

3359--A

2011-2012 Regular Sessions

I N S E N A T E

February 17, 2011

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- recommitted to the Committee on Agriculture in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the agriculture and markets law, in relation to the use of an official state of New York quality trademark for milk and milk products

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

1 Section 1. Section 254 of the agriculture and markets law is amended
2 by adding a new subdivision (e) to read as follows:
3 (E) THE COMMISSIONER SHALL, BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND
4 TWELVE, APPLY TO THE UNITED STATES PATENT AND TRADEMARK OFFICE FOR
5 REGISTRATION FOR A CERTIFICATION TRADEMARK OR TRADEMARKS CONSISTING OF A
6 SEAL OF THE STATE, THE WORDS "NEW YORK" AND ANY OTHER APPROPRIATE IDEN-
7 TIFYING WORDS. ANY CERTIFICATION TRADEMARK OBTAINED MAY ONLY BE USED ON
8 MILK AND MILK PRODUCTS WITHIN THE STATE WHICH ARE IN COMPLIANCE WITH THE
9 PROVISIONS OF SECTION TWO HUNDRED FIFTY-SEVEN-B OF THIS ARTICLE.
10 S 2. The agriculture and markets law is amended by adding a new
11 section 257-b to read as follows:
12 S 257-B. USE OF THE OFFICIAL STATE OF NEW YORK QUALITY TRADEMARK FOR
13 MILK AND MILK PRODUCTS.
14 1. FOR THE PURPOSE OF THIS SECTION, AND UNLESS THE CONTEXT OTHERWISE
15 INDICATES, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:
16 A. "APPLICANT" MEANS A PERSON WHO OWNS OR OPERATES A MILK PLANT, WHO
17 HAS APPLIED FOR AN INITIAL LICENSE TO USE THE STATE OF NEW YORK QUALITY
18 TRADEMARK FOR MILK OR MILK PRODUCTS AND A LICENSED USER SEEKING TO RENEW
19 A LICENSE.
20 B. "LICENSED USER" MEANS AN OWNER OR OPERATOR OF A MILK PLANT WHO HAS
21 APPLIED FOR AND BEEN ISSUED A LICENSE GRANTING PERMISSION TO USE THE

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

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1 OFFICIAL QUALITY TRADEMARK ON PACKAGES OR ADVERTISEMENT IN COMPLIANCE
2 WITH THIS SECTION.

3 C. "MILK PLANT" MEANS ANY PLACE, PREMISES OR ESTABLISHMENT WHERE MILK
4 OR MILK PRODUCTS ARE COLLECTED, HANDLED, PROCESSED, STORED, PASTEURIZED,
5 ASEPTICALLY PROCESSED, BOTTLED OR OTHERWISE PREPARED FOR DISTRIBUTION.

6 D. "PRODUCED WITHIN THE STATE" MEANS EIGHTY PERCENT OF THE MILK IN ANY
7 PACKAGE MUST HAVE ACTUALLY BEEN PRODUCED WITHIN THE STATE OF NEW YORK.
8 FOR ANY GIVEN PACKAGE, THE PERCENTAGE OF MILK PRODUCED WITHIN THE STATE
9 WILL BE DEEMED TO BE THAT PERCENTAGE OF THE LICENSED USER'S MILK USED
10 FOR PROCESSING WHICH WAS ACTUALLY PRODUCED WITHIN NEW YORK DURING THE
11 CALENDAR MONTH.

12 E. "RECOMBINANT BOVINE SOMATOTROPIN" OR RBST MEANS THE SYNTHETIC
13 VERSION OF THE NATURALLY-OCCURRING HORMONE, BOVINE SOMATOTROPIN OR RBST,
14 PRODUCED THROUGH RECOMBINANT DNA TECHNOLOGY.

15 F. "STATE OF NEW YORK QUALITY TRADEMARK" MEANS THE OFFICIAL QUALITY
16 TRADEMARK ADOPTED PURSUANT TO SECTION TWO HUNDRED FIFTY-FOUR OF THIS
17 ARTICLE.

18 2. THE GRADE "A" PASTEURIZED MILK ORDINANCE, 1993 REVISION, AS PROMUL-
19 GATED BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AND,
20 ALTERNATIVELY, THE STANDARDS SET FORTH IN THIS ARTICLE GOVERNING MILK
21 AND MILK PRODUCTS ARE HEREBY ADOPTED AS THE OFFICIAL STANDARDS FOR NEW
22 YORK GRADE A MILK.

