
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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Subject: Pupil nutrition: food and beverages: advertising: corporate incentive programs

SUMMARY

This bill prohibits public schools that participate in the National School Lunch Program or School Breakfast Program from advertising food or beverages that do not meet specified nutritional standards on school campuses during the school day, and from participating in corporate student incentive programs involving non-compliant food and beverages.

BACKGROUND

Existing federal law, the Healthy, Hunger-Free Kids Act of 2010:

- 1) Authorizes funding and sets policy for the United States Department of Agriculture's core child nutrition programs: the National School Lunch Program, the School Breakfast Program, the Special Supplemental Nutrition Program for Women, Infants and Children, the Summer Food Service Program, and the Child and Adult Care Food Program. The accompanying regulations are known as the Smart Snacks in Schools provisions. (United States Code, Title 42, § 1751-1779; Code of Federal Regulations, Title 7, § 210.11)
- 2) Requires each local educational agency (LEA) to establish a local school wellness policy for all schools participating in the National School Lunch Program and/or School Breakfast Program under the jurisdiction of the LEA. The local school wellness policy is a written plan that includes methods to promote student wellness, prevent and reduce childhood obesity, and provide assurance that school meals and other food and beverages sold and otherwise made available on the school campus during the school day are consistent with applicable minimum federal standards. (7 CFR § 210.31)
- 3) Requires a local school wellness policy to contain, among other things, standards and nutrition guidelines for all foods and beverages sold to students during the school day on each participating school campus under the jurisdiction of the LEA that permit marketing on the school campus during the school day of only those foods and beverages that meet the federal nutrition standards (as codified in state law below). (7 CFR § 210.31)

Existing state law:

- 1) Defines “competitive foods” as all food and beverages other than meals reimbursed under programs authorized by the federal Richard B. Russell National School Lunch Act (Public Law 113-79) and the federal Child Nutrition Act of 1966 (42 U.S.C. Sec. 1771 et seq.) available for sale to pupils on the school campus during the schoolday. (Education Code § 49430)

Competitive foods sold in elementary schools and competitive snack foods sold in middle schools or high schools.

- 2) Provides that, from the midnight before to 30 minutes after the end of the official schoolday, the only competitive foods that may be sold to pupils at each elementary school, and the only competitive snack foods that may be sold to pupils at each middle school or high school, that may be sold to students are fruit, vegetable, dairy, protein, or whole grain rich food items; foods with a fruit, vegetable, dairy, protein, or whole grain item as its first ingredient; or combination foods containing at least one-quarter cup of fruit or vegetable that meets the following standards:
 - a) Not more than 35 percent of its total calories shall be from fat. Exempt from this standard are individually sold portions of nuts, nut butters, seeds, seed butters, reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, fruits, vegetables that have not been deep fried, seafood, or a dried fruit and nut and seed combination.
 - b) Less than 10 percent of its total calories shall be from saturated fat. Exempt from this standard are reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, nuts, nut butters, seeds, seed butters, or a dried fruit and nut and seed combination.
 - c) Not more than 35 percent of its total weight shall be composed of sugar, including naturally occurring and added sugar. Exempt from this standard are fruits or vegetables that have not been deep fried, or a dried fruit and nut and seed combination.
 - d) Contains less than 0.5 grams of trans fat per serving.
 - e) Contains not more than 200 milligrams of sodium per item, package, or container sold to a pupil.
 - f) Contains not more than 200 calories per individual food item. (EC § 49431, §49431.2)

Competitive entrée items sold in middle schools or high schools.

- 3) Requires, from the midnight before to 30 minutes after the end of the official schoolday, at each middle school or high school, that a competitive entrée sold by the district food service department the day, or the day after, it is served on the federal National School Lunch Program or federal School Breakfast Program menu to meet the following standards:

- a) That it contains not more than 400 calories per entrée item.
 - b) That not more than 35 percent of its total calories shall be from fat.
 - c) That it contains less than 0.5 grams trans fat per serving.
 - d) That it is offered in the same or smaller portion sizes as in the federal National School Lunch Program or federal School Breakfast Program. (EC § 49431.2)
- 4) Requires, from the midnight before to 30 minutes after the end of the official schoolday, at each middle school or high school, that a competitive entrée sold by the district food service department but not the day, or the day after, it is served on the federal National School Lunch Program or federal School Breakfast Program menu, or a competitive entrée sold by any other entity, to meet the following standards:
- a) That not more than 35 percent of its total calories shall be from fat.
 - b) That less than 10 percent of its calories shall be from saturated fat.
 - c) That not more than 35 percent of its total weight shall be composed of sugar, including naturally occurring and added sugar.
 - d) That it contains less than 0.5 grams of trans fat per serving.
 - e) That it contains not more than 480 milligrams of sodium.
 - d) That it contains not more than 350 calories.

