

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 203

Introduced by Senator Monning

(Coauthors: Senators *Hancock*, *Leno*, *Mitchell*, *Pan*, and *Pavley*)

(Coauthors: Assembly Members *Chiu*, *McCarty*, *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 amended, Monning. Sugar-sweetened beverages: safety warnings.

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

1 certain types of cancer. Depending on their level of obesity, from
2 60 percent to over 80 percent of obese adults currently suffer from
3 type 2 diabetes, high blood cholesterol, high blood pressure, or
4 other related conditions.

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

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

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

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

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

38 (j) Sugar-sweetened beverages are a unique contributor to excess
39 caloric consumption. Research shows that calories from
40 sugar-sweetened beverages do not satisfy hunger the way calories

1 from solid food or fat or protein-containing beverages, such as
2 those containing milk and plant-based proteins, do. As a result,
3 sugar-sweetened beverages tend to add to the calories people
4 consume rather than replace them. Drinking one or two sodas a
5 day increases the risk of developing type 2 diabetes by 26 percent.
6 Drinking just one soda a day increases an adult’s likelihood of
7 being overweight by 27 percent, and for children the likelihood
8 doubles to 55 percent.

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

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

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

23

24 Article 15. Sugar-Sweetened Beverages Safety Warning Act

25

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

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

32 111224.10. For purposes of this article, unless the context
33 clearly requires otherwise, the following definitions shall apply:

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

38 (b) “Beverage container” means any sealed or unsealed container
39 regardless of size or shape, including, without limitation, those
40 made of glass, metal, paper, plastic, or any other material or

1 combination of materials that is used or intended to be used to hold
2 a sugar-sweetened beverage for individual sale to a consumer.

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

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

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

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

19 (g) “Department” means the State Department of Public Health,
20 and any agency or person lawfully designated by the department
21 to enforce or implement this article pursuant to Section 111020.

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

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

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

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

39 (l) “Person” means any natural person, partnership, cooperative
40 association, limited liability company, corporation, personal

1 representative, receiver, trustee, assignee, any other legal entity,
2 any city, county, city and county, district, commission, the state,
3 or any department, agency, or political subdivision thereof, any
4 interstate body, and, to the extent permitted by federal law, the
5 United States and its agencies and instrumentalities.

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

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

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

17 (p) (1) “Sugar-sweetened beverage” means any sweetened
18 nonalcoholic beverage, carbonated or noncarbonated, ~~sold~~ *intended*
19 for human consumption that has added caloric sweeteners and
20 contains 75 calories or more per 12 fluid ounces. “Nonalcoholic
21 beverage” means any beverage that contains less than one-half of
22 1 percent alcohol per volume.

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

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

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

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

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

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

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

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

39 (q) “Syrup” means a liquid mixture with added caloric sweetener
40 used in making, mixing, or compounding a sugar-sweetened

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

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

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

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

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

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

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

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

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

38 (c) If the safety warning required under subdivision (a) is not
39 printed directly on the beverage container, the safety warning shall

1 be affixed to the beverage container in such a manner that it cannot
2 be removed without thorough application of water or other solvents.

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

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

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

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

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

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

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

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

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

1 WARNING” shall appear in capital letters. The entire safety
2 warning shall appear in bold type.

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

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

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

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

36 SEC. 3. The provisions of this act are severable. If any
37 provision of this act or its application is held invalid, that invalidity

- 1 shall not affect other provisions or applications that can be given
- 2 effect without the invalid provision or application.

O