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

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I N A S S E M B L Y

January 17, 2014

Introduced by M. of A. ROSENTHAL -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to allergy awareness and training in restaurants

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

Section 1. The public health law is amended by adding a new section 1352-e to read as follows:

S 1352-E. ALLERGY AWARENESS AND TRAINING IN RESTAURANTS. 1. DEFINITIONS. (A) "MAJOR FOOD ALLERGEN" SHALL MEAN (I) MILK, EGGS, FISH (SUCH AS BASS, FLOUNDER, OR COD); CRUSTACEANS (SUCH AS CRAB, LOBSTER, OR SHRIMP); TREE NUTS (SUCH AS ALMONDS, PECANS, PISTACHIOS, OR WALNUTS), WHEAT, PEANUTS, AND SOYBEANS; AND (II) A FOOD INGREDIENT THAT CONTAINS PROTEIN DERIVED FROM A FOOD NAMED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH. THIS DOES NOT INCLUDE: (1) ANY HIGHLY REFINED OIL DERIVED FROM A FOOD SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH OR ANY INGREDIENT DERIVED FROM SUCH HIGHLY REFINED OIL; OR (2) ANY INGREDIENT THAT IS EXEMPT UNDER THE PETITION OR NOTIFICATION PROCESS SPECIFIED IN THE FEDERAL FOOD ALLERGEN LABELING AND CONSUMER PROTECTION ACT OF 2004.

(B) "MENU" SHALL MEAN A PRINTED OR PICTORIAL DISPLAY OF A FOOD ITEM OR ITEMS AND THEIR PRICE OR PRICES THAT ARE AVAILABLE FOR SALE FROM A FOOD ESTABLISHMENT. THIS INCLUDES MENUS DISTRIBUTED OR PROVIDED OUTSIDE THE ESTABLISHMENT AND PROMOTIONAL ITEMS THAT INCLUDE MENU INFORMATION FROM WHICH A CUSTOMER CAN PLACE AN ORDER.

(C) "MENU BOARD" SHALL MEAN ANY LIST OR PICTORIAL DISPLAY OF A FOOD ITEM OR ITEMS AND THEIR PRICE OR PRICES POSTED WITHIN OR OUTSIDE A FOOD ESTABLISHMENT.

(D) "APPROVED TRAINING PROVIDER" SHALL MEAN A TRAINING PROVIDER THAT HAS BEEN APPROVED BY THE DIRECTOR TO PROVIDE TRAINING AND ASSESSMENT OF ALLERGEN AWARENESS FOR FOOD SERVICE MANAGERS.

2. GENERAL REQUIREMENTS. (A) ALL MANAGERS AND DESIGNATED FOOD PREPARERS AND OTHER EMPLOYEES HIRED BY A FOOD SERVICE ESTABLISHMENT THAT COOKS, PREPARES, OR SERVES FOOD INTENDED FOR IMMEDIATE CONSUMPTION EITHER ON OR OFF THE PREMISES SHALL COMPLETE ALLERGEN AWARENESS TRAINING

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

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AND PASS AN ASSESSMENT FROM AN APPROVED TRAINING PROVIDER TO OBTAIN A CERTIFICATE OF ALLERGEN AWARENESS TRAINING PRIOR TO OR WITHIN THIRTY DAYS AFTER HIS OR HER HIRE DATE.

(B) ALL MANAGERS AND DESIGNATED EMPLOYEES SHALL COMPLETE ALLERGEN AWARENESS TRAINING AND PASS AN ASSESSMENT FROM AN APPROVED TRAINING PROVIDER TO ENSURE EACH MANAGER AND EMPLOYEE HAS A CERTIFICATE OF ALLERGEN AWARENESS TRAINING PRIOR TO OR WITHIN THIRTY DAYS AFTER HIS OR HER HIRE DATE.

(C) SUCH FOOD ESTABLISHMENTS SHALL INCLUDE ON ALL PRINTED MENUS AND MENU BOARDS A CLEAR AND CONSPICUOUS NOTICE REQUESTING A CUSTOMER NOTIFY THE SERVER, BEFORE PLACING AN ORDER, ABOUT THE CUSTOMER'S ALLERGY TO A MAJOR FOOD ALLERGEN. THE NOTICE SHALL STATE: "BEFORE PLACING YOUR ORDER, PLEASE INFORM YOUR SERVER IF A PERSON IN YOUR PARTY HAS A FOOD ALLERGY."

(D) THE NOTICE MUST BE INCLUDED ON PRINTED MENUS AND ON INDOOR AND OUTDOOR MENU BOARDS, INCLUDING DRIVE-THROUGH MENU BOARDS.

