

3953

2011-2012 Regular Sessions

I N   S E N A T E

March 10, 2011

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Introduced by Sens. HANNON, MAZIARZ, BALL -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the education law, in relation to directing the commissioners of education and health to establish rules and regulations for the treatment and monitoring of students of school districts, boards of cooperative educational services and nonpublic schools who suffer mild traumatic brain injuries; and to amend the general obligations law, in relation to the liability of school districts, nonpublic schools and boards of cooperative educational services

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 "concussion management and awareness act".  
3     S 2. Section 206 of the public health law is amended by adding a new  
4     subdivision 28 to read as follows:  
5     28. THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF EDUCA-  
6     TION, SHALL PROMULGATE RULES AND REGULATIONS, RELATING TO PUPILS WHO  
7     SUFFER MILD TRAUMATIC BRAIN INJURIES, IN ACCORDANCE WITH SUBDIVISION  
8     FORTY-TWO OF SECTION THREE HUNDRED FIVE OF THE EDUCATION LAW, AND  
9     PROVIDE FOR THE POSTING ON THE DEPARTMENT'S INTERNET WEBSITE OF SUCH  
10    INFORMATION AS SHALL BE REQUIRED PURSUANT TO SUCH SUBDIVISION.  
11    S 3. Section 305 of the education law is amended by adding a new  
12    subdivision 42 to read as follows:  
13    42. A. THE COMMISSIONER AND THE COMMISSIONER OF HEALTH, IN CONSULTA-  
14    TION AND COOPERATION WITH THE NEW YORK STATE PUBLIC HIGH SCHOOL ATHLETIC  
15    ASSOCIATION, PUBLIC AND NONPUBLIC SCHOOL ATHLETIC TRAINERS, PUBLIC AND  
16    NONPUBLIC SCHOOL INTERSCHOLASTIC SPORTS COACHES AND PUBLIC SCHOOL  
17    MEDICAL AND HEALTH PROFESSIONALS, SHALL:  
18    (I) PROMULGATE, IMPLEMENT AND UPDATE ANNUALLY RULES AND REGULATIONS  
19    ESTABLISHING A COURSE OF INSTRUCTION RELATING TO THE RECOGNITION, TREAT-

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

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1 MENT AND MONITORING OF PUPILS WHO SUFFER MILD TRAUMATIC BRAIN INJURIES,  
2 ALSO REFERRED TO AS A "CONCUSSION", WHILE RECEIVING INSTRUCTION OR  
3 ENGAGING IN ANY SCHOOL SPONSORED OR RELATED ACTIVITY. SUCH COURSE OF  
4 INSTRUCTION SHALL BE REQUIRED TO BE COMPLETED ON A BIENNIAL BASIS BY ALL  
5 COACHES, NURSES AND ATHLETIC TRAINERS OF EVERY SCHOOL DISTRICT AND BOARD  
6 OF COOPERATIVE EDUCATIONAL SERVICES, AND BE COMPLETED BY SUCH PERSONNEL  
7 EMPLOYED BY AN AUTHORIZING NONPUBLIC SCHOOL. THE COURSE OF INSTRUCTION  
8 REQUIRED BY THIS SUBPARAGRAPH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE  
9 DEFINITION OF A "CONCUSSION", SIGNS AND SYMPTOMS OF MILD TRAUMATIC BRAIN  
10 INJURIES, HOW SUCH INJURIES MAY OCCUR, AND THE GUIDELINES FOR THE RETURN  
11 TO SCHOOL AND TO CERTAIN SCHOOL ACTIVITIES AFTER A PUPIL HAS SUFFERED A  
12 MILD TRAUMATIC BRAIN INJURY REGARDLESS OF WHETHER SUCH INJURY OCCURRED  
13 OUTSIDE OF SCHOOL. SUCH TRAINING MAY BE COMPLETED BY MEANS OF COURSES OF  
14 INSTRUCTION, INCLUDING BUT NOT LIMITED TO, COURSES PROVIDED ONLINE AND  
15 BY TELECONFERENCE APPROVED BY THE DEPARTMENT AND THE DEPARTMENT OF  
16 HEALTH;

