

2374--A

2013-2014 Regular Sessions

I N   S E N A T E

January 16, 2013

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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 -- recommitted to the Committee on Agriculture in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT 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 (Part A); to amend the public health law, in relation to in-utero exposure to tobacco smoke prevention (Part B); to amend the public health law, in relation to including certain respiratory diseases and obesity within disease management demonstration programs (Part C); to amend the public health law, in relation to the reduction of emphysema, chronic bronchitis and other chronic respiratory diseases in children (Part D); to amend the public health law, in relation to the collection and reporting of obesity data (Part E); 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 F); to amend the public health law, in relation to breastfeeding of infants and the adolescent pregnancy nutrition counseling program (Part G); to amend the education law, in relation to the use of inhalers and nebulizers (Part H); to amend the real property law, in relation to residential rental property smoking policies (Part I); to amend the state finance law, in relation to establishing the obesity and respiratory disease research and education fund (Part J); to amend the social services law, in relation to child day care facilities (Part K); to amend the education law, in relation to use of school facilities by not-for-profit and charitable organizations for after-school programs (Part L); 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 M); to amend the education law, in relation to restricting the sale, lease, transfer or authorization of open-air schoolhouse playgrounds

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

LBD06771-05-4

for certain uses (Part N); to amend the education law, in relation to instruction in good health and reducing the incidence of obesity (Part O); to amend the public buildings law, in relation to bicycle access to public office buildings (Part P); to amend the agriculture and markets law and the education law, in relation to authorizing school districts and institutions of higher education to donate excess food to local voluntary food assistance programs (Part Q); and to amend the insurance law and the public health law, in relation to making actuarially appropriate reductions in health insurance premiums in return for an enrollee's or insured's participation in a qualified wellness program (Part R)

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "omnibus obesity and respiratory illness reduction act".  
3 S 2. This act enacts into law major components of legislation which  
4 combat the incidence of adult and child obesity and respiratory  
5 diseases, and encourage the production and consumption of fresh fruits  
6 and vegetables. Each component is wholly contained within a Part identified as Parts A through R. The effective date for each particular  
7 provision contained within such Part is set forth in the last section of  
8 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  
9 "of this act", when used in connection with that particular component,  
10 shall be deemed to mean and refer to the corresponding section of the  
11 Part in which it is found. Section four of this act sets forth the  
12 general effective date of this act.  
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#### PART A

16 Section 1. Subdivision 1 of section 206 of the public health law is  
17 amended by adding two new paragraphs (u) and (v) to read as follows:  
18 (U) (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 VEGETABLE  
26 SHORTENING, MARGARINE OR ANY KIND OF PARTIALLY HYDROGENATED VEGETABLE  
27 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 ESTABLISHMENTS.  
36  
37 (II) THE COMMISSIONER MAY ESTABLISH A VOLUNTARY ARTIFICIAL TRANS FAT  
38 REDUCTION PROGRAM. SUCH PROGRAM MAY CONSIST OF, BUT SHALL NOT BE LIMITED

1 TO, THE FOLLOWING COMPONENTS: (A) A PUBLIC INFORMATION DISSEMINATION  
2 PROGRAM TO INFORM THE PUBLIC OF THE HEALTH RISKS ASSOCIATED WITH THE  
3 OVERCONSUMPTION OF ARTIFICIAL TRANS FATS, AND (B) SUGGESTED FOOD PREPA-  
4 RATION METHODS THAT CAN BE FOLLOWED BY FOOD SERVICE ESTABLISHMENTS AND  
5 THE GENERAL PUBLIC TO REDUCE OR ELIMINATE THE USE OF ARTIFICIAL TRANS  
6 FATS.

7 (V) (I) FOR PURPOSES OF THIS PARAGRAPH, THE FOLLOWING DEFINITIONS  
8 SHALL APPLY:

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

16 (B) "NUTRITIONAL INFORMATION" MAY INCLUDE THE FOLLOWING, PER STANDARD  
17 MENU ITEM, AS THAT ITEM IS USUALLY PREPARED AND OFFERED FOR SALE:

18 (I) TOTAL NUMBER OF CALORIES.

19 (II) TOTAL NUMBER OF GRAMS OF CARBOHYDRATES.

20 (III) TOTAL NUMBER OF GRAMS OF SATURATED FAT.

21 (IV) TOTAL NUMBER OF MILLIGRAMS OF SODIUM.

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

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

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

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

35 S 2. This act shall take effect one year after it shall have become a  
36 law, provided that, effective immediately, any rules and regulations  
37 necessary to implement the provisions of this act on its effective date  
38 are authorized and directed to be completed on or before such date.

39 PART B

40 Section 1. The public health law is amended by adding a new article  
41 13-I to read as follows:

42 ARTICLE 13-I

43 IN-UTERO EXPOSURE TO TOBACCO SMOKE PREVENTION

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

45 1399-YY. PROGRAMS.

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

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

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

- 4 1. CARBON MONOXIDE MONITORING;
- 5 2. DEPRESSION, SOCIAL SUPPORT AND DOMESTIC VIOLENCE SCREENING AND  
6 REFERRALS;
- 7 3. REFERRALS FOR SMOKING CESSATION FOR HOUSEHOLD MEMBERS;
- 8 4. ONGOING SUPPORT BY COUNSELING AND EDUCATIONAL MATERIALS; AND
- 9 5. FINANCIAL INCENTIVES SUCH AS DIAPER COUPONS FOR QUITTING FOR MORE  
10 THAN FOUR WEEKS.

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

16 PART C

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

20 2. The department shall establish the criteria by which individuals  
21 will be identified as eligible for enrollment in the demonstration  
22 programs. Persons eligible for enrollment in the disease management  
23 demonstration program shall be limited to individuals who: receive  
24 medical assistance pursuant to title eleven of article five of the  
25 social services law and may be eligible for benefits pursuant to title  
26 18 of the social security act (Medicare); are not enrolled in a Medicaid  
27 managed care plan, including individuals who are not required or not  
28 eligible to participate in Medicaid managed care programs pursuant to  
29 section three hundred sixty-four-j of the social services law; are diag-  
30 nosed with chronic health problems as may be specified by the entity  
31 undertaking the demonstration program, including, but not limited to one  
32 or more of the following: congestive heart failure, chronic obstructive  
33 pulmonary disease, asthma, CHRONIC BRONCHITIS, OTHER CHRONIC RESPIRATORY  
34 DISEASES, diabetes, ADULT AND CHILDHOOD OBESITY, or other chronic health  
35 conditions as may be specified by the department; or have experienced or  
36 are likely to experience one or more hospitalizations or are otherwise  
37 expected to incur excessive costs and high utilization of health care  
38 services.

39 4. The demonstration program shall offer evidence-based services and  
40 interventions designed to ensure that the enrollees receive high quali-  
41 ty, preventative and cost-effective care, aimed at reducing the necessi-  
42 ty for hospitalization or emergency room care or at reducing lengths of  
43 stay when hospitalization is necessary. The demonstration program may  
44 include screening of eligible enrollees, developing an individualized  
45 care management plan for each enrollee and implementing that plan.  
46 Disease management demonstration programs that utilize information tech-  
47 nology systems that allow for continuous application of evidence-based  
48 guidelines to medical assistance claims data and other available data to  
49 identify specific instances in which clinical interventions are justi-  
50 fied and communicate indicated interventions to physicians, health care  
51 providers and/or patients, and monitor physician and health care provid-  
52 er response to such interventions, shall have the enrollees, or groups  
53 of enrollees, approved by the department for participation. The services  
54 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 D

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

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

(d) coordinating with the state education department, department of agriculture and markets, office of parks, recreation and historic preservation, office of temporary and disability assistance, office of chil-

dren and family services and other federal, state and local agencies to incorporate strategies to prevent and reduce childhood obesity into government food assistance, health, education and recreation programs;

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

(f) developing training programs for medical and other health professionals to teach practical skills in nutrition and exercise education to children and their parents and caregivers; [and]

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

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

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

S 2. The opening paragraph of section 2599-c 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:

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

S 3. This act shall take effect immediately.

## PART E

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

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

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

1 b. The effectiveness of alternate methods for treating or preventing  
2 obesity;

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

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

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

8 2. The department is authorized to fund the research authorized in  
9 subdivision one of this section AND SECTION TWENTY-FIVE HUNDRED-K OF  
10 THIS CHAPTER from gifts, grants, and donations from individuals, private  
11 organizations, foundations, or any governmental unit; except that no  
12 gift, grant, or donation may be accepted by the department if it is  
13 subject to conditions that are inconsistent with this title or any other  
14 laws of this state. The department shall have the power to direct the  
15 disposition of any such gift, grant, or donation for the purposes of  
16 this title.

