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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 626

Introduced by Assembly Members Skinner and Lowenthal
(~~Coauthor: Coauthors: Assembly Member Members Pan and~~
***Quirk-Silva*)**

February 20, 2013

An act to amend Sections 8423, 8482.3, 8483.3, 35182.5, 38091, 38100, 49430, 49431, 49431.2, 49431.5, 49431.7, and 49432 of, to repeal Sections 3808538092, 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 21st Century High School After School Safety and Enrichment for Teens program, referred to as High School ASSETs program, provides for the establishment of a high school after-school program that consists of an academic assistance element and an enrichment element. In selecting grantees to participate in the program, existing law requires the State Department of Education to consider specified criteria and requires an applicant to certify in the application,

among other things, the inclusion of a nutritional snack and a physical activity element.

This bill instead would require an applicant to certify in the application, among other things, the inclusion of a nutritional snack, meal, or both, and a physical activity element.

(1)

(2) 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. *The act requires an applicant to certify in the application, among other things, the inclusion of a nutritional snack.*

This bill would also require an entity that applies to operate a program to agree that meals made available by the program conform to specified federal nutrition standards. *The bill instead would require an applicant to certify in the application, among other things, the inclusion of a nutritional snack, meal, or both.*

The act authorizes the Legislature to amend certain of its provisions to further its purposes by majority vote of each house.

This bill would set forth a legislative finding and declaration that the bill's provisions further the purposes of the act.

(2)

(3) Existing law requires a minimum of 50% of the items offered for sale each schoolday during regular school hours, as specified, be selected from a specified list including, among others, milk and dairy products and nonconfection grain products.

This bill would repeal these provisions.

(4) 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 a school district as necessary for the operation of school cafeterias, including, but not limited to, expenditures for the lease or purchase of additional cafeteria equipment for a central food processing plant. Existing law authorizes the governing board of a school district to also make expenditures from the cafeteria fund for the construction, alteration, or improvement of a central food processing

plant, for the installation of additional cafeteria equipment for the central food processing plant, and for the lease or purchase of vehicles used primarily in connection with the 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 instead include as an authorized expenditure of the cafeteria fund expenditures for the lease or purchase of additional equipment for the kitchen or central food processing plant. The bill would instead authorize the governing board of a school district to make expenditures from the cafeteria fund for the purchase and installation of additional preparation, cooking, or service equipment for a kitchen or central food processing plant, including necessary alterations as specified, and for the lease or purchase of vehicles used solely in connection with the kitchen or central food processing plant. The bill would repeal the authority of the governing board of a school district 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)

(5) 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 the cost of the lease or purchase of cafeteria equipment for a kitchen or central food processing plant 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 kitchen 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 and the cost of replacement or maintenance of kitchen equipment a charge against cafeteria funds, and would add the costs of providing drinking water in the cafeteria a charge against cafeteria funds.

~~(4)~~

(6) 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)~~

(7) Existing law, the Pupil Nutrition, Health, and Achievement Act of 2001, requires each elementary school 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 either takes place away from school premises or takes place at least $\frac{1}{2}$ hour after the end of the schoolday. Existing law defines “sold” and “full meal” for purposes of those provisions.

This bill would instead make those provisions applicable from $\frac{1}{2}$ hour before the start of the schoolday to $\frac{1}{2}$ hour after the schoolday,

and would include individually sold dairy or whole grain foods among the list of foods that may be sold. The bill would revise the requirements for the sale of food at school fundraising events by deleting the requirement that the items be sold by pupils. The bill would also revise the definition of “sold” and “full meal” for purposes of those provisions.

(6)

(8) Existing law, 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 ½ hour before the start of the schoolday to ½ 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)

(9) Existing law requires beverages that are sold to a pupil at an elementary school to meet specified nutritional standards, unless the school authorizes the items to be sold by pupils of the school as part of a fundraising event, and the sale of those items either takes place away from school premises or takes place ½ hour or more after the end of the schoolday.

This bill would *delete 2%-fat milk from the specified nutritional standards and would delete the provision requiring the items to be sold by pupils of the school.*

(8)

(10) 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 ½ hour before the start of the schoolday to ½ 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 $\frac{1}{2}$ hour after the end of the schoolday and vending machines, pupil stores, and cafeterias are used later than $\frac{1}{2}$ hour after the end of the schoolday.

This bill would *delete 2%-fat milk from the specified nutritional standards and would* require that only beverages that meet the same specified nutritional standards may be sold to a pupil at a high school for $\frac{1}{2}$ hour before the start of the schoolday to $\frac{1}{2}$ 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 away from the premises of the school or the sale of those items takes place on school premises at least $\frac{1}{2}$ hour after the end of the schoolday.

