

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

S. 3927--A

A. 6229--A

2011-2012 Regular Sessions

S E N A T E - A S S E M B L Y

March 10, 2011

IN SENATE -- Introduced by Sens. LAVALLE, DeFRANCISCO, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. GALEF, ORTIZ, GOTTFRIED, ENGLEBRIGHT, BENEDETTO, CLARK, ARROYO, THIELE, DINOWITZ, P. RIVERA, PEOPLES-STOKES, ROBINSON, TITUS, CAMARA, BROOK-KRASNY, MAISEL, ROSENTHAL, GIGLIO, COLTON, JACOBS, LAVINE, WEISENBERG, SCHIMEL, MENG -- Multi-Sponsored by -- M. of A. BOYLAND, BURLING, CALHOUN, CASTELLI, CONTE, CORWIN, CROUCH, DUPREY, FINCH, GABRYSZAK, GUNTHER, HEASTIE, JAFFEE, JEFFRIES, JORDAN, LANCMAN, LATIMER, LENTOL, MAGNARELLI, McDOUGH, McENENY, McKEVITT, McLAUGHLIN, J. MILLER, PAULIN, PERRY, PRETLOW, RAIA, SCARBOROUGH, SWEENEY, TITONE, TOBACCO -- 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 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,

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

LBD10086-02-2

1 licorice, spun candy and candy coated popcorn, and no water ices except
2 those which contain fruit or fruit juices, shall be sold in any public
3 school within the state.]

4 1. A. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, SCHOOL DISTRICTS,
5 PRIVATE SCHOOLS WHO RECEIVE ANY FORM OF STATE FUNDING, BOARDS OF COOPER-
6 ATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTENSION
7 BOARDS AND CHARTER SCHOOLS, SHALL PERMIT, AT SCHOOLS UNDER ITS JURISDIC-
8 TION, THE SALE OF ONLY THE FOLLOWING BEVERAGES TO STUDENTS FROM ANY
9 SOURCE INCLUDING, BUT NOT LIMITED TO, SCHOOL STORES, VENDING MACHINES,
10 SCHOOL CAFETERIAS, AND ANY FUND-RAISING ACTIVITIES ON SCHOOL PREMISES,
11 WHETHER OR NOT SCHOOL SPONSORED:

12 (1) ONE HUNDRED PERCENT FRUIT JUICE, VEGETABLE JUICE OR COMBINATION OF
13 SUCH JUICES CONTAINING NO ADDED SUGARS OR SWEETENERS WITH UP TO ONE
14 HUNDRED TWENTY CALORIES PER EIGHT OUNCE SERVING;

15 (2) BOTTLED WATER OR SELTZER, WHICH MAY BE FLAVORED BUT CONTAIN NO
16 ADDED SUGARS OR SWEETENERS, CAFFEINE OR NICOTINE IN ANY SIZE CONTAINER;

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

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

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

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

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

37 2. EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, SCHOOL DISTRICTS,
38 PRIVATE SCHOOLS WHO RECEIVE ANY FORM OF STATE FUNDING, BOARDS OF COOPER-
39 ATIVE EDUCATIONAL SERVICES, COUNTY VOCATIONAL EDUCATION AND EXTENSION
40 BOARDS AND CHARTER SCHOOLS, SHALL PERMIT, AT SCHOOLS UNDER ITS JURISDIC-
41 TION, THE SALE OF ONLY PACKAGED AND NON-PACKAGED FOOD SOLD IN VENDING
42 MACHINES, SCHOOL STORES, THE SCHOOL CAFETERIA A LA CARTE FOOD LINES, OR
43 ANY PLACE IN SCHOOLS WHERE PACKAGED AND NON-PREPACKAGED FOOD ITEMS ARE
44 SOLD, FOOD THAT ADHERES TO THE FOLLOWING CRITERIA:

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

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

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

56 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.

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

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

(2) VEGETABLES WITH SAUCE AND SOUPS MEETING THE CRITERIA SET FORTH IN SUBPARAGRAPH FIVE OF PARAGRAPH D OF THIS SUBDIVISION MAY HAVE ONE HUNDRED FIFTY CALORIES IF THEY CONTAIN TWO 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 ONE-HALF OF A SERVING OF FRUIT OR VEGETABLES; OR

(3) OTHER FOOD ITEMS WHICH HAVE CALORIE LIMITS AS FOLLOWS PROVIDED THAT 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 ONE-HALF OF A SERVING OF FRUIT OR VEGETABLES. FOOD ITEMS THAT MEET THIS ADDITIONAL CRITERIA MAY HAVE NO MORE THAN ONE HUNDRED FIFTY CALORIES FOR ELEMENTARY SCHOOLS, NO MORE THAN ONE HUNDRED EIGHTY CALORIES FOR MIDDLE SCHOOLS AND NO MORE THAN TWO HUNDRED CALORIES FOR HIGH SCHOOLS.

