

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. BRAUNSTEIN, CASTRO, TITONE, WEPRIN, ROBERTS --
Multi-Sponsored by -- M. of A. ARROYO, CROUCH, GIBSON, MARKEY -- read
once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to prohib-
iting the sale of food products containing melatonin to minors

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

1 Section 1. Article 3 of the agriculture and markets law is amended by
2 adding a new section 45-d to read as follows:
3 S 45-D. SALE OF FOOD PRODUCTS CONTAINING MELATONIN TO MINORS PROHIB-
4 ITED. 1. NO PERSON, PARTNERSHIP OR CORPORATION SHALL SELL OR OFFER FOR
5 SALE IN THIS STATE ANY FOOD PRODUCT WHICH CONTAINS MELATONIN TO ANY
6 PERSON UNDER THE AGE OF EIGHTEEN YEARS; PROVIDED, HOWEVER, THAT ANY FOOD
7 NATURALLY CONTAINING MELATONIN SHALL BE EXEMPT FROM THE PROVISIONS OF
8 THIS SECTION.
9 2. EVERY PERSON, PARTNERSHIP OR CORPORATION ENGAGED IN THE RETAIL SALE
10 OR RENTAL OF FOOD PRODUCTS SHALL STORE AND DISPLAY SUCH FOOD PRODUCTS
11 CONTAINING MELATONIN IN A LOCATION DESIGNATED FOR PERSONS OVER THE AGE
12 OF EIGHTEEN, IN A MANNER WHICH RESTRICTS ACCESS TO SUCH FOOD PRODUCTS.
13 3. SALE OF ANY FOOD PRODUCTS THAT CONTAIN MELATONIN SHALL BE MADE ONLY
14 TO AN INDIVIDUAL WHO DEMONSTRATES, THROUGH (A) A VALID DRIVER'S LICENSE
15 OR NON-DRIVER'S IDENTIFICATION ISSUED BY THE COMMISSIONER OF MOTOR VEHI-
16 CLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES TERRITORY, COMMONWEALTH
17 OR POSSESSION, THE DISTRICT OF COLUMBIA, A STATE GOVERNMENT WITHIN THE
18 UNITED STATES OR A PROVINCIAL GOVERNMENT OF THE DOMINION OF CANADA; OR
19 (B) A VALID PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT OR ANY OTHER
20 COUNTRY; OR (C) AN IDENTIFICATION CARD ISSUED BY THE UNITED STATES,
21 INDICATING THAT THE INDIVIDUAL IS AT LEAST EIGHTEEN YEARS OF AGE. SUCH
22 IDENTIFICATION NEED NOT BE REQUIRED OF ANY INDIVIDUAL WHO REASONABLY
23 APPEARS TO BE AT LEAST THIRTY YEARS OF AGE, PROVIDED, HOWEVER, THAT SUCH

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

LBD04257-01-3

1 APPEARANCE SHALL NOT CONSTITUTE A DEFENSE IN ANY PROCEEDING INVOLVING
2 SALE OF ANY FOOD PRODUCT, TO AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

3 4. IN ANY PROCEEDING PURSUANT TO THIS SECTION, IT SHALL BE AN AFFIRMA-
4 TIVE DEFENSE THAT A PERSON PURCHASING OR ATTEMPTING TO PURCHASE ANY FOOD
5 PRODUCT CONTAINING MELATONIN PRODUCED A DRIVER'S LICENSE OR A NON-DRIVER
6 IDENTIFICATION CARD APPARENTLY ISSUED BY A GOVERNMENT ENTITY OR OTHER
7 IDENTIFICATION PURSUANT TO SUBDIVISION THREE OF THIS SECTION, SUCCESS-
8 FULLY COMPLETED THE TRANSACTION, AND THAT THE FOOD PRODUCT SOLD TO SUCH
9 PERSON WAS REASONABLE RELIANCE UPON SUCH IDENTIFICATION AND TRANSACTION.
10 IN EVALUATING THE APPLICABILITY OF SUCH AFFIRMATIVE DEFENSE, CONSIDER-
11 ATION SHALL BE GIVEN TO ANY WRITTEN POLICY ADOPTED AND IMPLEMENTED BY
12 THE SELLER TO EFFECTUATE THE PROVISIONS OF THIS SECTION. USE OF ANY
13 METHOD OF AN ELECTRONIC TRANSACTION SCAN SHALL NOT EXCUSE ANY PERSON
14 OPERATING A PLACE OF BUSINESS WHEREIN FOOD PRODUCTS ARE SOLD, OR THE
15 AGENT OR EMPLOYEE OF SUCH PERSON, FROM THE EXERCISE OF DUE DILIGENCE.
16 NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, ANY SUCH AFFIRMATIVE
17 DEFENSE SHALL NOT BE APPLICABLE IN ANY CIVIL OR CRIMINAL PROCEEDING, OR
18 IN ANY OTHER FORUM.

19 S 2. This act shall take effect on the ninetieth day after it shall
20 have become a law. Effective immediately, the addition, amendment and/or
21 repeal of any rule or regulation necessary for the implementation of
22 this act on its effective date are authorized to be made and completed.