17 (II) PROMULGATE, IMPLEMENT AND UPDATE ANNUALLY RULES AND REGULATIONS  
18 ESTABLISHING AN INFORMATIONAL PAMPHLET RELATING TO MILD TRAUMATIC BRAIN  
19 INJURIES, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO, THE DEFINITION OF A  
20 "CONCUSSION", SIGNS AND SYMPTOMS OF MILD TRAUMATIC BRAIN INJURIES, HOW  
21 SUCH INJURIES MAY OCCUR, AND THE GUIDELINES FOR THE RETURN TO SCHOOL AND  
22 TO CERTAIN SCHOOL ACTIVITIES AFTER A PUPIL HAS SUFFERED A MILD TRAUMATIC  
23 BRAIN INJURY REGARDLESS OF WHETHER SUCH INJURY OCCURRED OUTSIDE OF  
24 SCHOOL. SUCH INFORMATIONAL PAMPHLET SHALL BE PROVIDED TO EVERY PUPIL  
25 PARTICIPATING IN INTERSCHOLASTIC SPORTS AND TO THE PERSON IN PARENTAL  
26 RELATION TO SUCH PUPIL, TO EACH PUPIL WHO HAS SUFFERED A MILD TRAUMATIC  
27 BRAIN INJURY AND TO THE PERSON IN PARENTAL RELATION TO SUCH PUPIL, TO  
28 EVERY TEACHER OF PHYSICAL EDUCATION, TO EACH COACH OF AN INTERSCHOLASTIC  
29 TEAM, TO EACH MEMBER OF A CONCUSSION MANAGEMENT TEAM ESTABLISHED PURSU-  
30 ANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, AND SHALL BE POSTED ON THE  
31 INTERNET WEBSITES OF THE DEPARTMENT AND THE DEPARTMENT OF HEALTH. NO  
32 PUPIL SHALL ENGAGE IN ORGANIZED PRACTICE FOR OR PARTICIPATE IN ANY  
33 INTERSCHOLASTIC SPORT ON BEHALF OF A SCHOOL DISTRICT OR BOARD OF COOPER-  
34 ATIVE EDUCATIONAL SERVICES, UNLESS AND UNTIL THE PERSON IN PARENTAL  
35 RELATION TO SUCH PUPIL SHALL HAVE SIGNED AND RETURNED A STATEMENT  
36 ATTESTING THAT HE OR SHE HAS RECEIVED, READ AND UNDERSTANDS THE INFORMA-  
37 TIONAL PAMPHLET REQUIRED BY THIS SUBPARAGRAPH. EVERY SCHOOL DISTRICT AND  
38 BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL MAINTAIN ON FILE IN THE  
39 PUPIL'S PERMANENT HEALTH RECORD, A COPY OF EACH PARENTAL STATEMENT  
40 RECEIVED. ANY NONPUBLIC SCHOOL MAY IMPLEMENT THE PROVISIONS OF SUCH  
41 RULES AND REGULATIONS;

