

AMENDED IN ASSEMBLY APRIL 23, 2008

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~~ *July* 1, 2010, would prohibit the governing board of school district *or the administrator of a charter school* from advertising ~~a nonnutritious food or beverage, as defined, on school premises~~ *a food or beverage product, or advertising corporate*

brands, logos, names, or trademarks of food and beverage manufacturers on school premises. The bill would exempt from its prohibitions food or beverage products sold to or consumed by pupils, and would authorize the governing board of a school district and administrator of a charter school to exclude specified items from these prohibitions. To the extent that this bill would impose additional duties on a school district, this bill would impose a state-mandated local program. ~~The bill would also prohibit advertising on school premises of the corporate brand name, logo, or trademark of a manufacturer 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 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 the ~~rate~~ *proportion* 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

1 diabetes, which until recently affected only adults, now affects a
2 growing number of children, accounting for almost 50 percent of
3 new diabetes cases among children in some United States
4 communities.

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

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

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

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

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

1 (i) Schools can sell and promote healthy foods and beverages
2 without losing revenue derived from food sales. A study conducted
3 by the Centers for Disease Control and Prevention and the United
4 States Department of Agriculture found that of 17 schools that
5 changed to selling healthier foods and beverages, 12 schools
6 increased revenue and four schools had no change in revenue.

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

13 SEC. 2. Section 49437 is added to the Education Code, to read:
14 49437. (a) For purposes of this section, the following
15 definitions apply:

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

25 (A) Displays, such as vending machine exteriors.

26 (B) Corporate brand, logo, name, or trademark on school
27 equipment, such as marquees, message boards, scoreboards,
28 backboards, or uniforms.

29 (C) Corporate brand, logo, name, or trademark on cups, posters,
30 book covers, pupil assignment books, school supplies, or
31 educational materials.

32 (D) Advertisements in school publications, Internet Web sites,
33 in-school television, or mailings.

34 (E) Broadcasts on school radio stations, in-school television,
35 computer screensavers, school-sponsored Web sites, or the public
36 announcement system.

37 (F) Free samples, taste tests, or coupons of a product, or free
38 samples displaying advertising of a product.

1 (G) Educational incentive programs such as contests that use
2 food as a reward, or programs that provide schools with supplies
3 or funds when families purchase specific food products.

4 (H) Sponsorship of school activities, fundraisers, sports teams,
5 or market research.

6 ~~(2) “Nonnutritious food” means any of the following:~~

7 ~~(A) A snack food that has any of the following characteristics:~~

8 ~~(i) More than 35 percent of its total calories are derived from~~
9 ~~fat, excluding nuts, nut butters, seeds, eggs, cheese packaged for~~
10 ~~individual sale, fruits, vegetables that have not been deep fried, or~~
11 ~~legumes.~~

12 ~~(ii) More than 10 percent of its total calories are derived from~~
13 ~~saturated fat, excluding eggs or cheese packaged for individual~~
14 ~~sale.~~

15 ~~(iii) More than 35 percent of its total weight is composed of~~
16 ~~sugar, including naturally occurring and added sugar, but excluding~~
17 ~~fruits or vegetables that have not been deep fried.~~

18 ~~(iv) More than 175 calories per individual food item for grade~~
19 ~~schools.~~

20 ~~(v) more than 250 calories per individual food item for middle,~~
21 ~~junior, and high schools.~~

22 ~~(B) An individual entree that has either of the following:~~

23 ~~(i) More than 400 calories.~~

24 ~~(ii) More than 4 grams of fat per 100 calories.~~

25 ~~(3) “Nonnutritious beverage” means any of the following:~~

26 ~~(A) Fruit-based drinks that are composed of less than 50 percent~~
27 ~~fruit juice and have added sweetener.~~

28 ~~(B) Vegetable-based drinks that are composed of less than 50~~
29 ~~percent vegetable juice and have added sweetener.~~

30 ~~(C) Drinking water with added sweetener.~~

31 ~~(D) Milk, except for milk with a fat content of 2 percent or less,~~
32 ~~soy milk, rice milk, and other similar nondairy milk.~~

33 ~~(4)~~

34 (2) “School premises” means any real or personal property,
35 school vehicle, or facility under the control of a school district
36 including, but not limited to, school buildings, schoolbuses, and
37 school grounds.

38 (b) The governing board of a school district shall not permit by
39 any means, including, but not necessarily limited to, oral or written

1 contract, advertising a nonnutritious food or nonnutritious beverage
2 on school premises.

3 ~~(e) The governing board of a school district shall not permit by~~
4 ~~any means, including, but not limited to, oral or written contract,~~
5 ~~advertising on school premises of the corporate brand, logo, name,~~
6 ~~or trademark of a manufacturer of a nonnutritious food or~~
7 ~~nonnutritious beverage, or a restaurant that sells nonnutritious~~
8 ~~foods or nonnutritious beverages. This prohibition shall not apply~~
9 ~~to a corporate brand, logo, name, or trademark on an advertisement~~
10 ~~solely of a food or beverage described in this section if the~~
11 ~~corporate brand, logo, name, or trademark does not exceed 1~~
12 ~~percent of the surface area of the advertisement.~~

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

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

22 *(b) (1) Except as set forth in this section, the governing board*
23 *of a school district or administrator of a charter school shall not*
24 *allow advertising of a food or beverage product, or advertising of*
25 *corporate brands, logos, names, or trademarks of food and*
26 *beverage manufacturers on school premises.*

27 *(2) The package of food or beverage products with corporate*
28 *brands, logos, names, or trademarks sold to or consumed by pupils*
29 *on school premises shall not be considered “advertising” under*
30 *this section.*

31 *(3) The governing board of a school district or administrator*
32 *of a charter school may exempt from the scope of paragraph (1)*
33 *permanent nonconsumable donated items, including, but not limited*
34 *to, marquees, message boards, scoreboards or backboards, with*
35 *corporate brands, logos, names, or trademarks of food or beverage*
36 *products or manufacturers that existed immediately preceding*
37 *July 1, 2010.*

38 *(4) Vending machines shall not be given the exemption*
39 *authorized in paragraph (3) of this subdivision.*

1 SEC. 3. This act shall become operative on ~~January~~ *July* 1,
2 2010.

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

7 ~~SEC. 5.~~

8 *SEC. 4.* If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.