

1446

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. LAVALLE, DeFRANCISCO, MORAHAN, ONORATO, PARKER, SAMPSON, SERRANO, WINNER -- 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 providing for the sale, availability and distribution of healthy foods and beverages on school property and at school-sponsored functions

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 the sale of certain [sweetened] foods AND
4 BEVERAGES. [From the beginning of the school day until the end of the
5 last scheduled meal period, no sweetened soda water, no chewing gum, no
6 candy including hard candy, jellies, gums, marshmallow candies, fondant,
7 licorice, spun candy and candy coated popcorn, and no water ices except
8 those which contain fruit or fruit juices, shall be sold in any public
9 school within the state.]
10 1. A. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, SCHOOL DISTRICTS,
11 PRIVATE SCHOOLS WHO RECEIVE ANY FORM OF STATE FUNDING, BOARDS OF COOPER-
12 ATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTENSION
13 BOARDS AND CHARTER SCHOOLS, SHALL PERMIT, AT SCHOOLS UNDER ITS JURISDIC-
14 TION, THE SALE OF ONLY THE FOLLOWING BEVERAGES TO STUDENTS FROM ANY
15 SOURCE INCLUDING, BUT NOT LIMITED TO, SCHOOL STORES, VENDING MACHINES,
16 SCHOOL CAFETERIAS, AND ANY FUND-RAISING ACTIVITIES ON SCHOOL PREMISES,
17 WHETHER OR NOT SCHOOL SPONSORED:
18 (1) ONE HUNDRED PERCENT FRUIT JUICE, VEGETABLE JUICE OR COMBINATION OF
19 SUCH JUICES CONTAINING NO ADDED SUGARS OR SWEETENERS WITH UP TO ONE
20 HUNDRED TWENTY CALORIES PER EIGHT OUNCE SERVING;
21 (2) BOTTLED WATER OR SELTZER, WHICH MAY BE FLAVORED BUT CONTAIN NO
22 ADDED SUGARS OR SWEETENERS, CAFFEINE OR NICOTINE IN ANY SIZE CONTAINER;

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

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(3) LOW-FAT, NON-FAT, OR NO MORE THAN TWO PERCENT MILK THAT MAY BE FLAVORED BUT CONTAINS NO MORE THAN ONE HUNDRED EIGHTY CALORIES PER EIGHT OUNCE SERVING;

(4) LOW-FAT OR NON-FAT NONDAIRY MILK, SUCH AS SOY, RICE, OR LACTOSE-FREE MILK, WHICH MAY BE FLAVORED BUT CONTAIN NO MORE THAN ONE HUNDRED EIGHTY CALORIES PER EIGHT OUNCE SERVING, AND SHALL BE CALCIUM AND VITAMIN FORTIFIED; AND

(5) NO-CALORIE OR LOW-CALORIE BEVERAGES WITH UP TO TEN CALORIES PER EIGHT OUNCES AND OTHER LOW-CALORIE BEVERAGES SUCH AS LIGHT JUICES AND SPORTS DRINKS WITH NO MORE THAN SIXTY-SIX CALORIES PER EIGHT OUNCES SHALL BE PERMITTED IN HIGH SCHOOLS ONLY, PROVIDED THAT A MINIMUM OF FIFTY PERCENT OF THE BEVERAGES AVAILABLE ARE COMPRISED OF WATER, MILK, NON-DAIRY MILK, AND/OR JUICES.

B. PORTION SIZES OF BEVERAGES, OTHER THAN WATER AS DESCRIBED IN SUBPARAGRAPH TWO OF PARAGRAPH A OF THIS SUBDIVISION, THAT ARE OFFERED FOR SALE PURSUANT TO THIS SECTION SHALL NOT EXCEED EIGHT OUNCES FOR ELEMENTARY SCHOOL, TEN OUNCES FOR MIDDLE SCHOOL AND TWELVE OUNCES FOR HIGH SCHOOL.

