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

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I N S E N A T E

January 11, 2010

Introduced by Sen. DUANE -- 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 establishments and retail food stores

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

Section 1. Section 1351 of the public health law is amended to read as follows:

S 1351. Food places; duty to permit inspections. Every owner, operator, lessor, lessee or person in charge of any hotel, restaurant, dining room, dining car, drug store, soda fountain, steamboat or other place engaged in the preparation, sale or service of food for and to the general public, and every officer or other person in charge of any public, penal or charitable institution in this state, shall permit the commissioner or his duly authorized agents or employees to have access to all parts of any and all of such places herein mentioned wherein food is stored, prepared or served for the purpose of ascertaining whether the provisions of sections thirteen hundred fifty to thirteen hundred fifty-two, inclusive, AND SECTION THIRTEEN HUNDRED FIFTY-SIX of this [chapter] TITLE, and the provisions of the sanitary code and provisions of local ordinances or regulations are being observed.

S 2. The public health law is amended by adding a new section 1356 to read as follows:

S 1356. FOOD CONTAINING ARTIFICIAL TRANS FAT. 1. (A) NO FOOD SERVICE ESTABLISHMENT OR MOBILE FOOD SERVICE ESTABLISHMENT, AS DEFINED BY THE STATE SANITARY CODE, SHALL STORE, DISTRIBUTE, HOLD FOR SERVICE, USE IN PREPARATION OF ANY MENU ITEM, SERVE OR SELL ANY FOOD, AS DEFINED BY THE STATE SANITARY CODE, CONTAINING ARTIFICIAL TRANS FAT.

(B) PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY TO FOOD THAT IS: (I) SERVED OR SOLD DIRECTLY TO PATRONS OR CUSTOMERS IN A MANUFACTURER'S ORIGINAL SEALED PACKAGE THAT BEARS A NUTRITION FACTS LABEL IN THE FORM REQUIRED BY THE FEDERAL NUTRITION LABELING AND EDUCATION ACT OF 1990 AND

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

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THE ASSOCIATED REGULATIONS OF THE FEDERAL FOOD AND DRUG ADMINISTRATION; OR (II) STORED, HELD OR USED FOR THE PURPOSE OF MANUFACTURING FOOD THAT IS SERVED OR SOLD DIRECTLY TO PATRONS OR CUSTOMERS IN A MANUFACTURER'S ORIGINAL SEALED PACKAGE THAT BEARS A NUTRITION FACTS LABEL IN THE FORM REQUIRED BY THE FEDERAL NUTRITION LABELING AND EDUCATION ACT OF 1990 AND THE ASSOCIATED REGULATIONS OF THE FEDERAL FOOD AND DRUG ADMINISTRATION.

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

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

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

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

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

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

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

(II) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH, A FOOD WHICH HAS, ACCORDING TO THE NUTRITION FACTS LABEL OR OTHER DOCUMENTATION ACCEPTABLE TO THE DEPARTMENT, A TRANS FAT CONTENT OF LESS THAN 0.5 GRAMS PER SERVING SHALL NOT BE DEEMED TO CONTAIN ARTIFICIAL TRANS FAT.

(C) WITH RESPECT TO ANY FOOD STORED, DISTRIBUTED, HELD FOR SERVICE, USED IN PREPARATION OF ANY MENU ITEM, SERVED OR SOLD BY A FOOD SERVICE ESTABLISHMENT OR A RETAIL FOOD STORE THAT IS OR CONTAINS VEGETABLE SHORTENING, MARGARINE OR ANY KIND OF PARTIALLY HYDROGENATED VEGETABLE OIL, THE ESTABLISHMENT OR STORE SHALL MAINTAIN, FOR AS LONG AS THE FOOD IS STORED, DISTRIBUTED, HELD FOR SERVICE, USED IN PREPARATION OF ANY MENU ITEM, SERVED OR SOLD AND IN A MANNER SPECIFIED BY THE DEPARTMENT, DOCUMENTATION ACCEPTABLE TO THE DEPARTMENT WHICH ESTABLISHES THE ARTIFICIAL TRANS FAT CONTENT OF THE FOOD.

S 4. This act shall take effect on the two hundredth day after it shall have become a law with respect to oils, shortenings and margarines containing artificial trans fat that are used for frying or in spreads, and shall take effect one year after it shall have become a law with respect to oils or shortenings used for deep frying of yeast dough or cake batter and with respect to all other foods containing artificial trans fat. Effective immediately, the commissioner of health and the commissioner of agriculture and markets are authorized to adopt, amend or repeal, on an emergency basis if necessary, any regulation necessary to implement any provision of this act on its effective date.