(E) ALL NOTICES ON MENU BOARDS MUST BE EASILY READABLE FROM THE POINT OF SERVICE AT WHICH FOOD IS ORDERED. ON THE MENU BOARD ITSELF, THE FONT SIZE OF THE NOTICE MUST BE EQUAL TO OR GREATER THAN THE FONT SIZE OF THE SMALLEST MENU ITEM LISTED ON THE MENU BOARD.

(F) IN LIEU OF PLACING THE NOTICE DIRECTLY ON THE INDOOR OR OUTDOOR MENU BOARD ITSELF, THE FOOD ESTABLISHMENT MAY POST THE NOTICE ADJACENT TO THE MENU OR AT EACH POINT OF SERVICE WHERE FOOD IS ORDERED. SUCH NOTICE MUST BE SECURELY POSTED IN A MANNER SO THAT IT MAY BE EASILY SEEN AND READ FROM A DISTANCE OF FIVE FEET BY A PERSON STANDING AT OR APPROACHING THE POINT OF SERVICE, SHALL DIRECTLY FACE THE PURCHASER, AND SHALL NOT BE OBSTRUCTED FROM VIEW.

3. FOOD ALLERGEN AWARENESS TRAINING. (A) FOOD SERVICE ESTABLISHMENTS SHALL HAVE ON STAFF MANAGERS AND EMPLOYEES WHO HAVE BEEN ISSUED A CERTIFICATE OF ALLERGEN AWARENESS TRAINING BY AN APPROVED TRAINING PROVIDER AS QUALIFIED BY THE DEPARTMENT. THE CERTIFICATE WILL BE VALID FOR FIVE YEARS.

(B) MANAGERS SHALL:

(I) DEMONSTRATE KNOWLEDGE OF MAJOR FOOD ALLERGENS BY POSTING THE FOOD ALLERGEN AWARENESS TRAINING CERTIFICATE ISSUED BY AN APPROVED TRAINING PROVIDER;

(II) ENSURE THAT DESIGNATED EMPLOYEES ARE PROPERLY TRAINED IN FOOD ALLERGY AWARENESS AS IT RELATED TO THEIR ASSIGNED DUTIES; AND

(III) ENSURE THAT AT LEAST ONE EMPLOYEE WITH A CERTIFICATE OF ALLERGEN AWARENESS TRAINING IS ON SITE DURING ALL HOURS OF OPERATION.

4. CERTIFICATE RENEWAL. (A) CERTIFICATES OF ALLERGEN AWARENESS TRAINING SHALL BE RENEWED EVERY FIVE YEARS BY COMPLETING AN ALLERGEN AWARENESS TRAINING COURSE, AS QUALIFIED BY THE DEPARTMENT.

(B) THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS TO ESTABLISH A QUALIFYING PROGRAM TO DESIGNATE APPROVED TRAINING PROVIDERS.

5. FOOD ALLERGY AWARE DESIGNATION. (A) THE COMMISSIONER SHALL DEVELOP A PROGRAM FOR RESTAURANTS TO BE DESIGNATED AS "FOOD ALLERGY AWARE" AND SHALL MAINTAIN A LISTING OF RESTAURANTS RECEIVING SUCH DESIGNATION ON ITS WEBSITE. PARTICIPATION IN THE PROGRAM SHALL BE VOLUNTARY AND THE DEPARTMENT SHALL, IN CONSULTATION WITH THE NEW YORK STATE RESTAURANT ASSOCIATION, ISSUE GUIDELINES AND REQUIREMENTS FOR RESTAURANTS TO RECEIVE SUCH DESIGNATION, PROVIDED THAT SUCH REQUIREMENTS SHALL INCLUDE, BUT NOT BE LIMITED TO, MAINTAINING ON THE PREMISES, AND MAKING AVAILABLE TO THE PUBLIC, A MASTER LIST OF ALL THE INGREDIENTS USED IN THE PREPARATION OF EACH FOOD ITEM AVAILABLE FOR CONSUMPTION.

(B) NO EARLIER THAN TWELVE MONTHS AND NO LATER THAN TWENTY-FOUR MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE COMMISSIONER, IN CONSULTA-

TION WITH THE NEW YORK STATE RESTAURANT ASSOCIATION, SHALL SUBMIT A REPORT TO THE CLERKS OF THE ASSEMBLY AND THE SENATE, WHICH SHALL INCLUDE ANALYSIS OF THE IMPACT OF THIS SECTION. THE REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, COMPLIANCE OF RESTAURANTS WITH THIS SECTION, AND PROPOSED CHANGES TO THIS SECTION CONSISTENT WITH THE PUBLIC HEALTH AND WELFARE.

S 2. This act shall take effect on the ninetieth day after it shall have become a law; provided that the commissioner of health is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement this act on its effective date, on or before such date.