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

21 S 2. This act shall take effect immediately.

22

## PART F

23 Section 1. Paragraphs (a), (b) and (c) of subdivision 1 of section  
24 2411 of the public health law, as amended by chapter 219 of the laws of  
25 1997, are amended to read as follows:

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

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

38 (c) Consult with the Centers for Disease Control and Prevention, the  
39 National Institutes of Health, the Federal Agency For Health Care Policy  
40 and Research, the National Academy of Sciences and other organizations  
41 or entities which may be involved in cancer research to solicit both  
42 information regarding breast, prostate and testicular cancer research  
43 projects, AND ADULT AND CHILDHOOD OBESITY, ASTHMA, CHRONIC BRONCHITIS OR  
44 OTHER CHRONIC RESPIRATORY DISEASE RESEARCH PROJECTS that are currently  
45 being conducted and recommendations for future research projects;

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

49 1. The commissioner shall act in an advisory and supervisory capacity,  
50 in matters pertaining to the safeguarding of motherhood, the prevention  
51 of maternal, perinatal, infant and child mortality, the prevention of  
52 diseases, low birth weight, CHILDHOOD OBESITY, and defects of childhood  
53 and the promotion of maternal, prenatal and child health, including care  
54 in hospitals, and shall administer such services bearing on the health

1 of mothers and children for which funds are or shall hereafter be made  
2 available.

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

5 S 2500-K. CHILDHOOD OBESITY PREVENTION AND SCREENING. 1. LEGISLATIVE  
6 DECLARATION. THE LEGISLATURE HEREBY FINDS, DETERMINES AND DECLARES THAT  
7 OBESITY, PARTICULARLY CHILDHOOD OBESITY, IS A SERIOUS MEDICAL PROBLEM  
8 AND THAT THE HIGH INCIDENCE OF SUCH CONDITION NEEDS TO BE CURTAILED TO  
9 IMPROVE THE OVERALL HEALTH OF THE GENERAL PUBLIC AND TO HELP REDUCE THE  
10 COST OF PROVIDING HEALTH CARE IN THIS STATE. PROVIDED FURTHER, THAT THE  
11 LEGISLATURE HEREBY REAFFIRMS THE LEGISLATIVE INTENT CONTAINED IN SECTION  
12 TWO HUNDRED SIXTY-ONE OF THIS CHAPTER CONCERNING OBESITY.

13 2. THE COMMISSIONER MAY ESTABLISH, FOR USE BY PEDIATRIC PRIMARY CARE  
14 PROVIDERS AND HOSPITALS, BEST PRACTICE PROTOCOLS FOR THE EARLY SCREEN-  
15 ING, IDENTIFICATION AND TREATMENT OF CHILDREN WHO HAVE LOW BIRTH WEIGHTS  
16 OR MAY BECOME SUSCEPTIBLE TO CONTRACTING ASTHMA OR MANIFEST TO HAVE  
17 CHILDHOOD OBESITY CONDITIONS. SUCH PROTOCOLS SHALL INCORPORATE STANDARDS  
18 AND GUIDELINES ESTABLISHED BY THE AMERICAN ACADEMY OF PEDIATRICIANS, THE  
19 FEDERAL DEPARTMENT OF AGRICULTURE, THE FEDERAL DEPARTMENT OF HEALTH AND  
20 HUMAN SERVICES, THE SURGEON GENERAL, AND THE CENTERS FOR DISEASE CONTROL  
21 AND PREVENTION.

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

29 4. THE INFORMATION WHEN RECEIVED BY THE DEPARTMENT SHALL BE USED SOLE-  
30 LY FOR THE PURPOSE OF IMPROVING QUALITY OF CARE AND SHALL NOT BE SUBJECT  
31 TO RELEASE UNDER ARTICLE SIX OF THE PUBLIC OFFICERS LAW, AND WHERE  
32 APPLICABLE, SHALL BE SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF  
33 SECTION TWENTY-EIGHT HUNDRED FIVE-M OF THIS CHAPTER, EXCEPT THAT THE  
34 RELEASE OF BIRTH CERTIFICATE INFORMATION SHALL BE SUBJECT TO SECTION  
35 FORTY-ONE HUNDRED SEVENTY-FOUR OF THIS CHAPTER.

36 5. THE COMMISSIONER MAY RELEASE INFORMATION COLLECTED THROUGH THE  
37 STATEWIDE PERINATAL DATA SYSTEM, PURSUANT TO SECTION TWENTY-FIVE  
38 HUNDRED-H OF THIS TITLE AND CORRESPONDING INFORMATION RELATED TO ASTHMA,  
39 CHILDHOOD OBESITY OR UNDERWEIGHT BABIES TO HIS OR HER DESIGNEES, INCLUD-  
40 ING PERSONS OR ENTITIES UNDER CONTRACT WITH THE DEPARTMENT TO REVIEW  
41 QUALITY OF CARE ISSUES, AS RELATED TO THE PROVISIONS OF THIS SECTION,  
42 AND TO CONDUCT QUALITY IMPROVEMENT INITIATIVES AS NEEDED TO MONITOR,  
43 EVALUATE AND IMPROVE PATIENT CARE AND OUTCOMES. SUCH DESIGNEE OR PERSON  
44 OR ENTITY UNDER CONTRACT WITH THE DEPARTMENT TO REVIEW QUALITY OF CARE  
45 ISSUES SHALL MAINTAIN THE CONFIDENTIALITY OF ALL SUCH INFORMATION AND  
46 SHALL USE IT ONLY TO IMPROVE QUALITY OF CARE, AS APPROVED BY THE DEPART-  
47 MENT, AND TO IMPLEMENT THE PROVISIONS OF TITLE FIVE OF ARTICLE TWO OF  
48 THIS CHAPTER, AS ADDED BY CHAPTER FIVE HUNDRED THIRTY-EIGHT OF THE LAWS  
49 OF TWO THOUSAND TWO.

50 6. THE DEPARTMENT MAY PRODUCE AND DISTRIBUTE EDUCATIONAL MATERIALS ON  
51 CHILDHOOD OBESITY AND ASTHMA RISKS AND PRECAUTIONS. SUCH MATERIALS MAY  
52 BE MADE AVAILABLE TO CHILD CARE CENTERS, PEDIATRICIANS AND NURSERY,  
53 ELEMENTARY AND SECONDARY SCHOOLS FOR DISTRIBUTION TO PERSONS IN PARENTAL  
54 RELATION TO CHILDREN, AND TO HOSPITALS, BIRTHING CENTERS AND OTHER  
55 APPROPRIATE HEALTH CARE PROVIDERS FOR DISTRIBUTION TO MATERNITY  
56 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 G

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 choice. It is your right to be informed about the benefits of breastfeeding and have your health care provider [and], maternal health care facility AND CHILD DAY CARE FACILITY encourage and support breastfeeding. You have the right to make your own choice about breastfeeding. Whether you choose to breastfeed or not you have the following basic rights regardless of your race, creed, national origin, sexual orientation, gender identity or expression, or source of payment for your health care. Maternal health care facilities have a responsibility to ensure that you understand these rights. They must provide this information clearly for you and must provide an interpreter if necessary. These rights may only be limited in cases where your health or the health of your baby requires it. If any of the following things are not medically

1 right for you or your baby, you should be fully informed of the facts  
2 and be consulted.

3 (1) Before You Deliver, if you attend prenatal childbirth education  
4 classes provided by the maternal health care facility and all hospital  
5 clinics and diagnostic and treatment centers providing prenatal services  
6 in accordance with article 28 of the public health law you must receive  
7 the breastfeeding mothers' bill of rights. Each maternal health care  
8 facility shall provide the maternity information leaflet, including the  
9 Breastfeeding Mothers' Bill of Rights, in accordance with section twenty-  
10 eight hundred three-i of this chapter to each patient or to the  
11 appointed personal representative at the time of prebooking or time of  
12 admission to a maternal health care facility. Each maternal health care  
13 provider shall give a copy of the Breastfeeding Mothers' Bill of Rights  
14 to each patient at or prior to the medically appropriate time.

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

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

20 \* How breastfeeding benefits you and your baby nutritionally,  
21 medically and emotionally;

22 \* How to prepare yourself for breastfeeding;

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

25 (2) In The Maternal Health Care Facility:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 \* You have the right to printed breastfeeding information free of  
5 commercial material.

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

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

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

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

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

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

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

28 4. The commissioner shall make regulations reasonably necessary to  
29 implement this section.

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

32 S 2505. Human breast milk; collection, storage and distribution;  
33 general powers of the commissioner. The commissioner is hereby  
34 empowered to:

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

38 (b) conduct educational activities to inform the public and health  
39 care providers of the availability of human breast milk for infants  
40 determined to require such milk and to inform potential donors of the  
41 opportunities for proper donation;

42 (c) ADOPT REGULATIONS AND GUIDELINES TO ENCOURAGE AND FACILITATE  
43 EMPLOYERS AND CHILD DAY CARE CENTERS TO ESTABLISH ENVIRONMENTS THAT DO  
44 NOT DISCOURAGE BREASTFEEDING AND THE PROVISION OF BREAST MILK. SUCH  
45 ENVIRONMENTS SHALL INCLUDE SANITARY LOCATIONS FOR BREASTFEEDING, REFRI-  
46 GERATORS, AND TRAINED STAFF TO ASSIST IN BREASTFEEDING AND FEEDING  
47 BABIES WITH EXPRESSED BREAST MILK;

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

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

53 S 3. Subdivision 2 of section 2515 of the public health law, as added  
54 by section 20 of part A of chapter 58 of the laws of 2008, is amended to  
55 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 H

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 NEBU-

LIZERS 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 I

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 TWENTY 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 J

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.

