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I N S E N A T E

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Introduced by Sens. HUNTLEY, ADAMS, DIAZ, ESPADA, MONSERRATE, PARKER,
SAMPSON, SCHNEIDERMAN, STAVISKY -- read twice and ordered printed, and
when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the agriculture and markets law, in relation to certain
perishable foods

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

1 Section 1. Section 16 of the agriculture and markets law is amended by
2 adding a new subdivision 44 to read as follows:

3 44. (A) RECEIVE AND EVALUATE COMPLAINTS AND INITIATE HIS OR HER OWN
4 INVESTIGATIONS RELATING TO MATTERS PROVIDED IN ARTICLE TWELVE-B OF THIS
5 CHAPTER, RELATING TO CERTAIN PERISHABLE FOODS, AND TAKE APPROPRIATE
6 ACTION RELATED THERETO, INCLUDING STOP SALE ORDERS WHERE NECESSARY AND
7 PROPER.

8 (B) THE COMMISSIONER SHALL HAVE THE POWER, AFTER REASONABLE NOTICE AND
9 HEARING, TO DETERMINE THE REASONABLENESS OF ANY STATEMENT OR REPRESEN-
10 TATION AS TO THE DATE AND CONDITIONS OF STORAGE AFFIXED PURSUANT TO
11 ARTICLE TWELVE-B OF THIS CHAPTER.

12 S 2. The agriculture and markets law is amended by adding a new arti-
13 cle 12-B to read as follows:

14 ARTICLE 12-B

15 PERISHABLE FOODS

16 SECTION 156-J. STATEMENT OF LEGISLATIVE FINDINGS AND PURPOSES.

17 156-K. DEFINITIONS.

18 156-L. LABELLING REQUIREMENTS.

19 156-M. EXEMPTIONS.

20 156-N. EXCEPTIONAL CIRCUMSTANCES.

21 156-O. ENFORCEMENT.

22 156-P. RULES AND REGULATIONS.

23 S 156-J. STATEMENT OF LEGISLATIVE FINDINGS AND PURPOSES. THE LEGISLA-
24 TURE HEREBY FINDS AND DECLARES THAT:

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

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1 1. CONSUMERS CANNOT BE CERTAIN THAT FOOD OFFERED FOR SALE IS FRESH OR
2 THAT IT WILL REMAIN FRESH FOR A REASONABLE PERIOD OF TIME AFTER IT IS
3 PURCHASED. THE LEGISLATURE PARTICULARLY RECOGNIZES CONSUMER CONCERN WITH
4 THE FRESHNESS OF FOODS INCLUDING, BUT NOT LIMITED TO, MEAT, POULTRY,
5 FISH, DAIRY PRODUCTS, EGGS, FRUIT, VEGETABLES, AND BAKED GOODS.

6 2. THE LEGISLATURE FURTHER FINDS THAT THE FOOD INDUSTRY'S PRACTICE OF
7 CONTROLLING FOOD FRESHNESS THROUGH CODED DATES HAS PROVEN INADEQUATE FOR
8 PROTECTION OF THE PUBLIC.

9 3. THE LEGISLATURE DECLARES THAT A MANDATORY SYSTEM OF CLEAR AND LEGI-
10 BLE DATING ACCOMPANIED BY A STATEMENT OF RECOMMENDED CONDITIONS OF STOR-
11 AGE IS THE BEST WAY TO ASSURE CONSUMERS OF THE FRESHNESS OF THE GOODS
12 THAT THEY BUY IN STORES.

13 S 156-K. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING
14 TERMS SHALL HAVE THE FOLLOWING MEANINGS:

15 1. "FOOD STORE" MEANS A STORE SELLING FOOD AT RETAIL, WHICH STORE IS
16 NOT PRIMARILY ENGAGED IN THE SALE OF FOOD FOR CONSUMPTION ON THE PREM-
17 ISES;

18 2. "PERISHABLE FOODS" MEANS AND INCLUDES (A) EGGS, GRADE AA, GRADE A,
19 AND GRADE B SHELL EGGS;

20 (B) ALL PRE-PACKAGED, FULLY OR PARTIALLY PREPARED BAKED GOODS WHICH
21 HAVE A MOISTURE CONTENT EXCEEDING EIGHTEEN PERCENT, WITH OR WITHOUT
22 ADDITIVES, KNOWN AS:

23 (I) BREADS, ROLLS AND BUNS AS DEFINED PURSUANT TO TITLE 21, CHAPTER 1,
24 PART 136.110 OF THE CODE OF FEDERAL REGULATIONS, EXCEPT THOSE KNOWN AS
25 FRUITCAKES;

26 (II) CAKES, PASTRIES, AND COOKIES, EXCEPT THOSE THAT ARE OFFERED FOR
27 SALE IN INDIVIDUAL, PORTION PACK, SNACK-TYPE PACKAGES;

