

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 626

Introduced by Assembly Members Skinner and Lowenthal

February 20, 2013

An act to amend Sections 8482.3, ~~35182.5~~, 38091, 38100, 49430, 49431, 49431.2, 49431.5, 49431.7, ~~49432~~, and ~~49434~~ and 49432 of, and to repeal Sections 38092, 38102, 49433, 49433.5, 49433.7, 49433.9, 49435, and 49436 of, *and to repeal and add Section 49434 of*, the Education Code, relating to school nutrition.

LEGISLATIVE COUNSEL'S DIGEST

AB 626, as amended, 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 *authorizes the governing board of any school district with an average daily attendance of over 100,000 to allow as an expenditure from its cafeteria fund a share of money, agreed upon pursuant to a contract, that is generated from the joint sale of items between the cafeteria and an associated student body store.* 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~~ *plant, to allow as an expenditure from that fund a share of money generated from the joint sale of items between the cafeteria and an associated student body store,* 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~~ *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 place 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. *Existing law requires a school district found to be noncompliant with certain provisions of that act to adopt a corrective action plan, as specified.*

~~This bill would authorize the Superintendent, in the administrative review of a school district, to report the extent of the school district’s compliance~~ *repeal those provisions and require that compliance with the act be monitored by the State Department of Education in conformity with the USDA’s administrative review process, as specified.*

(11) This bill would also make *conforming and* 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.
10 If a program operates at multiple schoolsites, only one application
11 shall be required for its establishment.

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

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

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

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

26 (d) Applicants shall agree that snacks or meals made available
27 through a program shall conform to the nutrition standards in
28 Article 2.5 (commencing with Section 49430) of Chapter 9 of Part
29 27 of Division 4 of Title 2.

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

32 (1) A local educational agency, including, but not limited to, a
33 charter school, the California School for the Deaf (northern
34 California), the California School for the Deaf (southern
35 California), and the California School for the Blind.

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

- 1 (f) Applicants for grants pursuant to this article shall ensure that
2 each of the following requirements is fulfilled, if applicable:
- 3 (1) The application documents the commitments of each partner
4 to operate a program on that site or sites.
- 5 (2) The application has been approved by the school district, or
6 the charter school governing board, and the principal of each
7 participating school for each schoolsite or other site.
- 8 (3) Each partner in the application agrees to share responsibility
9 for the quality of the program.
- 10 (4) The application designates the public agency or local
11 educational agency partner to act as the fiscal agent. For purposes
12 of this section, “public agency” means only a county board of
13 supervisors or if the city is incorporated or has a charter, a city
14 council.
- 15 (5) Applicants agree to follow all fiscal reporting and auditing
16 standards required by the department.
- 17 (6) Applicants agree to incorporate into the program both of the
18 elements required pursuant to subdivision (c).
- 19 (7) Applicants agree to provide information to the department
20 for the purpose of program evaluation pursuant to Section 8483.55.
- 21 (8) Applicants shall certify that program evaluations will be
22 based upon Section 8484 and upon any requirements recommended
23 by the Advisory Committee on Before and After School Programs
24 and adopted by the state board, in compliance with subdivision
25 (g) of Section 8482.4.
- 26 (9) The application states the targeted number of pupils to be
27 served by the program.
- 28 (10) Applicants agree to provide the following information on
29 participating pupils to the department:
- 30 (A) Schoolday attendance rates.
- 31 (B) Pupil test scores from the Standardized Testing and
32 Reporting Program established under Section 60640, reflecting
33 achievement in the areas addressed by required program elements,
34 if assessments have been established in that area.
- 35 (C) Program attendance.
- 36 (g) (1) Grantees shall review their after school program plans
37 every three ~~years~~ *years*, including, but not limited to, all of the
38 following:

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

4 (B) Program content, including the elements identified in
5 subdivision (c).

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

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

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

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

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

17 *SEC. 2. Section 35182.5 of the Education Code is amended to*
18 *read:*

19 35182.5. (a) The Legislature finds and declares all of the
20 following:

21 (1) State and federal laws require all schools participating in
22 meal programs to provide nutritious food and beverages to pupils.

