

6435

I N S E N A T E

January 13, 2016

Introduced by Sen. 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 sugar-sweetened beverages with warnings

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

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

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

5 S 204-E. LABELING OF SUGAR-SWEETENED BEVERAGES. 1. FOR THE PURPOSES OF
6 THIS 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 SUGAR-SWEETENED
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, THAT HUMANS PERCEIVE AS SWEET AND SHALL
17 INCLUDE, BUT NOT BE LIMITED TO, SUCROSE, FRUCTOSE, GLUCOSE, AND OTHER
18 SUGARS AND FRUIT JUICE CONCENTRATES. "CALORIC" MEANS A SUBSTANCE THAT
19 ADDS CALORIES TO THE DIET OF 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 SUGAR-SWEETENED BEVERAGE.

22 (E) "CONSUMER" MEANS AN INDIVIDUAL WHO PURCHASES A SUGAR-SWEETENED
23 BEVERAGE 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.

LBD03793-05-5

1 CONSUMER MAKES AN ORDER SELECTION, WHICH CAN BE IN DIFFERENT FORMS SUCH
2 AS BOOKLETS, PAMPHLETS, OR SINGLE SHEETS OF PAPER, AND CAN BE LOCATED
3 INSIDE OR OUTSIDE OF SUCH PUBLIC FOOD SERVICE ESTABLISHMENT.

4 (H) "NATURAL FRUIT JUICE" MEANS THE ORIGINAL LIQUID RESULTING FROM THE
5 PRESSING OF FRUIT, THE LIQUID RESULTING FROM THE RECONSTITUTION OF
6 NATURAL FRUIT JUICE CONCENTRATE OR THE LIQUID RESULTING FROM THE RESTO-
7 RATION OF WATER TO DEHYDRATED NATURAL FRUIT JUICE.

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

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

17 (K) "PRINCIPAL DISPLAY PANEL" MEANS THE PART OF A LABEL THAT IS MOST
18 LIKELY TO BE DISPLAYED, PRESENTED, SHOWN OR EXAMINED UNDER CUSTOMARY
19 CONDITIONS OF DISPLAY FOR RETAIL SALE.

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

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

27 (2) SUCH TERM SHALL NOT INCLUDE:

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

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

32 (I) AN ORAL NUTRITIONAL THERAPY FOR PERSONS WHO CANNOT ABSORB OR META-
33 BOLIZE DIETARY NUTRIENTS FROM FOOD OR BEVERAGES,

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

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

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

40 (D) ANY BEVERAGE WHOSE PRINCIPAL INGREDIENT BY WEIGHT IS MILK; OR

41 (E) ANY ALCOHOLIC BEVERAGE THAT IS SUBJECT TO REGULATION BY THE ALCO-
42 HOLIC BEVERAGE CONTROL LAW.

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

48 (O) "UNSEALED BEVERAGE CONTAINER" MEANS A BEVERAGE CONTAINER INTO
49 WHICH A BEVERAGE IS DISPENSED OR POURED AT THE PREMISES WHERE THE BEVER-
50 AGE IS PURCHASED INCLUDING, BUT NOT LIMITED TO, A CONTAINER FOR FOUNTAIN
51 DRINKS.

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

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

3 (B) THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION
4 SHALL BE DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER AND READILY LEGIBLE
5 UNDER ORDINARY CONDITIONS ON THE PRINCIPAL DISPLAY PANEL OF THE SEALED
6 BEVERAGE CONTAINER, SEPARATE AND APART FROM ALL OTHER INFORMATION, AND
7 SHALL BE ON A CONTRASTING BACKGROUND. THE ENTIRE SAFETY WARNING SHALL
8 APPEAR IN BOLD TYPE.

9 (C) IF THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVI-
10 SION IS NOT PRINTED DIRECTLY ON THE BEVERAGE CONTAINER, THE SAFETY WARN-
11 ING SHALL BE AFFIXED TO THE BEVERAGE CONTAINER IN SUCH A MANNER THAT IT
12 CANNOT BE REMOVED WITHOUT THOROUGH APPLICATION OF WATER OR OTHER
13 SOLVENTS.

14 (D) NO PERSON SHALL DISTRIBUTE, SELL OR OFFER FOR SALE A MULTIPACK OF
15 SUGAR-SWEETENED BEVERAGES IN SEALED BEVERAGE CONTAINERS UNLESS THE
16 MULTIPACK OF BEVERAGES BEARS THE SAFETY WARNING REQUIRED BY PARAGRAPH
17 (A) OF THIS SUBDIVISION. THE SAFETY WARNING SHALL BE POSTED IN A CLEAR
18 AND CONSPICUOUS MANNER ON THE PRINCIPAL DISPLAY PANEL AND ON AT LEAST
19 ONE OTHER SIDE OF THE MULTIPACK, IN ADDITION TO BEING POSTED ON EACH
20 INDIVIDUAL SEALED BEVERAGE CONTAINER.

