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

10172

I N A S S E M B L Y

August 20, 2014

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Camara) -- read once and referred to the Committee on Consumer Affairs and Protection

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

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

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

S 2. Legislative intent. The legislature hereby finds and declares that:

(a) the prevalence of obesity in the state has increased dramatically over the past 30 years. Although no group has escaped the epidemic, low income communities and communities of color are disproportionately affected;

(b) the obesity epidemic is of particular concern because obesity increases the risk of diabetes, heart disease, arthritis, asthma and certain types of cancer. Depending on their level of obesity, from 60 percent to over 80 percent of obese adults currently suffer from type II diabetes, high blood cholesterol, high blood pressure or other related conditions;

(c) the medical costs for people who are obese are dramatically higher than for those of normal weight. Overweight and obesity account for $147 billion in health care costs nationally, or 9 percent of all medical spending, with one-half of these costs paid publicly through the Medicare and Medicaid programs;

(d) there is overwhelming evidence of the link between obesity and the consumption of sweetened beverages, such as soft drinks, energy drinks, sweet teas and sports drinks. The 2010 Dietary Guidelines for Americans recommend that everyone reduce their intake of sugar-sweetened beverages;

(e) individuals who drink one to two sugar-sweetened beverages per day have a 26 percent higher risk for developing type II diabetes. Over the past 10 years, the percentage of teens nationwide that have diabetes or

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

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prediabetes has increased from 9 percent to 23 percent. According to the American Diabetes Association, persons with type I diabetes should limit or avoid consumption of sugar-sweetened beverages. Complications of diabetes include: heart disease, nerve damage, gum infections, kidney disease, hearing impairment, blindness, amputation of toes, feet or legs, and increased risk of Alzheimer's disease;

(f) according to nutrition experts, sweetened beverages, such as soft drinks, energy drinks, sweet teas and sports drinks, offer little or no nutritional value, but massive quantities of added sugars. A 20 ounce bottle of soda contains the equivalent of approximately 17 teaspoons of sugar. Yet, the American Heart Association recommends that Americans consume no more than five to nine teaspoons of sugar per day;

(g) sugar-sweetened beverages are the single largest source of added sugars in the American diet, with the average American drinking nearly 45 gallons of sweetened beverages a year, the equivalent of 39 pounds of extra sugar every year. Over 50 percent of the United States population drinks one or more sugar-sweetened beverages per day;

(h) sugar-sweetened beverages are a unique contributor to excess caloric consumption. Research shows that calories from sugar-sweetened beverages do not satisfy hunger the way calories from solid food or fat or protein-containing beverages such as those containing milk and plant-based proteins. As a result, sugar-sweetened beverages tend to add to the calories people consume rather than replace them;

(i) consistent evidence shows a positive relationship between sugar intake and dental caries (cavities) in adults and fewer caries when sugar intake is restricted. Children who frequently consume beverages high in sugar are at an increased risk for dental caries. Untreated dental caries can lead to pain, infection, tooth loss and, in severe cases, death; and

(j) evidence suggests that health warnings can increase knowledge and reduce consumption of harmful products.

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

S 204-E. LABELING OF SUGAR-SWEETENED BEVERAGES. 1. FOR THE PURPOSES OF THIS SECTION:

(A) "BEVERAGE CONTAINER" MEANS ANY SEALED OR UNSEALED CONTAINER REGARDLESS OF SIZE OR SHAPE INCLUDING, BUT NOT LIMITED TO, THOSE MADE OF GLASS, METAL, PAPER, PLASTIC, OR ANY OTHER MATERIAL OR COMBINATION OF MATERIALS THAT IS USED OR INTENDED TO BE USED TO HOLD A SUGAR-SWEETENED BEVERAGE FOR INDIVIDUAL SALE TO A CONSUMER.

