

STATE OF NEW YORK

8386

IN SENATE

January 25, 2024

Introduced by Sens. KAVANAGH, RIVERA -- read twice and ordered printed,
and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to the
labeling of high-sugar beverages with warnings

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "high-sugar beverages safety warning act".

3 § 2. The agriculture and markets law is amended by adding a new
4 section 204-e to read as follows:

5 § 204-e. Labeling of high-sugar beverages. 1. For the purposes of this
6 section:

7 (a) "Beverage container" means any sealed or unsealed container
8 regardless of size or shape including, but not limited to, those made of
9 glass, metal, paper, plastic, or any other material or combination of
10 materials that is used or intended to be used to hold a high-sugar
11 beverage for individual sale to a consumer.

12 (b) "Beverage dispensing machine" means any device that mixes concen-
13 trate with any one or more other ingredients, and dispenses the result-
14 ing mixture into an unsealed container as a ready-to-drink beverage.

15 (c) "Caloric sweetener" means any substance containing calories, suit-
16 able for human consumption, and shall include, but not be limited to,
17 sucrose, fructose, glucose, and other sugars and fruit juice concen-
18 trates. "Caloric" means a substance that adds calories to the diet of
19 the individual who consumes such substance.

20 (d) "Concentrate" means a syrup or powder that is used or intended to
21 be used for mixing, compounding or making a high-sugar beverage.

22 (e) "Consumer" means an individual who purchases a high-sugar beverage
23 for a purpose other than resale.

24 (f) "Distribute" means to sell or otherwise provide a product to any
25 person for resale.

26 (g) "Menu or menu board" means the primary writing of a public food
27 service establishment, as defined in subdivision three of section thir-
28 teen hundred ninety-nine-n of the public health law, from which a

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

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1 consumer makes an order selection, which can be in different forms such
2 as booklets, pamphlets, or single sheets of paper, or published on an
3 online site, and can be located inside, outside, or on the website of
4 such public food service establishment or on a related software applica-
5 tion designed for food delivery.

6 (h) "Natural fruit juice" means the original liquid resulting from the
7 pressing of fruit, the liquid resulting from the reconstitution of
8 natural fruit juice concentrate or the liquid resulting from the resto-
9 ration of water to dehydrated natural fruit juice.

10 (i) "Natural vegetable juice" means the original liquid resulting from
11 the pressing of vegetables, the liquid resulting from the reconstitution
12 of natural vegetable juice concentrate or the liquid resulting from the
13 restoration of water to dehydrated natural vegetable juice.

14 (j) "Powder" means a solid mixture with added caloric sweetener used
15 in making, mixing or compounding a high-sugar beverage by mixing such
16 solid mixture with any one or more other ingredients including, but not
17 limited to, water, ice, syrup, simple syrup, fruits, vegetables, fruit
18 juice, or carbonation or other gas.

19 (k) "Principal display panel" means the part of a label that is most
20 likely to be displayed, presented, shown or examined under customary
21 conditions of display for retail sale.

22 (l) "Sealed beverage container" means a beverage container holding a
23 beverage that is dispensed into its container and closed or sealed off
24 the premises where the beverage is purchased.

25 (m) (1) "High-sugar beverage" means any sweetened nonalcoholic bever-
26 age, carbonated or noncarbonated, sold for human consumption that has
27 added caloric sweeteners and which contains one hundred percent or more
28 of the Food and Drug Administration's daily value for added sugars.

29 (2) Such term shall not include:

30 (A) any beverage containing one hundred percent natural fruit juice or
31 natural vegetable juice with no added caloric sweeteners;

32 (B) any liquid product manufactured for any of the following uses and
33 commonly referred to as a "dietary aid":

34 (i) an oral nutritional therapy for persons who cannot absorb or meta-
35 bolize dietary nutrients from food or beverages,

36 (ii) a source of necessary nutrition used as a result of a medical
37 condition, or

38 (iii) an oral electrolyte solution for infants and children formulated
39 to prevent dehydration due to illness;

40 (C) any product for consumption by infants and that is commonly
41 referred to as "infant formula";

42 (D) any beverage whose principal ingredient by weight is milk; or

43 (E) any alcoholic beverage that is subject to regulation by the alco-
44 holic beverage control law.

45 (n) "Syrup" means a liquid mixture with added caloric sweetener used
46 in making, mixing or compounding a high-sugar beverage by mixing such
47 liquid mixture with any one or more other ingredients, including, but
48 not limited to, water, ice, a powder, simple syrup, fruits, vegetables,
49 fruit juice, vegetable juice, or carbonation or other gas.

