

ASSEMBLY BILL

No. 626

Introduced by Assembly Members Skinner and Lowenthal

February 20, 2013

An act to amend Sections 8482.3, 38091, 38100, 49430, 49431, 49431.2, 49431.5, 49431.7, 49432, and 49434 of, and to repeal Sections 38102, 49433, 49433.5, 49433.7, 49433.9, 49435, and 49436 of, the Education Code, relating to school nutrition.

LEGISLATIVE COUNSEL'S DIGEST

AB 626, as introduced, Skinner. School nutrition.

(1) Existing law, the After School Education and Safety Program Act of 2002, enacted by initiative statute, establishes the After School Education and Safety Program to serve pupils in kindergarten and grades 1 to 9, inclusive, and requires an entity that applies to operate a program to agree that snacks made available by the program conform to specified nutrition standards.

This bill would also require an entity that applies to operate a program to agree that meals made available by the program conform to the same specified nutrition standards.

(2) Existing law authorizes the governing board of any school district to establish cafeterias in the schools under its jurisdiction and authorizes the moneys received for the sale of food or for any services performed by the cafeterias to be paid into the county treasury to the credit of the cafeteria fund of the particular school district. Existing law requires the cafeteria fund to be used only for those expenditures authorized by the governing board of the school district as necessary for the operation of school cafeterias, including, but not limited to, certain expenditures related to a central food processing plant. Existing law also authorizes

the governing board of a school district to authorize the establishment of one or more cafeteria revolving accounts whenever a cafeteria fund is operated.

This bill would repeal the authority of the governing board of a school district to use moneys in the cafeteria fund for certain expenditures related to a central food processing plant and to create one or more cafeteria revolving accounts.

(3) Existing law requires the cost of housing and equipping cafeterias to be a charge against the funds of the school district except that the governing board of a school district is authorized to make the cost of the lease or purchase of additional cafeteria equipment for a central food processing plant, and of vending machines and their installation and housing, a charge against cafeteria funds if the governing board of the school district deems it necessary. Existing law also authorizes the governing board of a school district, if school district funds are expended for the lease or purchase of additional cafeteria equipment for a central food processing plant, or for the lease, purchase, installation, or housing of vending machines, to reimburse school funds from cafeteria funds within 5 years after the expenditure.

This bill would instead require the cost of providing adequate housing for cafeterias, including, but not limited to, kitchen facilities, to be a charge against the funds of the school district. The bill would require the cost of the lease or purchase of cafeteria equipment and of vending machines and their installation and housing to be a charge against cafeteria funds. However, the governing board of a school district would be authorized to make these costs a charge against the funds of the school district if the governing board of the school district deems it necessary. The bill would also authorize the governing board of the school district, if school district funds are expended for the lease or purchase of cafeteria equipment, or for the lease, purchase, installation, or housing of vending machines, as specified, to reimburse school funds from cafeteria funds during the same fiscal year.

Existing law authorizes the governing board of a school district to make the cost of maintenance of the physical plant used in connection with cafeterias, the cost of replacement of equipment, and the cost of telephone charges, water, electricity, gas, coal, wood, fuel oil, and garbage disposal a charge against the funds of the school district.

This bill would instead authorize the governing board of a school district to make the cost of maintenance of kitchen facilities, the cost of replacement kitchen equipment, and the reasonable costs of providing

drinking water in the cafeteria and garbage disposal related to food service and delivery a charge against cafeteria funds.

(4) Existing law authorizes the governing board of any school district operating school cafeterias to establish and maintain a cafeteria fund reserve for the purchase, lease, maintenance, or replacement of cafeteria equipment.

This bill would repeal that provision.

(5) Existing law, the Pupil Nutrition, Health, and Achievement Act of 2001, requires each elementary school, commencing July 1, 2007, to sell only certain foods to a pupil during the schoolday, except for food items sold as part of a school fundraising event, if the items are sold by pupils of the school and the sale of those items takes place off of and away from school premises or 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. Existing law defines “sold” as the exchange of food for money, coupon, or vouchers.

This bill would require each elementary school, from one-half hour before the start of the schoolday to one-half hour after the schoolday, to sell only certain foods to a pupil, except for food items sold as part of a school fundraising event if the sale of those items takes places off of and away from school premises, or the sale of those items takes place on school premises at least one-half hour after the end of the schoolday. The bill would also define “sold” as the exchange of food or beverages for money, coupon, vouchers, or order forms, when any part of the exchange occurs on a school campus.

(6) Existing law, commencing July 1, 2007, and excluding food served as part of a United States Department of Agriculture (USDA) meal program, requires snacks and entrée items sold to a pupil in middle, junior, or high school to meet specified nutritional standards, and requires entrée items to also be categorized as entrée items in the School Breakfast Program or National School Lunch Program. Existing law authorizes the sale of food items that do not comply with these provisions in specific circumstances, including, but not limited to, if the sale of those items occurs during a school-sponsored pupil activity after the end of the schoolday.

