

**Introduced by Senator Monning
(Coauthor: Senator Steinberg)**

February 13, 2014

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

SB 1000, as introduced, Monning. Public health: 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, 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 Beverage Safety Warning Act, which would prohibit a person from distributing, selling, or offering for sale a sugar-sweetened beverage in a sealed beverage container, or a multipack of sugar-sweetened beverages, in this state unless the beverage container or multipack bears a specified 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.

This bill would require every person that distributes, sells, or offers for retail sale a sugar-sweetened beverage to maintain on its business premises, for a period of two years following each distribution, purchase, or sale, all records, including legible invoices and purchase orders, to determine the quantity and type of sugar-sweetened beverages distributed, purchased, or sold.

(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 Act. Existing law authorizes the State Department of Public Health to assess a civil penalty against any person in an amount not to exceed \$1000 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 Act.

This bill, commencing July 1, 2015, 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. By imposing additional enforcement duties on local agencies, this bill would impose a state-mandated local program.

This bill would also create the Sugar-Sweetened Beverage 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. This bill would also require the State Department of Public Health to adopt regulations for the implementation of those provisions.

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

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The prevalence of obesity in the United States has increased
4 dramatically over the past 30 years. In California, adult obesity
5 rates have increased from 8.9 percent in 1984 to 25.0 percent in
6 2012, and if current trends continue, the rate is expected to increase
7 to 46.6 percent in 2030. Nearly 40 percent of California children
8 are currently overweight or obese. Although no group has escaped
9 the epidemic, low income and communities of color are
10 disproportionately affected.

11 (b) The obesity epidemic is of particular concern because obesity
12 increases the risk of diabetes, heart disease, arthritis, asthma, and
13 certain types of cancer. Depending on their level of obesity, from
14 60 percent to over 80 percent of obese adults currently suffer from
15 type II diabetes, high blood cholesterol, high blood pressure, or
16 other related conditions.

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

1 (d) Health care costs and lost productivity resulting from
2 overweight, obesity, and physical inactivity are estimated to cost
3 California more than \$52 billion annually.

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

11 (f) Individuals who drink one to two sugar-sweetened beverages
12 per day have a 26 percent higher risk for developing type II
13 diabetes. Over the past 10 years, the percentage of teens nationwide
14 that have diabetes or prediabetes has increased from 9 percent to
15 23 percent. According to the American Diabetes Association,
16 persons with type I diabetes should limit or avoid consumption of
17 sugar-sweetened beverages. Complications of diabetes include:
18 heart disease, nerve damage, gum infections, kidney disease,
19 hearing impairment, blindness, amputation of toes, feet, or legs,
20 and increased risk of Alzheimer's disease.

21 (g) According to nutrition experts, sweetened beverages, such
22 as soft drinks, energy drinks, sweet teas, and sport drinks, offer
23 little or no nutritional value, but massive quantities of added sugars.
24 A 20-ounce bottle of soda contains the equivalent of approximately
25 17 teaspoons of sugar. Yet, the American Heart Association
26 recommends that Americans consume no more than five to nine
27 teaspoons of sugar per day.

28 (h) Sugar-sweetened beverages are the single largest source of
29 added sugars in the American diet, with the average American
30 drinking nearly 45 gallons of sweetened beverages a year, the
31 equivalent of 39 pounds of extra sugar every year. Over 50 percent
32 of the US population drinks one or more sugar-sweetened
33 beverages per day.

34 (i) In California, 19 percent of 2 to 5 year olds drink a
35 sugar-sweetened beverage each day. That number climbs to 32
36 percent among 6 to 11 year olds, and 65 percent among 12 to 17
37 year olds. Additionally, major disparities now exist between races
38 and ethnicities. Seventy-four percent of African American
39 adolescents drink at least one sugar-sweetened beverage each day,

1 compared to 73 percent of Latinos, 63 percent of Asians, and 56
2 percent of whites.

3 (j) Sugar-sweetened beverages are a unique contributor to excess
4 caloric consumption. Research shows that calories from
5 sugar-sweetened beverages do not satisfy hunger the way calories
6 from solid food or fat or protein-containing beverages such as
7 those containing milk and plant-based proteins. As a result,
8 sugar-sweetened beverages tend to add to the calories people
9 consume rather than replace them.

