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

May 13, 2014

Introduced by M. of A. JAFFEE -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to misbranding of certain fish species

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 201-i to read as follows:

S 201-I. MISBRANDING OF CERTAIN FISH SPECIES. 1. AS USED IN THIS SECTION: (A) "ESCOLAR" SHALL MEAN ANY VARIETY OF FISH KNOWN AS ESCOLAR, WALU, SNAKE MACKEREL, OR ANY OTHER COMMON NAME OF THE SCIENTIFIC SPECIES NAME LEPIDOCYBIUM FLAVORBRUNNEUM.

(B) "OILFISH" SHALL MEAN ANY VARIETY OF FISH KNOWN AS OILFISH OR ANY OTHER COMMON NAME OF THE SCIENTIFIC SPECIES NAME RUVETTUS PRETIOSUS.

(C) "WHITE TUNA" SHALL MEAN THE FISH SPECIES KNOWN AS ALBACORE TUNA, LONG FIN TUNA, OR THE SCIENTIFIC SPECIES NAME THUNNUS ALALUNGA.

2. NO PERSON, RETAIL OR PUBLIC FOOD SERVICE ESTABLISHMENT AS DEFINED IN SECTION SEVENTY-ONE-Y OF THIS CHAPTER, SHALL SELL, OFFER FOR SALE, DISTRIBUTE, IMPORT, OR EXPORT THE SPECIES OF FISH COMMONLY KNOWN AS ESCOLAR OR OILFISH UNDER THE NAME TUNA, ALBACORE TUNA, WHITE TUNA, OR ANY OTHER SPECIES NAME, COMMON OR SCIENTIFIC, OTHER THAN THE RECOGNIZED COMMON OR SCIENTIFIC SPECIES NAMES FOR SUCH SPECIES DEFINED IN SUBDIVISION ONE OF THIS SECTION.

S 2. Section 39 of the agriculture and markets law, as amended by section 1 of part Q of chapter 59 of the laws of 2009, is amended to read as follows:

S 39. Penalties for violation of chapter or other laws. Every person violating any of the provisions of this chapter, or of any other law the enforcement of which is within the jurisdiction of the department shall, except where other penalties are hereinafter prescribed, be subject to a penalty in the sum of not more than six hundred dollars for the first violation, nor more than one thousand two hundred dollars for the second and each subsequent violation and provided further, however, that for a violation of subdivision thirteen or fifteen of section two hundred of

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

LBD14366-01-4

this chapter, the minimum penalty shall be five hundred dollars and the maximum penalty shall be one thousand dollars and that for the second and subsequent offenses such person may also be subject to an administrative order suspending the manufacture and/or sale of such confectionery for a period of time up to three months for each such violation; AND PROVIDED FURTHER, HOWEVER, THAT FOR A VIOLATION OF SUBDIVISION TWO OF SECTION TWO HUNDRED ONE-I OF THIS CHAPTER, THE MINIMUM PENALTY SHALL BE ONE THOUSAND DOLLARS AND A MAXIMUM OF TWO THOUSAND DOLLARS FOR THE FIRST OFFENSE AND FOR THE SECOND AND SUBSEQUENT OFFENSES ANY PERSON, RETAIL, OR FOOD SERVICE ESTABLISHMENT FOUND TO BE IN VIOLATION MAY BE SUBJECT TO AN ADMINISTRATIVE ORDER SUSPENDING THE SALE, OFFER FOR SALE, DISTRIBUTION, IMPORT, OR EXPORT OF SUCH FISH SPECIES FOR A PERIOD OF TIME UP TO THREE MONTHS FOR EACH VIOLATION. When such violation consists of the manufacture or production of any prohibited article, each day during which or any part of which such manufacture or production is carried on or continued, shall be deemed a separate violation. When the violation consists of the sale, or the offering or exposing for sale or exchange of any prohibited article or substance, the sale of each one of several packages shall constitute a separate violation, and each day on which any such article or substance is offered or exposed for sale or exchange shall constitute a separate violation. If the sale be of milk and it be in cans, bottles or containers of any kind and if the milk in any one of such containers be adulterated, it shall be deemed a violation whether such vendor be selling all the milk in all of his containers to one person or not. When the use of any such article or substance is prohibited, each day during which or any part of which such article or substance is so used or furnished for use, shall constitute a separate violation, and the furnishing of the same for use to each person to whom the same may be furnished shall constitute a separate violation. When the storage of any article is prohibited beyond a certain period, each day during which or any part of which any article is so stored beyond the period provided for by this chapter, shall constitute a separate violation. A right of action for the recovery of, or a liability for, penalties incurred as provided in this chapter, or in any other law the enforcement of which is within the jurisdiction of the department, may be released, settled or compromised before the matter is referred to the attorney general as provided in section forty-four of this article, and thereafter may be released, settled or compromised by the attorney general, either before or after an action is brought to recover such penalties.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed by the commissioner of agriculture and markets on or before such effective date.