This bill would apply these restrictions to the sale of snacks and entrées to a pupil in middle school or high school from one-half hour before the start of the schoolday to one-half hour after the schoolday, and would remove the requirement that entrée items be categorized as entrée items in the School Breakfast Program or National School Lunch

Program. The bill would also repeal the authority of a middle school or high school to permit the sale of food items that do not comply with the specified nutritional standards if the sale of those items occurs during a school-sponsored pupil activity after the end of the schoolday.

(7) Existing law requires that only beverages that meet specified nutritional standards may be sold to a pupil at an elementary school, regardless of the time of day. Existing law authorizes an elementary school to permit the sale of beverages that do not meet the specified nutritional standards as part of a fundraising event if the items are sold by pupils of the school and the sale of those items takes place off of and away from the premises of the school or the sale of those items takes place one-half hour or more after the end of the schoolday.

This bill would instead require, from one-half hour before the start of the schoolday to one-half hour after the schoolday, that only beverages that meet specified nutritional standards may be sold to a pupil at an elementary school. The bill would also remove the requirement that beverages that do not meet specified nutritional standards must be sold by pupils of the school.

Existing law requires that only beverages that meet specified nutritional standards may be sold to a pupil at a middle or junior high school from one-half hour before the start of the schoolday to one-half hour after the end of the schoolday. Existing law authorizes a middle or junior high school to permit the sale of beverages that do not meet the specified nutritional standards as part of a school event if the sale of those items occurs during a school-sponsored event and takes place at the location of the event at least one-half hour after the end of the schoolday and vending machines, pupil stores, and cafeterias are used later than one-half hour after the end of the schoolday.

This bill would require that only beverages that meet the same specified nutritional standards may be sold to a pupil at a high school for one-half hour before the start of the schoolday to one-half hour after the end of the schoolday. The bill would also authorize a middle school or high school to permit the sale of beverages that do not meet specified nutritional standards as part of a school event if either the sale of those items takes place off of and away from the premises of the school or the sale of those items takes place on school premises at least one-half hour after the end of the schoolday.

(8) Existing law prohibits a school or school district, during school hours and one-half hour before and after school hours, through a vending machine or school food service establishment, as defined, from making

available to pupils enrolled in kindergarten, or grades 1 to 12, inclusive, food containing artificial trans fat, as defined, or use food containing artificial trans fat in the preparation of a food item served to those pupils unless the food is provided as part of a USDA meal program.

This bill would instead prohibit a school or school district, from one-half hour before the start of the schoolday to one-half hour after the end of the schoolday, from selling to pupils enrolled in kindergarten, or grades 1 to 12, inclusive, food containing artificial trans fat, as defined, unless the food is provided as part of a USDA meal program.

(9) Existing law requires the State Department of Education to establish a 3-year pilot program related to the Pupil Nutrition, Health, and Achievement Act of 2001, commencing in the fall of the 2002–03 school year, in which a total of not less than 10 high schools, middle schools, or any combination of high schools and middle schools that apply are selected to participate.

This bill would repeal the provisions related to the pilot program.

(10) Existing law authorizes the Superintendent of Public Instruction to monitor school districts for compliance with the Pupil Nutrition, Health, and Achievement Act of 2001, and requires each school district so monitored to report to the Superintendent in the coordinated review effort regarding the extent of the school district’s compliance.

This bill would authorize the Superintendent, in the administrative review of a school district, to report the extent of the school district’s compliance.

(11) This bill would also make nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 8482.3 of the Education Code is amended
- 2 to read:
- 3 8482.3. (a) The After School Education and Safety Program
- 4 shall be established to serve pupils in kindergarten and grades 1
- 5 to 9, inclusive, at participating public elementary, middle, junior
- 6 high, and charter schools.
- 7 (b) A program may operate a before school component of a
- 8 program, an after school component, or both the before and after
- 9 school components of a program, on one or multiple schoolsites.

1 If a program operates at multiple schoolsites, only one application
2 shall be required for its establishment.

3 (c) Each component of a program established pursuant to this
4 article shall consist of the following two elements:

5 (1) An educational and literacy element in which tutoring or
6 homework assistance is provided in one or more of the following
7 areas: language arts, mathematics, history and social science,
8 computer training, or science.

9 (2) An educational enrichment element, that may include, but
10 need not be limited to, fine arts, career technical education,
11 recreation, physical fitness, and prevention activities.

12 (3) Notwithstanding any other provision of this article, the
13 majority of the time spent by a pupil who is in kindergarten or any
14 of grades 1 to 9, inclusive, and who is participating in a career
15 technical education element of a program established pursuant to
16 this article shall be at a site that complies with Section 8484.6.

17 (d) Applicants shall agree that snacks *or meals* made available
18 through a program shall conform to the nutrition standards in
19 Article 2.5 (commencing with Section 49430) of Chapter 9 of Part
20 27 of Division 4 of Title 2.