(9)

(11) Existing law prohibits a school or school district, during school hours and $\frac{1}{2}$ 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 $\frac{1}{2}$ hour before the start of the schoolday to $\frac{1}{2}$ 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.

(10)

(12) 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.

(11)

(13) 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.

(12)

(14) 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 8423 of the Education Code is amended
2 to read:

3 8423. (a) The department shall select grantees to participate
4 in the 21st Century High School After School Safety and
5 Enrichment for Teens program from among applicants that apply
6 on forms and in a manner prescribed by the department. To the
7 extent possible, the selection of applicants by the department shall
8 result in an equitable distribution of grant awards to applicants in
9 northern, southern, and central California, and in urban, suburban,
10 and rural areas of the state.

11 (b) The department shall consider the following criteria in
12 awarding grants:

13 (1) Strength of the educational element and alignment with state
14 academic standards, preparation for the high school exit
15 examination, and other academic interventions.

16 (2) Strength of the enrichment element.

17 (3) Evidence of community collaboration, including
18 demonstrated support of the principal and staff from participating
19 schools.

20 (4) A description of the manner in which programs will provide
21 a safe physical and emotional environment and opportunities for
22 relationship building, and promote active pupil engagement.

23 (5) A description of the manner in which the program design
24 will be periodically reexamined in order to maintain strong pupil
25 interest.

1 (6) A description of plans to attract pupils, particularly pupils
2 considered at risk or in need of academic support, on a regular
3 basis.

4 (c) The application shall certify all of the following:

5 (1) Completion of an assessment of pupils' preferences for
6 program activities.

7 (2) Access to, and availability of, computers and technology.

8 (3) Inclusion of a nutritional ~~snack~~ *snack, meal, or both*, and a
9 physical activity element.

10 (4) That the program will meet all of the evaluation
11 requirements.

12 (5) Fiscal accountability.

13 ~~SECTION 1.~~

14 *SEC. 2.* Section 8482.3 of the Education Code is amended to
15 read:

16 8482.3. (a) The After School Education and Safety Program
17 shall be established to serve pupils in kindergarten and grades 1
18 to 9, inclusive, at participating public elementary, middle, junior
19 high, and charter schools.

20 (b) A program may operate a before school component of a
21 program, an after school component, or both the before and after
22 school components of a program, on one or multiple schoolsites.
23 If a program operates at multiple schoolsites, only one application
24 shall be required for its establishment.

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

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

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

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

39 (d) (1) Applicants shall agree that snacks made available
40 through a program shall conform to the nutrition standards in

1 Article 2.5 (commencing with Section 49430) of Chapter 9 of Part
2 27 of Division 4 of Title 2.

3 (2) Applicants shall agree that meals made available through a
4 program shall conform to the nutrition standards of the United
5 States Department of Agriculture’s at-risk afterschool meal
6 component of the Child and Adult Care Food Program (42 U.S.C.
7 Sec. 1766) or the National School Lunch Program (42 U.S.C. Sec.
8 1751 et seq.) 1766).

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

11 (1) A local educational agency, including, but not limited to, a
12 charter school, the California School for the Deaf (northern
13 California), the California School for the Deaf (southern
14 California), and the California School for the Blind.

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

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

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

21 (2) The application has been approved by the school district, or
22 the charter school governing ~~board~~ *body*, and the principal of each
23 participating school for each schoolsite or other site.

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

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

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

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

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

37 (8) Applicants shall certify that program evaluations will be
38 based upon Section 8484 and upon any requirements recommended
39 by the Advisory Committee on Before and After School Programs

1 and adopted by the state board, in compliance with subdivision
2 (g) of Section 8482.4.

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

5 (10) Applicants agree to provide the following information on
6 participating pupils to the department:

7 (A) Schoolday attendance rates.

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

12 (C) Program attendance.

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

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

18 (B) Program content, including the elements identified in
19 subdivision (c).

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

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

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

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

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

31 *SEC. 3. Section 8483.3 of the Education Code, as amended by*
32 *Section 18 of Chapter 380 of the Statutes of 2006, is amended to*
33 *read:*

34 8483.3. (a) The department shall select applicants to participate
35 in the program established pursuant to this article from among
36 applicants that apply on forms and in a manner prescribed by the
37 department. It is the intent of the Legislature that the manner
38 prescribed by the department, to the extent possible, allow for short
39 and concise applicant responses. To the extent possible, the
40 selection of applicants by the department shall result in an equitable

1 distribution of grant awards pursuant to Section 8483.7 to
2 applicants in northern, southern, and central California, and in
3 urban, suburban, and rural areas of California.

