

2608

2011-2012 Regular Sessions

I N S E N A T E

January 26, 2011

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".

28 3. FOR PURPOSES OF THIS SECTION:

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

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

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

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

9 (II) MILK AND EGGS;

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

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

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

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

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

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

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

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

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