

Government of Canada: Leave those kids alone

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Overview

Franchisors in the food and restaurant industry should be aware of proposed restrictions on their ability to advertise certain types of food and beverages to children. First introduced in the Senate in September 2016, [Bill S-228](#) (short title: *Child Health Protection Act*) is a private Member's bill that aims to amend the *Food and Drugs Act* to prohibit certain food and beverage marketing directed at children. While the ultimate form and content of the bill is still unclear, there seems to be sufficient political will to pass restrictions of this nature.

As currently constituted, the bill contains very little detail, especially compared to its earlier incarnation. However, if passed in its current form, Bill S-228 would prohibit any person from advertising "unhealthy food in a manner that is directed primarily at children." Children are defined as persons under 17 years old. Aside from some provisions to protect the validity of trademarks affected by the proposed legislation, there are no other operative provisions. The bill calls for regulations under the *Food and Drugs Act* to define "unhealthy food" and specify criteria for determining whether unhealthy food is advertised in a manner that is "primarily directed at children," including how, when and where an advertisement is communicated.

Legislative progress

These advertising restrictions may still be a long way from implementation; however, external indicators suggest that this bill — or something quite like it — will eventually become law. Bill S-228 was passed by the Senate on September 28, 2017. It is currently at the committee stage in the House of Commons after passing First and Second Reading. The bill must still go through the House committee process and pass Third Reading before it can receive Royal Assent (assuming the Senate approves any amendments that the House makes). If it gets that far, under its current wording, the prohibitions would not come into force until two years after it receives Royal Assent.

While two previous bills with similar subject matter failed (in 1974 and 2009) and private Member's bills do not often pass, this one appears to have broad support across political aisles and government bodies. Health Canada is "[committed](#) to introducing new restrictions on the commercial marketing of unhealthy foods and beverages to children," and Health Minister Petipas Taylor's [Mandate Letter](#) from Prime Minister Trudeau lists, as a priority, "introducing new restrictions on the commercial marketing of unhealthy food and beverages to children, similar to those now in place in Quebec." The same mandate was given to the previous Health Minister, Jane Philpott.

While parliamentary support has been widespread since Senator Nancy Greene Raine first introduced the bill, the most recent changes have weakened that support base. Hansard

evidence from the Senate debates indicated universal support, but the changes implemented in the Senate committee process, such as gutting most of the content and raising the age to 17 from 13, has eroded support from the Conservative Party. Nevertheless, all other major federal political parties appear to fully support the Bill.

Commentary

All signs point to further changes to the bill's content. If the approach taken in Québec's *Consumer Protection Act* is adopted by the federal government, it could result in a complete prohibition on commercial advertising of certain food and beverages to children.

While the timeline is long, it seems clear that Parliament will include this type of legislation as one of their tactics to fight rising childhood obesity. Franchisors operating in the restaurant space will want to keep an eye on these developments. In addition, brand owners will eventually be required to consider whether their intellectual property, packaging and endorsements are "directed at children."

If you have any questions or would like more information, please contact a member of Osler's Franchise Group.