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

4 S 2. This act shall take effect immediately.

5 PART K

6 Section 1. Paragraph (a) of subdivision 2-a of section 390 of the  
7 social services law, as added by chapter 416 of the laws of 2000, is  
8 amended to read as follows:

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

31 S 2. Section 390-a of the social services law is amended by adding a  
32 new subdivision 6 to read as follows:

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

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

41 PART L

42 Section 1. Subdivision 1 of section 414 of the education law is  
43 amended by adding a new paragraph (l) to read as follows:

44 (L) FOR BONA FIDE AFTER-SCHOOL PROGRAMS OPERATED BY A NOT-FOR-PROFIT  
45 OR CHARITABLE ORGANIZATION. SUCH PROGRAMS SHALL PRESENT SOME FORM OF  
46 EDUCATIONAL INSTRUCTION OR ACADEMIC MATERIAL, OR PROMOTE PHYSICAL EDUCA-  
47 TION.

48 S 2. Subdivision 2 of section 414 of the education law, as amended by  
49 chapter 513 of the laws of 2005, is amended to read as follows:

50 2. The trustees or board of education shall determine the terms and  
51 conditions for such use which may include rental at least in an amount  
52 sufficient to cover all resulting expenses for the purposes of para-

1 graphs (a), (b), (c), (d), (e), (g), (i), (j) and (k) of subdivision one  
2 of this section. FOR THE PURPOSES OF PARAGRAPH (1) OF SUBDIVISION ONE OF  
3 THIS SECTION, THE TRUSTEES OR BOARD OF EDUCATION MAY PROVIDE THAT EITHER  
4 NO FEE OR A MINIMAL FEE BE IMPOSED UPON THE NOT-FOR-PROFIT OR CHARITABLE  
5 ORGANIZATION. Any such use, pursuant to [paragraphs] PARAGRAPH (a), (c),  
6 (d), (h) [and], (j) OR (L) of subdivision one of this section, shall not  
7 allow the exclusion of any district child solely because said child is  
8 not attending a district school or not attending the district school  
9 which is sponsoring such use or on which grounds the use is to occur.

10 S 3. Subdivision 27 of section 2590-h of the education law, as amended  
11 by chapter 345 of the laws of 2009, is amended to read as follows:

12 27. Promulgate regulations, in conjunction with each community super-  
13 intendent, establishing a plan for providing access to school facilities  
14 in each community school district, when not in use for school purposes,  
15 in accordance with the provisions of section four hundred fourteen of  
16 this chapter. Such plan shall set forth a reasonable system of fees not  
17 to exceed the actual costs and specify that no part of any fee shall  
18 directly or indirectly benefit or be deposited into an account which  
19 inures to the benefit of the custodians or custodial engineers.  
20 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE  
21 CONTRARY, SUCH PLAN MAY PROVIDE THAT EITHER NO FEE OR A MINIMAL FEE  
22 SHALL BE CHARGED FOR THE USE OF SCHOOL FACILITIES BY A NOT-FOR-PROFIT OR  
23 CHARITABLE ORGANIZATION. THE USE OF SUCH FACILITIES SHALL ONLY BE FOR  
24 BONA FIDE AFTER-SCHOOL PROGRAMS THAT PRESENT SOME FORM OF EDUCATIONAL  
25 INSTRUCTION OR ACADEMIC MATERIAL, OR PROMOTE PHYSICAL EDUCATION.

26 S 4. Subdivision 27 of section 2590-h of the education law, as amended  
27 by chapter 720 of the laws of 1996, is amended to read as follows:

28 27. Develop, in conjunction with each community superintendent, a plan  
29 for providing access to school facilities in each community school  
30 district, when not in use for school purposes, in accordance with the  
31 provisions of section four hundred fourteen of this chapter. Such plan  
32 shall set forth a reasonable system of fees not to exceed the actual  
33 costs and specify that no part of any fee shall directly or indirectly  
34 benefit or be deposited into an account which inures to the benefit of  
35 the custodians or custodial engineers. NOTWITHSTANDING ANY OTHER  
36 PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, SUCH PLAN MAY  
37 PROVIDE THAT EITHER NO FEE OR A MINIMAL FEE SHALL BE CHARGED FOR THE USE  
38 OF SCHOOL FACILITIES BY A NOT-FOR-PROFIT OR CHARITABLE ORGANIZATION. THE  
39 USE OF SUCH FACILITIES SHALL ONLY BE FOR BONA FIDE AFTER-SCHOOL PROGRAMS  
40 THAT PRESENT SOME FORM OF EDUCATIONAL INSTRUCTION OR ACADEMIC MATERIAL,  
41 OR PROMOTE PHYSICAL EDUCATION.

42 S 5. This act shall take effect on the one hundred eightieth day after  
43 it shall have become a law; provided that the amendments to subdivision  
44 27 of section 2590-h of the education law, made by section three of this  
45 act, shall be subject to the expiration and reversion of such section,  
46 pursuant to subdivision 12 of section 17 of chapter 345 of the laws of  
47 2009, as amended, when upon such date the provisions of section four of  
48 this act shall take effect.

49

#### PART M

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

53 S 901. School health services to be provided. 1. School health  
54 services, as defined in subdivision two of this section, shall be

1 provided by each school district for all students attending the public  
2 schools in this state, except in the city school district of the city of  
3 New York, as provided in this article. School health services shall  
4 include the services of a registered professional nurse, if one is  
5 employed, and shall also include such services as may be rendered as  
6 provided in this article in examining students for the existence of  
7 disease or disability, OR MAY INCLUDE SERVICES RELATED TO EXAMINING FOR  
8 CHILDHOOD OBESITY BASED UPON THE CALCULATION OF EACH STUDENT'S BODY MASS  
9 INDEX AND WEIGHT STATUS CATEGORY PURSUANT TO SECTION NINE HUNDRED FOUR  
10 OF THIS ARTICLE, and in testing the eyes and ears of such students.

11 2. School health services for the purposes of this article shall mean  
12 the several procedures, including, but not limited to, medical examina-  
13 tions, dental inspection and/or screening, scoliosis screening, vision  
14 screening [and], audiometer tests, AND CHILDHOOD OBESITY AS MEASURED BY  
15 BODY MASS INDEX AND WEIGHT STATUS CATEGORY, designed to determine the  
16 health status of the child; to inform parents or other persons in  
17 parental relation to the child, pupils and teachers of the individual  
18 child's health condition subject to federal and state confidentiality  
19 laws; to guide parents, children and teachers in procedures for prevent-  
20 ing and correcting defects [and], diseases AND CHILDHOOD OBESITY CONDI-  
21 TIONS; to instruct the school personnel in procedures to take in case of  
22 accident or illness; to survey and make necessary recommendations  
23 concerning the health and safety aspects of school facilities and the  
24 provision of health information.

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

30 1. A health certificate shall be furnished by each student in the  
31 public schools upon his or her entrance in such schools and upon his or  
32 her entry into the grades prescribed by the commissioner in regulations,  
33 provided that such regulations shall require such certificates at least  
34 twice during the elementary grades and twice in the secondary grades. An  
35 examination and health history of any child may be required by the local  
36 school authorities at any time in their discretion to promote the educa-  
37 tional interests of such child. Each certificate shall be signed by a  
38 duly licensed physician, physician assistant, or nurse practitioner, who  
39 is authorized by law to practice in this state, and consistent with any  
40 applicable written practice agreement, or by a duly licensed physician,  
41 physician assistant, or nurse practitioner, who is authorized to prac-  
42 tice in the jurisdiction in which the examination was given, provided  
43 that the commissioner has determined that such jurisdiction has stand-  
44 ards of licensure and practice comparable to those of New York. Each  
45 such certificate shall describe the condition of the student when the  
46 examination was made, which shall not be more than twelve months prior  
47 to the commencement of the school year in which the examination is  
48 required, and shall state whether such student is in a fit condition of  
49 health to permit his or her attendance at the public schools. THE EXAM-  
50 INATION MAY INCLUDE A DIABETES RISK ANALYSIS AND, IF NECESSARY, CHILDREN  
51 WITH RISK FACTORS FOR TYPE 1 DIABETES, OR RISK FACTORS ASSOCIATED WITH  
52 TYPE 2 DIABETES SUCH AS OBESITY, A FAMILY HISTORY OF TYPE 2 DIABETES, OR  
53 ANY OTHER FACTORS CONSISTENT WITH INCREASED RISK SHALL BE TESTED FOR  
54 DIABETES. Each such certificate shall also state the student's body mass  
55 index (BMI) and weight status category. For purposes of this section,  
56 BMI is computed as the weight in kilograms divided by the square of



1 height in meters or the weight in pounds divided by the square of height  
2 in inches multiplied by a conversion factor of 703. Weight status cate-  
3 gories for children and adolescents shall be as defined by the commis-  
4 sioner of health. In all school districts such physician, physician  
5 assistant or nurse practitioner shall determine whether a one-time test  
6 for sickle cell anemia is necessary or desirable and he or she shall  
7 conduct such a test and the certificate shall state the results.

