

118TH CONGRESS
2D SESSION

S. 5640

To amend the Internal Revenue Code of 1986 to protect children’s health by denying any deduction for advertising and marketing directed at children to promote the consumption of food of poor nutritional quality.

IN THE SENATE OF THE UNITED STATES

DECEMBER 20 (legislative day, DECEMBER 16), 2024

Mr. BLUMENTHAL (for himself and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to protect children’s health by denying any deduction for advertising and marketing directed at children to promote the consumption of food of poor nutritional quality.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stop Subsidizing
5 Childhood Obesity Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) According to the Centers for Disease Con-
2 trol, nearly one-fifth of children and adolescents ages
3 2-19 have obesity. Black and Hispanic children and
4 adolescents have higher rates of obesity than white
5 children and adolescents. Children and adolescents
6 from families with an income at or below 130 per-
7 cent of the federal poverty level also have higher
8 rates of obesity compared to children and adoles-
9 cents whose family income is more than 350 percent
10 of the Federal poverty level.

11 (2) A study published in the New England
12 Journal of Medicine found that if the child and ado-
13 lescent population of the United States continues on
14 its current trajectory, a majority of today's children
15 will be obese by age 35.

16 (3) Health-related behaviors, such as eating
17 habits and physical activity patterns, develop early
18 in life and often extend into adulthood. Overall,
19 American children and youth are not achieving basic
20 nutritional goals. The diets of American children
21 and adolescents depart substantially from rec-
22 ommended patterns that put their health at risk.
23 They consume excess calories and added sugars and
24 have higher than recommended intakes of sodium,
25 total fat, and saturated fats.

1 (4) According to a 2012 report from the Fed-
2 eral Trade Commission, the total amount spent on
3 food marketing to children is about \$1,800,000,000
4 a year.

5 (5) Companies market food to children through
6 television, radio, internet and social media, maga-
7 zines, product placement in movies and video games,
8 schools, product packages, toys, clothing and other
9 merchandise, and almost anywhere a logo or product
10 image can be displayed.

11 (6) According to a comprehensive review by the
12 National Academy of Medicine, television food adver-
13 tising affects children's food choices, food purchase
14 requests, diets, and health.

15 (7) A 2006 report from the National Academy
16 of Medicine confirmed that marketing of high-calorie
17 foods to children and adolescents has been identified
18 as one of the major contributors to childhood obe-
19 sity.

20 (8) Nearly all foods advertised on television pro-
21 gramming intended for children are for products
22 “high in nutrients to limit”, as determined by the
23 Federal Interagency Working Group, including satu-
24 rated fat, trans fat, sugar, and sodium. According to
25 research from the University of Illinois Chicago,

1 children under 12 still see more than 1,000 food-re-
2 lated ads a year, most of them for unhealthy prod-
3 ucts.

4 (9) Food and beverage companies dispropor-
5 tionately target advertising for many of their least
6 nutritious brands to black and Hispanic youth,
7 which contributes to health disparities. According to
8 a study from the University of Connecticut, Black
9 youth viewed 75 percent more ads than their white
10 peers. The study also showed that disparities in ra-
11 cial and ethnic targeted advertising are widening. In
12 2012, Black preschoolers, children, and teens saw
13 approximately 60 percent more fast-food ads than
14 their White peers, and in 2019, they saw approxi-
15 mately 75 percent more. Additionally, in 2019, fast-
16 food restaurants spent \$318,000,000 to advertise on
17 Spanish-language TV, a 33 percent increase from
18 2012. The number of ads viewed by Hispanic pre-
19 schoolers and children increased 2 percent and 7
20 percent respectively over the 7 year period, in con-
21 trast with a decline in ads viewed by preschoolers
22 and children overall during the same time period.

23 (10) According to a 2015 study in the Amer-
24 ican Journal of Preventative Medicine, eliminating
25 the tax deduction for television advertising expenses

1 with respect to advertisements for unhealthy food
 2 and beverages that target children could reduce
 3 childhood obesity and save approximately
 4 \$350,000,000 in healthcare costs over the course of
 5 a decade.

6 **SEC. 3. DENIAL OF DEDUCTION FOR MARKETING DI-**
 7 **RECTED AT CHILDREN TO PROMOTE FOOD**
 8 **OF POOR NUTRITIONAL QUALITY.**

9 (a) IN GENERAL.—Part IX of subchapter B of chap-
 10 ter 1 of the Internal Revenue Code of 1986 is amended
 11 by adding at the end the following new section:

12 **“SEC. 280I. DENIAL OF DEDUCTION FOR MARKETING DI-**
 13 **RECTED AT CHILDREN FOR FOOD OF POOR**
 14 **NUTRITIONAL QUALITY OR BRANDS PRI-**
 15 **MARILY ASSOCIATED WITH FOOD OF POOR**
 16 **NUTRITIONAL QUALITY.**

17 “(a) IN GENERAL.—No deduction shall be allowed
 18 under this chapter with respect to—

19 “(1) any marketing primarily directed at chil-
 20 dren for food of poor nutritional quality or brands
 21 primarily associated with food of poor nutritional
 22 quality, and

23 “(2) any of the following which are incurred or
 24 provided primarily for purposes described in para-
 25 graph (1):

1 “(A) Travel expenses (including meals and
2 lodging).

