CALIFORNIA BILL TEXT

TITLE: Sugar-sweetened beverages: safety warnings

VERSION: Amended/Substituted
July 05, 2018
Bonta, Chiu, and Wood

SUMMARY: An act to add Article 15 (commencing with Section 111224) to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, relating to public health.

TEXT:

AMENDED IN SENATE JULY 5, 2018
AMENDED IN SENATE JUNE 20, 2018
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CALIFORNIA LEGISLATURE--2017-18 REGULAR SESSION

ASSEMBLY BILL No. 1335

Introduced by Assembly Member Bonta
Members Bonta, Chiu, and Wood

(Principal coauthor: Senator Wiener)

(Coauthors: Assembly Members Bloom, McCarty, Mark Stone, and Thurmond)

(Coauthors: Senators Monning and Stern)

February 17, 2017

An act to add Article 15 (commencing with Section 111224) to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1335, as amended, Bonta. Sugar-sweetened beverages: safety warnings.
(1) Existing federal law, the Federal Food, Drug, and Cosmetic Act, regulates, among other things, the quality and packaging of foods introduced or delivered for introduction into interstate commerce and generally prohibits the misbranding of food. Existing federal law, the Nutrition Labeling and Education Act of 1990, governs state and local labeling requirements, including those that characterize the relationship of any nutrient specified in the labeling of food to a disease or health-related condition. Existing state law, the Sherman Food, Drug, and Cosmetic Law, generally regulates misbranded food and provides that any food is misbranded if its labeling does not conform with the requirements for nutrient content or health claims as set forth in the Federal Food, Drug, and Cosmetic Act and the regulations adopted pursuant to that federal act. Existing law requires that a food facility, as defined, make prescribed disclosures and warnings to consumers, as specified. A violation of these provisions is a crime.

Existing state law, the Pupil Nutrition, Health, and Achievement Act of 2001, also requires the sale of only certain beverages to pupils at schools. The beverages that may be sold include fruit-based and vegetable-based drinks, drinking water with no added sweetener, milk, and in middle and high schools, an electrolyte replacement beverage if those beverages meet certain nutritional requirements.

This bill would establish the Sugar-Sweetened Beverages Safety Warning Act, which would prohibit a person from distributing, selling, or offering for sale a sugar-sweetened beverage in a sealed beverage container, a multipack of sugar-sweetened beverages, or a concentrate, as those terms are defined, in this state unless the sealed beverage container, multipack, or packaging of the concentrate bears a safety warning, as prescribed. The bill also would require every person who owns, leases, or otherwise legally controls the premises where a vending machine or beverage dispensing machine is located, or where a sugar-sweetened beverage is sold in an unsealed container, to place a specified safety warning in certain locations, including on the exterior of any vending machine that includes a sugar-sweetened beverage for sale.

(2) Under existing law, the State Department of Public Health, upon the request of a health officer, as defined, may authorize the local health department of a city, county, city and county, or local health district to enforce the provisions of the Sherman Food, Drug, and Cosmetic Law. Existing law authorizes the State Department of Public Health to assess a civil penalty against any person in an amount not to exceed $1,000 per day, except as specified. Existing law authorizes the Attorney General or any district attorney, on behalf of the State Department of Public Health, to bring an action in a superior court to grant a temporary or permanent injunction restraining a person from violating any provision of the Sherman Food, Drug, and Cosmetic Law.

This bill, commencing July 1, 2019, would provide that any violation of the provisions described in (1) above, or regulations adopted pursuant to those provisions, is punishable by a civil penalty of not less than $50, but no greater than $500.

This bill would also create the Sugar-Sweetened Beverages Safety Warning Fund for the receipt of all moneys collected for violations of those provisions. The bill would allocate moneys in this fund, upon appropriation by the Legislature, to the department for the purpose of enforcing those provisions.

(3) The bill would make legislative findings and declarations relating to the consumption of sugar-sweetened beverages, obesity, and dental disease.


The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:
(a) Over the past 30 years, adult diabetes rates have nearly tripled in the United States. Currently, 9 percent of adults in the United States have diabetes and more than one-third have prediabetes. In California, an estimated 14 percent of adults have diabetes. Over the past 10 years, the percentage of teens nationwide that have diabetes or prediabetes has increased from 9 percent to 23 percent. One in three children born today, including one-half of African American and Latino children, is expected to develop diabetes in their lifetime. Complications of diabetes include heart disease, nerve damage, gum infections, kidney disease, hearing impairment, blindness, amputation of toes, feet, or legs, and increased risk of Alzheimer's disease.

