

Introduced by Senator Monning
(Coauthors: Senators Leno, Mitchell, Pan, and Pavley)
(Coauthors: Assembly Members Chiu, Williams, and Wood)

February 11, 2015

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 203, as introduced, Monning. 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, or a multipack of sugar-sweetened beverages, in this state unless the beverage container or multipack 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, 2016, 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.

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

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

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) Over the past 30 years, adult diabetes rates have nearly
4 tripled in the United States. Currently, one in 9 adults in the United
5 States has diabetes and more than one-third have prediabetes. In
6 California, 14 percent of adults have diabetes. Over the past 10
7 years, the percentage of teens nationwide that have diabetes or
8 prediabetes has increased from 9 percent to 23 percent. One in
9 three children born today, including one-half of African American
10 and Latino children, is expected to develop diabetes in their
11 lifetime. Complications of diabetes include heart disease, nerve
12 damage, gum infections, kidney disease, hearing impairment,
13 blindness, amputation of toes, feet, or legs, and increased risk of
14 Alzheimer’s disease.

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

24 (c) The prevalence of obesity in the United States has increased
25 dramatically over the past 30 years. In California, 60 percent of
26 adults are overweight or obese and adult obesity rates have nearly
27 tripled increasing from 8.9 percent in 1984 to 25.0 percent in 2012,
28 and if current trends continue, the rate is expected to increase to
29 46.6 percent in 2030. Nearly 40 percent of California children are
30 currently overweight or obese and obesity rates have tripled for
31 adolescents and quadrupled for 6 to 11 year olds. Although no
32 group has escaped the epidemic, low income and communities of
33 color are disproportionately affected.

34 (d) The obesity epidemic is of particular concern because obesity
35 increases the risk of diabetes, heart disease, arthritis, asthma, and
36 certain types of cancer. Depending on their level of obesity, from
37 60 percent to over 80 percent of obese adults currently suffer from

1 type 2 diabetes, high blood cholesterol, high blood pressure, or
2 other related conditions.

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

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

15 (g) According to nutrition experts, sweetened beverages, such
16 as soft drinks, energy drinks, sweet teas, and sports drinks, offer
17 little or no nutritional value, but massive quantities of added sugars.
18 A 20-ounce bottle of soda contains the equivalent of approximately
19 17 teaspoons of sugar. Yet, the American Heart Association
20 recommends that Americans consume no more than five to nine
21 teaspoons of sugar per day.

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

28 (i) In California, 19 percent of two to five year olds drink a
29 sugar-sweetened beverage each day. That number climbs to 32
30 percent among 6 to 11 year olds, and 65 percent among 12 to 17
31 year olds. Additionally, major disparities now exist between races
32 and ethnicities. Seventy-four percent of African American
33 adolescents drink at least one sugar-sweetened beverage each day,
34 compared to 73 percent of Latinos, 63 percent of Asians, and 56
35 percent of whites.

36 (j) Sugar-sweetened beverages are a unique contributor to excess
37 caloric consumption. Research shows that calories from
38 sugar-sweetened beverages do not satisfy hunger the way calories
39 from solid food or fat or protein-containing beverages, such as
40 those containing milk and plant-based proteins, do. As a result,

1 sugar-sweetened beverages tend to add to the calories people
2 consume rather than replace them. Drinking one or two sodas a
3 day increases the risk of developing type 2 diabetes by 26 percent.
4 Drinking just one soda a day increases an adult’s likelihood of
5 being overweight by 27 percent, and for children the likelihood
6 doubles to 55 percent.

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

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

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

21
22 Article 15. Sugar-Sweetened Beverages Safety Warning Act
23

24 111224. This article shall be known and may be cited as the
25 Sugar-Sweetened Beverages Safety Warning Act.

26 111224.05. It is the intent of the Legislature, by enacting this
27 article, to protect consumers and to promote informed purchasing
28 decisions by requiring a warning about the harmful health effects
29 that result from the consumption of drinks with added sugars.

