STATE OF NEW YORK

4424--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. REYES, KELLES -- read once and referred to the Committee on Agriculture -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the agriculture and markets law, the general business 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:

Section 1. Legislative findings and intent. The legislature hereby finds that children are an inherently vulnerable population, and that marketing unhealthy foods in a targeted and persistent manner to this group is inconsistent with this state's efforts to curb the disastrous health outcomes that follow the overconsumption of these products. Such marketing is inherently misleading, as children often lack the same ability to resist the rewarding cues presented in unhealthy food marketing as adults. New York has a strong and substantial interest in protecting our children from negative health consequences. Additionally, the power of the state is at its greatest when protecting the health and welfare of its citizens, especially those most vulnerable. Thus, the legislature finds that unfair and deceptive marketing targeted at children can mislead and manipulate children into lifelong habits, and that such unfair and deceptive advertising should be regulated accordingly.

§ 2. Section 202-a of the agriculture and markets law is amended by adding a new subdivision 4 to read as follows:

4. In determining whether a violation of this section has occurred, the court shall consider factors and special consideration given to advertising directed at a child pursuant to section three hundred fifty-a of general business law.

§ 3. Section 350-a of the general business law is amended by adding three new subdivisions 4, 5 and 6 to read as follows:

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

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4. In determining whether any advertising concerning a food or food product is false or misleading, factors shall include, but not be limited to:

(a) Whether the advertisement targets a consumer who is reasonably unable to protect their interests because of their age, physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factor.

(b) Whether the advertisement is an unfair act, practice or conduct.

(c) For the purposes of this subdivision and subdivision six of this section, a "consumer" is defined as a person who is targeted by an advertisement, or those acting on such a person's behalf.

5. For the purposes of this section, for a consumer: an act, practice, or conduct is "unfair" where it:

(a) causes or is likely to cause substantial injury to such consumer;

(b) cannot be reasonably avoided by such consumer; and

(c) is not outweighed by countervailing benefits to such consumer or to competition.

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

(a) Subject matter;

(b) Visual content;

(c) Use of animated characters or child-oriented activities and incentives;

(d) Music or other audio content;

(e) Age of models;

(f) Presence of child celebrities or celebrities who appeal to children;

(g) Language;

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

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

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

(k) Other similar factors.

§ 4. Subdivision 3 of section 350-e of the general business law, as amended by chapter 328 of the laws of 2007, is amended to read as follows:

3. Any person who has been injured by reason of any violation of section three hundred fifty or three hundred fifty-a of this article may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages, up to ten thousand dollars, if the court finds that the defendant willfully or knowingly violated this section or engaged in advertising directed at a child pursuant to section three hundred fifty-a of this article. The court may award reasonable attorney's fees to a prevailing plaintiff.

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

1. The program shall be designed to prevent and reduce the incidence and prevalence of obesity in children and adolescents, especially among populations with high rates of obesity and obesity-related health complications including, but not limited to, diabetes, heart disease, cancer, osteoarthritis, asthma, emphysema, chronic bronchitis, other chronic respiratory diseases and other conditions. The program shall use recommendations and goals of the United States departments of agriculture and health and human services, the surgeon general and centers for disease control and prevention in developing and implementing guidelines for nutrition education and physical activity projects as part of obesity prevention efforts. The content and implementation of the program shall stress the benefits of choosing a balanced, healthful diet from the many options available to consumers[~~, without specifically targeting the elimination of any particular food group, food product or food-related industry~~] **while specifically including education on access and the nutritional value of locally grown foods and food products including, but not limited to dairy, fruit and vegetable food products. The program shall cooperate with the department of agriculture and markets to add access to locally grown foods and food products including, but not limited to dairy, fruit and vegetable food products within the guidelines and framework of the program**.

§ 6. Severability. If any part or provision of this act or its application to a person is held invalid, the invalidity of that part, provision or application does not affect other parts, provisions or applications of this act that can be given effect without the invalid provision or application.

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