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

3675

2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

Introduced by M. of A. FINCH, BUTLER, CROUCH, KOLB, BURLING -- Multi-Sponsored by -- M. of A. MAGEE, McDONOUGH, MOLINARO -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law and the cooperative corporations law, in relation to establishing a dairy farmers' bill of rights

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

Section 1. The agriculture and markets law is amended by adding two new sections 256-c and 256-d to read as follows:

S 256-C. DAIRY FARMERS' BILL OF RIGHTS; DECLARATION OF POLICY. THE EXPRESSED INTENT OF THE AGRICULTURE AND MARKETS LAW AND THE POLICY OF THIS STATE IS TO FOSTER AND ENCOURAGE THE MARKETING OF MILK THROUGH PRODUCER OWNED AND CONTROLLED COOPERATIVES. THE ORDERLY MARKETING OF MILK FOR THE BENEFIT OF FARMERS, MILK DEALERS, AND CONSUMERS IS ENHANCED WHEN MILK PRODUCERS ARE FREE TO MAKE AN INDEPENDENT UNCOERCED DECISION REGARDING THEIR PARTICIPATION IN COOPERATIVE ASSOCIATIONS, AS AUTHORIZED BY STATE AND FEDERAL LAW. INTERFERENCE IN THE EXERCISE OF THIS FREE RIGHT OF CHOICE IS CONTRARY TO THE PUBLIC INTEREST. FOR THIS REASON, THE LEGISLATURE FINDS THAT THE PUBLIC INTEREST REQUIRES THAT THERE BE A SPECIFICATION OF PROHIBITED UNFAIR TRADE PRACTICES WHICH HAVE THE PURPOSE OF INTENTIONALLY IMPAIRING A PRODUCER'S FREEDOM TO BARGAIN COLLECTIVELY WITH OTHER PRODUCERS IN THE MARKETING OF THE PRODUCER'S PRODUCT.

FOR PURPOSES OF THIS SECTION, (I) AN "ASSOCIATION OF PRODUCERS" OR "COOPERATIVE" SHALL MEAN ANY CORPORATION OR ASSOCIATION OF PERSONS ENGAGED IN THE PRODUCTION OF MILK AND OPERATING FOR THE MUTUAL BENEFIT OF ITS MEMBERS IN CONFORMITY WITH THE REQUIREMENT OF THE CAPPER-VOLSTEAD ACT, AND ANY FEDERATION OF SUCH CORPORATIONS OR ASSOCIATIONS, OR OF SUCH CORPORATIONS, ASSOCIATIONS, AND INDIVIDUAL PRODUCERS, AND (II) AN ASSOCIATION OF PRODUCERS SHALL NOT BE CONSIDERED TO BE A MILK DEALER.

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

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S 256-D. UNFAIR PRACTICES BY DEALERS. 1. IT SHALL BE UNLAWFUL FOR ANY MILK DEALER OR ANY OF ITS OFFICERS, MANAGERS, AGENTS, OR EMPLOYEES TO INTENTIONALLY IMPAIR A PRODUCER'S FREEDOM TO JOIN OR TO PARTICIPATE IN AN ASSOCIATION OF PRODUCERS OR COOPERATIVE BY:

(A) COERCING, THROUGH THREAT OF INJURY TO PERSON OR PROPERTY, OR TO HEALTH, SAFETY, BUSINESS OR FINANCIAL CONDITION, REPUTATION OR PERSONAL RELATIONSHIPS ANY PRODUCER IN THE EXERCISE OF HIS OR HER RIGHT TO JOIN AND BELONG TO AN ASSOCIATION OF PRODUCERS OR COOPERATIVE;

(B) SOLICITING OR REQUESTING ANY PRODUCER TO BREACH A MARKETING AGREEMENT OR OTHER CONTRACTUAL AGREEMENT BETWEEN THE PRODUCER AND AN ASSOCIATION OF PRODUCERS OR COOPERATIVE;

(C) MAKING A LOAN OR GIFT OF MONEY, OR OF ANYTHING ELSE OF VALUE, OR OFFERING TO MAKE SUCH A LOAN OR GIFT FOR THE SPECIFIC PURPOSE OF INDUCING A PRODUCER TO REFUSE OR CEASE TO BELONG TO AN ASSOCIATION OF PRODUCERS OR COOPERATIVE;

(D) REFUSING TO DEAL WITH ANY PRODUCER, BECAUSE OF THE EXERCISE OF THE PRODUCER'S RIGHT TO JOIN AND BELONG TO AN ASSOCIATION OF PRODUCERS OR COOPERATIVE;

