STATE OF NEW YORK

397--A

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

January 8, 2025

Introduced by Sens. MYRIE, BAILEY, BROUK, CLEARE, COMRIE, FAHY, KAVANAGH, MAY, RAMOS, SEPULVEDA, SKOUFIS, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- recommitted to the Committee on Agriculture in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, 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:

Section 1. Legislative findings and intent. The legislature hereby finds that children are an inherently vulnerable population, and that marketing food and beverages high in saturated fatty acids, trans-fatty acids, and free sugars 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 which include but are not limited to increased rates of malnutrition, undernutrition, micronutrient deficiencies, obesity, and other diet-related illnesses. Such marketing is inherently misleading, aggressive, and pervasive 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 and remain aligned with the goals of the Convention on the Rights of the Child which ensures access to nutritious foods and freedom from exploitation of all kinds. 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

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

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manipulate children into lifelong habits, and that such unfair and deceptive advertising should be regulated accordingly.

§ 2. Section 350-a of the general business law is amended by adding a new subdivision 5 to read as follows:

5. For purposes of this section, factors for determining whether an advertisement is false advertising shall include, but not be limited to, whether the advertisement is directed at a child as defined in section seventy-five-a of the domestic relations law, or a parent or guardian acting on a child's behalf. In determining whether an advertisement concerning a food or food product is directed at a child or a parent or guardian acting on a child's behalf, factors shall include, but not be limited to:

(a) Subject matter;

(b) Visual content;

(c) Use of bright colors and 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 including claims, buzzwords, sayings, and/or phrases that are trending such as common colloquial words specific to the age group;

(h) Competent and reliable empirical evidence regarding audience composition and evidence regarding the intended 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 television/commercial advertising; and

(k) Other related factors including, but not limited to, the ease of accessibility of the product for children.

§ 3. 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 the factors set forth in section three hundred fifty-a of the general business law, and special consideration shall be given to advertising directed at a child or a parent or guardian acting on a child's behalf.

§ 4. 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**~~] **that specifically includes education on access and the**

nutritional value of locally grown foods and food products. This shall include but not be 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. This shall include but not be limited to, dairy, fruit and vegetable food products within the guidelines and framework of the program.

§ 5. 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.

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