(b) Diabetes costs the state at least $24.5 billion each year in total health care expenses and lost productivity. Average medical expenditures for people with diabetes are 2.3 times higher than for those without diabetes. One in three California hospital stays is for people with diabetes. Hospital stays for patients with diabetes, regardless of the primary diagnosis, cost $2,200 more than other patients, which adds an extra $1.6 billion each year to California's hospitalization costs, including $254 million in Medi-Cal costs alone.

(c) The prevalence of obesity in the United States has increased dramatically over the past 30 years. In California, 60 percent of adults are overweight or obese and adult obesity rates have nearly tripled increasing from 8.9 percent in 1984 to 25.0 percent in 2012, and if current trends continue, the rate is expected to increase to 46.6 percent in 2030. Nearly 40 percent of California children are currently overweight or obese and obesity rates have tripled for adolescents and quadrupled for children 6 to 11 years of age. Although no group has escaped the epidemic, low income and communities of color are disproportionately affected.

(d) The obesity epidemic is of particular concern because obesity increases the risk of diabetes, heart disease, arthritis, asthma, and certain types of cancer. Depending on their level of obesity, from 60 percent to over 80 percent of obese adults currently suffer from type 2 diabetes, high blood cholesterol, high blood pressure, or other related conditions.

(e) The medical costs for people who are obese are dramatically higher than those of normal weight. Overweight and obesity account for $147 billion in health care costs nationally, or 9 percent of all medical spending, with one-half of these costs paid publicly through the Medicare and Medicaid programs.

(f) There is overwhelming evidence of the link between obesity and the consumption of sweetened beverages, such as soft drinks, energy drinks, sweet teas, and sports drinks. The 2010 Dietary Guidelines for Americans recommend that everyone reduce their intake of sugar-sweetened beverages. California adults who drink one soda or more per day are 27 percent more likely to be overweight or obese, regardless of income or ethnicity.

(g) According to nutrition experts, sweetened beverages, such as soft drinks, energy drinks, sweet teas, and sports drinks, offer little or no nutritional value, but massive quantities of added sugars. A 20-ounce bottle of soda contains the equivalent of approximately 17 teaspoons of sugar. Yet, the American Heart Association recommends that Americans consume no more than five to nine teaspoons of sugar per day.

(h) Sugar-sweetened beverages are the single largest source of added sugars in the American diet, with the average American drinking nearly 42 gallons of sweetened beverages a year, the equivalent of 39 pounds of extra sugar every year. Over 50 percent of the United States population drinks one or more sugar-sweetened beverages per day.

(i) In California, 19 percent of children 2 to 5 years of age drink a sugar-sweetened beverage each day. That number climbs to 32 percent among children 6 to 11 years of age, and 65 percent among children 12 to 17 years of age. Additionally, major disparities now exist between races and ethnicities. Seventy-four percent of African American adolescents drink at least one sugar-sweetened beverage each day, compared to 73 percent of Latinos, 63 percent of Asians, and 56 percent of whites.
(j) Sugar-sweetened beverages are a unique contributor to excess caloric consumption. Research shows that calories from sugar-sweetened beverages do not satisfy hunger the way calories from solid food or fat or protein-containing beverages, such as those containing milk and plant-based proteins, do. As a result, sugar-sweetened beverages tend to add to the calories people consume rather than replace them. Drinking one or two sodas a day increases the risk of developing type 2 diabetes by 26 percent. Drinking just one soda a day increases an adult's likelihood of being overweight by 27 percent, and for children, the likelihood doubles to 55 percent.

(k) Consistent evidence shows a positive relationship between sugar intake and dental caries (cavities) in adults and fewer caries when sugar intake is restricted. Children who frequently consume beverages high in sugar are at an increased risk for dental caries. Untreated dental caries can lead to pain, infection, tooth loss, and in severe cases, death.

(l) Evidence suggests that safety warnings can increase knowledge and reduce consumption of harmful products. Studies show that prominent safety warnings on the face of cigarette packages can increase health knowledge, perceptions of risk, and can promote smoking cessation of both youth and adults.

SEC. 2. Article 15 (commencing with Section 111224) is added to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 15. Sugar-Sweetened Beverages Safety Warning Act

111224. This article shall be known and may be cited as the Sugar-Sweetened Beverages Safety Warning Act.

111224.05. It is the intent of the Legislature, by enacting this article, to protect consumers and to promote informed purchasing decisions by requiring a warning about the harmful health effects that result from the consumption of drinks with added sugars.

