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

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 awareness 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 ASSEMBLY, DO ENACT AS FOLLOWS:

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

ARTICLE 25-BB

GROWN IN NEW YORK

SECTION 340. LEGISLATIVE INTENT.
341. GROWN IN NEW YORK PROGRAM, CREATED.
342. PURPOSES AND DUTIES OF THE DEPARTMENT.
343. CERTIFICATION MARK USE AND IMAGING.
344. LICENSING AGREEMENT.
345. REGISTRATION.
346. RULES AND REGULATIONS.

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

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

LBD06077-06-5

S 341. GROWN IN NEW YORK PROGRAM, CREATED. THE DEPARTMENT SHALL CONDUCT A "GROWN IN NEW YORK" PROMOTIONAL CAMPAIGN TO INCREASE AWARENESS 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. IN THE PROGRAM, THE DEPARTMENT SHALL EMPHASIZE THE DEVELOPMENT OF REGIONAL FOOD AND CULTURAL TOURISM TRAILS AND THE DEVELOPMENT OF REGIONAL FOOD SYSTEMS THROUGH ACTIVITIES SUCH AS CREATING A PROGRAM LOGO AND MAINTAINING RELATED MARKETING MATERIALS; CREATING OR SUPPORTING NETWORKS OF PRODUCERS; AND STRENGTHENING CONNECTIONS BETWEEN PRODUCERS, RETAILERS, INSTITUTIONS, AND CONSUMERS AND NEARBY PRODUCERS. FUNDING FOR SUCH PROGRAM SHALL DERIVE FROM A BUDGET APPROPRIATION THEREFOR BEGINNING IN THE FISCAL YEAR DURING WHICH SUCH PROGRAM COMMENCES.

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

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

3. REGISTRATION OF PARTICIPANTS;

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

5. IDENTIFICATION AND FACILITATION OF OPPORTUNITIES TO ESTABLISH AGREEMENTS WITH LOCAL GROWERS AND MANUFACTURERS FOR POTENTIAL MARKETPLACE EXPANSION OF PRODUCTS;

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

7. DETERMINING FUNDING SOURCES AVAILABLE TO THE MANUFACTURING COMMUNITY TO SUPPORT MARKETING, BRANDING AND PROMOTION OF LOCALLY GROWN BRANDING EFFORTS.

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

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

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

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

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

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

2. THE OWNERSHIP AND PROTECTION OF THE "GROWN IN NEW YORK" CERTIFICATION MARK;

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

4. AGREEMENT BY THE PARTICIPANT TO REFRAIN FROM ACTING SO AS TO DIMINISH THE VALUE OF THE CERTIFICATION MARK AND TO COOPERATE WITH THE DEPARTMENT IN ITS EFFORTS TO PROTECT THE CERTIFICATION MARK;

5. AGREEMENT BY THE PARTICIPANT TO MAINTAIN RECORDS EVIDENCING COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE LICENSING AGREEMENT;

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

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

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

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

S 2. 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 is authorized and directed to be made and completed on or before such date.