

AMENDED IN SENATE MARCH 27, 2014

SENATE BILL

No. 1000

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

(Coauthors: Senators DeSaulnier, Leno, Mitchell, and Steinberg)

(Coauthors: Assembly Members Ammiano and Williams)

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 amended, 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 *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 Beverage~~ *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 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~~. *Law*. Existing law authorizes the State Department of Public Health to assess a civil penalty against any person in an amount not to exceed ~~\$1000~~ *\$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 ~~Act~~. *Law*.

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~~ *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. 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.

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

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

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

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

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

33 (h) Sugar-sweetened beverages are the single largest source of
34 added sugars in the American diet, with the average American
35 drinking nearly 45 gallons of sweetened beverages a year, the
36 equivalent of 39 pounds of extra sugar every year. Over 50 percent
37 of the ~~US~~ *United States* population drinks one or more
38 sugar-sweetened beverages per day.

39 (i) In California, 19 percent of ~~2~~ *two* to ~~5~~ *five* year olds,
40 *inclusive*, drink a sugar-sweetened beverage each day. That number

1 climbs to 32 percent among 6 to 11 year olds, *inclusive*, and 65
2 percent among 12 to 17 year olds, *inclusive*. Additionally, major
3 disparities now exist between races and ethnicities. Seventy-four
4 percent of African American adolescents drink at least one
5 sugar-sweetened beverage each day, compared to 73 percent of
6 Latinos, 63 percent of Asians, and 56 percent of whites.

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

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

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

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

28

29 Article 15. Sugar-Sweetened Beverages Safety Warning Act

30

31 111224. This article shall be known and may be cited as the
32 Sugar-Sweetened Beverages Safety Warning Act.

33 111224.05. It is the intent of the Legislature, by enacting this
34 article, to protect consumers and to promote informed purchasing
35 decisions by requiring a warning about the harmful health effects
36 that result from the consumption of drinks with added sugars.

37 111224.10. For purposes of this article, unless the context
38 clearly requires otherwise, the following definitions shall apply:

39 (a) "Beverage container" means any sealed or unsealed container
40 regardless of size or shape, including without limitation, those

1 made of glass, metal, paper, plastic, or any other material or
2 combination of materials that is used or intended to be used to hold
3 a sugar-sweetened beverage for individual sale to a consumer.

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

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

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

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

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

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

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

30 (i) “Natural vegetable juice” means the original liquid resulting
31 from the pressing of ~~vegetable~~, *vegetables*, the liquid resulting
32 from the reconstitution of natural vegetable juice concentrate, or
33 the liquid resulting from the restoration of water to dehydrated
34 natural vegetable juice.

35 (j) “Person” means any natural person, partnership, cooperative
36 association, limited liability company, corporation, personal
37 representative, receiver, trustee, assignee, any other legal entity,
38 any city, county, city and county, district, commission, the state,
39 or any department, agency, or political subdivision thereof, any

1 interstate body, and, to the extent permitted by federal law, the
2 United States and its agencies and instrumentalities.

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

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

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

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

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

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

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

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

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

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

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

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

37 (o) “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, a powder,

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

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

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

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

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

37 (c) If the safety warning required under subdivision (a) is not
38 printed directly on the beverage container, the safety warning shall
39 be affixed to the beverage container in such a manner that it cannot
40 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 each side of the multipack, in
6 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 111224.25. Every person that distributes, sells, or offers for
2 retail sale a sugar-sweetened beverage shall maintain on its
3 business premises, for a period of two years following each
4 distribution, purchase, or sale, all records, including, legible
5 invoices and purchase orders, as may be necessary to determine
6 the quantity and type of sugar-sweetened beverages distributed,
7 purchased, or sold. The department and a local enforcement agency
8 shall have the right to inspect, examine, and copy those records at
9 any time during normal business hours for the purpose of ensuring
10 compliance by distributors with the requirements of this article.
11 The refusal to allow a full inspection, examination, or copying of
12 those records shall constitute a violation of this article.

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

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

32 111224.35. The department shall adopt regulations for the
33 implementation of this article in accordance with the
34 Administrative Procedure Act (Chapter 3.5 (commencing with
35 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
36 Code). Notwithstanding Section 111224.15 or 111224.20, if, after
37 appropriate investigation and consultation with the state health
38 officer, the department finds that available scientific information
39 would justify a change in the language of the safety warnings set
40 forth in Sections 111224.15 and 111224.20, the department may

1 adopt regulations to develop new language for the safety warning
2 and may require that the alternative language be adopted in lieu
3 of the language set forth in Sections 111224.15 and 111224.20.

4 111224.40. It is the intent of the Legislature that nothing in
5 this article shall be construed to preempt or prohibit the adoption
6 and implementation of local ordinances related to sugar-sweetened
7 beverages, except any local ordinance requiring a safety warning
8 to be placed on a sugar-sweetened beverage container that is
9 inconsistent with this article. An ordinance is not deemed
10 inconsistent with this article if it affords greater protection than
11 the requirements set forth in this article.

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

16 SEC. 4. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.