28 (III) ENGLISH MUFFINS, CORN MUFFINS, BRAN MUFFINS, AND OTHER SIMILAR
29 PRODUCTS;

30 (C) THE FOLLOWING PREPACKAGED DAIRY AND DAIRY-TYPE PRODUCTS:

31 (I) THOSE PRODUCTS WITH OR WITHOUT ADDITIVES OR FLAVORINGS, KNOWN AS
32 CHEESE, AS DEFINED PURSUANT TO TITLE 21, CHAPTER 1, PART 133 OF THE CODE
33 OF FEDERAL REGULATIONS, THAT CONTAIN FIFTY PERCENT OR MORE MOISTURE IN
34 THE FINISHED PRODUCT;

35 (II) LOW-FAT, MULTI-VITAMIN, MULTI-MINERAL TYPE MILK PRODUCTS WHICH
36 ARE NORMALLY STORED AT TEMPERATURES BETWEEN THIRTY-TWO DEGREES FAHREN-
37 HEIT AND FORTY DEGREES FAHRENHEIT;

38 (III) FLAVORED MILK;

39 (IV) CULTURED MILK, CULTURED MILK PRODUCTS, CULTURED SKIM-MILK, AND
40 CULTURED SKIM-MILK PRODUCTS, WITH OR WITHOUT FRUITS, VEGETABLES, MEATS,
41 CHEESES, OR OTHER ADDITIVES;

42 (V) MILK SHAKE;

43 (VI) EGGNOG;

44 (VII) YOGURT, MADE FROM SKIM-MILK OR WHOLE MILK, WITH OR WITHOUT
45 FRUITS, VEGETABLES, MEATS, OR OTHER ADDITIVES;

46 (VIII) WHIPPED CREAM AND INSTANT WHIPPED CREAM;

47 (IX) SOUR CREAM, CULTURED CREAM, SALAD CREAM, AND NON-CULTURED SOUR
48 CREAM, WITH OR WITHOUT CULTURED HALF AND HALF;

49 (X) SOUR HALF AND HALF, CULTURED HALF AND HALF, NON-CULTURED SOUR HALF
50 AND HALF, AND NON-CULTURED HALF AND HALF;

51 (XI) DAIRY DRESSING AND DAIRY DIP;

52 (XII) NON-DAIRY COFFEE CREAMERS WHICH ARE NORMALLY STORED AT TEMPER-
53 ATURES BETWEEN THIRTY-TWO DEGREES FAHRENHEIT AND FORTY DEGREES FAHREN-
54 HEIT; AND

55 (D) ALL PRE-PACKAGED, PREPARED FOODS WHICH REQUIRE REFRIGERATION.

1 3. "RETAIL" OR "RETAIL SALE" MEANS A SALE TO A CONSUMER OR TO ANY
2 PERSON FOR ANY PURPOSE OTHER THAN FOR RESALE;

3 4. "SELL" OR "OFFER TO SELL" MEANS THE ACT OF SELLING, DISPLAYING, OR
4 OFFERING FOR RETAIL SALE FOR OFF-PREMISES HUMAN CONSUMPTION.

5 S 156-1. LABELLING REQUIREMENTS. 1. NO FOOD STORE SHALL OFFER FOR
6 RETAIL SALE ANY PERISHABLE FOOD UNLESS THE CONTAINER OF SUCH PERISHABLE
7 FOOD IS LABELLED IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION AND
8 STAMPED, PRINTED, OR OTHERWISE PLAINLY AND CONSPICUOUSLY MARKED WITH THE
9 FOLLOWING INFORMATION:

10 (A) THE LAST DAY OR DATE OF SALE OR THE LAST DAY OR DATE FOR RECOM-
11 MENDED USAGE; AND

12 (B) A STATEMENT INDICATING RECOMMENDED CONDITIONS OR METHODS OF STOR-
13 AGE.

14 2. THE INFORMATION REQUIRED BY SUBDIVISION ONE OF THIS SECTION SHALL
15 BE CLEARLY MARKED ON EACH AND EVERY PACKAGE OR ITEM AS FOLLOWS:

16 (A) THE INFORMATION SHALL APPEAR ON THE TOP COVER OR PRINCIPAL FRONT
17 OR BACK PANEL OF ITS CONTAINER OR ON A LABEL AFFIXED THERETO; OR

18 (B) A NOTICE SHALL APPEAR ON THE TOP COVER OR PRINCIPAL FRONT OR BACK
19 PANEL OR ON THE LABEL AFFIXED THERETO INDICATING THE LOCATION ON THE
20 PACKAGE OF SUCH INFORMATION.

