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

3953

2011-2012 Regular Sessions

I N S E N A T E

March 10, 2011

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:

Section 1. Short title. This act shall be known and may be cited as the "concussion management and awareness act".

S 2. Section 206 of the public health law is amended by adding a new subdivision 28 to read as follows:

28. THE COMMISSIONER, IN COOPERATION WITH THE COMMISSIONER OF EDUCATION, SHALL PROMULGATE RULES AND REGULATIONS, RELATING TO PUPILS WHO SUFFER MILD TRAUMATIC BRAIN INJURIES, IN ACCORDANCE WITH SUBDIVISION FORTY-TWO OF SECTION THREE HUNDRED FIVE OF THE EDUCATION LAW, AND PROVIDE FOR THE POSTING ON THE DEPARTMENT'S INTERNET WEBSITE OF SUCH INFORMATION AS SHALL BE REQUIRED PURSUANT TO SUCH SUBDIVISION.

S 3. Section 305 of the education law is amended by adding a new subdivision 42 to read as follows:

42. A. THE COMMISSIONER AND THE COMMISSIONER OF HEALTH, IN CONSULTATION AND COOPERATION WITH THE NEW YORK STATE PUBLIC HIGH SCHOOL ATHLETIC ASSOCIATION, PUBLIC AND NONPUBLIC SCHOOL ATHLETIC TRAINERS, PUBLIC AND NONPUBLIC SCHOOL INTERSCHOLASTIC SPORTS COACHES AND PUBLIC SCHOOL MEDICAL AND HEALTH PROFESSIONALS, SHALL:

(I) PROMULGATE, IMPLEMENT AND UPDATE ANNUALLY RULES AND REGULATIONS 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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MENT AND MONITORING OF PUPILS WHO SUFFER MILD TRAUMATIC BRAIN INJURIES, ALSO REFERRED TO AS A "CONCUSSION", WHILE RECEIVING INSTRUCTION OR ENGAGING IN ANY SCHOOL SPONSORED OR RELATED ACTIVITY. SUCH COURSE OF INSTRUCTION SHALL BE REQUIRED TO BE COMPLETED ON A BIENNIAL BASIS BY ALL COACHES, NURSES AND ATHLETIC TRAINERS OF EVERY SCHOOL DISTRICT AND BOARD OF COOPERATIVE EDUCATIONAL SERVICES, AND BE COMPLETED BY SUCH PERSONNEL EMPLOYED BY AN AUTHORIZING NONPUBLIC SCHOOL. THE COURSE OF INSTRUCTION REQUIRED BY THIS SUBPARAGRAPH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE DEFINITION OF A "CONCUSSION", SIGNS AND SYMPTOMS OF MILD TRAUMATIC BRAIN INJURIES, HOW SUCH INJURIES MAY OCCUR, AND THE GUIDELINES FOR THE RETURN TO SCHOOL AND TO CERTAIN SCHOOL ACTIVITIES AFTER A PUPIL HAS SUFFERED A MILD TRAUMATIC BRAIN INJURY REGARDLESS OF WHETHER SUCH INJURY OCCURRED OUTSIDE OF SCHOOL. SUCH TRAINING MAY BE COMPLETED BY MEANS OF COURSES OF INSTRUCTION, INCLUDING BUT NOT LIMITED TO, COURSES PROVIDED ONLINE AND BY TELECONFERENCE APPROVED BY THE DEPARTMENT AND THE DEPARTMENT OF HEALTH;

(II) PROMULGATE, IMPLEMENT AND UPDATE ANNUALLY RULES AND REGULATIONS ESTABLISHING AN INFORMATIONAL PAMPHLET RELATING TO MILD TRAUMATIC BRAIN INJURIES, WHICH SHALL INCLUDE BUT NOT BE LIMITED TO, THE DEFINITION OF A "CONCUSSION", SIGNS AND SYMPTOMS OF MILD TRAUMATIC BRAIN INJURIES, HOW SUCH INJURIES MAY OCCUR, AND THE GUIDELINES FOR THE RETURN TO SCHOOL AND TO CERTAIN SCHOOL ACTIVITIES AFTER A PUPIL HAS SUFFERED A MILD TRAUMATIC BRAIN INJURY REGARDLESS OF WHETHER SUCH INJURY OCCURRED OUTSIDE OF SCHOOL. SUCH INFORMATIONAL PAMPHLET SHALL BE PROVIDED TO EVERY PUPIL PARTICIPATING IN INTERSCHOLASTIC SPORTS AND TO THE PERSON IN PARENTAL RELATION TO SUCH PUPIL, TO EACH PUPIL WHO HAS SUFFERED A MILD TRAUMATIC BRAIN INJURY AND TO THE PERSON IN PARENTAL RELATION TO SUCH PUPIL, TO EVERY TEACHER OF PHYSICAL EDUCATION, TO EACH COACH OF AN INTERSCHOLASTIC TEAM, TO EACH MEMBER OF A CONCUSSION MANAGEMENT TEAM ESTABLISHED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, AND SHALL BE POSTED ON THE INTERNET WEBSITES OF THE DEPARTMENT AND THE DEPARTMENT OF HEALTH. NO PUPIL SHALL ENGAGE IN ORGANIZED PRACTICE FOR OR PARTICIPATE IN ANY INTERSCHOLASTIC SPORT ON BEHALF OF A SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES, UNLESS AND UNTIL THE PERSON IN PARENTAL RELATION TO SUCH PUPIL SHALL HAVE SIGNED AND RETURNED A STATEMENT ATTESTING THAT HE OR SHE HAS RECEIVED, READ AND UNDERSTANDS THE INFORMATIONAL PAMPHLET REQUIRED BY THIS SUBPARAGRAPH. EVERY SCHOOL DISTRICT AND BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL MAINTAIN ON FILE IN THE PUPIL'S PERMANENT HEALTH RECORD, A COPY OF EACH PARENTAL STATEMENT RECEIVED. ANY NONPUBLIC SCHOOL MAY IMPLEMENT THE PROVISIONS OF SUCH RULES AND REGULATIONS;

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

MILD TRAUMATIC BRAIN INJURIES. SUCH TRAINING SHALL INCLUDE THE SIGNS AND SYMPTOMS OF MILD TRAUMATIC BRAIN INJURIES, POST CONCUSSION AND SECOND IMPACT SYNDROMES, RETURN TO SCHOOL AND TO ATHLETICS GUIDELINES AND REQUIREMENTS, AND THE AVAILABLE RESOURCES FOR CONCUSSION MANAGEMENT AND TREATMENT. FURTHERMORE, EVERY CONCUSSION MANAGEMENT TEAM MAY ESTABLISH AND IMPLEMENT A PROGRAM WHICH PROVIDES INFORMATION ON MILD TRAUMATIC BRAIN INJURIES TO PERSONS IN PARENTAL RELATIONS TO PUPILS THROUGHOUT EACH SCHOOL YEAR.

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

B. THE RULES AND REGULATIONS ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL BE DEEMED TO BE THE MINIMUM STANDARDS THAT MUST BE COMPLIED WITH BY EVERY SCHOOL DISTRICT AND BOARD OF COOPERATIVE EDUCATIONAL SERVICES SCHOOL RELATING TO MILD TRAUMATIC BRAIN INJURIES. NOTHING IN THIS SUBDIVISION SHALL PROHIBIT ANY SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES OR NONPUBLIC SCHOOL FROM ADOPTING AND IMPLEMENTING MORE STRINGENT STANDARDS.

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

TITLE 3

LIABILITY OF SCHOOLS

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

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

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

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

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

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

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

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

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

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

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