

4657

2015-2016 Regular Sessions

I N A S S E M B L Y

February 5, 2015

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

AN ACT to amend the agriculture and markets law, in relation to the
creation of a "Grown in New York" program campaign to increase aware-
ness and consumption of locally grown and produced foods and related
products and to increase the production and improve the distribution
of foods and related products for local consumption

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

1 Section 1. The agriculture and markets law is amended by adding a new
2 article 25-BB to read as follows:

3 ARTICLE 25-BB

4 GROWN IN NEW YORK

5 SECTION 340. LEGISLATIVE INTENT.

6 341. GROWN IN NEW YORK PROGRAM, CREATED.

7 342. PURPOSES AND DUTIES OF THE DEPARTMENT.

8 343. CERTIFICATION MARK USE AND IMAGING.

9 344. LICENSING AGREEMENT.

10 345. REGISTRATION.

11 346. RULES AND REGULATIONS.

12 S 340. LEGISLATIVE INTENT. DESPITE AN INCREASING TREND AMONG AMERICANS
13 TO BUY LOCALLY GROWN FOODS, THERE ARE CURRENTLY INSUFFICIENT RESOURCES
14 AND INFORMATION AVAILABLE TO SUPPORT, ENCOURAGE AND FOSTER CONSUMER
15 PRODUCT AWARENESS AND PURCHASES OF LOCALLY MANUFACTURED PRODUCTS IN NEW
16 YORK STATE. BY DEFINING, BRANDING AND PROTECTING WHAT "GROWN IN NEW
17 YORK" MEANS, NEW YORK CAN CAPITALIZE AND PROTECT ITS AGRICULTURAL BUSI-
18 NESSES IN AN INCREASINGLY COMPETITIVE GLOBAL MARKET BY DISTINGUISHING
19 AND BUILDING PRIDE IN SUCH BUSINESSES. THE FURTHER PROMOTION AND EDUCA-
20 TION OF CONSUMERS ABOUT THE VALUES OF BUYING LOCAL IS A MUTUALLY BENEFI-
21 CIAL AND RECIPROCAL ENTERPRISE. NOT ONLY WILL NEW YORKERS BENEFIT FROM
22 HEALTHFUL CONSUMPTION BUT LOCAL BUSINESSES WILL BE STRENGTHENED AND NEW
23 BUSINESSES WILL CHOOSE TO GROW AND MAKE PRODUCTS IN NEW YORK, THUS
24 CREATING AND SECURING JOBS AND FOSTERING LOCAL ECONOMIES.

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

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1 S 341. GROWN IN NEW YORK PROGRAM, CREATED. THE DEPARTMENT SHALL
2 CONDUCT A "GROWN IN NEW YORK" PROMOTIONAL CAMPAIGN TO INCREASE AWARENESS
3 AND CONSUMPTION OF LOCALLY GROWN AND PRODUCED FOODS AND RELATED PRODUCTS
4 AND TO INCREASE THE PRODUCTION AND IMPROVE THE DISTRIBUTION OF FOODS AND
5 RELATED PRODUCTS FOR LOCAL CONSUMPTION. IN THE PROGRAM, THE DEPARTMENT
6 SHALL EMPHASIZE THE DEVELOPMENT OF REGIONAL FOOD AND CULTURAL TOURISM
7 TRAILS AND THE DEVELOPMENT OF REGIONAL FOOD SYSTEMS THROUGH ACTIVITIES
8 SUCH AS CREATING A PROGRAM LOGO AND MAINTAINING RELATED MARKETING MATE-
9 RIALS; CREATING OR SUPPORTING NETWORKS OF PRODUCERS; AND STRENGTHENING
10 CONNECTIONS BETWEEN PRODUCERS, RETAILERS, INSTITUTIONS, AND CONSUMERS
11 AND NEARBY PRODUCERS. FUNDING FOR SUCH PROGRAM SHALL DERIVE FROM A
12 BUDGET APPROPRIATION THEREFOR BEGINNING IN THE FISCAL YEAR DURING WHICH
13 SUCH PROGRAM COMMENCES.

14 S 342. PURPOSES AND DUTIES OF THE DEPARTMENT. THE DEPARTMENT'S "GROWN
15 IN NEW YORK" CAMPAIGN SHALL INCLUDE, BUT NOT BE LIMITED TO: 1. DEVELOP-
16 MENT OF A "GROWN IN NEW YORK" LOGO AS THE OFFICIAL STATE EMBLEM TO IDEN-
17 TIFY PRODUCTS THAT ARE LOCALLY MANUFACTURED AND IN-KIND ADVERTISING
18 PROGRAMS WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, A PROGRAM WEBSITE,
19 DISTRIBUTION OF PERIODICAL NEWSLETTERS, AND SOCIAL MEDIA NETWORKING AND
20 EDUCATIONAL AND TRAINING PROGRAMS APPRISING CONSUMERS ABOUT THE "GROWN
21 IN NEW YORK" CAMPAIGN AND THE VALUES AND BENEFITS OF BUYING LOCALLY
22 GROWN GOODS OR PRODUCTS;

