

SENATE No. 1291

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>Joanne M. Comerford</i> | <i>Hampshire, Franklin and Worcester</i> | <i>1/25/2019</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> | <i>1/28/2019</i> |
| <i>John J. Lawn, Jr.</i> | <i>10th Middlesex</i> | <i>1/30/2019</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>1/31/2019</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> | <i>2/4/2019</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>2/4/2019</i> |

SENATE No. 1291

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1291) of Jason M. Lewis, Joanne M. Comerford, Kay Khan, John J. Lawn, Jr. and other members of the General Court for legislation to prohibit the marketing of sugary drinks in schools. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1220 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 2018 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.

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

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

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

19 Advertising is prohibited on any property or facility owned or leased by the school district or
20 school and used at any time for school-related activities, including, but not limited to, school
21 buildings, athletic fields, facilities, signs, scoreboards, or parking lots, or any school buses or
22 other vehicles, equipment, vending machines, uniforms, educational material or supplies. For
23 purposes of this statute, beverages that may not be sold on the school campus during the school
24 day are those that do not meet the minimum nutrition standards for foods sold outside the school
25 meal programs as set forth by the United States Department of Agriculture under the Healthy,
26 Hunger-Free Kids Act of 2010 and federal regulations implementing the Act [42 U.S.C. section
27 1779(b)];

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

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

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

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

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

38 (3) Advertising contained on product packaging.

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

41 Section 331. REQUIRING LABELS ON CERTAIN SUGARY DRINK
42 ADVERTISEMENTS

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

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

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

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

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

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

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

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

74 (1) Containers or packages for sugary drinks;

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

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

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

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

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

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

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

96 Section 236. LIMITATION ON BEVERAGES IN CHILDREN’S MEALS

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

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

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

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

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

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

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

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

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

121 (3) 100 per cent juice, with no added sweeteners, in a serving size of no more than 8
122 ounces.

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

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

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

138 SECTION 5.

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

145 (b) The Commission shall consist of 13 members, 1 of whom shall be the commissioner
146 of public health or a designee, who shall serve as chair, 1 of whom shall be the commissioner of
147 elementary and secondary education or a designee, 1 of whom shall be the executive director of
148 the Massachusetts School Building Authority or a designee, 1 of whom shall be the secretary of
149 transportation or a designee, 1 of whom shall be the commissioner of environmental protection
150 or a designee, 1 of whom shall be the commissioner of conservation and recreation or a designee,
151 1 of whom shall be the administrator of the Board of Building Regulations and Standards or a
152 designee, 1 of whom shall be the executive director of the Massachusetts Water Resources
153 Authority or a designee, 1 of whom shall be a representative of a public health advocacy
154 organization, 1 of whom shall be a representative of a water access advocacy organization, 1 of
155 whom shall be the director of the Prevention Research Center on Nutrition and Physical Activity
156 at Harvard University School of Public Health or a designee.

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