

4489

2009-2010 Regular Sessions

I N S E N A T E

April 24, 2009

Introduced by Sen. DUANE -- (at request of the Governor) -- read twice
and ordered printed, and when printed to be committed to the Committee
on Health

AN ACT to amend the public health law and the agriculture and markets
law, in relation to prohibiting the sale or use of artificial trans
fats in food service establishments, mobile food service establish-
ments and retail food stores

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

1 Section 1. Section 1351 of the public health law is amended to read
2 as follows:
3 S 1351. Food places; duty to permit inspections. Every owner, opera-
4 tor, lessor, lessee or person in charge of any hotel, restaurant, dining
5 room, dining car, drug store, soda fountain, steamboat or other place
6 engaged in the preparation, sale or service of food for and to the
7 general public, and every officer or other person in charge of any
8 public, penal or charitable institution in this state, shall permit the
9 commissioner or his duly authorized agents or employees to have access
10 to all parts of any and all of such places herein mentioned wherein food
11 is stored, prepared or served for the purpose of ascertaining whether
12 the provisions of sections thirteen hundred fifty to thirteen hundred
13 fifty-two, inclusive, AND SECTION THIRTEEN HUNDRED FIFTY-SIX of this
14 [chapter] TITLE, and the provisions of the sanitary code and provisions
15 of local ordinances or regulations are being observed.
16 S 2. The public health law is amended by adding a new section 1356 to
17 read as follows:
18 S 1356. FOOD CONTAINING ARTIFICIAL TRANS FAT. 1. (A) NO FOOD SERVICE
19 ESTABLISHMENT OR MOBILE FOOD SERVICE ESTABLISHMENT, AS DEFINED BY THE
20 STATE SANITARY CODE, SHALL STORE, DISTRIBUTE, HOLD FOR SERVICE, USE IN
21 PREPARATION OF ANY MENU ITEM, SERVE OR SELL ANY FOOD, AS DEFINED BY THE
22 STATE SANITARY CODE, CONTAINING ARTIFICIAL TRANS FAT.

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

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1 (B) PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY TO FOOD THAT IS:
2 (I) SERVED OR SOLD DIRECTLY TO PATRONS OR CUSTOMERS IN A MANUFACTURER'S
3 ORIGINAL SEALED PACKAGE THAT BEARS A NUTRITION FACTS LABEL IN THE FORM
4 REQUIRED BY THE FEDERAL NUTRITION LABELING AND EDUCATION ACT OF 1990 AND
5 THE ASSOCIATED REGULATIONS OF THE FEDERAL FOOD AND DRUG ADMINISTRATION;
6 OR (II) STORED, HELD OR USED FOR THE PURPOSE OF MANUFACTURING FOOD THAT
7 IS SERVED OR SOLD DIRECTLY TO PATRONS OR CUSTOMERS IN A MANUFACTURER'S
8 ORIGINAL SEALED PACKAGE THAT BEARS A NUTRITION FACTS LABEL IN THE FORM
9 REQUIRED BY THE FEDERAL NUTRITION LABELING AND EDUCATION ACT OF 1990 AND
10 THE ASSOCIATED REGULATIONS OF THE FEDERAL FOOD AND DRUG ADMINISTRATION.

11 2. (A) A FOOD SHALL BE DEEMED TO CONTAIN ARTIFICIAL TRANS FAT IF THE
12 FOOD IS LABELED AS, LISTS AS AN INGREDIENT, OR CONTAINS: (I) VEGETABLE
13 SHORTENING OR MARGARINE, UNLESS DOCUMENTATION ACCEPTABLE TO THE DEPART-
14 MENT DEMONSTRATES THAT SUCH VEGETABLE SHORTENING OR MARGARINE CONTAINS
15 NO PARTIALLY HYDROGENATED VEGETABLE OIL; OR (II) ANY KIND OF PARTIALLY
16 HYDROGENATED VEGETABLE OIL.

17 (B) NOTWITHSTANDING PARAGRAPH (A) OF THIS SUBDIVISION, A FOOD WHICH
18 HAS, ACCORDING TO THE NUTRITION FACTS LABEL OR OTHER DOCUMENTATION
19 ACCEPTABLE TO THE DEPARTMENT, A TRANS FAT CONTENT OF LESS THAN 0.5 GRAMS
20 PER SERVING SHALL NOT BE DEEMED TO CONTAIN ARTIFICIAL TRANS FAT.

21 3. WITH RESPECT TO ANY FOOD STORED, DISTRIBUTED, HELD FOR SERVICE,
22 USED IN PREPARATION OF ANY MENU ITEM, SERVED OR SOLD BY A FOOD SERVICE
23 ESTABLISHMENT OR A MOBILE FOOD SERVICE ESTABLISHMENT THAT IS OR CONTAINS
24 VEGETABLE SHORTENING, MARGARINE OR ANY KIND OF PARTIALLY HYDROGENATED
25 VEGETABLE OIL, THE ESTABLISHMENT SHALL MAINTAIN, FOR AS LONG AS THE FOOD
26 IS STORED, DISTRIBUTED, HELD FOR SERVICE, USED IN PREPARATION OF ANY
27 MENU ITEM, SERVED OR SOLD AND IN A MANNER SPECIFIED BY THE DEPARTMENT,
28 DOCUMENTATION ACCEPTABLE TO THE DEPARTMENT WHICH ESTABLISHES THE ARTIFI-
29 CIAL TRANS FAT CONTENT OF THE FOOD.