8 3. a. Within thirty days after the student's entrance in such schools  
9 or grades, the health certificate shall be submitted to the principal or  
10 his or her designee and shall be filed in the student's cumulative  
11 health record. If such student does not present a health certificate as  
12 required in this section, unless he or she has been accommodated on  
13 religious grounds, the principal or the principal's designee shall cause  
14 a notice to be sent to the parents or person in parental relationship to  
15 such student that if the required health certificate is not furnished  
16 within thirty days from the date of such notice, an examination will be  
17 made of such student, as provided in this article. Each school and  
18 school district [chosen as part of an appropriate sampling methodology]  
19 shall participate in surveys directed by the commissioner of health  
20 pursuant to the public health law in relation to students' BMI and  
21 weight status categories as reported on the school health certificate  
22 and which shall be subject to audit by the commissioner of health. Such  
23 surveys shall contain the information required pursuant to subdivision  
24 one of this section in relation to students' BMI and weight status cate-  
25 gories in aggregate. Parents or other persons in parental relation to a  
26 student may refuse to have the student's BMI and weight status category  
27 included in such survey. Each school and school district shall provide  
28 the commissioner of health with any information, records and reports he  
29 or she may require for the purpose of such audit. The BMI and weight  
30 status survey and audit as described in this subdivision shall be  
31 conducted consistent with confidentiality requirements imposed by feder-  
32 al law.

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

36 4. Notwithstanding the provisions of subdivisions one, two and three  
37 of this section, no examinations for a health certificate or health  
38 history shall be required or dental certificate requested, and no  
39 screening examinations for sickle cell anemia OR CHILDHOOD OBESITY shall  
40 be required where a student or the parent or person in parental relation  
41 to such student objects thereto on the grounds that such examinations or  
42 health history conflict with their genuine and sincere religious  
43 beliefs.

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

47 1. Each principal of a public school, or his or her designee, shall  
48 report to the director of school health services having jurisdiction  
49 over such school, the names of all students who have not furnished  
50 health certificates as provided in section nine hundred three of this  
51 article, or who are children with disabilities, as defined by article  
52 eighty-nine of this chapter, and the director of school health services  
53 shall cause such students to be separately and carefully examined and  
54 tested to ascertain whether any student has defective sight or hearing,  
55 or any other physical disability which may tend to prevent him or her  
56 from receiving the full benefit of school work, or from requiring a

1 modification of such work to prevent injury to the student or from  
2 receiving the best educational results. Each examination shall also  
3 include a calculation of the student's body mass index (BMI) and weight  
4 status category. For purposes of this section, BMI is computed as the  
5 weight in kilograms divided by the square of height in meters or the  
6 weight in pounds divided by the square of height in inches multiplied by  
7 a conversion factor of 703. Weight status categories for children and  
8 adolescents shall be as defined by the commissioner of health. In all  
9 school districts, such physician, physician assistant or nurse practi-  
10 tioner shall determine whether a one-time test for sickle cell anemia is  
11 necessary or desirable and he or she shall conduct such tests and the  
12 certificate shall state the results. If it should be ascertained, upon  
13 such test or examination, that any of such students have defective sight  
14 or hearing[,], or other physical disability, including sickle cell  
15 anemia, as above described, OR ARE OBESE, the principal or his or her  
16 designee shall notify the parents of, or other persons in parental  
17 relation to, the child as to the existence of such disability. If the  
18 parents or other persons in parental relation are unable or unwilling to  
19 provide the necessary relief and treatment for such students, such fact  
20 shall be reported by the principal or his or her designee to the direc-  
21 tor of school health services, whose duty it shall be to provide relief  
22 for such students. Each school and school district [chosen as part of an  
23 appropriate sampling methodology] shall participate in surveys directed  
24 by the commissioner of health pursuant to the public health law in  
25 relation to students' BMI and weight status categories as determined by  
26 the examination conducted pursuant to this section and which shall be  
27 subject to audit by the commissioner of health. Such surveys shall  
28 contain the information required pursuant to this subdivision in  
29 relation to students' BMI and weight status categories in aggregate.  
30 [Parents or other persons in parental relation to a student may refuse  
31 to have the student's BMI and weight status category included in such  
32 survey.] Each school and school district shall provide the commissioner  
33 of health with any information, records and reports he or she may  
34 require for the purpose of such audit. The BMI and weight status survey  
35 and audit as described in this section shall be conducted consistent  
36 with confidentiality requirements imposed by federal law. [Data  
37 collection for such surveys shall commence on a voluntary basis at the  
38 beginning of the two thousand seven academic school year, and by all  
39 schools chosen as part of the sampling methodology at the beginning of  
40 the two thousand eight academic school year.] The department shall also  
41 utilize the collected data to develop a report of child obesity and  
42 obesity related diseases.

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

45 S 912. Health and welfare services to all children. The voters and/or  
46 trustees or board of education of every school district shall, upon  
47 request of the authorities of a school other than public, provide resi-  
48 dent children who attend such school with any or all of the health and  
49 welfare services and facilities which are made available by such voters  
50 and/or trustees or board of education to or for children attending the  
51 public schools of the district. Such services may include, but are not  
52 limited to all services performed by a physician, physician assistant,  
53 dentist, dental hygienist, registered professional nurse, nurse practi-  
54 tioner, school psychologist, school social worker or school speech ther-  
55 apist, and may also include dental prophylaxis, vision and hearing  
56 screening examinations, CHILDHOOD OBESITY SCREENING, the taking of

1 medical histories and the administration of health screening tests, the  
2 maintenance of cumulative health records and the administration of emer-  
3 gency care programs for ill or injured students. Any such services or  
4 facilities shall be so provided notwithstanding any provision of any  
5 charter or other provision of law inconsistent herewith. Where children  
6 residing in one school district attend a school other than public  
7 located in another school district, the school authorities of the  
8 district of residence shall contract with the school authorities of the  
9 district where such nonpublic school is located, for the provision of  
10 such health and welfare services and facilities to such children by the  
11 school district where such nonpublic school is located, for a consider-  
12 ation to be agreed upon between the school authorities of such  
13 districts, subject to the approval of the qualified voters of the  
14 district of residence when required under the provisions of this chap-  
15 ter. Every such contract shall be in writing and in the form prescribed  
16 by the commissioner, and before such contract is executed the same shall  
17 be submitted for approval to the superintendent of schools having juris-  
18 diction over such district of residence and such contract shall not  
19 become effective until approved by such superintendent.

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

23 4. The committee is encouraged to study AND MAKE RECOMMENDATIONS ON  
24 all facets of the current nutritional policies of the district includ-  
25 ing, but not limited to, the goals of the district to promote health and  
26 proper nutrition, REDUCE THE INCIDENCE OF CHILDHOOD OBESITY, vending  
27 machine sales, menu criteria, educational curriculum teaching healthy  
28 nutrition, AND educational information provided to parents or guardians  
29 regarding healthy nutrition and the health risks associated with obesi-  
30 ty, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIRATORY DISEASES.  
31 PROVIDED, FURTHER, THE COMMITTEE MAY PROVIDE INFORMATION TO PERSONS IN  
32 PARENTAL RELATION ON opportunities offered to parents or guardians to  
33 encourage healthier eating habits to students, and the education  
34 provided to teachers and other staff as to the importance of healthy  
35 nutrition AND ABOUT THE DANGERS OF CHILDHOOD OBESITY. In addition the  
36 committee shall consider recommendations and practices of other  
37 districts and nutrition studies.

38 5. The committee is encouraged to report periodically to the district  
39 regarding practices that will educate teachers, parents or guardians and  
40 children about healthy nutrition and raise awareness of the dangers of  
41 CHILDHOOD obesity, ASTHMA, CHRONIC BRONCHITIS AND OTHER CHRONIC RESPIR-  
42 ATORY DISEASES. The committee is encouraged also to provide any parent  
43 teacher associations in the district with such findings and recommenda-  
44 tions.

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

#### 47 PART N

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

51 5. It shall be unlawful for a schoolhouse to be constructed in the  
52 city of New York without an open-air playground attached to or used in  
53 connection with the same. EXISTING PLAYGROUNDS SHALL NOT BE SOLD,  
54 LEASED OR TRANSFERRED, OR PERMANENTLY AUTHORIZED FOR OTHER USES SUCH AS

1 SCHOOL BUILDING CONSTRUCTION, RENOVATION, PLACEMENT OR STORAGE OF BUILD-  
2 ING MATERIALS FOR SUCH WORK THAT WOULD ELIMINATE THE USE OF SUCH PLAY-  
3 GROUND SPACE FOR OUTDOOR RECREATIONAL ACTIVITIES UNLESS A PLAN IS ESTAB-  
4 LISHED AND IMPLEMENTED TO PROVIDE SUITABLE AND ADEQUATE PHYSICAL  
5 ACTIVITIES OR SPACE TO ACCOMMODATE THE PHYSICAL AND RECREATIONAL NEEDS  
6 OF THE PUPILS OF SUCH BUILDING. THE PROVISIONS OF THIS SUBDIVISION  
7 SHALL NOT APPLY TO SCHOOL CONSTRUCTION OR RENOVATION ACTIVITIES THAT  
8 OCCUR ON OR REQUIRE THE USE OF SUCH PLAYGROUNDS FOR A DURATION OF NO  
9 MORE THAN ONE YEAR.

10 S 2. This act shall take effect July 1, 2015; provided however, that  
11 the commissioner of education is authorized and directed to promulgate  
12 any rules or regulations necessary for the timely implementation of this  
13 act on or before such date.