4 (b) The department shall consider the following in selecting
5 schools to participate in the program established pursuant to this
6 article:

7 (1) Percentage of pupils eligible for free and reduced lunch.

8 (2) Other indicators of need for the program, including, but not
9 limited to, socioeconomic status of the neighborhoods in which
10 participating pupils reside, the percentage of English language
11 learners at the school, and the availability of programs in the
12 community in which participating pupils reside.

13 (c) The application shall certify all of the following:

14 (1) Inclusion of an educational element.

15 (2) Inclusion of an enrichment element. These opportunities
16 may include arts, career technical education, recreation, technology,
17 and other activities to support positive youth development.

18 (3) That the program will provide a safe physical and emotional
19 environment and opportunities for relationship building, and
20 promote active pupil engagement.

21 (4) Staff training and development will be provided.

22 (5) Integration with the regular schoolday and other extended
23 learning opportunities.

24 (6) Community collaboration, including, but not limited to,
25 demonstrated support of the schoolsite principal and staff.

26 (7) Opportunities for physical activity.

27 (8) Inclusion of a nutritional ~~snack~~ *snack, meal, or both*.

28 (9) Fiscal accountability.

29 (10) Availability of required local matching funds.

30 (11) That the program will meet all of the evaluation
31 requirements.

32 (d) Subdivision (b) does not apply to an applicant school that
33 meets the priority criteria described in subdivision (a) of Section
34 8482.5.

35 ~~SEC. 2.~~

36 *SEC. 4.* Section 35182.5 of the Education Code is amended to
37 read:

38 35182.5. (a) The Legislature finds and declares all of the
39 following:

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

3 (2) State and federal laws restrict the sale of food and beverages
4 in competition with meal programs to enhance the nutritional goals
5 for pupils, and to protect the fiscal and nutritional integrity of the
6 school food service programs.

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

12 (b) For purposes of this section, the following terms have the
13 following meanings:

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

16 (A) Drinking water.

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

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

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

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

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

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

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

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

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

39 (1) Enter into or renew a contract or permit a school within the
40 district to enter into or renew a contract that grants exclusive or

1 nonexclusive advertising or grants the right to the exclusive or
2 nonexclusive sale of carbonated beverages or nonnutritious
3 beverages or nonnutritious food within the district to a person,
4 business, or corporation, unless the governing board of the school
5 district does all of the following:

6 (A) Adopts a policy after a public hearing of the governing
7 board to ensure that the district has internal controls in place to
8 protect the integrity of the public funds and to ensure that funds
9 raised benefit public education, and that the contracts are entered
10 into on a competitive basis pursuant to procedures contained in
11 Section 20111 of the Public Contract Code or through the issuance
12 of a Request for Proposal.

13 (B) Provides to parents, guardians, pupils, and members of the
14 public the opportunity to comment on the contract by holding a
15 public hearing on the contract during a regularly scheduled board
16 meeting. The governing board shall clearly, and in a manner
17 recognizable to the general public, identify in the agenda the
18 contract to be discussed at the meeting.

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

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

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

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

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

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

38 (E) Offers the parents the opportunity to request in writing that
39 the pupil not be exposed to the program that contains the
40 advertising. Any request shall be honored for the school year in

1 which it is submitted, or longer if specified, but may be withdrawn
2 by the parents or guardians at any time.

3 (d) A governing board may meet the public hearing requirement
4 set forth in subparagraph (B) of paragraph (1) of subdivision (c)
5 for those contracts that grant the right to the exclusive or
6 nonexclusive sale of carbonated beverages or nonnutritious
7 beverages or nonnutritious food within the district, by an annual
8 public hearing to review and discuss existing and potential
9 contracts for the sale of food and beverages on campuses, including
10 food and beverages sold as full meals, through competitive sales,
11 as fundraisers, and through vending machines.

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

14 (A) The nutritional value of food and beverages sold within the
15 district.

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

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

21 (D) Barriers to pupil participation in school breakfast and lunch
22 programs.

23 (2) A school district that holds an annual public hearing
24 consistent with this subdivision is not released from the public
25 hearing requirements set forth in subparagraph (B) of paragraph
26 (1) of subdivision (c) for those contracts not discussed at the annual
27 public hearing.