23 (2) State and federal laws restrict the sale of food and beverages
24 in competition with meal programs to enhance the nutritional goals
25 for pupils, and to protect the fiscal and nutritional integrity of the
26 school food service programs.

27 (3) Parents, pupils, and community members should have the
28 opportunity to ensure, through the review of food and beverage
29 contracts, that food and beverages sold on school campuses provide
30 nutritious sustenance to pupils, promote good health, help pupils
31 learn, provide energy, and model fit living for life.

32 (b) For the purposes of this section, the following terms have
33 the following meanings:

34 (1) “Nonnutritious beverages” means any beverage that is not
35 any of the following:

36 (A) Drinking water.

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

39 (C) An electrolyte replacement beverage that contains 42 grams
40 or less of added sweetener per 20 ounce serving.

1 (D) A 100 percent fruit juice, or fruit-based drink that is
2 composed of 50 percent or more fruit juice and that has no added
3 sweeteners.

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

8 (3) “Nonnutritious food” means food that is not sold as part of
9 the school breakfast or lunch program as a full meal, and that meets
10 any of the following standards:

11 (A) More than 35 percent of its total calories are from fat.

12 (B) More than 10 percent of its total calories are from saturated
13 fat.

14 (C) More than 35 percent of its total weight is composed of
15 sugar. This subparagraph does not apply to the sale of fruits or
16 vegetables.

17 (c) The governing board of a school district ~~may~~ *shall* not do
18 any of the following:

19 (1) Enter into or renew a contract or permit a school within the
20 district to enter into or renew a contract that grants exclusive or
21 nonexclusive advertising or grants the right to the exclusive or
22 nonexclusive sale of carbonated beverages or nonnutritious
23 beverages or nonnutritious food within the district to a person,
24 business, or corporation, unless the governing board of the school
25 district does all of the following:

26 (A) Adopts a policy after a public hearing of the governing
27 board to ensure that the district has internal controls in place to
28 protect the integrity of the public funds and to ensure that funds
29 raised benefit public education, and that the contracts are entered
30 into on a competitive basis pursuant to procedures contained in
31 Section 20111 of the Public Contract Code or through the issuance
32 of a Request for Proposal.

33 (B) Provides to parents, guardians, pupils, and members of the
34 public the opportunity to comment on the contract by holding a
35 public hearing on the contract during a regularly scheduled board
36 meeting. The governing board shall clearly, and in a manner
37 recognizable to the general public, identify in the agenda the
38 contract to be discussed at the meeting.

1 (2) Enter into a contract that prohibits a school district employee
 2 from disparaging the goods or services of the party contracting
 3 with the ~~school~~ governing board.

4 (3) Enter into a contract or permit a school within the district
 5 to enter into a contract for electronic products or services that
 6 requires the dissemination of advertising to pupils, unless the
 7 governing board of the school district does all of the following:

8 (A) Enters into the contract at a noticed public hearing of the
 9 governing board.

10 (B) Makes a finding that the electronic product or service in
 11 question is or would be an integral component of the education of
 12 pupils.

13 (C) Makes a finding that the school district cannot afford to
 14 provide the electronic product or service unless it contracts to
 15 permit dissemination of advertising to pupils.

16 (D) Provides written notice to the parents or guardians of pupils
 17 that the advertising will be used in the classroom or other learning
 18 centers. This notice shall be part of the district’s normal ongoing
 19 communication to parents or guardians.

20 (E) Offers the parents the opportunity to request in writing that
 21 the pupil not be exposed to the program that contains the
 22 advertising. Any request shall be honored for the school year in
 23 which it is submitted, or longer if specified, but may be withdrawn
 24 by the parents or guardians at any time.