42 (III) PROMULGATE, IMPLEMENT AND REGULARLY UPDATE RULES AND REGULATIONS  
43 REQUIRING EVERY SCHOOL DISTRICT AND BOARD OF COOPERATIVE EDUCATIONAL  
44 SERVICES, AND AUTHORIZING NONPUBLIC SCHOOLS, TO ESTABLISH A CONCUSSION  
45 MANAGEMENT TEAM. EACH CONCUSSION MANAGEMENT TEAM SHALL BE COMPOSED OF  
46 THE ATHLETIC DIRECTOR (IF ANY), A SCHOOL NURSE, THE SCHOOL PHYSICIAN, A  
47 COACH OF AN INTERSCHOLASTIC TEAM, AN ATHLETIC TRAINER AND SUCH OTHER  
48 APPROPRIATE PERSONNEL AS SHALL BE DESIGNATED BY THE DISTRICT OR BOARD.  
49 THE CONCUSSION MANAGEMENT TEAM SHALL BE THE ENTITY WITH THE PRIMARY  
50 RESPONSIBILITY OF IMPLEMENTING THE RULES AND REGULATIONS PROMULGATED  
51 PURSUANT TO SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH IN ITS SCHOOL  
52 DISTRICT, AUTHORIZING NONPUBLIC SCHOOL OR BOARD OF COOPERATIVE EDUCA-  
53 TIONAL SERVICES. IN PARTICULAR, A CONCUSSION MANAGEMENT TEAM SHALL  
54 ENSURE THAT EVERY COACH, ASSISTANT COACH, VOLUNTEER COACH, AND PHYSICAL  
55 EDUCATION TEACHER THAT WORKS WITH AND PROVIDES INSTRUCTION TO PUPILS  
56 ENGAGED IN ATHLETIC ACTIVITIES SHALL HAVE COMPLETED TRAINING RELATING TO

1 MILD TRAUMATIC BRAIN INJURIES. SUCH TRAINING SHALL INCLUDE THE SIGNS  
2 AND SYMPTOMS OF MILD TRAUMATIC BRAIN INJURIES, POST CONCUSSION AND  
3 SECOND IMPACT SYNDROMES, RETURN TO SCHOOL AND TO ATHLETICS GUIDELINES  
4 AND REQUIREMENTS, AND THE AVAILABLE RESOURCES FOR CONCUSSION MANAGEMENT  
5 AND TREATMENT. FURTHERMORE, EVERY CONCUSSION MANAGEMENT TEAM MAY ESTAB-  
6 LISH AND IMPLEMENT A PROGRAM WHICH PROVIDES INFORMATION ON MILD TRAUMAT-  
7 IC BRAIN INJURIES TO PERSONS IN PARENTAL RELATIONS TO PUPILS THROUGHOUT  
8 EACH SCHOOL YEAR.

9 (IV) PROMULGATE, IMPLEMENT AND REGULARLY UPDATE RULES AND REGULATIONS,  
10 TO BE CARRIED OUT BY EACH CONCUSSION MANAGEMENT TEAM, WHICH SHALL  
11 PROVIDE FOR THE EVALUATION, TREATMENT AND MANAGEMENT OF PUPILS WHO ARE  
12 BELIEVED TO HAVE SUSTAINED MILD TRAUMATIC BRAIN INJURIES. SUCH RULES AND  
13 REGULATIONS SHALL REQUIRE THE IMMEDIATE REMOVAL FROM ATHLETIC ACTIVITIES  
14 OF ANY PUPIL BELIEVED TO HAVE SUSTAINED OR WHO HAS SUSTAINED A MILD  
15 TRAUMATIC BRAIN INJURY, THE REPORTING OF SUCH INJURY TO THE DEPARTMENT,  
16 AND AN EVALUATION OF SUCH PUPIL PURSUANT TO SPECIFIED GUIDELINES. IN THE  
17 EVENT THAT THERE IS ANY DOUBT AS TO WHETHER A PUPIL HAS SUSTAINED A  
18 CONCUSSION, IT SHALL BE PRESUMED THAT HE OR SHE HAS BEEN SO INJURED  
19 UNTIL PROVEN OTHERWISE. NO SUCH PUPIL SHALL RESUME ATHLETIC ACTIVITY  
20 UNTIL HE OR SHE SHALL HAVE BEEN SYMPTOM FREE FOR NOT LESS THAN  
21 TWENTY-FOUR HOURS, AND HAS BEEN EVALUATED BY AND RECEIVED WRITTEN AND  
22 SIGNED AUTHORIZATION FROM A PHYSICIAN TRAINED IN THE EVALUATION AND  
23 TREATMENT OF MILD TRAUMATIC BRAIN INJURIES. SUCH AUTHORIZATION SHALL BE  
24 KEPT ON FILE IN THE PUPIL'S PERMANENT HEALTH RECORD. FURTHERMORE, SUCH  
25 RULES AND REGULATIONS SHALL PROVIDE GUIDELINES FOR LIMITATIONS AND  
26 RESTRICTIONS ON SCHOOL ATTENDANCE AND ACTIVITIES FOR PUPILS WHO HAVE  
27 SUSTAINED MILD TRAUMATIC BRAIN INJURIES, CONSISTENT WITH THE DIRECTIVES  
28 OF THE PUPIL'S TREATING PHYSICIAN. IN ADDITION TO THE REQUIREMENTS OF  
29 THE RULES AND REGULATIONS ESTABLISHED PURSUANT TO THIS SUBPARAGRAPH,  
30 EACH SCHOOL DISTRICT AND BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL  
31 ESTABLISH AND UPDATE POLICIES, AS NEEDED AND CONSISTENT WITH THE RULES  
32 AND REGULATIONS PROMULGATED PURSUANT TO THIS PARAGRAPH, THAT REFLECT THE  
33 MOST CURRENT AVAILABLE INFORMATION AND PRACTICES ON THE PREVENTION, RISK  
34 AND TREATMENT OF SPORTS-RELATED MILD TRAUMATIC BRAIN INJURIES.

