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

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:

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

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

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

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

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

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

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

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

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

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

(II) MILK AND EGGS;

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

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

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

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

4. A. THE PROVISIONS OF THIS SECTION SHALL BE ENFORCED BY THE MUNICIPAL DIRECTORS OF WEIGHTS AND MEASURES APPOINTED PURSUANT TO ARTICLE SIXTEEN OF THIS CHAPTER. THE EXCLUSIVE REMEDY FOR A VIOLATION OF THIS SECTION SHALL BE THE ISSUANCE OF A REMOVAL ORDER, AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, AND THE CIVIL PENALTY FOR FAILURE TO COMPLY THEREWITH, AS PROVIDED IN PARAGRAPH D OF THIS SUBDIVISION.

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

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

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

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