

8250

2009-2010 Regular Sessions

I N A S S E M B L Y

May 11, 2009

Introduced by M. of A. P. RIVERA -- read once and referred to the
Committee on Education

AN ACT to amend the public health law, the education law and the agri-
culture and markets law, in relation to establishing nutritional stan-
dards for certain foods and beverages sold in schools

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York state healthy kids act".

3 S 2. Section 2599-c of the public health law, as amended by section 88
4 of part B of chapter 58 of the laws of 2005, is amended to read as
5 follows:

6 S 2599-c. School-based childhood obesity prevention and physical
7 activity programs. 1. The commissioner shall encourage the establishment
8 of school-based childhood obesity prevention and physical activity
9 programs that promote:

10 [1.] (A) A healthy school environment, including physical and aesthet-
11 ic surroundings and culture designed to prevent and reduce the incidence
12 and prevalence of obesity; and

13 [2.] (B) Parent/community involvement, including an integrated school,
14 parent, and community approach for enhancing the health and well-being
15 of students.

16 2. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE COMMISSIONER OF
17 EDUCATION AND THE COMMISSIONER OF AGRICULTURE AND MARKETS, DEVELOP
18 RECOMMENDATIONS FOR NUTRITIONAL AND DIETARY STANDARDS FOR FOOD AND
19 BEVERAGES SOLD IN SCHOOLS CONSISTENT WITH SECTION NINE HUNDRED FIFTEEN
20 OF THE EDUCATION LAW. IN DEVELOPING SUCH RECOMMENDATIONS, THE COMMIS-
21 SIONER AND THE COMMISSIONERS OF EDUCATION AND AGRICULTURE AND MARKETS
22 SHALL REVIEW EXISTING SCIENCE AND EVIDENCE-BASED RESEARCH TO EXAMINE AND
23 EVALUATE THE USE OF FOOD COLORING, CHEMICAL ADDITIVES AND ARTIFICIAL
24 SWEETENERS IN FOODS AND BEVERAGES, AND MAKE SUCH RECOMMENDATIONS AS THEY

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

LBD09207-02-9

1 DEEM APPROPRIATE. THE RECOMMENDATIONS SHALL BE PROVIDED IN WRITING TO
2 THE COMMISSIONER OF EDUCATION NO LATER THAN AUGUST THIRTY-FIRST, TWO
3 THOUSAND NINE, AND REVISED RECOMMENDATIONS SHALL BE PROVIDED AS DEEMED
4 NECESSARY BY THE COMMISSIONER.

5 S 3. Section 915 of the education law, as added by chapter 674 of the
6 laws of 1987, is amended to read as follows:

7 S 915. [Prohibiting the sale of certain sweetened foods. From the
8 beginning of the school day until the end of the last scheduled meal
9 period, no] HEALTHY SCHOOL FOODS AND BEVERAGES. 1. DEFINITIONS. FOR THE
10 PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING
11 MEANINGS:

12 A. "SCHOOL MEALS" SHALL MEAN MEALS WHICH MEET THE NUTRITIONAL REQUIRE-
13 MENTS OF, AND ARE REIMBURSABLE UNDER, ANY PROGRAM AUTHORIZED BY THE
14 RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT OR THE CHILD NUTRITION ACT
15 OF 1966.

16 B. "SNACKS AND A LA CARTE ITEMS" SHALL MEAN FOOD ITEMS THAT ARE SOLD
17 INDIVIDUALLY, OUTSIDE OF SCHOOL MEALS, FROM SOURCES INCLUDING, BUT NOT
18 LIMITED TO, SCHOOL CAFETERIAS, A LA CARTE LINES, SCHOOL STORES OR VEND-
19 ING MACHINES.

20 2. APPLICABILITY. A. THIS SECTION AND THE REGULATIONS PROMULGATED
21 PURSUANT THERETO SHALL APPLY TO ELEMENTARY AND SECONDARY SCHOOLS AND
22 PROGRAMS UNDER THE JURISDICTION OF THE FOLLOWING (COLLECTIVELY REFERRED
23 TO IN THIS SECTION AS "SCHOOL DISTRICTS"): SCHOOL DISTRICTS, NON-PUBLIC
24 SCHOOLS THAT PARTICIPATE IN ANY PROGRAM AUTHORIZED BY THE RICHARD B.
25 RUSSELL NATIONAL SCHOOL LUNCH ACT OR THE CHILD NUTRITION ACT OF 1966,
26 BOARDS OF COOPERATIVE EDUCATIONAL SERVICES, CHARTER SCHOOLS AND SCHOOLS
27 OPERATING PURSUANT TO ARTICLES EIGHTY-THREE, EIGHTY-FIVE, EIGHTY-SEVEN
28 AND EIGHTY-EIGHT OF THIS CHAPTER. SUCH SCHOOL DISTRICTS SHALL BE
29 REQUIRED TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS SECTION AND
30 REGULATIONS PROMULGATED PURSUANT THERETO.

