

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 841 (Weber) – As Amended May 2, 2017

**SUBJECT:** Pupil nutrition: food and beverages: advertising: corporate incentive programs

**SUMMARY:** Prohibits schools and school districts from advertising food or beverages on school campuses and participating in food and beverage related incentive and fundraising programs that do not comply with the nutrition standards for food and beverages permitted to be sold during the school day. Specifically, **this bill:**

- 1) Expresses findings and declarations regarding the increasing rates of childhood obesity, the linkages to the marketing of foods of poor nutritional value, and the importance of healthy eating and regular physical activity to pupils' academic success.
- 2) Prohibits a school or school district from doing any of the following:
  - a) Advertising any food or beverage unless the food and beverage product manufactured, sold, or distributed under the corporate brand name can be served or sold on a school campus during the schoolday.
  - b) Participating in a corporate incentive program that rewards pupils with free or discounted foods or beverages when they reach certain academic goals.
  - c) Participating in a corporate-sponsored program that provides funds to schools in exchange for consumer purchases of foods or beverages.
- 3) Specifies that the prohibition against advertising food or beverages includes the advertising on any property or facility owned or leased by the school district or school and used at any time for school-related activities, including, but not limited to, school buildings, athletic fields, facilities, signs, scoreboards, or parking lots, or any school buses or other vehicles, equipment, vending machines, uniforms, educational materials, or supplies.
- 4) Specifies that the prohibition on advertising does not apply to:
  - a) Advertising on broadcast, digital, or print media, unless the media are produced or controlled by the local education agency (LEA), school, faculty, or its pupils.
  - b) Advertising on clothing with brand images worn on school grounds.
  - c) Advertising contained in product packaging.
- 5) Expresses the intent of the Legislature that the governing board of each school district annually review its compliance with these provisions.

**EXISTING LAW:**

- 1) Under federal law, all LEAs participating in the National School Lunch or Breakfast Programs are required to develop a local school wellness policy. Regulations, adopted in July

2016, state that a LEA that chooses to allow marketing of food and beverages to students, must specify in their local wellness policy, that only those foods and beverages that may be sold on the school campus during the school day (i.e. those that meet the competitive food standards) may be advertised on campus. The marketing of products on the exterior of vending machines, through posters, menu boards, coolers, trash cans, and other food service equipment, as well as cups used for beverage dispensing are all subject to local school wellness policy standards. The federal rule does not require schools to immediately replace menu boards, coolers, tray liners, beverage cups, and other food service equipment with depictions of noncompliant products or logos to comply with new local school wellness policy standards, but does require compliance when these items are replaced. It also does not require a LEA to immediately remove or replace an existing scoreboard on a sports field or in gymnasium in order to comply with this requirement. (Title 7, Code of Federal Regulations, Sections 210 and 211)

- 2) Federal local wellness policy standards for marketing do not apply to marketing that occurs at events outside of school hours, such as after school sporting or other events, including school fundraising events.
- 3) The *Smart Snacks in School* regulation applies to foods sold a la carte, in the school store, vending machines, and any other venues where food is sold to students. Smart Snack requirements are contained in federal law and were codified in California law in 2016. (EC 49431 and the federal Healthy and Hunger Free Kids Act of 2010)

**Smart Snacks:** the only competitive foods that may be sold to a pupil during the schoolday 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:

- Not more than 35 percent of its total calories shall be from fat;
- Less than 10 percent of its total calories shall be from saturated fat;
- Not more than 35 percent of its total weight composed of sugar, including naturally occurring and added sugar;
- Contains less than 0.5 grams of trans fat per serving.
- Contains not more than 200 milligrams of sodium per item, package, or container;
- Contains not more than 200 calories per individual food item.

**Beverage Standards:** the only beverages that may be served or sold to a pupil during the schoolday are the following:

- Fruit-based drinks of no less than 50 percent fruit juice with no added sweetener;
- Vegetable-based drinks of no less than 50 percent vegetable juice with no added sweetener;

