

2374

2013-2014 Regular Sessions

I N   S E N A T E

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Introduced by Sens. KLEIN, ADDABBO, CARLUCCI, HANNON, HASSELL-THOMPSON, PARKER, SAVINO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law, in relation to combatting the incidence of adult and child obesity, establishing a community gardens task force and encouraging direct marketing of fresh fruits and vegetables in areas with a high incidence of adult and child obesity (Part A); to amend the education law, in relation to screening for childhood obesity and promotion of the availability of certain foods and beverages in schools (Part B); to amend the public health law, in relation to regulating the use of artificial trans fats and requiring food service facilities to post or provide nutritional information on the food products served, and the inclusion of weight control in the health care and wellness education and outreach program (Part C); to amend the education law, in relation to restricting the sale, lease, transfer or authorization of open-air schoolhouse playgrounds for certain uses (Part D); to amend the education law, in relation to instruction in good health and reducing the incidence of obesity (Part E); to amend the public health law, in relation to in-utero exposure to tobacco smoke prevention (Part F); to amend the public health law, in relation to including certain respiratory diseases and obesity within disease management demonstration programs (Part G); to amend the public health law, in relation to the reduction of emphysema, chronic bronchitis and other chronic respiratory diseases in children (Part H); to amend the public health law, in relation to the collection and reporting of obesity data (Part I); to amend the public health law, in relation to directing the health research science board to study respiratory diseases and obesity, and childhood obesity prevention and screening (Part J); to amend the public health law, in relation to breastfeeding of infants and the adolescent pregnancy nutrition counseling program (Part K); to amend the education law, in relation to the use of inhalers and nebulizers (Part L); to amend the real property law, in relation to residential rental property smoking policies (Part M); to amend the state finance

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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law, in relation to establishing the obesity and respiratory disease research and education fund (Part N); to amend the insurance law, in relation to wellness programs (Part O); to amend the social services law, in relation to health and nutritional education and services and child day care facilities; and to amend the county law, in relation to the Cornell cooperative extension system relating to adult and childhood obesity, asthma, and respiratory illness prevention (Part P)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "omnibus obesity and respiratory illness reduction act".

S 2. This act enacts into law major components of legislation which combat the incidence of adult and child obesity and respiratory diseases, and encourage the production and consumption of fresh fruits and vegetables. Each component is wholly contained within a Part identified as Parts A through P. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

#### PART A

Section 1. Section 3 of the agriculture and markets law, as amended by chapter 651 of the laws of 1946, is amended to read as follows:

S 3. Declaration of policy and purposes. The agricultural industry is basic to the life of our state. It vitally concerns and affects the welfare, health, economic well-being and productive and industrial capabilities of all our people. It is the policy and duty of the state to promote, foster, and encourage the agricultural industry, with proper standards of living for those engaged therein; to design and establish long-range programs for its stabilization and profitable operation; to increase through education, research, regulation, and scientific means, the quantity, quality, and efficiency of its production; to improve its marketing system; to encourage adequate and skilled assistance for agricultural enterprises; to maintain at fair prices uncontrolled by speculation the instrumentalities and products of agriculture; to remove unnecessary or unfair costs and obstacles in the [transportation] TRANSPORTATION, storage, processing, distribution, marketing, and sale of agricultural products; to prevent frauds in the traffic therein; to promote an expanded demand for the state's agricultural products and the intelligent uses thereof by consumers as pure and wholesome food; to protect the public health and to eliminate the evils of under-nourishment; to encourage the selection and consumption of food according to sound dietary and nutritional principles; TO IMPROVE OUR CITIZENS' OVERALL HEALTH AND TO COMBAT THE INCREASING INCIDENCE OF ADULT AND CHILDHOOD OBESITY; and to make our people conscious of the bond of mutual self-interest between our urban and our rural populations.

Accordingly, all laws enacted concerning the agricultural industry and its allied subjects, whether included in this chapter or not, are to be

1 deemed an exercise of the police power of the state and a discharge of  
2 its obligations for the promotion of the general welfare through state-  
3 wide laws and regulations, local initiative and government, cooperative  
4 action between groups and localities, home-rule measures, individual  
5 enterprise, civic consciousness, and appropriate coordination with the  
6 federal government and as between educational research institutions  
7 within the state.

8 Such laws and all governmental measures adopted pursuant thereto  
9 should receive a liberal interpretation and application in furtherance  
10 of the aforesaid policy and purposes.

11 S 2. Subdivision 5-b of section 16 of the agriculture and markets law,  
12 as added by chapter 2 of the laws of 2001, is amended to read as  
13 follows:

14 5-b. (A) Establish, in cooperation with the commissioner of education,  
15 a farm-to-school program to facilitate and promote the purchase of New  
16 York farm products by schools, universities and other educational insti-  
17 tutions under the jurisdiction of the education department. The depart-  
18 ment shall solicit information from the education department regarding  
19 school districts and other educational institutions interested in  
20 purchasing New York farm products, including but not limited to, the  
21 type and amount of such products schools wish to purchase and the name  
22 of the appropriate contact person from the interested school district.  
23 The department shall make this information readily available to inter-  
24 ested New York farmers, farm organizations and businesses that market  
25 New York farm products. The department shall provide information to the  
26 education department and interested school districts and other educa-  
27 tional institutions about the availability of New York farm products,  
28 including but not limited to, the types and amount of products, and the  
29 names and contact information of farmers, farm organizations and busi-  
30 nesses marketing such products. The commissioner shall report to the  
31 legislature on the need for changes in law to facilitate the purchases  
32 of such products by schools and educational institutions.

33 The department shall also coordinate with the education department,  
34 and school food service, education, health and nutrition, farm, and  
35 other interested organizations in establishing a promotional event, to  
36 be known as New York Harvest For New York Kids Week, in early October  
37 each year, that will promote New York agriculture and foods to children  
38 through school meal programs and the classroom, at farms and farmers'  
39 markets and other locations in the community.

40 (B) COOPERATE WITH THE DEPARTMENT OF HEALTH IN IMPLEMENTING THE CHILD-  
41 HOOD OBESITY PREVENTION PROGRAM PURSUANT TO TITLE EIGHT OF ARTICLE TWEN-  
42 TY-FIVE OF THE PUBLIC HEALTH LAW AND WITH THE COMMISSIONER OF EDUCATION  
43 TO ENCOURAGE THE PRODUCTION AND CONSUMPTION OF FRESH LOCALLY PRODUCED  
44 FRUITS AND VEGETABLES BY ELEMENTARY AND SECONDARY SCHOOL AGED CHILDREN  
45 PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION TO HELP COMBAT THE  
46 INCREASING INCIDENCE OF CHILDHOOD OBESITY.

47 (C) COOPERATE WITH FEDERAL, OTHER STATE AND MUNICIPAL AGENCIES TO  
48 ENCOURAGE THE EXPANSION OF COMMUNITY GARDENS PURSUANT TO ARTICLE TWO-C  
49 OF THIS CHAPTER TO HELP ENCOURAGE THE PRODUCTION AND CONSUMPTION OF  
50 FRESH LOCALLY PRODUCED FRUITS AND VEGETABLES TO HELP COMBAT THE INCREAS-  
51 ING INCIDENCE OF ADULT AND CHILD OBESITY.

52 S 3. Article 2-C of the agriculture and markets law is amended by  
53 adding a new section 31-f to read as follows:

54 S 31-F. LEGISLATIVE FINDINGS. THE LEGISLATURE HEREBY FINDS AND  
55 DECLARES THAT COMMUNITY GARDENS PROVIDE SIGNIFICANT HEALTH, EDUCATIONAL  
56 AND SOCIAL BENEFITS TO THE GENERAL PUBLIC, ESPECIALLY FOR THOSE WHO

1 RESIDE IN URBAN AND SUBURBAN AREAS OF THIS STATE. FURTHERMORE, IT IS THE  
2 ARTICULATED PUBLIC POLICY OF THIS STATE TO PROMOTE AND FOSTER GROWTH IN  
3 THE NUMBER OF COMMUNITY GARDENS AND THE ACREAGE OF SUCH GARDENS. THE  
4 COMMUNITY GARDEN MOVEMENT CONTINUES TO PROVIDE LOW COST FOOD THAT IS  
5 FRESH AND NUTRITIOUS FOR THOSE WHO MAY BE UNABLE TO READILY AFFORD FRESH  
6 FRUITS AND VEGETABLES FOR THEMSELVES OR THEIR FAMILIES, PROMOTES PUBLIC  
7 HEALTH AND HEALTHIER INDIVIDUAL LIFESTYLES BY ENCOURAGING BETTER EATING  
8 HABITS AND INCREASED PHYSICAL ACTIVITY BY GROWING THEIR OWN FOOD,  
9 FOSTERS THE RETENTION AND EXPANSION OF OPEN SPACES, PARTICULARLY IN  
10 URBAN ENVIRONMENTS, ENHANCES URBAN AND SUBURBAN ENVIRONMENTAL QUALITY  
11 AND COMMUNITY BEAUTIFICATION, PROVIDES INEXPENSIVE COMMUNITY BUILDING  
12 ACTIVITIES, RECREATION AND PHYSICAL EXERCISE FOR ALL AGE GROUPS, ESTAB-  
13 LISHES A SAFE PLACE FOR COMMUNITY INVOLVEMENT AND HELPS TO REDUCE THE  
14 INCIDENCE OF CRIME, ENGENDERS A CLOSER RELATIONSHIP BETWEEN URBAN RESI-  
15 DENTS, NATURE AND THEIR LOCAL ENVIRONMENT, AND FOSTERS GREEN JOB TRAIN-  
16 ING AND ECOLOGICAL EDUCATION AT ALL LEVELS. FURTHER, THE PROMOTION OF  
17 COMMUNITY GARDENS CAN HELP THE COMMUNITY TO CONDUCT ACTIVITIES FOR  
18 ITSELF TO COMBAT CHILDHOOD AND ADULT OBESITY TO ADVANCE THE OVERALL  
19 HEALTH OF COMMUNITY MEMBERS. IT IS THEREFORE THE INTENT OF THE LEGIS-  
20 LATURE AND THE PURPOSE OF THIS ARTICLE TO FOSTER GROWTH IN THE NUMBER,  
21 SIZE AND SCOPE OF COMMUNITY GARDENS IN THIS STATE BY ENCOURAGING STATE  
22 AGENCIES, MUNICIPALITIES AND PRIVATE PARTIES IN THEIR EFFORTS TO PROMOTE  
23 COMMUNITY GARDENS.

24 S 4. Subdivisions 2 and 3 of section 31-g of the agriculture and  
25 markets law, as added by chapter 862 of the laws of 1986, are amended  
26 and a new subdivision 4-a is added to read as follows:

27 2. "Garden" shall mean a piece OR PARCEL of land appropriate for THE  
28 cultivation of herbs, fruits, flowers, NUTS, HONEY, POULTRY FOR EGG  
29 PRODUCTION, MAPLE SYRUP, ORNAMENTAL OR VEGETABLE PLANTS, NURSERY  
30 PRODUCTS, or vegetables.

31 3. "Municipality" shall mean any county, town, village, city, school  
32 district [or], BOARD OF COOPERATIVE EDUCATIONAL SERVICES, other special  
33 district, OR ANY OFFICE OR AGENCY THEREOF.

34 4-A. "STATE AGENCY" SHALL MEAN ANY DEPARTMENT, BUREAU, COMMISSION,  
35 BOARD, PUBLIC AUTHORITY OR OTHER AGENCY OF THE STATE, INCLUDING ANY  
36 PUBLIC BENEFIT CORPORATION OF WHICH ANY MEMBER OF WHOSE BOARD IS  
37 APPOINTED BY THE GOVERNOR.

38 S 5. Section 31-h of the agriculture and markets law, as added by  
39 chapter 862 of the laws of 1986, is amended to read as follows:

40 S 31-h. Office of community gardens; powers; duties. 1. The commis-  
41 sioner shall establish within the department an office of community  
42 gardens which shall have the authority and responsibility for carrying  
43 out the provisions of this article in cooperation with the [state]  
44 department of environmental conservation, the [state] education depart-  
45 ment, THE DEPARTMENT OF HEALTH, the department of state, cooperative  
46 extensions and other state agencies and municipalities.