30 S 3. Section 500 of the agriculture and markets law is amended by
31 adding a new subdivision 6 to read as follows:

32 6. (A) (I) NO FOOD SERVICE ESTABLISHMENT OR RETAIL FOOD STORE, AS
33 DEFINED BY THIS SECTION, SHALL STORE, DISTRIBUTE, HOLD FOR SERVICE, USE
34 IN PREPARATION OF ANY MENU ITEM, SERVE OR SELL ANY FOOD, AS DEFINED BY
35 SECTION ONE HUNDRED NINETY-EIGHT OF THIS CHAPTER, CONTAINING ARTIFICIAL
36 TRANS FAT.

37 (II) SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL NOT APPLY TO FOOD THAT
38 IS: (A) SERVED OR SOLD DIRECTLY TO PATRONS OR CUSTOMERS IN A MANUFAC-
39 Turer's ORIGINAL SEALED PACKAGE THAT BEARS A NUTRITION FACTS LABEL IN
40 THE FORM REQUIRED BY THE FEDERAL NUTRITION LABELING AND EDUCATION ACT OF
41 1990 AND THE ASSOCIATED REGULATIONS OF THE FEDERAL FOOD AND DRUG ADMIN-
42 ISTRATION; OR (B) STORED, HELD OR USED FOR THE PURPOSE OF MANUFACTURING
43 FOOD THAT IS SERVED OR SOLD DIRECTLY TO PATRONS OR CUSTOMERS IN A
44 MANUFACTURER'S ORIGINAL SEALED PACKAGE THAT BEARS A NUTRITION FACTS
45 LABEL IN THE FORM REQUIRED BY THE FEDERAL NUTRITION LABELING AND EDUCA-
46 TION ACT OF 1990 AND THE ASSOCIATED REGULATIONS OF THE FEDERAL FOOD AND
47 DRUG ADMINISTRATION.

48 (B) (I) A FOOD SHALL BE DEEMED TO CONTAIN ARTIFICIAL TRANS FAT IF THE
49 FOOD IS LABELED AS, LISTS AS AN INGREDIENT, OR CONTAINS: (A) VEGETABLE
50 SHORTENING OR MARGARINE, UNLESS DOCUMENTATION ACCEPTABLE TO THE DEPART-
51 MENT DEMONSTRATES THAT SUCH VEGETABLE SHORTENING OR MARGARINE CONTAINS
52 NO PARTIALLY HYDROGENATED VEGETABLE OIL; OR (B) ANY KIND OF PARTIALLY
53 HYDROGENATED VEGETABLE OIL.

54 (II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, A FOOD WHICH
55 HAS, ACCORDING TO THE NUTRITION FACTS LABEL OR OTHER DOCUMENTATION

1 ACCEPTABLE TO THE DEPARTMENT, A TRANS FAT CONTENT OF LESS THAN 0.5 GRAMS
2 PER SERVING SHALL NOT BE DEEMED TO CONTAIN ARTIFICIAL TRANS FAT.

3 (C) WITH RESPECT TO ANY FOOD STORED, DISTRIBUTED, HELD FOR SERVICE,
4 USED IN PREPARATION OF ANY MENU ITEM, SERVED OR SOLD BY A FOOD SERVICE
5 ESTABLISHMENT OR A RETAIL FOOD STORE THAT IS OR CONTAINS VEGETABLE SHOR-
6 TENING, MARGARINE OR ANY KIND OF PARTIALLY HYDROGENATED VEGETABLE OIL,
7 THE ESTABLISHMENT OR STORE SHALL MAINTAIN, FOR AS LONG AS THE FOOD IS
8 STORED, DISTRIBUTED, HELD FOR SERVICE, USED IN PREPARATION OF ANY MENU
9 ITEM, SERVED OR SOLD AND IN A MANNER SPECIFIED BY THE DEPARTMENT,
10 DOCUMENTATION ACCEPTABLE TO THE DEPARTMENT WHICH ESTABLISHES THE ARTIFI-
11 CIAL TRANS FAT CONTENT OF THE FOOD.

12 S 4. This act shall take effect on the one hundred eightieth day after
13 it shall have become a law with respect to oils, shortenings and marga-
14 rines containing artificial trans fat that are used for frying or in
15 spreads, and shall take effect one year after it shall have become a law
16 with respect to oils or shortenings used for deep frying of yeast dough
17 or cake batter and with respect to all other foods containing artificial
18 trans fat. Effective immediately, the commissioner of health and the
19 commissioner of agriculture and markets are authorized to adopt, amend
20 or repeal, on an emergency basis if necessary, any regulation necessary
21 to implement any provision of this act on its effective date.