21 (e) Applicants for programs established pursuant to this article
22 may include any of the following:

23 (1) A local educational agency, including, but not limited to, a
24 charter school, the California School for the Deaf (northern
25 California), the California School for the Deaf (southern
26 California), and the California School for the Blind.

27 (2) A city, county, or nonprofit organization in partnership with,
28 and with the approval of, a local educational agency or agencies.

29 (f) Applicants for grants pursuant to this article shall ensure that
30 each of the following requirements is fulfilled, if applicable:

31 (1) The application documents the commitments of each partner
32 to operate a program on that site or sites.

33 (2) The application has been approved by the school district, or
34 the charter school governing board, and the principal of each
35 participating school for each schoolsite or other site.

36 (3) Each partner in the application agrees to share responsibility
37 for the quality of the program.

38 (4) The application designates the public agency or local
39 educational agency partner to act as the fiscal agent. For purposes
40 of this section, “public agency” means only a county board of

1 supervisors or if the city is incorporated or has a charter, a city
2 council.

3 (5) Applicants agree to follow all fiscal reporting and auditing
4 standards required by the department.

5 (6) Applicants agree to incorporate into the program both of the
6 elements required pursuant to subdivision (c).

7 (7) Applicants agree to provide information to the department
8 for the purpose of program evaluation pursuant to Section 8483.55.

9 (8) Applicants shall certify that program evaluations will be
10 based upon Section 8484 and upon any requirements recommended
11 by the Advisory Committee on Before and After School Programs
12 and adopted by the state board, in compliance with subdivision
13 (g) of Section 8482.4.

14 (9) The application states the targeted number of pupils to be
15 served by the program.

16 (10) Applicants agree to provide the following information on
17 participating pupils to the department:

18 (A) Schoolday attendance rates.

19 (B) Pupil test scores from the Standardized Testing and
20 Reporting Program established under Section 60640, reflecting
21 achievement in the areas addressed by required program elements,
22 if assessments have been established in that area.

23 (C) Program attendance.

24 (g) (1) Grantees shall review their after school program plans
25 every three years including, but not limited to, all of the following:

26 (A) Program goals. A grantee may specify any new program
27 goals that will apply to the following three years during the grant
28 renewal process.

29 (B) Program content, including the elements identified in
30 subdivision (c).

31 (C) Outcome measures selected from those identified in
32 subdivision (a) of Section 8484 that the grantee will use for the
33 next three years.

34 (D) Any other information requested by the department.

35 (E) If the program goals or outcome measures change as a result
36 of this review, the grantee shall notify the department in a manner
37 prescribed by the department.

38 (F) The grantee shall maintain documentation of the after school
39 program plan for a minimum of five years.

1 (2) The department shall monitor this review as part of its onsite
2 monitoring process.

3 SEC. 2. Section 38091 of the Education Code is amended to
4 read:

5 38091. The cafeteria fund shall be used only for those
6 expenditures authorized by the governing board *of a school district*
7 as necessary for the operation of school cafeterias, including, but
8 not limited to, expenditures for the lease or purchase of additional
9 cafeteria equipment ~~for the central food processing plant~~, vending
10 machines and their installation and housing, and computer
11 equipment and related software.

12 ~~Whenever a cafeteria fund is operated pursuant to these~~
13 ~~provisions, the governing board may authorize the establishment~~
14 ~~of one or more cafeteria revolving accounts. For accounting~~
15 ~~purposes, a cafeteria revolving account is to be treated as a~~
16 ~~revolving cash account of the cafeteria fund, providing that the~~
17 ~~receipt of income and expenditures made from a cafeteria revolving~~
18 ~~account become recorded as income and expenditures of the~~
19 ~~cafeteria fund. Appropriate transfers, replenishments, and deposits~~
20 ~~between the cafeteria fund and a cafeteria revolving account may~~
21 ~~occur as are necessary to comply with accounting requirements.~~
22 ~~A cafeteria revolving account may receive and expend moneys in~~
23 ~~the same manner and for the same purposes as authorized for a~~
24 ~~cafeteria account.~~

25 ~~The governing board of any school district, or of two or more~~
26 ~~school districts governed by governing boards of identical~~
27 ~~personnel, may also make expenditures from the cafeteria fund~~
28 ~~for the construction, alteration, or improvement of a central food~~
29 ~~processing plant, for the installation of additional cafeteria~~
30 ~~equipment for the central food processing plant, and for the lease~~
31 ~~or purchase of vehicles used primarily in connection with the~~
32 ~~central food processing plant.~~

33 SEC. 3. Section 38100 of the Education Code is amended to
34 read:

35 38100. (a) The cost of *providing adequate housing and*
36 ~~equipping~~ *for cafeterias, including, but not limited to, kitchen*
37 *facilities*, is a charge against the funds of the school district. *The*
38 *cost of the lease or purchase of cafeteria equipment and of vending*
39 *machines and their installation and housing shall be a charge*
40 *against cafeteria funds, in accordance with Section 38091.*