23 2. CREATION OF ELIGIBILITY REQUIREMENTS THAT WILL PERMIT PARTICIPANTS
24 THE USE OF THE "GROWN IN NEW YORK" LOGO ON THEIR PRODUCTS AND REPRESENT
25 THAT SUCH PRODUCT WAS GROWN IN THIS STATE PROVIDED THAT SUCH PRODUCT HAS
26 AN AGRICULTURAL ORIGIN AND/OR COMPONENTS OF WHICH ARE NOT FEWER THAN
27 SEVENTY-FIVE PERCENT GROWN OR HARVESTED IN NEW YORK OR ITS SURFACE OR
28 COASTAL WATERS;

29 3. REGISTRATION OF PARTICIPANTS;

30 4. IDENTIFICATION AND FACILITATION OF OPPORTUNITIES TO INCREASE
31 CONSUMER DEMAND FOR LOCALLY GROWN GOODS OR PRODUCTS;

32 5. IDENTIFICATION AND FACILITATION OF OPPORTUNITIES TO ESTABLISH
33 AGREEMENTS WITH LOCAL GROWERS AND MANUFACTURERS FOR POTENTIAL MARKET-
34 PLACE EXPANSION OF PRODUCTS;

35 6. PROVIDING EDUCATIONAL OPPORTUNITIES FOR CONSUMERS REGARDING LOCAL
36 GROWTH AND MANUFACTURING OF PRODUCTS AND INITIATIVES TO FURTHER PROMOTE
37 THE BRAND; AND

38 7. DETERMINING FUNDING SOURCES AVAILABLE TO THE MANUFACTURING COMMUNI-
39 TY TO SUPPORT MARKETING, BRANDING AND PROMOTION OF LOCALLY GROWN BRAND-
40 ING EFFORTS.

41 S 343. CERTIFICATION MARK USE AND IMAGING. 1. THE CERTIFICATION MARK
42 SHALL ONLY BE APPLIED TO PRODUCTS THAT MEET THE ELIGIBILITY REQUIREMENTS
43 PROMULGATED BY THE DEPARTMENT. THE CERTIFICATION MARK MAY BE USED IN
44 ADVERTISEMENT IN CONJUNCTION WITH THE PHRASE, "LOOK FOR THIS MARK" OR
45 LIKE EXPRESSIONS. ADVERTISING, PROPOSITIONAL OR MERCHANDISING MATERIALS
46 WHICH BEAR THE CERTIFICATION MARK SHALL NOT MAKE OR CONTAIN ANY CLAIMS
47 WHICH ARE FALSE, MISLEADING OR DECEPTIVE, INCLUDING, BUT NOT LIMITED TO,
48 CLAIMS WHICH DISCREDIT OR DISPARAGE THE QUALITY, VALUE, SALE, OR USE OF
49 ANY COMPETING PRODUCT AND OTHERWISE COMPLY WITH ADVERTISING STANDARDS OF
50 ALL APPLICABLE LOCAL, STATE, AND FEDERAL LAWS.

51 2. PROGRAM PARTICIPANTS SHALL MAINTAIN RECORDS SUFFICIENT TO AUDIT
52 THROUGHOUT CERTIFICATION MARK USAGE FOR THE PURPOSES OF VERIFYING ONGO-
53 ING COMPLIANCE WITH ALL ELIGIBILITY REQUIREMENTS. PARTICIPANTS MAY BE
54 REQUIRED, UPON WRITTEN NOTICE BY THE DEPARTMENT, TO OBTAIN THE DEPART-
55 MENT'S APPROVAL PRIOR TO USE OF THE CERTIFICATION MARK FOR PARTICULAR
56 PRODUCTS AND MAY, AT ITS DISCRETION, REFUSE SUCH APPROVAL OR REVOKE USE

1 OF THE CERTIFICATION MARK IN PARTICULAR CASES IF SUCH USAGE IS DEEMED
2 INCONSISTENT WITH THE "GROWN IN NEW YORK" PROMOTIONAL CAMPAIGN.

3 3. THE CERTIFICATION MARK SHALL BE ISSUED BY THE DEPARTMENT AND SHALL
4 SERVE AS THE OFFICIAL STATE EMBLEM IDENTIFYING PRODUCTS THAT ARE "GROWN
5 IN NEW YORK." UPON ISSUANCE BY THE DEPARTMENT, THE CERTIFICATION MARKS
6 REPRODUCED BY PROGRAM PARTICIPANTS SHALL NOT BE ALTERED IN ANY WAY
7 PROVIDED, HOWEVER, THAT THE OVERALL SIZE OF THE CERTIFICATION MARK MAY
8 VARY. IN NO CASE SHALL A PROGRAM PARTICIPANT'S NAME AND/OR TRADEMARK BE
9 INSERTED WITHIN OR OVERLAP THE BOUNDARIES OF THE CERTIFICATION MARK.
10 PROGRAM PARTICIPANTS SHALL NOT USE THE CERTIFICATION MARK AS ITS OWN
11 MARK, OR AS THE EXCLUSIVE REPRESENTATION OF SUCH PARTICIPANTS.

