

# SENATE . . . . . No. 2781

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## The Commonwealth of Massachusetts

—  
In the One Hundred and Ninety-Second General Court  
(2021-2022)  
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SENATE, March 24, 2022.

The committee on Public Health, to whom was referred the petitions (accompanied by bill, Senate, No. 1464) of Jason M. Lewis, Kay Khan, Angelo J. Puppolo, Jr., Patrick M. O'Connor and other members of the General Court for legislation to prohibit the marketing of sugary drinks in schools; and (accompanied by bill, House, No. 2333) of Kay Khan, Jon Santiago and others relative to prohibiting the marketing of certain drinks with added sugar on school grounds, reports the accompanying bill (Senate, No. 2781).

For the committee,  
Joanne M. Comerford

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The Commonwealth of Massachusetts

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**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
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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 2020 Official Edition,  
2 is hereby amended by inserting after section 97 the following section:-

3           Section 98. (a) For the purposes of this section, the following words shall have the  
4 following meanings:

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

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

12           (3) “Non-compliant beverage”, beverages that do not meet the minimum nutrition  
13 standards for foods sold or served under school meal programs as set forth by the United States

14 Department of Agriculture under the Healthy, Hunger-Free Kids Act of 2010 and federal  
15 regulations implementing the Act [42 U.S.C. section 1779(b)].

16 (4) “Non-compliant beverage brand”, a beverage brand that has a beverage product  
17 manufactured, sold or distributed under the corporate brand name, or by any of the corporate  
18 brand’s subsidiaries and affiliated corporations, that is a non-compliant beverage.

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

21 (1) The advertising of any non-compliant beverage or of any non-compliant beverage  
22 brand. Advertising of a non-compliant beverage or non-compliant beverage brand shall be  
23 prohibited on any property or facility owned or leased by the school district or school and used at  
24 any time for school-related activities, including, but not limited to, school buildings, athletic  
25 fields, facilities, signs, scoreboards, or parking lots, or any school buses or other vehicles,  
26 equipment, vending machines, uniforms, educational material or supplies.

27 (2) The participation in a corporate incentive program that rewards children with free or  
28 discounted non-compliant beverages when they reach certain academic goals.

29 (3) The participation in any corporate-sponsored program that provides funds to schools  
30 in exchange for consumer purchases of non-compliant beverages.

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

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

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

35 (3) Advertising contained on product packaging.

36 (4) advertising at infrequent school fundraising events.

37 SECTION 2. Chapter 94 of the General Laws is hereby amended by inserting after  
38 section 329 the following section:-

39 Section 330. (a) For the purposes of this section, the following words shall have the  
40 following meanings:

41 (1) "Chain restaurant", a restaurant or similar retail food establishment that is part of a  
42 chain with 20 or more locations doing business under the same name and offering for sale  
43 substantially the same menu items.

44 (2) "Daily Value", the daily reference value established by the U.S. Food and Drug  
45 Administration based on the reference caloric intake of 2,000 calories per day.

46 (3) "Menu or menu board" means the primary writing of a chain restaurant from which a  
47 customer makes an order selection, including, but not limited to, breakfast, lunch, and dinner  
48 menus; dessert menus; beverage menus; children's menus; other specialty menus; electronic  
49 menus; and menus on the internet.

50 (4) "Standard menu item", means a food or beverage item, including multiple items  
51 priced together, that is listed on a menu or menu board. It shall not include temporary menu  
52 items appearing on the menu for less than 60 days per calendar year.

53 (b) The department of public health shall promulgate regulations designating an icon with  
54 accompanying text that shall be displayed adjacent to the name of any standard menu item that  
55 exceeds the daily value for added sugars.

56 (c) Any chain restaurant operating within the state and shall display on menus or menu  
57 boards:

58 (1) The added sugars warning icon and accompanying text identified under subsection  
59 (b), at a height no smaller than the largest letter in the name of the item.

60 (2) The following factual statement explaining the warning: "[insert icon and  
61 accompanying text]: this item may exceed the Food and Drug Administration total daily  
62 recommended limit for added sugars based on a 2,000 calorie diet."

63 (d) Any chain restaurant that violates the provisions of this section shall be subject to a  
64 civil penalty of not more than \$250 per day for each location not in compliance.

65 (e) The department of public health shall publish a guidance explaining the added sugars  
66 warning icon requirement and how to comply.

67 SECTION 3. Section 1 of Chapter 71 of the General Laws is hereby amended by adding  
68 the following paragraph: -

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

75 SECTION 4. Chapter 111 of the General Laws is hereby amended by inserting after  
76 section 242 of the following section:-

77 Section 243. (a) For the purposes of this section, the following words shall have the  
78 following meanings:

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

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

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

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

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

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

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

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

101 (3) 100 per cent juice, with no added sweeteners, in a serving size of no more than 8  
102 ounces.

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

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

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

117 SECTION 5. (a) Section 330 of chapter 94 of the General Laws shall take effect 2 years  
118 after the enactment of this act.

119 (b) The department of public health shall promulgate regulations designating an icon with  
120 accompanying text that shall be displayed adjacent to the name of any standard menu item that  
121 exceeds the daily value for added sugars and shall publish its initial guidance on compliance with  
122 the added sugars warning icon requirement of said section 330 no later than 1 year after the  
123 enactment of this act.

124 (c) No later than 4 years after the enactment of this act, the department of public health  
125 shall issue a report reviewing evidence of the law's impact on menu item reformulation and  
126 consumer behavior, and recommending additional nutrients that should be considered for menu  
127 warning icons. The report shall be provided to the joint committee on public health and shall be  
128 posted on the public internet site of the department.

129 (d) Severability. If any provision of this act, or any application of any provision of this  
130 act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that  
131 shall not affect the validity or effectiveness of any other provision of this act, or of any other  
132 application of any provision of this act, which can be given effect without that provision or  
133 application; and to that end, the provisions and applications of this act are severable.