

AMENDED IN ASSEMBLY APRIL 8, 2008
AMENDED IN ASSEMBLY MARCH 28, 2008
CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2708

Introduced by Assembly Member Solorio

February 22, 2008

An act to add Section 49437 to the Education Code, relating to prohibited advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 2708, as amended, Solorio. School districts: pupils' health and nutrition: prohibited advertising.

(1) The Pupil Nutrition, Health, and Achievement Act of 2001 requires a school to follow the Enhanced Food Based Meal Pattern, Nutrient Standard Meal Planning, or Traditional Meal Pattern developed by the United States Department of Agriculture or the Shaping Health as Partners in Education (SHAPE) Menu Patterns developed by the state in order to qualify for reimbursement for free and reduced-price meals sold or served to pupils. The act prescribes nutrition standards for snacks sold to pupils in middle, junior, or high school with certain exceptions. The act also prohibits the sale of certain beverages to pupils at elementary schools, and prescribes rules for the sale of certain beverages to pupils in middle, junior high, and high schools.

This bill, *on and after January 1, 2010*, would prohibit ~~a school from displaying~~ the governing board of school district from advertising a nonnutritious food or beverage, as defined, on school premises. The bill would also prohibit advertising on school premises of the corporate brand name, logo, or trademark of a ~~restaurant or food and beverage~~

manufacturer, if any of the products manufactured or sold by the restaurant or food and beverage manufacturer do not comply with prescribed nutrition standards, thereby imposing *of a nonnutritious food or beverage, except as specified. By imposing additional duties on a school district, the bill would impose* a state-mandated local program. The bill would require the Superintendent of Public Instruction to monitor school district compliance with these provisions. A school district found to be noncompliant would be required to adopt a corrective action plan, as specified. ~~The bill would prescribe specified penalties for noncompliance with the action plan.~~ The bill would provide that its provisions are severable.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and hereby declares all of
- 2 the following:
- 3 (a) California has the second highest rate of overweight children
- 4 in the nation.
- 5 (b) In 2004, more than 28 percent of California pupils in grades
- 6 5, 7, and 9 were overweight, with ~~rates~~ *the rate of overweight*
- 7 *children* being even higher for Asian and Pacific Islander children
- 8 (35.9 percent), Latino children (35.4 percent), Native American
- 9 children (31.7 percent), and African American children (28.7
- 10 percent).
- 11 (c) Diabetes has also reached epidemic levels among children
- 12 primarily as a result of the growing obesity epidemic. Type 2
- 13 diabetes, which until recently affected only adults, now affects a
- 14 growing number of children, accounting for almost 50 percent of
- 15 new diabetes cases among children in some United States
- 16 communities.

1 (d) A recent study found that severely overweight pupils miss
2 nine days of school per year. The same study estimated that average
3 size school districts in California may lose as much as one hundred
4 sixty thousand dollars (\$160,000) per year, and very large districts
5 may lose as much as \$15 million per year as a result of reduced
6 average daily attendance resulting from childhood obesity-related
7 absences.

8 (e) Only 2 percent of California youth *who are* 12 to 17 years
9 of age, inclusive, consume foods that meet national dietary
10 recommendations. Approximately 70 percent of United States
11 ~~children ages 2 to 11, who are 2 to 11 years of age,~~ inclusive,
12 consume foods that exceed current dietary recommendations for
13 intakes of total and saturated fat. Only 21 percent of California
14 children meet the goal of eating five servings of fruits and
15 vegetables per day.

16 (f) *Marketing and advertising of nonnutritious foods and*
17 *beverages to children is a key component of the obesity epidemic.*
18 A review by the Institute of Medicine of the federal National
19 Academies of Medicine found that food marketing influences
20 children's attitudes, preferences, food purchase requests, diets,
21 and health. Additional studies show that labeling and signage on
22 school campuses affect pupils' food selections at school.

23 (g) The majority of the foods and beverages marketed in schools
24 are of poor nutritional quality. Candy and snack food
25 manufacturers, soft drink bottlers, and fast food restaurants are
26 among the entities that market most heavily in schools and promote
27 consumption of their products to children.