Beverages sold in schools

- 5) Provides that from the midnight before to 30 minutes after the end of the official school day, at each elementary or middle school, the only competitive beverages that may be sold to a pupil are:
- a) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweetener in a maximum serving size of 8 fluid ounces for elementary school or 12 fluid ounces for middle school.
 - b) Vegetable-based drinks that are composed of no less than 50 percent vegetable juice and have no added sweetener in a maximum serving size of 8 fluid ounces for elementary school or 12 fluid ounces for middle school.
 - c) Plain water or plain carbonated water.
 - d) One-percent-fat unflavored milk, nonfat flavored or unflavored milk, soy milk, rice milk, and other similar nondairy milk in a maximum serving size

of 8 fluid ounces for elementary school or 12 fluid ounces for middle school. (EC § 49431.5)

- 6) Provides that from the midnight before to 30 minutes after the end of the official school day, at each high school, the only competitive beverages that may be sold to a pupil are:
- a) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweetener in a maximum serving size of 12 fluid ounces.
 - b) Vegetable-based drinks that are composed of no less than 50 percent vegetable juice and have no added sweetener in a maximum serving size of 12 fluid ounces.
 - c) Plain water or plain carbonated water.
 - d) One-percent-fat unflavored milk, nonfat flavored or unflavored milk, soy milk, rice milk, and other similar nondairy milk in a maximum serving size of 12 fluid ounces.
 - e) Flavored water or flavored carbonated water with no added sweetener that is labeled to contain less than 5 calories per 8 fluid ounces in a maximum serving size of 20 fluid ounces.
 - f) Flavored water or flavored carbonated water with no added sweetener that is labeled to contain no more than 40 calories per 8 fluid ounces in a maximum serving size of 12 fluid ounces.
 - g) Electrolyte replacement beverages that are labeled to contain less than 5 calories per 8 fluid ounces in a maximum serving size of 20 fluid ounces.
 - h) Electrolyte replacement beverages that are labeled to contain no more than 40 calories per 8 fluid ounces in a maximum serving size of 12 fluid ounces. (EC § 49431.5)

Trans fat

- 4) Prohibits a school or school district from selling food containing artificial trans fat to K-12 students, from the midnight before to 30 minutes after the official schoolday. (EC § 49431.7)

School wellness policy

- 5) Requires every public school to inform the public about the content of the school's local school wellness policy, established pursuant to the federal Healthy, Hunger-Free Kids Act of 2010 (Public Law 111-296). (EC § 49432)

ANALYSIS

This bill prohibits public schools that participate in the National School Lunch Program or School Breakfast Program from advertising food or beverages that do not meet specified nutritional standards on school campuses during the school day, and from participating in corporate student incentive programs involving non-compliant food and beverages. Specifically, this bill:

- 1) Expresses findings and declarations regarding rising childhood obesity rates and the importance of school nutrition programs as well as the potential negative impacts of marketing non-compliant foods and beverages in schools.
- 2) Prohibits any school, school district, or charter school that participates in the National School Lunch or Breakfast Program from advertising any food or beverage on campus during the school day unless the food or beverage can be served or sold during the schoolday.
- 3) Prohibits schools from participating in corporate incentive programs that reward pupils with free or discounted non-compliant foods or beverages when they reach certain academic goals.
- 4) Exempts all of the following from the advertisement prohibition:
 - a) Advertising on broadcast, digital, or print media, unless the media are produced or controlled by the local educational agency, school, faculty, or its pupils.
 - b) Advertising on clothing with brand images worn on school grounds.
 - c) Advertising contained in product packaging.
 - d) Advertising of infrequent school fundraising events involving non-compliant food or beverages.
- 5) Specifies that schools are not required to replace durable, non-consumable items that would not be in compliance with these provisions, including, but not limited to, scoreboards or team uniforms, in use as of January 1, 2018, but requires compliance with these provisions when those items are replaced or contracts renegotiated.
- 6) Expresses the intent of the Legislature:
 - a) To encourage schools to use nonfood related fundraising programs.
 - b) That the governing board or body of a school district and a charter school annually review their compliance with these provisions.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “This bill seeks to prevent the growing obesity, diabetes, and tooth decay crisis that we see in younger adults, adolescents, and children. These youth and children begin developing their

eating habits at a very young age. Children spend most of their time at school; the products that are provided and advertised to them there are the products that they are most likely to crave and consume. By eliminating the advertising of these unhealthy products, our hope is that we can start to build healthier eating habits amongst our youth and stem the growing chronic disease epidemic in our state. Finally, we believe that it is essential to codify this federal regulation into state law because we are not sure if this regulation will continue to exist under the current administration. As you can see with menu labeling, we're concerned that these progressive nutrition policies may get rolled back. Codifying the regulation would ensure this much-needed policy remains law in our state notwithstanding federal actions.

