

SENATE No. 1220

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to protect youth from the health risks of sugary drinks.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/2/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/8/2017</i>

SENATE No. 1220

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1220) of Jason M. Lewis, Michael J. Barrett and Sal N. DiDomenico for legislation to prohibit the marketing of sugary drinks in schools. Public Health.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to protect youth from the health risks of sugary drinks.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 71 of the General Laws, as appearing in the 2014 Official Edition,
2 is hereby amended by inserting after section 97 the following section:-

3 Section 98. PROHIBITION OF MARKETING OF SUGARY DRINKS IN SCHOOLS

4 (a) For the purposes of this section, the following words shall have the following
5 meanings:

6 (1) “Advertising” means an oral, written or graphic statement or representation, including
7 a company logo or trademark, made for the purpose of promoting the use or sale of a product by
8 the producer, manufacturer, distributor, seller or any other entity with a commercial interest in
9 the product.

(2) “Brand” means a corporate or product name, a business image or a mark, regardless of whether it may legally qualify as a trademark used by a seller or manufacturer to identify goods or services and to distinguish them from competitors’ goods.

(b) Except as provided in subsection (c), the department of education shall prohibit at any school within the commonwealth:

(1) The advertising of any beverage that may not be sold on the school campus during the school day or of any corporate brand, unless every beverage product manufactured, sold or distributed under the corporate brand name, or by any of the corporate brand’s subsidiaries and affiliated corporations, can be served or sold on the school campus during the school day.

Advertising is prohibited 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 material or supplies. For purposes of this statute, beverages that may not be sold on the school campus during the school day are those that do not meet the minimum nutrition standards for foods sold outside the school meal programs as set forth by the United States Department of Agriculture under the Healthy, Hunger-Free Kids Act of 2010 and federal regulations implementing the Act [42 U.S.C. section 1779(b)];

(2) the participation in a corporate incentive program that rewards children with free or discounted beverages that may not be sold on the school campus during the school day when they reach certain academic goals; or

(3) the participation in corporate-sponsored programs that provide funds to schools in exchange for consumer purchases of beverages that may not be sold on the school campus during the school day.

(c) The restriction on advertising in subsection (b) shall not apply to

(1) Advertising on broadcast, digital, or print media, unless the media are produced or controlled by the local education agency, school, faculty, or its students;

(2) Advertising on clothing with brand images work on school grounds; or

(3) Advertising contained on product packaging.

SECTION 2. Chapter 94 of the General Laws is hereby amended by inserting after section 330 the following section:-

Section 331. REQUIRING LABELS ON CERTAIN SUGARY DRINK
ADVERTISEMENTS

(a) For the purposes of this section, the following words shall have the following meanings:

(1) "Advertiser" means any person who is any of the following "(a) in the business of manufacturing, distributing, or selling sugary drinks, including without limitation, a retailer; (b) is in the business of placing or installing advertisements, or who provides space for the display of advertisements; or (c) is an agent or contractor of a Person described in (a) or (b) assisting such Person with the manufacture, distribution or sale of sugary drink, the placement or installation of advertisements or the provision of space for advertisements. The term "advertiser" shall not

include the employees of a person, including, without limitation, employees of agent or contractors, except that it shall include individuals acting as sole proprietors.

(2) “Sugary drink” is defined as stated in chapter 64O.

(3) “Sugary drink advertisement” means any advertisement, including, without limitation, any logo, that identifies, promotes or markets a sugar-sweetened beverage for sale or use that is any of the following: (a) on a poster, paper or a billboard; (b) in or on a stadium, arena, transit shelter or any other structure; (c) in or on a bus, car, train, pedicab or any other vehicle; or (d) on a wall, or any other surface material.

(b) Any advertiser who posts a sugary drink advertisement shall place on the sugary drink advertisement the following label: “WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay.” The word “WARNING” shall appear in capital letters. The Warning shall be enclosed in a rectangular border within the printed advertisement that is the same color as the letters of the Warning and that is the width of the first downstroke of the capital “W” of the word “WARNING.” The Warning shall occupy at least 20% of the area of each sugary drink advertisement and the text shall be printed in a size and manner so as to be clearly legible to the intended viewer of the sugary drink advertisement. The text of the warning shall be positioned such that the Warning and the other information on the sugary drink advertisement had the same orientation, such that text in the sugary drink advertisement and the Warning are read in the same direction. The Warning shall be indelibly printed on or permanently affixed to each sugary drink advertisement.

(c) The department of public health shall promulgate regulations related to this section, including, but not limited to, determining reasonable exemptions to this section.

(d) The following shall be exempt from the requirement imposed in this section:

(1) Containers or packages for sugary drinks;

(2) Any menus or handwritten listings or representations of foods or beverages that may be served or ordered for consumption at a retail establishment;

(3) Any display or representation of, or other information about, a sugary drink, including, without limitation, any logo on a vehicle if the vehicle is being used by any person who is in the business of manufacturing, distributing or selling the sugary drink in the performance of such business;

(4) Any other advertisements determined by the department of public health as referenced in subsection (c).

