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

8412

2015-2016 Regular Sessions

I N A S S E M B L Y

October 9, 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 prohibiting the sale of oversized sugar-sweetened fountain beverages to minors

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

Section 1. Article 3 of the agriculture and markets law is amended by adding a new section 45-d to read as follows:

S 45-D. SALE OF OVERSIZED SUGAR-SWEETENED FOUNTAIN BEVERAGES TO MINORS PROHIBITED. 1. NO PERSON, PARTNERSHIP OR CORPORATION SHALL SELL OR OFFER FOR SALE IN THIS STATE AN OVERSIZED SUGAR-SWEETENED FOUNTAIN BEVERAGE IN A CUP OR CONTAINER THAT CONTAINS MORE THAN SIXTEEN FLUID OUNCES TO ANY PERSON UNDER THE AGE OF EIGHTEEN YEARS.

2. SALE OF OVERSIZED SUGAR-SWEETENED FOUNTAIN BEVERAGES SHALL BE MADE ONLY TO AN INDIVIDUAL WHO DEMONSTRATES, THROUGH (A) A VALID DRIVER'S LICENSE OR NON-DRIVER'S IDENTIFICATION ISSUED BY THE COMMISSIONER OF MOTOR VEHICLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES TERRITORY, COMMONWEALTH OR POSSESSION, THE DISTRICT OF COLUMBIA, A STATE GOVERNMENT WITHIN THE UNITED STATES OR A PROVINCIAL GOVERNMENT OF THE DOMINION OF CANADA; OR (B) A VALID PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT OR ANY OTHER COUNTRY; OR (C) AN IDENTIFICATION CARD ISSUED BY THE UNITED STATES, INDICATING THAT THE INDIVIDUAL IS AT LEAST EIGHTEEN YEARS OF AGE. SUCH IDENTIFICATION NEED NOT BE REQUIRED OF ANY INDIVIDUAL WHO REASONABLY APPEARS TO BE AT LEAST THIRTY YEARS OF AGE, PROVIDED, HOWEVER, THAT SUCH APPEARANCE SHALL NOT CONSTITUTE A DEFENSE IN ANY PROCEEDING INVOLVING SALE OF ANY FOOD PRODUCT, TO AN INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

3. IN ANY PROCEEDING PURSUANT TO THIS SECTION, IT SHALL BE AN AFFIRMATIVE DEFENSE THAT A PERSON PURCHASING OR ATTEMPTING TO PURCHASE AN OVERSIZED SUGAR-SWEETENED FOUNTAIN BEVERAGE PRODUCED A DRIVER'S LICENSE OR A

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

LBD11907-02-5

NON-DRIVER IDENTIFICATION CARD APPARENTLY ISSUED BY A GOVERNMENT ENTITY OR OTHER IDENTIFICATION PURSUANT TO SUBDIVISION TWO OF THIS SECTION, SUCCESSFULLY COMPLETED THE TRANSACTION, AND THAT THE SALE OF SUCH BEVERAGE TO SUCH PERSON WAS BASED ON THE REASONABLE RELIANCE UPON SUCH IDENTIFICATION AND TRANSACTION. IN EVALUATING THE APPLICABILITY OF SUCH AFFIRMATIVE DEFENSE, CONSIDERATION SHALL BE GIVEN TO ANY WRITTEN POLICY ADOPTED AND IMPLEMENTED BY THE SELLER TO EFFECTUATE THE PROVISIONS OF THIS SECTION. USE OF ANY METHOD OF AN ELECTRONIC TRANSACTION SCAN SHALL NOT EXCUSE ANY PERSON OPERATING A PLACE OF BUSINESS WHEREIN OVERSIZED SUGAR-SWEETENED FOUNTAIN BEVERAGES ARE SOLD, OR THE AGENT OR EMPLOYEE OF SUCH PERSON, FROM THE EXERCISE OF DUE DILIGENCE. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, ANY SUCH AFFIRMATIVE DEFENSE SHALL NOT BE APPLICABLE IN ANY CIVIL OR CRIMINAL PROCEEDING, OR IN ANY OTHER FORUM.

4. FOR PURPOSES OF THIS SECTION:

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

(B) "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.

(C) "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.

(D) "OVERSIZED" MEANS CUP OR CONTAINER THAT MAY CONTAIN MORE THAN SIXTEEN FLUID OUNCES.

(E) (1) "SUGAR-SWEETENED FOUNTAIN 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 AND IS PROVIDED FROM A FOUNTAIN MACHINE OR TAP.

(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;

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

(F) ANY PRE-BOTTLED SUGAR-SWEETENED BEVERAGE SOLD IN BOTTLES OF ANY SIZE.

S 2. 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 are authorized to be made and completed on or before such effective date.