(B) "BEVERAGE DISPENSING MACHINE" MEANS ANY DEVICE THAT MIXES CONCENTRATE WITH ANY ONE OR MORE OTHER INGREDIENTS, AND DISPENSES THE RESULTING MIXTURE INTO AN UNSEALED CONTAINER AS A READY-TO-DRINK BEVERAGE.

(C) "CALORIC SWEETENER" MEANS ANY SUBSTANCE CONTAINING CALORIES, SUITABLE FOR HUMAN CONSUMPTION, THAT HUMANS PERCEIVE AS SWEET AND SHALL INCLUDE, BUT NOT BE LIMITED TO, SUCROSE, FRUCTOSE, GLUCOSE, AND OTHER SUGARS AND FRUIT JUICE CONCENTRATES. "CALORIC" MEANS A SUBSTANCE THAT ADDS CALORIES TO THE DIET OF THE INDIVIDUAL WHO CONSUMES SUCH SUBSTANCE.

(D) "CONCENTRATE" MEANS A SYRUP OR POWDER THAT IS USED OR INTENDED TO BE USED FOR MIXING, COMPOUNDING OR MAKING A SUGAR-SWEETENED BEVERAGE.

(E) "CONSUMER" MEANS AN INDIVIDUAL WHO PURCHASES A SUGAR-SWEETENED BEVERAGE FOR A PURPOSE OTHER THAN RESALE.

(F) "DISTRIBUTE" MEANS TO SELL OR OTHERWISE PROVIDE A PRODUCT TO ANY PERSON FOR RESALE.

(G) "NATURAL FRUIT JUICE" MEANS THE ORIGINAL LIQUID RESULTING FROM THE PRESSING OF FRUIT, THE LIQUID RESULTING FROM THE RECONSTITUTION OF

NATURAL FRUIT JUICE CONCENTRATE OR THE LIQUID RESULTING FROM THE RESTORATION OF WATER TO DEHYDRATED NATURAL FRUIT JUICE.

(H) "NATURAL VEGETABLE JUICE" MEANS THE ORIGINAL LIQUID RESULTING FROM THE PRESSING OF VEGETABLES, THE LIQUID RESULTING FROM THE RECONSTITUTION OF NATURAL VEGETABLE JUICE CONCENTRATE OR THE LIQUID RESULTING FROM THE RESTORATION OF WATER TO DEHYDRATED NATURAL VEGETABLE JUICE.

(I) "POWDER" MEANS A SOLID MIXTURE WITH ADDED CALORIC SWEETENER USED IN MAKING, MIXING OR COMPOUNDING A SUGAR-SWEETENED BEVERAGE BY MIXING SUCH SOLID MIXTURE WITH ANY ONE OR MORE OTHER INGREDIENTS INCLUDING, BUT NOT LIMITED TO, WATER, ICE, SYRUP, SIMPLE SYRUP, FRUITS, VEGETABLES, FRUIT JUICE, OR CARBONATION OR OTHER GAS.

(J) "SEALED BEVERAGE CONTAINER" MEANS A BEVERAGE CONTAINER HOLDING A BEVERAGE THAT IS CLOSED OR SEALED BEFORE BEING OFFERED FOR SALE TO A CONSUMER.

(K) (1) "SUGAR-SWEETENED BEVERAGE" MEANS ANY SWEETENED NONALCOHOLIC BEVERAGE, CARBONATED OR NONCARBONATED, SOLD FOR HUMAN CONSUMPTION THAT HAS ADDED CALORIC SWEETENERS AND WHICH CONTAINS SEVENTY-FIVE CALORIES OR MORE PER TWELVE FLUID OUNCES.

