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

6542

I N S E N A T E

February 4, 2014

Introduced by Sen. BALL -- 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 the labeling of gluten-free foods and food products

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 214-o to read as follows:

S 214-O. LABELING OF GLUTEN-FREE FOODS AND FOOD PRODUCTS. 1. FOR THE PURPOSES OF THIS SECTION:

A. "GLUTEN-CONTAINING GRAIN" SHALL MEAN ANY OF THE FOLLOWING GRAINS OR THEIR CROSSBRED HYBRIDS:

(1) WHEAT, INCLUDING ANY SPECIES BELONGING TO THE GENUS TRITICUM;

(2) RYE, INCLUDING ANY SPECIES BELONGING TO THE GENUS SECALE; OR

(3) BARLEY, INCLUDING ANY SPECIES BELONGING TO THE GENUS HORDEUM.

B. "GLUTEN" SHALL MEAN THE PROTEINS THAT NATURALLY OCCUR IN A GLUTEN-CONTAINING GRAIN AND THAT MY CAUSE ADVERSE HEALTH EFFECTS IN INDIVIDUALS WITH CELIAC DISEASE.

C. "GLUTEN-FREE" SHALL MEAN:

(1) THAT A FOOD OR PRODUCT:

(A) DOES NOT CONTAIN ANY OF THE FOLLOWING:

(I) AN INGREDIENT THAT IS A GLUTEN-CONTAINING GRAIN,

(II) AN INGREDIENT THAT IS DERIVED FROM A GLUTEN-CONTAINING GRAIN AND THAT HAS NOT BEEN PROCESSED TO REMOVE GLUTEN, OR

(III) AN INGREDIENT THAT IS DERIVED FROM A GLUTEN-CONTAINING GRAIN AND THAT HAS BEEN PROCESSED TO REMOVE GLUTEN, IF THE USE OF SUCH INGREDIENT RESULTS IN THE PRESENCE OF TWENTY PARTS PER MILLION OR MORE OF GLUTEN IN THE FOOD OR FOOD PRODUCT; OR

(B) INHERENTLY DOES NOT CONTAIN GLUTEN; AND

(2) ANY UNAVOIDABLE PRESENCE OF GLUTEN IN THE FOOD OR FOOD PRODUCT IS BELOW TWENTY PARTS PER MILLION.

2. A. ANY FOOD OR FOOD PRODUCT WHICH INCLUDES IN ITS LABELING THE TERM "GLUTEN-FREE", "NO GLUTEN", "FREE OF GLUTEN" OR "WITHOUT GLUTEN" WHICH IS NOT GLUTEN FREE SHALL BE DEEMED MISBRANDED.

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

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B. ANY FOOD OR FOOD PRODUCT THAT INCLUDES THE TERM "WHEAT" IN ITS INGREDIENT LIST OR IS OTHERWISE LABELED WITH THE TERM "CONTAINS WHEAT", AS REQUIRED BY 21 U.S.C. 343 (W)(1)(A), AND IS ALSO LABELLED AS "GLUTEN-FREE", "NO GLUTEN", "FREE OF GLUTEN" OR "WITHOUT GLUTEN" SHALL BE DEEMED TO BE MISBRANDED, UNLESS THE TERM "WHEAT" OR "CONTAINS WHEAT" IS IMMEDIATELY FOLLOWED BY AN ASTERISK AND THE FOLLOWING STATEMENT: "THE WHEAT HAS BEEN PROCESSED TO ALLOW THIS FOOD OR FOOD PRODUCT TO MEET THE REQUIREMENTS OF THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS".

3. THE DEPARTMENT SHALL ESTABLISH AN IMPLEMENT A SCIENTIFICALLY VALID METHOD, CONSISTENT WITH ANY SUCH METHOD ESTABLISHED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION, THAT WILL RELIABLY DETECT THE PRESENCE OF TWENTY PARTS PER MILLION OR MORE OF GLUTEN IN ALL FOODS AND FOOD PRODUCTS.

4. THE PROVISIONS OF THIS SECTION SHALL BE INTERPRETED AND IMPLEMENTED IN A MANNER WHICH IS CONSISTENT WITH ANY FEDERAL STATUTE, RULE OR REGULATION RELATING TO THE LABELING OF FOOD AND FOOD PRODUCTS WITH THEIR GLUTEN CONTENT.

5. ANY INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, ASSOCIATION OR FIRM VIOLATING THE PROVISIONS OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR.

6. ANY INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, ASSOCIATION OR FIRM VIOLATING THE PROVISIONS OF THIS SECTION SHALL BE SUBJECT TO THE CIVIL PENALTIES PROVIDED FOR IN SECTIONS THIRTY-NINE AND FORTY OF THIS CHAPTER.

7. THE COMMISSIONER SHALL PROMULGATE ANY AND ALL RULES AND REGULATIONS, AND TAKE ANY FURTHER ACTIONS AS SHALL BE NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION. PROVIDED THAT ALL SUCH RULES, REGULATIONS AND ACTIONS SHALL BE CONSISTENT WITH THE PROVISIONS OF ANY FEDERAL LAW, RULE OR REGULATION RELATING TO THE LABELING OF FOOD OR FOOD PRODUCTS AS "GLUTEN FREE".

S 2. The commissioner of agriculture and markets shall post on the department of agriculture and markets internet website the provisions of section 214-o of the agriculture and markets law, as added by section one of this act, an explanation of such provisions and the effective date of subdivisions 1 through 6 of such section of the agriculture and markets law.

S 3. This act shall take effect immediately, except that subdivisions 1 through 6 of section 214-o of the agriculture and markets law, as added by section one of this act, shall take effect one year after this act shall have become a law.