- Plain water or plain carbonated water;
  - One-percent-fat unflavored milk, nonfat flavored or unflavored milk, soy milk, rice milk, and other similar nondairy milk;
  - Flavored water or flavored carbonated water with no added sweetener (high school only);
  - Electrolyte replacement beverages with specified calorie counts (high school only);
  - Sodas, colas, or soft drinks are not allowed;
  - A beverage shall not contain caffeine with the exception of trace amounts of naturally occurring caffeine substances.
- 4) Prohibits school districts from entering into a contract that grants advertising rights, or the right to sell carbonated beverages or non-nutritious beverages or food, unless the district governing board does both of the following: (EC 35182.5)
- a) Adopts a policy after a public hearing of the board to ensure the district has internal controls in place, as specified;
  - b) Provide for public comment on the contract through a public hearing during a regularly scheduled board meeting. The requirement for a public hearing may be fulfilled by an annual public hearing to review and discuss existing and potential contracts for the sale of food and beverages on campuses, including food and beverages sold as full meals, through competitive sales, as fundraisers, and through vending machines.
- 5) Requires the incorporation of nutrition education curriculum content for grades one to six, into the health curriculum framework at its next revision, including skills to critically evaluate nutrition information, misinformation, and commercial food advertising. (EC 51210.4)

**FISCAL EFFECT:** This bill is keyed non-fiscal

**COMMENTS:**

*Need for the bill.* According to the author, “AB 841 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.

AB 841 simply codifies the federal regulation relating to local school wellness policy requirements preventing schools from marketing unhealthy foods and beverages on participating school campuses during school hours pursuant to the Healthy, Hunger-Free Kids Act. We believe it is essential to codify this federal regulation into state law as the regulation may not continue to exist under the current federal administration.”

***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% of California 10-17 year olds were considered obese in 2011 and 13.9% of high school students were identified as obese in 2015. Additional data, from the UCLA Center for Health Policy Research, shows that 38% of California 5<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> graders were overweight or obese in 2010, down slightly from 38.44% 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.

***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 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% 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% 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 noncommercial 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. The report also summarized research showing:

- Food companies spend \$1.8 billion per year to market products directly to children and teens;
- 90% of food marketing expenditures targeted to youth promote products with little nutritional value including fast food, sugary beverages, high-sugar cereals, snacks, candy, and desserts;
- In 2011, children ages 2-11 years saw an average of 12.8 television ads for food and beverages daily, while older children and teens ages 12-17 years saw 16.2 ads per day;
- The use of social media marketing to reach teens has grown exponentially. Nine foods and beverages rank among the top 20 brands on Facebook. Fast-food restaurants place 19% of their paid online advertising on Facebook, totaling six billion ads in 2012.

***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.

***Commercialism in schools.*** Children spend approximately six hours per day, five days per week, in school and because school attendance is compulsory, they have little freedom to avoid commercial content they are exposed to in school. In addition, some contend that commercial content delivered in schools may be assumed to have the endorsement of teachers and school officials.

Food and beverage advertising and marketing in schools may include:

- Posters and signage;
- Vending machine signage;
- Equipment and supplies with logos or brand names, such as beverage coolers; cups, napkins or plates; scoreboards on school fields or in gymnasiums; athletic uniforms; and school buses;
- Advertising in yearbooks and school newspapers;
- School event sponsorship, including sporting events;
- Fundraisers, including sales of food and beverage items, or donations from local restaurants;
- Corporate sponsored classroom materials or scholarships.

Some contend that school-based marketing of food and beverages of low nutritional value undermines parents' and schools' health promotion efforts. Many recommend the elimination of all food marketing in schools, while others recommend that only healthy foods be marketed in schools.

The Los Angeles Unified School District (LAUSD) sponsorship guidelines, adopted in 2011, state that "the district will not seek sponsorship from corporations that market, sell or produce products that may be harmful to children, including but not limited to, tobacco, alcohol, firearms, gambling, or high fat and calorie food and drinks." At a recent LAUSD board meeting on April 18, the board adopted a resolution noting that, despite the sponsorship guidelines, sponsorship by corporations that market and sell high fat and calorie foods and drinks remains prevalent, including McTeacher Night events hosted and promoted by McDonald's restaurants, which have occurred in LAUSD schools more than 120 times since 2013. The LAUSD board took action at that meeting, to direct the Superintendent to ensure compliance with the sponsorship guidelines and to issue a letter to the McDonald's Corporation to cease offering McTeacher Nights at LAUSD schools.

***School district wellness policies.*** As of 2006, any LEA with schools under its jurisdiction (including charter schools) participating in the federal school lunch or breakfast program, is required to adopt a school district wellness policy, which includes at a minimum the following elements:

- Goals for nutrition promotion and education;
- Goals for physical activity and other school-based activities that promote student wellness;
- Nutrition guidelines for all food and beverages provided and sold during the school day;
- Provisions for stakeholder communications and accountability.