C. THIS SECTION SHALL APPLY TO ALL BEVERAGES SOLD ON SCHOOL GROUNDS DURING THE REGULAR AND EXTENDED SCHOOL DAY.

2. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, SCHOOL DISTRICTS, PRIVATE SCHOOLS WHO 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 IN VENDING MACHINES, SCHOOL STORES, THE SCHOOL CAFETERIA A LA CARTE FOOD LINES, OR ANY PLACE IN SCHOOLS WHERE PACKAGED AND NON-PREPACKAGED FOOD ITEMS ARE SOLD, FOOD THAT ADHERES TO THE FOLLOWING CRITERIA:

A. FRESH FRUIT WITH NO ADDED SWEETENERS OR VEGETABLES THAT ARE NON-FRIED; FRESH FRUITS SHALL NOT BE LIMITED IN SERVING SIZE OR CALORIE LIMIT, HOWEVER CALORIES FOR PACKAGED FRUITS AND VEGETABLES WHEN PACKAGED IN THEIR OWN JUICE OR DRIED SHALL BE LIMITED TO ONE HUNDRED FIFTY CALORIES PER SERVING IN ELEMENTARY SCHOOLS, ONE HUNDRED EIGHTY CALORIES PER SERVING IN MIDDLE SCHOOL, AND TWO HUNDRED CALORIES PER SERVING IN HIGH SCHOOLS;

B. ANY REDUCED-FAT OR PART-SKIM CHEESE IN NO MORE THAN 1.5 OUNCE SERVING SIZE, ALL OTHER DAIRY PRODUCTS MUST BE NON-FAT OR LOW-FAT;

C. ANY ONE EGG WITH NO ADDED FAT OR EQUAL AMOUNT OF EGG EQUIVALENT WITH NO ADDED FAT; AND

D. ANY OTHER FOOD THAT MEETS ALL OF THE FOLLOWING CRITERIA:

(1) CONTAINS NO MORE THAN THIRTY-FIVE PERCENT OF TOTAL CALORIES FROM FAT, WITH THE EXCEPTION OF NUTS, NUT BUTTERS, AND SEEDS WHICH SHALL BE PERMITTED IRRESPECTIVE OF TOTAL CALORIES FROM FAT;

(2) CONTAINS NO MORE THAN TEN PERCENT OF CALORIES FROM SATURATED FAT OR NO MORE THAN ONE GRAM OF SATURATED FAT;

(3) CONTAINS ZERO GRAMS OF TRANS-FAT;

(4) CONTAINS NO MORE THAN THIRTY-FIVE PERCENT OF SUGAR BY WEIGHT; AND

(5) CONTAINS NO MORE THAN TWO-HUNDRED THIRTY MILLIGRAMS OF SODIUM PER SERVING, WITH THE EXCEPTION OF LOW-FAT AND FAT-FREE DAIRY PRODUCTS WHICH MAY HAVE NO MORE THAN FOUR-HUNDRED AND EIGHTY MILLIGRAMS OF SODIUM, AND VEGETABLES WITH SAUCE AND SOUPS THAT MAY HAVE NO MORE THAN FOUR HUNDRED EIGHTY MILLIGRAMS OF SODIUM IF THEY CONTAIN ONE OR MORE OF THE FOLLOWING: MORE THAN TWO GRAMS OF FIBER; OR MORE THAN FIVE GRAMS OF PROTEIN; OR MORE THAN TEN PERCENT OF THE DAILY RECOMMENDED VALUE OF VITAMIN A, C, E, FOLATE, CALCIUM, MAGNESIUM, POTASSIUM, OR IRON; OR MORE THAN A HALF SERVING OF FRUITS OR VEGETABLES.

1 E. ADDITIONAL FOOD ITEMS THAT MEET AT LEAST ONE OF THE FOLLOWING
2 CRITERIA SHALL ALSO BE PERMITTED:

3 (1) FOODS THAT CONTAIN NO MORE THAN ONE HUNDRED CALORIES; OR

4 (2) VEGETABLES WITH SAUCE AND SOUPS MEETING THE CRITERIA SET FORTH IN
5 SUBPARAGRAPH FIVE OF PARAGRAPH D OF THIS SUBDIVISION MAY HAVE ONE
6 HUNDRED FIFTY CALORIES IF THEY CONTAIN TWO OR MORE OF THE FOLLOWING:
7 MORE THAN TWO GRAMS OF FIBER; OR MORE THAN FIVE GRAMS OF PROTEIN; OR
8 MORE THAN TEN PERCENT OF THE DAILY RECOMMENDED VALUE OF VITAMIN A, C, E,
9 FOLATE, CALCIUM, MAGNESIUM, POTASSIUM, OR IRON; OR MORE THAN ONE-HALF OF
10 A SERVING OF FRUIT OR VEGETABLES; OR

