
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair

2015 - 2016 Regular

Bill No: SB 1169
Author: McGuire
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Urgency: No
Consultant: Lynn Lorber
Hearing Date: March 30, 2016
Fiscal: Yes

Subject: Pupil nutrition: competitive food service and standards

SUMMARY

This bill makes numerous changes to school nutrition standards for competitive food and beverages to better align to the federal Smart Snacks in Schools regulations.

BACKGROUND

Existing federal law, the Healthy, Hunger-Free Kids Act of 2010, authorizes funding and sets policy for the United States Department of Agriculture's core child nutrition programs: the National School Lunch Program, the School Breakfast Program, the Special Supplemental Nutrition Program for Women, Infants and Children, the Summer Food Service Program, and the Child and Adult Care Food Program. The accompanying regulations are known as the Smart Snacks in Schools provisions. (United States Code, Title 42, § 1751-1779; Code of Federal Regulations, Title 7, § 210.11)

Existing state law:

Competitive food sold in elementary schools

- 1) Provides that, from one-half hour before the start of the schoolday to one-half hour after the schoolday, the only food that may be sold to students are full meals, individually sold dairy or whole grain foods, and individually sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, vegetables that have not been deep fried, and legumes.
(Education Code § 49431)
- 2) Requires the food described above, if sold outside of a United States Department of Agriculture meal program, to meet all of the following standards:
 - a) Not more than 35% of its total calories shall be from fat. Exempt from this standard are individually sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, vegetables that have not been deep fried, or legumes.
 - b) Not more than 10% of its total calories shall be from saturated fat. Exempt from this standards are eggs or cheese packaged for individual sale.

- c) Not more than 35% of its total weight shall be composed of sugar, including naturally occurring and added sugar. Exempt from this standard are fruit or vegetables that have not been deep fried.
- d) Not more than 175 calories per individual food item. (EC § 49431)

Snacks sold in middle or high schools

- 3) Requires snacks sold outside of a United States Department of Agriculture meal program, from one-half hour before the start of the schoolday to one-half hour after the schoolday, to meet the same standards as is required for competitive food in elementary schools except snacks may have up to 250 calories per individual food item. (EC § 49431.2)

Competitive entrée items sold in middle or high schools

- 4) Prohibits entrée items sold outside of a United States Department of Agriculture meal program, from one-half hour before the start of the schoolday to one-half hour after the schoolday, from containing more than 400 calories per entrée, and no more than 4 grams of fat per 100 calories. (EC § 49431.2)

Beverages sold in elementary schools

- 5) Provides that, regardless of the time of day, only the following beverages may be sold:
 - a) Fruit-based drinks that are composed of no less than 50% fruit juice and have no added sweetener.
 - b) Vegetable-based drinks that are composed of no less than 50% vegetable juice and have no added sweetener.
 - c) Drinking water with no added sweetener.
 - d) One-percent-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk. (EC § 49431.5)

Beverages sold in middle or high schools

- 6) Provides that, from one-half hour before the start of the schoolday to one-half hour after the schoolday, only the following beverages may be sold:
 - a) Fruit-based drinks that are composed of no less than 50% fruit juice and have no added sweetener.
 - b) Vegetable-based drinks that are composed of no less than 50% vegetable juice and have no added sweetener.

- c) Drinking water with no added sweetener.
- d) One-percent-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk.
- e) An electrolyte replacement beverage that contains no more than 42 grams of added sweetener per 20-ounce serving. (EC § 49431.5)

Trans fat

- 7) Prohibits a school or school district from selling food containing artificial trans fat to K-12 students, from one-half hour before the start of the schoolday to one-half hour after the schoolday. (EC § 49431.7)

School wellness policy

- 8) Requires every public school to post the school district's nutrition and physical activity policies, in public view within all school cafeterias or other central eating areas. (EC § 49432)

ANALYSIS

This bill makes numerous changes to school nutrition standards for competitive food and beverages to better align to the federal Smart Snacks in Schools regulations. Specifically, this bill:

Sale of competitive food in all grade levels

- 1) Eliminates the option for certain food to be sold to students before the beginning of the schoolday by narrowing the period of time in which certain food may be sold to students, from "one-half hour before the start of the schoolday to one-half hour after the schoolday," to "the midnight before to 30 minutes after the end of the official schoolday."

Sale of competitive food in elementary schools

- 2) Modifies the food that may be sold to students from outside of the schoolday as follows:
 - a) Strike reference to "full meals, individually sold dairy or whole grain foods, and individually sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit vegetable that have not been deep fried, and legumes."
 - b) Insert "fruit, vegetable, dairy, protein, or whole grain rich food items; foods with a fruit, vegetable, dairy, protein, or whole grain item as its first ingredient; or combination foods containing at least one-quarter cup of fruit or vegetable."

