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

301

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ, GALEF -- Multi-Sponsored by -- M. of A. BRENNAN, HOOPER, ORTIZ -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the agriculture and markets law, in relation to certain perishable foods

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

Section 1. Section 16 of the agriculture and markets law is amended by adding a new subdivision 45 to read as follows:

45. (A) RECEIVE AND EVALUATE COMPLAINTS AND INITIATE HIS OR HER OWN INVESTIGATIONS RELATING TO MATTERS PROVIDED IN ARTICLE TWELVE-B OF THIS CHAPTER, RELATING TO CERTAIN PERISHABLE FOODS, AND TAKE APPROPRIATE ACTION RELATED THERETO, INCLUDING STOP SALE ORDERS WHERE NECESSARY AND PROPER.

(B) THE COMMISSIONER SHALL HAVE THE POWER, AFTER REASONABLE NOTICE AND HEARING, TO DETERMINE THE REASONABLENESS OF ANY STATEMENT OR REPRESENTATION AS TO THE DATE AND CONDITIONS OF STORAGE AFFIXED PURSUANT TO ARTICLE TWELVE-B OF THIS CHAPTER.

S 2. The agriculture and markets law is amended by adding a new article 12-B to read as follows:

ARTICLE 12-B

PERISHABLE FOODS

SECTION 156-J. STATEMENT OF LEGISLATIVE FINDINGS AND PURPOSES.
156-K. DEFINITIONS.
156-L. LABELLING REQUIREMENTS.
156-M. EXEMPTIONS.
156-N. EXCEPTIONAL CIRCUMSTANCES.
156-O. ENFORCEMENT.
156-P. RULES AND REGULATIONS.

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

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S 156-J. STATEMENT OF LEGISLATIVE FINDINGS AND PURPOSES. THE LEGISLATURE HEREBY FINDS AND DECLARES THAT:

1. CONSUMERS CANNOT BE CERTAIN THAT FOOD OFFERED FOR SALE IS FRESH OR THAT IT WILL REMAIN FRESH FOR A REASONABLE PERIOD OF TIME AFTER IT IS PURCHASED. THE LEGISLATURE PARTICULARLY RECOGNIZES CONSUMER CONCERN WITH THE FRESHNESS OF FOODS INCLUDING, BUT NOT LIMITED TO, MEAT, POULTRY, FISH, DAIRY PRODUCTS, EGGS, FRUIT, VEGETABLES, AND BAKED GOODS.

2. THE LEGISLATURE FURTHER FINDS THAT THE FOOD INDUSTRY'S PRACTICE OF CONTROLLING FOOD FRESHNESS THROUGH CODED DATES HAS PROVEN INADEQUATE FOR PROTECTION OF THE PUBLIC.

3. THE LEGISLATURE DECLARES THAT A MANDATORY SYSTEM OF CLEAR AND LEGIBLE DATING ACCOMPANIED BY A STATEMENT OF RECOMMENDED CONDITIONS OF STORAGE IS THE BEST WAY TO ASSURE CONSUMERS OF THE FRESHNESS OF THE GOODS THAT THEY BUY IN STORES.

S 156-K. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "FOOD STORE" MEANS A STORE SELLING FOOD AT RETAIL, WHICH STORE IS NOT PRIMARILY ENGAGED IN THE SALE OF FOOD FOR CONSUMPTION ON THE PREMISES;

2. "PERISHABLE FOODS" MEANS AND INCLUDES (A) EGGS, GRADE AA, GRADE A, AND GRADE B SHELL EGGS;

(B) ALL PRE-PACKAGED, FULLY OR PARTIALLY PREPARED BAKED GOODS WHICH HAVE A MOISTURE CONTENT EXCEEDING EIGHTEEN PERCENT, WITH OR WITHOUT ADDITIVES, KNOWN AS:

(I) BREADS, ROLLS AND BUNS AS DEFINED PURSUANT TO TITLE 21, CHAPTER 1, PART 136.110 OF THE CODE OF FEDERAL REGULATIONS, EXCEPT THOSE KNOWN AS FRUITCAKES;

(II) CAKES, PASTRIES, AND COOKIES, EXCEPT THOSE THAT ARE OFFERED FOR SALE IN INDIVIDUAL, PORTION PACK, SNACK-TYPE PACKAGES;

(III) ENGLISH MUFFINS, CORN MUFFINS, BRAN MUFFINS, AND OTHER SIMILAR PRODUCTS;