11 (3) OTHER FOOD ITEMS WHICH HAVE CALORIE LIMITS AS FOLLOWS PROVIDED
12 THAT THEY CONTAIN ONE OR MORE OF THE FOLLOWING: MORE THAN TWO GRAMS OF
13 FIBER; OR MORE THAN FIVE GRAMS OF PROTEIN; OR MORE THAN TEN PERCENT OF
14 THE DAILY RECOMMENDED VALUE OF VITAMIN A, C, E, FOLATE, CALCIUM, MAGNE-
15 SIUM, POTASSIUM OR IRON; OR MORE THAN ONE-HALF OF A SERVING OF FRUIT OR
16 VEGETABLES. FOOD ITEMS THAT MEET THIS ADDITIONAL CRITERIA MAY HAVE NO
17 MORE THAN ONE HUNDRED FIFTY CALORIES FOR ELEMENTARY SCHOOLS, NO MORE
18 THAN ONE HUNDRED EIGHTY CALORIES FOR MIDDLE SCHOOLS AND NO MORE THAN TWO
19 HUNDRED CALORIES FOR HIGH SCHOOLS.

20 FOR INDIVIDUAL SERVING PACKAGES, THE GUIDELINES DEFINED IN THIS
21 SECTION SHALL APPLY TO THE WHOLE PACKAGE AS LABELED ON THE PACKAGE
22 NUTRITION FACTS PANEL. IN THE EVENT THAT SUCH ITEMS ARE PURCHASED IN
23 BULK, BUT SOLD INDIVIDUALLY, THE CRITERION APPLIES TO THE LABEL SERVING.

24 3. FRUIT AND NON-FRIED VEGETABLES SHALL BE OFFERED FOR SALE AT ANY
25 LOCATION WHERE FOOD IS SOLD WITHIN THE EXCEPTION OF NON-REFRIGERATED
26 VENDING MACHINES AND VENDING MACHINES THAT DISPENSE ONLY BEVERAGES.

27 4. PROVISIONS OF THIS SECTION SHALL APPLY TO THE SALE OF ALL FOODS AND
28 BEVERAGES ON SCHOOL GROUNDS, INCLUDING BUT NOT LIMITED TO SCHOOL STORES,
29 CANTEEN, A LA CARTE LINES IN CAFETERIAS, VENDING MACHINES AND CONCESSION
30 STANDS ON SCHOOL PROPERTY; PROVIDED, HOWEVER, THE PROVISIONS OF THIS
31 SECTION SHALL NOT APPLY TO THE FOOD AND BEVERAGES PART OF THE STATE AND
32 FEDERALLY FUNDED SCHOOL BREAKFAST AND LUNCH PROGRAMS. ITEMS THAT WOULD
33 BE CONSIDERED TO BE ENTREES IF SOLD IN THE REIMBURSABLE MEAL PROGRAM,
34 BUT ARE SOLD A LA CARTE AS COMPETITIVE FOODS, ARE NOT SUBJECT TO THESE
35 GUIDELINES. THE COMMISSIONER SHALL BE AUTHORIZED TO PROMULGATE RULES
36 AND REGULATIONS PROVIDING LIMITED EXEMPTIONS TO THE PROVISIONS OF THIS
37 SUBDIVISION PERMITTING SCHOOLS UNDER ITS JURISDICTION TO DEEM THE SALE
38 TO STUDENTS OF BEVERAGES AND FOODS THAT ARE NOT LISTED IN SUBDIVISION
39 ONE OR TWO OF THIS SECTION; PROVIDED, THAT SUCH SALE IS IN CONNECTION
40 WITH A SCHOOL-SPONSORED, INTERSCHOLASTIC SPORTING EVENT OR SANCTIONED
41 EVENT OR FUNDRAISER WHERE PARENTS AND OTHER ADULTS CONSTITUTE A SIGNIF-
42 ICANT PORTION OF THE AUDIENCE OR ARE SELLING BEVERAGES AND FOODS AS
43 BOOSTERS OCCURRING AFTER THE END OF THE REGULAR SCHOOL DAY OR ON THE
44 WEEKEND, SUCH SALE IS AT THE LOCATION OF SUCH EVENT, AND SUCH BEVERAGES
45 AND FOODS ARE NOT SOLD FROM A VENDING MACHINE OR SCHOOL STORE. FOR THE
46 PURPOSES OF THIS SUBDIVISION, "REIMBURSABLE MEAL PROGRAM" SHALL MEAN THE
47 STATE AND FEDERALLY FUNDED SCHOOL BREAKFAST AND LUNCH PROGRAMS.