According to the California Department of Education, over 85% of California schools participate in the federal school meals program and thus, are required to adopt a wellness policy. California public schools that choose not to participate in the school meals program include some charter schools, alternative schools, community day schools, juvenile court schools, as well as some regular public schools. A national study found that, as of the 2013-14 school year, 95% of school districts nationwide had adopted a wellness policy, although many failed to include all of the required policy components.

***This bill*** prohibits schools from advertising any food or beverage on school campuses that cannot be served or sold during the schoolday; participating in corporate food and beverage incentive programs, and participating in corporate-sponsored programs that provide funds to schools in return for consumer purchases of certain foods or beverages.

The bill applies to schools under the jurisdiction of school districts, which would not necessarily include all charter schools. **Committee staff recommends** that the bill be amended to include language clarifying that the provisions apply to all public schools participating in the federal school meal program, including charter schools.

Federal regulations prohibit the advertising during the schoolday of foods and beverages that do not meet competitive food nutritional standards. This bill extends the prohibition on advertising to any time of day on school property. **Committee staff recommends** the advertising prohibition be narrowed to advertising on school property during the schoolday (defined as midnight to ½ hour after the end of the school day), with an exemption for infrequent school-sponsored fundraisers.

The bill's prohibition on advertising includes any property or facility owned or leased by the school, including school buildings, athletic fields, facilities, signs, scoreboards, parking lots, schoolbuses, vending machines, uniforms, educational materials, or supplies. These restrictions are consistent with federal regulations. Federal guidance states that items such as scoreboards that are already in place do not need to be replaced, but requires LEAs to consider the marketing guidelines when the items are replaced or updated over time. **Committee staff recommends** an amendment that would grandfather scoreboards, team uniforms, or any other durable, non-consumable items on school property in place as of the effective date of the bill.

The bill prohibits school from participating in corporate incentive programs that reward pupils with free or discounted foods or beverages when they reach certain academic goals. Federal wellness policy marketing standards do not restrict such incentive programs.

The bill also includes a prohibition on participation in a corporate-sponsored program that provides funds to schools in exchange for consumer purchases of foods or beverages. This could include label redemption programs (e.g. Box Tops for Education, cookie dough or candy sales, or restaurant promotions where a portion of proceeds are donated to a school in return for school community members' patronage). **Committee staff recommends** an amendment to remove this provision from the bill and add intent language urging schools to use non-food related fundraising programs.

**Arguments in support.** Supporters note that although junk food is no longer sold in schools, some schools still allow companies to advertise junk food. If a food cannot be sold in school, then it should not be promoted in school. Many schools put time and resources into teaching pupils about nutrition. When junk food is marketed on school grounds, it undermines the school's positive work. Schools need to be places where children and youth receive a consistent set of messages about healthy eating. Curtailing exposure to foods and beverages with poor nutritional value will not only reduce a student's vulnerability to advertising but will reinforce the goal to eat nutritiously and promote healthy eating habits.

**Arguments in opposition.** Opponents state that this bill would impose costly and confusing restrictions on foods and beverages in schools that already meet school nutrition standards. The bill would needlessly and senselessly prohibit schools from participating in programs that provide funding to schools in exchange for consumer purchases of foods and beverages, including common fundraisers like door-to-door food sales to support a school sports team, as well as incentive programs such as label redemption programs and nights at restaurants where proceeds are donated to local schools. One of the leading school philanthropic incentive programs has provided over \$50 million to over 9,000 California schools. Schools frequently use these donations to support healthy lifestyles in children through purchases of fitness and playground equipment.

**Prior 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). The bill was held in Assembly Appropriations.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Heart Association/American Stroke Association (Sponsor)  
Public Health Advocates (Sponsor)  
American Academy of Pediatrics  
California Food Policy Advocates  
California Pan-Ethnic Health Network  
California School Nurses Organization  
California Teachers Association  
Latino Coalition for a Healthy California  
Numerous individuals

### **Opposition**

Agricultural Council of California  
American Beverage Association  
Association of Food, Beverage and Consumer Products Companies  
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  
National Federation of Independent Business  
School Employers Association of California  
Small School Districts Association

**Analysis Prepared by:** Debbie Look / ED. / (916) 319-2087