

3953--A

2011-2012 Regular Sessions

I N S E N A T E

March 10, 2011

Introduced by Sens. HANNON, MAZIARZ, BALL, DeFRANCISCO, LARKIN, NOZZOLIO
-- read twice and ordered printed, and when printed to be committed to
the Committee on Health -- committee discharged, bill amended, ordered
reprinted as amended and recommitted to said committee

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 educa-
tional services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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:

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

LBD09691-07-1

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

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

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

1 EDUCATION TEACHER, NURSE AND ATHLETIC TRAINER THAT WORKS WITH AND
2 PROVIDES INSTRUCTION TO PUPILS ENGAGED IN ATHLETIC ACTIVITIES SHALL HAVE
3 COMPLETED TRAINING RELATING TO MILD TRAUMATIC BRAIN INJURIES. FURTHER-
4 MORE, EVERY CONCUSSION MANAGEMENT TEAM MAY ESTABLISH AND IMPLEMENT A
5 PROGRAM WHICH PROVIDES INFORMATION ON MILD TRAUMATIC BRAIN INJURIES TO
6 PERSONS IN PARENTAL RELATIONS TO PUPILS THROUGHOUT EACH SCHOOL YEAR.

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

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

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

42 TITLE 3

43 LIABILITY OF SCHOOLS

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

46 9-303. LIABILITY OF SCHOOL DISTRICTS FOR NOT-FOR-PROFIT YOUTH
47 SPORTS PROGRAMS.

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

55 S 9-303. LIABILITY OF SCHOOL DISTRICTS FOR NOT-FOR-PROFIT YOUTH SPORTS
56 PROGRAMS. 1. A SCHOOL DISTRICT, NONPUBLIC SCHOOL OR BOARD OF COOPER-

1 ACTIVE EDUCATIONAL SERVICES SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY
2 OR DEATH OF A PERSON DUE TO ACTION OR INACTION OF ANY OTHER PERSON
3 EMPLOYED BY, VOLUNTEERING WITH OR UNDER CONTRACT WITH SUCH NOT-FOR-PRO-
4 FIT YOUTH PROGRAM IF:

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

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

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

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

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

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

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