21 (E) NO PERSON SHALL DISTRIBUTE, SELL OR OFFER FOR SALE A CONCENTRATE
22 UNLESS THE PACKAGING OF THE CONCENTRATE, WHICH IS INTENDED FOR RETAIL
23 SALE, BEARS THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDI-
24 VISION. THE SAFETY WARNING SHALL BE POSTED IN A CLEAR AND CONSPICUOUS
25 MANNER ON THE PRINCIPAL DISPLAY PANEL OF THE PACKAGING OF THE CONCEN-
26 TRATE.

27 (F) THIS SUBDIVISION SHALL NOT BE CONSTRUED TO REQUIRE THE SAFETY
28 WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION TO BE PLACED IMME-
29 DIATELY PRECEDING ANY COMMON NAME OR PRIMARY PRODUCT DESCRIPTOR.

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

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

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

40 (3) AT THE POINT-OF-PURCHASE, WHICH MAY INCLUDE THE MENU OR MENU
41 BOARD, WHERE ANY CONSUMER PURCHASES A SUGAR-SWEETENED BEVERAGE IN AN
42 UNSEALED BEVERAGE CONTAINER, WHEN THE UNSEALED BEVERAGE CONTAINER IS
43 FILLED BY AN EMPLOYEE OF A FOOD ESTABLISHMENT RATHER THAN THE CONSUMER;
44 PROVIDED, HOWEVER, THIS SUBPARAGRAPH SHALL NOT APPLY UNLESS THE PREMISES
45 WHERE A BEVERAGE DISPENSING MACHINE IS LOCATED, OR WHERE THE
46 SUGAR-SWEETENED BEVERAGE IS SOLD IN AN UNSEALED BEVERAGE CONTAINER IS
47 PART OF A NETWORK OF SUBSIDIARIES, AFFILIATES OR OTHER MEMBER STORES,
48 UNDER DIRECT OR INDIRECT COMMON CONTROL, WITH THREE OR MORE STORES
49 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: DRINKING BEVERAGES WITH ADDED SUGAR CONTRIBUTES TO
53 OBESITY, DIABETES AND TOOTH DECAY."

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-

1 TION, AND SHALL BE ON A CONTRASTING BACKGROUND. THE ENTIRE SAFETY WARN-
2 ING SHALL APPEAR IN BOLD TYPE.

3 4. (A) WHENEVER IT SHALL APPEAR THAT THERE HAS BEEN A VIOLATION OF
4 THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE
5 NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING
6 JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON
7 NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND
8 RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO
9 THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN
10 FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT
11 OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT
12 REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED
13 THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE
14 ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF
15 SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES,
16 AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A
17 VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL
18 PENALTY OF NOT LESS THAN FIFTY DOLLARS NOR MORE THAN FIVE HUNDRED
19 DOLLARS FOR EACH SUCH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED
20 APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A
21 DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE
22 WITH THE CIVIL PRACTICE LAW AND RULES.

23 (B) THE PROVISIONS OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE
24 DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, OR BY THE TOWN ATTOR-
25 NEY, CITY CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICI-
26 PALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED UNDER THIS SECTION
27 SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

28 5. A RETAILER SHALL NOT BE SUBJECT TO THE PENALTIES UNDER THIS SECTION
29 UNLESS: (A) THE RETAILER IS THE MANUFACTURER OF THE SUGAR-SWEETENED
30 BEVERAGE, THE PACKAGER OF A MULTIPACK OF SUGAR-SWEETENED BEVERAGES IN
31 SEALED BEVERAGE CONTAINERS, OR THE MANUFACTURER OF A CONCENTRATE AND
32 SELLS THE SUGAR-SWEETENED BEVERAGE, MULTIPACK OF SUGAR-SWEETENED BEVER-
33 AGES, OR CONCENTRATE UNDER A BRAND IT OWNS; OR (B) THE RETAILER'S FAIL-
34 URE TO LABEL WAS KNOWING AND WILLFUL.

35 S 3. Severability clause. If any provision of this act or its appli-
36 cation to any person, legal entity, or circumstance is held invalid, the
37 remainder of the act or the application of the provision to other
38 persons, legal entities or circumstances shall not be affected.

39 S 4. This act shall take effect one year after it shall have become a
40 law.