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

4426

2009-2010 Regular Sessions

I N S E N A T E

April 23, 2009

Introduced by Sen. O. JOHNSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to obligations of care of purveyors of food

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

Section 1. Article 9 of the general obligations law is amended by adding a new title 3 to read as follows:

TITLE 3

PURVEYORS OF FOOD

SECTION 9-301. SHORT TITLE.
9-303. DEFINITIONS.
9-305. PURVEYORS OF FOOD THAT COMPLY WITH THE APPLICABLE STATE AND FEDERAL LAWS.

S 9-301. SHORT TITLE. THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS THE "COMMONSENSE CONSUMPTION ACT".

S 9-303. DEFINITIONS. FOR THE PURPOSES OF THIS TITLE:

1. "CLAIM" SHALL MEAN ANY CLAIM BY OR ON BEHALF OF A NATURAL PERSON, AS WELL AS ANY DERIVATIVE OR OTHER CLAIM ARISING THEREFROM ASSERTED BY OR ON BEHALF OF ANY OTHER PERSON.

2. "GENERALLY KNOWN CONDITION ALLEGEDLY CAUSED BY OR ALLEGEDLY LIKELY TO RESULT FROM LONG-TERM CONSUMPTION" SHALL MEAN A CONDITION GENERALLY KNOWN TO RESULT OR LIKELY TO RESULT FROM THE CUMULATIVE EFFECT OF CONSUMPTION, AND NOT FROM A SINGLE INSTANCE OF CONSUMPTION.

3. "KNOWING AND WILLFUL VIOLATION OF FEDERAL OR STATE LAW" SHALL MEAN THAT:

A. THE CONDUCT CONSTITUTING THE VIOLATION WAS COMMITTED WITH THE INTENT TO DECEIVE OR INJURE CONSUMERS OR WITH ACTUAL KNOWLEDGE THAT SUCH CONDUCT WAS INJURIOUS TO CONSUMERS; AND

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

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B. THE CONDUCT CONSTITUTING THE VIOLATION WAS NOT REQUIRED BY THE RULES, ORDERS, OR OTHER PRONOUNCEMENT OF, OR ANY LAW ADMINISTERED BY ANY FEDERAL, STATE OR LOCAL AGENCY.

4. "OTHER PERSON" SHALL MEAN ANY INDIVIDUAL, CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION, FIRM, PARTNERSHIP OR OTHER ENTITY, INCLUDING ANY GOVERNMENTAL ENTITY.

S 9-305. PURVEYORS OF FOOD THAT COMPLY WITH THE APPLICABLE STATE AND FEDERAL LAWS. 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS SECTION, A MANUFACTURER, PACKER, DISTRIBUTOR, CARRIER, HOLDER, SELLER, MARKETER OR ADVERTISER OF FOOD, AS DEFINED IN SECTION 201 (F) OF THE FEDERAL FOOD DRUG AND COSMETIC ACT (21 U.S.C. 321 (F)), OR AN ASSOCIATION OF ONE OR MORE SUCH ENTITIES, SHALL NOT BE SUBJECT TO ANY CIVIL ACTION FOR ANY CLAIM ARISING OUT OF WEIGHT GAIN, OBESITY, A HEALTH CONDITION ASSOCIATED WITH WEIGHT GAIN OR OBESITY, OR OTHER GENERALLY KNOWN CONDITION ALLEGEDLY CAUSED BY OR ALLEGEDLY LIKELY TO RESULT FROM LONG-TERM CONSUMPTION OF FOOD.