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

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

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

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

1 *SEC. 5. Section 38085 of the Education Code is repealed.*

2 ~~38085. A minimum of 50 percent of the items, other than foods~~
3 ~~reimbursed under Chapters 13 (commencing with Section 1751)~~
4 ~~and 13A (commencing with Section 1771) of Title 42 of the United~~
5 ~~States Code, offered for sale each schoolday at any schoolsite by~~
6 ~~any entity or organization during regular school hours shall be~~
7 ~~selected from the following list:~~

8 ~~(a) Milk and dairy products, including cheese, yogurt, frozen~~
9 ~~yogurt, and ice cream.~~

10 ~~(b) Full-strength fruit and vegetable juices and fruit drinks~~
11 ~~containing 50 percent or more full-strength fruit juice, and fruit~~
12 ~~nectars containing 35 percent or more full-strength fruit juice.~~

13 ~~(c) Fresh, frozen, canned, and dried fruits and vegetables.~~

14 ~~(d) Nuts, seeds, and nut butters.~~

15 ~~(e) Nonconfection grain products, as defined by regulation of~~
16 ~~the United States Food and Drug Administration, including~~
17 ~~crackers, bread sticks, tortillas, pizza, pretzels, bagels, muffins,~~
18 ~~and popcorn.~~

19 ~~(f) Meat, poultry, and fish, and their products, including beef~~
20 ~~jerky, tacos, meat turnovers, pizza, chili and sandwiches.~~

21 ~~(g) Legumes and legume products, including bean burritos, chili~~
22 ~~beans, bean dip, roasted soy beans, and soups.~~

23 ~~(h) Any foods which would qualify as one of the required food~~
24 ~~components of the Type A lunch which is defined in and~~
25 ~~reimbursable under the National School Lunch Act (Chapter 13~~
26 ~~(commencing with Section 1751) of Title 42 of the United States~~
27 ~~Code).~~

28 For the purposes of this section, “item” shall be defined as each
29 separate kind of food offered for sale as a separate unit.

30 ~~SEC. 3.~~

31 *SEC. 6. Section 38091 of the Education Code is amended to*
32 *read:*

33 38091. (a) The cafeteria fund shall be used only for those
34 expenditures authorized by the governing board of a school district
35 as necessary for the operation of school cafeterias, including, but
36 not limited to, expenditures for the lease or purchase of additional
37 cafeteria equipment for the kitchen or central food processing
38 plant, vending machines and their installation and housing, and
39 computer equipment and related software.

1 (b) The governing board of any school district, or of two or
 2 more school districts governed by governing boards of identical
 3 personnel, may also make expenditures from the cafeteria fund
 4 for the purchase and installation of additional preparation, cooking,
 5 or service equipment for a kitchen or central food processing plant,
 6 including necessary alterations incidental to the installation of the
 7 equipment, and for the lease or purchase of vehicles used solely
 8 in connection with the kitchen or central food processing plant.

9 ~~SEC. 4.~~

10 ~~SEC. 7.~~ Section 38092 of the Education Code is repealed.

11 ~~SEC. 5.~~

12 ~~SEC. 8.~~ Section 38100 of the Education Code is amended to
 13 read:

14 38100. (a) The cost of providing adequate housing for
 15 cafeterias, including, but not limited to, kitchen facilities, is a
 16 charge against the funds of the school district. The cost of the lease
 17 or purchase of cafeteria equipment and of vending machines and
 18 their installation and housing shall be a charge against cafeteria
 19 funds, in accordance with Section 38091. However, when the
 20 governing board of a school district deems it necessary, the
 21 governing board of a school district may make the cost of the lease
 22 or purchase of cafeteria equipment for a kitchen or central food
 23 processing plant, and vending machines and their installation and
 24 housing a charge against the funds of the school district. If school
 25 district funds are expended for the lease or purchase of kitchen
 26 equipment or for the lease, purchase, installation, or housing of
 27 vending machines, the governing board of the school district may
 28 at any time during the same fiscal year after the expenditure
 29 reimburse school district funds from cafeteria funds. The governing
 30 board of a school district shall only approve reimbursement for
 31 vending machines if one, or both, of the following apply:

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

36 (2) The vending machines sell only food, or only beverages, or
 37 both that comply with state and federal competitive food laws and
 38 regulations.

39 (b) The governing board of a school district may by resolution
 40 make the cost of maintenance of the kitchen facilities, the cost of

1 replacement or maintenance of kitchen equipment, and costs of
2 telephone charges, water, drinking water in the cafeteria, electricity,
3 gas, coal, wood, fuel, oil, and garbage disposal related to food
4 service and delivery a charge against cafeteria funds, provided that
5 the school district complies with all applicable state and federal
6 laws and regulations.

