

# STATE OF NEW YORK

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8583--A

2021-2022 Regular Sessions

## IN ASSEMBLY

December 13, 2021

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Introduced by M. of A. REYES -- read once and referred to the Committee on Agriculture -- recommitted to the Committee on Agriculture in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

20 § 2. Subdivision 1 of section 202-a of the agriculture and markets  
21 law, as added by chapter 797 of the laws of 1939, is amended and four  
22 new subdivisions 4, 5, 6 and 7 are added to read as follows:

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

LBD13338-07-2

1     1. ~~[An advertisement concerning a food or food product]~~ Any represen-  
2 tations disseminated in any manner or by any means including digitally,  
3 or by statement, word, design, device, sound or any combination thereof,  
4 for the purpose of inducing, or which are likely to induce, directly or  
5 indirectly, the purchase of food or food products shall not be false or  
6 misleading in any [particular] manner. In determining whether any  
7 advertising concerning a food or food product is false or misleading,  
8 factors shall include, but not be limited to:

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

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

19     4. For the purposes of paragraph (a) of subdivision one of this  
20 section, a true statement of information in brief summary relating to  
21 effects of substantial consumption of this product is sufficient.  
22 Untrue or misleading information in any part of the advertisement will  
23 not be corrected by the inclusion in another distinct part of the adver-  
24 tisement of a brief statement containing true information relating to  
25 the effects of consumption.

26     5. For the purposes of paragraph (b) of subdivision one of this  
27 section, content is "unfair or deceptive" if it is likely to mislead  
28 children acting reasonably under the circumstances and it is not  
29 outweighed by the benefit to consumers.

30     6. For purposes of paragraph (b) of subdivision one of this section,  
31 special consideration shall be given to advertisements directed at a  
32 child as defined in section three hundred seventy-one of the social  
33 services law. In determining whether an advertisement concerning a food  
34 or food product is directed at a child, factors shall include, but not  
35 be limited to:

36     (a) Subject matter;

37     (b) Visual content;

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

40     (d) Music or other audio content;

41     (e) Age of models;

42     (f) Presence of child celebrities or celebrities who appeal to chil-  
43 dren;

44     (g) Language;

45     (h) Competent and reliable empirical evidence regarding audience  
46 composition and evidence regarding the intended audience;

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

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

51     (k) Other similar factors.

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

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

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

8 24. ~~[Co-operate]~~ Cooperate with local health departments and other  
9 local agencies in preventing the production, manufacture, sale or offer-  
10 ing for sale of fraudulent, deleterious or unwholesome food. The  
11 department, in conjunction with the department of health, shall annually  
12 produce to the legislature a report detailing a determination as to  
13 which foods may be unwholesome or deleterious according to generally  
14 accepted nutritional standards. The commissioner may contract with any  
15 such local health department or other local agency for the performance  
16 of inspections with respect to any food or other product over which he  
17 or she has jurisdiction, powers and duties under the provisions of this  
18 chapter.

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

22 1. The program shall be designed to prevent and reduce the incidence  
23 and prevalence of obesity in children and adolescents, especially among  
24 populations with high rates of obesity and obesity-related health  
25 complications including, but not limited to, diabetes, heart disease,  
26 cancer, osteoarthritis, asthma, emphysema, chronic bronchitis, other  
27 chronic respiratory diseases and other conditions. The program shall use  
28 recommendations and goals of the United States departments of agricul-  
29 ture and health and human services, the surgeon general and centers for  
30 disease control and prevention in developing and implementing guidelines  
31 for nutrition education and physical activity projects as part of obesi-  
32 ty prevention efforts. The content and implementation of the program  
33 shall stress the benefits of choosing a balanced, healthful diet from  
34 the many options available to consumers~~[, without specifically targetting~~  
35 ~~the elimination of any particular food group, food product or food-re-~~  
36 ~~lated industry]~~.

37 § 5. Severability. If any part or provision of this act or its appli-  
38 cation to a person is held invalid, the invalidity of that provision or  
39 application does not affect other provisions or applications of this act  
40 that can be given effect without the invalid provision or application.

41 § 6. This act shall take effect on the thirtieth day after it shall  
42 have become a law.