3 “(B) Goods or services of a type generally
4 considered to constitute entertainment, amuse-
5 ment, or recreation or the use of a facility in
6 connection with providing such goods and serv-
7 ices.

8 “(C) Gifts.

9 “(D) Other promotion expenses.

10 “(b) DEFINITIONS.—For purposes of this section—

11 “(1) BRAND.—The term ‘brand’ means a cor-
12 porate or product name, a business image, or a
13 mark, regardless of whether it may legally qualify as
14 a trademark, used by a seller or manufacturer to
15 identify goods or services and to distinguish them
16 from the goods of a competitor.

17 “(2) CHILD.—The term ‘child’ means an indi-
18 vidual who is age 14 or under.

19 “(3) DIRECTED AT.—The term ‘directed at’ in-
20 cludes the use of measured media if the audience for
21 such media will consist of 25 percent or more of
22 children.

23 “(c) MARKETING.—For purposes of this section, the
24 term ‘marketing’ means all advertising and promotional
25 techniques, including—

1 “(1) advertising (including product placement)
2 on television and radio, in print media, in social
3 media, mobile media and apps, and on the Internet
4 (including third-party and company-sponsored
5 websites),

6 “(2) product packaging and labeling,

7 “(3) advertising preceding a movie shown in a
8 movie theater or placed on a video (DVD or VHS)
9 or within a video game or mobile application,

10 “(4) promotional content transmitted to per-
11 sonal computers and other digital or mobile devices,

12 “(5) advertising displays and promotions at the
13 retail site, including preferential placement,

14 “(6) specialty or premium items distributed in
15 connection with the sale of a product or a product
16 loyalty program,

17 “(7) character licensing fees, toy cobranding
18 and cross-promotions,

19 “(8) sponsorship of events,

20 “(9) celebrity endorsements, and

21 “(10) in-school advertising including corporate-
22 branded materials, corporate incentive programs,
23 label redemption programs, fundraisers, signs, score-
24 boards, posters, vending machine fronts, in-school

1 TV and radio, corporate sponsorships, and market
 2 research activities.

3 “(d) REGULATIONS.—Not later than 18 months after
 4 the date of the enactment of this section, the Secretary,
 5 in consultation with the Secretary of Health and Human
 6 Services and the Federal Trade Commission, shall promul-
 7 gate such regulations as may be necessary to carry out
 8 the purposes of this section, including regulations defining
 9 the terms ‘directed at children’, ‘food of poor nutritional
 10 quality’, and ‘brand primarily associated with food of poor
 11 nutritional quality’, based on the National Academy of
 12 Medicine report described in section 3(b) of the Stop Sub-
 13 sidizing Childhood Obesity Act, for purposes of this sec-
 14 tion.”.

15 (b) STUDY BY NATIONAL ACADEMY OF MEDICINE.—

16 (1) IN GENERAL.—Not later than 60 days after
 17 the date of the enactment of this section, the Sec-
 18 retary of the Treasury (or the Secretary’s delegate)
 19 shall enter into a contract with the National Acad-
 20 emy of Medicine to develop procedures for the eval-
 21 uation and identification of—

22 (A) food of poor nutritional quality; and

23 (B) brands that are primarily associated
 24 with food of poor nutritional quality.

1 (2) REPORT.—Not later than 12 months after
 2 the date of the enactment of this section, the Na-
 3 tional Academy of Medicine shall submit to the Sec-
 4 retary of the Treasury (or the Secretary’s delegate)
 5 a report that establishes the proposed procedures de-
 6 scribed in paragraph (1).

7 (c) CLERICAL AMENDMENT.—The table of sections
 8 for part IX of subchapter B of chapter 1 of such Code
 9 is amended by adding at the end the following new item:

“Sec. 280I. Denial of deduction for marketing directed at children for food of
 poor nutritional quality or brands primarily associated with
 food of poor nutritional quality.”.

10 (d) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to amounts paid or incurred in tax-
 12 able years beginning 24 months after the date of the en-
 13 actment of this Act.

14 **SEC. 4. ADDITIONAL FUNDING FOR THE FRESH FRUIT AND**
 15 **VEGETABLE PROGRAM.**

16 In addition to any other amounts made available to
 17 carry out the Fresh Fruit and Vegetable Program under
 18 section 19 of the Richard B. Russell National School
 19 Lunch Act (42 U.S.C. 1769a), the Secretary of the Treas-
 20 ury (or the Secretary’s delegate) shall, on an annual basis,
 21 transfer to such program, from amounts in the general
 22 fund of the Treasury of the United States, an amount de-
 23 termined by the Secretary of the Treasury (or the Sec-
 24 retary’s delegate) to be equal to the increase in revenue

1 for the preceding 12-month period by reason of the
2 amendments made by section 3 of this Act.

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