

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

(PREFILED)

January 7, 2009

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

IN ASSEMBLY -- Introduced by M. of A. SAYWARD -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to providing for the sale, availability and distribution of healthy foods and beverages for school lunch programs

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

1 Section 1. Section 915 of the education law, as added by chapter 674  
2 of the laws of 1987, is amended to read as follows:  
3 S 915. [Prohibiting] PROMOTING the sale, AVAILABILITY OR DISTRIBUTION  
4 of certain [sweetened] foods AND BEVERAGES FOR A SCHOOL LUNCH PROGRAM.  
5 [From the beginning of the school day until the end of the last sched-  
6 uled meal period, no sweetened soda water, no chewing gum, no candy  
7 including hard candy, jellies, gums, marshmallow candies, fondant,  
8 licorice, spun candy and candy coated popcorn, and no water ices except  
9 those which contain fruit or fruit juices, shall be sold in any public  
10 school within the state.] 1. EXCEPT AS OTHERWISE PROVIDED BY THIS  
11 SECTION, SCHOOL DISTRICTS, PRIVATE SCHOOLS WHICH RECEIVE ANY FORM OF  
12 STATE FUNDING, BOARDS OF COOPERATIVE EDUCATIONAL SERVICES, COUNTY VOCA-  
13 TIONAL EDUCATION AND EXTENSION BOARDS, AND CHARTER SCHOOLS, SHALL  
14 PERMIT, AT SCHOOLS UNDER ITS JURISDICTION, THE SALE OF THE FOLLOWING  
15 BEVERAGES TO STUDENTS AS PART OF A SCHOOL LUNCH PROGRAM:  
16 (A) JUICES WITH AT LEAST FIFTY PERCENT FRUIT JUICES OR FRUIT IN NOT  
17 MORE THAN TWELVE OUNCE CONTAINERS OR VEGETABLE-BASED DRINKS IN NOT MORE  
18 THAN TWELVE OUNCE CONTAINERS;  
19 (B) BEVERAGES THAT CONTAIN ONLY WATER AND FRUIT OR VEGETABLE JUICE AND  
20 HAVE NO ADDED SUGARS;

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

1 (C) DRINKING WATER OR SELTZER WATER, WHICH MAY BE FLAVORED BUT DOES  
2 NOT CONTAIN CAFFEINE, IN ANY SIZE CONTAINER;

3 (D) ONE PERCENT FAT MILK AND NONFAT MILK, THAT MAY BE FLAVORED BUT  
4 CONTAIN NO MORE THAN THIRTY-TWO GRAMS OF SUGAR PER EIGHT OUNCE SERVING,  
5 IN NOT MORE THAN SIXTEEN OUNCE CONTAINERS; AND

6 (E) NONDAIRY MILK, SUCH AS SOY OR RICE MILK, WHICH MAY BE FLAVORED BUT  
7 CONTAIN NO MORE THAN THIRTY-TWO GRAMS TOTAL SUGAR PER EIGHT OUNCE SERV-  
8 ING, SHALL BE CALCIUM AND VITAMIN FORTIFIED, AND NOT IN MORE THAN  
9 SIXTEEN OUNCE CONTAINERS.

10 2. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, SCHOOL DISTRICTS,  
11 PRIVATE SCHOOLS WHICH RECEIVE ANY FORM OF STATE FUNDING, BOARDS OF COOP-  
12 ERATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTENSION  
13 BOARDS, AND CHARTER SCHOOLS, SHALL PERMIT, AT SCHOOLS UNDER ITS JURIS-  
14 DICTION, THE SALE OF ONLY PACKAGED AND NON-PACKAGED FOOD SOLD THAT  
15 ADHERES TO THE FOLLOWING CRITERIA:

16 (A) PACKAGE SIZES FOR GRAINS SHALL NOT EXCEED 1.25 OUNCES FOR CHIPS,  
17 CRACKERS, POPCORN AND SIMILARLY PACKAGED ITEMS; ONE OUNCE FOR COOKIES;  
18 TWO OUNCE CEREAL BARS AND GRANOLA BARS AND SIMILARLY PACKAGED ITEMS; TWO  
19 OUNCES FOR BAKERY ITEMS INCLUDING, BUT NOT LIMITED TO, PASTRIES, MUFFINS  
20 AND BAGELS; PACKAGE SIZES FOR DAIRY AND NONDAIRY ITEMS SHALL NOT EXCEED  
21 EIGHT OUNCES FOR YOGURT; FOUR OUNCES FOR ICE CREAM AND TWO OUNCES FOR  
22 CHEESE; PACKAGE SIZES FOR NUTS AND SEEDS SHALL NOT EXCEED 1.25 OUNCES  
23 FOR TRAIL MIX, NUTS, SEEDS AND JERKY; THERE SHALL BE NO MAXIMUM PACKAGE  
24 SIZE ESTABLISHED FOR FRUITS AND VEGETABLES;

25 (B) EACH PACKAGE OF FOOD SHALL NOT HAVE MORE THAN THIRTY PERCENT OF  
26 ITS TOTAL CALORIES FROM FAT;

27 (C) EACH PACKAGE SHALL NOT HAVE MORE THAN TEN PERCENT OF ITS TOTAL  
28 CALORIES FROM SATURATED FAT;

29 (D) EACH PACKAGE SHALL NOT HAVE MORE THAN FIFTEEN GRAMS OF SUGAR;

30 (E) EACH PACKAGE OF GRAINS, FRUITS AND VEGETABLES SHALL CONTAIN NOT  
31 MORE THAN THIRTY GRAMS OF TOTAL CARBOHYDRATES (INCLUDING NATURAL AND  
32 ADDED SUGAR); EACH PACKAGE OF DAIRY AND NON-DAIRY SHALL CONTAIN NOT MORE  
33 THAN FOUR GRAMS PER OUNCE OF TOTAL CARBOHYDRATE INCLUDING NATURAL SUGAR  
34 AND NATURAL MILK SUGAR;

35 (F) WHOLE GRAINS SHALL BE AT LEAST FIFTY PERCENT OF THE TOTAL BREAD  
36 EQUIVALENT; AND

37 (G) THE PORTION SIZE SHALL BE EQUIVALENT TO FEDERAL STANDARDS.

38 3. FOOD ITEMS AND BEVERAGES NOT PREPACKAGED WITH NUTRITIONAL INFORMA-  
39 TION BY THE DISTRIBUTOR SHALL BE REQUIRED TO HAVE NUTRITIONAL INFORMA-  
40 TION INCLUDING CALORIES, PERCENTAGE OF CALORIES FROM FAT, PERCENTAGE OF  
41 CALORIES FROM SATURATED FAT, CHOLESTEROL, PROTEIN, CARBOHYDRATE, FIBER,  
42 CALCIUM, IRON, VITAMIN A AND VITAMIN C AND ANY SUCH OTHER INFORMATION AS  
43 REQUIRED TO BE INCLUDED ON THE FOOD NUTRITION LABEL BY THE FOOD AND DRUG  
44 ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN  
45 SERVICES AVAILABLE TO THE CUSTOMER, EITHER ON A DISPLAY CASE, IN A BIND-  
46 ER OR WITHIN INFORMATION PACKETS HELD BY FOOD SERVICE STAFF FOR REQUEST  
47 BY THE CUSTOMER.

48 4. WHERE POSSIBLE, AT LEAST TWO FRUITS AND TWO NON-FRIED VEGETABLE  
49 CHOICES SHALL BE GIVEN AT EACH LUNCHEON MEAL, AND FIVE DIFFERENT FRUITS  
50 AND FIVE DIFFERENT VEGETABLES EACH WEEK. SUCH ITEMS SHALL INCLUDE, BUT  
51 NOT BE LIMITED TO, FRESH FRUIT AND VEGETABLES, CANNED FRUIT IN LIGHT  
52 SYRUP, CANNED VEGETABLES AND FIFTY--ONE HUNDRED PERCENT FRUIT JUICE.  
53 FRUIT AND NON-FRIED VEGETABLES SHALL BE OFFERED FOR SALE AT ANY LOCATION  
54 WHERE FOOD IS SOLD AS PART OF A SCHOOL LUNCH PROGRAM.

