

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- 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 the labeling of foods containing sodium and sodium compounds

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

1 Section 1. The agriculture and markets law is amended by adding a new  
2 section 204-e to read as follows:

3 S 204-E. FOODS CONTAINING SODIUM AND SODIUM COMPOUNDS. 1. NOTWITH-  
4 STANDING ANY CONTRARY PROVISION OF LAW, NO PERSON SHALL MANUFACTURE,  
5 PACK, SELL, OFFER FOR SALE AND/OR EXPOSE FOR SALE ANY FOOD COMMODITY IN  
6 PACKAGE FORM UNLESS IT IS LABELED WITH THE FOLLOWING INFORMATION IN A  
7 FORM TO BE PRESCRIBED BY THE COMMISSIONER:

8 A. THE SIZE OF A SERVING OF THE FOOD COMMODITY,

9 B. THE TOTAL AMOUNT OF SUCH SERVINGS IN THE PACKAGE,

10 C. THE APPROXIMATE AMOUNT OF SODIUM, IN MILLIGRAMS, CONTAINED IN A  
11 SERVING OF THE FOOD COMMODITY WHICH APPROXIMATE AMOUNT SHALL REPRESENT A  
12 GOOD FAITH EFFORT MADE BY THE MANUFACTURER, PACKER OR SELLER TO LABEL  
13 SUCH PACKAGE WITH A VALUE THAT IS AS NEAR AS PRACTICABLE TO THE AMOUNT  
14 OF SODIUM IN A SERVING OF THE FOOD COMMODITY, COMPUTED TO THE NEAREST  
15 MULTIPLE OF FIVE MILLIGRAMS, AS CAN BE OBTAINED BY A REASONABLE ANALYSIS  
16 OF SUCH FOOD COMMODITY, EXCEPT THAT, IF NOT MORE THAN TEN MILLIGRAMS ARE  
17 CONTAINED IN A SPECIFIED SERVING OF THE FOOD, THE LABEL SHALL BEAR A  
18 STATEMENT TO THAT EFFECT.

19 2. A. IF THE APPROXIMATE AMOUNT, IN MILLIGRAMS, CONTAINED IN A SERVING  
20 IS GREATER THAN FOUR HUNDRED MILLIGRAMS, THEN EITHER THE WORDS "HIGH IN  
21 SODIUM" OR "HIGHLY SALTED" MUST ALSO BE INCLUDED ON THE LABEL OF THE  
22 PACKAGE.

23 B. IF THE APPROXIMATE AMOUNT, IN MILLIGRAMS, CONTAINED IN A SERVING IS  
24 GREATER THAN EIGHT HUNDRED MILLIGRAMS, THEN EITHER THE WORDS "HIGH IN  
25 SODIUM" OR "HIGHLY SALTED" MUST ALSO BE INCLUDED ON THE LABEL OF THE  
26 PACKAGE ALONG WITH THE SENTENCE: "IN SOME PEOPLE A HIGH SALT (SODIUM)  
27 DIET MAY CONTRIBUTE TO HIGH BLOOD PRESSURE".

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

1 3. FOR PURPOSES OF THIS SECTION:

2 A. THE TERM "SODIUM" SHALL INCLUDE THE SODIUM CONTAINED IN SODIUM  
3 COMPOUNDS.

4 B. THE TERM "FOOD COMMODITY IN PACKAGE FORM" SHALL BE CONSTRUED TO  
5 MEAN A FOOD COMMODITY PACKAGED IN ANY MANNER IN ADVANCE OF SALE IN UNITS  
6 SUITABLE FOR RETAIL SALE, AND CUSTOMARILY SOLD IN A FOOD STORE, BUT  
7 SHALL NOT INCLUDE THE FOLLOWING:

8 (I) FRESH FRUITS, FRESH VEGETABLES AND FRESH UNPROCESSED MEAT, POULTRY  
9 AND FISH;

10 (II) MILK AND EGGS;

11 (III) FOOD SOLD FOR CONSUMPTION ON THE PREMISES; AND

12 (IV) IDENTICAL ITEMS WITHIN A MULTI-ITEM PACKAGE THAT IS PROPERLY  
13 LABELED WITH THE SODIUM CONTENT.

14 C. THE TERM "SERVING" SHALL BE CONSTRUED TO MEAN THAT REASONABLE QUAN-  
15 TITY OF FOOD SUITED FOR, OR PRACTICABLE FOR, CONSUMPTION AS PART OF A  
16 MEAL BY AN ADULT MALE ENGAGED IN LIGHT PHYSICAL ACTIVITY, OR BY AN  
17 INFANT OR CHILD UNDER FOUR YEARS OF AGE WHEN THE ARTICLE PURPORTS TO, OR  
18 IS REPRESENTED TO BE, FOR CONSUMPTION BY AN INFANT OR CHILD UNDER FOUR  
19 YEARS OF AGE.

