

7028

I N   S E N A T E

March 8, 2010

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Introduced by Sen. ESPADA -- read twice and ordered printed, and when printed to be committed to the Committee on Health

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:

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  
25    DEEM APPROPRIATE. THE RECOMMENDATIONS SHALL BE PROVIDED IN WRITING TO  
26    THE COMMISSIONER OF EDUCATION NO LATER THAN AUGUST THIRTY-FIRST, TWO

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

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1 THOUSAND TEN, AND REVISED RECOMMENDATIONS SHALL BE PROVIDED AS DEEMED  
2 NECESSARY BY THE COMMISSIONER.

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

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

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

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

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

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

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

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

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

54 (II) THE NUTRITIONAL AND DIETARY STANDARDS FOR HEALTHY SNACKS AND A LA  
55 CARTE ITEMS AND BEVERAGES SHALL BE DEVELOPED TO PROMOTE A HEALTHFUL DIET  
56 AND SHALL BE BASED ON THE PREPONDERANCE OF THE NUTRITIONAL, SCIENTIFIC

1 AND MEDICAL KNOWLEDGE WHICH IS CURRENT AT THE TIME THE REGULATIONS ARE  
2 BEING PROMULGATED.

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

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

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

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

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

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

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

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

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

53 S 5. Severability clause. If any clause, sentence, paragraph, section  
54 or part of this act shall be adjudged by any court of competent juris-  
55 diction to be invalid, such judgment shall not affect, impair or invali-  
56 date the remainder thereof, but shall be confined in its operation to

1 the clause, sentence, paragraph, section or part thereof directly  
2 involved in the controversy in which such judgment shall have been  
3 rendered.  
4 S 6. This act shall take effect immediately.