47 2. The duties of the office shall include:

48 a. Upon request, the office shall assist in the identification of  
49 vacant public land within a given geographical location and provide  
50 information regarding agency jurisdiction and the relative suitability  
51 of such lands for community gardening purposes;

52 b. Serve as a coordinator on behalf of interested community groups and  
53 the appropriate state or local agencies to facilitate the use of vacant  
54 public lands for community garden use for not less than one growing  
55 season by receiving and forwarding with recommendation completed appli-  
56 cations to the appropriate STATE OR MUNICIPAL agency. PROVIDED, FURTHER,

1 THAT THE OFFICE MAY DEVELOP A SINGLE RECOMMENDED APPLICATION FORM TO BE  
2 USED BY COMMUNITY GROUPS WHEN APPLYING TO STATE AGENCIES OR MUNICI-  
3 PALITIES FOR USE OF VACANT PUBLIC LAND FOR COMMUNITY GARDEN PURPOSES;

4 c. Support and encourage contact between community garden programs  
5 already in existence and those programs in the initial stages of devel-  
6 opment; [and]

7 d. Seek and provide such assistance, to the extent funds or grants may  
8 become available, for the purposes identified in this article[.];

9 E. ASSIST, SUPPORT AND ENCOURAGE CONTACT AND COOPERATION BETWEEN, AND  
10 THE COOPERATIVE SHARING OF RESOURCES BETWEEN COMMUNITY GARDEN GROUPS,  
11 SCHOOL GARDEN PROGRAMS AND LOCAL VOLUNTARY FOOD ASSISTANCE PROGRAMS,  
12 SUCH AS COMMUNITY FOOD PANTRIES, SOUP KITCHENS, OTHER COMMUNITY AND  
13 NOT-FOR-PROFIT ORGANIZATIONS THAT PROVIDE OR DISTRIBUTE FOOD TO THE POOR  
14 AND DISADVANTAGED, HOSPITALS, OTHER HEALTH CARE FACILITIES AND EDUCA-  
15 TIONAL FACILITIES. SUCH SUPPORT CAN INCLUDE THE PROVISION OF SURPLUS  
16 COMMUNITY GARDEN FOOD OR OTHER AGRICULTURAL PRODUCTS TO SUCH LOCAL  
17 VOLUNTARY FOOD ASSISTANCE PROGRAMS;

18 F. ASSIST, SUPPORT AND ENCOURAGE COMMUNICATION, AND THE SHARING OF  
19 RESOURCES BETWEEN COMMUNITY GARDEN ORGANIZATIONS AND THE NEW YORK  
20 HARVEST FOR NEW YORK KIDS WEEK PROGRAM ESTABLISHED BY THE DEPARTMENT  
21 PURSUANT TO SUBDIVISION FIVE-B OF SECTION SIXTEEN OF THIS CHAPTER, AND  
22 INDIVIDUAL FARM-TO-SCHOOL AND SCHOOL GARDEN PROGRAMS;

23 G. SUPPORT EFFORTS BY THE DEPARTMENTS OF HEALTH AND EDUCATION TO  
24 COMBAT ADULT AND CHILDHOOD OBESITY BY ENCOURAGING THE CONSUMPTION OF  
25 COMMUNITY GARDEN PRODUCED FRUITS AND VEGETABLES; AND

26 H. ESTABLISH A COMMUNITY GARDENS TASK FORCE PURSUANT TO SECTION THIR-  
27 TY-ONE-J OF THIS ARTICLE.

28 S 6. Section 31-i of the agriculture and markets law, as added by  
29 chapter 862 of the laws of 1986, is amended to read as follows:

30 S 31-i. Use of state OR MUNICIPALLY owned land for community gardens.  
31 1. Any state agency[, department, board, public benefit corporation,  
32 public authority] or [commission] MUNICIPALITY with title to vacant  
33 public land may permit community organizations to use such lands for  
34 community gardening purposes. Such use of vacant public land may be  
35 conditioned on the community organization possessing liability insurance  
36 and accepting liability for injury or damage resulting from use of the  
37 vacant public land for community gardening purposes.

38 2. State agencies AND MUNICIPALITIES which have received an applica-  
39 tion for use of public lands for community garden purposes shall respond  
40 to the applicant within thirty days and make a final determination with-  
41 in one hundred eighty days.

42 S 7. The agriculture and markets law is amended by adding a new  
43 section 31-j to read as follows:

44 S 31-J. COMMUNITY GARDENS TASK FORCE. 1. THE OFFICE MAY CONVENE A  
45 COMMUNITY GARDENS TASK FORCE TO IDENTIFY AND DEVELOP WAYS TO ENCOURAGE  
46 STATE AGENCIES, MUNICIPALITIES AND PRIVATE PARTIES TO ESTABLISH AND  
47 EXPAND COMMUNITY GARDENS AND THE ACTIVITIES CONDUCTED BY SUCH GARDENS.

48 2. THE TASK FORCE SHALL BE CHAIRED BY THE COMMISSIONER, OR BY SUCH  
49 OFFICER OR EMPLOYEE OF THE DEPARTMENT AS SHALL BE DESIGNATED BY THE  
50 COMMISSIONER. THE MEMBERSHIP OF THE TASK FORCE MAY INCLUDE REPRESENTA-  
51 TION FROM THE EDUCATION DEPARTMENT, DEPARTMENT OF ENVIRONMENTAL  
52 CONSERVATION, DEPARTMENT OF HEALTH, DEPARTMENT OF STATE, OFFICE OF  
53 PARKS, RECREATION AND HISTORIC PRESERVATION, AND OFFICE OF GENERAL  
54 SERVICES. SUCH TASK FORCE SHALL INCLUDE MEMBERS THAT REPRESENT COUNTIES,  
55 CITIES, TOWNS, VILLAGES, SCHOOL DISTRICTS, OTHER SPECIAL USE DISTRICTS,  
56 PUBLIC AUTHORITIES AND COOPERATIVE EXTENSION SERVICES.

3. THE TASK FORCE SHALL HAVE NOT MORE THAN TWENTY-FIVE MEMBERS.

4. THE OFFICE, MAY REQUEST THE ASSISTANCE OF STATE AGENCIES INCLUDING, BUT NOT LIMITED TO THE EDUCATION DEPARTMENT, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, DEPARTMENT OF HEALTH, DEPARTMENT OF STATE, DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, OFFICE OF STATE PARKS, RECREATION AND HISTORIC PRESERVATION, AND OFFICE OF GENERAL SERVICES TO CARRY OUT THE WORK OF THE TASK FORCE.

5. THE TASK FORCE MAY ONLY ACT WHEN THREE-FIFTHS OF ITS MEMBERSHIP ARE PRESENT. ALL ACTION OF THE TASK FORCE SHALL REQUIRE AN AFFIRMATIVE VOTE OF ITS MEMBERSHIP. THE TASK FORCE SHALL CONVENE AT THE CALL OF THE OFFICE.

6. THE MEMBERS OF THE TASK FORCE SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES PURSUANT TO THIS SECTION.

7. (A) THE GOALS OF THE TASK FORCE MAY INCLUDE, BUT ARE NOT LIMITED TO, THE STUDY, EVALUATION AND DEVELOPMENT OF RECOMMENDATIONS: (I) TO ENCOURAGE THE ESTABLISHMENT AND EXPANSION OF COMMUNITY GARDENS BY STATE AGENCIES, MUNICIPAL GOVERNMENTS, EDUCATIONAL FACILITIES AND PRIVATE PARTIES, SUCH AS HOSPITALS, OTHER HEALTH CARE FACILITIES AND OTHER HEALTH CARE PROVIDERS, (II) TO ENCOURAGE COOPERATION BETWEEN THE ACTIVITIES AND OPERATIONS OF COMMUNITY GARDENS AND PROVISION OF DONATED FOOD TO LOCAL VOLUNTARY FOOD ASSISTANCE PROGRAMS FOR THE POOR AND DISADVANTAGED, (III) TO ENCOURAGE THE PRODUCTION AND CONSUMPTION OF FRESH FRUITS AND VEGETABLES TO HELP COMBAT THE INCREASING PREVALENCE OF ADULT AND CHILDHOOD OBESITY, AND (IV) TO INCREASE THE BENEFITS THAT COMMUNITY GARDENS MAY PROVIDE TO THE LOCAL COMMUNITY IN WHICH THEY ARE LOCATED.

(B) IN ACHIEVING THE GOALS OF THE TASK FORCE, THE TASK FORCE MAY CONSIDER RECOMMENDATIONS THAT: (I) ENCOURAGE THE EXECUTION OF CONSERVATION EASEMENTS BY STATE AGENCIES, MUNICIPALITIES, EDUCATIONAL FACILITIES OR PRIVATE PARTIES TO ESTABLISH OR PROTECT COMMUNITY GARDENS, (II) ENCOURAGE THE CREATION OF MECHANISMS TO TRANSFER DEVELOPMENT RIGHTS TO PROTECT COMMUNITY GARDENS OR ENCOURAGE THE DONATION OR LEASE OF LANDS FOR COMMUNITY GARDENS, (III) DEVELOPMENT OF MODEL ZONING CODES, LOCAL LAND USE LAWS OR OTHER MUNICIPAL POLICIES THAT COULD ENCOURAGE THE ESTABLISHMENT OR RETENTION OF COMMUNITY GARDENS, (IV) ENCOURAGE COOPERATIVE INITIATIVES BETWEEN HEALTH CARE FACILITIES, OTHER HEALTH CARE PROVIDERS AND COMMUNITY GROUPS TO ENCOURAGE THE PRODUCTION AND CONSUMPTION OF FRESH FRUITS AND VEGETABLES TO COMBAT THE HIGH INCIDENCE OF ADULT AND CHILD OBESITY, AND (V) ANY OTHER ACTIVITY TO ACHIEVE THE GOALS DEEMED APPROPRIATE BY THE TASK FORCE ACCORDING TO THE PROVISIONS OF THIS ARTICLE.

S 8. The opening paragraph of section 281 of the agriculture and markets law, as added by chapter 834 of the laws of 1981, is amended to read as follows:

The legislature hereby finds that inflation has caused higher prices in all phases of farm and food production and farm and food products distribution; and that the demand, by consumers within the state, for increasing supplies of wholesome, fresh and nutritious farm and food products provides a significant opportunity for the development of alternative marketing structures for food grown within the state by which such products may be supplied directly to the consuming public. IN ADDITION, INCREASING THE SUPPLY OF WHOLESOME, FRESH, LOCALLY PRODUCED FRUITS AND VEGETABLES CAN HELP TO ENCOURAGE THE CONSUMPTION OF SUCH PRODUCE IN A MANNER THAT HELPS TO COMBAT THE INCREASING INCIDENCE OF ADULT AND CHILDHOOD OBESITY. REDUCING THE INCIDENCE OF OBESITY CAN HELP TO IMPROVE THE OVERALL HEALTH OF THE GENERAL PUBLIC, HELP TO REDUCE THE

1 COST OF PROVIDING HEALTH CARE AND REDUCE THE STATE'S COSTS OF PROVIDING  
2 SUCH CARE.

3 S 9. Subdivision 5 of section 283 of the agriculture and markets law,  
4 as added by chapter 834 of the laws of 1981, is amended and a new subdi-  
5 vision 8-a is added to read as follows:

6 5. Provide assistance to consumer or non-profit organizations, PUBLIC  
7 OR PRIVATE AGENCIES, HOSPITALS AND OTHER HEALTH CARE FACILITIES seeking  
8 to purchase or facilitate the purchase of farm products directly from  
9 producers.

10 8-A. ENCOURAGE THE DEVELOPMENT OF DIRECT MARKETING PROGRAMS, WITHIN  
11 AREAS OF THE STATE DESIGNATED BY THE DEPARTMENT OF HEALTH AS HAVING A  
12 HIGH INCIDENCE OF CHILDHOOD OBESITY AND TO INCREASE THE CONSUMPTION OF  
13 FRESH FRUITS AND VEGETABLES TO HELP CURB THE INCIDENCE OF CHILDHOOD  
14 OBESITY.

