STATE OF NEW YORK

6408

2023-2024 Regular Sessions

IN SENATE

April 18, 2023

Introduced by Sen. RIVERA -- 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 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. Legislative findings. The legislature hereby finds added sugars include sugars that are added to foods and beverages during processing. They include foods packaged as sweeteners, syrups and honey, and sugars from concentrated fruit or vegetable juices. They do not include naturally occurring sugars that are found in milk, fruits, and vegetables. The daily value for added sugars established by the federal Food and Drug Administration is 50 grams per day based on a 2,000-calorie daily diet, equivalent to approximately 12 teaspoons. Healthy eating patterns that are relatively lower in added sugars, less than 50 grams per day, are associated with a reduced risk of cardiovascular disease, type 2 diabetes, and certain types of cancers. Unfortunately, American adults consume an average of 17 teaspoons of added sugars per day, about 40 percent more than currently recommended by the Dietary Guidelines for Americans.

The leading source of added sugars in the American diet, accounting for 24 percent of our intake, is sugar-sweetened beverages-like soda, fruit drinks, sports drinks, energy drinks, flavored milk, and sweetened coffee. These are followed closely by desserts and sweet snacks, which account for 19 percent of our added sugars intake. Sugary drinks contribute to an increased risk of type 2 diabetes and heart disease, in part by leading to weight gain, and are linked to a higher risk of dental cavities. Regularly consuming sugary drinks, seven or more servings per week, is associated with a statistically significant 29 percent increase in risk of dying from cardiovascular disease, compared to

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

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consuming one serving per week or less. Consuming one or more 12-oz cans of soda per day significantly increases the risk of dying from heart disease.

Healthy eating patterns that are low in added sugars are associated with a reduced risk of cardiovascular disease, type 2 diabetes, and certain types of cancers. Warning icons are an effective tool to reduce added sugars consumption. Research from randomized controlled trials has shown that warnings on sugary drinks can significantly reduce sugary drink purchases. Sugary drink consumption dropped by nearly 25 percent in the 18 months after the country of Chile adopted "high in sugar" nutrient warnings on food and drink packaging nationwide. This act implements added sugar warnings on menu items at chain restaurants.

§ 2. 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 retail establishment that offers food for sale that is not usually eaten on the premises, or a restaurant that is part of a chain with fifteen or more locations nationally that are 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 one person's share of the food item. For example, a pizza with eight slices that is reasonably estimated to serve two people contains two discrete servings. 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 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 food item for which certain variations or combinations do not have high added sugars content, if any variation or combination described under the same listing does have 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 one hundred dollars for a first offense and two hundred fifty dollars for each subsequent offense.

§ 3. 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.

§ 4. 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.