

# STATE OF NEW YORK

2473

2019-2020 Regular Sessions

## IN ASSEMBLY

January 22, 2019

Introduced by M. of A. DINOWITZ, GOTTFRIED, MOSLEY, JAFFEE, SIMON, JOYNER, COLTON, GALEF, STECK, ARROYO, SIMOTAS, SEAWRIGHT, L. ROSENTHAL, GLICK, ORTIZ -- Multi-Sponsored by -- M. of A. COOK, DE LA ROSA, D'URSO, EPSTEIN, 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.

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

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1 (e) "Consumer" means an individual who purchases a sugar-sweetened  
2 beverage for a purpose other than resale.

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

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

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

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

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

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

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

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

34 (2) Such term shall not include:

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

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

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

41 (ii) a source of necessary nutrition used as a result of a medical  
42 condition, or

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

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

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

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

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

55 (o) "Unsealed beverage container" means a beverage container into  
56 which a beverage is dispensed or poured at the premises where the bever-

1 age is purchased including, but not limited to, a container for fountain  
2 drinks.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (c) The safety warning required by paragraph (a) of this subdivision  
6 shall be displayed in a clear and conspicuous manner and readily legible  
7 under ordinary conditions, separate and apart from all other informa-  
8 tion, and shall be on a contrasting background. The entire safety warn-  
9 ing shall appear in bold type.

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

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

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

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

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