28 ~~(h) Advertising of foods and beverages of poor nutritional~~
29 ~~quality on school premises~~

30 (h) *Marketing and advertising of nonnutritious foods and*
31 *beverages, as well as the brands and manufacturers associated*
32 *with these products, on school premises* conflicts with the
33 educational mission and imperative of California's schools to teach
34 California's children about good health and sound nutrition, and
35 provide diligent care regarding the health and physical development
36 of pupils. This advertising creates the erroneous appearance that
37 the school endorses the consumption of nonnutritious foods and
38 beverages and does not further the schools' pedagogical purposes.

39 (i) Schools can sell and promote healthy foods and beverages
40 without losing revenue derived from food sales. A study conducted

1 by the Centers for Disease Control and Prevention and the United
 2 States Department of Agriculture found that of 17 schools that
 3 changed to selling healthier foods and beverages, 12 schools
 4 increased revenue and four schools had no change in revenue.

5 (j) To succeed in reducing the number of overweight and obese
 6 children, children need to have a healthful environment, with
 7 healthful messages and healthful food available. Because children
 8 spend one-third of their day at school, schools must provide an
 9 environment that is free of advertising of nonnutritious foods and
 10 beverages.

11 SEC. 2. Section 49437 is added to the Education Code, to read:

12 49437. (a) For ~~the~~ purposes of this section, ~~“nonnutritious~~
 13 ~~foods” mean the following definitions apply:~~

14 (1) *“Advertising” means an advertisement or marketing, or a*
 15 *public notice or activity to promote the purchase of a nonnutritious*
 16 *food or nonnutritious beverage, to extol a nonnutritious food or*
 17 *nonnutritious beverage, or to promote a brand of nonnutritious*
 18 *food or nonnutritious beverage. This includes, but is not limited*
 19 *to, the following:*

20 (A) *Displays, such as vending machine exteriors.*

21 (B) *Corporate brand, logo, name, or trademark on school*
 22 *equipment, such as marquees, message boards, scoreboards,*
 23 *backboards, or uniforms.*

24 (C) *Corporate brand, logo, name, or trademark on cups, posters,*
 25 *book covers, pupil assignment books, school supplies, or*
 26 *educational materials.*

27 (D) *Advertisements in school publications, Internet Web sites,*
 28 *in-school television, or mailings.*

29 (E) *Broadcasts on school radio stations, in-school television,*
 30 *computer screensavers, school-sponsored Web sites, or the public*
 31 *announcement system.*

32 (F) *Free samples, taste tests, or coupons of a product, or free*
 33 *samples displaying advertising of a product.*

34 (G) *Educational incentive programs such as contests that use*
 35 *food as a reward, or programs that provide schools with supplies*
 36 *or funds when families purchase specific food products.*

37 (H) *Sponsorship of school activities, fundraisers, sports teams,*
 38 *or market research.*

39 (2) *“Nonnutritious food” means any of the following:*

40 (1)

- 1 (A) A snack food that has any of the following characteristics:
2 ~~(A)~~
3 (i) More than 35 percent of its total calories are derived from
4 fat, *excluding nuts, nut butters, seeds, eggs, cheese packaged for*
5 *individual sale, fruits, vegetables that have not been deep fried,*
6 *or legumes.*
7 ~~(B)~~
8 (ii) More than 10 percent of its total calories are derived from
9 saturated fat, *excluding eggs or cheese packaged for individual*
10 *sale.*
11 ~~(C)~~
12 (iii) More than 35 percent of its total weight is composed of
13 sugar, including naturally occurring and added sugar, *but excluding*
14 *fruits or vegetables that have not been deep fried.*
15 ~~(D)~~
16 (iv) More than 175 calories per individual food item *for grade*
17 *schools.*
18 (v) *more than 250 calories per individual food item for middle,*
19 *junior, and high schools.*
20 ~~(2)~~
21 (B) An individual entree that has either of the following:
22 ~~(A)~~
23 (i) More than 400 calories.
24 ~~(B)~~
25 (ii) More than 4 grams of fat per 100 calories.
26 ~~(b) For the purposes of this section, “nonnutritious beverages”~~
27 ~~mean~~
28 (3) “*Nonnutritious beverage*” means any of the following:
29 ~~(1)~~
30 (A) Fruit-based drinks that are composed of less than 50 percent
31 fruit juice and have added sweetener.
32 ~~(2)~~
33 (B) Vegetable-based drinks that are composed of less than 50
34 percent vegetable juice and have added sweetener.
35 ~~(3)~~
36 (C) Drinking water with added sweetener.
37 ~~(4)~~
38 (D) Milk, except for milk with a fat content of 2 percent or less,
39 soy milk, rice milk, and other similar nondairy milk.