(2) SUCH TERM SHALL NOT INCLUDE:

(A) ANY BEVERAGE CONTAINING ONE HUNDRED PERCENT NATURAL FRUIT JUICE OR NATURAL VEGETABLE JUICE WITH NO ADDED CALORIC SWEETENERS;

(B) ANY LIQUID PRODUCT MANUFACTURED FOR ANY OF THE FOLLOWING USES AND COMMONLY REFERRED TO AS A "DIETARY AID":

(I) AN ORAL NUTRITIONAL THERAPY FOR PERSONS WHO CANNOT ABSORB OR METABOLIZE DIETARY NUTRIENTS FROM FOOD OR BEVERAGES,

(II) A SOURCE OF NECESSARY NUTRITION USED AS A RESULT OF A MEDICAL CONDITION, OR

(III) AN ORAL ELECTROLYTE SOLUTION FOR INFANTS AND CHILDREN FORMULATED TO PREVENT DEHYDRATION DUE TO ILLNESS;

(C) ANY PRODUCT FOR CONSUMPTION BY INFANTS AND THAT IS COMMONLY REFERRED TO AS "INFANT FORMULA"; OR

(D) ANY BEVERAGE WHOSE PRINCIPAL INGREDIENT BY WEIGHT IS MILK.

(1) "SYRUP" MEANS A LIQUID MIXTURE WITH ADDED CALORIC SWEETENER USED IN MAKING, MIXING OR COMPOUNDING A SUGAR-SWEETENED BEVERAGE BY MIXING SUCH LIQUID MIXTURE WITH ANY ONE OR MORE OTHER INGREDIENTS, INCLUDING, BUT NOT LIMITED TO, WATER, ICE, A POWDER, SIMPLE SYRUP, FRUITS, VEGETABLES, FRUIT JUICE, VEGETABLE JUICE, OR CARBONATION OR OTHER GAS.

(M) "UNSEALED BEVERAGE CONTAINER" MEANS A BEVERAGE CONTAINER INTO WHICH A BEVERAGE IS DISPENSED OR POURED AT THE PREMISES WHERE THE BEVERAGE IS PURCHASED INCLUDING, BUT NOT LIMITED TO, A CONTAINER FOR FOUNTAIN DRINKS.

2. (A) NO PERSON SHALL DISTRIBUTE, SELL OR OFFER FOR SALE A SUGAR-SWEETENED BEVERAGE IN A SEALED BEVERAGE CONTAINER UNLESS SUCH CONTAINER BEARS THE FOLLOWING SAFETY WARNING AND OTHERWISE MEETS ALL OF THE REQUIREMENTS OF THIS SUBDIVISION:

"SAFETY WARNING: DRINKING BEVERAGES WITH ADDED SUGAR CONTRIBUTES TO OBESITY, DIABETES AND TOOTH DECAY."

(B) (1) THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE CONSPICUOUSLY DISPLAYED AND READILY LEGIBLE UNDER ORDINARY CONDITIONS ON THE FRONT OF THE SEALED BEVERAGE CONTAINER, SEPARATE AND APART FROM ALL OTHER INFORMATION, AND SHALL BE ON A CONTRASTING BACKGROUND. THE ENTIRE SAFETY WARNING SHALL APPEAR IN BOLD TYPE.

(2) THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION SHALL APPEAR IN A FONT SIZE AND IN A MAXIMUM NUMBER OF CHARACTERS (I.E., LETTERS, NUMBERS, AND MARKS) PER INCH, AS FOLLOWS:

(A) FOR BEVERAGE CONTAINERS OF EIGHT FLUID OUNCES OR LESS, THE SAFETY WARNING SHALL BE IN SCRIPT, TYPE OR PRINTING NOT SMALLER THAN ONE MILLIMETER, AND THERE SHALL BE NO MORE THAN FORTY CHARACTERS PER LINEAR INCH.

(B) FOR BEVERAGE CONTAINERS OF MORE THAN EIGHT FLUID OUNCES AND LESS THAN ONE LITER, THE SAFETY WARNING SHALL BE IN SCRIPT, TYPE OR PRINTING NOT SMALLER THAN 2 MILLIMETERS, AND THERE SHALL BE NO MORE THAN TWENTY-FIVE CHARACTERS PER LINEAR INCH.