The bill simply codifies a federal guideline that was finalized in July of 2016 that requires all local education agencies to update their local wellness policies. Among the updates, schools are required to prevent the advertising of products that do not meet the "smart snack" standards. Currently, schools are not allowed to sell or provide unhealthy foods or beverages to pupils during school hours. Schools should be a place that provides consistent messaging related to healthy eating habits. As such, schools should also not be able to advertise unhealthy products that they are already prohibited from selling."

- 2) ***Codifies federal regulations and recommendations regarding marketing.*** Less than one year ago, the Food and Nutrition Services within the United States Department of Agriculture (USDA) finalized its rule permitting the marketing on the school campus during the school day of only those foods and beverages that meet the federal nutrition standards. That rule became effective August 29, 2016 and local educational agencies must be in compliance by no later June 30, 2017. This bill seeks to codify that rule, as well as guidance interpreting that rule. According to and USDA guidance document SP-24-2017, which was issued on April 6, 2017:
- a) "Food marketing commonly includes oral, written, or graphic statements made for the purpose of promoting the sale of a food or beverage product. Therefore, the marketing standards apply to item such as posters, flyers, and other printed materials advertising products." The bill's definition of advertising is consistent with this guidance.
 - b) "Marketing standards apply to the school campus. The school campus is defined as all areas under the jurisdiction of the school that are accessible to students during the school day. School day is defined as the midnight before through 30 minutes after the end of the school day. Examples of areas affected include the cafeteria, classrooms, hallways, gymnasiums, football/soccer fields, running track, parking lots, and all other areas of the campus that students may occupy during the school day. Items, such as scoreboards, that are already in place do not need to be replaced; however, LEAs must consider the marketing guidelines in the wellness policy when these items are replaced or updated over time..." The bill's prohibitions and exceptions are consistent with this guidance.

- c) “Brand name marketing is not restricted. If a specific product does not meeting the Smart Snacks nutrition standards, it may not be marketed on the campus during the school day, however, the brand may be marketed... local educational agencies (LEAs) may choose to include more stringent marketing standard for brand marketing and copycat products in their local wellness policy; they may simply eliminate advertising of all brands that market foods inconsistent with the Smart Snacks nutrition standards; or they may allow both brand marketing and copycat products that meet Smart Snacks stands to be marketed in schools.” This bill is consistent with this guidance and continues to allow corporate brand advertising so long as that corporate brand offers a food or beverage that meets federal and state nutrition standards. The prohibition in the bill applies only to individual food or beverage products.”
- d) “The local school wellness policy marketing standards are not intended to restrict incentive programs. While the LEA is required to address standards and nutrition guidelines for all food and beverages available on the school campus during the school day, it may determine what is in the best interest of their respective school communities. LEAs are encouraged to use nonfood-related incentive programs or programs that promote items consistent with the Smart Snacks standards.” The bill is again consistent with this encouragement, as it prohibits only those incentive programs that promote foods or beverages that do not meet federal or state nutrition standards.

In sum, this bill would help minimize the mixed messaging students might receive on a school campus by ensuring alignment between those food and beverages that allowed to be sold during the schoolday and those food and beverages that are advertised on school grounds.

- 4) ***Rates of childhood obesity and diabetes.*** In recent years, significant attention has been given to children’s nutritional intake, including foods and beverages consumed at school, as a result of the rising incidence of children who are overweight or obese. American children’s’ diets are often high in saturated fat, added sugar, and sodium.

According to the Trust for America’s Health, State of Obesity, 15.1 percent of California 10-17-year-olds were considered obese in 2011 and 13.9 percent of high school students were identified as obese in 2015. Additional data, from the UCLA Center for Health Policy Research, shows that 38 percent of California 5th, 7th and 9th graders were overweight or obese in 2010, down slightly from 38.44 percent in 2005. Obesity is associated with an increased risk of type 2 diabetes, cardiovascular disease, and cancer, as well as a lower life expectancy.

According to the California Department of Public Health, approximately 18,000 children between 5 to 19 years old in California had diagnosed diabetes in 2008, with 15,000 having type 1 or juvenile diabetes and 3,000 having type 2 or adult-onset diabetes. They also noted that studies show a consistent rise in type 2 diabetes among children and youth. Diabetes is the leading cause of blindness,

amputations, and kidney failure, and is a major contributor to heart attacks and strokes.

