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

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I N A S S E M B L Y

February 24, 2010

Introduced by M. of A. J. MILLER, KOON -- Multi-Sponsored by -- M. of A. CRESPO, ERRIGO, McKEVITT -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to changes to grocery item packaging

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

Section 1. The general business law is amended by adding a new section 396-zz to read as follows:

S 396-ZZ. CHANGES TO GROCERY ITEM PACKAGING. 1. IT SHALL BE A DECEPTIVE ACT AND PRACTICE AS DEFINED BY ARTICLE TWENTY-TWO-A OF THIS CHAPTER FOR THE SELLER OF PREPACKAGED GROCERY ITEMS TO KNOWINGLY SELL SUCH ITEMS IF THE SIZE OF THEIR COMMONLY SOLD STANDARD PACKAGING HAS BEEN MADE MORE THAN TEN PERCENT SMALLER THAN PREVIOUSLY SOLD WITHOUT INFORMING CONSUMERS OF SUCH SIZE CHANGES, EXCEPTING CASES WHERE THE PRICE PER UNIT OF MEASUREMENT HAS NOT CHANGED FOR SUCH ITEMS. A PROMINENT SIGN SHALL BE DISPLAYED BY SUCH SELLER FOR NOT LESS THAN NINETY DAYS AFTER THE FIRST SUCH NEW AND SMALLER PACKAGE HAS BEEN PLACED ON DISPLAY FOR SALE, SHALL BE IN AT LEAST SEVENTY-TWO POINT TYPE, AND SHALL INCLUDE LANGUAGE THAT IS AT A MINIMUM CONSTRUCTIVELY SIMILAR TO THE FOLLOWING:

NOTE: THE PREVIOUSLY SOLD PACKAGE OF THIS PRODUCT (PRODUCT) WHICH WAS SOLD IN A (SIZE AND TYPE OF PACKAGE) AT A PRICE OF (PRICE PER UNIT OF MEASUREMENT) IS NOW BEING SOLD IN A (SIZE AND TYPE OF PACKAGE) AT A PRICE OF (PRICE PER UNIT OF MEASUREMENT).

THIS PROVISION SHALL APPLY TO ANY GROCERY ITEM WHICH HAS BEEN OFFERED FOR SALE IN ITS PRIOR PACKAGE SIZE FOR A PERIOD OF ONE YEAR OR MORE, SUCH THAT A CONSUMER MIGHT REASONABLY EXPECT THAT WHEN PURCHASING THAT ITEM THEY ARE RECEIVING THE PREVIOUSLY CUSTOMARY AND EXPECTED QUANTITY OF SAID ITEM. IT SHALL BE THE RESPONSIBILITY OF THE GROCERY DISTRIBUTOR TO PROVIDE THE RETAILER WITH APPROPRIATE MATERIALS TO LABEL SUCH GROCERY ITEMS WHEN THERE HAS BEEN A CHANGE IN WHAT WAS PREVIOUSLY THE CUSTOMARY SIZE OF PACKAGING.

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

LBD15364-03-0

2. SELLERS SHALL BE EXEMPT FROM THE NOTIFICATION REQUIREMENTS CONTAINED IN THIS SECTION IN ANY CASE WHERE BOTH THE ORIGINAL AND NEW SIZED PACKAGES ARE OFFERED FOR SALE SIMULTANEOUSLY AND DISPLAYED IN IMMEDIATE PROXIMITY TO EACH OTHER FOR A PERIOD OF AT LEAST FORTY-FIVE DAYS.

3. SELLERS SHALL BE EXEMPT FROM THE NOTIFICATION REQUIREMENTS CONTAINED IN THIS SECTION IN ANY CASE WHERE THE PER UNIT PRICE FOR BOTH THE OLD AND NEW SIZES OF SUCH PACKAGED GROCERY ITEMS IS AND REMAINS IDENTICAL FOR A PERIOD OF NOT LESS THAN SIXTY DAYS.

4. VIOLATIONS OF THIS SECTION WILL BE SUBJECT TO ALL SUCH PENALTIES AND REMEDIES AS PROVIDED FOR BY ARTICLE TWENTY-TWO-A OF THIS CHAPTER AND AS THE ATTORNEY GENERAL MAY DEEM APPROPRIATE.

5. IN ADDITION, A SELLER FOUND TO BE IN VIOLATION OF THIS SECTION SHALL BE SUBJECT TO A PENALTY OF TREBLE THE UNIT PRICE DIFFERENTIAL MULTIPLIED BY THE NUMBER OF UNITS OFFERED FOR SALE IN VIOLATION OF THIS PROVISION, AND FURTHER MULTIPLIED BY THE NUMBER OF DAYS THAT SUCH ITEMS WERE OFFERED FOR SALE TO THE PUBLIC. FINES LEVIED PURSUANT TO VIOLATIONS OF THIS SECTION SHALL BE PAYABLE TO THE GENERAL FUND.

6. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY RETAIL STORE LOCATIONS WITH FEWER THAN SEVEN THOUSAND FIVE HUNDRED SQUARE FEET OF SPACE DEDICATED TO SALES OF GROCERY ITEMS.

S 2. This act shall take effect immediately.