

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 126

Introduced by Avery, 28.

Read first time January 06, 2011

Committee: Agriculture

A BILL

- 1 FOR AN ACT relating to marketing; to adopt the Children's Health and
- 2 Responsible Corporate Marketing Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as
2 the Children's Health and Responsible Corporate Marketing Act.

3 Sec. 2. (1) The Legislature finds that:

4 (a) Childhood obesity is a genuine national epidemic.
5 According to the Centers for Disease Control and Prevention, fourteen
6 percent of Nebraska's children are overweight, and another eleven
7 percent are considered obese. Thirty-eight percent of Nebraska's
8 adults are considered overweight, and another twenty-seven percent
9 are considered obese. A total of 470,000 Nebraskans are considered to
10 be either overweight or obese;

11 (b) Childhood obesity is empirically linked to chronic
12 long-term diseases, such as diabetes, high blood pressure, coronary
13 disease, stroke, and some cancers;

14 (c) Ongoing health care expenses linked to lack of early
15 preventive measures will be a physical and emotional burden to the
16 citizens of Nebraska and a financial burden to the medical assistance
17 program in the future, which program spends about one hundred fifteen
18 million dollars on obesity-related health care each year; and

19 (d) Parents have limited expertise and resources in
20 marketing and product persuasion compared to highly sophisticated,
21 well-funded marketing experts in profit-driven multinational
22 corporations.

23 (2) The Legislature finds that, to promote the
24 nutritional health of children in Nebraska and for preservation of
25 the public health and promotion of general welfare, it is necessary

1 to encourage multinational and corporate responsibility in Nebraska
2 by restricting advertising and marketing of licensed media characters
3 and other consumer incentives to children in branded food and
4 beverage products sold in Nebraska restaurants, food establishments,
5 and convenience stores.

6 Sec. 3. For purposes of the Children's Health and
7 Responsible Corporate Marketing Act, the definitions found in
8 sections 4 to 15 apply.

9 Sec. 4. Advertise means to make public declaration by
10 print media, television, or radio of the qualities of or advantages
11 of a consumer incentive item so as to increase food and beverage
12 retail sales by restaurants or food establishments.

13 Sec. 5. Child means any juvenile under twelve years of
14 age.

15 Sec. 6. Consumer incentive item means any licensed media
16 character, toy, game, trading card, contest, point accumulation, club
17 membership, admission ticket, token, code or password for digital
18 access, voucher, incentive, or other premium or prize that is
19 associated with a packaged child's meal served by or acquired from a
20 fast food restaurant, full-service restaurant, food establishment, or
21 convenience store.

22 Sec. 7. Convenience store has the definition found in
23 section 81-2,242.03.

24 Sec. 8. Department means the Department of Agriculture.

25 Sec. 9. Director means the Director of Agriculture.

1 Sec. 10. Fast food restaurant means any public place (1)
2 which is kept, used, maintained, advertised, and held out to the
3 public as a place where meals are prepared and consumed on or off-
4 premise or where limited table service exists, (2) which has no
5 sleeping accommodations, (3) which has an adequate and sanitary
6 kitchen and a sufficient number and kind of employees to prepare,
7 cook, and serve suitable food for its guests, (4) which may precook
8 in bulk or prepare cooked food, and (5) which may or may not have
9 wait staff.

10 Sec. 11. Food establishment has the definition found in
11 section 81-2,245.01.

12 Sec. 12. Full-service restaurant has the meaning found in
13 section 77-1011.

14 Sec. 13. Packaged children's breakfast means a
15 combination of food and beverage items offered together in one
16 combination, portion, or bundle at a single price which is primarily
17 targeted for and sold to children and which consists of food
18 typically recognized as breakfast items.

19 Sec. 14. Packaged children's meal means a combination of
20 food and beverage items offered together in one portion or bundle at
21 a single price which is primarily targeted for and sold to children.

22 Sec. 15. Stand-alone product means any consumer incentive
23 item which is sold by a fast food restaurant, full-service
24 restaurant, food establishment, or convenience store as a single item
25 and not in conjunction with a packaged child's breakfast or packaged

1 child's meal.

2 Sec. 16. (1) Fast food restaurants, full-service
3 restaurants, food establishments, and convenience stores shall not
4 advertise, market, supply, or sell consumer incentive items
5 associated with the purchase of a packaged child's breakfast unless
6 the packaged child's breakfast:

7 (a) Does not exceed four hundred calories;

8 (b) Does not exceed ten percent of calories from
9 saturated fat with a maximum of five grams saturated fat;

10 (c) Contains no more than one-half gram artificial trans
11 fat per food or beverage item in the meal;

12 (d) Does not exceed ten percent of calories from added
13 sugars;

14 (e) Does not exceed four hundred thirty milligrams of
15 sodium;

16 (f) If it includes a grain, includes at least fifty
17 percent whole grain; and

18 (g) Includes at least one cup of fruit.

