

# STATE OF NEW YORK

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397--A

2025-2026 Regular Sessions

## IN SENATE

(Prefiled)

January 8, 2025

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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:

1 Section 1. Legislative findings and intent. The legislature hereby  
2 finds that children are an inherently vulnerable population, and that  
3 marketing food and beverages high in saturated fatty acids, trans-fatty  
4 acids, and free sugars in a targeted and persistent manner to this group  
5 is inconsistent with this state's efforts to curb the disastrous health  
6 outcomes that follow the overconsumption of these products which include  
7 but are not limited to increased rates of malnutrition, undernutrition,  
8 micronutrient deficiencies, obesity, and other diet-related illnesses.  
9 Such marketing is inherently misleading, aggressive, and pervasive as  
10 children often lack the same ability to resist the rewarding cues  
11 presented in unhealthy food marketing as adults. New York has a strong  
12 and substantial interest in protecting our children from negative health  
13 consequences and remain aligned with the goals of the Convention on the  
14 Rights of the Child which ensures access to nutritious foods and freedom  
15 from exploitation of all kinds. Additionally, the power of the state is  
16 at its greatest when protecting the health and welfare of its citizens,  
17 especially those most vulnerable. Thus, the legislature finds that  
18 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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1 manipulate children into lifelong habits, and that such unfair and  
2 deceptive advertising should be regulated accordingly.

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

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

13 (a) Subject matter;

14 (b) Visual content;

15 (c) Use of bright colors and animated characters or child-oriented  
16 activities and incentives;

17 (d) Music or other audio content;

18 (e) Age of models;

19 (f) Presence of child celebrities or celebrities who appeal to chil-  
20 dren;

21 (g) Language including claims, buzzwords, sayings, and/or phrases that  
22 are trending such as common colloquial words specific to the age group;

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

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

28 (j) Medium by which the advertisement is communicated, including, but  
29 not limited to, social media, or television/commercial advertising; and

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

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

34 4. In determining whether a violation of this section has occurred,  
35 the court shall consider the factors set forth in section three hundred  
36 fifty-a of the general business law, and special consideration shall be  
37 given to advertising directed at a child or a parent or guardian acting  
38 on a child's behalf.

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

42 1. The program shall be designed to prevent and reduce the incidence  
43 and prevalence of obesity in children and adolescents, especially among  
44 populations with high rates of obesity and obesity-related health  
45 complications including, but not limited to, diabetes, heart disease,  
46 cancer, osteoarthritis, asthma, emphysema, chronic bronchitis, other  
47 chronic respiratory diseases and other conditions. The program shall use  
48 recommendations and goals of the United States departments of agricul-  
49 ture and health and human services, the surgeon general and centers for  
50 disease control and prevention in developing and implementing guidelines  
51 for nutrition education and physical activity projects as part of obesi-  
52 ty prevention efforts. The content and implementation of the program  
53 shall stress the benefits of choosing a balanced, healthful diet from  
54 the many options available to consumers, [~~without specifically targeting~~  
55 ~~the elimination of any particular food group, food product or food-re-~~  
56 ~~lated industry]~~ that specifically includes education on access and the

1 nutritional value of locally grown foods and food products. This shall  
2 include but not be limited to, dairy, fruit and vegetable food products.  
3 The program shall cooperate with the department of agriculture and  
4 markets to add access to locally grown foods and food products. This  
5 shall include but not be limited to, dairy, fruit and vegetable food  
6 products within the guidelines and framework of the program.

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

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