- 3) Modifies the standards that competitive food must meet as follows:
 - a) For the limit of up to 35% of total calories being from fat:
 - i) Strikes reference to “eggs” and “legumes.”
 - ii) Adds reference to “seed butters, part skim mozzarella cheese, seafood, and a dried fruit and nut and seed combination.”
 - iii) Specifies that “cheese” is to be “reduced-fat cheese.”
 - b) For the limit of not more than 10% of total calories from saturated fat, and the exemption for eggs or cheese packaged for individual sales, provides that *less than* 10% of total calories shall be from saturated fat, and exempts “reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, nuts, nut butters, seeds, seed butters, or a dried fruit and nut and seed combination.”
 - c) For the limit of up to 35% of total weight being composed of sugar, adds “a dried fruit and nut and seed combination.”
 - d) For calories per individual food item, increases the calories from “175” to “200.”
- 4) Adds standards for competitive food as follows:
 - a) Contains less than 0.5 grams of trans fat per serving.
 - b) Contains not more than 200 milligrams of sodium per item, package, or container sold to a student.

Sale of a competitive entrée in middle and high schools

- 5) Modifies the competitive entrées that may be sold to students outside of the schoolday for items *sold by the school the day or the day after* the entrée is served as part of the school meal, as follows:
 - a) Modifies the limit on fat from no more than 4 grams of fat per 100 calories, to “not more than 35% of total calories from fat.”
 - b) Adds “contains less than 0.5 grams of trans fat per serving.”
 - c) Adds “is offered in the same or smaller portion sizes as in the federal National School Lunch Program or federal School Breakfast Program.”
- 6) Creates new requirement that a competitive entrée sold by the school but *not the day or the day after* the entrée is served as part of the school meal, or is sold by any other entity, meet the following standards:

- a) Not more than 35% of its total calories shall be from fat.
- b) Less than 10% of its calories shall be from saturated fat.
- c) Not more than 35% of its total weight shall be composed of sugar, including naturally occurring and added sugar.
- d) Contains less than 0.5 grams of trans fat per serving.
- e) Contains not more than 480 milligrams of sodium.
- f) Contains not more than 350 calories.

Sale of competitive snacks in middle and high schools

- 7) Eliminates the option for competitive snack foods to be sold to students before the beginning of the schoolday by narrowing the period of time in which competitive snack foods may be sold to students, from “one-half hour before the start of the schoolday to one-half hour after the schoolday,” to “the midnight before to 30 minutes after the end of the official schoolday.”
- 8) Limits the competitive snack foods that may be sold to students during the schoolday to the following:
 - a) Fruit, vegetable, dairy, protein, or whole grain rich food items.
 - b) Food with a fruit, vegetable, dairy, protein, or whole grain item as its first ingredient.
 - c) Combination foods containing at least one-quarter cup of fruit or vegetable.
- 9) Reduces the maximum allowable calories per individual competitive snack food from 250 to 200 calories.
- 10) Requires competitive snack food sold to students during the schoolday to contain less than 0.5 grams of trans fat per serving.
- 11) Requires competitive snack food sold to students during the schoolday to contain not more than 200 milligrams of sodium per item, package, or container.
- 12) Modifies the exemption on not more than 35% of its total calories being from fat, by deleting “eggs” and “legumes,” adding “seed butters, part skim mozzarella cheese packaged for individual sale, seafood, and a dried fruit and nut and seed combination,” and specifying that cheese is to be “reduced-fat” cheese.
- 13) Modifies the exemption on not more than 10% of its total calories being from saturated fat to “less than 10%,” deletes “eggs,” adds “part skim mozzarella

cheese packaged for individual sale, nuts, nut butters, seeds, seed butters, or a dried fruit and nut and seed combination,” and specifies that cheese is to be “reduced-fat” cheese.

- 14) Modifies the exemption on not more than 35% of its total weight being composed of sugar by adding “a dried fruit and nut and seed combination.”

Artificial trans fat

- 15) Eliminates the option for food containing artificial trans fat to be sold to students before the beginning of the schoolday by narrowing the period of time in which food containing artificial trans fat may be sold to students, from “one-half hour before the start of the schoolday to one-half hour after the schoolday,” to “the midnight before to 30 minutes after the end of the official schoolday.”

Sale of beverages for all grades

- 16) Clarifies that nutrition standards apply to *competitive* beverages.
- 17) Eliminates the option for certain beverages to be sold to students before the beginning of the schoolday by narrowing the period of time in which certain beverages may be sold to students, from “one-half hour before the start of the schoolday to one-half hour after the schoolday,” to “the midnight before to 30 minutes after the end of the official schoolday.”
- 18) Adds a limit on the serving size of fruit-based drinks, vegetable-based drinks, and milk, as follows:
 - a) Maximum serving size of eight fluid ounces for elementary schools, and 12 fluid ounces for middle schools.
 - b) Maximum serving size of 12 fluid ounces for high schools.
- 19) Specifies that drinking water is to be “plain drinking water.”
- 20) Prohibits drinking water that contains flavor.
- 21) Prohibits flavored one-percent fat milk.
- 22) Authorizes flavored or unflavored nonfat milk.

Sale of beverages in elementary and middle schools

- 23) Requires middle schools to meet the same standards as those for elementary schools, rather than the standards for high schools.
- 24) Prohibits any beverage from containing caffeine with the exception of trace amounts of naturally occurring caffeine substances.