21 S 156-M. EXEMPTIONS. THE REQUIREMENTS OF SECTION ONE HUNDRED
22 FIFTY-SIX-1 OF THIS ARTICLE SHALL NOT APPLY TO:

23 1. ANY PRODUCT STORED AT OR BELOW A TEMPERATURE OF THIRTY-TWO DEGREES
24 FAHRENHEIT IN ACCORDANCE WITH THE RECOMMENDATION OF THE MANUFACTURER OR
25 PROCESSOR;

26 2. ANY PRODUCT HEREINABOVE DESIGNATED WHICH IS STERILIZED WHEN HERMET-
27 ICALLY SEALED AND PACKAGED AND IS SO MAINTAINED UNTIL THE TIME OF SALE
28 BY A FOOD STORE TO THE PUBLIC;

29 3. ANY PRODUCT MADE FROM PRODUCTS AFTER THE DATE MARKED WHERE SUCH
30 SECONDARY PRODUCTS ARE THE RESULT OF AN ADDITIONAL PROCESSING STAGE;

31 4. ANY COMPANY OWNED STORES, COMMONLY KNOWN AS "THRIFT STORES", AT
32 WHICH CERTAIN PRODUCTS ARE SOLD OR OFFERED FOR SALE, AT A REDUCED PRICE,
33 AFTER THE RECOMMENDED SELL-BY-DATE FOR SUCH GOODS; AND

34 5. ANY PACKAGE WHICH CONTAINS SMALLER PACKAGES OF FOOD PRODUCT IF THE
35 SMALLER PACKAGES BEAR LABEL INFORMATION WHICH COMPLIES WITH THE
36 PROVISIONS OF THIS SECTION AND IF THAT INFORMATION IS READILY ACCESSIBLE
37 TO THE CONSUMER.

38 S 156-N. EXCEPTIONAL CIRCUMSTANCES. UPON WRITTEN APPLICATION TO THE
39 COMMISSIONER, AND UPON A SHOWING OF EXCEPTIONAL CIRCUMSTANCES, A FOOD
40 STORE MAY BE GRANTED AN EXTENSION IN WRITING, NOT TO EXCEED SIX MONTHS,
41 IN WHICH TO COMPLY, IN WHOLE OR IN PART, WITH THE REQUIREMENTS OF THIS
42 ARTICLE. IN THE EVENT THAT A FOOD STORE HAS SUBSTANTIALLY COMPLIED WITH
43 THE REQUIREMENTS OF THIS ARTICLE DURING THE PREVIOUSLY GRANTED EXTENSION
44 PERIOD, BUT EXCEPTIONAL CIRCUMSTANCES EXIST WHICH RENDER FULL COMPLIANCE
45 DURING THE EXTENSION PERIOD IMPOSSIBLE, IMPRACTICABLE, OR CREATE UNDUE
46 FINANCIAL HARDSHIP, A FOOD STORE MAY APPLY IN WRITING TO THE COMMISSION-
47 ER FOR AN ADDITIONAL FINAL EXTENSION IN ORDER TO FULLY COMPLY WITH THIS
48 ARTICLE. ANY REQUEST FOR AN ADDITIONAL FINAL EXTENSION MUST BE SUPPORTED
49 BY EVIDENCE OF EXCEPTIONAL CIRCUMSTANCES AND SUBSTANTIAL COMPLIANCE
50 DURING THE PREVIOUSLY GRANTED EXTENSION PERIOD.

51 S 156-O. ENFORCEMENT. 1. WHENEVER THE COMMISSIONER OR HIS OR HER
52 REPRESENTATIVE SHALL FIND ANY FOOD STORE IN VIOLATION OF THIS ARTICLE,
53 THE COMMISSIONER OR HIS OR HER REPRESENTATIVE MAY ISSUE A WRITTEN "STOP
54 SALE ORDER" TO SUCH FOOD STORE WARNING OF SUCH VIOLATION. ANY SUCH ORDER
55 MAY DIRECT THE FOOD STORE TO REMOVE FROM SALE OR DISPOSE OF ANY PERISH-

1 ABLE FOOD FOUND TO BE IN VIOLATION OF SECTION ONE HUNDRED FIFTY-SIX-1 OF
2 THIS ARTICLE.

3 2. ANY FOOD STORE WHICH HAS BEEN ISSUED A "STOP SALE ORDER" PURSUANT
4 TO SUBDIVISION ONE OF THIS SECTION AND WHICH FAILS TO FOLLOW ANY ONE OR
5 MORE DIRECTIVES SET FORTH THEREIN SHALL BE SUBJECT TO A CIVIL PENALTY IN
6 AN AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS.

7 S 156-P. RULES AND REGULATIONS. THE COMMISSIONER IS AUTHORIZED AND
8 DIRECTED TO PROMULGATE ANY RULES AND REGULATIONS NECESSARY AND APPROPRI-
9 ATE FOR THE IMPLEMENTATION OF THIS ARTICLE.

10 S 3. This act shall take effect on the one hundred eightieth day after
11 it shall have become a law; provided, however that effective immediate-
12 ly, the addition, amendment and/or repeal of any rules or regulations
13 necessary for the implementation of the foregoing provisions of this act
14 on its effective date are authorized and directed to be made and
15 completed on or before such effective date.