S T A T E O F N E W Y O R K

S. 356 A. 590

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:

Section 1. Section 915 of the education law, as added by chapter 674 of the laws of 1987, is amended to read as follows:

S 915. [Prohibiting] PROMOTING the sale, AVAILABILITY OR DISTRIBUTION of certain [sweetened] foods AND BEVERAGES FOR A SCHOOL LUNCH PROGRAM. [From the beginning of the school day until the end of the last scheduled meal period, no sweetened soda water, no chewing gum, no candy including hard candy, jellies, gums, marshmallow candies, fondant, licorice, spun candy and candy coated popcorn, and no water ices except those which contain fruit or fruit juices, shall be sold in any public school within the state.] 1. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, SCHOOL DISTRICTS, PRIVATE SCHOOLS WHICH RECEIVE ANY FORM OF STATE FUNDING, BOARDS OF COOPERATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTENSION BOARDS, AND CHARTER SCHOOLS, SHALL PERMIT, AT SCHOOLS UNDER ITS JURISDICTION, THE SALE OF THE FOLLOWING BEVERAGES TO STUDENTS AS PART OF A SCHOOL LUNCH PROGRAM:

(A) JUICES WITH AT LEAST FIFTY PERCENT FRUIT JUICES OR FRUIT IN NOT MORE THAN TWELVE OUNCE CONTAINERS OR VEGETABLE-BASED DRINKS IN NOT MORE THAN TWELVE OUNCE CONTAINERS;

(B) BEVERAGES THAT CONTAIN ONLY WATER AND FRUIT OR VEGETABLE JUICE AND HAVE NO ADDED SUGARS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. THE COMMISSIONER SHALL ESTABLISH A PROCESS TO MONITOR THE REPORTING AND PROOF OF SALE OF SUCH LUNCHES PURSUANT TO THIS SECTION. SUCH PROCESS SHALL, IN PART, PROVIDE THAT EACH SCHOOL DISTRICT, PRIVATE SCHOOL THAT RECEIVES ANY FORM OF STATE FUNDING, BOARDS OF COOPERATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTENSION BOARD AND CHARTER SCHOOLS SUBJECT TO THE PROVISIONS OF THIS SECTION, SHALL COMPLETE AN ANNUAL REPORT ON SALE, AVAILABILITY AND DISTRIBUTION OF FOOD AND BEVERAGES ON SCHOOL GROUNDS AND THAT EACH SUCH SCHOOL REPORT SHALL BE SUBMITTED TO THE COMMISSIONER IN A TIMELY MANNER AS THE COMMISSIONER SHALL PROVIDE FOR IN RULES AND REGULATIONS. SUCH REPORT SHALL BE PRESENTED TO THE SCHOOL WELLNESS COMMITTEE FOR THE PURPOSES OF ESTABLISHING SCHOOL WELLNESS POLICIES IN COMPLIANCE WITH FEDERAL REQUIREMENTS FOR REVIEW AND COMMENT PRIOR TO SUBMISSION TO THE COMMISSIONER. THE COMMISSIONER SHALL PREPARE AND DELIVER WITHIN TWO YEARS OF THE EFFECTIVE DATE OF THIS SUBDIVISION AND ANNUALLY THEREAFTER, A REPORT TO THE GOVERNOR AND THE LEGISLATURE:

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

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

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