19 (2) Fast food restaurants, full-service restaurants, food
20 establishments, and convenience stores shall not advertise, market,
21 supply, or sell consumer incentive items associated with the purchase
22 of a packaged child's meal unless the packaged child's meal:

23 (a) Does not exceed five hundred calories per packaged
24 child's meal;

25 (b) Does not exceed ten percent of calories from

1 saturated fat with a maximum of six grams saturated fat;

2 (c) Contains no more than one-half gram artificial trans
3 fat per food or beverage item in the meal;

4 (d) Does not exceed ten percent of calories from added
5 sugars;

6 (e) Does not exceed six hundred forty milligrams of
7 sodium;

8 (f) If it includes a grain, includes at least fifty
9 percent whole grain; and

10 (g) Includes at least one cup of fruits or vegetables,
11 not including fried vegetables.

12 Sec. 17. (1) A fast food restaurant, full-service
13 restaurant, food establishment, or convenience store shall not
14 discount packaged children's breakfasts or packaged children's meals
15 that do not meet the requirements of section 16 of this act in order
16 to offset the cost of consumer incentive items as stand-alone
17 products and meet national average sales price for the fast food
18 restaurant's, full-service restaurant's, food establishment's, or
19 convenience store's standard packaged children's breakfast or
20 packaged children's meal that includes a consumer incentive item.

21 (2) A fast food restaurant, full-service restaurant, food
22 establishment, or convenience store may sell consumer incentive items
23 as stand-alone products in a separate transaction.

24 Sec. 18. The director shall administer, implement, and
25 enforce the Children's Health and Responsible Corporate Marketing

1 Act. The director or his or her designee shall conduct periodic
2 inspections to determine compliance with the act.

3 Sec. 19. The director may, within seven working days
4 after finding a violation of the Children's Health and Responsible
5 Corporate Marketing Act or the rules and regulations adopted under
6 the act, issue a citation to the violator. The citation shall be
7 served upon the violator personally or by certified mail. Each
8 citation shall specifically describe the nature of the violation and
9 identify the statute, rule, or regulation violated. When a citation
10 is served, the violator shall have seven working days to remedy the
11 violation. If such violation has not been remedied at the end of such
12 time, the department may take such other action as is deemed
13 appropriate pursuant to the act, the rules and regulations, and the
14 Administrative Procedure Act.

15 Sec. 20. (1) The director may, after notice and a
16 hearing, issue an order imposing an administrative fine for violation
17 of the act in an amount which shall not exceed one thousand dollars.
18 Each separate activity or day in which an activity takes place
19 constitutes a separate violation. In determining whether to impose an
20 administrative fine and, if a fine is imposed, the amount of the
21 fine, the director shall take into consideration (a) the seriousness
22 of the violation, (b) the extent to which the violator derived
23 financial gain as a result of his or her failure to comply, (c) the
24 extent of intent, willfulness, or negligence by the licensee in the
25 violation, (d) the likelihood of the violation reoccurring, (e) the

1 history of the violator's failure to comply, (f) the violator's
2 attempts to prevent or limit his or her failure to comply, (g) the
3 violator's willingness to correct violations, (h) the nature of the
4 violator's disclosure of violations, (i) the violator's cooperation
5 with investigations of his or her failure to comply, and (j) any
6 factors which may be established by rules and regulations. Such fine
7 may be enforced in the same manner as civil judgments. Any person
8 charged with a violation of the act may waive his or her right to a
9 hearing and consent to such discipline as the director determines is
10 appropriate. The Administrative Procedure Act shall govern all
11 hearings held pursuant to this section.

12 (2) The department shall remit administrative fines
13 collected under this section to the State Treasurer on a monthly
14 basis for distribution in accordance with Article VII, section 5, of
15 the Constitution of Nebraska.

16 Sec. 21. Violation of the Children's Health and
17 Responsible Corporate Marketing Act or a final order of the director
18 issued under the act is a Class IV misdemeanor for each violation.
19 Each separate activity or day in which an activity takes place
20 constitutes a separate violation. The county attorney of the county
21 in which any violation of the act occurs, when notified of such
22 violation by the department, shall cause appropriate proceedings to
23 be instituted and pursued in a court of competent jurisdiction.

24 Sec. 22. The director shall adopt and promulgate rules
25 and regulations to carry out the Children's Health and Responsible

1 Corporate Marketing Act.