation. If the sale be of milk and it be  
22 in cans, bottles or containers of any kind and if the milk in any one of  
23 such containers be adulterated, it shall be deemed a violation whether  
24 such vendor be selling all the milk in all of his containers to one  
25 person or not. When the use of any such article or substance is prohib-  
26 ited, each day during which or any part of which such article or  
27 substance is so used or furnished for use, shall constitute a separate  
28 violation, and the furnishing of the same for use to each person to whom  
29 the same may be furnished shall constitute a separate violation. When  
30 the storage of any article is prohibited beyond a certain period, each  
31 day during which or any part of which any article is so stored beyond  
32 the period provided for by this chapter, shall constitute a separate  
33 violation. A right of action for the recovery of, or a liability for,  
34 penalties incurred as provided in this chapter, or in any other law the  
35 enforcement of which is within the jurisdiction of the department, may  
36 be released, settled or compromised before the matter is referred to the  
37 attorney general as provided in section forty-four of this article, and  
38 thereafter may be released, settled or compromised by the attorney  
39 general, either before or after an action is brought to recover such  
40 penalties.

41 S 3. This act shall take effect on the one hundred twentieth day after  
42 it shall have become a law, provided, however, that effective immediate-  
43 ly, the addition, amendment and/or repeal of any rule or regulation  
44 necessary for the implementation of this act on its effective date are  
45 authorized and directed to be made and completed by the commissioner of  
46 agriculture and markets on or before such effective date.