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

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

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

24
25 Article 15. Sugar-Sweetened Beverages Safety Warning Act

26
27 111224. This article shall be known and may be cited as the
28 Sugar-Sweetened Beverages Safety Warning Act.

29 111224.05. It is the intent of the Legislature, by enacting this
30 article, to protect consumers and to promote informed purchasing
31 decisions by requiring a warning about the harmful health effects
32 that result from the consumption of drinks with added sugars.

33 111224.10. For purposes of this article, unless the context
34 clearly requires otherwise, the following definitions shall apply:

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

1 (b) “Beverage dispensing machine” means any device that mixes
2 concentrate with any one or more other ingredients and dispenses
3 the resulting mixture into an unsealed container as a ready-to-drink
4 beverage.

5 (c) “Caloric sweetener” means any substance containing calories,
6 suitable for human consumption, that humans perceive as sweet
7 and includes, without limitation, sucrose, fructose, glucose, and
8 other sugars and fruit juice concentrates. “Caloric” means a
9 substance that adds calories to the diet of a person who consumes
10 that substance.

11 (d) “Concentrate” means a syrup or powder that is used or
12 intended to be used for mixing, compounding, or making a
13 sugar-sweetened beverage.

14 (e) “Consumer” means a person who purchases a
15 sugar-sweetened beverage for a purpose other than resale in the
16 ordinary course of business.

17 (f) “Department” means the State Department of Public Health,
18 and any agency or person lawfully designated by the department
19 to enforce or implement this article.

20 (g) “Distribute” means to sell or otherwise provide a product
21 to any person for resale in the ordinary course of business to a
22 consumer within this state.

23 (h) “Natural fruit juice” means the original liquid resulting from
24 the pressing of fruit, the liquid resulting from the reconstitution of
25 natural fruit juice concentrate, or the liquid resulting from the
26 restoration of water to dehydrated natural fruit juice.

27 (i) “Natural vegetable juice” means the original liquid resulting
28 from the pressing of vegetable, the liquid resulting from the
29 reconstitution of natural vegetable juice concentrate, or the liquid
30 resulting from the restoration of water to dehydrated natural
31 vegetable juice.

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

39 (k) “Powder” means a solid mixture with added caloric sweetener
40 used in making, mixing, or compounding a sugar-sweetened

1 beverage by mixing the powder with any one or more other
2 ingredients, including, without limitation, water, ice, syrup, simple
3 syrup, fruits, vegetables, fruit juice, or carbonation or other gas.

4 (l) “Sale” or “sell” means any distribution or transfer for a
5 business purpose, whether or not consideration is received.

6 (m) “Sealed beverage container” means a beverage container
7 holding a beverage that is closed or sealed before being offered
8 for sale to a consumer.

9 (n) (1) “Sugar-sweetened beverage” means any sweetened
10 nonalcoholic beverage, carbonated or noncarbonated, sold for
11 human consumption that has added caloric sweeteners and contains
12 75 calories or more per 12 fluid ounces. “Nonalcoholic beverage”
13 means any beverage that contains less than one-half of one percent
14 alcohol per volume.

15 (2) “Sugar-sweetened beverage” does not include any of the
16 following:

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

19 (B) Any liquid product manufactured for any of the following
20 uses and commonly referred to as a “dietary aid”:

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

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

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

27 (C) Any product for consumption by infants and that is
28 commonly referred to as “infant formula.”

29 (D) Any beverage whose principal ingredient by weight is milk.
30 “Milk” means natural liquid milk, regardless of the animal source
31 or butterfat content.

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

38 (p) “Unsealed beverage container” means a beverage container
39 into which a beverage is dispensed or poured at the business

1 premises where the beverage is purchased, including, without
2 limitation, a container for fountain drinks.

3 111224.15. (a) A person shall not distribute, sell, or offer for
4 sale a sugar-sweetened beverage in a sealed beverage container in
5 this state unless the container bears the following safety warning
6 and otherwise meets all of the requirements under this section:

7 “STATE OF CALIFORNIA SAFETY WARNING: Drinking
8 beverages with added sugar(s) contributes to obesity, diabetes, and
9 tooth decay.”

