

Senate Bill No. 56

CHAPTER 361

An act to amend Sections 49430.5, 49431, 49433, 49433.7, 49433.9, and 49434 of the Education Code, relating to pupil nutrition.

[Approved by Governor September 3, 2002. Filed with Secretary of State September 4, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 56, Escutia. Pupil health: nutrition.

Existing law requires the State Department of Education to establish a pilot program in which 10 high schools, middle schools or any combination thereof voluntarily adopt certain food sale requirements. Existing law requires, commencing January 1, 2004, the sale of all foods on school grounds at elementary and middle schools, as defined, and at middle and high schools participating in the pilot program, to be approved by the person or persons designated for this purpose by the school district, subject to funding being appropriated in the Budget Act of 2003. Existing law authorizes a school district maintaining at least one middle school to convene a Child Nutrition and Physical Activity Advisory Committee that would develop and recommend a school district policy on nutrition and physical activity to the governing board of the school district for its adoption.

This bill would require schools that apply and are selected to participate in the pilot program to comply with those food sale requirements, and would make various technical and clarifying changes in related provisions. The bill would subject operation of the existing law to funding being appropriated on or before January 1, 2004.

The people of the State of California do enact as follows:

SECTION 1. Section 49430.5 of the Education Code is amended to read:

49430.5. (a) The reimbursement a school receives for free and reduced price meals sold or served to pupils in elementary or middle schools shall be increased to twenty-three cents (\$0.23).

(b) Each elementary and middle school shall receive a reimbursement of ten cents (\$0.10) for meals sold at full price.

(c) To qualify for the increased reimbursement for free and reduced price meals and for the reimbursement for meals sold at full price, a school shall follow the United States Department of Agriculture's



Enhanced Food Based Meal Pattern, the United States Department of Agriculture's Nutrient Standard Meal Planning, California's SHAPE Menu Patterns, or the USDA Traditional Meal Pattern.

(d) The reimbursement rates set forth in this section shall be adjusted annually for increases in cost of living in the same manner set forth in Section 42238.1.

(e) This section shall become operative on January 1, 2004, only if moneys are appropriated on or before January 1, 2004, for the purposes of increased reimbursements pursuant to this article.

SEC. 2. Section 49431 of the Education Code is amended to read:

49431. (a) At elementary and middle schools, and in those schools participating in the pilot program created pursuant to Section 49433.7, the sale of all foods on school grounds shall be approved for compliance with the nutrition standards in this section by the person or persons responsible for implementing these provisions as designated by the school district.

(b) (1) At elementary schools, the only food that may be sold to pupils during breakfast and lunch periods is food that is sold as a full meal. This paragraph does not prohibit the sale of fruit, nonfried vegetables, legumes, beverages, dairy products, or grain products, as individual food items if they meet the requirements set forth in this subdivision.

(2) An individual food item sold to a pupil during morning or afternoon breaks at elementary schools shall meet all of the following standards:

(A) Not more than 35 percent of its total calories shall be from fat. This subparagraph does not apply to the sale of nuts or seeds.

(B) Not more than 10 percent of its total calories shall be from saturated fat.

(C) Not more than 35 percent of its total weight shall be composed of sugar. This subparagraph does not apply to the sale of fruits or vegetables.

(3) Regardless of the time of day, water, milk, 100 percent fruit juices, or fruit-based drinks that are composed of no less than 50 percent fruit juice and that have no added sweeteners are the only beverages that may be sold to pupils at an elementary school.

(c) In middle schools, from one-half hour before the start of the schoolday until after the end of the last lunch period, no carbonated beverage shall be sold to pupils.

(d) At middle schools, vending machines that contain carbonated beverages shall remain locked or be rendered inoperable until after the end of the last lunch period.



(e) An elementary school may permit the sale of food items that do not comply with subdivisions (a) to (d), inclusive, as part of a school fundraising event in any of the following circumstances:

(1) The items are sold by pupils of the school and the sale of those items takes place off of school premises.

(2) The items are sold by pupils of the school and the sale of those items takes place at least one-half hour after the end of the schoolday.

(f) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, this section shall not be waived pursuant to that article.

(g) Although a middle school is required to comply with those provisions of this section applicable to middle schools, it may, in addition, elect to apply for participation in the pilot program pursuant to Section 49433.7.

(h) (1) This section shall become operative on January 1, 2004, only if moneys are appropriated on or before January 1, 2004, for each of the following purposes:

(A) Providing nutrition policy development grants pursuant to subdivision (c) of Section 49433.

(B) Support and technical assistance to school districts pursuant to Section 49433.5.

(C) Increasing meal reimbursements pursuant to Section 49430.5.

(2) The State Department of Education shall file a written statement with the Secretary of the Senate and the Chief Clerk of the Assembly prior to January 1, 2004, stating whether funds have been appropriated to meet the conditions of paragraph (1) and subdivision (e) of Section 49430.5. The statement shall state the annual Budget Act or other measure in which each appropriation was made.