30 111224.10. For purposes of this article, unless the context
31 clearly requires otherwise, the following definitions shall apply:

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

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

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

11 (e) “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 (f) “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 (g) “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 pursuant to Section 111020.

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

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

32 (k) “Natural vegetable juice” means the original liquid resulting
33 from the pressing of vegetables, the liquid resulting from the
34 reconstitution of natural vegetable juice concentrate, or the liquid
35 resulting from the restoration of water to dehydrated natural
36 vegetable juice.

37 (l) “Person” means any natural person, partnership, cooperative
38 association, limited liability company, corporation, personal
39 representative, receiver, trustee, assignee, any other legal entity,
40 any city, county, city and county, district, commission, the state,

1 or any department, agency, or political subdivision thereof, any
2 interstate body, and, to the extent permitted by federal law, the
3 United States and its agencies and instrumentalities.

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

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

12 (o) “Sealed beverage container” means a beverage container
13 holding a beverage that is closed or sealed before being offered
14 for sale to a consumer.

15 (p) (1) “Sugar-sweetened beverage” means any sweetened
16 nonalcoholic beverage, carbonated or noncarbonated, sold for
17 human consumption that has added caloric sweeteners and contains
18 75 calories or more per 12 fluid ounces. “Nonalcoholic beverage”
19 means any beverage that contains less than one-half of 1 percent
20 alcohol per volume.

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

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

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

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

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

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

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

35 (D) Any beverage whose principal ingredient by weight is
36 animal milk or a milk substitute.

37 (q) “Syrup” means a liquid mixture with added caloric sweetener
38 used in making, mixing, or compounding a sugar-sweetened
39 beverage by mixing the syrup with any one or more other
40 ingredients, including, without limitation, water, ice, powder,

1 simple syrup, fruits, vegetables, fruit juice, vegetable juice, or
2 carbonation or other gas.

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

7 111224.15. (a) A person shall not distribute, sell, or offer for
8 sale a sugar-sweetened beverage in a sealed beverage container in
9 this state unless the container bears the following safety warning
10 and otherwise meets all of the requirements under this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 111224.30. (a) Notwithstanding Section 111825, subdivision
 2 (b) of Section 111855, or any other law, commencing July 1, 2016,
 3 any violation of this article, or a regulation adopted pursuant to
 4 this article, is punishable by a civil penalty of not less than fifty
 5 dollars (\$50), but no greater than five hundred dollars (\$500). The
 6 department may assess the civil penalty according to the procedures
 7 set forth in Section 111855. A person shall not be found to violate
 8 this article more than once during any one inspection visit.

9 (b) There is hereby created in the State Treasury the
 10 Sugar-Sweetened Beverages Safety Warning Fund. The fund shall
 11 consist of moneys collected for the violation of this article. The
 12 department shall remit to the Treasurer any civil penalties collected
 13 pursuant to subdivision (a) on a biannual basis, no later than March
 14 15 and September 15 of each year. Notwithstanding any other law,
 15 moneys in the fund, upon appropriation by the Legislature, shall
 16 be allocated to the department for the purpose of enforcing this
 17 article.

18 111224.35. Notwithstanding Section 111224.15 or 111224.20,
 19 if, after appropriate investigation and consultation with the state
 20 health officer, the department finds that available scientific
 21 information would justify a change in the language of the safety
 22 warnings set forth in Sections 111224.15 and 111224.20, the
 23 department may adopt regulations to develop new language for
 24 the safety warning and may require that the alternative language
 25 be adopted in lieu of the language set forth in Sections 111224.15
 26 and 111224.20.

27 111224.40. It is the intent of the Legislature that nothing in
 28 this article shall be construed to preempt or prohibit the adoption
 29 and implementation of local ordinances related to sugar-sweetened
 30 beverages, except any local ordinance that is inconsistent with this
 31 article. An ordinance is not deemed inconsistent with this article
 32 if it affords greater protection than the requirements set forth in
 33 this article.

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