14

## PART 0

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

18 1. All pupils above the age of eight years in all elementary and  
19 secondary schools, shall receive as part of the prescribed courses of  
20 instruction therein such physical education under the direction of the  
21 commissioner of education as the regents may determine. Such courses  
22 shall be designed to aid in the well-rounded education of pupils and in  
23 the development of character, citizenship, OVERALL physical fitness,  
24 GOOD health [and], the worthy use of leisure AND THE REDUCTION IN THE  
25 INCIDENCE OF CHILDHOOD OBESITY. Pupils above such age attending the  
26 public schools shall be required to attend upon such prescribed courses  
27 of instruction.

28 5. (A) It shall be the duty of the regents to adopt rules determining  
29 the subjects to be included in courses of physical education provided  
30 for in this section, the period of instruction in each of such courses,  
31 the qualifications of teachers, and the attendance upon such courses of  
32 instruction.

33 (B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE REGENTS  
34 MAY PROVIDE IN ITS RULES THAT THE PHYSICAL EDUCATION INSTRUCTION  
35 REQUIREMENT FOR ALL STUDENTS ENROLLED IN ELEMENTARY AND SECONDARY SCHOOL  
36 GRADES SHALL, WHERE FEASIBLE, INCLUDE DAILY PHYSICAL EXERCISE OR ACTIV-  
37 ITY, INCLUDING STUDENTS WITH DISABLING CONDITIONS AND THOSE IN ALTERNA-  
38 TIVE EDUCATION PROGRAMS. THE REGENTS MAY INCLUDE IN ITS RULES THAT  
39 STUDENTS ENROLLED IN SUCH ELEMENTARY AND SECONDARY SCHOOLS SHALL PARTIC-  
40 IPATE IN PHYSICAL EDUCATION, EXERCISE OR ACTIVITY FOR A MINIMUM OF ONE  
41 HUNDRED TWENTY MINUTES DURING EACH SCHOOL WEEK. THE REGENTS MAY PROVIDE  
42 FOR A TWO-YEAR PHASE-IN SCHEDULE FOR DAILY PHYSICAL EDUCATION IN ELEMEN-  
43 TARY SCHOOLS IN ITS RULES.

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

48 Health education regarding alcohol, drugs, tobacco abuse, THE  
49 REDUCTION IN THE INCIDENCE OF OBESITY, and the prevention and detection  
50 of certain cancers. 1. All schools shall include, as an integral part of  
51 health, SCIENCE, OR PHYSICAL education, instruction so as to discourage  
52 the misuse and abuse of alcohol, tobacco[, ] and other drugs, TO REDUCE  
53 THE INCIDENCE OF OBESITY, and promote attitudes and behavior that  
54 enhance health, well being, and human dignity.

1 3-B. INSTRUCTION REGARDING THE LONG TERM HEALTH RISKS ASSOCIATED WITH  
2 OBESITY AND METHODS OF PREVENTING AND REDUCING THE INCIDENCE OF OBESITY,  
3 INCLUDING GOOD NUTRITION AND REGULAR EXERCISE. SUCH INSTRUCTION MAY BE  
4 AN INTEGRAL PART OF REQUIRED HEALTH, SCIENCE, OR PHYSICAL EDUCATION  
5 COURSES.

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

8 1. Within the amounts appropriated, the commissioner is hereby  
9 authorized to establish a demonstration program and to distribute state  
10 funds to local school districts, boards of cooperative educational  
11 services and in certain instances community school districts, for the  
12 development, implementation, evaluation, validation, demonstration and  
13 replication of exemplary comprehensive health education programs to  
14 assist the public schools in developing curricula, training staff, and  
15 addressing local health education needs of students, parents, and staff.  
16 SUCH PROGRAMS SHALL SERVE THE PURPOSE OF DEVELOPING AND ENHANCING  
17 PUPILS' HEALTH KNOWLEDGE, SKILLS, ATTITUDES AND BEHAVIORS, WHICH IS  
18 FUNDAMENTAL TO IMPROVING THEIR HEALTH STATUS AND ACADEMIC PERFORMANCE,  
19 AS WELL AS REDUCING THE INCIDENCE OF ADOLESCENT PREGNANCY, ALCOHOL  
20 ABUSE, TOBACCO ABUSE, TRUANCY, SUICIDE, SUBSTANCE ABUSE, OBESITY, ASTH-  
21 MA, OTHER CHRONIC RESPIRATORY DISEASES, AND OTHER PROBLEMS OF CHILDHOOD  
22 AND ADOLESCENCE.

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

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

29 S 5. This act shall take effect immediately.

## 30 PART P

31 Section 1. Section 11 of the public buildings law, as added by chapter  
32 819 of the laws of 1987 and subdivision 2 as amended by chapter 126 of  
33 the laws of 1988, is amended to read as follows:

34 S 11. Pilot program of bicycle parking facilities. 1. Legislative  
35 finding. In recognition of the role which bicycles can serve as a valu-  
36 able transportation mode with energy conservation, health, PHYSICAL  
37 FITNESS and environmental benefits, it is hereby declared to be the  
38 policy of the state that provision for adequate and safe bicycle facili-  
39 ties including the use of present facilities for safe and secure bicycle  
40 parking AND STORAGE be included in the planning [and], development,  
41 CONSTRUCTION OR RECONSTRUCTION of all state facilities.

42 2. (a) The commissioner of general services shall undertake a [pilot]  
43 program for THE provision and promotion of safe and secure bicycle park-  
44 ing facilities at state office buildings FOR STATE EMPLOYEES AND VISI-  
45 TORS AT SUCH BUILDINGS. The commissioner[, within one year of the enact-  
46 ment of this section,] OF GENERAL SERVICES shall provide, at the  
47 principal office buildings under his OR HER superintendence at the  
48 Nelson A. Rockefeller Empire State Plaza in Albany[, New York], secure  
49 bicycle parking facilities for use by employees and visitors. PROVIDED,  
50 FURTHER, THAT THE COMMISSIONER OF GENERAL SERVICES SHALL MAKE AN INVEN-  
51 TORY OF ALL EXISTING BICYCLE PARKING AND STORAGE FACILITIES AT ALL STATE  
52 OFFICE BUILDINGS AND OFFICE BUILDINGS IN WHICH THE STATE LEASES OR OCCU-  
53 PIES SPACE. SUCH INVENTORY SHALL BE MADE ONLY OF STATE OWNED OR LEASED  
54 BUILDINGS OR OFFICES WHICH HAVE OVER FIFTY STATE EMPLOYEES LOCATED AT

1 SUCH SITE OR IN WHICH THE VISITATION RATE BY THE GENERAL PUBLIC IS OVER  
2 FIVE HUNDRED VISITORS, ON AVERAGE, EACH MONTH. SUCH INVENTORY OF BICYCLE  
3 PARKING AND STORAGE FACILITIES SHALL BE COMPLETED WITHIN TWO YEARS OF  
4 THE EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FOURTEEN  
5 WHICH AMENDED THIS SECTION.

6 (b) The commissioner OF GENERAL SERVICES is also authorized, within a  
7 reasonable period and where feasible, to provide suitable support facil-  
8 ities including clothing lockers, showers and changing facilities, and  
9 to charge a reasonable use fee.

10 (c) For the purpose of this section, the term "bicycle parking facili-  
11 ty" means a device or enclosure, located within a building or installa-  
12 tion, or conveniently adjacent thereto, that is easily accessible,  
13 clearly visible and so located as to minimize the danger of theft of  
14 bicycles. Such a device shall consist of a parking rack, locker, or  
15 other device constructed to enable the frame and both wheels of a bicy-  
16 cle to be secured with ease by use of a padlock in a manner that will  
17 minimize the risk of theft, or an enclosure which limits access to the  
18 bicycles and is under observation by an attendant.

19 3. UPON COMPLETION OF A STATE OFFICE BUILDING BICYCLE PARKING AND  
20 STORAGE FACILITIES INVENTORY PROVIDED FOR IN PARAGRAPH (A) OF SUBDIVI-  
21 SION TWO OF THIS SECTION, THE COMMISSIONER OF GENERAL SERVICES SHALL  
22 DEVELOP A PLAN TO EXPAND BICYCLE PARKING AND STORAGE FACILITIES TO  
23 ENCOURAGE THE USE OF SUCH FACILITIES BY STATE EMPLOYEES AND THE GENERAL  
24 PUBLIC THAT PATRONIZE SUCH FACILITIES TO CONDUCT PUBLIC BUSINESS. SUCH  
25 PLAN SHALL BE COMPLETED WITHIN EIGHTEEN MONTHS AFTER FINALIZATION OF THE  
26 PARKING AND STORAGE FACILITIES INVENTORY. SUCH PLAN SHALL CONTAIN AND  
27 ADDRESS THE FOLLOWING ELEMENTS TO ENCOURAGE STATE EMPLOYEES AND THE  
28 GENERAL PUBLIC TO USE BICYCLES MORE FREQUENTLY AT EACH STATE OFFICE  
29 BUILDING FACILITY OR LEASED PREMISE:

30 (A) THE INVENTORY OF BICYCLE PARKING AND STORAGE FACILITIES SHALL BE  
31 RANKED FROM HIGHEST TO LOWEST BASED ON THE EXISTING UNFULFILLED DEMAND  
32 FOR SUCH FACILITIES AT STATE OFFICE BUILDINGS. SUCH RANKING SHALL ALSO  
33 CONSIDER INCREASED FUTURE DEMAND OR THE POTENTIAL FOR INCREASED FUTURE  
34 DEMAND OF SUCH PARKING AND STORAGE FACILITIES;

