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

1015

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to labelling the recycled content level of consumer packaging

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

Section 1. Short title. This act shall be known as the "recycling right to know act".

S 2. Legislative findings and declaration. The legislature hereby finds and declares that waste reduction and recycling are the most environmentally sound solid waste management programs. The legislature further finds that New York consumers can play a major role in promoting recycling by purchasing products made of recycled materials and that consumers need basic information to make informed consumer choices. The legislature further finds that by requiring packaging to carry a product label identifying the recycled content level of such packaging, consumers will be able to make such informed choices. The legislature also finds that as more products use recycled material for packaging, the markets for recycled products will be positively affected.

S 3. The general business law is amended by adding a new section 399-ff to read as follows:

S 399-FF. RECYCLED CONTENT LEVEL OF CONSUMER PACKAGING. 1. DEFINITIONS. FOR PURPOSES OF THIS SECTION:

(A) "LABEL" SHALL MEAN ANY WRITTEN, PRINTED OR GRAPHIC MATTER AFFIXED, IMPRINTED AND/OR IMPRESSED TO ANY PACKAGE CONTAINING A CONSUMER COMMODITY.

(B) "CONSUMER COMMODITY" OR "COMMODITY" SHALL MEAN THE FOLLOWING, IF SOLD IN A PACKAGE:

(I) FOOD OR BEVERAGES, WHETHER SOLID, LIQUID OR MIXED, AND ALL SUBSTANCES OR INGREDIENTS ADDED THERETO FOR ANY PURPOSE, USED OR INTENDED FOR CONSUMPTION BY HUMAN BEINGS OR ANIMALS; AND

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

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(II) GOODS, CUSTOMARILY SOLD AT RETAIL, THAT ARE USED BY CONSUMERS IN THE PERFORMANCE OF SERVICES ORDINARILY RENDERED WITHIN THE HOUSEHOLD OR BUSINESS, AND THAT ARE USUALLY CONSUMED OR EXPENDED IN THE COURSE OF SUCH USE.

(C) "PACKAGE" SHALL MEAN A CONTAINER IN WHICH ANY CONSUMER COMMODITY IS ENCLOSED FOR SALE AT RETAIL, AND WHICH CONTAINS A SINGLE ITEM, A QUANTITY OF THE SAME ITEM, A SET OR AN ITEM WITH ALL ITS COMPONENT PARTS.

(D) "PRODUCT" SHALL MEAN THAT PORTION OF A CONSUMER COMMODITY OFFERED FOR SALE AT RETAIL OR WHOLESALE THAT IS NOT A PACKAGE.

(E) "MATERIAL" SHALL MEAN ANY SUBSTANCE OR COMBINATION OF SUBSTANCES FROM WHICH PACKAGING IS MADE, INCLUDING, BUT NOT LIMITED TO PAPER, GLASS, PLASTIC AND METAL.

(F) "MULTI-MATERIAL PACKAGING" SHALL MEAN PACKAGING MADE OF MORE THAN ONE MATERIAL.

(G) "POST-CONSUMER MATERIAL" MEANS ONLY THOSE PRODUCTS, PACKAGES OR MATERIALS GENERATED BY A BUSINESS OR CONSUMER WHICH HAVE SERVED THEIR INTENDED END USE AS CONSUMER ITEMS, AND WHICH HAVE BEEN SEPARATED OR DIVERTED FROM THE WASTE STREAM FOR THE PURPOSES OF COLLECTION, AND RECYCLING AS A SECONDARY MATERIAL FEEDSTOCK, BUT SHALL NOT INCLUDE WASTE MATERIAL GENERATED AFTER THE COMPLETION OF A MANUFACTURING OR CONVERTING PROCESS.

2. NO MERCHANT, MANUFACTURER, FIRM, CORPORATION, ASSOCIATION OR AGENT OR EMPLOYEE THEREOF SHALL SELL ANY CONSUMER COMMODITY WHICH FAILS TO DISCLOSE ON THE LABEL OF ITS PACKAGE THE POST-CONSUMER RECYCLED CONTENT OF THE PACKAGE. THE LABEL SHALL CONTAIN A CIRCLE WITH THREE CHASING ARROWS ON THE CIRCUMFERENCE OF THE CIRCLE ALL FACING THE SAME DIRECTION, WITH THE PERCENTAGE OF THE POST-CONSUMER RECYCLED CONTENT OF THE PACKAGE LOCATED WITHIN SUCH CIRCLES. THE LABEL MUST APPEAR ON THE FACE OF THE PACKAGE, MUST BE EASILY VISIBLE AND BE OF SIGNIFICANT SIZE. MULTI-MATERIAL PACKAGING MUST INCLUDE THE AVERAGE POST-CONSUMER RECYCLED CONTENT OF EACH OF THE MATERIALS THAT MAKE UP THE TOTAL PACKAGE.

3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE, THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.