

AMENDED IN ASSEMBLY APRIL 23, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 626**

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**Introduced by Assembly Members Skinner and Lowenthal**

February 20, 2013

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An act to amend Sections 8482.3, 35182.5, 38091, 38100, 49430, 49431, 49431.2, 49431.5, 49431.7, and 49432 of, 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 *federal* 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, 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. *The bill would require the governing board of a school district to only approve reimbursement for vending machines if specified conditions apply.*

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 *or maintenance of* 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 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 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) (1) Applicants shall agree that snacks ~~or meals~~ made  
 27 available through a program shall conform to the nutrition  
 28 standards in Article 2.5 (commencing with Section 49430) of  
 29 Chapter 9 of Part 27 of Division 4 of Title 2.  
 30 (2) *Applicants shall agree that meals made available through*  
 31 *a program shall conform to the nutrition standards of the United*  
 32 *States Department of Agriculture's at-risk afterschool meal*  
 33 *component of the Child and Adult Care Food Program (42 U.S.C.*  
 34 *Sec. 1766) or the National School Lunch Program (42 U.S.C. Sec.*  
 35 *1751 et seq.).*

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

3 (1) A local educational agency, including, but not limited to, a  
4 charter school, the California School for the Deaf (northern  
5 California), the California School for the Deaf (southern  
6 California), and the California School for the Blind.

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

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

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

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

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

18 (4) The application designates the public agency or local  
19 educational agency partner to act as the fiscal agent. For purposes  
20 of this section, “public agency” means only a county board of  
21 supervisors or if the city is incorporated or has a charter, a city  
22 council.

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

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

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

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

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

36 (10) Applicants agree to provide the following information on  
37 participating pupils to the department:

38 (A) Schoolday attendance rates.

39 (B) Pupil test scores from the Standardized Testing and  
40 Reporting Program established under Section 60640, reflecting

1 achievement in the areas addressed by required program elements,  
2 if assessments have been established in that area.

3 (C) Program attendance.

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

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

9 (B) Program content, including the elements identified in  
10 subdivision (c).

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

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

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

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

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

22 SEC. 2. Section 35182.5 of the Education Code is amended to  
23 read:

24 35182.5. (a) The Legislature finds and declares all of the  
25 following:

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

28 (2) State and federal laws restrict the sale of food and beverages  
29 in competition with meal programs to enhance the nutritional goals  
30 for pupils, and to protect the fiscal and nutritional integrity of the  
31 school food service programs.

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

37 (b) For purposes of this section, the following terms have the  
38 following meanings:

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

1 (A) Drinking water.

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

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

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

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

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

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

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

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

22 (c) The governing board of a school district shall not do any of  
23 the following:

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

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

38 (B) Provides to parents, guardians, pupils, and members of the  
39 public the opportunity to comment on the contract by holding a  
40 public hearing on the contract during a regularly scheduled board

1 meeting. The governing board shall clearly, and in a manner  
2 recognizable to the general public, identify in the agenda the  
3 contract to be discussed at the meeting.

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

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

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

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

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

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

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

28 (d) A governing board may meet the public hearing requirement  
29 set forth in subparagraph (B) of paragraph (1) of subdivision (c)  
30 for those contracts that grant the right to the exclusive or  
31 nonexclusive sale of carbonated beverages or nonnutritious  
32 beverages or nonnutritious food within the district, by an annual  
33 public hearing to review and discuss existing and potential  
34 contracts for the sale of food and beverages on campuses, including  
35 food and beverages sold as full meals, through competitive sales,  
36 as fundraisers, and through vending machines.

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

39 (A) The nutritional value of food and beverages sold within the  
40 district.

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

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

6 (D) Barriers to pupil participation in school breakfast and lunch  
7 programs.

8 (2) A school district that holds an annual public hearing  
9 consistent with this subdivision is not released from the public  
10 hearing requirements set forth in subparagraph (B) of paragraph  
11 (1) of subdivision (c) for those contracts not discussed at the annual  
12 public hearing.

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

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

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

23 (h) Contracts entered into before January 1, 2004, may remain  
24 in effect, but may not be renewed if they are in conflict with this  
25 section.

26 SEC. 3. Section 38091 of the Education Code is amended to  
27 read:

28 38091. The cafeteria fund shall be used only for those  
29 expenditures authorized by the governing board of a school district  
30 as necessary for the operation of school cafeterias, including, but  
31 not limited to, expenditures for the lease or purchase of additional  
32 cafeteria equipment, vending machines and their installation and  
33 housing, and computer equipment and related software.

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

35 SEC. 5. Section 38100 of the Education Code is amended to  
36 read:

37 38100. (a) The cost of providing adequate housing for  
38 cafeterias, including, but not limited to, kitchen facilities, is a  
39 charge against the funds of the school district. The cost of the lease  
40 or purchase of cafeteria equipment and of vending machines and

1 their installation and housing shall be a charge against cafeteria  
2 funds, in accordance with Section 38091. However, when the  
3 governing board of a school district deems it necessary, the  
4 governing board of a school district may make the cost of the lease  
5 or purchase of cafeteria equipment and vending machines and their  
6 installation and ~~housing~~, *housing* a charge against the funds of the  
7 school district. If school district funds are expended for the lease  
8 or purchase of cafeteria equipment or for the lease, purchase,  
9 installation, or housing of vending machines, the governing board  
10 of the school district may at any time during the same fiscal year  
11 after the expenditure reimburse school district funds from cafeteria  
12 funds. The governing board of a school district shall only approve  
13 reimbursement for vending machines if one, or both, 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~~ *only food,*  
20 *or only beverages, or both* that comply with state and federal  
21 competitive food laws and regulations.