25 (d) A governing board may meet the public hearing requirement
 26 set forth in subparagraph (B) of paragraph (1) of subdivision (c)
 27 for those contracts that grant the right to the exclusive or
 28 nonexclusive sale of carbonated beverages or nonnutritious
 29 beverages or nonnutritious food within the district, by ~~either of~~
 30 ~~the following:~~

31 ~~(1) Review of the contract at a public hearing by a Child~~
 32 ~~Nutrition and Physical Activity Advisory Committee established~~
 33 ~~pursuant to Section 49433 that has contract review authority for~~
 34 ~~the sale of food and beverages.~~

35 ~~(2) (A) An~~ an annual public hearing to review and discuss
 36 existing and potential contracts for the sale of food and beverages
 37 on campuses, including food and beverages sold as full meals,
 38 through competitive sales, as fundraisers, and through vending
 39 machines.

40 ~~(B)~~

1 (I) The public hearing shall include, but not be limited to, a
2 discussion of all of the following:

3 (i)

4 (A) The nutritional value of food and beverages sold within the
5 district.

6 (ii)

7 (B) The availability of fresh fruit, vegetables, and grains in
8 school meals and snacks, including, but not limited to, locally
9 grown and organic produce.

10 (iii)

11 (C) The amount of fat, sugar, and additives in the food and
12 beverages discussed.

13 (iv)

14 (D) Barriers to pupil participation in school breakfast and lunch
15 programs.

16 (E)

17 (2) A school district that holds an annual public hearing
18 consistent with this ~~paragraph~~ *subdivision* is not released from the
19 public hearing requirements set forth in subparagraph (B) of
20 paragraph (1) of subdivision (c) for those contracts not discussed
21 at the annual public hearing.

22 (e) The governing board of the school district shall make
23 accessible to the public any contract entered into pursuant to
24 paragraph (1) of subdivision (c) and may not include in that
25 contract a confidentiality clause that would prevent a school or
26 school district from making any part of the contract public.

27 (f) The governing board of a school district may sell advertising,
28 products, or services on a nonexclusive basis.

29 (g) The governing board of a school district may post public
30 signs indicating the district's appreciation for the support of a
31 person or business for the district's education program.

32 (h) Contracts entered into ~~prior to~~ *before* January 1, 2004, may
33 remain in effect, but may not be renewed if they are in conflict
34 with this section.

35 ~~SEC. 2.~~

36 *SEC. 3.* Section 38091 of the Education Code is amended to
37 read:

38 38091. The cafeteria fund shall be used only for those
39 expenditures authorized by the governing board of a school district
40 as necessary for the operation of school cafeterias, including, but

1 not limited to, expenditures for the lease or purchase of additional
2 cafeteria equipment, vending machines and their installation and
3 housing, and computer equipment and related software.

4 *SEC. 4. Section 38092 of the Education Code is repealed.*

5 ~~38092. The governing board of any school district with an
6 average daily attendance of over 100,000 may allow as an
7 expenditure from the cafeteria fund or account a share of money
8 agreed upon pursuant to a contract, which is generated from the
9 joint sale of items between the cafeteria and an associated student
10 body student store. The expenditure must result from an agreement
11 entered into by the cafeteria and the associated student body in
12 which pupils will participate in the operation of the store.~~

13 ~~SEC. 3.~~

14 *SEC. 5. Section 38100 of the Education Code is amended to
15 read:*

16 38100. (a) The cost of providing adequate housing for
17 cafeterias, including, but not limited to, kitchen facilities, is a
18 charge against the funds of the school district. The cost of the lease
19 or purchase of cafeteria equipment and of vending machines and
20 their installation and housing shall be a charge against cafeteria
21 funds, in accordance with Section 38091. However, when the
22 governing board of a school district deems it necessary, the
23 governing board of a school district may make the cost of the lease
24 or purchase of cafeteria equipment and vending machines and their
25 installation and housing, a charge against the funds of the school
26 district. If school district funds are expended for the lease or
27 purchase of cafeteria equipment or for the lease, purchase,
28 installation, or housing of vending machines, the governing board
29 of the school district may at any time during the same fiscal year
30 after the expenditure reimburse school district funds from cafeteria
31 funds. The governing board of a school district shall only approve
32 reimbursement for vending machines if ~~at least one~~ *one, or both,*
33 of the following apply:

34 (1) The vending machines are owned and operated by the school
35 food services department, sell meals that qualify for federal meal
36 program reimbursement, and are equipped with appropriate point
37 of service meal counting software.