(C) THE FOLLOWING PREPACKAGED DAIRY AND DAIRY-TYPE PRODUCTS:

(I) THOSE PRODUCTS WITH OR WITHOUT ADDITIVES OR FLAVORINGS, KNOWN AS CHEESE, AS DEFINED PURSUANT TO TITLE 21, CHAPTER 1, PART 133 OF THE CODE OF FEDERAL REGULATIONS, THAT CONTAIN FIFTY PERCENT OR MORE MOISTURE IN THE FINISHED PRODUCT;

(II) LOW-FAT, MULTI-VITAMIN, MULTI-MINERAL TYPE MILK PRODUCTS WHICH ARE NORMALLY STORED AT TEMPERATURES BETWEEN THIRTY-TWO DEGREES FAHRENHEIT AND FORTY DEGREES FAHRENHEIT;

(III) FLAVORED MILK;

(IV) CULTURED MILK, CULTURED MILK PRODUCTS, CULTURED SKIM-MILK, AND CULTURED SKIM-MILK PRODUCTS, WITH OR WITHOUT FRUITS, VEGETABLES, MEATS, CHEESES, OR OTHER ADDITIVES;

(V) MILK SHAKE;

(VI) EGGNOG;

(VII) YOGURT, MADE FROM SKIM-MILK OR WHOLE MILK, WITH OR WITHOUT FRUITS, VEGETABLES, MEATS, OR OTHER ADDITIVES;

(VIII) WHIPPED CREAM AND INSTANT WHIPPED CREAM;

(IX) SOUR CREAM, CULTURED CREAM, SALAD CREAM, AND NON-CULTURED SOUR CREAM, WITH OR WITHOUT CULTURED HALF AND HALF;

(X) SOUR HALF AND HALF, CULTURED HALF AND HALF, NON-CULTURED SOUR HALF AND HALF, AND NON-CULTURED HALF AND HALF;

(XI) DAIRY DRESSING AND DAIRY DIP;

(XII) NON-DAIRY COFFEE CREAMERS WHICH ARE NORMALLY STORED AT TEMPERATURES BETWEEN THIRTY-TWO DEGREES FAHRENHEIT AND FORTY DEGREES FAHRENHEIT; AND

(D) ALL PRE-PACKAGED, PREPARED FOODS WHICH REQUIRE REFRIGERATION.

3. "RETAIL" OR "RETAIL SALE" MEANS A SALE TO A CONSUMER OR TO ANY PERSON FOR ANY PURPOSE OTHER THAN FOR RESALE;

4. "SELL" OR "OFFER TO SELL" MEANS THE ACT OF SELLING, DISPLAYING, OR OFFERING FOR RETAIL SALE FOR OFF-PREMISES HUMAN CONSUMPTION.

S 156-1. LABELLING REQUIREMENTS. 1. NO FOOD STORE SHALL OFFER FOR RETAIL SALE ANY PERISHABLE FOOD UNLESS THE CONTAINER OF SUCH PERISHABLE FOOD IS LABELLED IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION AND STAMPED, PRINTED, OR OTHERWISE PLAINLY AND CONSPICUOUSLY MARKED WITH THE FOLLOWING INFORMATION:

(A) THE LAST DAY OR DATE OF SALE OR THE LAST DAY OR DATE FOR RECOMMENDED USAGE; AND

(B) A STATEMENT INDICATING RECOMMENDED CONDITIONS OR METHODS OF STORAGE.

2. THE INFORMATION REQUIRED BY SUBDIVISION ONE OF THIS SECTION SHALL BE CLEARLY MARKED ON EACH AND EVERY PACKAGE OR ITEM AS FOLLOWS:

(A) THE INFORMATION SHALL APPEAR ON THE TOP COVER OR PRINCIPAL FRONT OR BACK PANEL OF ITS CONTAINER OR ON A LABEL AFFIXED THERETO; OR

(B) A NOTICE SHALL APPEAR ON THE TOP COVER OR PRINCIPAL FRONT OR BACK PANEL OR ON THE LABEL AFFIXED THERETO INDICATING THE LOCATION ON THE PACKAGE OF SUCH INFORMATION.

