

STATE OF NEW YORK

8583

2021-2022 Regular Sessions

IN ASSEMBLY

December 13, 2021

Introduced by M. of A. REYES -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law and the public health law, in relation to food and food product advertising

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and intent. The legislature hereby
2 finds that children and adolescents are an inherently vulnerable popu-
3 lation, and that marketing unhealthy foods in a targeted and persistent
4 manner to this group is inconsistent with this state's efforts to curb
5 the disastrous health outcomes that follow the overconsumption of these
6 products. Such marketing is inherently misleading, as children and young
7 adults often lack the same ability to resist the rewarding cues
8 presented in unhealthy food marketing as adults. This predatory commer-
9 cial speech has contributed to an epidemic of obesity and its related
10 co-morbidities, particularly in the children of black and brown communi-
11 ties. Furthermore, there is a growing consensus that processed food is
12 habit forming, increasing the danger to public health that can arise
13 from succumbing to misleading advertising. New York has a strong and
14 substantial interest in protecting our children from negative health
15 consequences. Additionally, the power of the state is at its greatest
16 when protecting the health and welfare of its citizens, especially those
17 most vulnerable. Thus, the legislature finds that certain types of
18 marketing targeted at children can mislead and manipulate children into
19 lifelong habits, and that such advertising should be regulated accord-
20 ingly.

21 § 2. Subdivision 1 of section 202-a of the agriculture and markets
22 law, as added by chapter 797 of the laws of 1939, is amended and two new
23 subdivisions 4 and 5 are added to read as follows:

24 1. An advertisement concerning a food or food product shall not be
25 false or misleading in any particular. In determining whether any

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 advertising concerning a food or food product is false or misleading,
2 factors shall include, but not be limited to:

3 (a) Representations disseminated in any manner or by any means,
4 including digitally, or by statement, word, design, device, sound or any
5 combination thereof, for the purpose of inducing, or which are likely to
6 induce, directly or indirectly, the purchase of food or food product;

7 (b) The extent to which the advertising fails to reveal facts material
8 in the light of such representations with respect to the food or food
9 product to which the advertising relates under the conditions prescribed
10 in said advertisement, or under such conditions as are customary or
11 usual; and

12 (c) Whether the entity responsible for the advertisement knowingly or
13 with reason to know, used false or misleading content to target a
14 consumer reasonably unable to protect their interests because of their
15 age, physical infirmity, ignorance, illiteracy, inability to understand
16 the language of an agreement, or similar factor.

17 4. For purposes of paragraph (c) of subdivision one of this section,
18 special consideration shall be given to advertisements directed at a
19 child as defined in section three hundred seventy-one of the social
20 services law. In determining whether an advertisement concerning a food
21 or food product is directed at a child, factors shall include, but not
22 be limited to:

23 (a) Subject matter;

24 (b) Visual content;

25 (c) Use of animated characters or child-oriented activities and incen-
26 tives;

27 (d) Music or other audio content;

28 (e) Age of models;

29 (f) Presence of child celebrities or celebrities who appeal to chil-
30 drren;

31 (g) Language;

32 (h) Competent and reliable empirical evidence regarding audience
33 composition and evidence regarding the intended audience;

34 (i) Physical location of advertisement, including, but not limited to,
35 proximity to schools or other institutions frequented by children;

36 (j) Medium by which the advertisement is communicated, including, but
37 not limited to, social media; or

38 (k) Other similar factors.

39 5. (a) Whenever there shall be a violation of this section, the attor-
40 ney general, in the name of the people of the state of New York, or a
41 city corporation counsel on behalf of the locality, may bring an action
42 in the supreme court or federal district court to enjoin and restrain
43 such violations and to obtain restitution and damages.

44 (b) Any person, firm, corporation or association that has been damaged
45 as a result of violations of this section shall be entitled to bring an
46 action for recovery of damages or to enforce this section in the supreme
47 court or federal district court.

48 § 3. Subdivision 24 of section 16 of the agriculture and markets law,
49 as amended by chapter 108 of the laws of 1974, is amended to read as
50 follows:

51 24. [~~Co-operate~~] Cooperate with local health departments and other
52 local agencies in preventing the production, manufacture, sale or offer-
53 ing for sale of fraudulent, deleterious or unwholesome food. The
54 department, in conjunction with the department of health, shall annually
55 produce to the legislature a report detailing a determination as to
56 which foods may be unwholesome or deleterious according to generally

1 accepted nutritional standards. The commissioner may contract with any
2 such local health department or other local agency for the performance
3 of inspections with respect to any food or other product over which he
4 or she has jurisdiction, powers and duties under the provisions of this
5 chapter.

6 § 4. Subdivision 1 of section 2599-b of the public health law, as
7 amended by section 1 of part A of chapter 469 of the laws of 2015, is
8 amended to read as follows:

9 1. The program shall be designed to prevent and reduce the incidence
10 and prevalence of obesity in children and adolescents, especially among
11 populations with high rates of obesity and obesity-related health
12 complications including, but not limited to, diabetes, heart disease,
13 cancer, osteoarthritis, asthma, emphysema, chronic bronchitis, other
14 chronic respiratory diseases and other conditions. The program shall use
15 recommendations and goals of the United States departments of agricul-
16 ture and health and human services, the surgeon general and centers for
17 disease control and prevention in developing and implementing guidelines
18 for nutrition education and physical activity projects as part of obesi-
19 ty prevention efforts. The content and implementation of the program
20 shall stress the benefits of choosing a balanced, healthful diet from
21 the many options available to consumers[~~, without specifically targeting~~
22 ~~the elimination of any particular food group, food product or food re-~~
23 ~~lated industry~~].

24 § 5. This act shall take effect on the thirtieth day after it shall
25 have become a law.