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

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

4. PROVISIONS OF THIS SECTION SHALL APPLY TO THE SALE OF ALL FOODS AND BEVERAGES ON SCHOOL GROUNDS, INCLUDING BUT NOT LIMITED TO SCHOOL STORES, CANTEEN, A LA CARTE LINES IN CAFETERIAS, VENDING MACHINES AND CONCESSION STANDS ON SCHOOL PROPERTY; PROVIDED, HOWEVER, THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO THE FOOD AND BEVERAGES PART OF THE STATE AND FEDERALLY FUNDED SCHOOL BREAKFAST AND LUNCH PROGRAMS. ITEMS THAT WOULD BE CONSIDERED TO BE ENTREES IF SOLD IN THE REIMBURSABLE MEAL PROGRAM, BUT ARE SOLD A LA CARTE AS COMPETITIVE FOODS, ARE NOT SUBJECT TO THESE GUIDELINES. THE COMMISSIONER SHALL BE AUTHORIZED TO PROMULGATE RULES AND REGULATIONS PROVIDING LIMITED EXEMPTIONS TO THE PROVISIONS OF THIS SUBDIVISION PERMITTING SCHOOLS UNDER ITS JURISDICTION TO DEEM THE SALE TO STUDENTS OF BEVERAGES AND FOODS THAT ARE NOT LISTED IN SUBDIVISION ONE OR TWO OF THIS SECTION; PROVIDED, THAT SUCH SALE IS IN CONNECTION WITH A SCHOOL-SPONSORED, INTERSCHOLASTIC SPORTING EVENT OR SANCTIONED

1 EVENT OR FUNDRAISER WHERE PARENTS AND OTHER ADULTS CONSTITUTE A SIGNIF-
2 ICANT PORTION OF THE AUDIENCE OR ARE SELLING BEVERAGES AND FOODS AS
3 BOOSTERS OCCURRING AFTER THE END OF THE REGULAR SCHOOL DAY OR ON THE
4 WEEKEND, SUCH SALE IS AT THE LOCATION OF SUCH EVENT, AND SUCH BEVERAGES
5 AND FOODS ARE NOT SOLD FROM A VENDING MACHINE OR SCHOOL STORE. FOR THE
6 PURPOSES OF THIS SUBDIVISION, "REIMBURSABLE MEAL PROGRAM" SHALL MEAN THE
7 STATE AND FEDERALLY FUNDED SCHOOL BREAKFAST AND LUNCH PROGRAMS.

8 5. THE COMMISSIONER, IN CONSULTATION WITH THE COMMISSIONER OF HEALTH,
9 SHALL ESTABLISH A PROCEDURE FOR ENGAGING SCHOOL WELLNESS COMMITTEES
10 ESTABLISHED IN COMPLIANCE WITH FEDERAL REQUIREMENTS, IN EDUCATING
11 STUDENTS, PARENTS, SCHOOL ADMINISTRATORS AND SCHOOL BOARDS ON THE NUTRI-
12 TIONAL STANDARDS SET FORTH WITHIN THIS SECTION. THE COMMISSIONER SHALL
13 PROMULGATE REGULATIONS TO ENGAGE SCHOOL WELLNESS COMMITTEES IN MONITOR-
14 ING SCHOOL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION AND MAKING
15 RECOMMENDATIONS TO IMPROVE SCHOOL DISTRICT COMPLIANCE WITH THESE
16 PROVISIONS. ADDITIONALLY, THE COMMISSIONER SHALL REQUIRE EACH SCHOOL
17 SUPERINTENDENT TO FILE A COPY OF THE DISTRICT WELLNESS POLICY, AS
18 REQUIRED BY THE FEDERAL CHILD NUTRITIONAL AND WIC REAUTHORIZATION ACT OF
19 2004 (PUBLIC LAW 108-265), WITH THE DEPARTMENT. THE DEPARTMENT SHALL
20 MAINTAIN A CENTRAL REPOSITORY OF ALL FILED POLICIES FOR PUBLIC ACCESS
21 AND REVIEW. IF A HIGH SCHOOL AND MIDDLE SCHOOL HAVE SHARED ACCESS TO
22 FOOD SERVICE AND/OR VENDING AREAS, THE SCHOOL DISTRICT, WITH THE
23 APPROVAL OF THE DISTRICT WELLNESS COMMITTEE, MAY ADOPT THE HIGH SCHOOL
24 STANDARDS FOR THE MIDDLE SCHOOL. IF A SCHOOL HAS SHARED ACCESS TO FOOD
25 SERVICE AND/OR VENDING AREAS, FOR ELEMENTARY, MIDDLE AND HIGH SCHOOL,
26 THE SCHOOL DISTRICT, WITH THE APPROVAL OF THE DISTRICT WELLNESS COMMIT-
27 TEE, MAY ADOPT THE MIDDLE SCHOOL STANDARDS FOR ALL THREE LEVELS. SCHOOL
28 DISTRICT WELLNESS COMMITTEES MAY, AT THEIR DISCRETION, ELECT TO PROHIBIT
29 OR TO PHASE OUT THE SALE OF SODAS, TEAS, AND/OR SPORTS DRINKS, AS WELL
30 AS, ESTABLISHING STRICTER STANDARDS FOR FOODS IN SCHOOL STORES, VENDING
31 MACHINES, SCHOOL CAFETERIAS, AND ANY FUND-RAISING ACTIVITIES ON SCHOOL
32 PREMISES IN THEIR DISTRICTS.

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

42 S 2. This act shall take effect September 1, 2013 and shall apply to
43 all contracts issued, renewed, modified, altered or amended on or after
44 such effective date. Effective immediately, the addition, amendment
45 and/or repeal of any rule or regulation necessary for the implementation
46 of this act on its effective date are authorized and directed to be made
47 and completed on or before such date.