48 5. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH,
49 SHALL ESTABLISH A PROCEDURE FOR ENGAGING SCHOOL WELLNESS COMMITTEES
50 ESTABLISHED IN COMPLIANCE WITH FEDERAL REQUIREMENTS, IN EDUCATING
51 STUDENTS, PARENTS, SCHOOL ADMINISTRATORS AND SCHOOL BOARDS ON THE NUTRI-
52 TIONAL STANDARDS SET FORTH WITHIN THIS SECTION. THE COMMISSIONER SHALL
53 PROMULGATE REGULATIONS TO ENGAGE SCHOOL WELLNESS COMMITTEES IN MONITOR-
54 ING SCHOOL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION AND MAKING
55 RECOMMENDATIONS TO IMPROVE SCHOOL DISTRICT COMPLIANCE WITH THESE
56 PROVISIONS. ADDITIONALLY, THE COMMISSIONER SHALL REQUIRE EACH SCHOOL

1 SUPERINTENDENT TO FILE A COPY OF THE DISTRICT WELLNESS POLICY, AS
2 REQUIRED BY THE FEDERAL CHILD NUTRITIONAL AND WIC REAUTHORIZATION ACT OF
3 2004 (PUBLIC LAW 108-265), WITH THE DEPARTMENT. THE DEPARTMENT SHALL
4 MAINTAIN A CENTRAL REPOSITORY OF ALL FILED POLICIES FOR PUBLIC ACCESS
5 AND REVIEW. IF A HIGH SCHOOL AND MIDDLE SCHOOL HAVE SHARED ACCESS TO
6 FOOD SERVICE AND OR VENDING AREAS, THE SCHOOL DISTRICT, WITH THE
7 APPROVAL OF THE DISTRICT WELLNESS COMMITTEE, MAY ADOPT THE HIGH SCHOOL
8 STANDARDS FOR THE MIDDLE SCHOOL. IF A SCHOOL HAS SHARED ACCESS TO FOOD
9 SERVICE AND OR VENDING AREAS, FOR ELEMENTARY, MIDDLE AND HIGH SCHOOL,
10 THE SCHOOL DISTRICT, WITH THE APPROVAL OF THE DISTRICT WELLNESS COMMIT-
11 TEE, MAY ADOPT THE MIDDLE SCHOOL STANDARDS FOR ALL THREE LEVELS. SCHOOL
12 DISTRICT WELLNESS COMMITTEES MAY, AT THEIR DISCRETION, ELECT TO PROHIBIT
13 OR TO PHASE OUT THE SALE OF SODAS, TEAS, AND/OR SPORTS DRINKS, AS WELL
14 AS, ESTABLISHING STRICTER STANDARDS FOR FOODS IN SCHOOL STORES, VENDING
15 MACHINES, SCHOOL CAFETERIAS, AND ANY FUND-RAISING ACTIVITIES ON SCHOOL
16 PREMISES IN THEIR DISTRICTS.

17 6. NO PROVISION OF THIS SECTION SHALL BE CONSTRUED TO PERMIT THE SALE
18 OF THE FOLLOWING ITEMS: CHEWING GUM, CANDY INCLUDING HARD CANDY,
19 JELLIES, GUMS, MARSHMALLOW CANDIES, FONDANT, LICORICE, SPUN CANDY AND
20 CANDY COATED POPCORN, AND WATER ICES EXCEPT THOSE WHICH CONTAIN FRUIT OR
21 FRUIT JUICES IN ANY ELEMENTARY OR SECONDARY SCHOOL WITHIN THE STATE, NOR
22 SHALL IT BE CONSTRUED TO RESTRICT A SCHOOL DISTRICT OR ITS WELLNESS
23 COMMITTEE'S AUTHORITY TO ADOPT LOCAL POLICIES THAT WOULD PROHIBIT OR
24 PHASE OUT THE SALE OF SODAS, TEAS AND/OR SPORTS DRINKS OR OTHER FOOD
25 ITEMS IN THEIR DISTRICTS.

26 S 2. This act shall take effect September 1, 2010 and shall apply to
27 all contracts issued, renewed, modified, altered or amended on or after
28 such effective date. Effective immediately, the addition, amendment
29 and/or repeal of any rule or regulation necessary for the implementation
30 of this act on its effective date are authorized and directed to be made
31 and completed on or before such date.