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

8400

2015-2016 Regular Sessions

I N A S S E M B L Y

October 2, 2015

Introduced by M. of A. TITONE -- 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 food items and beverages with warnings prescribed by the department of health

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 food item and beverage safety warning act".

S 2. 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 FOOD ITEMS AND 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.

(D) "CALORIC" MEANS A SUBSTANCE THAT ADDS CALORIES TO THE DIET OF THE INDIVIDUAL WHO CONSUMES SUCH SUBSTANCE.

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

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

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

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

(H) "FOOD ITEM 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 FOOD ITEM FOR INDIVIDUAL SALE TO A CONSUMER.

(I) "FOOD ITEM DISPENSING MACHINE" MEANS ANY DEVICE THAT DISPENSES SUGAR-SWEETENED FOOD ITEMS.

(J) "MENU OR MENU BOARD" MEANS THE PRIMARY WRITING OF A PUBLIC FOOD SERVICE ESTABLISHMENT, AS DEFINED IN SUBDIVISION THREE OF SECTION THIRTEEN HUNDRED NINETY-NINE-N OF THE PUBLIC HEALTH LAW, FROM WHICH A CONSUMER MAKES AN ORDER SELECTION, WHICH CAN BE IN DIFFERENT FORMS SUCH AS BOOKLETS, PAMPHLETS, OR SINGLE SHEETS OF PAPER, AND CAN BE LOCATED INSIDE OR OUTSIDE OF SUCH PUBLIC FOOD SERVICE ESTABLISHMENT.

(K) "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.

(L) "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.

(M) "POWDER" MEANS A SOLID MIXTURE WITH ADDED CALORIC SWEETENER USED IN MAKING, MIXING OR COMPOUNDING A SUGAR-SWEETENED FOOD ITEM OR 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.

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

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

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

(Q) (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 FOOD ITEMS AND 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";

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

(E) ANY ALCOHOLIC BEVERAGE THAT IS SUBJECT TO REGULATION BY THE ALCOHOLIC BEVERAGE CONTROL LAW.

(R) "SUGAR-SWEETENED FOOD ITEM" MEANS ANY SWEETENED FOOD ITEM SOLD FOR HUMAN CONSUMPTION THAT HAS ADDED CALORIC SWEETENERS AND WHICH CONTAINS SEVENTY-FIVE CALORIES OR MORE PER FOUR OUNCES.

(S) "SYRUP" MEANS A LIQUID MIXTURE WITH ADDED CALORIC SWEETENER USED IN MAKING, MIXING OR COMPOUNDING A SUGAR-SWEETENED FOOD ITEM OR 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.

(T) "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.

(U) "UNSEALED FOOD ITEM CONTAINER" MEANS A FOOD ITEM CONTAINER INTO WHICH A FOOD ITEM IS DISPENSED OR PLACED AT THE PREMISES WHERE THE FOOD ITEM IS PURCHASED.

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

(B) THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER AND READILY LEGIBLE UNDER ORDINARY CONDITIONS ON THE PRINCIPAL DISPLAY PANEL OF THE SEALED FOOD ITEM CONTAINER OR 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.

(C) IF THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION IS NOT PRINTED DIRECTLY ON THE FOOD ITEM CONTAINER OR BEVERAGE CONTAINER, THE SAFETY WARNING SHALL BE AFFIXED TO THE FOOD ITEM CONTAINER OR 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 FOOD ITEMS OR SUGAR-SWEETENED BEVERAGES IN SEALED FOOD ITEM CONTAINERS OR SEALED BEVERAGE CONTAINERS UNLESS THE MULTIPACK OF FOOD ITEMS OR BEVERAGES BEARS THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION. THE SAFETY WARNING SHALL BE POSTED IN A CLEAR AND CONSPICUOUS MANNER ON THE PRINCIPAL DISPLAY PANEL AND ON AT LEAST ONE OTHER SIDE OF THE MULTIPACK, IN ADDITION TO BEING POSTED ON EACH INDIVIDUAL SEALED FOOD ITEM CONTAINER OR 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 IN A CLEAR AND CONSPICUOUS MANNER ON THE PRINCIPAL DISPLAY PANEL OF THE PACKAGING OF THE CONCENTRATE.

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

3. (A) EVERY PERSON WHO OWNS, LEASES OR OTHERWISE CONTROLS THE PREMISES WHERE A VENDING MACHINE OR FOOD ITEM OR BEVERAGE DISPENSING MACHINE

IS LOCATED, OR WHERE A SUGAR-SWEETENED FOOD ITEM OR SUGAR-SWEETENED BEVERAGE IS SOLD IN AN UNSEALED FOOD ITEM CONTAINER OR 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 FOOD ITEM OR SUGAR-SWEETENED BEVERAGE FOR SALE;

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

(3) AT THE POINT-OF-PURCHASE, WHICH MAY INCLUDE THE MENU OR MENU BOARD, WHERE ANY CONSUMER PURCHASES A SUGAR-SWEETENED FOOD ITEM OR SUGAR-SWEETENED BEVERAGE IN AN UNSEALED FOOD ITEM CONTAINER OR UNSEALED BEVERAGE CONTAINER, WHEN THE UNSEALED FOOD ITEM CONTAINER OR UNSEALED BEVERAGE CONTAINER IS FILLED BY AN EMPLOYEE OF A FOOD ESTABLISHMENT RATHER THAN THE CONSUMER; PROVIDED, HOWEVER, THIS SUBPARAGRAPH SHALL NOT APPLY UNLESS THE PREMISES WHERE A FOOD ITEM OR BEVERAGE DISPENSING MACHINE IS LOCATED, OR WHERE THE SUGAR-SWEETENED FOOD ITEM OR SUGAR-SWEETENED BEVERAGE IS SOLD IN AN UNSEALED FOOD ITEM CONTAINER OR UNSEALED BEVERAGE CONTAINER IS PART OF A NETWORK OF SUBSIDIARIES, AFFILIATES OR OTHER MEMBER STORES, UNDER DIRECT OR INDIRECT COMMON CONTROL, WITH THREE OR MORE STORES LOCATED IN NEW YORK.

(B) THE SAFETY WARNING REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION SHALL BE DISPLAYED IN A CLEAR AND CONSPICUOUS MANNER 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. (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 SUGAR-SWEETENED FOOD ITEM OR SUGAR-SWEETENED BEVERAGE, THE PACKAGER OF A MULTIPACK OF SUGAR-SWEETENED FOOD ITEMS IN SEALED FOOD ITEM CONTAINERS OR SUGAR-SWEETENED BEVERAGES IN SEALED BEVERAGE CONTAINERS, OR THE MANUFACTURER OF A

CONCENTRATE AND SELLS THE SUGAR-SWEETENED FOOD ITEM OR SUGAR-SWEETENED BEVERAGE, MULTIPACK OF SUGAR-SWEETENED FOOD ITEMS OR SUGAR-SWEETENED BEVERAGES, OR CONCENTRATE UNDER A BRAND IT OWNS; OR

(B) THE RETAILER'S FAILURE TO LABEL WAS KNOWING AND WILLFUL.

S 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.

S 4. The department of health shall prescribe safety warnings for sugar-sweetened food items and sugar-sweetened beverages as required by section two hundred four-e of the agriculture and markets law, as added by section two of this act.

S 5. This act shall take effect one year after it shall have become a law. 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 to be made and completed on or before such effective date.