35 (B) IN URBAN SETTINGS, THERE SHALL BE A PLAN TO DEVELOP AN AMPLE  
36 SUPPLY OF SECURE COVERED AND UNCOVERED OFF-STREET BICYCLE PARKING AND  
37 STORAGE OR ALTERNATE INDOOR PARKING OR STORAGE FOR SUCH BICYCLES;

38 (C) ADEQUATE POSTING OF SUCH BICYCLE PARKING AND STORAGE FACILITIES  
39 SHALL BE PROVIDED FOR AND PLACED AROUND SUCH STATE OFFICE BUILDING  
40 FACILITY TO ENCOURAGE UTILIZATION OF SUCH PARKING AND STORAGE FACILITIES  
41 BY STATE EMPLOYEES AND THE GENERAL PUBLIC;

42 (D) A MARKETING PLAN AND COMMUNITY OUTREACH EFFORT SHALL PROVIDE FOR  
43 THE DISSEMINATION OF INFORMATION TO STATE EMPLOYEES, VISITORS TO STATE  
44 OFFICE BUILDINGS, AND TO THE GENERAL PUBLIC TO ENCOURAGE INDIVIDUALS TO  
45 USE BICYCLES WHEN TRAVELING TO SUCH BUILDINGS OR FACILITIES; AND

46 (E) THE COMMISSIONER OF GENERAL SERVICES SHALL INCLUDE AND ADDRESS ANY  
47 OTHER ELEMENT IN THE PLAN AS HE OR SHE DEEMS APPROPRIATE.

48 4. In undertaking such [pilot] program, the office OF GENERAL SERVICES  
49 shall: (a) Consult with and cooperate with (i) [the statewide bicycle  
50 advisory council, (ii)] the [New York state] department of transporta-  
51 tion regional bicycle coordinator[, (iii)]; (II) local bicycle planning  
52 groups[,]; and [(iv)] (III) persons, organizations, and groups served  
53 by, interested in, or concerned with the area under study.

54 (b) Request and receive from any department, division, board, bureau,  
55 commission or other agency of the state or any political subdivision  
56 thereof or any public authority, any assistance and data as may be

1 necessary to enable the office OF GENERAL SERVICES to carry out its  
2 responsibilities under this section.

3 [(c) On or before the first day of January, nineteen hundred eighty-  
4 nine, a report shall be submitted to the governor and the legislature  
5 which shall include a determination of usage levels, a statement outlin-  
6 ing first year progress and the elements of a statewide plan for the  
7 provision of such facilities.]

8 5. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE STATE OR  
9 THE OWNER, LESSEE, MANAGER OR OTHER PERSON WHO IS IN CONTROL OF A BUILD-  
10 ING GOVERNED BY THIS SECTION TO PROVIDE SPACE FOR STORED BICYCLES AT  
11 SUCH BUILDING OR BROUGHT INTO SUCH BUILDING OR TO PERMIT A BICYCLE TO BE  
12 PARKED IN A MANNER THAT VIOLATES BUILDING OR FIRE CODES OR ANY OTHER  
13 APPLICABLE LAW, RULE OR CODE, OR WHICH OTHERWISE IMPEDES INGRESS OR  
14 EGRESS TO SUCH BUILDING.

15 6. THERE IS HEREBY ESTABLISHED A TEMPORARY BICYCLE COMMUTING TASK  
16 FORCE TO EXAMINE THE DEVELOPMENT OF SHELTERED BICYCLE PARKING IN PUBLIC  
17 SPACES.

18 (A) SUCH TASK FORCE SHALL BE COMPRISED OF NINE MEMBERS, INCLUDING THE  
19 COMMISSIONER OF GENERAL SERVICES, THE COMMISSIONER OF TRANSPORTATION,  
20 THE COMMISSIONER OF MOTOR VEHICLES, THE COMMISSIONER OF BUILDINGS OF THE  
21 CITY OF NEW YORK AND THE COMMISSIONER OF PARKS AND RECREATION OR A  
22 DESIGNEE OF ANY SUCH COMMISSIONERS. THE REMAINING FOUR MEMBERS SHALL  
23 CONSIST OF A GROUP OF MUNICIPAL PLANNERS, BICYCLE ASSOCIATION REPRESEN-  
24 TATIVES, BUILDING CONTRACTORS AND ENGINEERS. THEY SHALL BE APPOINTED AS  
25 FOLLOWS: ONE MEMBER SHALL BE APPOINTED BY THE TEMPORARY PRESIDENT OF THE  
26 SENATE; ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE  
27 SENATE; ONE MEMBER SHALL BE APPOINTED BY THE SPEAKER OF THE ASSEMBLY;  
28 AND ONE MEMBER SHALL BE APPOINTED BY THE MINORITY LEADER OF THE ASSEM-  
29 BLY.

30 (B) THE CHAIR OF THE TEMPORARY BICYCLE COMMUTING TASK FORCE SHALL BE  
31 THE COMMISSIONER OF GENERAL SERVICES. MEMBERS OF THE TEMPORARY BICYCLE  
32 COMMUTING TASK FORCE SHALL SERVE WITHOUT COMPENSATION AND SHALL MEET  
33 WHEN DEEMED NECESSARY BY THE CHAIR.

34 (C) WITHIN EIGHTEEN MONTHS OF THE TEMPORARY BICYCLE COMMUTING TASK  
35 FORCE'S ESTABLISHMENT, SUCH TASK FORCE SHALL ISSUE A REPORT TO THE  
36 GOVERNOR AND THE LEGISLATURE. SUCH REPORT SHALL INCLUDE, BUT NOT BE  
37 LIMITED TO (I) AN ASSESSMENT OF THE DEMAND FOR SHELTERED BICYCLE PARKING  
38 IN PUBLIC SPACES; (II) AN EXAMINATION OF THE MARKETING AND COMMUNITY  
39 OUTREACH EFFORTS NEEDED TO ENCOURAGE THE USE OF BICYCLES; (III) RECOM-  
40 MENDATIONS ON ESTABLISHING PARTNERSHIPS WITH ENTITIES TO DEVELOP SHEL-  
41 TERED BICYCLE STORAGE AND PARKING FACILITIES IN PUBLIC SPACES; AND (IV)  
42 SUGGESTIONS ON EXPANDING THE OFFICE OF GENERAL SERVICES TO LOCAL MUNICI-  
43 PAL AND PRIVATE OFFICE BUILDINGS. SUCH REPORT SHALL BE POSTED ON THE  
44 WEBSITE OF EACH STATE AGENCY THAT WAS A MEMBER OF SUCH TASK FORCE WITHIN  
45 TWENTY DAYS FROM ITS SUBMISSION TO THE GOVERNOR. THE TEMPORARY BICYCLE  
46 COMMUTING TASK FORCE SHALL CEASE TO EXIST THREE MONTHS AFTER THE ISSU-  
47 ANCE OF ITS REPORT.

48 S 2. This act shall take effect on the one hundred eightieth day after  
49 it shall have become a law.

## 50 PART Q

51 Section 1. Section 16 of the agriculture and markets law is amended by  
52 adding a new subdivision 5-c to read as follows:

53 5-C. COOPERATE WITH THE COMMISSIONER OF EDUCATION, PURSUANT TO SUBDI-  
54 VISION THIRTY-TWO OF SECTION THREE HUNDRED FIVE OF THE EDUCATION LAW, TO

1 DEVELOP GUIDELINES FOR THE VOLUNTARY IMPLEMENTATION BY SCHOOL DISTRICTS  
2 AND INSTITUTIONS OF HIGHER EDUCATION, AS DEFINED IN SUBDIVISION EIGHT OF  
3 SECTION TWO OF THE EDUCATION LAW, OF PROGRAMS WHICH ENCOURAGE THE  
4 DONATION OF EXCESS, UNUSED, EDIBLE FOOD FROM MEALS SERVED AT SUCH EDUCA-  
5 TIONAL FACILITIES TO LOCAL VOLUNTARY FOOD ASSISTANCE PROGRAMS.

6 S 2. Section 305 of the education law is amended by adding a new  
7 subdivision 32 to read as follows:

8 32. THE COMMISSIONER, IN CONSULTATION AND COOPERATION WITH THE COMMIS-  
9 SIONER OF AGRICULTURE AND MARKETS, SHALL DEVELOP VOLUNTARY GUIDELINES TO  
10 ENCOURAGE AND FACILITATE THE ABILITY OF SCHOOL DISTRICTS AND INSTI-  
11 TUTIONS OF HIGHER EDUCATION TO DONATE EXCESS, UNUSED, EDIBLE FOOD FROM  
12 MEALS SERVED AT SUCH EDUCATIONAL FACILITIES TO LOCAL VOLUNTARY FOOD  
13 ASSISTANCE PROGRAMS INCLUDING, BUT NOT LIMITED TO, COMMUNITY FOOD  
14 PANTRIES, SOUP KITCHENS, AND OTHER COMMUNITY AND NOT-FOR-PROFIT ORGAN-  
15 IZATIONS THAT DISTRIBUTE FOOD TO THE POOR AND DISADVANTAGED.