20 D. THE TERM "APPROXIMATE AMOUNT OF SODIUM" SHALL BE CONSTRUED TO MEAN  
21 A "REPRESENTATIVE VALUE" IN MILLIGRAMS OF THE AMOUNT OF SODIUM CONTAINED  
22 IN A SERVING OF THE FOOD COMMODITY AND SHALL NOT BE CONSTRUED SO RIGIDLY  
23 AS TO NOT ALLOW DEVIATIONS FROM THE VALUE LABELED BECAUSE OF DIFFER-  
24 ENCES IN THE AREAS WHERE THE FOOD COMMODITY IS GROWN OR BECAUSE OF  
25 SEASONAL CROP DIFFERENCES.

26 4. A. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED BY THE MUNICI-  
27 PAL DIRECTORS OF WEIGHTS AND MEASURES APPOINTED PURSUANT TO ARTICLE  
28 SIXTEEN OF THIS CHAPTER. THE EXCLUSIVE REMEDY FOR A VIOLATION OF THIS  
29 SECTION SHALL BE THE ISSUANCE OF A REMOVAL ORDER, AS PROVIDED IN PARA-  
30 GRAPH B OF THIS SUBDIVISION, AND THE CIVIL PENALTY FOR FAILURE TO COMPLY  
31 THEREWITH, AS PROVIDED IN PARAGRAPH D OF THIS SUBDIVISION.

32 B. WHENEVER ANY MUNICIPAL WEIGHTS AND MEASURES OFFICIAL FINDS ANY  
33 PACKAGED FOOD OR FOOD PRODUCT BEING SOLD, OFFERED OR EXPOSED FOR SALE IN  
34 VIOLATION OF ANY SUBDIVISION OF THIS SECTION, HE SHALL ISSUE A REMOVAL  
35 ORDER. SUCH ORDER SHALL BE IN WRITING, SHALL IDENTIFY THE FOOD OR FOOD  
36 PRODUCT WHICH IS IN VIOLATION OF THIS SECTION AND DIRECT THAT SUCH FOOD  
37 OR FOOD PRODUCT BE IMMEDIATELY REMOVED FROM SALE.

38 C. IT SHALL BE UNLAWFUL FOR ANY PERSON TO SELL, OFFER OR EXPOSE FOR  
39 SALE ANY FOOD OR FOOD PRODUCT FOR WHICH A REMOVAL ORDER HAS BEEN ISSUED  
40 AND IS IN EFFECT PURSUANT TO THIS SECTION.

41 D. FAILURE TO COMPLY WITH A REMOVAL ORDER SHALL CONSTITUTE A SEPARATE  
42 VIOLATION WITH RESPECT TO EACH PACKAGE OR CONTAINER WHICH IS NOT IMME-  
43 DIATELY REMOVED FROM SALE. EACH DAY OR PART THEREOF A VIOLATION IS  
44 CONTINUED SHALL CONSTITUTE A SEPARATE VIOLATION. THE MUNICIPAL DIRECTOR  
45 OF WEIGHTS AND MEASURES MAY REFER THE EVIDENCE OF A VIOLATION OF THIS  
46 SECTION TO THE ATTORNEY FOR THE MUNICIPALITY FOR THE COMMENCEMENT OF A  
47 CIVIL ACTION, IN THE NAME OF THE MUNICIPALITY, TO RECOVER A CIVIL PENAL-  
48 TY IN THE AMOUNTS PRESCRIBED IN SECTION THIRTY-NINE OF THIS CHAPTER. A  
49 CAUSE OF ACTION FOR RECOVERY OF SUCH PENALTY MAY BE RELEASED, SETTLED OR  
50 COMPROMISED BY THE MUNICIPAL DIRECTOR BEFORE THE MATTER IS REFERRED TO  
51 THE MUNICIPAL ATTORNEY OR THEREAFTER BY SUCH ATTORNEY. NOTWITHSTANDING  
52 THE PROVISIONS OF SECTION FORTY-FIVE OF THIS CHAPTER, ALL MONEYS  
53 COLLECTED HEREUNDER SHALL BE RETAINED BY THE MUNICIPALITY.

54 S 2. This act shall take effect 2 years after the date on which it  
55 shall have become a law; however, it shall not be deemed to affect any  
56 food commodity already packaged before the effective date of this act.