S T A T E O F N E W Y O R K

9859--A

I N A S S E M B L Y

February 3, 2010

Introduced by M. of A. MAGEE -- read once and referred to the Committee on Agriculture -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the agriculture and markets law, the public health law and the alcoholic beverage control 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:

Section 1. Subdivisions 14 and 15 of section 200 of the agriculture and markets law, as added by chapter 189 of the laws of 2008, the opening paragraph of subparagraph (iii) of paragraph (a) of subdivision 15 as amended by chapter 341 of the laws of 2009, is amended to read as follows:

14. If it is ice cream OR OTHER FROZEN DESSERTS made with wine bearing or containing more than five percent of alcohol by volume.

15. With respect to the manufacture and sale of ice cream OR OTHER FROZEN DESSERTS made with wine bearing or containing more than one-half of one percent, but not more than five percent of alcohol by volume:

(a) No person shall sell at retail packages of ice cream OR OTHER FROZEN DESSERTS made with wine for consumption off the premises where sold unless:

(i) each package is a sealed package containing at least one pint, as received from the manufacturer or distributor;

(ii) each sealed package containing at least one pint, as received from the manufacturer or distributor, in a format to be established or approved by the commissioner, prominently bears the following statements:

(A) The sale of this product to individuals under the age of twenty-one years is prohibited.

(B) This product is made with wine and contains alcohol up to five percent by volume.

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

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(C) Notice. This product contains 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.

(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. Section 1352-c of the public health law, as added by chapter 189 of the laws of 2008, is amended to read as follows:

S 1352-c. Ice cream OR OTHER FROZEN DESSERTS made with wine. No person shall sell at retail individual servings of ice cream OR OTHER FROZEN DESSERTS made with wine bearing or containing more than one-half of one percent but not more than five percent of alcohol by volume, unless the following statements are prominently displayed on the printed menu (or, if no printed menus are used, on the menu board or sign setting forth

the bill of fare) immediately adjacent to the listing of the item or items of wine ice cream OR OTHER FROZEN DESSERTS being offered:

1. The sale of wine ice cream OR OTHER FROZEN DESSERTS to individuals under the age of twenty-one is prohibited.

2. Wine ice cream [contains] OR OTHER FROZEN DESSERTS CONTAIN alcohol up to five percent by volume.

3. Notice: Wine ice cream [contains] OR OTHER FROZEN DESSERTS CONTAIN alcohol used as a flavoring and, as with any product that contains alcohol:

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

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

S 3. Subdivision 1 of section 3 of the alcoholic beverage control law, as amended by chapter 189 of the laws of 2008, is amended to read as follows:

1. "Alcoholic beverage" or "beverage" mean and include alcohol, spirits, liquor, wine, beer, cider and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed by a human being, and any warehouse receipt, certificate, contract or other document pertaining thereto; except that confectionery containing alcohol as provided by subdivision twelve of section two hundred of the agriculture and markets law and ice cream AND OTHER FROZEN DESSERTS made with wine as provided in subdivision fifteen of section two hundred of the agriculture and markets law shall not be regulated as an "alcoholic beverage" or "beverage" within the meaning of this section where the sale, delivery or giving away is to a person aged twenty-one years or older. The sale, delivery or giving away of ice cream made with wine to a person under the age of twenty-one years may be prosecuted administratively and/or criminally in accordance with the provisions of this chapter.

S 4. This act shall take effect on the thirtieth day after it shall have become a law.