16 SUCH GUIDELINES MAY INCLUDE, BUT NEED NOT BE LIMITED TO:

17 A. A METHODOLOGY TO PROVIDE INFORMATION TO EDUCATIONAL INSTITUTIONS  
18 AND LOCAL VOLUNTARY FOOD ASSISTANCE PROGRAMS OF THE PROVISIONS OF SUCH  
19 GUIDELINES;

20 B. A MEANS BY WHICH EDUCATIONAL INSTITUTIONS ARE PROVIDED WITH THE  
21 NAMES AND ADDRESSES OF ALL NEARBY LOCAL VOLUNTARY FOOD ASSISTANCE  
22 PROGRAMS;

23 C. A MEANS BY WHICH LOCAL VOLUNTARY FOOD ASSISTANCE PROGRAMS ARE  
24 PROVIDED WITH THE NAMES AND ADDRESSES OF NEARBY EDUCATIONAL INSTITUTIONS  
25 WHICH SERVE MEALS UPON THEIR PREMISES;

26 D. NOTIFICATION TO EDUCATIONAL INSTITUTIONS OF THEIR ABILITY TO ELECT  
27 TO DONATE EXCESS, UNUSED, EDIBLE FOOD TO LOCAL VOLUNTARY FOOD ASSISTANCE  
28 PROGRAMS; AND

29 E. THE PROVISION OF INFORMATION AND TECHNICAL ASSISTANCE ON THE MANNER  
30 OF HOW TO BEST DONATE EXCESS FOOD IN A SAFE AND SANITARY MANNER.

31 THE COMMISSIONER SHALL COORDINATE THE IMPLEMENTATION OF SUCH GUIDE-  
32 LINES WITH THE FARM-TO-SCHOOL PROGRAM AND THE NEW YORK HARVEST FOR NEW  
33 YORK KIDS WEEK PROGRAM ESTABLISHED PURSUANT TO SUBDIVISION FIVE-B OF  
34 SECTION SIXTEEN OF THE AGRICULTURE AND MARKETS LAW.

35 S 3. This act shall take effect on the one hundred eightieth day after  
36 it shall have become a law.

## 37 PART R

38 Section 1. Section 3231 of the insurance law, as added by chapter 501  
39 of the laws of 1992, is amended by adding a new subsection (c-1) to read  
40 as follows:

41 (C-1) SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT, AN INSURER OR  
42 HEALTH MAINTENANCE ORGANIZATION ISSUING AN INDIVIDUAL OR GROUP HEALTH  
43 INSURANCE POLICY PURSUANT TO THIS SECTION MAY PROVIDE FOR AN ACTUARIALLY  
44 APPROPRIATE REDUCTION IN PREMIUM RATES OR OTHER BENEFITS OR ENHANCEMENTS  
45 APPROVED BY THE SUPERINTENDENT TO ENCOURAGE AN ENROLLEE'S OR INSURED'S  
46 ACTIVE PARTICIPATION IN A QUALIFIED WELLNESS PROGRAM. A QUALIFIED WELL-  
47 NESS PROGRAM CAN BE A RISK MANAGEMENT SYSTEM THAT IDENTIFIES AT-RISK  
48 POPULATIONS OR ANY OTHER SYSTEMATIC PROGRAM OR COURSE OF MEDICAL CONDUCT  
49 WHICH HELPS TO PROMOTE PHYSICAL AND MENTAL FITNESS, HEALTH AND WELL-BE-  
50 ING, HELPS TO PREVENT OR MITIGATE THE CONDITIONS OF ACUTE OR CHRONIC  
51 SICKNESS, DISEASE OR PAIN, OR WHICH MINIMIZES ADVERSE HEALTH CONSE-  
52 QUENCES DUE TO LIFESTYLE. SUCH A WELLNESS PROGRAM MAY HAVE SOME OR ALL  
53 OF THE FOLLOWING ELEMENTS TO ADVANCE THE PHYSICAL HEALTH AND MENTAL  
54 WELL-BEING OF ITS PARTICIPANTS:



(1) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEMINATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFICATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPERTENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

(2) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOURAGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIVITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THIS ARTICLE; AND

(3) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE INSURER OR HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC OUTCOMES AS A RESULT OF AN ENROLLEE'S OR INSURED'S ADHERENCE TO THE APPROVED WELLNESS PROGRAM.

S 2. Subsections (b) and (c) of section 3239 of the insurance law, as added by chapter 592 of the laws of 2008, paragraphs 6 and 7 of subsection (b) and subparagraphs (C) and (D) of paragraph 2 of subsection (c) as amended, and paragraph 8 of subsection (b) and subparagraphs (E) and (F) of paragraph 2 of subsection (c) as added by chapter 519 of the laws of 2013, are amended to read as follows:

(b) A wellness program may include, but is not limited to, the following programs or services:

- (1) the use of a health risk assessment tool;
- (2) a smoking cessation program;
- (3) a weight management program;
- (4) a stress AND/OR HYPERTENSION management program;
- (5) a worker injury prevention program;
- (6) a nutrition education program;
- (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[.];
- (9) A SUBSTANCE OR ALCOHOL ABUSE CESSATION PROGRAM; AND
- (10) A PROGRAM TO MANAGE AND COPE WITH CHRONIC PAIN.

(c)(1) A wellness program may use rewards and incentives for participation provided that where the group health insurance policy or subscriber contract is required to be community-rated, the rewards and incentives shall not include a discounted premium rate or a rebate or refund of premium, EXCEPT AS PROVIDED IN SECTION THREE THOUSAND TWO HUNDRED THIRTY-ONE OF THIS ARTICLE, OR SECTION FOUR THOUSAND TWO HUNDRED THIRTY-FIVE, FOUR THOUSAND THREE HUNDRED SEVENTEEN OR FOUR THOUSAND THREE HUNDRED TWENTY-SIX OF THIS CHAPTER, OR SECTION FORTY-FOUR HUNDRED FIVE OF THE PUBLIC HEALTH LAW.

(2) Permissible rewards and incentives MAY include:

(A) full or partial reimbursement of the cost of participating in smoking cessation [or], weight management, STRESS AND/OR HYPERTENSION, WORKER INJURY PREVENTION, NUTRITION EDUCATION, SUBSTANCE OR ALCOHOL ABUSE CESSATION, OR CHRONIC PAIN MANAGEMENT AND COPING programs;

1 (B) full or partial reimbursement of the cost of membership in a  
2 health club or fitness center;

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

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

10 (E) full or partial reimbursement of the cost of participating in a  
11 stress management program or activity; and

12 (F) full or partial reimbursement of the cost of participating in a  
13 health or fitness program.

14 (3) Where the reward involves a group member's meeting a specified  
15 standard based on a health condition, the wellness program must meet the  
16 requirements of 45 CFR Part 146.

17 (4) A reward or incentive which involves a discounted premium rate or  
18 a rebate or refund of premium shall be based on actuarial demonstration  
19 that the wellness program can reasonably be expected to result in the  
20 overall good health and well being of the group AS PROVIDED IN SECTION  
21 THREE THOUSAND TWO HUNDRED THIRTY-ONE OF THIS ARTICLE, SECTIONS FOUR  
22 THOUSAND TWO HUNDRED THIRTY-FIVE, FOUR THOUSAND THREE HUNDRED SEVENTEEN  
23 AND FOUR THOUSAND THREE HUNDRED TWENTY-SIX OF THIS CHAPTER, AND SECTION  
24 FORTY-FOUR HUNDRED FIVE OF THE PUBLIC HEALTH LAW.

25 S 3. Subsection (h) of section 4235 of the insurance law is amended by  
26 adding a new paragraph 5 to read as follows:

27 (5) EACH INSURER DOING BUSINESS IN THIS STATE, WHEN FILING WITH THE  
28 SUPERINTENDENT ITS SCHEDULES OF PREMIUM RATES, RULES AND CLASSIFICATION  
29 OF RISKS FOR USE IN CONNECTION WITH THE ISSUANCE OF ITS POLICIES OF  
30 GROUP ACCIDENT, GROUP HEALTH OR GROUP ACCIDENT AND HEALTH INSURANCE, MAY  
31 PROVIDE FOR AN ACTUARIALLY APPROPRIATE REDUCTION IN PREMIUM RATES OR  
32 OTHER BENEFITS OR ENHANCEMENTS APPROVED BY THE SUPERINTENDENT TO ENCOUR-  
33 AGE AN ENROLLEE'S OR INSURED'S ACTIVE PARTICIPATION IN A QUALIFIED WELL-  
34 NESS PROGRAM. A QUALIFIED WELLNESS PROGRAM CAN BE A RISK MANAGEMENT  
35 SYSTEM THAT IDENTIFIES AT-RISK POPULATIONS OR ANY OTHER SYSTEMATIC  
36 PROGRAM OR COURSE OF MEDICAL CONDUCT WHICH HELPS TO PROMOTE PHYSICAL AND  
37 MENTAL FITNESS, HEALTH AND WELL-BEING, HELPS TO PREVENT OR MITIGATE THE  
38 CONDITIONS OF ACUTE OR CHRONIC SICKNESS, DISEASE OR PAIN, OR WHICH MINI-  
39 MIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. SUCH A WELLNESS  
40 PROGRAM MAY HAVE SOME OR ALL OF THE FOLLOWING ELEMENTS TO ADVANCE THE  
41 PHYSICAL HEALTH AND MENTAL WELL-BEING OF ITS PARTICIPANTS:

42 (A) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEM-  
43 INATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH  
44 WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES  
45 THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE  
46 AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFI-  
47 CATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPER-  
48 TENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

49 (B) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOUR-  
50 AGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIV-  
51 ITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS  
52 PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THIS  
53 CHAPTER; AND

54 (C) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS  
55 OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND

1 MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE  
2 GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

3 SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES  
4 THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE  
5 INSURER OR HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC  
6 OUTCOMES AS A RESULT OF AN ENROLLEE'S OR INSURED'S ADHERENCE TO THE  
7 APPROVED WELLNESS PROGRAM.

