

**RESOLUTION NO. 188 -2013, ADOPTING LOCAL LAW
NO. 16 -2013, A LOCAL LAW TO PROTECT MINORS FROM
DIRECT MAIL STIMULANT DRINK ADVERTISING AND
SAMPLES**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on February 5, 2013, a proposed local law entitled, "**A LOCAL LAW TO PROTECT MINORS FROM DIRECT MAIL STIMULANT DRINK ADVERTISING AND SAMPLES**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 16 -2013, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO PROTECT MINORS FROM DIRECT MAIL
STIMULANT DRINK ADVERTISING AND SAMPLES**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that so-called "energy drinks" are very popular, particularly among young people.

This Legislature also finds that these drinks contain very high amounts of caffeine, though the exact amounts are not disclosed by their makers as nutrition information.

This Legislature finds that caffeine is not a source of energy but a stimulant and, therefore, these beverages are more accurately described as "stimulant drinks" and are referred to as such in this law.

This Legislature finds that stimulant drinks also contain herbal supplements, vitamins and amino acids, including, but not limited to, guarana, taurine, vitamins B6 and B12, yerba mate, bitter orange, ginkgo, St. John's Wort and ginseng. The exact blend of these ingredients is not disclosed by manufacturers.

This Legislature determines that consumption of stimulant drinks by minors has been associated with hyperactivity, lack of concentration, poor nutrition and dental problems. Consumption of stimulant drinks can also cause significant adverse health effects, including: aggravating heart conditions, headaches, rapid heartbeat, nervousness, irritability, sleeplessness, dehydration, abnormal heart rhythms, and stomach upset. These effects may be exacerbated in minors and occur after consuming smaller quantities of caffeine or other stimulants.

This Legislature notes that many stimulant drinks are labeled by their own manufacturers as "Not Recommended for Children".

This Legislature also finds that although there is general consensus that it is not advisable for minors to consume stimulant drinks, some manufacturers and distributors of stimulant drinks advertise their products at extreme sporting events, concerts, and in video games and gaming networks, all of which are popular with adolescents.

This Legislature further determines that some stimulant drink manufacturers provide free samples of their products at public events that attract young people; mail free samples of liquid and powdered stimulant drinks to minors at their homes; and provide coupons to minors for free or discounted samples of stimulant drinks.

This Legislature concludes that given the health risks associated with consumption of stimulant drinks by minors, it is reasonable and appropriate for the County of Suffolk to exercise its police powers to prohibit certain advertising and marketing practices that put stimulant drinks in the hands of minors.

Therefore, the purpose of this law is to prohibit the distribution of free samples of stimulant drinks or coupons for free or discounted stimulant drinks to minors within the County of Suffolk.

Section 2. Definitions.

As used in this law, the following terms shall have the meanings indicated:

“STIMULANT DRINK” shall mean a beverage or powdered drink mix that contains 75 or more milligrams of caffeine per 8 fluid ounces and generally includes a combination of other supplements such as methylxanthines, B vitamins, herbal ingredients and other ingredients which are advertised as being specifically designed to provide or improve energy.

“PERSON” shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association or other entity or business organization of any kind.

Section 3. Prohibitions.

No person shall provide free samples of stimulant drinks or coupons for free or discounted stimulant drinks to any individual under the age of eighteen (18) in the County of Suffolk. This prohibition shall apply to the direct mailing of free samples or coupons for free or discounted stimulant drinks to County residents under the age of eighteen (18).

Section 4. Penalties.

- A. Violation of this law shall be punishable by a civil fine of up to five hundred dollars (\$500.00) for a first violation, with subsequent violations punishable by a fine of up to one thousand dollars (\$1,000.00).
- B. A civil penalty shall only be assessed by the Commissioner of the Department of Health Services following a hearing at which an alleged violator has the opportunity to be heard.

Section 5. Enforcement.

- A. This law shall be enforced by the Department of Health Services.

Section 6. Authority to Promulgate Rules and Regulations.

The Commissioner of the Department of Health Services is hereby authorized and empowered to promulgate such rules and regulations as he or she deems necessary to implement this law.

Section 7. Applicability.

This law shall apply to actions occurring on or after the effective date of this law.

Section 8. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 9. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 10. Effective Date.

This law shall take effect on the sixtieth (60) day upon filing in the Office of the Secretary of State.

DATED: March 19, 2013

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: April 19, 2013

After a public hearing duly held on April 2, 2013
Filed with the Secretary of State on May 3, 2013