STATE OF NEW YORK

4045

2023-2024 Regular Sessions

IN SENATE

February 2, 2023

Introduced by Sen. FERNANDEZ -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to enacting the New York healthy vending act

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 article 18 to read as follows:

ARTICLE 18

NEW YORK HEALTHY VENDING ACT

Section 1800. Definitions.
1801. Applicability.
1802. Vending machine requirements.
1803. Enforcement and reports.
1804. Violations and penalties.

§ 1800. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Food and beverage vending machine" means a self-service machine offered for public use that, on insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses servings of food or beverages in bulk or in packages, or prepared by the machine, without the necessity of replenishing the device between each vended operation.

2. "Packaged" means bottled, canned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

3. "Healthy food or beverage option" means a packaged food or beverage that meets the requirements to be a healthy food option or a healthy beverage option established in section eighteen hundred two of this article.

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

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§ 1801. Applicability. 1. All food and beverages sold by state agencies, including through vending machines located on property owned or leased by the state, shall meet minimum nutrition and procurement standards as set forth in section eighteen hundred two of this article.

2. If a food and beverage vending machine is located on state property that has been leased to a private entity, the department shall encourage the tenant to meet the requirements of this article.

§ 1802. Vending machine requirements. 1. Any packaged snack food and beverage option offered in a food and beverage vending machine shall contain:

(a) zero grams of trans fat per serving; and

(b) no more than two hundred milligrams of sodium per package.

2. At a minimum, seventy-five percent of entree food items must meet the following calorie, sodium, fat, and sugar standards:

(a) No more than four hundred calories per package/item;

(b) No more than four hundred eighty milligrams of sodium per package/item;

(c) No more than thirty-five percent of calories from fat per package/item (one gram fat = nine calories, therefore no more than fifteen grams for a four hundred-calorie item);

(d) No more than ten percent of calories from saturated fat per package/item (one gram fat = nine calories, therefore no more than four grams for a four hundred-calorie item);

(e) Zero grams trans fat per package/item; and

(f) No more than thirty-five percent of calories from total sugars, with a maximum of fifteen grams of total sugars per package/item (one gram sugar = four calories).

3. Each entree item must meet at least two of the following positive nutritional value standards:

(a) Contain one-fourth cup of fruit, non-fried vegetable, or fat-free/low-fat dairy;

(b) Contain one ounce of nuts or seeds or one tablespoon of nut butter;

(c) At least fifty percent of the grain ingredients are whole grain; and

(d) Contain at least ten percent of the daily value of a naturally occurring nutrient of public health concern (calcium, potassium, vitamin D, or fiber).

4. Upon the effective date of this section, at least twenty-five percent of the packaged food and beverage options offered in a food and beverage vending machine shall be healthy food or beverage options. Within two years from the effective date of this section, at least fifty percent of the packaged food and beverage options offered in a food and beverage vending machine shall be healthy food or beverage options. Within three years from the effective date of this section and thereafter, at least seventy-five percent of the packaged food and beverage options offered in a food and beverage vending machine shall be healthy food or beverage options.

5. The following beverages are considered a healthy beverage option:

(a) fat free milk;

(b) one percent low fat dairy milk;

(c) calcium or vitamin D fortified soy milk with fewer than two hundred calories per container; and

(d) packages containing twelve ounces or less of one hundred percent fruit juice, vegetable juice, or fruit juice combined with water, with

no added caloric sweeteners and no more than two hundred milligrams of sodium per container.

6. Except as provided in subdivision five of this section, a healthy beverage option may not contain more than forty calories per package.

7. A healthy food option shall contain:

(a) no more than two hundred calories per package;

(b) less than thirty-five percent of calories from fat, except for foods containing one hundred percent nuts or seeds;

(c) less than ten percent of calories from saturated fat; and

(d) no more than thirty-five percent of calories from total sugars, excluding fruits and vegetables with no added calorie sweeteners or fats and yogurt with less than thirty grams of total sugar per eight ounces.

8. Sugarless chewing gum and mints are considered a healthy food option.

9. A healthy food or beverage option offered for sale in a food and beverage vending machine shall be displayed in a way that is easily visible and distinguishable from foods and beverages that are not considered healthy food or beverage options.

10. A healthy food or beverage option shall be stocked in a position with the highest selling potential.

11. An operator of a food and beverage vending machine shall post a sign in close proximity to each food or beverage option or the selection button for the food or beverage option that includes a clear and conspicuous statement disclosing the number of calories contained in the food or beverage option if a food or beverage option sold from the vending machine:

(a) is packaged in a way that does not allow the prospective purchaser to examine the nutrition facts panel before purchasing the food or beverage; or

(b) does not otherwise provide visible nutrition information at the point of purchase.

12. This article may not be construed to require a unit of state government to place a food and beverage vending machine on state property.

§ 1803. Enforcement and reports. 1. On or before the first of January, two thousand twenty-eight, and every five years thereafter, the department shall review and, if necessary, revise and update the requirements for healthy food options and healthy beverage options established in section eighteen hundred two of this article to reflect advancements in nutrition science, dietary data, and product availability.

2. To enforce this article, the department may:

(a) inspect food and beverage vending machines that are subject to this article; and

(b) receive reports from persons regarding potential noncompliance with this article.

3. The department shall disseminate information and conduct trainings on the requirements of this article.

4. On or before the first of January, two thousand twenty-four, and every two years thereafter, the department shall report to the governor on:

(a) the implementation of this article, including successes, challenges, and barriers;

(b) an assessment of the compliance of food and beverage vending machine operators with this article; and

(c) recommendations for improving the healthy food or beverage option standards and food and beverage vending machine operator compliance, if necessary.

§ 1804. Violations and penalties. 1. A person who violates this article is subject to:

(a) for a first violation, a civil fine of no less than one hundred dollars paid by the food and beverage vending machine operator; and

(b) for each subsequent violation, a civil fine of not less than five hundred dollars paid by the food and beverage vending machine operator.

2. A person who commits five or more violations within a six month period:

(a) may not operate a food and beverage vending machine on state property; and

(b) is subject to a civil fine of not less than one thousand dollars.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.