

# STATE OF NEW YORK

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2017-2018 Regular Sessions

## IN ASSEMBLY

February 7, 2017

Introduced by M. of A. DINOWITZ, GOTTFRIED, MOSLEY, HIKIND, JAFFEE, SIMON, JOYNER, COLTON, GALEF, STECK, ARROYO, SIMOTAS, SEAWRIGHT, TITONE -- Multi-Sponsored by -- M. of A. COOK, GLICK, PERRY -- 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:

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

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

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

3 (g) "Menu or menu board" means the primary writing of a public food  
4 service establishment, as defined in subdivision three of section thir-  
5 teen hundred ninety-nine-n of the public health law, from which a  
6 consumer makes an order selection, which can be in different forms such  
7 as booklets, pamphlets, or single sheets of paper, and can be located  
8 inside or outside of such public food service establishment.

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

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

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

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

25 (l) "Sealed beverage container" means a beverage container holding a  
26 beverage that is closed or sealed before being offered for sale to a  
27 consumer.

28 (m) (1) "Sugar-sweetened beverage" means any sweetened nonalcoholic  
29 beverage, carbonated or noncarbonated, sold for human consumption that  
30 has added caloric sweeteners and which contains seventy-five calories or  
31 more per twelve fluid ounces.

32 (2) Such term shall not include:

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

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

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

39 (ii) a source of necessary nutrition used as a result of a medical  
40 condition, or

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

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

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

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

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

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

1 2. (a) No person shall distribute, sell or offer for sale a sugar-  
2 sweetened beverage in a sealed beverage container unless such container  
3 bears the following safety warning and otherwise meets all of the  
4 requirements of this subdivision:

5 "SAFETY WARNING: Drinking beverages with added sugar contributes to  
6 obesity, diabetes and tooth decay."

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

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

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

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

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

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

39 (1) on the exterior of any vending machine that includes a sugar-  
40 sweetened beverage for sale;

41 (2) on the exterior of any beverage dispensing machine used by a  
42 consumer to dispense a sugar-sweetened beverage through self-service;  
43 and

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

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

1 "SAFETY WARNING: Drinking beverages with added sugar contributes to  
2 obesity, diabetes and tooth decay."

3 (c) 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, separate and apart from all other informa-  
6 tion, and shall be on a contrasting background. The entire safety warn-  
7 ing shall appear in bold type.

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

28 (b) The provisions of this section may be enforced concurrently by the  
29 director of a municipal consumer affairs office, or by the town attor-  
30 ney, city corporation counsel, or other lawful designee of a munici-  
31 pality or local government, and all moneys collected under this section  
32 shall be retained by such municipality or local government.

33 5. A retailer shall not be subject to the penalties under this section  
34 unless: (a) the retailer is the manufacturer of the sugar-sweetened  
35 beverage, the packager of a multipack of sugar-sweetened beverages in  
36 sealed beverage containers, or the manufacturer of a concentrate and  
37 sells the sugar-sweetened beverage, multipack of sugar-sweetened bever-  
38 ages, or concentrate under a brand it owns; or (b) the retailer's fail-  
39 ure to label was knowing and willful.

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

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