1 However, when the governing board of a school district deems it
 2 necessary, the governing board *of a school district* may make the
 3 cost of the lease or purchase of ~~additional~~ cafeteria equipment for
 4 ~~a central food processing plant~~, and of vending machines and their
 5 installation and housing, a charge against ~~cafeteria funds~~ *the funds*
 6 *of the school district*. If school district funds are expended for the
 7 lease or purchase of ~~additional~~ cafeteria equipment for a ~~central~~
 8 ~~food processing plant~~, or for the lease, purchase, installation, or
 9 housing of vending machines, the governing board *of the school*
 10 *district* may at any time ~~within five years during the same fiscal~~
 11 *year* after the expenditure reimburse school district funds from
 12 cafeteria funds. *The governing board of a school district shall only*
 13 *approve reimbursement for vending machines if at least one of the*
 14 *following apply:*

15 (1) *The vending machines are owned and operated by the school*
 16 *food services department, sell meals that qualify for federal meal*
 17 *program reimbursement, and are equipped with appropriate point*
 18 *of service meal counting software.*

19 (2) *The vending machines sell food and beverages that comply*
 20 *with state and federal competitive food laws and regulations.*

21 ~~The~~

22 (b) *The governing board of a school district may by resolution*
 23 *make the cost of maintenance of the ~~physical plant used in~~*
 24 *connection ~~with cafeterias, kitchen facilities,~~ the cost of*
 25 *replacement of kitchen equipment, and the ~~cost of telephone~~*
 26 *charges, water, electricity, gas, coal, wood, fuel oil, reasonable*
 27 *costs of providing drinking water in the cafeteria, and garbage*
 28 *disposal related to food service and delivery a charge against the*
 29 *funds of the school district. cafeteria funds provided that the school*
 30 *district complies with all applicable state and federal laws and*
 31 *regulations.*

32 ~~The governing board of any school district, or of two or more~~
 33 ~~school districts governed by governing boards of identical~~
 34 ~~personnel, may also make the cost of the construction, alteration,~~
 35 ~~or improvement of a central food processing plant and the~~
 36 ~~installation of additional cafeteria equipment a charge against~~
 37 ~~cafeteria funds. If district funds are expended for these purposes,~~
 38 ~~the governing board also may at any time within five years after~~
 39 ~~the expenditure reimburse district funds from cafeteria funds.~~

40 SEC. 4. Section 38102 of the Education Code is repealed.

1 ~~38102. The governing board of any school district operating~~
2 ~~school cafeterias may establish and maintain a cafeteria fund~~
3 ~~reserve for the purchase, lease, maintenance, or replacement of~~
4 ~~cafeteria equipment, to be known as the cafeteria equipment~~
5 ~~reserve. The funds for this reserve are to be derived from the sales~~
6 ~~of food in the school cafeterias in an amount to be determined by~~
7 ~~the governing board and may be accumulated from year to year~~
8 ~~until expended for this purpose. Funds in the cafeteria equipment~~
9 ~~reserve shall only be used for the purchase, lease, maintenance, or~~
10 ~~replacement of cafeteria equipment.~~

11 ~~Nothing in this section shall prohibit any school district from~~
12 ~~replacing cafeteria equipment from district funds as provided in~~
13 ~~Section 38100.~~

14 SEC. 5. Section 49430 of the Education Code is amended to
15 read:

16 49430. As used in this article, the following terms have the
17 following meanings:

18 (a) “Elementary school” means a ~~public~~ *school operated and*
19 *maintained by a school district, charter school, or county office*
20 *of education that maintains any grade from kindergarten to grade*
21 *6, inclusive, but no grade higher than grade 6.*

22 (b) “Middle school” means a ~~public~~ *school operated and*
23 *maintained by a school district, charter school, or county office*
24 *of education that maintains grade 7 or 8, 7 to 9, inclusive, or 7 to*
25 *10, inclusive.*

26 (c) “High school” means a ~~public~~ *school operated and*
27 *maintained by a school district, charter school, or county office*
28 *of education maintaining any of grades 9 to 12, inclusive.*

29 (d) “Full meal” means a combination of food items that meet
30 USDA-approved School Breakfast Program or National School
31 Lunch Program meal pattern requirements or the menu planning
32 options of Shaping Health as Partners in Education developed by
33 the state (SHAPE California network).

34 (e) “Added sweetener” means an additive other than 100 percent
35 fruit juice that enhances the sweetness of a beverage.

36 (f) “Sold” means the exchange of food *or beverages* for money,
37 coupons, ~~or~~ vouchers, *or order forms, when any part of the*
38 *exchange occurs on a school campus.*

1 (g) “Entrée” means a food that is generally regarded as being
2 the primary food in a meal, and shall include, but not be limited
3 to, sandwiches, burritos, pasta, and pizza.