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

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

22 (A) For beverage containers of 8 fluid ounces or less, the safety
23 warning shall be in script, type, or printing not smaller than 1
24 millimeter, and there shall be no more than 40 characters per linear
25 inch.

26 (B) For beverage containers of more than 8 fluid ounces and
27 less than 1 liter, the safety warning shall be in script, type, or
28 printing not smaller than 2 millimeters, and there shall be no more
29 than 25 characters per linear inch.

30 (C) For beverage containers of 1 liter or more, the safety warning
31 shall be in script, type, or printing not smaller than 3 millimeters,
32 and there shall be no more than 12 characters per linear inch.

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

37 (d) A person shall not distribute, sell, or offer for sale a
38 multi-pack of sugar-sweetened beverages in sealed beverage
39 containers in this state unless the multipack of beverages bears the
40 safety warning required under subdivision (a). The safety warning

1 shall be posted conspicuously on each side of the multipack, in
2 addition to being posted on each individual sealed beverage
3 container.

4 (e) A person shall not distribute, sell, or offer for sale a
5 concentrate in this state unless the packaging of the concentrate,
6 which is intended for retail sale, bears the safety warning required
7 under subdivision (a). The safety warning shall be posted
8 conspicuously on the front of the packaging of the concentrate.

9 111224.20. (a) Every person who owns, leases, or otherwise
10 legally controls the premises where a vending machine or beverage
11 dispensing machine is located, or where a sugar-sweetened
12 beverage is sold in an unsealed beverage container, shall place, or
13 cause to be placed, a safety warning in each of the following
14 locations:

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

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

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

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

26 “STATE OF CALIFORNIA SAFETY WARNING: Drinking
27 beverages with added sugar(s) contributes to obesity, diabetes, and
28 tooth decay.”

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

36 111224.25. Every person that distributes, sells, or offers for
37 retail sale a sugar-sweetened beverage shall maintain on its
38 business premises, for a period of two years following each
39 distribution, purchase, or sale, all records, including, legible
40 invoices and purchase orders, as may be necessary to determine

1 the quantity and type of sugar-sweetened beverages distributed,
2 purchased, or sold. The department and a local enforcement agency
3 shall have the right to inspect, examine, and copy those records at
4 any time during normal business hours for the purpose of ensuring
5 compliance by distributors with the requirements of this article.
6 The refusal to allow a full inspection, examination, or copying of
7 those records shall constitute a violation of this article.

8 111224.30. (a) Notwithstanding Section 111825, subdivision
9 (b) of Section 111855, or any other law, commencing July 1, 2015,
10 any violation of this article, or a regulation adopted pursuant to
11 this article, is punishable by a civil penalty of not less than fifty
12 dollars (\$50), but no greater than five hundred dollars (\$500). The
13 department or a local enforcement agency may assess the civil
14 penalty according to the procedures set forth in Section 111855.
15 A person shall not be found to violate this article more than once
16 during any one inspection visit.

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

26 111224.35. The department shall adopt regulations for the
27 implementation of this article in accordance with the
28 Administrative Procedure Act (Chapter 3.5 (commencing with
29 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
30 Code). Notwithstanding Section 111224.15 or 111224.20, if, after
31 appropriate investigation and consultation with the state health
32 officer, the department finds that available scientific information
33 would justify a change in the language of the safety warnings set
34 forth in Sections 111224.15 and 111224.20, the department may
35 adopt regulations to develop new language for the safety warning
36 and may require that the alternative language be adopted in lieu
37 of the language set forth in Sections 111224.15 and 111224.20.

38 111224.40. It is the intent of the Legislature that nothing in
39 this article shall be construed to preempt or prohibit the adoption
40 and implementation of local ordinances related to sugar-sweetened

1 beverages, except any local ordinance requiring a safety warning
2 to be placed on a sugar-sweetened beverage container that is
3 inconsistent with this article. An ordinance is not deemed
4 inconsistent with this article if it affords greater protection than
5 the requirements set forth in this article.

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

10 SEC. 4. If the Commission on State Mandates determines that
11 this act contains costs mandated by the state, reimbursement to
12 local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.

O