22 (b) The governing board of a school district may by resolution  
23 make the cost of maintenance of the kitchen facilities, the cost of  
24 replacement *or maintenance of* kitchen equipment, and the  
25 reasonable costs of providing drinking water in the cafeteria, and  
26 garbage disposal related to food service and delivery a charge  
27 against cafeteria funds provided that the school district complies  
28 with all applicable state and federal laws and regulations.

29 SEC. 6. Section 38102 of the Education Code is repealed.

30 SEC. 7. Section 49430 of the Education Code is amended to  
31 read:

32 49430. As used in this article, the following terms have the  
33 following meanings:

34 (a) “Elementary school” means a school operated and maintained  
35 by a school district or county office of education that maintains  
36 any grade from kindergarten to grade 6, inclusive, but no grade  
37 higher than grade 6.

38 (b) “Middle school” means a school operated and maintained  
39 by a school district or county office of education that maintains  
40 grade 7 or 8, 7 to 9, inclusive, or 7 to 10, inclusive.

1 (c) “High school” means a school operated and maintained by  
2 a school district or county office of education maintaining any of  
3 grades 9 to 12, inclusive.

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

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

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

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

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

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

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

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

29 SEC. 8. Section 49431 of the Education Code is amended to  
30 read:

31 49431. (a) (1) From one-half hour before the start of the  
32 schoolday to one-half hour after the schoolday, at each elementary  
33 school, the only food that may be sold to a pupil are full meals,  
34 individually sold dairy or whole grain foods, and individually sold  
35 portions of nuts, nut butters, seeds, eggs, cheese packaged for  
36 individual sale, fruit, vegetables that have not been deep fried, and  
37 legumes.

38 (2) An individually sold dairy or whole grain food item, and  
39 individually sold portions of nuts, nut butters, seeds, eggs, cheese  
40 packaged for individual sale, fruit, vegetables that have not been

1 deep fried, and legumes may be sold to pupils at an elementary  
2 school, except food sold as part of a USDA meal program, if they  
3 meet all of the following standards:

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

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

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

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

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

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

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

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

26 SEC. 9. Section 49431.2 of the Education Code is amended to  
27 read:

28 49431.2. (a) From one-half hour before the start of the  
29 schoolday to one-half hour after the schoolday, snacks sold to a  
30 pupil in middle school or high school, except food served as part  
31 of a USDA meal program, shall meet all of the following standards:

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

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

39 (3) Not more than 35 percent of its total weight shall be  
40 composed of sugar, including naturally occurring and added sugars.

1 This paragraph does not apply to the sale of fruits or vegetables  
2 that have not been deep fried.

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

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

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

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

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

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

20 SEC. 10. Section 49431.5 of the Education Code is amended  
21 to read:

22 49431.5. (a) (1) From one-half hour before the start of the  
23 schoolday to one-half hour after the schoolday, only the following  
24 beverages may be sold to a pupil at an elementary school:

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

27 (B) Vegetable-based drinks that are composed of no less than  
28 50 percent vegetable juice and have no added sweetener.

29 (C) Drinking water with no added sweetener.

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

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

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

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

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

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

6 (B) Vegetable-based drinks that are composed of no less than  
7 50 percent vegetable juice and have no added sweetener.

8 (C) Drinking water with no added sweetener.

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

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

13 (4) A middle school or high school may permit the sale of  
14 beverages that do not comply with paragraph (3) as part of a school  
15 event if the sale of those items meets either of the following  
16 criteria:

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

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

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

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

26 SEC. 11. Section 49431.7 of the Education Code is amended  
27 to read:

28 49431.7. (a) From one-half hour before the start of the  
29 schoolday to one-half hour after the end of the schoolday, a school  
30 or school district shall not sell to pupils enrolled in kindergarten,  
31 or any of grades 1 to 12, inclusive, food containing artificial trans  
32 fat, as defined in subdivision (b).

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

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

1 SEC. 12. Section 49432 of the Education Code is amended to  
2 read:

3 49432. Every public school may post a summary of nutrition  
4 and physical activity laws and regulations, and shall post the school  
5 district's nutrition and physical activity policies, in public view  
6 within all school cafeterias or other central eating areas. The  
7 department shall develop the summary of state law and regulations.

8 SEC. 13. Section 49433 of the Education Code is repealed.

9 SEC. 14. Section 49433.5 of the Education Code is repealed.

10 SEC. 15. Section 49433.7 of the Education Code is repealed.

11 SEC. 16. Section 49433.9 of the Education Code is repealed.

12 SEC. 17. Section 49434 of the Education Code is repealed.

13 SEC. 18. Section 49434 is added to the Education Code, to  
14 read:

15 49434. Compliance with this article shall be monitored by the  
16 department in conformity with the United States Department of  
17 Agriculture's administrative review process, as published in the  
18 Federal Register, Volume 77, Number 17, on January 26, 2012.

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

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