23 3. A. THE DEPARTMENT SHALL ADOPT RULES PERMITTING THE USE OF THE
24 CERTIFICATION TRADEMARK PROVIDED FOR IN THIS SECTION ON MILK OR MILK
25 PRODUCTS. THE INITIAL RULES SHALL INCLUDE LIMITATIONS RELATING TO THE
26 USE OF MILK FROM COWS THAT HAVE BEEN TREATED WITH RECOMBINANT BOVINE
27 SOMATOTROPIN, REFERRED TO IN THIS SECTION AS "RBST." THE RULES SHALL
28 INCLUDE A REQUIREMENT THAT THE DEPARTMENT RECEIVE WRITTEN CONSENT FROM
29 PRODUCERS TO DRAW BLOOD FROM THEIR MILKING HERD, EXAMINE HISTORICAL MILK
30 PRODUCTION RECORDS, INSPECT MEDICINE STORAGE PLACES AND PERFORM OTHER
31 INSPECTIONS REASONABLY NECESSARY TO VERIFY COMPLIANCE WITH THE TRADEMARK
32 CRITERIA.

33 B. IF THE CRITERIA FOR USE OF THE CERTIFICATION TRADEMARK INCLUDE
34 ABSENCE OF THE USE OF RBST, A MILK PRODUCER IN THIS STATE WHO SELLS MILK
35 TO A MILK PLANT THAT USES THE TRADEMARK MUST NOTIFY THAT MILK PLANT
36 BEFORE USING RBST WITHIN THE MILKING HERD OF THE PRODUCER'S DAIRY FARM.
37 NOTIFICATION TO THE MILK PLANT MUST BE MADE AT LEAST FORTY-FIVE DAYS
38 BEFORE USING RBST. NOTIFICATION MUST BE MADE BY CERTIFIED MAIL AND SENT
39 TO THE MILK PLANT'S EMPLOYEE RESPONSIBLE FOR MILK PROCUREMENT AT THE
40 PLANT LOCATION WHERE THE MILK IS PROCESSED. FOR PURPOSES OF THIS
41 SECTION, "POSSESSION OF RBST" MEANS USE.

42 C. IF A MILK PRODUCER FAILS TO GIVE THE MILK PLANT THE NOTICE REQUIRED
43 IN PARAGRAPH B OF THIS SUBDIVISION, THE MILK PLANT IS NOT REQUIRED TO
44 COMPLY WITH ANY APPLICABLE NOTICE REQUIREMENTS BEFORE REFUSING TO
45 CONTINUE TO PURCHASE MILK UNDER ANY CONTRACT WITH THAT MILK PRODUCER.

46 4. AN APPLICANT MUST MEET THE CRITERIA OUTLINED IN THIS SUBDIVISION IN
47 ORDER TO OBTAIN A STATE OF NEW YORK QUALITY TRADEMARK LICENSE FOR MILK
48 OR MILK PRODUCTS:

49 A. AN APPLICANT MUST OBTAIN AN ORIGINAL AFFIDAVIT EXECUTED WITHIN THE
50 PRECEDING SIX MONTHS FROM EACH MILK PRODUCER AND OTHER MILK PLANTS FROM
51 WHOM THE APPLICANT REGULARLY PURCHASES OR INTENDS TO PURCHASE MILK OR
52 MILK PRODUCTS. ALL AFFIDAVITS MUST BE IN COMPLIANCE WITH THE REQUIRE-
53 MENTS OF SUBDIVISION SEVEN OF THIS SECTION.

54 B. AN APPLICANT MUST PROVIDE THE DEPARTMENT WITH AN AFFIDAVIT SETTING
55 FORTH THE CURRENT LIST OF MILK PRODUCERS AND OTHER MILK PLANTS FROM WHOM
56 THE APPLICANT REGULARLY PURCHASES OR INTENDS TO PURCHASE MILK STATING

1 THAT THE MILK PRODUCERS AND MILK PLANTS HAVE FURNISHED AFFIDAVITS IN
2 COMPLIANCE WITH SUBDIVISION SEVEN OF THIS SECTION. AN APPLICANT WHO OWNS
3 OR OPERATES A DAIRY FARM WHERE SALES OF MILK PRODUCED ON THE FARM ARE
4 MADE DIRECTLY TO CONSUMERS SHALL ALSO PROVIDE THE DEPARTMENT WITH AN
5 AFFIDAVIT IN THE FORM PRESCRIBED FOR PRODUCERS BY SUBDIVISION SEVEN OF
6 THIS SECTION. THE AFFIDAVIT OF AN APPLICANT SHALL ALSO CONTAIN A STATE-
7 MENT THAT THE APPLICANT BELIEVES THAT THE MILK THE APPLICANT HAS OR WILL
8 PURCHASE OR PRODUCE IS FROM COWS NOT TREATED WITH RBST.