- 5) ***Impacts of advertising on children and youth.*** The American Psychological Association (APA) notes that today's children, ages 8 to 18, consume multiple types of media and spend more time (44.5 hours/week) in front of the computer, television, and game screens than any other activity in their lives except sleeping. According to the APA, research has found strong associations between increases in advertising for non-nutritious foods and the rates of childhood obesity. Children who watch more than three hours of television per day are 50 percent more likely to be obese than children who watch fewer than two hours. Food and beverage advertising targeted at children influences their product preferences, requests, and diet.

Food ads on television make up 50 percent of all of the ad time on children's shows and are often dominated by unhealthy food products. Young children are unable to consistently distinguish between commercial and non-commercial content and even older children are unable to recognize the persuasive nature of commercial messages. Children may be particularly vulnerable to the marketing of poor nutritional quality foods because they lack the decision-making skills and maturity to make healthier choices.

A 2014 research brief published by the Yale Rudd Center for Food Policy and Obesity identifies that current food marketing practices present a significant public health threat for older children and teens. Adolescents' stage of brain development makes them highly susceptible to marketing overall, especially marketing for tempting products that require well-developed self-regulatory abilities to resist. Newer forms of marketing, including social media marketing are often difficult to recognize as they may be disguised as messages from friends. Children ages 12 to 14 face heightened risk from the influence of unhealthy marketing due to their greater independence and higher levels of media consumption.

- 6) ***Voluntary industry guidelines.*** The Children's Food and Beverage Advertising Initiative (CFBAI) is a voluntary program to limit advertising to children of foods that meet nutritional standards. This initiative was launched in 2006 and includes 18 companies, primarily food and beverage manufacturers as well as two fast food organizations.

A 2012 report by the Federal Trade Commission (FTC) found a decrease in food and beverage marketing to children and adolescents from \$2.1 billion in 2006 to \$1.8 billion in 2009. The FTC report noted that the self-regulatory CFBAI is limited in scope as it does not cover all forms of marketing and focuses on children 11 years and younger.

- 7) ***Intent language regarding school fundraisers?*** The bill states the intent of the Legislature to encourage schools to use nonfood related fundraising programs. Federal law authorizes infrequent fundraisers for food or beverages that do not meet federal nutrition guidelines if that state agency specifies the level of infrequency. According to the California Department of Education,

“California requires that all competitive foods and beverages meet applicable standards; therefore, California does not allow any exempted food or beverage fundraisers during the school day. Fundraisers can still occur during the school day, but they must follow all applicable state and federal competitive food rules.” Food is often an integral component to school fundraising events, which provide critical funds to local schools. Additionally, there are no prohibitions against fundraisers involving any type of food or beverage that occur outside the school day. Given the importance of school fundraisers, the *committee may wish to consider* the extent to which this intent language is appropriate.

- 8) **Previous legislation.** AB 2708 (Solorio) of the 2007-08 Session would have prohibited the governing board of a school district or administrator of a charter school from allowing advertising of a food or beverage product or corporate brands, names, or trademarks of food and beverage manufacturers on school premises. The bill would have exempted the advertising prohibition for permanent, non-consumable donated items that existed prior to July 1, 2010 (e.g. scoreboards and backboards). AB 2708 was held in Assembly Appropriations.

SUPPORT

American Academy of Pediatrics
 American Diabetes Association
 American Heart Association/American Stroke Association
 California Association for Health, Physical Education, Recreation and Dance
 California Food Policy Advocates
 California Pan-Ethnic Health Network
 California School Nurses Organization
 California State PTA
 California Teachers Association
 Campaign for a Commercial-Free Childhood
 Center for Communications, Health and the Environment
 Center for Science in the Public Interest
 Latino Coalition for a Healthy California
 Prevention Institute
 Public Health Advocates
 Social Justice Learning Institute
 World’s Finest Chocolates

OPPOSITION

Agricultural Council of California
 American Beverage Association
 Association of Food, Beverage and Consumer Products Companies
 Bakery, Confectionary, Tobacco Workers and Grain Millers Union
 California Chamber of Commerce
 California League of Food Processors
 California Manufacturers & Technology Association
 California Restaurant Association
 California Retailers Association

Dairy Institute of California
Grocery Manufacturers Association
International Brotherhood of Teamsters
National Confectioners Association
National Federation of Independent Business
School Employers Association of California
Small School Districts Association
United Food & Commercial Workers

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