

Who are you calling a child? Advertising restrictions get closer to fruition

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Overview

The proposed restrictions on advertising certain types of food and beverages to children are getting closer to reality. [As we have noted previously](#), 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. As of September 19, 2018, the bill has passed Third Reading in the House of Commons. Despite making it through both houses of Parliament, the bill is not quite ready for Royal Assent; nevertheless, it is one important step closer.

Content and progress

As we noted in our previous Update, there is not much content to the bill as presently drafted. The dominant purpose of the *Child Health Protection Act* is to prohibit any person from advertising "unhealthy food in a manner that is directed primarily at children." What constitutes "unhealthy food" and "directed primarily at children" remains to be clarified in the as-yet-undrafted regulations under the *Food and Drugs Act*. Aside from some provisions to protect the validity of trademarks affected by the proposed legislation, there are no other operative provisions.

The current sticking point appears to be the definition of "children." When first proposed in the Senate in September 2016, the bill defined children as persons under 13 years old. After emerging from the committee stage in the Senate (and being stripped of most of its content), the age had been raised to 17. Now through the House of Commons committee stage, the definition has reverted to "persons who are under 13 years of age."

Outlook

Given that the House of Commons has proposed amendments to the bill, the changes must be approved by the Senate before the legislation can receive Royal Assent. The bill does not need to repeat all formal stages of lawmaking in both houses of Parliament, but the Senate and House must agree on a final form through the exchange of messages or, if necessary, a conference. The House sent a message to the Senate regarding the amendments on September 19, 2018.

Considering the bill's skeletal construction and general multi-partisan support, it is unlikely to take long to finalize Bill S-228. That does not mean the operative restrictions will appear

soon: regulations have not yet been proposed or considered, and the bill is currently drafted to come into effect two years after it receives Royal Assent. Nevertheless, franchisors in the food and restaurant industry should be aware that these long-debated restrictions are one step closer to fruition.

If you have any questions or would like more information, please review our [previous legislative update](#) or contact a member of Osler's [Franchise Group](#).