4 (h) “Snack” means a food that is generally regarded as
5 supplementing a meal, including, but not limited to, chips, crackers,
6 onion rings, nachos, french fries, donuts, cookies, pastries,
7 cinnamon rolls, and candy.

8 (i) “Deep fried” means a food item is cooked by total submersion
9 in oil or fat.

10 (j) “Par fried” means a food item is fried to reach an internal
11 temperature of 160 degrees Fahrenheit then is cooled to room
12 temperature so that it may be refrigerated or frozen for future
13 frying.

14 (k) “Flash fried” means a food item is quickly fried on both
15 sides in oil with a temperature of 400 degrees Fahrenheit or higher.

16 SEC. 6. Section 49431 of the Education Code is amended to
17 read:

18 49431. (a) (1) ~~Commencing July 1, 2007, From one-half hour~~
19 *before the start of the schoolday to one-half hour after the*
20 *schoolday, at each elementary school, the only food that may be*
21 *sold to a pupil during the school day are full meals, individually*
22 *sold dairy or whole grain foods, and individually sold portions of*
23 *nuts, nut butters, seeds, eggs, cheese packaged for individual sale,*
24 *fruit, vegetables that have not been deep fried, and legumes.*

25 (2) *An individually sold dairy or whole grain food item, and*
26 *individually sold portions of nuts, nut butters, seeds, eggs, cheese*
27 *packaged for individual sale, fruit, vegetables that have not been*
28 *deep fried, and legumes may be sold to pupils at an elementary*
29 *school, except food sold as part of a USDA meal program, if it*
30 ~~meets~~ *they meet* all of the following standards:

31 (A) *Not more than 35 percent of its total calories shall be from*
32 *fat. This subparagraph shall not apply to individually sold portions*
33 *of nuts, nut butters, seeds, eggs, cheese packaged for individual*
34 *sale, fruit, vegetables that have not been deep fried, or legumes.*

35 (B) *Not more than 10 percent of its total calories shall be from*
36 *saturated fat. This subparagraph shall not apply to eggs or cheese*
37 *packaged for individual sale.*

38 (C) *Not more than 35 percent of its total weight shall be*
39 *composed of sugar, including naturally occurring and added sugar.*

1 *This subparagraph shall not apply to fruit or vegetables that have*
 2 *not been deep fried.*

3 (D) Not more than 175 calories per individual food item.

4 (b) An elementary school may permit the sale of food items that
 5 do not comply with subdivision (a) as part of a school fundraising
 6 event in ~~any~~ *either* of the following circumstances:

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

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

12 (c) It is the intent of the Legislature that the governing board of
 13 a school district annually review its compliance with the nutrition
 14 standards described in this section and Section 49431.5.

15 SEC. 7. Section 49431.2 of the Education Code is amended to
 16 read:

17 49431.2. (a) ~~Commencing July 1, 2007, From one-half hour~~
 18 ~~before the start of the schoolday to one-half hour after the~~
 19 ~~schoolday, snacks sold to a pupil in middle, junior, school or high~~
 20 ~~school, except food served as part of a USDA meal program, shall~~
 21 ~~meet all of the following standards:~~

22 (1) Not more than 35 percent of its total calories shall be from
 23 fat. This paragraph does not apply to the sale of nuts, nut butters,
 24 seeds, eggs, cheese packaged for individual sale, fruits, vegetables
 25 that have not been deep fried, or legumes.

26 (2) Not more than 10 percent of its total calories shall be from
 27 saturated fat. This subparagraph does not apply to eggs or cheese
 28 packaged for individual sale.

29 (3) Not more than 35 percent of its total weight shall be
 30 composed of sugar, including naturally occurring and added sugars.
 31 This paragraph does not apply to the sale of fruits or vegetables
 32 that have not been deep fried.

33 (4) No more than 250 calories per individual food item.

34 (b) ~~Commencing July 1, 2007, From one-half hour before the~~
 35 ~~start of the schoolday to one-half hour after the schoolday, entrée~~
 36 ~~items sold to a pupil in middle, junior, school or high school, except~~
 37 ~~food served as part of a USDA meal program, shall contain no~~
 38 ~~more than 400 calories per entrée, and shall contain no more than~~
 39 ~~4 grams of fat per 100 calories contained in each entrée, and shall~~

1 ~~be categorized as entrée items in the School Breakfast Program or~~
2 ~~National School Lunch Program.~~

3 (c) A middle, ~~junior~~, *school* or high school may permit the sale
4 of food items that do not comply with subdivision (a) or (b) in any
5 of the following circumstances:

6 (1) The sale of those items takes place off of and away from
7 school premises.

8 (2) The sale of those items takes place on school premises at
9 least one-half hour after the end of the schoolday.

10 ~~(3) The sale of those items occurs during a school-sponsored~~
11 ~~pupil activity after the end of the schoolday.~~

12 (d) It is the intent of the Legislature that the governing board
13 of a school district annually review its compliance with the
14 nutrition standards described in this section.