35 B. THE RULES AND REGULATIONS ESTABLISHED PURSUANT TO THIS SUBDIVISION  
36 SHALL BE DEEMED TO BE THE MINIMUM STANDARDS THAT MUST BE COMPLIED WITH  
37 BY EVERY SCHOOL DISTRICT AND BOARD OF COOPERATIVE EDUCATIONAL SERVICES  
38 SCHOOL RELATING TO MILD TRAUMATIC BRAIN INJURIES. NOTHING IN THIS SUBDI-  
39 VISION SHALL PROHIBIT ANY SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCA-  
40 TIONAL SERVICES OR NONPUBLIC SCHOOL FROM ADOPTING AND IMPLEMENTING MORE  
41 STRINGENT STANDARDS.

42 S 4. Article 9 of the general obligations law is amended by adding a  
43 new title 3 to read as follows:

#### 44 TITLE 3

#### 45 LIABILITY OF SCHOOLS

46 SECTION 9-301. LIABILITY OF SCHOOL DISTRICTS, NONPUBLIC SCHOOLS AND  
47 BOARDS OF COOPERATIVE EDUCATIONAL SERVICES.

48 9-303. LIABILITY OF SCHOOL DISTRICTS FOR NOT-FOR-PROFIT YOUTH  
49 SPORTS PROGRAMS.

50 S 9-301. LIABILITY OF SCHOOL DISTRICTS, NONPUBLIC SCHOOLS AND BOARDS  
51 OF COOPERATIVE EDUCATIONAL SERVICES. A SCHOOL DISTRICT, NONPUBLIC  
52 SCHOOL OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL NOT BE LIABLE  
53 FOR ANY PERSONAL INJURY OR DEATH OF A PERSON DUE TO ACTION OR INACTION  
54 OF ANY OTHER PERSON EMPLOYED BY SUCH DISTRICT, SCHOOL OR BOARD, WHEN  
55 SUCH ACTION OR INACTION TAKES PLACE UPON DISTRICT, SCHOOL OR BOARD PROP-  
56 ERTY DURING THE DELIVERY OF SERVICES THEREBY.