SEC. 3. Section 49433 of the Education Code is amended to read:

49433. (a) A school district maintaining at least one elementary or middle school or high school that is participating in the pilot program pursuant to Section 49433.7 may convene a Child Nutrition and Physical Activity Advisory Committee that shall develop and recommend to the governing board of the school district for its adoption, school district policies on nutrition and physical activity. The committee shall include, but need not be limited to, school district governing board members, school administrators, food service directors, food service staff, parents, pupils, physical and health education teachers, dietitians, health care professionals, and interested community members. In developing the policy, the committee shall hold at least one public hearing.

(b) The policies shall address issues and goals, including, but not limited to, all of the following:

(1) Implementing the nutritional standards set forth in Section 49431.



(2) Encouraging fundraisers that promote good health habits and discouraging fundraisers that promote unhealthy foods.

(3) Ensuring that no pupil is hungry.

(4) Improving nutritional standards.

(5) Increasing the availability of fresh fruits and vegetables, including provisions that encourage schools to make fruits and vegetables available at all locations where food is sold.

(6) Ensuring, to the extent possible, that the food served is fresh.

(7) Encouraging eligible pupils to participate in the school lunch program.

(8) Integrating nutrition and physical activity into the overall curriculum.

(9) Ensuring regular professional development for food services staff.

(10) Ensuring pupils a minimum of 30 minutes to eat lunch and 20 minutes to eat breakfast, when provided.

(11) Ensuring pupils engage in healthful levels of vigorous physical activity.

(12) Ensuring pupils receive nutrition education.

(13) Improving the quality of physical education curricula and increasing training of physical education teachers.

(14) Enforcing existing physical education requirements.

(15) Altering the economic structures in place to encourage healthy eating by pupils and reduce dependency on generating profits for the school from the sale of unhealthy foods.

(16) Developing a financing plan to implement the policies.

(17) Increasing the availability of organic fruits and vegetables and school gardens.

(18) Collaborating with local farmers' markets.

(c) A school district maintaining at least one elementary or middle school may apply to the State Department of Education for a grant to offset the costs of developing and adopting policies pursuant to this section. The grants shall be one-time grants and shall be available to applicant school districts by March 1, 2002.

(d) A participating school district shall receive a grant of no less than four thousand dollars (\$4,000) and no more than twenty-five thousand dollars (\$25,000), depending upon the size of the school district, for the purpose of offsetting the costs of developing the school district nutrition and physical activity policies.

SEC. 4. Section 49433.7 of the Education Code is amended to read: 49433.7. The State Department of Education shall establish a three-year pilot program in which a total of not less than 10 high schools, middle schools, or any combination thereof, that apply are selected to



participate. Although the selection process shall be essentially random, the selection process shall be weighted so that the pilot program contains participants that, as a group, are representative of the geographic diversity of the state. The pilot program shall commence in the fall of the 2002–03 school year. Participating districts will be eligible to receive a grant pursuant to subdivision (c) of Section 49433. Districts will be eligible for an increased reimbursement rate for free and reduced price meals served at participating high schools as set forth in Section 49430.5.

SEC. 5. Section 49433.9 of the Education Code is amended to read: 49433.9. A school district participating in the pilot program shall adopt the provisions of subdivision (a) of Section 49431 and Section 49433 and shall comply with all of the following requirements:

(a) (1) No beverage other than any of the following shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and that have no added sweeteners.

(B) Drinking water.

(C) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(D) Electrolyte replacement beverages that do not contain more than 42 grams of added sweetener per 20 ounce serving.

(2) No carbonated beverage shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday.

(3) (A) Except as set forth in subparagraph (B), no beverage that exceeds 12 ounces per serving shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday.

(B) The 12-ounce maximum serving requirement does not apply to any of the following:

(i) Drinking water.

(ii) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(iii) An electrolyte replacement beverage. An electrolyte replacement beverage shall not exceed 20 ounces per serving.

(4) For the purposes of this subdivision and paragraph (3) of subdivision (b) of Section 49431, “added sweetener” means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice which is a component of the beverage.



(b) No food item shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday unless it meets all of the standards set forth in subparagraphs (A) to (C) of paragraph (2) of Section 49431.

(c) Entree items and side dish serving sizes shall be no larger than the portions of those foods served as part of the federal school meal program.

(d) Fruit and nonfried vegetables shall be offered for sale at any location where food is sold.

SEC. 6. Section 49434 of the Education Code is amended to read:

49434. (a) The Superintendent of Public Instruction shall annually randomly select not less than 10 percent of the school districts of the state to report compliance with this article as set forth in subdivision (b). The group selected shall be sufficient to provide a statistically random and accurate sampling of the state as a whole.

(b) Each school district selected pursuant to subdivision (a) shall report to the Superintendent of Public Instruction in the coordinated compliance review regarding the extent to which it has complied with this article.

(c) For any school district that the Superintendent of Public Instruction finds is not in compliance with the mandatory provisions of this article, the Superintendent of Public Instruction shall issue a notice of noncompliance. The noncomplying school district shall adopt, and provide to the Superintendent of Public Instruction, a corrective plan. The corrective plan shall set forth the actions to be taken by the school district in order to ensure that the school district will be in full compliance within one year from the issuance of the noncompliance notification.