9 C. AN APPLICANT WHO HAS PREVIOUSLY HELD A LICENSE OR IS A LICENSED
10 USER WHO IS APPLYING FOR A RENEWAL OF AN EXISTING LICENSE MUST HAVE
11 SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF THIS SECTION WHILE EXER-
12 CISING THE PRIVILEGES OF THE LICENSE.

13 D. AN APPLICANT MUST OBTAIN WRITTEN CONSENT FROM EACH MILK PRODUCER
14 FROM WHOM THE APPLICANT REGULARLY PURCHASES OR INTENDS TO PURCHASE MILK
15 OR MILK PRODUCTS ALLOWING THE DEPARTMENT TO DRAW BLOOD FROM THE MILKING
16 HERD, EXAMINE MILK PRODUCTION RECORDS, INSPECT MEDICINE STORAGE PLACES,
17 AND REVIEW SUCH BUSINESS RECORDS AS ARE REASONABLY NECESSARY TO VERIFY
18 COMPLIANCE WITH THIS SECTION.

19 5. A. LICENSED USERS MUST OBTAIN NEW AFFIDAVITS FROM MILK PRODUCERS
20 AND MILK PLANTS FROM WHOM MILK IS PURCHASED ON AN ANNUAL BASIS.

21 B. LICENSED USERS SHALL FILE SUPPLEMENTAL AFFIDAVITS WITH THE DEPART-
22 MENT SHOWING THE ADDITION OF ANY MILK PRODUCERS OR MILK PLANTS NOT
23 MENTIONED IN THE AFFIDAVIT FURNISHED UNDER PARAGRAPH B OF SUBDIVISION
24 FOUR OF THIS SECTION, AND SHALL OBTAIN THE APPLICABLE AFFIDAVITS AND
25 CONSENTS UNDER SUBDIVISION SEVEN OF THIS SECTION AS SOON AS PRACTICABLE
26 FOLLOWING THE FORMATION OF ANY CONTRACT OR ARRANGEMENT FOR MILK
27 PURCHASES WITH ANY NEW MILK PRODUCER OR MILK PLANT.

28 C. ALL AFFIDAVITS REQUIRED TO BE OBTAINED FROM MILK PRODUCERS AND MILK
29 PLANTS MUST BE IN COMPLIANCE WITH SUBDIVISION SEVEN OF THIS SECTION AND
30 BE MAINTAINED ON FILE AND MADE AVAILABLE FOR INSPECTION BY THE DEPART-
31 MENT AT ALL REASONABLE TIMES.

32 D. A LICENSED USER MUST OBTAIN WRITTEN CONSENT FROM EACH MILK PRODUCER
33 FROM WHOM THE LICENSED USER PURCHASES OR INTENDS TO PURCHASE MILK, OR
34 MILK PRODUCTS ALLOWING THE DEPARTMENT TO DRAW BLOOD FROM THE MILKING
35 HERD, EXAMINE MILK PRODUCTION RECORDS, INSPECT MEDICINE STORAGE PLACES,
36 AND REVIEW SUCH BUSINESS RECORDS AS ARE REASONABLY NECESSARY TO VERIFY
37 COMPLIANCE WITH THIS RULE. LICENSED USERS MUST RETAIN AND MAKE THE WRIT-
38 TEN CONSENTS AVAILABLE TO THE DEPARTMENT AT ALL REASONABLE TIMES.

39 E. IN DISPLAYING OR ADVERTISING THE STATE OF NEW YORK QUALITY TRADE-
40 MARK AND MAKING ANY STATEMENTS, CLAIMS OR EXPLANATIONS WITH REGARD TO
41 THE ABSENCE OF RBST, LICENSED USERS MUST FOLLOW ANY AND ALL LABELING
42 REGULATIONS OR OTHER ENFORCEABLE GUIDELINES AS PRESCRIBED FROM TIME TO
43 TIME BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION. ANY VIOLATION OF
44 THIS SECTION MAY RESULT IN SANCTIONS AND SUSPENSION OR REVOCATION OF
45 SAID LICENSE.