(e) Advertisers in violation of this section shall for the first offense be punished by a fine of not more than \$100; and for any subsequent offense shall be punished by a fine of not less than \$100 nor more than \$500.

SECTION 3. The second paragraph of Section 1 of Chapter 71 of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by adding the following sentence: -

(a) The department of elementary and secondary education shall encourage school districts to implement instruction in media literacy skills from the third grade to the twelfth grade, and in any of the core subjects or other subjects, to equip students with skills for accessing, analyzing, evaluating, and creating all types of media. Instruction shall include, but not be limited to, teaching of skills for analyzing and evaluating advertising content for food, beverages, drugs and alcohol.

SECTION 4. Chapter 111 of the General Laws is hereby amended by inserting after section 235 of the following section:-

Section 236. LIMITATION ON BEVERAGES IN CHILDREN’S MEALS

(a) For the purposes of this section, the following words shall have the following meanings:

(1) “Chain restaurant” a retail food establishment that prepares, serves, and vends food directly to the consumer that (a) operates 10 or more establishments in the commonwealth or (b) is a restaurant franchisee where the franchisor and the franchisees of that restaurant together operate 10 or more establishments in the commonwealth.

(2) “Chain restaurant franchisee,” an individual, corporation, partnership or other entity, or group of individuals or entities, that operates one or more restaurants in the commonwealth under a franchise agreement with another individual, corporation, partnership or other entity, or group of individuals or entities.

(3) “Chain restaurant franchisor,” an individual, corporation, partnership or other entity, or group of individuals or entities, that grants a franchisee the right to operate one or more fast food restaurants in the commonwealth under its trademark or trade name.

(4) “Children’s Meal” means a combination of food item or items and a beverage, sold together at a single price, primarily intended for consumption by children.

(5) “Default Beverage” means the beverage automatically included as part of a children’s meal, absent a specific request by the purchaser of the children’s meal for an alternative beverage.

(b) A chain restaurant may only sell a children's meal if the default beverage is one of the following:

(1) Water, sparkling water or flavored water, with no added natural or artificial sweeteners;

(2) Nonfat or 1 per cent milk or non-dairy milk alternative containing no more than 130 calories per container and/or serving as offered for sale; or

(3) 100 per cent juice, with no added sweeteners, in a serving size of no more than 8 ounces.

(c) (1) The department of public health and local boards of health acting under the supervision of the department of public health shall implement, administer and enforce this section. The department of public health is hereby authorized to issue all rules and regulations consistent with this section and shall have all necessary powers to carry out the purpose of this section.

(2) All chain restaurants shall report, upon enactment of this chapter and annually, thereafter, to the department of public health whether they offer children's meals and if so, that they understand their obligations under this section. Such reporting must be done on a form prescribed by the department of public health and must be signed by a responsible agent or officer of the chain restaurant in order to confirm that the information provided on the form is accurate and complete. Failure to comply with this subsection shall constitute a violation of this section.

(d) Restaurants in violation of this section shall for the first offense be punished by a fine of not more than \$100; and for any subsequent offense shall be punished by a fine of not less than \$100 nor more than \$500.

SECTION 5.

(a) Notwithstanding any general or special law to the contrary, there shall be established a Special Commission on Access to Drinking Water in Public Places. The Commission shall evaluate the public health benefits of and options for expanding access to drinking water in public places, including but not limited to parks, playgrounds, schools, libraries, other public buildings, bicycle and pedestrian paths, stadiums, arenas, and commercial, cultural and other properties generally open to the public.

(b) The Commission shall consist of 13 members, 1 of whom shall be the commissioner of public health or a designee, who shall serve as chair, 1 of whom shall be the commissioner of elementary and secondary education or a designee, 1 of whom shall be the executive director of the Massachusetts School Building Authority or a designee, 1 of whom shall be the secretary of transportation or a designee, 1 of whom shall be the commissioner of environmental protection or a designee, 1 of whom shall be the commissioner of conservation and recreation or a designee, 1 of whom shall be the administrator of the Board of Building Regulations and Standards or a designee, 1 of whom shall be the executive director of the Massachusetts Water Resources Authority or a designee, 1 of whom shall be a representative of a public health advocacy organization, 1 of whom shall be a representative of a water access advocacy organization, 1 of whom shall be the director of the Prevention Research Center on Nutrition and Physical Activity at Harvard University School of Public Health or a designee.

(c) The Commission shall first convene within 60 days of the effective date of this Act, and not less than bi-monthly thereafter, and shall file a report with the Joint Committee on Public Health no later than 180 days after first convening. The report shall (a) present current scientific evidence on the health and other benefits of adequate water consumption, including but not limited to consumption by school-age children; (b) present currently available data on water consumption among Massachusetts residents by age, place of residence, gender, race, income, and other demographic factors; (c) evaluate current laws, regulations, and policies regarding access to drinking water in public places in Massachusetts; (d) evaluate current obstacles to access to drinking water in public places in Massachusetts; and (e) make recommendations for changes to policies, regulations, and legislation in order to expand access to drinking water in public places in Massachusetts. The commission shall be empowered to hold regular public meetings, fact-finding hearings and other public forums as it considers necessary. Members shall not receive compensation for their services.