111224.10. For purposes of this article, unless the context clearly requires otherwise, the following definitions shall apply:

(a) "Animal milk" means natural liquid milk, which is secreted by an animal and consumed by humans. For purposes of this definition, "animal milk" includes natural milk concentrate and dehydrated natural milk, whether or not reconstituted.

(b) "Beverage container" means any sealed or unsealed container regardless of size or shape, including, without limitation, those made of glass, metal, paper, plastic, or any other material or combination of materials that is used or intended to be used to hold a sugar-sweetened beverage for individual sale to a consumer.

(c) "Beverage dispensing machine" means any device that mixes concentrate with any one or more other ingredients and dispenses the resulting mixture into an unsealed container as a ready-to-drink beverage.

(d) "Caloric sweetener" means any substance containing calories, suitable for human consumption, that humans perceive as sweet and includes, without limitation, sucrose, fructose, glucose, and other sugars and fruit juice concentrates. "Caloric" means a substance that adds calories to the diet of a person who consumes that substance.

(e) "Concentrate" means a syrup or powder that is used or intended to be used for mixing, compounding, or making a sugar-sweetened beverage.

(f) "Consumer" means a person who purchases a sugar-sweetened beverage for a purpose other than resale in the ordinary course of business.
(g) "Department" means the State Department of Public Health, and any agency or person lawfully designated by the department to enforce or implement this article pursuant to Section 111020.

(h) "Distribute" means to sell or otherwise provide a product to any person for resale in the ordinary course of business to a consumer within this state.

(i) "Milk substitute" means a plant-based beverage in which the principal ingredients by weight are (1) water and (2) grains, nuts, legumes, or seeds. For purposes of this definition, "milk substitute" includes, without limitation, almond milk, coconut milk, flax milk, hazelnut milk, oat milk, rice milk, and soy milk.

(j) "Natural fruit juice" means the original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the restoration of water to dehydrated natural fruit juice.

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

(l) "Person" means any natural person, partnership, cooperative association, limited liability company, corporation, personal representative, receiver, trustee, assignee, any other legal entity, any city, county, city and county, district, commission, the state, or any department, agency, or political subdivision thereof, any interstate body, and, to the extent permitted by federal law, the United States and its agencies and instrumentalities.

(m) "Powder" means a solid mixture with added caloric sweetener used in making, mixing, or compounding a sugar-sweetened beverage by mixing the powder with any one or more other ingredients, including, without limitation, water, ice, syrup, simple syrup, fruits, vegetables, fruit juice, or carbonation or other gas.

(n) "Sale" or "sell" means any distribution or transfer for a business purpose, whether or not consideration is received.

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

(p) (1) "Sugar-sweetened beverage" means any sweetened nonalcoholic beverage, carbonated or noncarbonated, intended for human consumption that has added caloric sweeteners and contains 75 calories or more per 12 fluid ounces. "Nonalcoholic beverage" means any beverage that contains less than one-half of 1 percent alcohol per volume.

(2) "Sugar-sweetened beverage" does not include any of the following:

(A) Any beverage containing 100 percent natural fruit juice or natural vegetable juice with no added caloric sweeteners.

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

(i) An oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages.

(ii) A source of necessary nutrition used as a result of a medical condition.

(iii) An oral electrolyte solution for infants and children formulated to prevent dehydration due to illness.

(C) Any product for consumption by infants and that is commonly referred to as "infant formula."
(D) Any beverage whose principal ingredient by weight is animal milk or a milk substitute.

(q) "Syrup" means a liquid mixture with added caloric sweetener used in making, mixing, or compounding a sugar-sweetened beverage by mixing the syrup with any one or more other ingredients, including, without limitation, water, ice, powder, simple syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or other gas.

(r) "Unsealed beverage container" means a beverage container into which a beverage is dispensed or poured at the business premises where the beverage is purchased, including, without limitation, a container for fountain drinks.

111224.15. (a) A person shall not distribute, sell, or offer for sale a sugar-sweetened beverage in a sealed beverage container in this state unless the container bears the following safety warning and otherwise meets all of the requirements under this section:

"STATE OF CALIFORNIA SAFETY WARNING: Drinking beverages with added sugar(s) contributes to obesity, type 2 diabetes, and tooth decay."