2. SUBDIVISION ONE OF THIS SECTION SHALL NOT PRECLUDE A CIVIL ACTION WHERE THE CLAIM OF WEIGHT GAIN, OBESITY, HEALTH CONDITION ASSOCIATED WITH WEIGHT GAIN OR OBESITY, OR OTHER GENERALLY KNOWN CONDITION ALLEGEDLY CAUSED BY OR ALLEGEDLY LIKELY TO RESULT FROM LONG-TERM CONSUMPTION OF FOOD WHEN SUCH CLAIM:

A. INCLUDES AS AN ELEMENT OF THE CAUSE OF ACTION A MATERIAL VIOLATION OF AN ADULTERATION OR MISBRANDING REQUIREMENT PRESCRIBED BY FEDERAL OR STATE LAW OR REGULATION, AND THE CLAIMED INJURY WAS PROXIMATELY CAUSED BY SUCH VIOLATION; OR

B. IS BASED ON ANY OTHER MATERIAL VIOLATION OF FEDERAL OR STATE LAW APPLICABLE TO THE MANUFACTURING, MARKETING, DISTRIBUTION, ADVERTISING, LABELING OR SALE OF FOOD, PROVIDED THAT SUCH VIOLATION WAS KNOWING AND WILLFUL, AND THE CLAIMED INJURY WAS PROXIMATELY CAUSED BY SUCH VIOLATION.

3. A. IN ANY ACTION AUTHORIZED PURSUANT TO PARAGRAPH A OF SUBDIVISION TWO OF THIS SECTION, THE COMPLAINT SHALL STATE WITH PARTICULARITY FOR EACH DEFENDANT AND CAUSE OF ACTION THE FOLLOWING:

(1) THE PROVISION OF FEDERAL OR STATE LAW, RULE OR REGULATION THAT ALLEGEDLY CREATED THE CAUSE OF ACTION;

(2) EACH ELEMENT OF THE CAUSE OF ACTION AND THE SPECIFIC FACTS ALLEGED TO SATISFY EACH ELEMENT OF THE CAUSE OF ACTION; AND

(3) THE SPECIFIC FACTS THAT ALLEGEDLY DEMONSTRATE THAT THE VIOLATION OF THE PROVISION OF FEDERAL OR STATE LAW, RULE OR REGULATION PROXIMATELY CAUSED ACTUAL INJURY TO THE PLAINTIFF.

B. IN ANY ACTION AUTHORIZED PURSUANT TO PARAGRAPH B OF SUBDIVISION TWO OF THIS SECTION, THE COMPLAINT SHALL COMPLY WITH THE PROVISIONS OF PARAGRAPH A OF THIS SUBDIVISION AND THE COMPLAINT COMMENCING SUCH ACTION SHALL STATE WITH PARTICULARITY FACTS SUFFICIENT TO SUPPORT A REASONABLE INFERENCE THAT THE VIOLATION WAS WITH INTENT TO DECEIVE OR INJURE CONSUMERS OR WITH THE ACTUAL KNOWLEDGE THAT SUCH VIOLATION WAS INJURIOUS TO CONSUMERS.

4. A. IN ANY ACTION AUTHORIZED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE OBLIGATION OF ANY PARTY OR NON-PARTY TO MAKE DISCLOSURES OF ANY KIND UNDER ANY APPLICABLE LAW, RULE OR ORDER, OR TO RESPOND TO DISCOVERY REQUESTS OF ANY KIND, AS WELL AS ALL PROCEEDINGS UNRELATED TO ADJUDICATING A MOTION TO DISMISS, SHALL BE STAYED PRIOR TO THE TIME FOR FILING A MOTION TO DISMISS AND DURING THE PENDENCY OF ANY SUCH MOTION UNLESS THE COURT FINDS UPON MOTION OF ANY PARTY THAT A RESPONSE TO A PARTICULARIZED DISCOVERY REQUEST IS NECESSARY TO PRESERVE EVIDENCE.

B. DURING THE PENDENCY OF ANY STAY OF DISCOVERY PURSUANT TO THIS SUBDIVISION, THE RESPONSIBILITIES OF THE PARTIES WITH REGARD TO THE TREATMENT OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE OBJECTS SHALL BE GOVERNED BY THE PROVISIONS OF THE CIVIL PRACTICE LAW AND RULES. A PARTY AGGRIEVED BY THE FAILURE OF AN OPPOSING PARTY TO COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH MAY SEEK THE APPLICABLE REMEDIES UNDER THE CIVIL PRACTICE LAW AND RULES.

S 2. This act shall take effect immediately and shall apply to any action or proceeding pending on such effective date, and to any action or proceeding commenced on or after the effective date of this act.