31 B. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH C OF THIS SUBDIVISION,
32 THIS SECTION AND REGULATIONS PROMULGATED PURSUANT THERETO SHALL APPLY TO
33 SNACKS AND A LA CARTE ITEMS AND BEVERAGES SOLD ON SCHOOL GROUNDS BEFORE,
34 DURING AND AFTER THE REGULAR SCHOOL DAY FROM ANY SOURCE INCLUDING, BUT
35 NOT LIMITED TO, SCHOOL CAFETERIAS, A LA CARTE LINES, SCHOOL STORES AND
36 VENDING MACHINES.

37 C. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBDIVISION, THIS
38 SECTION AND REGULATIONS PROMULGATED PURSUANT THERETO SHALL NOT APPLY TO:
39 (I) FOODS AND BEVERAGES SOLD AS SCHOOL MEALS; (II) FOODS AND BEVERAGES
40 SOLD AFTER SCHOOL ACTIVITIES ATTENDED BY BOTH ADULTS AND STUDENTS, SUCH
41 AS CONCERTS AND SPORTING EVENTS, SOLD BY SOURCES OTHER THAN SCHOOL
42 STORES OR VENDING MACHINES; (III) FOODS AND BEVERAGES PROVIDED UNDER THE
43 FEDERAL CHILD AND ADULT CARE FOOD PROGRAM, WHICH SHALL BE SUBJECT TO THE
44 REQUIREMENTS IMPOSED UNDER THAT PROGRAM; OR (IV) CAFFEINATED COFFEE OR
45 TEA SOLD TO SCHOOL EMPLOYEES.

46 3. NUTRITIONAL AND DIETARY STANDARDS. A. THE REGENTS AND THE COMMIS-
47 SIONER SHALL PROMULGATE REGULATIONS TO ESTABLISH NUTRITIONAL AND DIETARY
48 STANDARDS BASED UPON THE RECOMMENDATIONS DEVELOPED PURSUANT TO SUBDIVI-
49 SION TWO OF SECTION TWENTY-FIVE HUNDRED NINETY-NINE-C OF THE PUBLIC
50 HEALTH LAW.

51 (I) THE NUTRITIONAL AND DIETARY STANDARDS MAY BE UPDATED AS DEEMED
52 NECESSARY BY THE COMMISSION, IN CONSULTATION WITH THE COMMISSIONER OF
53 HEALTH, BUT NOT LESS FREQUENTLY THAN ONCE EVERY FIVE YEARS AND SHALL BE
54 MADE AVAILABLE FOR PUBLIC COMMENT AND REVIEW PURSUANT TO THE STATE
55 ADMINISTRATIVE PROCEDURE ACT.

1 (II) THE NUTRITIONAL AND DIETARY STANDARDS FOR HEALTHY SNACKS AND A LA
2 CARTE ITEMS AND BEVERAGES SHALL BE DEVELOPED TO PROMOTE A HEALTHFUL DIET
3 AND SHALL BE BASED ON THE PREPONDERANCE OF THE NUTRITIONAL, SCIENTIFIC
4 AND MEDICAL KNOWLEDGE WHICH IS CURRENT AT THE TIME THE REGULATIONS ARE
5 BEING PROMULGATED.

6 (III) UNDER NO CIRCUMSTANCE SHALL THE NUTRITIONAL AND DIETARY STAND-
7 ARDS INTERFERE WITH THE SPECIAL DIETARY NEEDS OF STUDENTS IN RELATION TO
8 HEALTH CONDITIONS, FOOD ALLERGIES, DIETARY INTOLERANCES AND RELIGIOUS
9 MANDATES.

10 (IV) THE NUTRITIONAL AND DIETARY STANDARDS MAY REFLECT THE NEEDS OF
11 STUDENTS AT DIFFERING AGES AND GRADE LEVELS.

12 (V) THE NUTRITIONAL AND DIETARY STANDARDS SHALL ENCOURAGE THE PURCHASE
13 OF FRESH FRUITS, VEGETABLES, MEAT AND DAIRY PRODUCTS WHICH ARE PRODUCED
14 BY LOCAL OR REGIONAL FARMS, CONSISTENT WITH APPLICABLE FEDERAL PROCURE-
15 MENT STANDARDS.