15 S 10. This act shall take effect immediately.

16 PART B

17 Section 1. Section 901 of the education law, as amended by chapter 477  
18 of the laws of 2004, subdivision 1 as amended by section 57 of part A-1  
19 of chapter 58 of the laws of 2006, is amended to read as follows:

20 S 901. School health services to be provided. 1. School health  
21 services, as defined in subdivision two of this section, shall be  
22 provided by each school district for all students attending the public  
23 schools in this state, except in the city school district of the city of  
24 New York, as provided in this article. School health services shall  
25 include the services of a registered professional nurse, if one is  
26 employed, and shall also include such services as may be rendered as  
27 provided in this article in examining students for the existence of  
28 disease or disability, OR MAY INCLUDE SERVICES RELATED TO EXAMINING FOR  
29 CHILDHOOD OBESITY BASED UPON THE CALCULATION OF EACH STUDENT'S BODY MASS  
30 INDEX AND WEIGHT STATUS CATEGORY PURSUANT TO SECTION NINE HUNDRED FOUR  
31 OF THIS ARTICLE, and in testing the eyes and ears of such students.

32 2. School health services for the purposes of this article shall mean  
33 the several procedures, including, but not limited to, medical examina-  
34 tions, dental inspection and/or screening, scoliosis screening, vision  
35 screening [and], audiometer tests, AND CHILDHOOD OBESITY AS MEASURED BY  
36 BODY MASS INDEX AND WEIGHT STATUS CATEGORY, designed to determine the  
37 health status of the child; to inform parents or other persons in  
38 parental relation to the child, pupils and teachers of the individual  
39 child's health condition subject to federal and state confidentiality  
40 laws; to guide parents, children and teachers in procedures for prevent-  
41 ing and correcting defects [and], diseases AND CHILDHOOD OBESITY CONDI-  
42 TIONS; to instruct the school personnel in procedures to take in case of  
43 accident or illness; to survey and make necessary recommendations  
44 concerning the health and safety aspects of school facilities and the  
45 provision of health information.

46 S 2. Subdivisions 1, 3 and 4 of section 903 of the education law, as  
47 amended by chapter 281 of the laws of 2007, subdivision 1 as separately  
48 amended by section 11 of part B of chapter 58 of the laws of 2007 and  
49 paragraph a of subdivision 3 as amended by section 28 of part A of chap-  
50 ter 58 of the laws of 2008, are amended to read as follows:

51 1. A health certificate shall be furnished by each student in the  
52 public schools upon his or her entrance in such schools and upon his or  
53 her entry into the grades prescribed by the commissioner in regulations,  
54 provided that such regulations shall require such certificates at least

1 twice during the elementary grades and twice in the secondary grades. An  
2 examination and health history of any child may be required by the local  
3 school authorities at any time in their discretion to promote the educa-  
4 tional interests of such child. Each certificate shall be signed by a  
5 duly licensed physician, physician assistant, or nurse practitioner, who  
6 is authorized by law to practice in this state, and consistent with any  
7 applicable written practice agreement, or by a duly licensed physician,  
8 physician assistant, or nurse practitioner, who is authorized to prac-  
9 tice in the jurisdiction in which the examination was given, provided  
10 that the commissioner has determined that such jurisdiction has stand-  
11 ards of licensure and practice comparable to those of New York. Each  
12 such certificate shall describe the condition of the student when the  
13 examination was made, which shall not be more than twelve months prior  
14 to the commencement of the school year in which the examination is  
15 required, and shall state whether such student is in a fit condition of  
16 health to permit his or her attendance at the public schools. THE EXAM-  
17 INATION MAY INCLUDE A DIABETES RISK ANALYSIS AND, IF NECESSARY, CHILDREN  
18 WITH RISK FACTORS FOR TYPE 1 DIABETES, OR RISK FACTORS ASSOCIATED WITH  
19 TYPE 2 DIABETES SUCH AS OBESITY, A FAMILY HISTORY OF TYPE 2 DIABETES, OR  
20 ANY OTHER FACTORS CONSISTENT WITH INCREASED RISK SHALL BE TESTED FOR  
21 DIABETES. Each such certificate shall also state the student's body mass  
22 index (BMI) and weight status category. For purposes of this section,  
23 BMI is computed as the weight in kilograms divided by the square of  
24 height in meters or the weight in pounds divided by the square of height  
25 in inches multiplied by a conversion factor of 703. Weight status cate-  
26 gories for children and adolescents shall be as defined by the commis-  
27 sioner of health. In all school districts such physician, physician  
28 assistant or nurse practitioner shall determine whether a one-time test  
29 for sickle cell anemia is necessary or desirable and he or she shall  
30 conduct such a test and the certificate shall state the results.

31 3. a. Within thirty days after the student's entrance in such schools  
32 or grades, the health certificate shall be submitted to the principal or  
33 his or her designee and shall be filed in the student's cumulative  
34 health record. If such student does not present a health certificate as  
35 required in this section, unless he or she has been accommodated on  
36 religious grounds, the principal or the principal's designee shall cause  
37 a notice to be sent to the parents or person in parental relationship to  
38 such student that if the required health certificate is not furnished  
39 within thirty days from the date of such notice, an examination will be  
40 made of such student, as provided in this article. Each school and  
41 school district [chosen as part of an appropriate sampling methodology]  
42 shall participate in surveys directed by the commissioner of health  
43 pursuant to the public health law in relation to students' BMI and  
44 weight status categories as reported on the school health certificate  
45 and which shall be subject to audit by the commissioner of health. Such  
46 surveys shall contain the information required pursuant to subdivision  
47 one of this section in relation to students' BMI and weight status cate-  
48 gories in aggregate. Parents or other persons in parental relation to a  
49 student may refuse to have the student's BMI and weight status category  
50 included in such survey. Each school and school district shall provide  
51 the commissioner of health with any information, records and reports he  
52 or she may require for the purpose of such audit. The BMI and weight  
53 status survey and audit as described in this subdivision shall be  
54 conducted consistent with confidentiality requirements imposed by feder-  
55 al law.



1 b. Within thirty days after the student's entrance in such schools or  
2 grades, the dental health certificate, if obtained, shall be filed in  
3 the student's cumulative health record.

4 4. Notwithstanding the provisions of subdivisions one, two and three  
5 of this section, no examinations for a health certificate or health  
6 history shall be required or dental certificate requested, and no  
7 screening examinations for sickle cell anemia OR CHILDHOOD OBESITY shall  
8 be required where a student or the parent or person in parental relation  
9 to such student objects thereto on the grounds that such examinations or  
10 health history conflict with their genuine and sincere religious  
11 beliefs.

12 S 3. Subdivision 1 of section 904 of the education law, as amended by  
13 section 12 of part B of chapter 58 of the laws of 2007, is amended to  
14 read as follows:

15 1. Each principal of a public school, or his or her designee, shall  
16 report to the director of school health services having jurisdiction  
17 over such school, the names of all students who have not furnished  
18 health certificates as provided in section nine hundred three of this  
19 article, or who are children with disabilities, as defined by article  
20 eighty-nine of this chapter, and the director of school health services  
21 shall cause such students to be separately and carefully examined and  
22 tested to ascertain whether any student has defective sight or hearing,  
23 or any other physical disability which may tend to prevent him or her  
24 from receiving the full benefit of school work, or from requiring a  
25 modification of such work to prevent injury to the student or from  
26 receiving the best educational results. Each examination shall also  
27 include a calculation of the student's body mass index (BMI) and weight  
28 status category. For purposes of this section, BMI is computed as the  
29 weight in kilograms divided by the square of height in meters or the  
30 weight in pounds divided by the square of height in inches multiplied by  
31 a conversion factor of 703. Weight status categories for children and  
32 adolescents shall be as defined by the commissioner of health. In all  
33 school districts, such physician, physician assistant or nurse practi-  
34 tioner shall determine whether a one-time test for sickle cell anemia is  
35 necessary or desirable and he or she shall conduct such tests and the  
36 certificate shall state the results. If it should be ascertained, upon  
37 such test or examination, that any of such students have defective sight  
38 or hearing[, ] or other physical disability, including sickle cell  
39 anemia, as above described, OR ARE OBESE, the principal or his or her  
40 designee shall notify the parents of, or other persons in parental  
41 relation to, the child as to the existence of such disability. If the  
42 parents or other persons in parental relation are unable or unwilling to  
43 provide the necessary relief and treatment for such students, such fact  
44 shall be reported by the principal or his or her designee to the direc-  
45 tor of school health services, whose duty it shall be to provide relief  
46 for such students. Each school and school district [chosen as part of an  
47 appropriate sampling methodology] shall participate in surveys directed  
48 by the commissioner of health pursuant to the public health law in  
49 relation to students' BMI and weight status categories as determined by  
50 the examination conducted pursuant to this section and which shall be  
51 subject to audit by the commissioner of health. Such surveys shall  
52 contain the information required pursuant to this subdivision in  
53 relation to students' BMI and weight status categories in aggregate.  
54 [Parents or other persons in parental relation to a student may refuse  
55 to have the student's BMI and weight status category included in such  
56 survey.] Each school and school district shall provide the commissioner

1 of health with any information, records and reports he or she may  
2 require for the purpose of such audit. The BMI and weight status survey  
3 and audit as described in this section shall be conducted consistent  
4 with confidentiality requirements imposed by federal law. [Data  
5 collection for such surveys shall commence on a voluntary basis at the  
6 beginning of the two thousand seven academic school year, and by all  
7 schools chosen as part of the sampling methodology at the beginning of  
8 the two thousand eight academic school year.] The department shall also  
9 utilize the collected data to develop a report of child obesity and  
10 obesity related diseases.

11 S 4. Section 912 of the education law, as amended by chapter 477 of  
12 the laws of 2004, is amended to read as follows:

13 S 912. Health and welfare services to all children. The voters and/or  
14 trustees or board of education of every school district shall, upon  
15 request of the authorities of a school other than public, provide resi-  
16 dent children who attend such school with any or all of the health and  
17 welfare services and facilities which are made available by such voters  
18 and/or trustees or board of education to or for children attending the  
19 public schools of the district. Such services may include, but are not  
20 limited to all services performed by a physician, physician assistant,  
21 dentist, dental hygienist, registered professional nurse, nurse practi-  
22 tioner, school psychologist, school social worker or school speech ther-  
23 apist, and may also include dental prophylaxis, vision and hearing  
24 screening examinations, CHILDHOOD OBESITY SCREENING, the taking of  
25 medical histories and the administration of health screening tests, the  
26 maintenance of cumulative health records and the administration of emer-  
27 gency care programs for ill or injured students. Any such services or  
28 facilities shall be so provided notwithstanding any provision of any  
29 charter or other provision of law inconsistent herewith. Where children  
30 residing in one school district attend a school other than public  
31 located in another school district, the school authorities of the  
32 district of residence shall contract with the school authorities of the  
33 district where such nonpublic school is located, for the provision of  
34 such health and welfare services and facilities to such children by the  
35 school district where such nonpublic school is located, for a consider-  
36 ation to be agreed upon between the school authorities of such  
37 districts, subject to the approval of the qualified voters of the  
38 district of residence when required under the provisions of this chap-  
39 ter. Every such contract shall be in writing and in the form prescribed  
40 by the commissioner, and before such contract is executed the same shall  
41 be submitted for approval to the superintendent of schools having juris-  
42 diction over such district of residence and such contract shall not  
43 become effective until approved by such superintendent.

44 S 5. Subdivisions 4 and 5 of section 918 of the education law, as  
45 added by chapter 493 of the laws of 2004, are amended to read as  
46 follows:

47 4. The committee is encouraged to study AND MAKE RECOMMENDATIONS ON  
48 all facets of the current nutritional policies of the district includ-  
49 ing, but not limited to, the goals of the district to promote health and  
50 proper nutrition, REDUCE THE INCIDENCE OF CHILDHOOD OBESITY, vending  
51 machine sales, menu criteria, educational curriculum teaching healthy  
52 nutrition, AND educational information provided to parents or guardians  
53 regarding healthy nutrition and the health risks associated with obesi-  
54 ty, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIRATORY DISEASES.  
55 PROVIDED, FURTHER, THE COMMITTEE MAY PROVIDE INFORMATION TO PERSONS IN  
56 PARENTAL RELATION ON opportunities offered to parents or guardians to

1 encourage healthier eating habits to students, and the education  
2 provided to teachers and other staff as to the importance of healthy  
3 nutrition AND ABOUT THE DANGERS OF CHILDHOOD OBESITY. In addition the  
4 committee shall consider recommendations and practices of other  
5 districts and nutrition studies.

