

# STATE OF NEW YORK

6359

2023-2024 Regular Sessions

## IN SENATE

April 18, 2023

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to provision or sale of New York milk in New York schools; to amend the agriculture and markets law, in relation to duties of the milk marketing advisory council; and directing the department of agriculture and markets to conduct a study to increase processing of milk in New York state; and providing for the repeal of such provisions upon expiration thereof

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 "whole milk in New York schools act".

3 § 2. The education law is amended by adding a new section 915-a to  
4 read as follows:

5 § 915-a. Provision or sale of New York milk in New York schools. 1.  
6 Definitions. For the purposes of this section, the following terms shall  
7 have the following meanings:

8 (a) "New York milk" means raw milk produced by the milking of cows  
9 physically located within the geographic boundaries of this state,  
10 transported to a dairy processing facility located within the geographic  
11 boundaries of this state and processed as fluid milk into containers  
12 intended for distribution to consumers.

13 (b) "New York school" means any school district, charter school,  
14 regional charter school, area career and technical school or intermedi-  
15 ate unit located within this state.

16 (c) "Reduced fat New York milk" means New York milk containing two  
17 percent milk fat. The term "reduced fat New York milk" shall include New  
18 York milk that has been flavored.

19 (d) "Whole New York milk" means New York milk containing at least  
20 three percent milk fat. The term "whole New York milk" shall include New  
21 York milk that has been flavored.

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

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1 2. Milk deemed in the stream of intrastate commerce. New York milk  
2 that is offered for sale to a New York school shall be deemed to be in  
3 the stream of intrastate commerce.

4 3. Provision or sale of New York milk in New York schools. Notwith-  
5 standing any other provision of law, rule or regulation, the school  
6 board or other governing entity of a New York school may elect to  
7 utilize funds from state or local sources to obtain whole New York milk  
8 or reduced fat New York milk to provide or sell at such New York school.

9 4. Duties of the commissioner. The commissioner shall notify the  
10 superintendent or chief administrator of each New York school of the  
11 provisions of this section.

12 5. Right of civil action. The attorney general may, on behalf of a New  
13 York school, bring a civil action against the federal government or any  
14 other entity to recover funds withheld or revoked as a result of an  
15 action taken by the school board or other governing entity of such New  
16 York school under subdivision three of this section. Provided, however,  
17 that in lieu of such civil action, the state of New York may pursue  
18 other appropriate remedies to ensure the continued provision or sale of  
19 New York milk in New York schools.

20 6. Alternative to civil action. If any federal law, rule, or regu-  
21 lation is enacted that would prevent a New York school from providing or  
22 selling whole New York milk or reduced fat New York milk, flavored or  
23 unflavored, then the commissioner shall issue a report to the governor  
24 and the legislature recommending alternative methods to encourage and  
25 promote the availability of whole New York milk and reduced fat New York  
26 milk in New York schools.

27 7. Reporting. No later than two years after the effective date of this  
28 section, the commissioner, in consultation with the commissioner of  
29 agriculture and markets and the milk marketing advisory council estab-  
30 lished pursuant to section two hundred fifty-four-a of the agriculture  
31 and markets law, shall issue a report to the chairperson and minority  
32 chairperson of the senate agriculture committee and the chairperson and  
33 minority chairperson of the assembly agriculture committee. Such report  
34 shall include all of the following information:

35 (a) A list of New York schools that have elected to provide or sell  
36 New York milk under subdivision three of this section;

37 (b) The approximate increase or decrease in the consumption of fluid  
38 milk at New York schools since the effective date of this section;

39 (c) Actions taken by the state of New York to promote New York whole  
40 milk and New York reduced fat milk availability in New York schools; and

41 (d) Any other information deemed relevant by the commissioner, the  
42 commissioner of agriculture and markets or the milk marketing advisory  
43 council established pursuant to section two hundred fifty-four-a of the  
44 agriculture and markets law for the purposes of this section.

45 § 3. Section 254-a of the agriculture and markets law is amended by  
46 adding a new subdivision 4 to read as follows:

47 4. The advisory council shall participate in the preparation and issu-  
48 ance of the report regarding consumption and availability of New York  
49 milk in New York schools as required pursuant to subdivision seven of  
50 section nine hundred fifteen-a of the education law.

51 § 4. Study to increase processing of milk in New York state. 1. The  
52 department of agriculture and markets shall undertake a comprehensive  
53 study to assess ways to increase the processing of milk within the state  
54 of New York for intrastate distribution and consumption, including  
55 expanding processing facilities.

56 2. The study shall:

1 (a) Identify potential incentives for dairy processors to expand their  
2 operations and increase milk processing;

3 (b) Identify areas of the state with the greatest potential for  
4 expanding milk processing, taking into consideration existing infras-  
5 tructure and resources;

6 (c) Identify potential funding sources to support the expansion of  
7 milk processing, including federal and state grants, loans and other  
8 programs; and

9 (d) Identify steps the state can take to improve access to distrib-  
10 ution and processing networks for small dairies.

11 3. The department of agriculture and markets shall submit a report of  
12 its findings and recommendations pursuant to the study to the governor,  
13 the speaker of the assembly, and the majority leader of the senate no  
14 later than one year after the effective date of this section.

15 4. The study and report required by this section shall be funded by  
16 existing appropriations to the department of agriculture and markets.

17 5. For the purposes of this section, the following terms shall have  
18 the following meanings:

19 (a) "Study" shall mean the study required pursuant to subdivision one  
20 of this section; and

21 (b) "Small dairies" shall mean dairies with 200 or fewer milk cows.

22 § 5. This act shall take effect on the thirtieth day after it shall  
23 have become a law and shall expire and be deemed repealed upon the  
24 occurrence of either of the following:

25 1. The amendment or repeal of section 9(a)(2)(A) of the National  
26 School Lunch Act (60 Stat. 230, 42 U.S.C. § 1758(a)(2)(A)), which  
27 results in the availability of whole milk or reduced fat milk, flavored  
28 or unflavored, in elementary and secondary schools in the state.

29 2. An update to the Dietary Guidelines for Americans published under  
30 section 301 of the National Nutrition Monitoring and Related Research  
31 Act of 1990 (Public Law 101-445, 7 U.S.C. § 5341), which permits the  
32 availability of whole milk or reduced fat milk, flavored or unflavored,  
33 in elementary and secondary schools in the state.

34 Provided, that the commissioner of education shall notify the legisla-  
35 tive bill drafting commission upon the occurrence of either event  
36 described in subdivisions one or two of this section in order that the  
37 commission may maintain an accurate and timely effective data base of  
38 the official text of the laws of the state of New York in furtherance of  
39 effectuating the provisions of section 44 of the legislative law and  
40 section 70-b of the public officers law.