16 B. THE NUTRITIONAL AND DIETARY STANDARDS SHALL INCLUDE APPROPRIATE
17 NUTRITIONAL STANDARDS AND CONSUMPTION AMOUNTS RELATED, BUT NOT LIMITED
18 TO: (I) DIETARY CHOLESTEROL; (II) SODIUM; (III) TOTAL CALORIE AMOUNTS;
19 (IV) CALORIES DERIVED FROM FAT AND SATURATED FAT; (V) CALORIES DERIVED
20 FROM SUGAR; (VI) SERVING SIZES; AND (VII) SUCH STANDARDS SHALL PROHIBIT
21 ARTIFICIAL TRANS FATTY ACIDS.

22 C. THE REGULATIONS DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION SHALL
23 BE PROMULGATED NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND NINE
24 AND SHALL BE EFFECTIVE ON AND AFTER SEPTEMBER FIRST, TWO THOUSAND TEN.
25 THE REGULATIONS SHALL APPLY ONLY TO SNACKS AND A LA CARTE ITEMS AND
26 BEVERAGE CONTRACTS BETWEEN SCHOOL DISTRICTS AND VENDORS THAT WERE
27 ISSUED, RENEWED, MODIFIED, ALTERED OR AMENDED ON OR AFTER SEPTEMBER
28 FIRST, TWO THOUSAND TEN.

29 4. PROHIBITIONS. NO sweetened soda water, no chewing gum, no candy
30 including hard candy, jellies, gums, marshmallow candies, fondant,
31 licorice, spun candy and candy coated popcorn, and no water ices except
32 those which contain ONE HUNDRED PERCENT fruit or fruit juices, shall be
33 sold in any [public] school [within the state] DISTRICT BEFORE, DURING
34 AND AFTER THE REGULAR SCHOOL DAY FROM ANY SOURCE, INCLUDING, BUT NOT
35 LIMITED TO, SCHOOL CAFETERIAS, A LA CARTE LINES, SCHOOL STORES AND VEND-
36 ING MACHINES.

37 5. COMPLIANCE. SCHOOL DISTRICTS SHALL MAKE AVAILABLE TO THE DEPART-
38 MENT, UPON REQUEST, DOCUMENTATION SETTING FORTH THE INGREDIENTS AND
39 NUTRIENTS OF ANY SNACK OR A LA CARTE ITEM OR BEVERAGE SOLD BY OR ON
40 BEHALF OF SUCH DISTRICT OR IS USED AS AN INGREDIENT IN A SNACK OR A LA
41 CARTE ITEM OR BEVERAGE SOLD BY OR ON BEHALF OF SUCH DISTRICT. THE STATE
42 COMPTROLLER SHALL REVIEW SCHOOL COMPLIANCE WITH THE REQUIREMENTS SET
43 FORTH IN THIS SECTION AND THE REGULATIONS PROMULGATED PURSUANT THERETO
44 AS PART OF THE ANNUAL AUDITS OF SCHOOL DISTRICTS AS AUTHORIZED UNDER
45 SUBDIVISION THREE-A OF SECTION TWENTY-ONE HUNDRED SIXTEEN-A AND PARA-
46 GRAPH (C) OF SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-FOUR
47 OF THIS CHAPTER AND SECTION THIRTY-THREE OF THE GENERAL MUNICIPAL LAW.

48 S 4. The agriculture and markets law is amended by adding a new
49 section 28 to read as follows:

50 S 28. SCHOOL NUTRITIONAL AND DIETARY STANDARDS. THE COMMISSIONER SHALL
51 PROVIDE CONSULTATION TO THE COMMISSIONERS OF EDUCATION AND HEALTH IN
52 ESTABLISHING AND REVISING NUTRITIONAL AND DIETARY STANDARDS FOR HEALTHY
53 SCHOOL SNACKS AND A LA CARTE ITEMS AND BEVERAGES, CONSISTENT WITH
54 SECTION NINE HUNDRED FIFTEEN OF THE EDUCATION LAW AND SUBDIVISION TWO OF
55 SECTION TWENTY-FIVE HUNDRED NINETY-NINE-C OF THE PUBLIC HEALTH LAW.

1 S 5. Severability clause. If any clause, sentence, paragraph, section
2 or part of this act shall be adjudged by any court of competent juris-
3 diction to be invalid, such judgment shall not affect, impair or invali-
4 date the remainder thereof, but shall be confined in its operation to
5 the clause, sentence, paragraph, section or part thereof directly
6 involved in the controversy in which such judgment shall have been
7 rendered.

8 S 6. This act shall take effect immediately.