1 ~~(e) If any of the products manufactured or sold by a restaurant~~
2 ~~or food or beverage manufacturer are nonnutritious foods or~~
3 ~~beverages, a school district shall not display the name, logo, or~~
4 ~~trademark of the restaurant or manufacturer. This prohibition~~
5 ~~includes the following:~~

6 ~~(1) Displays on any real or personal property, school vehicle,~~
7 ~~or facility under the control of a school district, including, but not~~
8 ~~limited to, school buildings, school buses, school grounds, and~~
9 ~~vending machine exteriors.~~

10 ~~(2) Corporate logos or brand names on school structures or~~
11 ~~equipment, including, but not limited to, marquees, message~~
12 ~~boards, scoreboards or backboards, or uniforms.~~

13 ~~(3) Corporate logos or brand names on cups, posters, book~~
14 ~~covers, student assignment books, school supplies, or educational~~
15 ~~materials.~~

16 ~~(4) Advertisements in school publications, Internet Web sites,~~
17 ~~in-school television, or mailings.~~

18 ~~(5) Broadcasts on school radio stations, in-school television,~~
19 ~~computer screensavers, school-sponsored Internet Web sites, and~~
20 ~~school public announcement systems.~~

21 ~~(6) Free samples, taste tests, or coupons for a product or free~~
22 ~~samples displaying the logo or brand name of a food product.~~

23 ~~(7) Educational incentive programs, including, but not limited~~
24 ~~to, contests that utilize food as a reward and programs that provide~~
25 ~~schools with supplies or funds when families purchase specific~~
26 ~~food products.~~

27 ~~(8) Sponsorship of school activities, fundraisers, sports teams,~~
28 ~~and market research.~~

29 ~~(4) “School premises” means any real or personal property,~~
30 ~~school vehicle, or facility under the control of a school district~~
31 ~~including, but not limited to, school buildings, schoolbuses, and~~
32 ~~school grounds.~~

33 ~~(b) The governing board of a school district shall not permit by~~
34 ~~any means, including, but not necessarily limited to, oral or written~~
35 ~~contract, advertising a nonnutritious food or nonnutritious~~
36 ~~beverage on school premises.~~

37 ~~(c) The governing board of a school district shall not permit by~~
38 ~~any means, including, but not limited to, oral or written contract,~~
39 ~~advertising on school premises of the corporate brand, logo, name,~~
40 ~~or trademark of a manufacturer of a nonnutritious food or~~

1 nonnutritious beverage, or a restaurant that sells nonnutritious
2 foods or nonnutritious beverages. This prohibition shall not apply
3 to a corporate brand, logo, name, or trademark on an
4 advertisement solely of a food or beverage described in this section
5 if the corporate brand, logo, name, or trademark does not exceed
6 1 percent of the surface area of the advertisement.

7 (d) The Superintendent shall monitor school districts for
8 compliance with this section. A school district that the
9 Superintendent finds to be noncompliant with this section shall
10 adopt, and provide to the Superintendent, a corrective action plan
11 that sets forth the actions to be taken by the school district to ensure
12 that the school district will be in full compliance within a time
13 period agreed upon between the Superintendent and governing
14 board of the school district that does not exceed one year.

15 ~~(e) If a school district fails to comply with the corrective action~~
16 ~~plan as described in subdivision (c), the school district shall pay~~
17 ~~a penalty of one hundred dollars (\$100) per infraction, and shall~~
18 ~~forfeit the revenues gained from the prohibited advertising activity.~~

19 (e) This section applies to all public schools and charter schools.

20 SEC. 3. This act shall become operative on January 1, 2010.

21 ~~SEC. 3.~~

22 SEC. 4. The provisions of this section are severable. If any
23 provision of this section or its application is held invalid, that
24 invalidity shall not affect other provisions or applications that can
25 be given effect without the invalid provision or application.

26 ~~SEC. 4.~~

27 SEC. 5. If the Commission on State Mandates determines that
28 this act contains costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.