38 (2) The vending machines sell food and beverages that comply
39 with state and federal competitive food laws and regulations.

1 (b) The governing board of a school district may by resolution
2 make the cost of maintenance of the kitchen facilities, the cost of
3 replacement kitchen equipment, and the reasonable costs of
4 providing drinking water in the cafeteria, and garbage disposal
5 related to food service and delivery a charge against cafeteria funds
6 provided that the school district complies with all applicable state
7 and federal laws and regulations.

8 ~~SEC. 4.~~

9 *SEC. 6.* Section 38102 of the Education Code is repealed.

10 ~~SEC. 5.~~

11 *SEC. 7.* Section 49430 of the Education Code is amended to
12 read:

13 49430. As used in this article, the following terms have the
14 following meanings:

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

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

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

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

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

33 (f) “Sold” means the exchange of food or beverages for money,
34 coupons, vouchers, or order forms, when any part of the exchange
35 occurs on a school campus.

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

39 (h) “Snack” means a food that is generally regarded as
40 supplementing a meal, including, but not limited to, chips, crackers,

1 onion rings, nachos, french fries, donuts, cookies, pastries,
2 cinnamon rolls, and candy.

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

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

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

11 ~~SEC. 6.~~

12 *SEC. 8.* Section 49431 of the Education Code is amended to
13 read:

14 49431. (a) (1) From one-half hour before the start of the
15 schoolday to one-half hour after the schoolday, at each elementary
16 school, the only food that may be sold to a pupil are full meals,
17 individually sold dairy or whole grain foods, and individually sold
18 portions of nuts, nut butters, seeds, eggs, cheese packaged for
19 individual sale, fruit, vegetables that have not been deep fried, and
20 legumes.

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

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

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

34 (C) Not more than 35 percent of its total weight shall be
35 composed of sugar, including naturally occurring and added sugar.
36 This subparagraph shall not apply to fruit or vegetables that have
37 not been deep fried.

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

1 (b) An elementary school may permit the sale of food items that
2 do not comply with subdivision (a) as part of a school fundraising
3 event in either of the following circumstances:

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

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

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

11 ~~SEC. 7.~~

12 *SEC. 9.* Section 49431.2 of the Education Code is amended to
13 read:

14 49431.2. (a) From one-half hour before the start of the
15 schoolday to one-half hour after the schoolday, snacks sold to a
16 pupil in middle school or high school, except food served as part
17 of a USDA meal program, shall meet all of the following standards:

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

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

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

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

30 (b) From one-half hour before the start of the schoolday to
31 one-half hour after the schoolday, entrée items sold to a pupil in
32 middle school or high school, except food served as part of a
33 USDA meal program, shall contain no more than 400 calories per
34 entrée, and shall contain no more than 4 grams of fat per 100
35 calories contained in each entrée.

36 (c) A middle school or high school may permit the sale of food
37 items that do not comply with subdivision (a) or (b) in any of the
38 following circumstances:

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

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

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

6 ~~SEC. 8.~~

7 *SEC. 10.* Section 49431.5 of the Education Code is amended
 8 to read:

9 49431.5. (a) (1) From one-half hour before the start of the
 10 schoolday to one-half hour after the schoolday, only the following
 11 beverages may be sold to a pupil at an elementary school:

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

14 (B) Vegetable-based drinks that are composed of no less than
 15 50 percent vegetable juice and have no added sweetener.

16 (C) Drinking water with no added sweetener.

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

19 (2) An elementary school may permit the sale of beverages that
 20 do not comply with paragraph (1) as part of a school fundraising
 21 event in either of the following circumstances:

22 (A) The sale of those items takes place off and away from the
 23 premises of the school.

24 (B) The sale of those items takes place on school premises at
 25 least one-half hour after the end of the schoolday.