15 SEC. 8. Section 49431.5 of the Education Code is amended to
16 read:

17 49431.5. (a) (1) ~~Regardless of the time of day, From one-half~~
18 ~~hour before the start of the schoolday to one-half hour after the~~
19 ~~schoolday, only the following beverages may be sold to a pupil at~~
20 ~~an elementary school:~~

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

23 (B) Vegetable-based drinks that are composed of no less than
24 50 percent vegetable juice and have no added sweetener.

25 (C) Drinking water with no added sweetener.

26 (D) Two-percent-fat milk, one-percent-fat milk, nonfat milk,
27 soy milk, rice milk, and other similar nondairy milk.

28 (2) An elementary school may permit the sale of beverages that
29 do not comply with paragraph (1) as part of a school fundraising
30 event in ~~any~~ *either* of the following circumstances:

31 ~~(A) The items are sold by pupils of the school and the sale of~~
32 ~~those items takes place off and away from the premises of the~~
33 ~~school.~~

34 ~~(B) The items are sold by pupils of the school and the sale of~~
35 ~~those items takes place on school premises at least one-half hour~~
36 ~~or more after the end of the schoolday.~~

37 (3) From one-half hour before the start of the schoolday to
38 one-half hour after the end of the schoolday, only the following
39 beverages may be sold to a pupil at a middle ~~or junior~~ *school or*
40 *high school:*

- 1 (A) Fruit-based drinks that are composed of no less than 50
2 percent fruit juice and have no added sweetener.
- 3 (B) Vegetable-based drinks that are composed of no less than
4 50 percent vegetable juice and have no added sweetener.
- 5 (C) Drinking water with no added sweetener.
- 6 (D) Two-percent-fat milk, one-percent-fat milk, nonfat milk,
7 soy milk, rice milk, and other similar nondairy milk.
- 8 (E) An electrolyte replacement beverage that contains no more
9 than 42 grams of added sweetener per 20-ounce serving.
- 10 (4) A middle ~~or junior school~~ or high school may permit the
11 sale of beverages that do not comply with paragraph (3) as part of
12 a school event if the sale of those items meets ~~all~~ *either* of the
13 following criteria:
- 14 (A) ~~The sale occurs during a school-sponsored event and takes~~
15 ~~place at the location of that event at least one-half hour after the~~
16 ~~end of the schoolday of those items takes place off and away from~~
17 ~~the premises of the school.~~
- 18 (B) ~~Vending machines, pupil stores, and cafeterias are used later~~
19 ~~than~~ *The sale of those items takes place on school premises at least*
20 *one-half hour after the end of the schoolday.*
- 21 (5) ~~This subdivision does not prohibit an elementary, or middle~~
22 ~~or junior high school from making available through a vending~~
23 ~~machine any beverage allowed under paragraph (1) or (3) at any~~
24 ~~time of day, or, in middle and junior high schools, any beverage~~
25 ~~that does not comply with paragraph (3) if the beverage only is~~
26 ~~available not later than one-half hour before the start of the~~
27 ~~schoolday and not sooner than one-half hour after the end of the~~
28 ~~schoolday.~~
- 29 (b) (1) ~~Commencing July 1, 2007, no less than 50 percent of~~
30 ~~all beverages sold to a pupil from one-half hour before the start of~~
31 ~~the schoolday until one-half hour after the end of the schoolday~~
32 ~~shall be those enumerated by paragraph (3).~~
- 33 (2) ~~Commencing July 1, 2009, all beverages sold to a pupil from~~
34 ~~one-half hour before the start of the schoolday until one-half hour~~
35 ~~after the end of the schoolday shall be those enumerated by~~
36 ~~paragraph (3).~~
- 37 (3) ~~Beverages allowed under this subdivision are all of the~~
38 ~~following:~~
- 39 (A) ~~Fruit-based drinks that are composed of no less than 50~~
40 ~~percent fruit juice and have no added sweetener.~~

1 ~~(B) Vegetable-based drinks that are composed of no less than~~
2 ~~50 percent vegetable juice and have no added sweetener.~~

3 ~~(C) Drinking water with no added sweetener.~~

4 ~~(D) Two-percent-fat milk, one-percent-fat milk, nonfat milk,~~
5 ~~soy milk, rice milk, and other similar nondairy milk.~~

6 ~~(E) An electrolyte replacement beverage that contains no more~~
7 ~~than 42 grams of added sweetener per 20-ounce serving.~~

8 ~~(e) For the purposes of this section, the following terms have~~
9 ~~the following meanings:~~

10 ~~(1) "Added sweetener" means any additive that enhances the~~
11 ~~sweetness of the beverage, including added sugar, but does not~~
12 ~~include the natural sugar or sugars that are contained within the~~
13 ~~fruit juice which is a component of the beverage.~~

14 ~~(2) "Sale of beverages" means the exchange of a beverage for~~
15 ~~money, coupons, or vouchers.~~

