

SENATE No. 1396

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>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/6/2023</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>3/20/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>7/6/2023</i>

SENATE No. 1396

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1396) of Jason M. Lewis and James B. Eldridge for legislation to prohibit the marketing of sugary drinks in schools. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1464 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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 98 the following section:-Section 99.

3 (a) For the purposes of this section, the following words shall have the following
4 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”, a beverage that does 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 an incentive program that rewards children with free or
28 discounted non-compliant beverages when they reach certain academic goals.

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

31 (c) The restriction on advertising in subsection

32 (b) shall not apply to

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

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

36 (3) Advertising contained on product packaging.

37 (4) Advertising at infrequent events held outside of normal school hours for primary
38 purpose of fundraising.

39 SECTION 2. Chapter 94 of the General Laws is hereby amended by inserting after
40 section 329 the following section:- Section 330.

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

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

46 (2) "Chain menu developer", the person that owns and licenses the brand name under
47 which the covered establishment does business, or any other person responsible for determining
48 the formula or recipe for items displayed on the menu of a covered establishment.

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

51 (4) "Food Tag", a written or printed description of food or beverages

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

56 (6) "Self-serve dispensing point", the location at which a customer may access food or
57 beverages without the assistance of a staff member, including self-serve fountain beverage
58 machines.

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

62 (b) The department of public health shall promulgate regulations designating an icon with
63 accompanying text that shall be displayed adjacent to the name of any standard menu item that
64 may exceed the daily value for added sugars.

65 (1) The added sugars warning icon and accompanying text identified under subsection

66 (b), which shall appear (a). next to or directly under each standard menu item that
67 exceeds the daily value for added sugars and at a height no smaller than the largest letter in the
68 name of the item. (b). prominently and conspicuously immediately adjacent to each self-serve
69 dispensing point.

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

73 (3) For menus allowing customization through interactivity, including interactive
74 electronic menus, chain restaurants may instead of displaying a static added sugars warning icon
75 and factual statement, display such icon and statement dynamically, so long as each appears
76 clearly (d) Any chain restaurant that violates the provisions of this section for every 6 months
77 shall be subject to a civil penalty of not more than \$250 per day for each location not in
78 compliance.

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

81 (f) Reporting Requirement. Once every 90 days, the chain menu developer shall report to
82 the department the amount of added sugars in each menu item offered for sale in a covered
83 establishment, or that no changes to the menu information have been made since the last report.

84 SECTION 3. Section 1 of Chapter 71 of the General Laws is hereby amended by adding
85 the following paragraph: - The department of elementary and secondary education shall
86 encourage school districts to implement instruction in media literacy skills from the third grade
87 to the twelfth grade, and in any of the core subjects or other subjects, to equip students with skills
88 for accessing, analyzing, evaluating, and creating all types of media. Instruction shall include,
89 but not be limited to, teaching of skills for analyzing and evaluating advertising content for food,
90 beverages, drugs and alcohol.

91 SECTION 4. Chapter 111 of the General Laws is hereby amended by inserting after
92 section 243 of the following section:- Section 244.

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

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

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

102 (3) "Children's meal" means a combination of food item or items and a beverage, sold
103 together at a single price, primarily intended for consumption by children.

104 (b) A chain restaurant may not sell a children's meal unless the children's meal meets the
105 following nutrition standards.

106 (1) The children's meal must contain no more than:

107 (a) 600 calories;

108 (b) 770 milligrams of sodium;

109 (c) 35 percent of calories from total sugars;

110 (d) 35 percent of calories from fat;

111 (e) 10 percent of calories from saturated fat; and

112 (f) 0.5 grams of trans fat.

113 (2) The children's meal must include at least two of the following options:

114 (a) 0.5 cup (or equivalent unit of measurement) of fruit;

115 (b) 0.5 cup (or equivalent unit of measurement) of non-fried vegetable;

116 (c) A whole grain product that contains at least 50 percent whole grain ingredients or
117 lists whole grains as the first ingredient;

118 (d) A lean protein food, consisting of at least two ounces of meat or meat alternative, one
119 ounce of nuts, seeds, dry beans, or peas, or one egg.

120 (e) 0.5 cup of nonfat or 1 percent milk or low-fat yogurt, or 1 ounce of reduced fat
121 cheese. Plant-based nondairy alternatives are allowed, but they must be calcium and Vitamin D
122 fortified.

123 For purposes of this subsection, all juices, including 100 percent fruit or vegetable juice,
124 condiments, and spreads shall not be considered fruits or vegetables and shall not be used as a
125 fruit or vegetable substitute.

126 (3) If the children's meal includes a beverage, that beverage must be:

127 (a) Water with no added natural or artificial sweeteners, of flavors;

128 (b) Unflavored nonfat or 1 percent milk with no added natural or artificial sweeteners;

129 (c) Unflavored non-dairy milk alternative that is nutritionally similar to cow's milk; or

130 (d) 100 percent fruit or vegetable juice or diluted juices, with no added sweeteners, in a
131 serving size of no more than 6 ounces.

132 (e) The department of public health and local boards of health acting under the
133 supervision of the department of public health shall implement, administer, and enforce this
134 statute. The department of public health is hereby authorized to issue all rules and regulations
135 consistent with this statute and shall have all necessary powers to carry out the purpose of this
136 statute.

137 (f) Within 30 days of the effective date of this statute, or any amendments thereto, the
138 department of public health shall send a copy of the statute or any such amendment and the
139 written information resources created in accordance with subsection (g) below to all chain
140 restaurants.

141 (g) Within 9 months of the effective date of this statute, the department of public health
142 shall develop an annual report form and shall send a copy of such form to all chain restaurants.
143 Within 30 days of any amendment to the annual report form, the department of health shall send
144 a copy of such form to all chain restaurants.

145 (h) The department of public health shall create a written informational resource in
146 English and Spanish summarizing the requirements of this statute.

147 (i) All chain restaurants shall report annually to the department of public health whether
148 they offer children's meals and if so, that they understand their obligations under this section.
149 Such reporting must be done on a form prescribed by the department and must be signed by a
150 responsible agent or officer of the chain restaurant in order to confirm that the information

151 provided on the form is accurate and complete. Failure to comply with this subsection shall
152 constitute a violation of this section.

153 (j) Restaurant that violates the provisions of this section for every 6 months shall be
154 subject to a civil penalty of not more than \$250 per day for each location not in compliance.

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

157 (a) (b) The department of public health shall promulgate regulations designating an
158 icon with accompanying text that shall be displayed next to or directly under the name of any
159 standard menu item that exceeds the daily value for added sugars or immediately adjacent to
160 each self-serve dispensing point and shall publish its initial guidance on compliance with the
161 added sugars warning icon requirement of said section 330 no later than 1 year after the
162 enactment of this act.

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

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