6 5. The committee is encouraged to report periodically to the district  
7 regarding practices that will educate teachers, parents or guardians and  
8 children about healthy nutrition and raise awareness of the dangers of  
9 CHILDHOOD obesity, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIR-  
10 ATORY DISEASES. The committee is encouraged also to provide any parent  
11 teacher associations in the district with such findings and recommenda-  
12 tions.

13 S 6. This act shall take effect two years after it shall have become a  
14 law.

15 PART C

16 Section 1. Subdivision 1 of section 206 of the public health law is  
17 amended by adding two new paragraphs (s) and (t) to read as follows:

18 (S) (I) BY RULE OR REGULATION, MAY REQUIRE FOOD SERVICE ESTABLISHMENTS  
19 INCLUDING, BUT NOT LIMITED TO RESTAURANTS, DINING ROOMS, DELIS, BAKER-  
20 IES, ELEMENTARY AND SECONDARY SCHOOLS, HOSPITALS, MOBILE FOOD SERVICE  
21 VEHICLES AND CARTS, AND CHILD CARE FACILITIES, THAT PREPARE, SELL OR  
22 SERVE FOOD FOR IMMEDIATE CONSUMPTION BY THE GENERAL PUBLIC, TO RESTRICT  
23 THE USE OF ARTIFICIAL TRANS FAT IN THE PREPARATION OF SUCH FOOD. FOR THE  
24 PURPOSES OF THIS PARAGRAPH, THE TERM "ARTIFICIAL TRANS FAT" MEANS ANY  
25 FOOD THAT IS LABELED, AND WHICH LISTS AS AN INGREDIENT OR CONTAINS VEGE-  
26 TABLE SHORTENING, MARGARINE OR ANY KIND OF PARTIALLY HYDROGENATED VEGE-  
27 TABLE OIL; PROVIDED, HOWEVER, THAT ANY FOOD WITH A NUTRITIONAL FACT  
28 LABEL OR OTHER DOCUMENTATION FROM A MANUFACTURER LIST STATING A TRANS  
29 FAT CONTENT OF LESS THAN .5 GRAMS PER SERVING SHALL NOT BE DEEMED TO  
30 CONTAIN ARTIFICIAL TRANS FAT. SUCH RULES AND REGULATIONS SHALL NOT APPLY  
31 TO ANY FOOD SERVED DIRECTLY TO THE GENERAL PUBLIC IN THE MANUFACTURER'S  
32 ORIGINAL SEALED PACKAGE. FURTHERMORE, SUCH RULES AND REGULATIONS SHALL  
33 NOT APPLY TO ANY FOOD SERVICE ESTABLISHMENT OR MOBILE FOOD COMMISSARY  
34 THAT IS SUBJECT TO ANY LOCAL LAW, ORDINANCE, CODE OR RULE THAT REGULATES  
35 THE USE OR DISCLOSURE OF ARTIFICIAL TRANS FATS BY FOOD SERVICE ESTAB-  
36 LISHMENTS.

37 (II) THE COMMISSIONER MAY REQUIRE FOOD SERVICE ESTABLISHMENTS SERVING  
38 FOODS WITH ARTIFICIAL TRANS FAT TO POST WARNING SIGNS TO INFORM THE  
39 PUBLIC ABOUT THE HEALTH RISKS ASSOCIATED WITH THE OVER CONSUMPTION OF  
40 FOODS PREPARED WITH ARTIFICIAL TRANS FATS. SUCH WARNING SIGNS SHALL BE  
41 CONSPICUOUSLY POSTED IN AREAS WHERE FOOD MAY BE ORDERED FROM THE FOOD  
42 SERVICE ESTABLISHMENT AND SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM:  
43 "WARNING - THIS ESTABLISHMENT USES ARTIFICIAL TRANS FAT IN THE PREPARA-  
44 TION OF SOME OR ALL OF THE FOODS THAT ARE SOLD OR SERVED HERE. WHEN  
45 OVERCONSUMED, ARTIFICIAL TRANS FATS CAN LEAD TO INCREASES IN THE RISK OF  
46 HEART ATTACK, STROKE AND DEVELOPMENT OF TYPE 2 DIABETES."

47 (III) THE COMMISSIONER MAY ESTABLISH A VOLUNTARY ARTIFICIAL TRANS FAT  
48 REDUCTION PROGRAM. SUCH PROGRAM MAY CONSIST OF, BUT SHALL NOT BE LIMITED  
49 TO, THE FOLLOWING COMPONENTS: (A) A PUBLIC INFORMATION DISSEMINATION  
50 PROGRAM TO INFORM THE PUBLIC OF THE HEALTH RISKS ASSOCIATED WITH THE  
51 OVERCONSUMPTION OF ARTIFICIAL TRANS FATS, AND (B) SUGGESTED FOOD PREPA-  
52 RATION METHODS THAT CAN BE FOLLOWED BY FOOD SERVICE ESTABLISHMENTS AND  
53 THE GENERAL PUBLIC TO REDUCE OR ELIMINATE THE USE OF ARTIFICIAL TRANS  
54 FATS.

(T) (I) FOR PURPOSES OF THIS PARAGRAPH, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "FOOD SERVICE FACILITY" MEANS A FOOD SERVICE ESTABLISHMENT, AS DEFINED IN THE STATE SANITARY CODE, THAT OPERATES UNDER COMMON OWNERSHIP OR CONTROL WITH AT LEAST TWENTY-FIVE OTHER FOOD SERVICE ESTABLISHMENTS WITH THE SAME NAME IN THE STATE THAT OFFER FOR SALE SUBSTANTIALLY THE SAME MENU ITEMS, OR OPERATES AS A FRANCHISED OUTLET OF A PARENT COMPANY WITH AT LEAST TWENTY-FIVE OTHER FRANCHISED OUTLETS WITH THE SAME NAME IN THE STATE THAT OFFER FOR SALE SUBSTANTIALLY THE SAME MENU ITEMS.

(B) "NUTRITIONAL INFORMATION" INCLUDES ALL OF THE FOLLOWING, PER STANDARD MENU ITEM, AS THAT ITEM IS USUALLY PREPARED AND OFFERED FOR SALE:

(I) TOTAL NUMBER OF CALORIES.

(II) TOTAL NUMBER OF GRAMS OF CARBOHYDRATES.

(III) TOTAL NUMBER OF GRAMS OF SATURATED FAT.

(IV) TOTAL NUMBER OF MILLIGRAMS OF SODIUM.

(C) "POINT OF SALE" MEANS THE LOCATION WHERE A CUSTOMER PLACES AN ORDER.

(D) IN CALCULATING NUTRITIONAL INFORMATION, A FOOD SERVICE FACILITY MAY USE ANY REASONABLE MEANS RECOGNIZED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION TO DETERMINE NUTRITIONAL INFORMATION FOR A STANDARD MENU ITEM, AS USUALLY PREPARED AND OFFERED FOR SALE INCLUDING, BUT NOT LIMITED TO, NUTRIENT DATABASES AND LABORATORY ANALYSES.

(II)(A) BY RULE OR REGULATION, MAY REQUIRE EVERY FOOD SERVICE FACILITY TO DISCLOSE THE NUTRITIONAL INFORMATION REQUIRED BY CLAUSE (B) OF THIS SUBPARAGRAPH.

(B) A FOOD SERVICE FACILITY, BY RULE OR REGULATION, MAY BE REQUIRED TO DISCLOSE THE NUTRITIONAL INFORMATION IN A CLEAR AND CONSPICUOUS MANNER AT THE POINT OF SALE PRIOR TO OR DURING THE PLACEMENT OF AN ORDER.

S 2. The opening paragraph of subdivision 1, and subdivisions 3, 4 and 6 of section 207 of the public health law, as amended by section 16 of part A of chapter 109 of the laws of 2010, are amended to read as follows:

There is hereby created within the department the health care and wellness education and outreach program. The department may conduct education and outreach programs for consumers, patients, ELEMENTARY AND SECONDARY SCHOOL EDUCATORS, and health care providers relating to any health care matters the commissioner deems appropriate and:

3. The department may produce, make available to others for reproduction, or contract with others to develop such materials mentioned in this section as the commissioner deems appropriate. These materials shall be made available to the public AND TO ELEMENTARY AND SECONDARY SCHOOL EDUCATORS free of charge as appropriate or for a fee under certain circumstances. The commissioner may require where appropriate any health care provider to make these materials available to patients.

4. In exercising any of his or her powers under this section, the commissioner may consult with appropriate health care professionals, providers, consumers, EDUCATORS and patients or organizations representing them.

6. The commissioner may appoint as appropriate advisory councils relating to various matters that are or are proposed to be the subjects of programs under this section. All such councils shall include representation of health care professionals, providers, EDUCATORS, consumers, patients and other appropriate interests. The members of the councils shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in performance of their duties.

1 S 3. Subdivision 1 of section 207 of the public health law is amended  
2 by adding a new paragraph (i) to read as follows:

3 (I) ABOUT THE SHORT TERM AND LONG TERM ADVERSE HEALTH RISKS TO ADULTS  
4 AND CHILDREN WHO BECOME OVERWEIGHT, OBESE OR UNDERWEIGHT. THE INFORMA-  
5 TION SHALL INCLUDE, BUT NEED NOT BE LIMITED TO PROVIDING CITATIONS TO  
6 THE DEPARTMENT'S WEBSITE, AS WELL AS ANY OTHER WEBSITES PROVIDING INFOR-  
7 MATION ON THE SUBJECT.

8 S 4. This act shall take effect one year after it shall have become a  
9 law, provided that, effective immediately, any rules and regulations  
10 necessary to implement the provisions of this act on its effective date  
11 are authorized and directed to be completed on or before such date.

12 PART D

13 Section 1. Subdivision 5 of section 2556 of the education law, such  
14 section as renumbered by chapter 762 of the laws of 1950, is amended to  
15 read as follows:

16 5. It shall be unlawful for a schoolhouse to be constructed in the  
17 city of New York without an open-air playground attached to or used in  
18 connection with the same. EXISTING PLAYGROUNDS SHALL NOT BE SOLD,  
19 LEASED OR TRANSFERRED, OR PERMANENTLY AUTHORIZED FOR OTHER USES SUCH AS  
20 SCHOOL BUILDING CONSTRUCTION, RENOVATION, PLACEMENT OR STORAGE OF BUILD-  
21 ING MATERIALS FOR SUCH WORK THAT WOULD ELIMINATE THE USE OF SUCH PLAY-  
22 GROUND SPACE FOR OUTDOOR RECREATIONAL ACTIVITIES UNLESS A PLAN IS ESTAB-  
23 LISHED AND IMPLEMENTED TO PROVIDE SUITABLE AND ADEQUATE PHYSICAL  
24 ACTIVITIES OR SPACE TO ACCOMMODATE THE PHYSICAL AND RECREATIONAL NEEDS  
25 OF THE PUPILS OF SUCH BUILDING. THE PROVISIONS OF THIS SUBDIVISION  
26 SHALL NOT APPLY TO SCHOOL CONSTRUCTION OR RENOVATION ACTIVITIES THAT  
27 OCCUR ON OR REQUIRE THE USE OF SUCH PLAYGROUNDS FOR A DURATION OF NO  
28 MORE THAN ONE YEAR.

29 S 2. This act shall take effect July 1, 2013; provided however, that  
30 the commissioner of education is authorized and directed to promulgate  
31 any rules or regulations necessary for the timely implementation of this  
32 act on or before such date.

33 PART E

34 Section 1. Subdivisions 1 and 5 of section 803 of the education law,  
35 as amended by chapter 118 of the laws of 1957, are amended to read as  
36 follows:

37 1. All pupils above the age of eight years in all elementary and  
38 secondary schools, shall receive as part of the prescribed courses of  
39 instruction therein such physical education under the direction of the  
40 commissioner of education as the regents may determine. Such courses  
41 shall be designed to aid in the well-rounded education of pupils and in  
42 the development of character, citizenship, OVERALL physical fitness,  
43 GOOD health [and], the worthy use of leisure AND THE REDUCTION IN THE  
44 INCIDENCE OF CHILDHOOD OBESITY. Pupils above such age attending the  
45 public schools shall be required to attend upon such prescribed courses  
46 of instruction.