16 ~~(d)~~

17 ~~(b) It is the intent of the Legislature that the governing board~~
18 ~~of a school district annually review its compliance with this section.~~

19 ~~(e)~~

20 ~~(c) Notwithstanding Article 3 (commencing with Section 33050)~~
21 ~~of Chapter 1 of Part 20 of Division 2, compliance with this section~~
22 ~~may not be waived.~~

23 SEC. 9. Section 49431.7 of the Education Code is amended to
24 read:

25 49431.7. ~~(a) Commencing on July 1, 2009, From one-half~~
26 ~~hour before the start of the schoolday to one-half hour after the~~
27 ~~end of the schoolday, a school or school district, through a vending~~
28 ~~machine or school food service establishment during school hours~~
29 ~~and one-half of an hour before and after school hours, shall not~~
30 ~~make available sell to pupils enrolled in kindergarten, or any of~~
31 ~~grades 1 to 12, inclusive, food containing artificial trans fat, as~~
32 ~~defined in subdivision (b), or use food containing artificial trans~~
33 ~~fat in the preparation of a food item served to those pupils.~~

34 ~~(b) For purposes of this section, a food contains artificial trans~~
35 ~~fat if a food contains vegetable shortening, margarine, or any kind~~
36 ~~of partially hydrogenated vegetable oil, unless the manufacturer's~~
37 ~~documentation or the label required on the food, pursuant to~~
38 ~~applicable federal and state law, lists the trans fat content as less~~
39 ~~than 0.5 grams of trans fat per serving.~~

1 ~~(e) For purposes of this section, “school food service~~
2 ~~establishment” means a place that regularly sells or serves a food~~
3 ~~item or meal on a school campus.~~

4 ~~(d)~~

5 ~~(c) This section does shall not apply to food provided as part~~
6 ~~of a USDA meal program.~~

7 SEC. 10. Section 49432 of the Education Code is amended to
8 read:

9 ~~49432. By January 1, 2004, every Every~~ public school may
10 post a summary of nutrition and physical activity laws and
11 regulations, and shall post the school district’s nutrition and
12 physical activity policies, in public view within all school cafeterias
13 or other central eating areas. ~~The State Department of Education~~
14 ~~department~~ shall develop the summary of state law and regulations.

15 SEC. 11. Section 49433 of the Education Code is repealed.

16 ~~49433. (a) A school district maintaining at least one elementary~~
17 ~~or middle school or high school that is participating in the pilot~~
18 ~~program pursuant to Section 49433.7 may convene a Child~~
19 ~~Nutrition and Physical Activity Advisory Committee that shall~~
20 ~~develop and recommend to the governing board of the school~~
21 ~~district for its adoption, school district policies on nutrition and~~
22 ~~physical activity. The committee shall include, but need not be~~
23 ~~limited to, school district governing board members, school~~
24 ~~administrators, food service directors, food service staff, parents,~~
25 ~~pupils, physical and health education teachers, dietitians, health~~
26 ~~care professionals, and interested community members. In~~
27 ~~developing the policy, the committee shall hold at least one public~~
28 ~~hearing.~~

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

31 ~~(1) Implementing the nutritional standards set forth in Section~~
32 ~~49431.~~

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

35 ~~(3) Ensuring that no pupil is hungry.~~

36 ~~(4) Improving nutritional standards.~~

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

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

- 1 ~~(7) Encouraging eligible pupils to participate in the school lunch~~
- 2 ~~program.~~
- 3 ~~(8) Integrating nutrition and physical activity into the overall~~
- 4 ~~curriculum.~~
- 5 ~~(9) Ensuring regular professional development for food services~~
- 6 ~~staff.~~
- 7 ~~(10) Ensuring pupils a minimum of 30 minutes to eat lunch and~~
- 8 ~~20 minutes to eat breakfast, when provided.~~
- 9 ~~(11) Ensuring pupils engage in healthful levels of vigorous~~
- 10 ~~physical activity.~~
- 11 ~~(12) Ensuring pupils receive nutrition education.~~
- 12 ~~(13) Improving the quality of physical education curricula and~~
- 13 ~~increasing training of physical education teachers.~~
- 14 ~~(14) Enforcing existing physical education requirements.~~
- 15 ~~(15) Altering the economic structures in place to encourage~~
- 16 ~~healthy eating by pupils and reduce dependency on generating~~
- 17 ~~profits for the school from the sale of unhealthy foods.~~
- 18 ~~(16) Developing a financing plan to implement the policies.~~
- 19 ~~(17) Increasing the availability of organic fruits and vegetables~~
- 20 ~~and school gardens.~~
- 21 ~~(18) Collaborating with local farmers' markets.~~
- 22 ~~(e) A school district maintaining at least one elementary or~~
- 23 ~~middle school may apply to the State Department of Education~~
- 24 ~~for a grant to offset the costs of developing and adopting policies~~
- 25 ~~pursuant to this section. The grants shall be one-time grants and~~
- 26 ~~shall be available to applicant school districts by March 1, 2002.~~
- 27 ~~(d) A participating school district shall receive a grant of no~~
- 28 ~~less than four thousand dollars (\$4,000) and no more than~~
- 29 ~~twenty-five thousand dollars (\$25,000), depending upon the size~~
- 30 ~~of the school district, for the purpose of offsetting the costs of~~
- 31 ~~developing the school district nutrition and physical activity~~
- 32 ~~policies.~~
- 33 ~~SEC. 12. Section 49433.5 of the Education Code is repealed.~~
- 34 ~~49433.5. The State Department of Education shall provide~~
- 35 ~~technical support and assistance to school districts in implementing~~
- 36 ~~Section 49433. The technical support and assistance shall include,~~
- 37 ~~but need not be limited to, highlighting model nutrition programs,~~
- 38 ~~disseminating information to assist in the financial management~~
- 39 ~~of the food service programs, identifying fundraising mechanisms~~
- 40 ~~for school food services programs and for pupil activities that~~