46 F. LICENSED USERS MUST DEMONSTRATE COMPLIANCE AT ALL TIMES WITH ALL
47 APPLICABLE FEDERAL OR STATE LAWS AND REGULATIONS AND MILK MUST MEET THE
48 STANDARDS ESTABLISHED BY THIS CHAPTER FOR NEW YORK GRADE A MILK.

49 G. LICENSED USERS MAY AFFIX THE TRADEMARK ONLY TO PACKAGES CONTAINING
50 MILK PRODUCED WITHIN THE STATE.

51 6. THE COMMISSIONER, OR A DULY AUTHORIZED AGENT OF THE COMMISSIONER,
52 MAY PERFORM INSPECTIONS AS AUTHORIZED BY THE WRITTEN CONSENTS WHICH MUST
53 BE OBTAINED UNDER THESE RULES.

54 7. LICENSED USERS SHALL FILE AFFIDAVITS REQUIRED IN SUBDIVISIONS FOUR
55 AND FIVE OF THIS SECTION ON FORMS AS PRESCRIBED AND FURNISHED BY THE
56 COMMISSIONER.

1 A. IN THE CASE OF AFFIDAVITS SUPPLIED BY MILK PRODUCERS TO LICENSED
2 USERS, THE AFFIDAVITS SHALL CONTAIN, AT A MINIMUM, THE FULL NAME AND
3 ADDRESS OF THE MILK PRODUCER AND A SWORN STATEMENT STATING THAT THE MILK
4 PRODUCER HAS NOT USED RECOMBINANT BOVINE SOMATOTROPIN (RBST) IN THE
5 PREVIOUS SIXTY DAYS, DOES NOT POSSESS, AND DOES NOT INTEND TO USE RBST
6 DURING THE UPCOMING YEAR. THE AFFIDAVIT OF A MILK PRODUCER SHALL ALSO
7 CONTAIN THE CONSENT REQUIRED BY PARAGRAPH B OF SUBDIVISION FIVE OF THIS
8 SECTION AND A STATEMENT ACKNOWLEDGING THAT:

9 (I) A MILK PRODUCER IN THIS STATE WHO SELLS MILK TO A MILK PLANT WHO
10 USES THE TRADEMARK MUST NOTIFY THAT MILK PLANT BEFORE USING RBST WITHIN
11 THE MILKING HERD OF THE PRODUCER'S DAIRY FARM;

12 (II) NOTIFICATION TO THE DEALER MUST BE MADE AT LEAST FORTY-FIVE DAYS
13 BEFORE USING RBST; AND

14 (III) NOTIFICATION MUST BE MADE BY CERTIFIED MAIL AND SENT TO THE MILK
15 PLANT'S EMPLOYEE RESPONSIBLE FOR MILK PROCUREMENT AT THE PLANT LOCATION
16 WHERE THE MILK IS PROCESSED.

17 B. IN THE CASE OF AFFIDAVITS SUPPLIED BY OWNERS OR OPERATORS OF MILK
18 PLANTS TO LICENSED USERS, THE AFFIDAVITS SHALL CONTAIN, AT A MINIMUM,
19 THE FULL NAME AND ADDRESS OF THE MILK PLANT AND A SWORN STATEMENT STAT-
20 ING THAT THE MILK PLANT POSSESSES, AND WILL MAKE AVAILABLE TO THE
21 DEPARTMENT, AFFIDAVITS AND CONSENTS IN COMPLIANCE WITH THIS SUBDIVISION
22 FROM ALL PRODUCERS WHOSE MILK OR MILK PRODUCTS ARE SUPPLIED BY THE MILK
23 PLANT TO THE LICENSED USER.

24 8. THE COMMISSIONER MAY SUSPEND OR REVOKE LICENSES ISSUED UNDER THIS
25 ARTICLE FOR VIOLATION OF ANY PROVISIONS OF THIS SECTION. THE FAILURE TO
26 COMPLY WITH THE REQUIREMENTS OF THIS SECTION SHALL BE SUFFICIENT CAUSE
27 FOR THE SUSPENSION OR REVOCATION OF THE LICENSE.

28 9. RECORDS AND AFFIDAVITS REQUIRED TO BE MAINTAINED BY LICENSED USERS
29 MAY BE DISCARDED AFTER THREE YEARS.

30 S 3. This act shall take effect on the one hundred eightieth day after
31 it shall have become a law.