

117TH CONGRESS
2D SESSION

S. 5086

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

NOVEMBER 15, 2022

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 of 2022”.

6 **SEC. 2. STOP SUBSIDIZING CHILDHOOD OBESITY.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) Childhood obesity has more than doubled in
2 children and tripled in adolescents in the past 30
3 years. Currently, more than $\frac{1}{3}$ of children and ado-
4 lescents in the United States are overweight or
5 obese, and non-Hispanic Black and Hispanic youth
6 have higher rates of obesity.

7 (2) A report by the Robert Wood Johnson
8 Foundation found that if current trends continue,
9 more than half of today's children will be obese by
10 age 35.

11 (3) Health-related behaviors, such as eating
12 habits and physical activity patterns, develop early
13 in life and often extend into adulthood. Overall,
14 American children and youth are not achieving basic
15 nutritional goals. The diets of American children
16 and adolescents depart substantially from the Die-
17 tary Guidelines for Americans and put their health
18 at risk. They are consuming excess calories and
19 added sugars and have higher than recommended in-
20 takes of sodium, total fat, and saturated fats.

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

1 (5) Companies market food to children through
2 television, radio, internet, magazines, product place-
3 ment in movies and video games, schools, product
4 packages, toys, clothing and other merchandise, and
5 almost anywhere a logo or product image can be dis-
6 played.

7 (6) According to a comprehensive review by the
8 National Academy of Medicine, television food adver-
9 tising affects children's food choices, food purchase
10 requests, diets, and health.

11 (7) A 2006 report from the National Academy
12 of Medicine confirmed that marketing high-calorie
13 foods to children and adolescents is one of the major
14 contributors to childhood obesity.

15 (8) Nearly all of foods advertised on television
16 programming intended for children are for products
17 high in recommended nutrients to limit, as deter-
18 mined by the Federal Interagency Working Group,
19 including saturated fat, trans fat, sugar, and so-
20 dium.

21 (9) Food and beverage companies dispropor-
22 tionately target advertising for many of their least
23 nutritious brands to Black and Hispanic youth,
24 which contributes to health disparities. Black chil-
25 dren and teens view almost twice as many ads for

1 candy, sugary drinks, and snacks on television com-
 2 pared with White youth, and $\frac{2}{3}$ of the food ads on
 3 Spanish-language television promote fast food,
 4 candy, sugary drinks, and snacks. Black children
 5 and teens viewed 70 percent more food-related TV
 6 ads, and 90 percent more ads for snacks and sugary
 7 drinks, as compared to their White peers.

8 (10) A 2015 study published in the American
 9 Journal of Preventative Medicine found that elimi-
 10 nating the tax deduction for these expenses related
 11 only to television could reduce childhood obesity and
 12 save about \$350,000,000 in healthcare costs over 10
 13 years.

14 (b) DENIAL OF DEDUCTION FOR ADVERTISING AND
 15 MARKETING DIRECTED AT CHILDREN TO PROMOTE THE
 16 CONSUMPTION OF FOOD OF POOR NUTRITIONAL QUAL-
 17 ITY.—

18 (1) IN GENERAL.—Part IX of subchapter B of
 19 chapter 1 of the Internal Revenue Code of 1986 is
 20 amended by adding at the end the following new sec-
 21 tion:

1 **“SEC. 280I. DENIAL OF DEDUCTION FOR ADVERTISING AND**
 2 **MARKETING DIRECTED AT CHILDREN TO**
 3 **PROMOTE THE CONSUMPTION OF FOOD OF**
 4 **POOR NUTRITIONAL QUALITY.**

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

7 “(1) any advertisement or marketing—

8 “(A) primarily directed at children for pur-
 9 poses of promoting the consumption by children
 10 of any food of poor nutritional quality, or

11 “(B) of a brand primarily associated with
 12 food of poor nutritional quality that is primarily
 13 directed at children, and

14 “(2) any of the following which are incurred or
 15 provided primarily for purposes described in para-
 16 graph (1):

17 “(A) Travel expenses (including meals and
 18 lodging).

19 “(B) Goods or services of a type generally
 20 considered to constitute entertainment, amuse-
 21 ment, or recreation or the use of a facility in
 22 connection with providing such goods and serv-
 23 ices.

24 “(C) Gifts.

25 “(D) Other promotion expenses.

26 “(b) NAM STUDY.—

1 “(1) IN GENERAL.—Not later than 60 days
 2 after the date of the enactment of this section, the
 3 Secretary shall enter into a contract with the Na-
 4 tional Academy of Medicine under which the Na-
 5 tional Academy of Medicine shall develop procedures
 6 for the evaluation and identification of—

7 “(A) food of poor nutritional quality, and
 8 “(B) brands that are primarily associated
 9 with food of poor nutritional quality.

10 “(2) NAM REPORT.—Not later than 12 months
 11 after the date of the enactment of this section, the
 12 National Academy of Medicine shall submit to the
 13 Secretary a report that establishes the proposed pro-
 14 cedures described in paragraph (1).

15 “(c) DEFINITIONS.—In this section:

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

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

24 “(3) FOOD.—The term ‘food’ shall include bev-
 25 erages, candy, and chewing gum.

1 “(d) REGULATIONS.—Not later than 18 months after
 2 the date of the enactment of this section, the Secretary,
 3 in consultation with the Secretary of Health and Human
 4 Services and the Federal Trade Commission and based on
 5 the report prepared by the National Academy of Medicine
 6 pursuant to subsection (b)(2), shall promulgate such regu-
 7 lations as may be necessary to carry out the purposes of
 8 this section, including regulations defining the terms ‘mar-
 9 keting’, ‘directed at children’, ‘food of poor nutritional
 10 quality’, and ‘brand primarily associated with food of poor
 11 nutritional quality’ for purposes of this section.”.

12 (2) CLERICAL AMENDMENT.—The table of sec-
 13 tions for such part IX is amended by adding at the
 14 end the following new item:

“Sec. 280I. Denial of deduction for advertising and marketing directed at chil-
 dren to promote the consumption of food of poor nutritional
 quality.”.

15 (3) EFFECTIVE DATE.—The amendments made
 16 by this subsection shall apply to amounts paid or in-
 17 curred in taxable years beginning 24 months after
 18 the date of the enactment of this Act.

19 (c) ADDITIONAL FUNDING FOR THE FRESH FRUIT
 20 AND VEGETABLE PROGRAM.—In addition to any other
 21 amounts made available to carry out the Fresh Fruit and
 22 Vegetable Program under section 19 of the Richard B.
 23 Russell National School Lunch Act (42 U.S.C. 1769a), the
 24 Secretary of the Treasury (or the Secretary’s delegate)

1 shall, on an annual basis, transfer to such program, from
2 amounts in the general fund of the Treasury of the United
3 States, an amount determined by the Secretary of the
4 Treasury (or the Secretary's delegate) to be equal to the
5 increase in revenue for the preceding 12-month period by
6 reason of the amendments made by subsection (b).

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