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

8250--A

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 -- recommitted to the Committee on Education in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, the education law and the agriculture and markets law, in relation to establishing nutritional standards for certain foods and beverages sold in schools

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

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

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

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

[1.] (A) A healthy school environment, including physical and aesthetic surroundings and culture designed to prevent and reduce the incidence and prevalence of obesity; and

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

2. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE COMMISSIONER OF EDUCATION AND THE COMMISSIONER OF AGRICULTURE AND MARKETS, DEVELOP RECOMMENDATIONS FOR NUTRITIONAL AND DIETARY STANDARDS FOR FOOD AND BEVERAGES SOLD IN SCHOOLS CONSISTENT WITH SECTION NINE HUNDRED FIFTEEN OF THE EDUCATION LAW. IN DEVELOPING SUCH RECOMMENDATIONS, THE COMMISSIONER AND THE COMMISSIONERS OF EDUCATION AND AGRICULTURE AND MARKETS

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

LBD09207-04-0

SHALL REVIEW EXISTING SCIENCE AND EVIDENCE-BASED RESEARCH TO EXAMINE AND EVALUATE THE USE OF FOOD COLORING, CHEMICAL ADDITIVES AND ARTIFICIAL SWEETENERS IN FOODS AND BEVERAGES, AND MAKE SUCH RECOMMENDATIONS AS THEY DEEM APPROPRIATE. THE RECOMMENDATIONS SHALL BE PROVIDED IN WRITING TO THE COMMISSIONER OF EDUCATION NO LATER THAN AUGUST THIRTY-FIRST, TWO THOUSAND TEN, AND REVISED RECOMMENDATIONS SHALL BE PROVIDED AS DEEMED NECESSARY BY THE COMMISSIONER.

S 3. 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 the sale of certain sweetened foods. From the beginning of the school day until the end of the last scheduled meal period, no] HEALTHY SCHOOL FOODS AND BEVERAGES. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "SCHOOL MEALS" SHALL MEAN MEALS WHICH MEET THE NUTRITIONAL REQUIREMENTS OF, AND ARE REIMBURSABLE UNDER, ANY PROGRAM AUTHORIZED BY THE RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT OR THE CHILD NUTRITION ACT OF 1966.

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

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

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

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

3. NUTRITIONAL AND DIETARY STANDARDS. A. THE REGENTS AND THE COMMISSIONER SHALL PROMULGATE REGULATIONS TO ESTABLISH NUTRITIONAL AND DIETARY STANDARDS BASED UPON THE RECOMMENDATIONS DEVELOPED PURSUANT TO SUBDIVISION TWO OF SECTION TWENTY-FIVE HUNDRED NINETY-NINE-C OF THE PUBLIC HEALTH LAW.

(I) THE NUTRITIONAL AND DIETARY STANDARDS MAY BE UPDATED AS DEEMED NECESSARY BY THE COMMISSION, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH, BUT NOT LESS FREQUENTLY THAN ONCE EVERY FIVE YEARS AND SHALL BE

MADE AVAILABLE FOR PUBLIC COMMENT AND REVIEW PURSUANT TO THE STATE ADMINISTRATIVE PROCEDURE ACT.

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

(III) UNDER NO CIRCUMSTANCE SHALL THE NUTRITIONAL AND DIETARY STANDARDS INTERFERE WITH THE SPECIAL DIETARY NEEDS OF STUDENTS IN RELATION TO HEALTH CONDITIONS, FOOD ALLERGIES, DIETARY INTOLERANCES AND RELIGIOUS MANDATES.

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

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

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

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

4. PROHIBITIONS. 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 ONE HUNDRED PERCENT fruit or fruit juices, shall be sold in any [public] school [within the state] DISTRICT BEFORE, DURING AND AFTER THE REGULAR SCHOOL DAY FROM ANY SOURCE, INCLUDING, BUT NOT LIMITED TO, SCHOOL CAFETERIAS, A LA CARTE LINES, SCHOOL STORES AND VENDING MACHINES.

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

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

S 28. SCHOOL NUTRITIONAL AND DIETARY STANDARDS. THE COMMISSIONER SHALL PROVIDE CONSULTATION TO THE COMMISSIONERS OF EDUCATION AND HEALTH IN ESTABLISHING AND REVISING NUTRITIONAL AND DIETARY STANDARDS FOR HEALTHY SCHOOL SNACKS AND A LA CARTE ITEMS AND BEVERAGES, CONSISTENT WITH

SECTION NINE HUNDRED FIFTEEN OF THE EDUCATION LAW AND SUBDIVISION TWO OF SECTION TWENTY-FIVE HUNDRED NINETY-NINE-C OF THE PUBLIC HEALTH LAW.

S 5. Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 6. This act shall take effect immediately.