

STATE OF NEW YORK

4424--B

2023-2024 Regular Sessions

IN ASSEMBLY

February 14, 2023

Introduced by M. of A. REYES, KELLEES -- read once and referred to the Committee on Agriculture -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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:

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. New York has a strong and substantial interest in
9 protecting our children from negative health consequences. Additionally,
10 the power of the state is at its greatest when protecting the health and
11 welfare of its citizens, especially those most vulnerable. Thus, the
12 legislature finds that unfair and deceptive marketing targeted at chil-
13 dren can mislead and manipulate children into lifelong habits, and that
14 such unfair and deceptive advertising should be regulated accordingly.

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

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

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

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

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

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

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

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

14 5. For the purposes of this section, for a consumer: an act, prac-
15 tice, or conduct is "unfair" where it:

16 (a) causes or is likely to cause substantial injury to such consum-
17 er;

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

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

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

27 (a) Subject matter;

28 (b) Visual content;

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

31 (d) Music or other audio content;

32 (e) Age of models;

33 (f) Presence of child celebrities or celebrities who appeal to chil-
34 dren;

35 (g) Language;

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

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

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

42 (k) Other similar factors.

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

46 1. The program shall be designed to prevent and reduce the incidence
47 and prevalence of obesity in children and adolescents, especially among
48 populations with high rates of obesity and obesity-related health
49 complications including, but not limited to, diabetes, heart disease,
50 cancer, osteoarthritis, asthma, emphysema, chronic bronchitis, other
51 chronic respiratory diseases and other conditions. The program shall use
52 recommendations and goals of the United States departments of agricul-
53 ture and health and human services, the surgeon general and centers for
54 disease control and prevention in developing and implementing guidelines
55 for nutrition education and physical activity projects as part of obesi-
56 ty prevention efforts. The content and implementation of the program

1 shall stress the benefits of choosing a balanced, healthful diet from
2 the many options available to consumers[~~, without specifically targeting~~
3 ~~the elimination of any particular food group, food product or food re-~~
4 ~~lated industry]~~ while specifically including education on access and the
5 nutritional value of locally grown foods and food products including,
6 but not limited to dairy, fruit and vegetable food products. The
7 program shall cooperate with the department of agriculture and markets
8 to add access to locally grown foods and food products including, but
9 not limited to dairy, fruit and vegetable food products within the
10 guidelines and framework of the program.

11 § 5. Severability. If any part or provision of this act or its appli-
12 cation to a person is held invalid, the invalidity of that part,
13 provision or application does not affect other parts, provisions or
14 applications of this act that can be given effect without the invalid
15 provision or application.

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