47 5. (A) It shall be the duty of the regents to adopt rules determining  
48 the subjects to be included in courses of physical education provided  
49 for in this section, the period of instruction in each of such courses,  
50 the qualifications of teachers, and the attendance upon such courses of  
51 instruction.

1 (B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE REGENTS  
2 MAY PROVIDE IN ITS RULES THAT THE PHYSICAL EDUCATION INSTRUCTION  
3 REQUIREMENT FOR ALL STUDENTS ENROLLED IN ELEMENTARY AND SECONDARY SCHOOL  
4 GRADES SHALL, WHERE FEASIBLE, INCLUDE DAILY PHYSICAL EXERCISE OR ACTIV-  
5 ITY, INCLUDING STUDENTS WITH DISABLING CONDITIONS AND THOSE IN ALTERNA-  
6 TIVE EDUCATION PROGRAMS. THE REGENTS MAY INCLUDE IN ITS RULES THAT  
7 STUDENTS ENROLLED IN SUCH ELEMENTARY AND SECONDARY SCHOOLS SHALL PARTIC-  
8 IPATE IN PHYSICAL EDUCATION, EXERCISE OR ACTIVITY FOR A MINIMUM OF ONE  
9 HUNDRED TWENTY MINUTES DURING EACH SCHOOL WEEK. THE REGENTS MAY PROVIDE  
10 FOR A TWO-YEAR PHASE-IN SCHEDULE FOR DAILY PHYSICAL EDUCATION IN ELEMEN-  
11 TARY SCHOOLS IN ITS RULES.

12 S 2. The section heading and subdivision 1 of section 804 of the  
13 education law, the section heading as amended by chapter 401 of the laws  
14 of 1998 and subdivision 1 as added by chapter 982 of the laws of 1977,  
15 are amended and a new subdivision 3-b is added to read as follows:

16 Health education regarding alcohol, drugs, tobacco abuse, THE  
17 REDUCTION IN THE INCIDENCE OF OBESITY, and the prevention and detection  
18 of certain cancers. 1. All schools shall include, as an integral part of  
19 health, SCIENCE AND PHYSICAL education, instruction so as to discourage  
20 the misuse and abuse of alcohol, tobacco[,] and other drugs, TO REDUCE  
21 THE INCIDENCE OF OBESITY, and promote attitudes and behavior that  
22 enhance health, well being, and human dignity.

23 3-B. INSTRUCTION REGARDING THE LONG TERM HEALTH RISKS ASSOCIATED WITH  
24 OBESITY AND METHODS OF PREVENTING AND REDUCING THE INCIDENCE OF OBESITY,  
25 INCLUDING GOOD NUTRITION AND REGULAR EXERCISE. SUCH INSTRUCTION MAY BE  
26 AN INTEGRAL PART OF REQUIRED HEALTH, SCIENCE AND PHYSICAL EDUCATION  
27 COURSES.

28 S 3. Subdivision 1 of section 804-a of the education law, as added by  
29 chapter 730 of the laws of 1986, is amended to read as follows:

30 1. Within the amounts appropriated, the commissioner is hereby  
31 authorized to establish a demonstration program and to distribute state  
32 funds to local school districts, boards of cooperative educational  
33 services and in certain instances community school districts, for the  
34 development, implementation, evaluation, validation, demonstration and  
35 replication of exemplary comprehensive health education programs to  
36 assist the public schools in developing curricula, training staff, and  
37 addressing local health education needs of students, parents, and staff.  
38 SUCH PROGRAMS SHALL SERVE THE PURPOSE OF DEVELOPING AND ENHANCING  
39 PUPILS' HEALTH KNOWLEDGE, SKILLS, ATTITUDES AND BEHAVIORS, WHICH IS  
40 FUNDAMENTAL TO IMPROVING THEIR HEALTH STATUS AND ACADEMIC PERFORMANCE,  
41 AS WELL AS REDUCING THE INCIDENCE OF ADOLESCENT PREGNANCY, ALCOHOL  
42 ABUSE, TOBACCO ABUSE, TRUANCY, SUICIDE, SUBSTANCE ABUSE, OBESITY, ASTH-  
43 MA, OTHER CHRONIC RESPIRATORY DISEASES, AND OTHER PROBLEMS OF CHILDHOOD  
44 AND ADOLESCENCE.

45 S 4. Section 813 of the education law, as added by chapter 296 of the  
46 laws of 1994, is amended to read as follows:

47 S 813. School lunch period; scheduling. Each school shall schedule a  
48 reasonable time DURING EACH SCHOOL DAY for each full day pupil attending  
49 pre-kindergarten through grade twelve WITH AMPLE TIME to consume lunch  
50 AND TO ENGAGE IN PHYSICAL EXERCISE OR RECREATION.

51 S 5. This act shall take effect immediately.

52

## PART F

53 Section 1. The public health law is amended by adding a new article  
54 13-I to read as follows:

## ARTICLE 13-I

## IN-UTERO EXPOSURE TO TOBACCO SMOKE PREVENTION

## SECTION 1399-XX. IN-UTERO EXPOSURE PREVENTION.

## 1399-YY. PROGRAMS.

S 1399-XX. IN-UTERO EXPOSURE PREVENTION. 1. EVERY HEALTHCARE PROVIDER, HEALTHCARE INSURER AND PREGNANCY PROGRAM SHALL DISTRIBUTE INFORMATION ON THE ADVERSE EFFECTS OF SMOKING DURING PREGNANCY FOR BOTH FIRSTHAND AND SECONDHAND SMOKE. SUCH ADVERSE EFFECTS TO THE INFANT INCLUDE LOWER BIRTH RATES, HIGHER INCIDENCE OF ASTHMA AND OBESITY, AND COGNITIVE AND DEVELOPMENTAL DAMAGE.

2. EVERY HEALTHCARE PROVIDER SHALL MONITOR EXPECTANT MOTHERS' SMOKING STATUSES AND OFFER CONTINUOUS TAILORED DISCUSSION OF QUITTING SMOKING WITH EXPECTANT MOTHERS DURING THEIR PRENATAL CARE.

S 1399-YY. PROGRAMS. THE FOLLOWING PROGRAMS SHALL BE ADDED TO EXISTING TOBACCO CONTROL PROGRAMS FOR PREGNANT WOMEN OR TO OTHER PREGNANCY RELATED PROGRAMS:

1. CARBON MONOXIDE MONITORING;

2. DEPRESSION, SOCIAL SUPPORT AND DOMESTIC VIOLENCE SCREENING AND REFERRALS;

3. REFERRALS FOR SMOKING CESSATION FOR HOUSEHOLD MEMBERS;

4. ONGOING SUPPORT BY COUNSELING AND EDUCATIONAL MATERIALS; AND

5. FINANCIAL INCENTIVES SUCH AS SHIPPING VOUCHER OR DIAPER COUPONS FOR QUITTING FOR MORE THAN FOUR WEEKS.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Provided, that effective immediately the commissioner of health is authorized and directed to promulgate any and all rules and regulations, and take any other measures necessary to implement the provisions of this act on its effective date.

## PART G

Section 1. Subdivisions 2 and 4 of section 2111 of the public health law, as added by section 21 of part C of chapter 58 of the laws of 2004, are amended to read as follows:

2. The department shall establish the criteria by which individuals will be identified as eligible for enrollment in the demonstration programs. Persons eligible for enrollment in the disease management demonstration program shall be limited to individuals who: receive medical assistance pursuant to title eleven of article five of the social services law and may be eligible for benefits pursuant to title 18 of the social security act (Medicare); are not enrolled in a Medicaid managed care plan, including individuals who are not required or not eligible to participate in Medicaid managed care programs pursuant to section three hundred sixty-four-j of the social services law; are diagnosed with chronic health problems as may be specified by the entity undertaking the demonstration program, including, but not limited to one or more of the following: congestive heart failure, chronic obstructive pulmonary disease, asthma, CHRONIC BRONCHITIS, OTHER CHRONIC RESPIRATORY DISEASES, diabetes, ADULT AND CHILDHOOD OBESITY, or other chronic health conditions as may be specified by the department; or have experienced or are likely to experience one or more hospitalizations or are otherwise expected to incur excessive costs and high utilization of health care services.

4. The demonstration program shall offer evidence-based services and interventions designed to ensure that the enrollees receive high quality, preventative and cost-effective care, aimed at reducing the necessi-

ty for hospitalization or emergency room care or at reducing lengths of stay when hospitalization is necessary. The demonstration program may include screening of eligible enrollees, developing an individualized care management plan for each enrollee and implementing that plan. Disease management demonstration programs that utilize information technology systems that allow for continuous application of evidence-based guidelines to medical assistance claims data and other available data to identify specific instances in which clinical interventions are justified and communicate indicated interventions to physicians, health care providers and/or patients, and monitor physician and health care provider response to such interventions, shall have the enrollees, or groups of enrollees, approved by the department for participation. The services provided by the demonstration program as part of the care management plan may include, but are not limited to, case management, social work, individualized health counselors, multi-behavioral goals plans, claims data management, health and self-care education, drug therapy management and oversight, personal emergency response systems and other monitoring technologies, SYSTEMATIC CHRONIC HEALTH CONDITIONS IDENTIFIED FOR MONITORING, telehealth services and similar services designed to improve the quality and cost-effectiveness of health care services.

S 2. This act shall take effect immediately.

## PART H

Section 1. Section 2599-b of the public health law, as amended by section 88 of part B of chapter 58 of the laws of 2005, is amended to read as follows:

S 2599-b. Program development. 1. The program shall be designed to prevent and reduce the incidence and prevalence of obesity in children and adolescents, especially among populations with high rates of obesity and obesity-related health complications including, but not limited to, diabetes, heart disease, cancer, osteoarthritis, asthma, CHRONIC BRONCHITIS, OTHER CHRONIC RESPIRATORY DISEASES and other conditions. The program shall use recommendations and goals of the United States departments of agriculture and health and human services, the surgeon general and centers for disease control AND PREVENTION in developing and implementing guidelines for nutrition education and physical activity projects as part of obesity prevention efforts. The content and implementation of the program shall stress the benefits of choosing a balanced, healthful diet from the many options available to consumers, without specifically targeting the elimination of any particular food group, food product or food-related industry.