1 S 9-303. LIABILITY OF SCHOOL DISTRICTS FOR NOT-FOR-PROFIT YOUTH SPORTS  
2 PROGRAMS. 1. A SCHOOL DISTRICT, NONPUBLIC SCHOOL OR BOARD OF COOPER-  
3 ATIVE EDUCATIONAL SERVICES SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY  
4 OR DEATH OF A PERSON DUE TO ACTION OR INACTION OF ANY OTHER PERSON  
5 EMPLOYED BY, VOLUNTEERING WITH OR UNDER CONTRACT WITH SUCH NOT-FOR-PRO-  
6 FIT YOUTH PROGRAM IF:

7 A. THE ACTION OR INACTION TAKES PLACE ON SCHOOL DISTRICT PROPERTY  
8 DURING THE DELIVERY OF SERVICE BY THE NOT-FOR-PROFIT YOUTH SPORTS  
9 PROGRAM;

10 B. THE NOT-FOR-PROFIT YOUTH SPORTS PROGRAM PROVIDES PROOF OF BEING  
11 INSURED UNDER AN ACCIDENT AND LIABILITY POLICY FROM AN INSURER AUTHOR-  
12 IZED TO DO BUSINESS IN THIS STATE, THAT COVERS ANY PERSONAL INJURY OR  
13 DEATH ARISING FROM DELIVERY OF SERVICES. SUCH COVERAGE SHALL BE NOT LESS  
14 THAN FIFTY THOUSAND DOLLARS DUE TO BODILY INJURY OR DEATH TO ANY SINGLE  
15 PERSON, AND NOT LESS THAN ONE HUNDRED THOUSAND DOLLARS DUE TO BODILY  
16 INJURY OR DEATH TO TWO OR MORE PERSONS IN ANY SINGLE INCIDENT;

17 C. THE NOT-FOR-PROFIT YOUTH SPORTS PROGRAM PROVIDES SUCH PROOF OF  
18 INSURANCE TO THE SCHOOL DISTRICT, NONPUBLIC SCHOOL OR BOARD OF COOPER-  
19 ATIVE EDUCATIONAL SERVICES PRIOR TO USING THE FACILITIES OF SUCH  
20 DISTRICT, SCHOOL OR BOARD; AND

21 D. THE NOT-FOR-PROFIT YOUTH SPORTS PROGRAM PROVIDES A STATEMENT AND  
22 PROOF OF COMPLIANCE WITH THE DISTRICT'S, SCHOOL'S OR BOARD'S POLICY AND  
23 GUIDELINES FOR THE TREATMENT AND MANAGEMENT OF MILD TRAUMATIC BRAIN  
24 INJURIES AND OTHER HEAD INJURIES.

25 2. FOR THE PURPOSES OF THIS SECTION, "YOUTH SPORTS PROGRAM" MEANS ONE  
26 OR MORE SPORTS TEAMS ORGANIZED PURSUANT TO A NOT-FOR-PROFIT OR SIMILAR  
27 CHARTER, OR WHICH ARE MEMBER TEAMS IN A LEAGUE ORGANIZED BY OR AFFIL-  
28 IATED WITH A COUNTY OR RECREATION DEPARTMENT.

29 3. ANY NOT-FOR-PROFIT YOUTH SPORTS PROGRAM MAY ADOPT AND IMPLEMENT THE  
30 STANDARDS AND REQUIREMENTS FOR MILD TRAUMATIC BRAIN INJURIES, ESTAB-  
31 LISHED BY THE COMMISSIONER OF EDUCATION PURSUANT TO SUBDIVISION  
32 FORTY-TWO OF SECTION THREE HUNDRED FIVE OF THE EDUCATION LAW. NOTHING IN  
33 THIS TITLE SHALL BE DEEMED TO PROHIBIT THE ADOPTION AND IMPLEMENTATION  
34 OF STANDARDS WHICH ARE MORE STRINGENT.

35 S 5. This act shall take effect on the first of July next succeeding  
36 the date on which it shall have become a law; provided, that, effective  
37 immediately, any rules and regulations necessary to implement the  
38 provisions of this act on its effective date are authorized and directed  
39 to be completed on or before such date.