1 ~~encourage healthy eating habits among pupils, and providing~~
2 ~~information regarding the current best practices in school child~~
3 ~~nutrition programs.~~

4 SEC. 13. Section 49433.7 of the Education Code is repealed.

5 ~~49433.7. The State Department of Education shall establish a~~
6 ~~three-year pilot program in which a total of not less than 10 high~~
7 ~~schools, middle schools, or any combination thereof, that apply~~
8 ~~are selected to participate. Although the selection process shall be~~
9 ~~essentially random, the selection process shall be weighted so that~~
10 ~~the pilot program contains participants that, as a group, are~~
11 ~~representative of the geographic diversity of the state. The pilot~~
12 ~~program shall commence in the fall of the 2002-03 school year.~~
13 ~~Participating districts will be eligible to receive a grant pursuant~~
14 ~~to subdivision (c) of Section 49433. Districts will be eligible for~~
15 ~~an increased reimbursement rate for free and reduced price meals~~
16 ~~served at participating high schools as set forth in Section 49430.5.~~

17 SEC. 14. Section 49433.9 of the Education Code is repealed.

18 ~~49433.9. A school district participating in the pilot program~~
19 ~~shall adopt the provisions of Section 49433 and shall comply with~~
20 ~~all of the following requirements:~~

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

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

26 ~~(B) Drinking water.~~

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

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

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

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

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

40 ~~(i) Drinking water.~~

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

3 ~~(iii) An electrolyte replacement beverage that does not exceed~~
4 ~~20 ounces per serving.~~

5 ~~(4) For the purposes of this subdivision, “added sweetener”~~
6 ~~means any additive that enhances the sweetness of the beverage,~~
7 ~~including, but not limited to, added sugar, but does not include the~~
8 ~~natural sugar or sugars that are contained within the fruit juice~~
9 ~~which is a component of the beverage.~~

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

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

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

20 SEC. 15. Section 49434 of the Education Code is amended to
21 read:

22 49434. (a) The Superintendent may monitor school districts
23 for compliance with this article as set forth in subdivision (b).

24 ~~(b) Each school district monitored pursuant to subdivision (a)~~
25 ~~shall report to the Superintendent in the coordinated review effort~~
26 ~~regarding the extent to which it has complied with this article.~~

27 *(b) The Superintendent, in the administrative review of a school*
28 *district, may report the extent to which the school district has*
29 *complied with this article.*

30 (c) A school district that the Superintendent finds to be
31 noncompliant with the mandatory provisions of this article shall
32 adopt, and provide to the Superintendent, a corrective action plan
33 that sets forth the actions to be taken by the school district to ensure
34 that the school district will be in full compliance, within a time
35 agreed upon between the Superintendent and the school district
36 that does not exceed one year.

37 SEC. 16. Section 49435 of the Education Code is repealed.

38 ~~49435. The State Department of Education, with advice from~~
39 ~~the Child Nutrition Advisory Council, shall design and implement~~
40 ~~a financial incentive grant program to help and encourage schools~~

1 ~~to implement the school district policies and meet the goals~~
2 ~~described in subdivision (b) of Section 49433.~~

3 SEC. 17. Section 49436 of the Education Code is repealed.

4 ~~49436. The department shall monitor the implementation of~~
5 ~~Sections 49431, 49433, 49433.5, 49433.7, and 49433.9 and shall~~
6 ~~report to the Legislature by May 1, 2005, its evaluation of all of~~
7 ~~the following:~~

8 ~~(1) The fiscal impact of the policies and standards developed~~
9 ~~by school districts.~~

10 ~~(2) The effect of this article upon school districts and pupils,~~
11 ~~including an assessment of pupil responses and related findings.~~

12 ~~(3) Recommendations for improvements or additions.~~

13 ~~(4) The resulting changes in food and beverage sales at schools.~~