2. The childhood obesity prevention program shall include, but not be limited to:

(a) developing media health promotion campaigns, IN COORDINATION WITH THE PUBLIC INFORMATION PROVIDED PURSUANT TO SECTION TWENTY-FIVE HUNDRED-K OF THIS ARTICLE, targeted to children and adolescents and their parents and caregivers that emphasize increasing consumption of low-calorie, high-nutrient foods, decreasing consumption of high-calorie, low-nutrient foods and increasing physical activity designed to prevent or reduce obesity;

(b) establishing school-based childhood obesity prevention nutrition education and physical activity programs including programs described in section twenty-five hundred ninety-nine-c of this article, as well as other programs with linkages to physical and health education courses, and which utilize the school health index of the National Center for



1 Chronic Disease Prevention and Health Promotion or other recognized  
2 school health assessment PURSUANT TO ARTICLE NINETEEN OF THE EDUCATION  
3 LAW;

4 (c) establishing community-based childhood obesity prevention nutri-  
5 tion education and physical activity programs including programs which  
6 involve parents and caregivers, and which encourage communities, fami-  
7 lies, child care and other settings to provide safe and adequate space  
8 and time for physical activity and encourage a healthy diet, AND CAN BE  
9 IN COORDINATION WITH COUNTY COOPERATIVE EXTENSION PROGRAMS ESTABLISHED  
10 PURSUANT TO SECTION TWO HUNDRED TWENTY-FOUR-B OF THE COUNTY LAW;

11 (d) coordinating with the state education department, department of  
12 agriculture and markets, office of parks, recreation and historic pres-  
13 ervation, office of temporary and disability assistance, office of chil-  
14 dren and family services and other federal, state and local agencies to  
15 incorporate strategies to prevent and reduce childhood obesity into  
16 government food assistance, health, education and recreation programs;

17 (e) sponsoring periodic conferences or meetings to bring together  
18 experts in nutrition, exercise, public health, mental health, education,  
19 parenting, media, food marketing, food security, agriculture, community  
20 planning and other disciplines to examine societal-based solutions to  
21 the problem of childhood obesity and issue guidelines and recommenda-  
22 tions for New York state policy and programs;

23 (f) developing training programs for medical and other health profes-  
24 sionals to teach practical skills in nutrition and exercise education to  
25 children and their parents and caregivers; [and]

26 (g) developing screening programs, IN ACCORDANCE WITH SECTION TWENTY-  
27 FIVE HUNDRED-K OF THIS ARTICLE, in coordination with health care provid-  
28 ers and institutions including but not limited to day care centers and  
29 schools for overweight and obesity for children aged two through eigh-  
30 teen years, using body mass index (BMI) appropriate for age and gender,  
31 and notification, in a manner protecting the confidentiality of such  
32 children and their families, of parents of BMI status, and explanation  
33 of the consequences of such status, including recommended actions  
34 parents may need to take and information about resources and referrals  
35 available to families to enhance nutrition and physical activity to  
36 reduce and prevent obesity[.]; AND

37 (H) COORDINATING WITH THE EDUCATION DEPARTMENT, OFFICE OF TEMPORARY  
38 AND DISABILITY ASSISTANCE, OFFICE OF CHILDREN AND FAMILY SERVICES AND  
39 OTHER FEDERAL, STATE AND LOCAL AGENCIES TO INCORPORATE STRATEGIES TO  
40 CURTAIL THE INCIDENCE OF ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC  
41 RESPIRATORY DISEASES TO ENABLE ADULTS AND CHILDREN TO SAFELY INCREASE  
42 PHYSICAL ACTIVITY TO HELP CURB THE INCIDENCE OF OBESITY.

43 3. The department, IN COOPERATION WITH THE EDUCATION DEPARTMENT, shall  
44 periodically collect and analyze information from schools, health and  
45 nutrition programs and other sources to determine the prevalence of  
46 childhood obesity in New York state, and to evaluate, to the extent  
47 possible, the effectiveness of the childhood obesity prevention program.

48 S 2. The opening paragraph of section 2599-c of the public health law,  
49 as amended by section 88 of part B of chapter 58 of the laws of 2005, is  
50 amended to read as follows:

51 The commissioner, IN COOPERATION WITH THE COMMISSIONERS OF EDUCATION  
52 AND AGRICULTURE AND MARKETS, AND COUNTY BOARDS OF COOPERATIVE EXTENSION,  
53 shall encourage the establishment of school-based childhood obesity  
54 prevention and physical activity programs that promote:

55 S 3. This act shall take effect immediately.

1

## PART I

2 Section 1. Section 263 of the public health law, as added by chapter  
3 538 of the laws of 2002, is amended to read as follows:

4 S 263. Department authorized to study obesity - report. 1. The depart-  
5 ment is authorized to sample and collect data on individual cases where  
6 obesity is being actively treated AND DATA COLLECTED PURSUANT TO SECTION  
7 TWENTY-FIVE HUNDRED-K OF THIS CHAPTER, and to analyze such data in order  
8 to evaluate the impact of treating obesity. Such data collection and  
9 analysis shall include the following:

10 a. The effectiveness of existing methods for treating or preventing  
11 obesity;

12 b. The effectiveness of alternate methods for treating or preventing  
13 obesity;

14 c. The fiscal impact of treating or preventing obesity;

15 d. The compliance and cooperation of patients with various methods of  
16 treating or preventing obesity; or

17 e. The reduction in serious medical problems associated with diabetes  
18 that results from treating or preventing obesity.

19 2. The department is authorized to fund the research authorized in  
20 subdivision one of this section AND SECTION TWENTY-FIVE HUNDRED-K OF  
21 THIS CHAPTER from gifts, grants, and donations from individuals, private  
22 organizations, foundations, or any governmental unit; except that no  
23 gift, grant, or donation may be accepted by the department if it is  
24 subject to conditions that are inconsistent with this title or any other  
25 laws of this state. The department shall have the power to direct the  
26 disposition of any such gift, grant, or donation for the purposes of  
27 this title.

28 3. After completion of the research authorized in subdivision one of  
29 this section, the department shall submit a report and supporting mate-  
30 rials to the governor and the legislature by June first of the following  
31 year AND UPDATE SUCH REPORT EVERY THREE YEARS.

32 S 2. This act shall take effect immediately.

33

## PART J

34 Section 1. Paragraphs (a), (b) and (c) of subdivision 1 of section  
35 2411 of the public health law, as amended by chapter 219 of the laws of  
36 1997, are amended to read as follows:

37 (a) Survey state agencies, boards, programs and other state govern-  
38 mental entities to assess what, if any, relevant data has been or is  
39 being collected which may be of use to researchers engaged in breast,  
40 prostate or testicular cancer research, OR ADULT AND CHILDHOOD OBESITY,  
41 ASTHMA, CHRONIC BRONCHITIS OR OTHER CHRONIC RESPIRATORY DISEASE  
42 RESEARCH;

43 (b) Consistent with the survey conducted pursuant to paragraph (a) of  
44 this subdivision, compile a list of data collected by state agencies  
45 which may be of assistance to researchers engaged in breast, prostate or  
46 testicular cancer research as established in section twenty-four hundred  
47 twelve of this title, AND ADULT AND CHILDHOOD OBESITY, ASTHMA, CHRONIC  
48 BRONCHITIS OR OTHER CHRONIC RESPIRATORY DISEASE RESEARCH;

49 (c) Consult with the Centers for Disease Control and Prevention, the  
50 National Institutes of Health, the Federal Agency For Health Care Policy  
51 and Research, the National Academy of Sciences and other organizations  
52 or entities which may be involved in cancer research to solicit both  
53 information regarding breast, prostate and testicular cancer research

1 projects, AND ADULT AND CHILDHOOD OBESITY, ASTHMA, CHRONIC BRONCHITIS OR  
2 OTHER CHRONIC RESPIRATORY DISEASE RESEARCH PROJECTS that are currently  
3 being conducted and recommendations for future research projects;

4 S 2. Subdivision 1 of section 2500 of the public health law, as  
5 amended by chapter 822 of the laws of 1987, is amended to read as  
6 follows:

7 1. The commissioner shall act in an advisory and supervisory capacity,  
8 in matters pertaining to the safeguarding of motherhood, the prevention  
9 of maternal, perinatal, infant and child mortality, the prevention of  
10 diseases, low birth weight, CHILDHOOD OBESITY, and defects of childhood  
11 and the promotion of maternal, prenatal and child health, including care  
12 in hospitals, and shall administer such services bearing on the health  
13 of mothers and children for which funds are or shall hereafter be made  
14 available.

15 S 3. The public health law is amended by adding a new section 2500-k  
16 to read as follows:

17 S 2500-K. CHILDHOOD OBESITY PREVENTION AND SCREENING. 1. LEGISLATIVE  
18 DECLARATION. THE LEGISLATURE HEREBY FINDS, DETERMINES AND DECLARES THAT  
19 OBESITY, PARTICULARLY CHILDHOOD OBESITY, IS A SERIOUS MEDICAL PROBLEM  
20 AND THAT THE HIGH INCIDENCE OF SUCH CONDITION NEEDS TO BE CURTAILED TO  
21 IMPROVE THE OVERALL HEALTH OF THE GENERAL PUBLIC AND TO HELP REDUCE THE  
22 COST OF PROVIDING HEALTH CARE IN THIS STATE. PROVIDED FURTHER, THAT THE  
23 LEGISLATURE HEREBY REAFFIRMS THE LEGISLATIVE INTENT CONTAINED IN SECTION  
24 TWO HUNDRED SIXTY-ONE OF THIS CHAPTER CONCERNING OBESITY.

25 2. THE COMMISSIONER MAY ESTABLISH, FOR USE BY PEDIATRIC PRIMARY CARE  
26 PROVIDERS AND HOSPITALS, BEST PRACTICE PROTOCOLS FOR THE EARLY SCREEN-  
27 ING, IDENTIFICATION AND TREATMENT OF CHILDREN WHO HAVE LOW BIRTH WEIGHTS  
28 OR MAY BECOME SUSCEPTIBLE TO CONTRACTING ASTHMA OR MANIFEST TO HAVE  
29 CHILDHOOD OBESITY CONDITIONS. SUCH PROTOCOLS SHALL INCORPORATE STANDARDS  
30 AND GUIDELINES ESTABLISHED BY THE AMERICAN ACADEMY OF PEDIATRICIANS, THE  
31 FEDERAL DEPARTMENT OF AGRICULTURE, THE FEDERAL DEPARTMENT OF HEALTH AND  
32 HUMAN SERVICES, THE SURGEON GENERAL, AND THE CENTERS FOR DISEASE CONTROL  
33 AND PREVENTION.

34 3. THE DEPARTMENT, IN ORDER TO SUPPORT QUALITY CARE IN ALL HOSPITALS  
35 WITH OBSTETRIC SERVICES AND FOR ALL PEDIATRIC PRIMARY CARE PROVIDERS, IS  
36 AUTHORIZED TO PROVIDE NON-PATIENT SPECIFIC INFORMATION FOR ALL BIRTHS AT  
37 EACH AFFILIATE HOSPITAL IN EACH REGIONAL PERINATAL CENTER'S NETWORK TO  
38 THE REGIONAL PERINATAL CENTER AND THE AFFILIATE, EXCEPT THAT SUCH INFOR-  
39 MATION SHALL INCLUDE ZIP CODE AND A UNIQUE IDENTIFIER, SUCH AS MEDICAL  
40 RECORD NUMBER.

41 4. THE INFORMATION WHEN RECEIVED BY THE DEPARTMENT SHALL BE USED SOLE-  
42 LY FOR THE PURPOSE OF IMPROVING QUALITY OF CARE AND SHALL NOT BE SUBJECT  
43 TO RELEASE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW, AND WHERE  
44 APPLICABLE, SHALL BE SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF  
45 SECTION TWENTY-EIGHT HUNDRED FIVE-M OF THIS CHAPTER, EXCEPT THAT THE  
46 RELEASE OF BIRTH CERTIFICATE INFORMATION SHALL BE SUBJECT TO SECTION  
47 FORTY-ONE HUNDRED SEVENTY-FOUR OF THIS CHAPTER.

48 5. THE COMMISSIONER MAY RELEASE INFORMATION COLLECTED THROUGH THE  
49 STATEWIDE PERINATAL DATA SYSTEM, PURSUANT TO SECTION TWENTY-FIVE  
50 HUNDRED-H OF THIS TITLE AND CORRESPONDING INFORMATION RELATED TO ASTHMA,  
51 CHILDHOOD OBESITY OR UNDERWEIGHT BABIES TO HIS OR HER DESIGNEES, INCLUD-  
52 ING PERSONS OR ENTITIES UNDER CONTRACT WITH THE DEPARTMENT TO REVIEW  
53 QUALITY OF CARE ISSUES, AS RELATED TO THE PROVISIONS OF THIS SECTION,  
54 AND TO CONDUCT QUALITY IMPROVEMENT INITIATIVES AS NEEDED TO MONITOR,  
55 EVALUATE AND IMPROVE PATIENT CARE AND OUTCOMES. SUCH DESIGNEE OR PERSON  
56 OR ENTITY UNDER CONTRACT WITH THE DEPARTMENT TO REVIEW QUALITY OF CARE

ISSUES SHALL MAINTAIN THE CONFIDENTIALITY OF ALL SUCH INFORMATION AND SHALL USE IT ONLY TO IMPROVE QUALITY OF CARE, AS APPROVED BY THE DEPARTMENT, AND TO IMPLEMENT THE PROVISIONS OF TITLE FIVE OF ARTICLE TWO OF THIS CHAPTER, AS ADDED BY CHAPTER FIVE HUNDRED THIRTY-EIGHT OF THE LAWS OF TWO THOUSAND TWO.