Sale of beverages in high schools

- 25) Authorizes the sale of:
- a) Other beverages that are labeled to contain less than five calories per eight fluid ounces in a maximum serving size of 20 fluid ounces.
 - b) Other beverages that are labeled to contain no more than 40 calories per eight fluid ounces in a maximum serving size of 12 fluid ounces.
 - c) Specifically prohibits the sale of beverages labeled or commonly referred to as sodas, colas, or soft drinks.
 - d) Prohibits the sale of any beverages containing caffeine with the exception of trace amounts of naturally occurring caffeine substances.

Meal Pattern

- 26) Deletes reference to the Enhanced Food Based Meal Pattern, Nutrient Standard Meal Planning, Traditional Meal Pattern and the SHAPE Menu Patterns.

School wellness policy

- 27) Modifies the requirement that every school publicize its school wellness policy as follows:
- a) Deletes the requirement that every school post the school district's nutrition and physical activity policies in public view within all school cafeterias or other central eating areas.
 - b) Adds the requirement that every school inform the public about the contents of the school's local school wellness policy, and make the local school wellness policy and any updates to the policy available to the public on an annual basis.

Definitions

- 28) Modifies the definition of "snack" to exclude "onion rings, nachos, french fries, donuts, cookies, pastries, cinnamon rolls, and candy" and to include "yogurt, cheese, nuts, seeds, fruit, or vegetables."
- 29) Prohibits the sale of a competitive "full meal," and deletes the definition of "full meal" to conform to federal regulations.
- 30) Adds the following definitions, to align to federal regulations:
- a) "Combination foods" means products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein, or grains.

- b) “Competitive foods” means all food and beverages other than meals reimbursed under programs authorized by the federal Richard B. Russell National School Lunch Act and the federal Child Nutrition Act available for sale to students on the school campus during the schoolday.
- c) “School campus” means all areas of the property under the jurisdiction of the school that are accessible to students during the schoolday.
- d) “Schoolday” means the period from the midnight before to 30 minutes after the end of the official schoolday.

Miscellaneous

- 31) Deletes obsolete language regarding the prohibition of the sale of certain food (deep dried, par fried, flash fried, trans fat) as being applicable to raw bulk United States Department of Agriculture (USDA) commodity foods but not applicable to other USDA commodity foods until the 2009 reauthorization of the USDA National School Lunch Program.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “In recent years, the United States Department of Agriculture has made various changes to the Healthy, Hunger-Free Kids Act. Most recently, there have been changes to the laws and regulations that govern competitive foods and beverages. In order to ensure all schools are complying with the most recent changes to the Healthy, Hunger-Free Kids Act, state law must be amended.”
- 2) ***Alignment to federal regulations.*** The federal Healthy, Hunger-Free Kids Act was enacted in 2010, and updated federal rules and regulations (Smart Snacks in Schools) were adopted in 2014-2015. This bill applies only to competitive food and beverages, and only makes conforming changes to better align with federal rules and regulations.
- 3) ***Sale of competitive food.*** Competitive food is any food item that is sold outside of the school meal, even if it is sold by the school (e.g. a la carte, vending machines, fundraisers, school stores). This bill:
 - a) Provides additional protein options, such as seafood or a dried fruit and nut and seed combination.
 - b) Eliminates the option for competitive snack foods, competitive food, competitive entrées, and competitive beverages to be sold to students before the beginning of the schoolday by narrowing the period of time in which these items may be sold to students, from “one-half hour before the start of the schoolday to one-half hour after the schoolday,” to “the midnight before to 30 minutes after the end of the official schoolday.”

- c) Decreases allowable calories for competitive snacks in middle and high school, and increases calories for competitive food in elementary school.
- 4) ***Sale of competitive beverages.*** This bill requires middle schools to meet the same beverage standards as elementary schools must meet, eliminates the allowable category of “electrolyte replacement beverage” while still allowing such beverages in high schools if caloric standards are met, provides additional beverage options to high schools (e.g. flavored or unflavored sparkling water, and decaffeinated coffee or tea drinks). This bill continues the prohibition on soda, and clarifies that caffeinated beverages are prohibited (e.g. energy drinks).
- 5) ***Meal patterns.*** Meal patterns describe what food items, serving sizes, and allowable calories, saturated fat, sodium and trans fat are to be served for specified grade spans. This bill deletes reference to the Enhanced Food Based Meal Pattern, Nutrient Standard Meal Planning, Traditional Meal Pattern and the SHAPE Menu Patterns. Federal regulations provide that the only allowable meal pattern is the 2012 United States Department of Agriculture meal pattern. <http://www.fns.usda.gov/sites/default/files/dietaryspecs.pdf>
- 6) ***Technical amendment.*** Consistent with the author’s wishes, **staff recommends an amendment** to name the sections affected by this bill as the “Healthy Food, Healthy Students Act.”

SUPPORT

California Food Policy Advocates
State Superintendent of Public Instruction, Tom Torlakson

OPPOSITION

None received.

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