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

115

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to kosher for Passover product price gouging

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 a new section 201-i to read as follows:

S 201-I. KOSHER FOR PASSOVER PRODUCT PRICE GOUGING. 1. DURING THE PASSOVER SEASON, NO PARTY WITHIN THE CHAIN OF DISTRIBUTION OF KOSHER FOR PASSOVER PRODUCTS SHALL SELL OR OFFER TO SELL ANY SUCH PRODUCTS FOR AN AMOUNT WHICH REPRESENTS AN UNCONSCIONABLY EXCESSIVE PRICE. THE DEPARTMENT IS HEREBY AUTHORIZED TO INVESTIGATE INSTANCES OF KOSHER FOR PASSOVER PRODUCT PRICE GOUGING DURING THE PASSOVER SEASON. SUCH INVESTIGATION SHALL INCLUDE, BUT NOT BE LIMITED TO, AN ANNUAL PASSOVER PRICE SURVEY TO EXAMINE THE PRICES OF KOSHER FOR PASSOVER PRODUCTS BEFORE, DURING AND AFTER THE PASSOVER SEASON.

2. WHETHER A PRICE IS UNCONSCIONABLY EXCESSIVE IS A QUESTION OF LAW FOR THE COURT.

(A) THE COURT'S DETERMINATION THAT A VIOLATION OF THIS SECTION HAS OCCURRED SHALL BE BASED ON ANY OF THE FOLLOWING FACTORS: (I) THAT THE AMOUNT OF THE EXCESS IN PRICE IS UNCONSCIONABLY EXTREME; OR (II) THAT THERE WAS AN EXERCISE OF UNFAIR LEVERAGE OR UNCONSCIONABLE MEANS; OR (III) A COMBINATION OF BOTH FACTORS IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH.

(B) IN ANY PROCEEDING COMMENCED PURSUANT TO SUBDIVISION THREE OF THIS SECTION, PRIMA FACIE PROOF THAT A VIOLATION OF THIS SECTION HAS OCCURRED SHALL INCLUDE EVIDENCE THAT:

(I) THE AMOUNT CHARGED REPRESENTS A GROSS DISPARITY BETWEEN THE PRICE OF THE GOODS OR SERVICES WHICH WERE THE SUBJECT OF THE TRANSACTION AND

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

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THEIR VALUE MEASURED BY THE PRICE AT WHICH SUCH KOSHER FOR PASSOVER PRODUCTS WERE SOLD OR OFFERED FOR SALE BY THE DEFENDANT IN THE USUAL COURSE OF BUSINESS IMMEDIATELY PRIOR TO THE PASSOVER SEASON; OR

(II) THE AMOUNT CHARGED GROSSLY EXCEEDED THE PRICE AT WHICH THE SAME OR SIMILAR KOSHER FOR PASSOVER PRODUCTS WERE READILY OBTAINABLE BY OTHER CONSUMERS IN THE TRADE AREA. A DEFENDANT MAY REBUT A PRIMA FACIE CASE WITH EVIDENCE THAT ADDITIONAL COSTS NOT WITHIN THE CONTROL OF THE DEFENDANT WERE IMPOSED ON THE DEFENDANT FOR THE PRODUCTS.

3. WHERE A VIOLATION OF THIS SECTION IS ALLEGED TO HAVE OCCURRED, THE ATTORNEY GENERAL MAY APPLY IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO THE SUPREME COURT OF THE STATE OF NEW YORK WITHIN THE JUDICIAL DISTRICT IN WHICH SUCH VIOLATIONS ARE ALLEGED TO HAVE OCCURRED, ON NOTICE OF FIVE DAYS, FOR AN ORDER ENJOINING OR RESTRAINING COMMISSION OR CONTINUANCE OF THE ALLEGED UNLAWFUL ACTS. IN ANY SUCH PROCEEDING, THE COURT SHALL IMPOSE A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS AND, WHERE APPROPRIATE, ORDER RESTITUTION TO AGGRIEVED CONSUMERS.

4. THE COMMISSIONER SHALL PROMULGATE ANY ADDITIONAL RULES AND REGULATIONS AS ARE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, INCLUDING BUT NOT LIMITED TO THE ESTABLISHMENT OF A KOSHER FOR PASSOVER PRODUCTS HOTLINE FOR CONSUMERS TO REPORT PRICE COMPLAINTS.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.