26 (3) From one-half hour before the start of the schoolday to
 27 one-half hour after the end of the schoolday, only the following
 28 beverages may be sold to a pupil at a middle school or high school:

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

31 (B) Vegetable-based drinks that are composed of no less than
 32 50 percent vegetable juice and have no added sweetener.

33 (C) Drinking water with no added sweetener.

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

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

38 (4) A middle school or high school may permit the sale of
 39 beverages that do not comply with paragraph (3) as part of a school

1 event if the sale of those items meets either of the following
2 criteria:

3 (A) The sale of those items takes place off and away from the
4 premises of the school.

5 (B) The sale of those items takes place on school premises at
6 least one-half hour after the end of the schoolday.

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

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

12 ~~SEC. 9.~~

13 *SEC. 11.* Section 49431.7 of the Education Code is amended
14 to read:

15 49431.7. (a) From one-half hour before the start of the
16 schoolday to one-half hour after the end of the schoolday, a school
17 or school district shall not sell to pupils enrolled in kindergarten,
18 or any of grades 1 to 12, inclusive, food containing artificial trans
19 fat, as defined in subdivision (b).

20 (b) For purposes of this section, a food contains artificial trans
21 fat if a food contains vegetable shortening, margarine, or any kind
22 of partially hydrogenated vegetable oil, unless the manufacturer's
23 documentation or the label required on the food, pursuant to
24 applicable federal and state law, lists the trans fat content as less
25 than 0.5 grams of trans fat per serving.

26 (c) This section shall not apply to food provided as part of a
27 USDA meal program.

28 ~~SEC. 10.~~

29 *SEC. 12.* Section 49432 of the Education Code is amended to
30 read:

31 49432. Every public school may post a summary of nutrition
32 and physical activity laws and regulations, and shall post the school
33 district's nutrition and physical activity policies, in public view
34 within all school cafeterias or other central eating areas. The
35 department shall develop the summary of state law and regulations.

36 ~~SEC. 11.~~

37 *SEC. 13.* Section 49433 of the Education Code is repealed.

38 ~~SEC. 12.~~

39 *SEC. 14.* Section 49433.5 of the Education Code is repealed.

1 ~~SEC. 13.~~

2 *SEC. 15.* Section 49433.7 of the Education Code is repealed.

3 ~~SEC. 14.~~

4 *SEC. 16.* Section 49433.9 of the Education Code is repealed.

5 ~~SEC. 15.~~ Section 49434 of the Education Code is amended to
6 read:

7 ~~49434. (a) The Superintendent may monitor school districts~~
8 ~~for compliance with this article as set forth in subdivision (b).~~

9 ~~(b) The Superintendent, in the administrative review of a school~~
10 ~~district, may report the extent to which the school district has~~
11 ~~complied with this article.~~

12 ~~(c) A school district that the Superintendent finds to be~~
13 ~~noncompliant with the mandatory provisions of this article shall~~
14 ~~adopt, and provide to the Superintendent, a corrective action plan~~
15 ~~that sets forth the actions to be taken by the school district to ensure~~
16 ~~that the school district will be in full compliance, within a time~~
17 ~~agreed upon between the Superintendent and the school district~~
18 ~~that does not exceed one year.~~

19 *SEC. 17.* Section 49434 of the Education Code is repealed.

20 ~~49434. (a) The Superintendent may monitor school districts~~
21 ~~for compliance with this article as set forth in subdivision (b).~~

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

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

32 *SEC. 18.* Section 49434 is added to the Education Code, to
33 read:

34 *49434. Compliance with this article shall be monitored by the*
35 *department in conformity with the United States Department of*
36 *Agriculture’s administrative review process, as published in the*
37 *Federal Register, Volume 77, Number 17, on January 26, 2012.*

38 ~~SEC. 16.~~

39 *SEC. 19.* Section 49435 of the Education Code is repealed.

1 ~~SEC. 17.~~

2 *SEC. 20.* Section 49436 of the Education Code is repealed.

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