(E) MAKING FALSE REPORTS ABOUT THE FINANCES OR MANAGEMENT OF AN ASSOCIATION OF PRODUCERS OR OTHER MILK DEALERS IN RECKLESS DISREGARD OF THE TRUTH OR KNOWING THAT SUCH STATEMENTS ARE UNTRUE AND THAT THERE IS A REASONABLE LIKELIHOOD THAT SUCH STATEMENTS WILL IMPAIR A PRODUCER'S RIGHT TO MAKE AN INDEPENDENT DECISION TO BELONG TO AN ASSOCIATION OF PRODUCERS OR COOPERATIVE; AND

(F) CONSPIRING, COMBINING, AGREEING, OR ARRANGING WITH ANY OTHER PERSON TO DO, OR AID AND ABET THE DOING OF, ANY ACT MADE UNLAWFUL BY THIS SECTION.

2. FOR PURPOSES OF THIS SECTION: (A) AN "ASSOCIATION OF PRODUCERS" OR "COOPERATIVE" SHALL MEAN ANY CORPORATION OR ASSOCIATION OF PERSONS ENGAGED IN THE PRODUCTION OF MILK AND OPERATING FOR THE MUTUAL BENEFIT OF ITS MEMBERS IN CONFORMITY WITH THE REQUIREMENTS OF THE CAPPER-VOLSTEAD ACT, AND ANY FEDERATION OF SUCH CORPORATIONS OR ASSOCIATIONS, OR OF SUCH CORPORATIONS, ASSOCIATIONS, AND INDIVIDUAL PRODUCERS, AND (B) AN ASSOCIATION OF PRODUCERS SHALL NOT BE CONSIDERED TO BE A MILK DEALER.

3. NOTHING IN THIS SECTION IS INTENDED TO PREVENT BARGAINING BETWEEN MILK DEALERS AND PRODUCERS OR ASSOCIATIONS OF PRODUCERS WITH RESPECT TO PRICE OR ANY OTHER TERMS OF PURCHASE OR HANDLING OF MILK IN A COURSE OF DEALING NOT PROSCRIBED BY THIS SECTION, NOR TO PREVENT PRODUCERS FROM REQUIRING THAT PAYMENT BE MADE THROUGH AN ASSOCIATION OF PRODUCERS OR COOPERATIVE.

4. WHENEVER THE COMMISSIONER HAS REASON TO BELIEVE A VIOLATION OF THIS SECTION HAS OCCURRED, THE COMMISSIONER MAY COMMENCE SUCH JUDICIAL ACTION, OR INSTITUTE SUCH INVESTIGATION OR PROCEEDING AND ISSUE AN ORDER BASED THEREON, AS IS PROVIDED BY THIS ARTICLE OR ARTICLE THREE OF THIS CHAPTER; PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL TAKE NO ACTION AGAINST A MILK DEALER UNDER SECTION TWO HUNDRED FIFTY-EIGHT-C OF THIS ARTICLE FOR CONDUCT WHICH IS A VIOLATION OF THIS SECTION UNLESS SUCH DEALER IS AT THE TIME OF SUCH CONDUCT SUBJECT TO A FINAL ADMINISTRATIVE OR JUDICIAL ORDER WHICH PROHIBITS SUCH CONDUCT BY SUCH DEALER; AND PROVIDED FURTHER THAT NOTHING CONTAINED IN THIS SECTION SHALL IMPAIR OR DELAY THE PRIVATE RIGHT OF ACTION CREATED BY SECTION SEVENTY-FOUR OF THE COOPERATIVE CORPORATIONS LAW FOR ANY VIOLATION OF THAT SECTION.

S 2. Section 74 of the cooperative corporations law is amended to read as follows:

S 74. Liability for damages for encouraging or permitting delivery of products in violation of marketing agreements. Any person, firm or

corporation who solicits or persuades or aids or abets any member of any cooperative corporation incorporated under or subject to this chapter to breach his marketing contract with the corporation by accepting or receiving such member's products for sale, marketing, manufacturing or processing thereof contrary to the terms of any marketing agreement of which said person or any officer [or], manager, AGENT OR EMPLOYEE of the said corporation has knowledge or notice, shall be liable in the penal sum of [one hundred] NOT MORE THAN TEN THOUSAND dollars for each contract, to the cooperative corporation aggrieved in a civil suit for damages; and such cooperative corporation shall be entitled to an injunction against such person, firm or corporation to prevent further breaches.

S 3. This act shall take effect immediately.