S 156-M. EXEMPTIONS. THE REQUIREMENTS OF SECTION ONE HUNDRED FIFTY-SIX-1 OF THIS ARTICLE SHALL NOT APPLY TO:

1. ANY PRODUCT STORED AT OR BELOW A TEMPERATURE OF THIRTY-TWO DEGREES FAHRENHEIT IN ACCORDANCE WITH THE RECOMMENDATION OF THE MANUFACTURER OR PROCESSOR;

2. ANY PRODUCT HEREINABOVE DESIGNATED WHICH IS STERILIZED WHEN HERMETICALLY SEALED AND PACKAGED AND IS SO MAINTAINED UNTIL THE TIME OF SALE BY A FOOD STORE TO THE PUBLIC;

3. ANY PRODUCT MADE FROM PRODUCTS AFTER THE DATE MARKED WHERE SUCH SECONDARY PRODUCTS ARE THE RESULT OF AN ADDITIONAL PROCESSING STAGE;

4. ANY COMPANY OWNED STORES, COMMONLY KNOWN AS "THRIFT STORES", AT WHICH CERTAIN PRODUCTS ARE SOLD OR OFFERED FOR SALE, AT A REDUCED PRICE, AFTER THE RECOMMENDED SELL-BY-DATE FOR SUCH GOODS; AND

5. ANY PACKAGE WHICH CONTAINS SMALLER PACKAGES OF FOOD PRODUCT IF THE SMALLER PACKAGES BEAR LABEL INFORMATION WHICH COMPLIES WITH THE PROVISIONS OF THIS SECTION AND IF THAT INFORMATION IS READILY ACCESSIBLE TO THE CONSUMER.

S 156-N. EXCEPTIONAL CIRCUMSTANCES. UPON WRITTEN APPLICATION TO THE COMMISSIONER, AND UPON A SHOWING OF EXCEPTIONAL CIRCUMSTANCES, A FOOD STORE MAY BE GRANTED AN EXTENSION IN WRITING, NOT TO EXCEED SIX MONTHS, IN WHICH TO COMPLY, IN WHOLE OR IN PART, WITH THE REQUIREMENTS OF THIS ARTICLE. IN THE EVENT THAT A FOOD STORE HAS SUBSTANTIALLY COMPLIED WITH THE REQUIREMENTS OF THIS ARTICLE DURING THE PREVIOUSLY GRANTED EXTENSION PERIOD, BUT EXCEPTIONAL CIRCUMSTANCES EXIST WHICH RENDER FULL COMPLIANCE DURING THE EXTENSION PERIOD IMPOSSIBLE, IMPRACTICABLE, OR CREATE UNDUE FINANCIAL HARDSHIP, A FOOD STORE MAY APPLY IN WRITING TO THE COMMISSIONER FOR AN ADDITIONAL FINAL EXTENSION IN ORDER TO FULLY COMPLY WITH THIS ARTICLE. ANY REQUEST FOR AN ADDITIONAL FINAL EXTENSION MUST BE SUPPORTED BY EVIDENCE OF EXCEPTIONAL CIRCUMSTANCES AND SUBSTANTIAL COMPLIANCE DURING THE PREVIOUSLY GRANTED EXTENSION PERIOD.

S 156-O. ENFORCEMENT. 1. WHENEVER THE COMMISSIONER OR HIS OR HER REPRESENTATIVE SHALL FIND ANY FOOD STORE IN VIOLATION OF THIS ARTICLE, THE COMMISSIONER OR HIS OR HER REPRESENTATIVE MAY ISSUE A WRITTEN "STOP SALE ORDER" TO SUCH FOOD STORE WARNING OF SUCH VIOLATION. ANY SUCH ORDER MAY DIRECT THE FOOD STORE TO REMOVE FROM SALE OR DISPOSE OF ANY PERISH-

ABLE FOOD FOUND TO BE IN VIOLATION OF SECTION ONE HUNDRED FIFTY-SIX-1 OF THIS ARTICLE.

2. ANY FOOD STORE WHICH HAS BEEN ISSUED A "STOP SALE ORDER" PURSUANT TO SUBDIVISION ONE OF THIS SECTION AND WHICH FAILS TO FOLLOW ANY ONE OR MORE DIRECTIVES SET FORTH THEREIN SHALL BE SUBJECT TO A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS.

S 156-P. RULES AND REGULATIONS. THE COMMISSIONER IS AUTHORIZED AND DIRECTED TO PROMULGATE ANY RULES AND REGULATIONS NECESSARY AND APPROPRIATE FOR THE IMPLEMENTATION OF THIS ARTICLE.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of the foregoing provisions of this act on its effective date are authorized and directed to be made and completed on or before such effective date.