8 S 4. Section 4317 of the insurance law is amended by adding a new  
9 subsection (c-1) to read as follows:

10 (C-1) SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT, AN INSURER OR  
11 HEALTH MAINTENANCE ORGANIZATION ISSUING AN INDIVIDUAL OR GROUP HEALTH  
12 INSURANCE CONTRACT PURSUANT TO THIS SECTION MAY PROVIDE FOR AN ACTUARI-  
13 ALLY APPROPRIATE REDUCTION IN PREMIUM RATES OR OTHER BENEFITS OR  
14 ENHANCEMENTS APPROVED BY THE SUPERINTENDENT TO ENCOURAGE AN ENROLLEE'S  
15 OR INSURED'S ACTIVE PARTICIPATION IN A QUALIFIED WELLNESS PROGRAM. A  
16 QUALIFIED WELLNESS PROGRAM CAN BE A RISK MANAGEMENT SYSTEM THAT IDENTI-  
17 FIES AT-RISK POPULATIONS OR ANY OTHER SYSTEMATIC PROGRAM OR COURSE OF  
18 MEDICAL CONDUCT WHICH HELPS TO PROMOTE PHYSICAL AND MENTAL FITNESS,  
19 HEALTH AND WELL-BEING, HELPS TO PREVENT OR MITIGATE THE CONDITIONS OF  
20 ACUTE OR CHRONIC SICKNESS, DISEASE OR PAIN, OR WHICH MINIMIZES ADVERSE  
21 HEALTH CONSEQUENCES DUE TO LIFESTYLE. SUCH A WELLNESS PROGRAM MAY HAVE  
22 SOME OR ALL OF THE FOLLOWING ELEMENTS TO ADVANCE THE PHYSICAL HEALTH AND  
23 MENTAL WELL-BEING OF ITS PARTICIPANTS:

24 (1) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEM-  
25 INATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH  
26 WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES  
27 THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE  
28 AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFI-  
29 CATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPER-  
30 TENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

31 (2) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOUR-  
32 AGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIV-  
33 ITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS  
34 PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THIS  
35 CHAPTER; AND

36 (3) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS  
37 OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND  
38 MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE  
39 GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

40 SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES  
41 THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE  
42 INSURER OR HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC  
43 OUTCOMES AS A RESULT OF AN ENROLLEE'S OR INSURED'S ADHERENCE TO THE  
44 APPROVED WELLNESS PROGRAM.

45 S 5. Subsection (m) of section 4326 of the insurance law is amended by  
46 adding a new paragraph 4 to read as follows:

47 (4) APPROVAL OF THE SUPERINTENDENT, AN INSURER OR HEALTH MAINTENANCE  
48 ORGANIZATION ISSUING A CONTRACT FOR QUALIFYING SMALL EMPLOYERS OR INDIV-  
49 IDUALS PURSUANT TO THIS SECTION MAY PROVIDE FOR AN ACTUARIALLY APPRO-  
50 PRIATE REDUCTION IN PREMIUM RATES OR OTHER BENEFITS OR ENHANCEMENTS  
51 APPROVED BY THE SUPERINTENDENT TO ENCOURAGE AN ENROLLEE'S OR INSURED'S  
52 ACTIVE PARTICIPATION IN A QUALIFIED WELLNESS PROGRAM. A QUALIFIED WELL-  
53 NESS PROGRAM CAN BE A RISK MANAGEMENT SYSTEM THAT IDENTIFIES AT-RISK  
54 POPULATIONS OR ANY OTHER SYSTEMATIC PROGRAM OR COURSE OF MEDICAL CONDUCT  
55 WHICH HELPS TO PROMOTE PHYSICAL AND MENTAL FITNESS, HEALTH AND WELL-BE-  
56 ING, HELPS TO PREVENT OR MITIGATE THE CONDITIONS OF ACUTE OR CHRONIC

1 SICKNESS, DISEASE OR PAIN, OR WHICH MINIMIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. SUCH A WELLNESS PROGRAM MAY HAVE SOME OR ALL OF THE FOLLOWING ELEMENTS TO ADVANCE THE PHYSICAL HEALTH AND MENTAL WELL-BEING OF ITS PARTICIPANTS:

5 (1) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEMINATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFICATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPERTENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

12 (2) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOURAGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIVITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THIS CHAPTER; AND

17 (3) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

21 SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE INSURER OR HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC OUTCOMES AS A RESULT OF AN ENROLLEE'S OR INSURED'S ADHERENCE TO THE APPROVED WELLNESS PROGRAM.

26 S 6. Section 4405 of the public health law is amended by adding a new subdivision 5-a to read as follows:

28 5-A. SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT OF FINANCIAL SERVICES, THE POSSIBLE PROVIDING OF AN ACTUARIALLY APPROPRIATE REDUCTION IN PREMIUM RATES OR OTHER BENEFITS OR ENHANCEMENTS APPROVED BY THE SUPERINTENDENT OF FINANCIAL SERVICES TO ENCOURAGE AN ENROLLEE'S ACTIVE PARTICIPATION IN A QUALIFIED WELLNESS PROGRAM. A QUALIFIED WELLNESS PROGRAM CAN BE A RISK MANAGEMENT SYSTEM THAT IDENTIFIES AT-RISK POPULATIONS OR ANY OTHER SYSTEMATIC PROGRAM OR COURSE OF MEDICAL CONDUCT WHICH HELPS TO PROMOTE PHYSICAL AND MENTAL FITNESS, HEALTH AND WELL-BEING, HELPS TO PREVENT OR MITIGATE THE CONDITIONS OF ACUTE OR CHRONIC SICKNESS, DISEASE OR PAIN, OR WHICH MINIMIZES ADVERSE HEALTH CONSEQUENCES DUE TO LIFESTYLE. SUCH A WELLNESS PROGRAM MAY HAVE SOME OR ALL OF THE FOLLOWING ELEMENTS TO ADVANCE THE PHYSICAL HEALTH AND MENTAL WELL-BEING OF ITS PARTICIPANTS:

41 (1) AN EDUCATION PROGRAM TO INCREASE THE AWARENESS OF AND DISSEMINATION OF INFORMATION ABOUT PURSUING HEALTHIER LIFESTYLES, AND WHICH WARNS ABOUT RISKS OF PURSUING ENVIRONMENTAL OR BEHAVIORAL ACTIVITIES THAT ARE DETRIMENTAL TO HUMAN HEALTH. IN ADDITION, INFORMATION ON THE AVAILABILITY OF HEALTH SCREENING TESTS TO ASSIST IN THE EARLY IDENTIFICATION AND TREATMENT OF DISEASES SUCH AS CANCER, HEART DISEASE, HYPERTENSION, DIABETES, ASTHMA, OBESITY OR OTHER ADVERSE HEALTH AFFLICTIONS;

48 (2) A PROGRAM THAT ENCOURAGES BEHAVIORAL PRACTICES THAT EITHER ENCOURAGES HEALTHY LIVING ACTIVITIES OR DISCOURAGES UNHEALTHY LIVING ACTIVITIES. SUCH ACTIVITIES OR PRACTICES MAY INCLUDE WELLNESS PROGRAMS, AS PROVIDED UNDER SECTION THREE THOUSAND TWO HUNDRED THIRTY-NINE OF THE INSURANCE LAW; AND

53 (3) THE MONITORING OF THE PROGRESS OF EACH COVERED PERSON TO TRACK HIS OR HER ADHERENCE TO SUCH WELLNESS PROGRAM AND TO PROVIDE ASSISTANCE AND MORAL SUPPORT TO SUCH COVERED PERSON TO ASSIST HIM OR HER TO ATTAIN THE GOALS OF THE COVERED PERSON'S WELLNESS PROGRAM.

1 SUCH WELLNESS PROGRAM SHALL DEMONSTRATE ACTUARIALLY THAT IT ENCOURAGES  
2 THE GENERAL GOOD HEALTH AND WELL-BEING OF THE COVERED POPULATION. THE  
3 HEALTH MAINTENANCE ORGANIZATION SHALL NOT REQUIRE SPECIFIC OUTCOMES AS A  
4 RESULT OF AN ENROLLEE'S ADHERENCE TO THE APPROVED WELLNESS PROGRAM;

5 S 7. This act shall take effect on the one hundred eightieth day after  
6 it shall have become a law; provided that, effective immediately any  
7 rules and regulations necessary to implement the provisions of this act  
8 on its effective date are authorized and directed to be added, amended  
9 and/or repealed on or before such date.

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

19 S 4. This act shall take effect immediately provided, however, that  
20 the applicable effective date of Parts A through R of this act shall be  
21 as specifically set forth in the last section of such Parts.