6. THE DEPARTMENT MAY PRODUCE AND DISTRIBUTE EDUCATIONAL MATERIALS ON CHILDHOOD OBESITY AND ASTHMA RISKS AND PRECAUTIONS. SUCH MATERIALS MAY BE MADE AVAILABLE TO CHILD CARE CENTERS, PEDIATRICIANS AND NURSERY, ELEMENTARY AND SECONDARY SCHOOLS FOR DISTRIBUTION TO PERSONS IN PARENTAL RELATION TO CHILDREN, AND TO HOSPITALS, BIRTHING CENTERS AND OTHER APPROPRIATE HEALTH CARE PROVIDERS FOR DISTRIBUTION TO MATERNITY PATIENTS. IN ADDITION, SUCH MATERIALS MAY BE PROVIDED TO HEALTH CARE PROFESSIONALS ENGAGED IN THE CARE AND TREATMENT OF CHILDREN FOR DISTRIBUTION TO SUCH CHILDREN AND PERSONS IN PARENTAL RELATION. THE DEPARTMENT MAY ALSO PROVIDE INFORMATION ON CHILDHOOD OBESITY AND ASTHMA RISKS AND PRECAUTIONS ON THE DEPARTMENT'S INTERNET WEBSITE. NO PROVISION OF THIS SUBDIVISION SHALL BE DEEMED TO PROHIBIT THE UTILIZATION AND DISTRIBUTION OF EDUCATIONAL MATERIALS RELATING THERETO PRODUCED BY ANY PUBLIC, PRIVATE OR GOVERNMENTAL ENTITY, IN LIEU OF THE DEPARTMENT'S PRODUCTION OF SUCH MATERIALS.

7. THE DEPARTMENT SHALL PERIODICALLY REVIEW AVAILABLE DATA ON OBESITY AND ASTHMA IN CHILDREN AND UPDATE THE INFORMATION ON CHILDHOOD OBESITY AND ASTHMA RISKS AND PRECAUTIONARY MEASURES PROVIDED IN ITS EDUCATIONAL MATERIALS AND ON ITS INTERNET WEBSITE, AS APPROPRIATE.

S 4. This act shall take effect immediately.

## PART K

Section 1. Section 2505-a of the public health law, as added by chapter 292 of the laws of 2009, is amended to read as follows:

S 2505-a. Rights of breastfeeding mothers. 1. The principles enunciated in subdivision three of this section are declared to be the public policy of the state and a copy of such statement of rights shall be posted conspicuously in a public place in each maternal health care facility AND CHILD DAY CARE FACILITY. For purposes of this section, "maternal health care provider" means a physician, midwife, or other authorized practitioner attending a pregnant woman; and "maternal health care facility" includes hospitals and freestanding birthing centers providing perinatal services in accordance with article twenty-eight of this chapter and applicable regulations.

2. The commissioner shall make available to every maternal health care provider [and], maternal health care facility AND CHILD DAY CARE FACILITY, on the health department's website for the purpose of health care facilities to include such rights in the maternity information leaflet as described in section twenty-eight hundred three-j of this chapter, a copy of the statement of rights provided in subdivision three of this section in the top six languages other than English spoken in the state according to the latest available data from the U.S. Bureau of Census, and shall adopt any rules and regulations necessary to ensure that such patients are treated in accordance with the provisions of such statement.

3. The statement of rights shall consist of the following:

"Breastfeeding Mothers' Bill of Rights"

Choosing the way you will feed your new baby is one of the important decisions you will make in preparing for your infant's arrival. Doctors agree that for most women breastfeeding is the safest and most healthy

1 choice. It is your right to be informed about the benefits of breast-  
2 feeding and have your health care provider [and], maternal health care  
3 facility AND CHILD DAY CARE FACILITY encourage and support breastfeed-  
4 ing. You have the right to make your own choice about breastfeeding.  
5 Whether you choose to breastfeed or not you have the following basic  
6 rights regardless of your race, creed, national origin, sexual orien-  
7 tation, gender identity or expression, or source of payment for your  
8 health care. Maternal health care facilities have a responsibility to  
9 ensure that you understand these rights. They must provide this informa-  
10 tion clearly for you and must provide an interpreter if necessary. These  
11 rights may only be limited in cases where your health or the health of  
12 your baby requires it. If any of the following things are not medically  
13 right for you or your baby, you should be fully informed of the facts  
14 and be consulted.

15 (1) Before You Deliver, if you attend prenatal childbirth education  
16 classes provided by the maternal health care facility and all hospital  
17 clinics and diagnostic and treatment centers providing prenatal services  
18 in accordance with article 28 of the public health law you must receive  
19 the breastfeeding mothers' bill of rights. Each maternal health care  
20 facility shall provide the maternity information leaflet, including the  
21 Breastfeeding Mothers' Bill of Rights, in accordance with section twen-  
22 ty-eight hundred three-i of this chapter to each patient or to the  
23 appointed personal representative at the time of prebooking or time of  
24 admission to a maternal health care facility. Each maternal health care  
25 provider shall give a copy of the Breastfeeding Mothers' Bill of Rights  
26 to each patient at or prior to the medically appropriate time.

27 You have the right to complete information about the benefits of  
28 breastfeeding for yourself and your baby. This will help you make an  
29 informed choice on how to feed your baby.

30 You have the right to receive information that is free of commercial  
31 interests and includes:

32 \* How breastfeeding benefits you and your baby nutritionally,  
33 medically and emotionally;

34 \* How to prepare yourself for breastfeeding;

35 \* How to understand some of the problems you may face and how to solve  
36 them.

37 (2) In The Maternal Health Care Facility:

38 \* You have the right to have your baby stay with you right after birth  
39 whether you deliver vaginally or by cesarean section. You have the right  
40 to begin breastfeeding within one hour after birth.

41 \* You have the right to have someone trained to help you in breast-  
42 feeding give you information and help you when you need it.

43 \* You have the right to have your baby not receive any bottle feeding  
44 or pacifiers.

45 \* You have the right to know about and refuse any drugs that may dry  
46 up your milk.

47 \* You have the right to have your baby in your room with you 24 hours  
48 a day.

49 \* You have the right to breastfeed your baby at any time day or night.

50 \* You have the right to know if your doctor or your baby's pediatri-  
51 cian is advising against breastfeeding before any feeding decisions are  
52 made.

53 \* You have the right to have a sign on your baby's crib clearly stat-  
54 ing that your baby is breastfeeding and that no bottle feeding of any  
55 type is to be offered.

1 \* You have the right to receive full information about how you are  
2 doing with breastfeeding and get help on how to improve.

3 \* You have the right to breastfeed your baby in the neonatal intensive  
4 care unit. If nursing is not possible, every attempt will be made to  
5 have your baby receive your pumped or expressed milk.

6 \* If you, or your baby, are re-hospitalized in a maternal care facili-  
7 ty after the initial delivery stay, the hospital will make every effort  
8 to continue to support breastfeeding, to provide hospital grade electric  
9 pumps and rooming in facilities.

10 \* You have the right to have help from someone specially trained in  
11 breastfeeding support and expressing breast milk if your baby has  
12 special needs.

13 \* You have the right to have a family member or friend receive breast-  
14 feeding information from a staff member if you request it.

15 (3) When You Leave The Maternal Health Care Facility:

16 \* You have the right to printed breastfeeding information free of  
17 commercial material.

18 \* You have the right, unless specifically requested by you, and avail-  
19 able at the facility, to be discharged from the facility without  
20 discharge packs containing infant formula, or formula coupons unless  
21 ordered by your baby's health care provider.

22 \* You have the right to get information about breastfeeding resources  
23 in your community including information on availability of breastfeeding  
24 consultants, support groups and breast pumps.

25 \* You have the right to have the facility give you information to help  
26 choose a medical provider for your baby and understand the importance of  
27 a follow-up appointment.

28 \* You have the right to receive information about safely collecting  
29 and storing your breast milk.

30 \* You have the right to breastfeed your baby in any location, public  
31 or private, where you are otherwise authorized to be. Complaints can be  
32 directed to the New York State Division of Human Rights.

33 \* YOU HAVE A RIGHT TO BREASTFEED YOUR BABY AT YOUR PLACE OF EMPLOYMENT  
34 OR CHILD DAY CARE CENTER IN AN ENVIRONMENT THAT DOES NOT DISCOURAGE  
35 BREASTFEEDING OR THE PROVISION OF BREAST MILK.

36 All the above are your rights. If the maternal health care facility  
37 does not honor these rights you can seek help by contacting the New York  
38 state department of health or by contacting the hospital complaint  
39 hotline or via email.

40 4. The commissioner shall make regulations reasonably necessary to  
41 implement this section.

42 S 2. Section 2505 of the public health law, as added by chapter 479 of  
43 the laws of 1980, is amended to read as follows:

44 S 2505. Human breast milk; collection, storage and distribution;  
45 general powers of the commissioner. The commissioner is hereby  
46 empowered to:

47 (a) adopt regulations and guidelines including, but not limited to  
48 donor standards, methods of collection, and standards for storage, and  
49 distribution of human breast milk;

50 (b) conduct educational activities to inform the public and health  
51 care providers of the availability of human breast milk for infants  
52 determined to require such milk and to inform potential donors of the  
53 opportunities for proper donation;

54 (c) ADOPT REGULATIONS AND GUIDELINES TO ENCOURAGE AND FACILITATE  
55 EMPLOYERS AND CHILD DAY CARE CENTERS TO ESTABLISH ENVIRONMENTS THAT DO  
56 NOT DISCOURAGE BREASTFEEDING AND THE PROVISION OF BREAST MILK. SUCH

ENVIRONMENTS SHALL INCLUDE SANITARY LOCATIONS FOR BREASTFEEDING, REFRIGERATORS, AND TRAINED STAFF TO ASSIST IN BREASTFEEDING AND FEEDING BABIES WITH EXPRESSED BREAST MILK;

(D) COLLECT AND COMPILE DATA ON THE PREVALENCE OF BREASTFEEDING IN THE STATE AND THE HEALTH CONDITION OF CHILDREN FED BREAST MILK IN COMPARISON TO THOSE WHO WERE NOT; AND

(E) establish rules and regulations to effectuate the provisions of this section.

S 3. Subdivision 2 of section 2515 of the public health law, as added by section 20 of part A of chapter 58 of the laws of 2008, is amended to read as follows:

2. "Services for eligible adolescents" means those services, including but not limited to: vocational and educational counseling, job skills training, family life and parenting education, life skills development, coordination, case management, primary preventive health care, PREGNANCY AND CHILD NUTRITION COUNSELING FOR EXPECTANT MOTHERS TO CURB THE INCIDENCE OF CHILDHOOD OBESITY, family planning, social and recreational programs, child care, outreach and advocacy, follow-up on service utilization, crisis intervention, and efforts to stimulate community interest and involvement.

S 4. Paragraph (c) of subdivision 2 of section 2515-a of the public health law, as added by section 20 of part A of chapter 58 of the laws of 2008, is amended to read as follows:

(c) serve a geographic area where the incidence of infant mortality, LOW BIRTH WEIGHT INFANTS, CHILDHOOD OBESITY and the prevalence of low-income families are high and where the availability or accessibility of services for eligible adolescents is low;

S 5. Subdivision (b) of section 2522 of the public health law, as amended by chapter 484 of the laws of 2009, is amended and a new subdivision (e-1) is added to read as follows:

(b) promotion of community awareness of the benefits TO THE MOTHER AND CHILD of preconception health and early and continuous prenatal care;

(E-1) HEALTH AND NUTRITIONAL EDUCATION AND SERVICES FOR BOTH PARENTS, REGARDING CHILDHOOD AND ADULT OBESITY AND ASTHMA, AND THE PREVENTION OR MITIGATION THEREOF;

S 6. This act shall take effect immediately.