(C) FOR BEVERAGE CONTAINERS OF ONE LITER OR MORE, THE SAFETY WARNING SHALL BE IN SCRIPT, TYPE OR PRINTING NOT SMALLER THAN THREE MILLIMETERS, AND THERE SHALL BE NO MORE THAN TWELVE CHARACTERS PER LINEAR INCH.

(C) IF THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION IS NOT PRINTED DIRECTLY ON THE BEVERAGE CONTAINER, THE SAFETY WARNING SHALL BE AFFIXED TO THE BEVERAGE CONTAINER IN SUCH A MANNER THAT IT CANNOT BE REMOVED WITHOUT THOROUGH APPLICATION OF WATER OR OTHER SOLVENTS.

(D) NO PERSON SHALL DISTRIBUTE, SELL OR OFFER FOR SALE A MULTIPACK OF SUGAR-SWEETENED BEVERAGES IN SEALED BEVERAGE CONTAINERS UNLESS THE MULTIPACK OF BEVERAGES BEARS THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION. THE SAFETY WARNING SHALL BE POSTED CONSPICUOUSLY ON AT LEAST TWO SIDES OF THE MULTIPACK, IN ADDITION TO BEING POSTED ON EACH INDIVIDUAL SEALED BEVERAGE CONTAINER.

(E) NO PERSON SHALL DISTRIBUTE, SELL OR OFFER FOR SALE A CONCENTRATE UNLESS THE PACKAGING OF THE CONCENTRATE, WHICH IS INTENDED FOR RETAIL SALE, BEARS THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION. THE SAFETY WARNING SHALL BE POSTED CONSPICUOUSLY ON THE FRONT OF THE PACKAGING OF THE CONCENTRATE.

3. (A) EVERY PERSON WHO OWNS, LEASES OR OTHERWISE CONTROLS THE PREMISES WHERE A VENDING MACHINE OR BEVERAGE DISPENSING MACHINE IS LOCATED, OR WHERE A SUGAR-SWEETENED BEVERAGE IS SOLD IN AN UNSEALED BEVERAGE CONTAINER, SHALL PLACE OR CAUSE TO BE PLACED, A SAFETY WARNING IN EACH OF THE FOLLOWING LOCATIONS:

(1) ON THE EXTERIOR OF ANY VENDING MACHINE THAT INCLUDES A SUGAR-SWEETENED BEVERAGE FOR SALE;

(2) ON THE EXTERIOR OF ANY BEVERAGE DISPENSING MACHINE USED BY A CONSUMER TO DISPENSE A SUGAR-SWEETENED BEVERAGE THROUGH SELF-SERVICE; AND

(3) AT THE POINT-OF-PURCHASE WHERE ANY CONSUMER PURCHASES A SUGAR-SWEETENED BEVERAGE IN AN UNSEALED BEVERAGE CONTAINER, WHEN THE UNSEALED BEVERAGE CONTAINER IS FILLED BY AN EMPLOYEE OF A FOOD ESTABLISHMENT RATHER THAN THE CONSUMER.

(B) THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION SHALL CONTAIN THE FOLLOWING LANGUAGE:

"SAFETY WARNING: DRINKING BEVERAGES WITH ADDED SUGAR CONTRIBUTES TO OBESITY, DIABETES AND TOOTH DECAY."

(C) THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE CONSPICUOUSLY DISPLAYED AND READILY LEGIBLE UNDER ORDINARY CONDITIONS, SEPARATE AND APART FROM ALL OTHER INFORMATION, AND SHALL BE ON A CONTRASTING BACKGROUND. THE ENTIRE SAFETY WARNING SHALL APPEAR IN BOLD TYPE.

4. ANY VIOLATION OF THIS SECTION SHALL BE PUNISHABLE BY A CIVIL PENALTY OF NOT LESS THAN FIFTY DOLLARS, NOR MORE THAN FIVE HUNDRED DOLLARS.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.