50 (o) "Unsealed beverage container" means a beverage container into
51 which a beverage is dispensed or poured at the premises where the bever-
52 age is purchased including, but not limited to, a container for fountain
53 drinks.

54 2. (a) No person shall distribute, sell or offer for sale a high-sugar
55 beverage in a sealed beverage container unless such container bears the

1 following safety warning and otherwise meets all of the requirements of
2 this subdivision:

3 "SAFETY WARNING: This beverage contains 100% or more of the FDA's
4 recommended daily intake of added sugar."

5 (b) The safety warning required by paragraph (a) of this subdivision
6 shall be displayed in a clear and conspicuous manner and readily legible
7 under ordinary conditions on the principal display panel of the sealed
8 beverage container, separate and apart from all other information, and
9 shall be on a contrasting background. The entire safety warning shall
10 appear in bold type.

11 (c) If the safety warning required by paragraph (a) of this subdivi-
12 sion is not printed directly on the beverage container, the safety warn-
13 ing shall be affixed to the beverage container in such a manner that it
14 cannot be removed without thorough application of water or other
15 solvents.

16 (d) No person shall distribute, sell or offer for sale a multipack of
17 high-sugar beverages in sealed beverage containers unless the multipack
18 of beverages bears the safety warning required by paragraph (a) of this
19 subdivision. The safety warning shall be posted in a clear and conspicu-
20 ous manner on the principal display panel and on at least one other side
21 of the multipack, in addition to being posted on each individual sealed
22 beverage container.

23 (e) No person shall distribute, sell or offer for sale a concentrate
24 unless the packaging of the concentrate, which is intended for retail
25 sale, bears the safety warning required by paragraph (a) of this subdivi-
26 sion. The safety warning shall be posted in a clear and conspicuous
27 manner on the principal display panel of the packaging of the concen-
28 trate.

29 (f) This subdivision shall not be construed to require the safety
30 warning required by paragraph (a) of this subdivision to be placed imme-
31 diately preceding any common name or primary product descriptor.

32 3. (a) Every person who owns, leases or otherwise controls the prem-
33 ises where a vending machine or beverage dispensing machine is located,
34 or where a high-sugar beverage is sold in an unsealed beverage contain-
35 er, shall place or cause to be placed, a safety warning in each of the
36 following locations:

37 (1) on the exterior of any vending machine that includes a high-sugar
38 beverage for sale;

39 (2) on the exterior of any beverage dispensing machine used by a
40 consumer to dispense a high-sugar beverage through self-service; and

41 (3) at the point-of-purchase, which may include the menu or menu
42 board, where any consumer purchases a high-sugar beverage in an unsealed
43 beverage container, when the unsealed beverage container is filled by an
44 employee of a food establishment rather than the consumer; provided,
45 however, this subparagraph shall not apply unless the premises where a
46 beverage dispensing machine is located, or where the high-sugar beverage
47 is sold in an unsealed beverage container is part of a network of
48 subsidiaries, affiliates or other member stores, under direct or indi-
49 rect common control, with three or more stores located in New York.

50 (b) The safety warning required by paragraph (a) of this subdivision
51 shall contain the following language:

52 "SAFETY WARNING: The Food and Drug Administration recommends limit-
53 ing added sugars to 50 grams per day based on a 2,000 calorie diet."

54 (c) The safety warning required by paragraph (a) of this subdivision
55 shall be displayed in a clear and conspicuous manner and readily legible
56 under ordinary conditions, separate and apart from all other informa-

tion, and shall be on a contrasting background. The entire safety warning shall appear in bold type.

4. (a) Whenever it shall appear that there has been a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this article, an injunction may be issued by such court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this article has occurred, the court may impose a civil penalty of not less than fifty dollars nor more than five hundred dollars for each such violation. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(b) The provisions of this section may be enforced concurrently by the director of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected under this section shall be retained by such municipality or local government.

5. A retailer shall not be subject to the penalties under this section unless: (a) the retailer is the manufacturer of the high-sugar beverage, the packager of a multipack of high-sugar beverages in sealed beverage containers, or the manufacturer of a concentrate and sells the high-sugar beverage, multipack of high-sugar beverages, or concentrate under a brand it owns; or (b) the retailer's failure to label was knowing and willful.

§ 3. Severability clause. If any provision of this act or its application to any person, legal entity, or circumstance is held invalid, the remainder of the act or the application of the provision to other persons, legal entities or circumstances shall not be affected.

§ 4. This act shall take effect one year after it shall have become a law.