## PART L

Section 1. Section 916 of the education law, as amended by chapter 524 of the laws of 2006, is amended to read as follows:

S 916. Pupils afflicted with asthma OR OTHER POTENTIALLY LIFE-THREATENING RESPIRATORY ILLNESSES. The board of education or trustees of each school district and board of cooperative educational services shall allow pupils who have been diagnosed by a physician or other duly authorized health care provider with a severe OR MODERATELY SEVERE asthmatic condition OR OTHER POTENTIALLY LIFE-THREATENING RESPIRATORY ILLNESS to carry and use a prescribed inhaler during the school day, with the written permission of a physician or other duly authorized health care provider, and parental consent, based on such physician's or provider's determination that such pupil is subject to sudden asthmatic attacks [severe enough to] THAT CAN debilitate such pupil. A record of such permission shall be maintained in the school office. In addition, upon the written request of a parent or person in parental relation, the board of education or trustees of a school district and board of cooperative educational services shall allow such pupils to maintain an extra

such inhaler in the care and custody of a registered professional nurse OR OTHER DESIGNATED RESPONSIBLE PERSON employed by such district or board of cooperative educational services. Nothing in this section shall require a school district or board of cooperative educational services to retain a school nurse solely for the purpose of taking custody of a spare inhaler, or require that a school nurse be available at all times in a school building for such purpose.

S 2. The education law is amended by adding a new section 921 to read as follows:

S 921. USE OF NEBULIZER. 1. EVERY SCHOOL DISTRICT AND BOARD OF COOPERATIVE EDUCATIONAL SERVICES IN THIS STATE MAY MAINTAIN ONE OR MORE NEBULIZERS IN THE OFFICE OF THE SCHOOL NURSE OR IN A SIMILAR ACCESSIBLE LOCATION.

2. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, MAY PROMULGATE REGULATIONS FOR THE ADMINISTRATION OF ASTHMA MEDICATION THROUGH THE USE OF A NEBULIZER BY THE SCHOOL NURSE OR PERSON AUTHORIZED BY REGULATION. THE REGULATIONS MAY INCLUDE:

A. A REQUIREMENT THAT EACH CERTIFIED NURSE OR OTHER PERSON AUTHORIZED TO ADMINISTER ASTHMA MEDICATION IN SCHOOLS RECEIVE TRAINING IN AIRWAY MANAGEMENT AND IN THE USE OF NEBULIZERS AND INHALERS CONSISTENT WITH NATIONALLY RECOGNIZED STANDARDS; AND

B. A REQUIREMENT THAT EACH PUPIL AUTHORIZED TO USE ASTHMA MEDICATION PURSUANT TO SECTION NINE HUNDRED SIXTEEN OF THIS ARTICLE OR A NEBULIZER HAVE AN ASTHMA TREATMENT PLAN PREPARED BY THE PHYSICIAN OF THE PUPIL, WHICH IDENTIFY, AT A MINIMUM, ASTHMA TRIGGERS, THE TREATMENT PLAN, AND SUCH OTHER ELEMENTS AS SHALL BE DETERMINED BY THE REGENTS.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately the commissioner of education is authorized to promulgate rules and regulations for the implementation of this act on such effective date.

#### PART M

Section 1. The real property law is amended by adding a new section 235-h to read as follows:

S 235-H. RESIDENTIAL RENTAL PROPERTY SMOKING POLICIES. EVERY RENTAL AGREEMENT FOR A DWELLING UNIT, IN A MULTIPLE DWELLING BUILDING WITH FOUR OR MORE UNITS, SHALL INCLUDE A DISCLOSURE OF THE SMOKING POLICY FOR THE PREMISES ON WHICH THE DWELLING UNIT IS LOCATED. THE DISCLOSURE MUST STATE WHETHER SMOKING IS PROHIBITED ON THE PREMISES, ALLOWED ON THE ENTIRE PREMISES OR ALLOWED IN LIMITED AREAS ON THE PREMISES. IF THE SMOKING POLICY ALLOWS SMOKING IN LIMITED AREAS ON THE PREMISES, THE DISCLOSURE MUST IDENTIFY THE AREAS ON THE PREMISES WHERE SMOKING IS ALLOWED.

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.

#### PART N

Section 1. The state finance law is amended by adding a new section 91-h to read as follows:

S 91-H. OBESITY AND RESPIRATORY DISEASE RESEARCH AND EDUCATION FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMMISSIONER OF TAXATION AND FINANCE AND THE COMPTROLLER, A SPECIAL FUND TO BE KNOWN AS THE "OBESITY AND RESPIRATORY DISEASE RESEARCH AND EDUCATION FUND".



2. SUCH FUND SHALL CONSIST OF ALL REVENUE RECEIVED PURSUANT TO AN APPROPRIATION THERETO, AND ALL OTHER MONEYS APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE PURSUANT TO LAW. NOTHING IN THIS SECTION SHALL BE DEEMED TO PREVENT THE STATE FROM RECEIVING GRANTS, GIFTS OR BEQUESTS FOR THE PURPOSES OF THE FUND AND DEPOSITING THEM INTO THE FUND ACCORDING TO LAW.

3. MONIES OF THE FUND SHALL BE EXPENDED ONLY FOR ADULT AND CHILDHOOD OBESITY, ASTHMA, CHRONIC BRONCHITIS OR OTHER CHRONIC RESPIRATORY DISEASE RESEARCH AND EDUCATIONAL PROJECTS CONDUCTED PURSUANT TO SECTIONS TWENTY-FOUR HUNDRED ELEVEN, TWENTY-FIVE HUNDRED AND TWENTY-FIVE HUNDRED-K OF THE PUBLIC HEALTH LAW.

4. MONIES SHALL BE PAYABLE FROM THE FUND ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS APPROVED OR CERTIFIED BY THE COMMISSIONER OF HEALTH.

S 2. This act shall take effect immediately.

#### PART O

Section 1. Paragraphs 6 and 7 of subsection (b) of section 3239 of the insurance law, as added by chapter 592 of the laws of 2008, are amended and a new paragraph 8 is added to read as follows:

(6) a nutrition education program; [and]

(7) health or fitness incentive programs[.]; AND

(8) A COORDINATED WEIGHT MANAGEMENT, NUTRITION, STRESS MANAGEMENT AND PHYSICAL FITNESS PROGRAM TO COMBAT THE HIGH INCIDENCE OF ADULT AND CHILDHOOD OBESITY, ASTHMA AND OTHER CHRONIC RESPIRATORY CONDITIONS.

S 2. Subparagraphs (C) and (D) of paragraph 2 of subsection (c) of section 3239 of the insurance law, as added by chapter 592 of the laws of 2008, are amended and two new subparagraphs (E) and (F) are added to read as follows:

(C) the waiver or reduction of copayments, coinsurance and deductibles for preventive services covered under the group policy or subscriber contract; [and]

(D) monetary rewards in the form of gift cards or gift certificates, so long as the recipient of the reward is encouraged to use the reward for a product or a service that promotes good health, such as healthy cook books, over the counter vitamins or exercise equipment[.];

(E) FULL OR PARTIAL REIMBURSEMENT OF THE COST OF PARTICIPATING IN A STRESS MANAGEMENT PROGRAM OR ACTIVITY; AND

(F) FULL OR PARTIAL REIMBURSEMENT OF THE COST OF PARTICIPATING IN A HEALTH OR FITNESS PROGRAM.

S 3. This act shall take effect immediately.

#### PART P

Section 1. Subparagraph 4 of paragraph (o) of subdivision 4 of section 366 of the social services law is amended by adding a new clause (vi-a) to read as follows:

(VI-A) HEALTH AND NUTRITIONAL EDUCATION AND SERVICES FOR BOTH PARENTS, REGARDING CHILDHOOD AND ADULT OBESITY, ASTHMA AND THE MITIGATION THEREOF;

S 2. Paragraph (a) of subdivision 2-a of section 390 of the social services law, as added by chapter 416 of the laws of 2000, is amended to read as follows:

(a) The office of children and family services shall promulgate regulations which establish minimum quality program requirements for

1 licensed and registered child day care homes, programs and facilities.  
2 Such requirements shall include but not be limited to (i) the need for  
3 age appropriate activities, materials and equipment to promote cogni-  
4 tive, educational, social, cultural, physical, emotional, language and  
5 recreational development of children in care in a safe, healthy and  
6 caring environment (ii) principles of childhood development (iii) appro-  
7 priate staff/child ratios for family day care homes, group family day  
8 care homes, school age day care programs and day care centers, provided  
9 however that such staff/child ratios shall not be less stringent than  
10 applicable staff/child ratios as set forth in part four hundred four-  
11 teen, four hundred sixteen, four hundred seventeen or four hundred eigh-  
12 teen of title eighteen of the New York code of rules and regulations as  
13 of January first, two thousand (iv) appropriate levels of supervision of  
14 children in care (v) APPROPRIATE PHYSICAL ACTIVITY, NUTRITIONAL OFFER-  
15 INGS, AND LOW CALORIE AND LOW SUGAR BEVERAGES TO LOWER THE INCIDENCE OF  
16 CHILDHOOD OBESITY (VI) minimum standards for sanitation, health,  
17 infection control, nutrition, buildings and equipment, safety, security  
18 procedures, first aid, fire prevention, fire safety, evacuation plans  
19 and drills, prevention of child abuse and maltreatment, staff qualifica-  
20 tions and training, record keeping, and child behavior management.

21 S 3. Section 390-a of the social services law is amended by adding a  
22 new subdivision 6 to read as follows:

23 6. NO FAMILY DAY CARE HOME, GROUP FAMILY DAY CARE HOME, SCHOOL AGE  
24 CHILD CARE PROGRAM OR CHILD DAY CARE CENTER SHALL DISCRIMINATE AGAINST  
25 ANY CHILD WHO IS BREAST FED OR WHO IS FED WITH EXPRESSED BREAST MILK.

26 S 4. Subdivision 1 of section 224-b of the county law, as added by  
27 chapter 575 of the laws of 1989, is amended to read as follows:

28 1. Agreements to employ and manage area program specialists. Notwith-  
29 standing the provisions of subdivision eight of section two hundred  
30 twenty-four of this article, two or more county cooperative extension  
31 associations may enter into a separate agreement with Cornell university  
32 to employ area program specialists. Examples of program areas which  
33 could be funded and delivered through the Cornell cooperative extension  
34 system could include but not be limited to water quality, solid waste  
35 management, commercial and alternative agricultural technologies inte-  
36 grated pest management, nutrition, diet and health, ADULT AND CHILDHOOD  
37 OBESITY, ASTHMA AND CHRONIC RESPIRATORY ILLNESS PREVENTION, community  
38 and rural development, housing availability and affordability, family  
39 and economic well being, and the complex problems of youth at risk. Such  
40 annual agreements shall identify the titles of the positions to be  
41 supported and the program areas for which they will provide leadership.  
42 Standards for the employment of area program specialists, including  
43 salaries, shall be established by Cornell university, through the direc-  
44 tor of extension in consultation with county cooperative extension asso-  
45 ciations, apart from standards for the employment of professional staff  
46 under section two hundred twenty-four of this article. Area program  
47 specialists shall, for administrative purposes, receive salary payments  
48 through the Cornell university payroll and for such purposes shall be  
49 deemed employees of Cornell university; provided, however, that their  
50 program activities shall be directed and managed jointly by the partic-  
51 ipating associations and Cornell university under the terms of the annu-  
52 al memorandum of agreement. Area program specialists shall be eligible  
53 to receive the same state or federal fringe benefits as professional  
54 staff employed by the cooperative extension associations under the terms  
55 of section two hundred twenty-four of this article.

1 S 5. This act shall take effect on the first of January next succeed-  
2 ing the date on which it shall have become a law; provided that, effec-  
3 tive immediately, any rules and regulations necessary to implement the  
4 provisions of this act on its effective date are authorized and directed  
5 to be completed on or before such date.

6 S 3. Severability clause. If any clause, sentence, paragraph, subdi-  
7 vision, section or part of this act shall be adjudged by any court of  
8 competent jurisdiction to be invalid, such judgment shall not affect,  
9 impair, or invalidate the remainder thereof, but shall be confined in  
10 its operation to the clause, sentence, paragraph, subdivision, section  
11 or part thereof directly involved in the controversy in which such judg-  
12 ment shall have been rendered. It is hereby declared to be the intent of  
13 the legislature that this act would have been enacted even if such  
14 invalid provisions had not been included herein.

15 S 4. This act shall take effect immediately provided, however, that  
16 the applicable effective date of Parts A through P of this act shall be  
17 as specifically set forth in the last section of such Parts.