7 ~~SEC. 6.~~

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

9 ~~SEC. 7.~~

10 *SEC. 10.* Section 49430 of the Education Code is amended to
11 read:

12 49430. As used in this article, the following terms have the
13 following meanings:

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

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

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

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

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

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

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

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

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

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

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

9 ~~SEC. 8.~~

10 *SEC. 11.* Section 49431 of the Education Code is amended to
11 read:

12 49431. (a) (1) From one-half hour before the start of the
13 schoolday to one-half hour after the schoolday, at each elementary
14 school, the only food that may be sold to a pupil are full meals,
15 individually sold dairy or whole grain foods, and individually sold
16 portions of nuts, nut butters, seeds, eggs, cheese packaged for
17 individual sale, fruit, vegetables that have not been deep fried, and
18 legumes.

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

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

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

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

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

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

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

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

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

8 ~~SEC. 9.~~

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

11 49431.2. (a) From one-half hour before the start of the
12 schoolday to one-half hour after the schoolday, snacks sold to a
13 pupil in middle school or high school, except food served as part
14 of a USDA meal program, shall meet all of the following standards:

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

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

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

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

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

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

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

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

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

4 ~~SEC. 10.~~

5 *SEC. 13.* Section 49431.5 of the Education Code is amended
6 to read:

7 49431.5. (a) (1) Regardless of the time of day, only the
8 following beverages may be sold to a pupil at an elementary school:

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

11 (B) Vegetable-based drinks that are composed of no less than
12 50 percent vegetable juice and have no added sweetener.

13 (C) Drinking water with no added sweetener.

14 (D) ~~Two-percent-fat milk, one-percent-fat~~ *One-percent-fat* milk,
15 nonfat milk, soy milk, rice milk, and other similar nondairy milk.

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

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

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

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

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

28 (B) Vegetable-based drinks that are composed of no less than
29 50 percent vegetable juice and have no added sweetener.

30 (C) Drinking water with no added sweetener.

31 (D) ~~Two-percent-fat milk, one-percent-fat~~ *One-percent-fat* milk,
32 nonfat milk, soy milk, rice milk, and other similar nondairy milk.

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

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

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

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

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

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

8 ~~SEC. 11.~~

9 *SEC. 14.* Section 49431.7 of the Education Code is amended
10 to read:

11 49431.7. (a) From one-half hour before the start of the
12 schoolday to one-half hour after the end of the schoolday, a school
13 or school district shall not sell to pupils enrolled in kindergarten,
14 or any of grades 1 to 12, inclusive, food containing artificial trans
15 fat, as defined in subdivision (b).

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

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

24 ~~SEC. 12.~~

25 *SEC. 15.* Section 49432 of the Education Code is amended to
26 read:

27 49432. Every public school may post a summary of nutrition
28 and physical activity laws and regulations, and shall post the school
29 district's nutrition and physical activity policies, in public view
30 within all school cafeterias or other central eating areas. The
31 department shall develop the summary of state law and regulations.

32 ~~SEC. 13.~~

33 *SEC. 16.* Section 49433 of the Education Code is repealed.

34 ~~SEC. 14.~~

35 *SEC. 17.* Section 49433.5 of the Education Code is repealed.

36 ~~SEC. 15.~~

37 *SEC. 18.* Section 49433.7 of the Education Code is repealed.

38 ~~SEC. 16.~~

39 *SEC. 19.* Section 49433.9 of the Education Code is repealed.

- 1 ~~SEC. 17.~~
- 2 *SEC. 20.* Section 49434 of the Education Code is repealed.
- 3 ~~SEC. 18.~~
- 4 *SEC. 21.* Section 49434 is added to the Education Code, to
- 5 read:
- 6 49434. Compliance with this article shall be monitored by the
- 7 department in conformity with the United States Department of
- 8 Agriculture’s administrative review process, as published in the
- 9 Federal Register, Volume 77, Number 17, on January 26, 2012.
- 10 ~~SEC. 19.~~
- 11 *SEC. 22.* Section 49435 of the Education Code is repealed.
- 12 ~~SEC. 20.~~
- 13 *SEC. 23.* Section 49436 of the Education Code is repealed.
- 14 *SEC. 24.* *The Legislature finds and declares that this act*
- 15 *furtheres the purposes of the After School Education and Safety*
- 16 *Program Act of 2002.*

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