55 5. PROVISIONS OF THIS SECTION SHALL APPLY TO THE SALE OF ALL FOODS AND  
56 BEVERAGES SOLD AS PART OF THE NATIONAL SCHOOL LUNCH PROGRAM AND SCHOOL

1 LUNCH PROGRAMS, THAT IS REIMBURSABLE UNDER SUCH PROGRAMS; IF SUCH SCHOOL  
2 PARTICIPATES IN THE GUIDELINES PROVIDED BY THIS SECTION, A TEN CENT PER  
3 LUNCH REIMBURSEMENT FROM THE STATE SHALL BE GRANTED.

4 6. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH,  
5 SHALL ESTABLISH A PROCEDURE FOR ENGAGING SCHOOL WELLNESS COMMITTEES  
6 ESTABLISHED IN COMPLIANCE WITH FEDERAL REQUIREMENTS, IN EDUCATING  
7 STUDENTS, PARENTS, SCHOOL ADMINISTRATORS AND SCHOOL BOARDS ON THE NUTRI-  
8 TIONAL STANDARDS SET FORTH WITHIN THIS SECTION.

9 7. THE COMMISSIONER SHALL ESTABLISH A PROCESS TO MONITOR THE REPORT-  
10 ING AND PROOF OF SALE OF SUCH LUNCHESES PURSUANT TO THIS SECTION. SUCH  
11 PROCESS SHALL, IN PART, PROVIDE THAT EACH SCHOOL DISTRICT, PRIVATE  
12 SCHOOL THAT RECEIVES ANY FORM OF STATE FUNDING, BOARDS OF COOPERATIVE  
13 EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTENSION BOARD  
14 AND CHARTER SCHOOLS SUBJECT TO THE PROVISIONS OF THIS SECTION, SHALL  
15 COMPLETE AN ANNUAL REPORT ON SALE, AVAILABILITY AND DISTRIBUTION OF FOOD  
16 AND BEVERAGES ON SCHOOL GROUNDS AND THAT EACH SUCH SCHOOL REPORT SHALL  
17 BE SUBMITTED TO THE COMMISSIONER IN A TIMELY MANNER AS THE COMMISSIONER  
18 SHALL PROVIDE FOR IN RULES AND REGULATIONS. SUCH REPORT SHALL BE  
19 PRESENTED TO THE SCHOOL WELLNESS COMMITTEE FOR THE PURPOSES OF ESTAB-  
20 LISHING SCHOOL WELLNESS POLICIES IN COMPLIANCE WITH FEDERAL REQUIREMENTS  
21 FOR REVIEW AND COMMENT PRIOR TO SUBMISSION TO THE COMMISSIONER. THE  
22 COMMISSIONER SHALL PREPARE AND DELIVER WITHIN TWO YEARS OF THE EFFECTIVE  
23 DATE OF THIS SUBDIVISION AND ANNUALLY THEREAFTER, A REPORT TO THE GOVER-  
24 NOR AND THE LEGISLATURE:

25 (A) DELINEATING BY SCHOOL DISTRICT, PUBLIC SCHOOLS, PRIVATE SCHOOLS,  
26 BOARDS OF COOPERATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION  
27 AND EXTENSION BOARDS AND CHARTER SCHOOLS FOR WHICH SUCH ANNUAL SCHOOL  
28 REPORT HAS NOT BEEN SUBMITTED TO THE COMMISSION AS PROVIDED FOR BY  
29 SUBDIVISION SEVEN OF THIS SECTION; AND

30 (B) DETAILING WHAT MEASURE THE COMMISSIONER HAS TAKEN, OR IS TAKING,  
31 TO ENSURE THAT SUCH SCHOOL REPORT IS COMPLETED FOR ALL SCHOOLS AND  
32 SUBMITTED TO THE COMMISSIONER AS REQUIRED. THE COMMISSIONER SHALL  
33 REQUIRE THAT A SUMMARY OF SUCH REPORT BE INCLUDED IN THE SCHOOL REPORT  
34 CARDS OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES REPORT CARDS REQUIRED  
35 BY THIS CHAPTER AND SHALL BE POSTED ON THE DEPARTMENT INTERNET WEBSITE  
36 FOR PUBLIC REVIEW.

37 S 2. This act shall take effect on the first of September next  
38 succeeding the date on which it shall have become a law; provided,  
39 however, that effective immediately, the addition, amendment and/or  
40 repeal of any rule or regulation necessary for the implementation of  
41 this act on its effective date are authorized and directed to be made  
42 and completed on or before such effective date.