(b) (1) The safety warning required by subdivision (a) shall be prominently displayed and readily legible under ordinary conditions on the front of the sealed beverage container, separate and apart from all other information, and shall be on a contrasting background. The first five words of the safety warning required under subdivision (a), "STATE OF CALIFORNIA SAFETY WARNING" shall appear in capital letters. The entire safety warning shall appear in bold type.

(2) The safety warning required under subdivision (a) shall appear in a type size and in a maximum number of characters (i.e., letters, numbers, and marks) per inch, as follows:

(A) For sealed beverage containers of eight fluid ounces or less, the safety warning shall be in script, type, or printing not smaller than one millimeter, and there shall be no more than 40 characters per linear inch.

(B) For sealed beverage containers of more than eight fluid ounces and less than one liter, the safety warning shall be in script, type, or printing not smaller than two millimeters, and there shall be no more than 25 characters per linear inch.

(C) For sealed beverage containers of one liter or more, the safety warning shall be in script, type, or printing not smaller than three millimeters, and there shall be no more than 12 characters per linear inch.

(c) If the safety warning required under subdivision (a) is not printed directly on the sealed beverage container, the safety warning shall be affixed to the sealed beverage container in such a manner that it cannot be removed without thorough application of water or other solvents.

(d) A person shall not distribute, sell, or offer for sale a multipack of sugar-sweetened beverages in sealed beverage containers in this state unless the multipack bears the safety warning required under subdivision (a). The safety warning shall be posted conspicuously on at least two sides of the multipack, in addition to being posted on each individual sealed beverage container.

(e) A person shall not distribute, sell, or offer for sale a concentrate in this state unless the packaging of the concentrate, which is intended for retail sale, bears the safety warning required under subdivision (a). The safety warning shall be posted conspicuously on the front of the packaging of the concentrate.
111224.20. (a) Every person who owns, leases, or otherwise legally controls the premises where a vending machine or beverage dispensing machine is located, or where a sugar-sweetened beverage is sold in an unsealed beverage container, shall place, or cause to be placed, a safety warning in each of the following locations:

(1) On the exterior of any vending machine that includes a sugar-sweetened beverage for sale.

(2) On the exterior of any beverage dispensing machine used by a consumer to dispense a sugar-sweetened beverage through self-service.

(3) At the point-of-purchase where any consumer purchases a sugar-sweetened beverage in an unsealed beverage container, when the unsealed beverage container is filled by an employee of a food establishment rather than the consumer.

(b) The safety warning required by subdivision (a) shall contain the following language:

"STATE OF CALIFORNIA SAFETY WARNING: Drinking beverages with added sugar(s) contributes to obesity, type 2 diabetes, and tooth decay."

(c) The safety warning required by subdivision (a) shall be prominently displayed and readily legible under ordinary conditions, separate and apart from all other information, and shall be on a contrasting background. The first five words of the safety warning in subdivision (b), "STATE OF CALIFORNIA SAFETY WARNING" shall appear in capital letters. The entire safety warning shall appear in bold type.

111224.30. (a) Notwithstanding Section 111825, subdivision (b) of Section 111855, or any other law, commencing July 1, 2019, any violation of this article, or a regulation adopted pursuant to this article, is punishable by a civil penalty of not less than fifty dollars ($50), but no greater than five hundred dollars ($500). The department may assess the civil penalty according to the procedures set forth in Section 111855. A person shall not be found to violate this article more than once during any one inspection visit.

(b) There is hereby created in the State Treasury the Sugar-Sweetened Beverages Safety Warning Fund. The fund shall consist of moneys collected for the violation of this article. The department shall remit to the Treasurer any civil penalties collected pursuant to subdivision (a) on a biannual basis, no later than March 15 and September 15 of each year. Notwithstanding any other law, moneys in the fund, upon appropriation by the Legislature, shall be allocated to the department for the purpose of enforcing this article.

111224.35. Notwithstanding Section 111224.15 or 111224.20, if, after appropriate investigation and consultation with the State Public Health Officer, the department finds that available scientific information would justify a change in the language of the safety warnings set forth in Sections 111224.15 and 111224.20, the department may adopt regulations to develop new language for the safety warning and may require that the alternative language be adopted in lieu of the language set forth in Sections 111224.15 and 111224.20.

111224.40. It is the intent of the Legislature that nothing in this article shall be construed to preempt or prohibit the adoption and implementation of local ordinances related to sugar-sweetened beverages, except any local ordinance that is inconsistent with this article. An ordinance is not deemed inconsistent with this article if it affords greater protection than the requirements set forth in this article.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.