STATE OF NEW YORK

6546--B

2023-2024 Regular Sessions

IN ASSEMBLY

April 17, 2023

Introduced by M. of A. REYES, KELLES -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to requiring chain restaurants to label menu items that have a high content of added sugars

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public health law is amended by adding a new section 1357 to read as follows:

§ 1357. Added sugar safety warnings for chain restaurants. 1. Definitions. For purposes of this section the following terms shall have the following meanings:

a. "Chain menu developer" means a person that owns and licenses the brand name under which the covered establishment does business, or any other person responsible for determining the formula or recipe for items displayed on the menu of a covered establishment.

b. "Covered establishment" means a food service establishment, as defined in part fourteen of the New York sanitary code 10 NYCRR 14-1.20, that is part of a chain with fifteen or more locations within the state doing business under the same name, regardless of the type of ownership of the locations, and offering for sale substantially similar food items.

c. "Food tag" means a written or printed description of food or beverages and their price, placed in the vicinity of a sample or self-serve item, including free-standing tags and tags attached to the shelf.

d. "Discrete serving" means the separated or easily separable uniform portion or portions of a food item comprising a reasonable estimate of

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

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one person's share of the food item. Food items without separated or easily separable uniform portions do not contain discrete servings.

e. "High added sugars content" means the item contains one hundred percent or more of the daily value for added sugars, as established by the federal Food and Drug Administration.

f. "Menu" means the primary writing of a covered establishment from which a customer makes an order selection, including but not limited to, breakfast, lunch, and dinner menus; dessert menus; beverage menus; children's menus; other specialty menus; electronic menus; and menus on the internet.

g. "Menu board" means a menu posted inside a covered establishment as well as a menu posted outside a covered establishment, including a drive-through menu.

h. "Food item" means a food or beverage item offered for sale by a covered establishment that is listed on a menu, menu board, or food tag, including a variable food or beverage item that comes in different flavors, varieties, or combinations and is listed as a single item. Food item excludes temporary food or beverage items listed for less than sixty days per calendar year.

i. "Point of purchase" means a place where a customer may order food within a covered establishment.

j. "Self-serve dispensing point" means a location at which a customer may access food or beverages without the assistance of a staff member, including self-serve fountain beverage machines.

2. Added sugars warning. a. A covered establishment not exempted under subdivision six of this section shall display an added sugars warning next to or directly under the name of each food item with high added sugars content wherever such food item is listed on a menu, menu board, or food tag, and by any self-serve dispensing point at which such food item is dispensed. This requirement applies to any menu item that comes in different flavors, varieties, or combinations if any flavor, variety, or combination has high added sugars content.

b. A food item that consists of more than one discrete serving requires an added sugars warning only if each discrete serving has a high added sugars content.

c. No later than one year after the department issues the rules and regulations required pursuant to paragraph d of this subdivision, a covered establishment is required to display at least one clearly visible warning on a menu, menu board, food tag, or by a self-serve dispensing point pursuant to paragraph a of this subdivision, and shall make a factual warning statement about high added sugars intake prominently, clearly, and conspicuously visible at the point of purchase.

d. No later than one year after the effective date of this section, the department shall promulgate rules and regulations designating a warning and factual warning statement.

3. Reporting requirement. Once every ninety days, every chain menu developer shall report to the department the amount of added sugars in each food item offered for sale in a covered establishment, or report that no changes to the menu information have been made since the last report.

4. Report. No later than six years after the effective date of this section, the department shall issue a report reviewing evidence of the impact of this section on food item reformulation and consumer behavior and recommend additional nutrients that should be considered for menu warnings.

5. Violations. Any chain restaurant that violates the provisions of this section shall be subject to a civil penalty of not more than two hundred fifty dollars per day for each location not in compliance.

6. Exemptions. The added sugars warning required pursuant to subdivision two of this section shall not be required to be displayed next to a food item that is already labeled with an added sugars warning equal or greater in size and similar in general appearance, when such icon is required pursuant to a rule, regulation, ordinance, local law, order, or policy issued by another jurisdiction having the same or substantially similar effect as determined by the commissioner. Food service establishments exempted from the added sugars warning labeling requirement by this subdivision shall be used in determining if a particular food service establishment is a chain restaurant.

§ 2. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 3. 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.