12 S 344. LICENSING AGREEMENT. PROGRAM PARTICIPANTS SHALL FULLY EXECUTE A
13 LICENSING AGREEMENT, THE PROVISIONS OF WHICH SHALL INCLUDE:

14 1. THE PURPOSE OF THE "GROWN IN NEW YORK" CAMPAIGN AS PROVIDED IN
15 SECTION THREE HUNDRED FORTY OF THIS ARTICLE;

16 2. THE OWNERSHIP AND PROTECTION OF THE "GROWN IN NEW YORK" CERTIF-
17 ICATION MARK;

18 3. STATEMENTS BY THE PARTICIPANTS ACKNOWLEDGING THAT THE CERTIFICATION
19 MARK AND GOOD WILL ARE THE PROPERTY OF THE DEPARTMENT;

20 4. AGREEMENT BY THE PARTICIPANT TO REFRAIN FROM ACTING SO AS TO DIMIN-
21 ISH THE VALUE OF THE CERTIFICATION MARK AND TO COOPERATE WITH THE
22 DEPARTMENT IN ITS EFFORTS TO PROTECT THE CERTIFICATION MARK;

23 5. AGREEMENT BY THE PARTICIPANT TO MAINTAIN RECORDS EVIDENCING COMPLI-
24 ANCE WITH THE TERMS AND CONDITIONS OF THE LICENSING AGREEMENT;

25 6. A STATEMENT OF INDEMNIFICATION EXCUSING THE DEPARTMENT, THE STATE
26 OF NEW YORK, AND EACH OF THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIREC-
27 TORS, AND AGENTS FROM ANY CLAIMS, ACTIONS, SUITS, INJURIES, DAMAGES,
28 COSTS, EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, AND/OR
29 OTHER LIABILITIES ARISING OUT OF OR IN CONNECTION WITH USE OF THE
30 CERTIFICATION MARK, BREACH OF THE AGREEMENT, AND/OR PROMOTION, SALE, USE
31 OR CONSUMPTION OF PARTICIPANTS' PRODUCTS; AND

32 7. AN AGREEMENT AWARDED ATTORNEY'S FEES TO THE PREVAILING PARTY IN
33 ANY ACTION ARISING OUT OF A DISPUTE OVER THE LICENSING AGREEMENT.

34 S 345. REGISTRATION. ANY PERSON OR CORPORATION THAT PARTICIPATES IN
35 THE "GROWN IN NEW YORK" PROGRAM SHALL REGISTER ANNUALLY WITH THE DEPART-
36 MENT IN A FORM AND MANNER AS REQUIRED BY THE DEPARTMENT. EACH PERSON OR
37 CORPORATION SHALL RENEW THEIR REGISTRATION ON THE ANNIVERSARY DATE OF
38 ORIGINAL MEMBERSHIP.

39 S 346. RULES AND REGULATIONS. THE DEPARTMENT SHALL PROMULGATE RULES
40 AND REGULATIONS FOR THE PURPOSES OF FULFILLING THE OBJECTIVES OF THIS
41 ARTICLE ON ITS EFFECTIVE DATE, INCLUDING RULES FOR ENTERING INTO
42 CONTRACTS WITH ADVERTISING AGENCIES FOR SERVICES WHICH ARE DIRECTLY
43 RELATED TO THE "GROWN IN NEW YORK" CAMPAIGN. THE DEPARTMENT SHALL
44 FURTHER DETERMINE, BY RULE, THE LOGOS OR PRODUCT IDENTIFIERS TO BE
45 DEPICTED FOR USE IN ADVERTISING, PUBLICIZING, AND PROMOTION OF NEW YORK
46 AGRICULTURAL PRODUCTS OR AGRICULTURAL-BASED PRODUCTS IN THE "GROWN IN
47 NEW YORK" CAMPAIGN. THE DEPARTMENT MAY ALSO ADOPT RULES NOT INCONSISTENT
48 WITH THE PROVISIONS OF THIS ARTICLE AS IN ITS JUDGMENT MAY BE NECESSARY
49 FOR PARTICIPANT REGISTRATION, RENEWAL OF REGISTRATION, APPLICATION
50 FORMS, AS WELL AS OTHER FORMS AND ENFORCEMENT MEASURES ENSURING COMPLI-
51 ANCE WITH THIS ARTICLE.

52 S 2. This act shall take effect on the one hundred twentieth day after
53 it shall have become a law; provided, however, that effective immediate-
54 ly, the addition, amendment and/or repeal of any rule or regulation
55 necessary for the implementation of this act on its effective date is
56 authorized and directed to be made and completed on or before such date.