

SENATE No. 861

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Promoting Healthy Alternatives in Public School Food Programs.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|------------------------|-------------------------------|
| Moore, Richard (SEN) | Worcester and Norfolk |
| Geraldo Alicea | 6th Worcester |
| Richard J. Ross | 9th Norfolk |
| Frank I. Smizik | 15th Norfolk |
| John W. Scibak | 2nd Hampshire |
| Brian A. Joyce | Norfolk, Bristol and Plymouth |
| James E. Timilty | Bristol and Norfolk |
| Timothy J. Toomey, Jr. | 26th Middlesex |
| Jennifer M. Callahan | 18th Worcester |
| Susan C. Fargo | Third Middlesex |
| Anthony D. Galluccio | Middlesex, Suffolk and Essex |
| Gale D. Candaras | First Hampden and Hampshire |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01262 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PROMOTING HEALTHY ALTERNATIVES IN PUBLIC SCHOOL FOOD PROGRAMS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 15 of the General Laws is hereby amended by inserting after
2 section 1E , as appearing in the 2006 Official Edition, the following section:-
3 Section 1E 1/2. The department of public health, in consultation with the department of
4 elementary and secondary education, shall annually establish: (a) regulations and guidelines for
5 the training of all elementary, middle, and high school nurses in behavioral health and
6 appropriate treatment and resources for eating disorders; (b) regulations and guidelines for
7 professional development for school nurses and to aid staff to gain the most up-to-date
8 knowledge on eating disorder treatment and identification; and (c) guidelines for establishing a
9 referral program which uses medical resources in the community in collaboration with schools to
10 identify children in need of services and provide these services through in-school, outpatient and
11 inpatient settings, where appropriate.

12 SECTION 2. Section 1C of chapter 69 of the General Laws, as so appearing, is hereby
13 amended by adding the following paragraph:

14 The board, in consultation with the department of public health and the nutrition board
15 established under section 181 of chapter 6 shall promulgate rules and regulations which set
16 minimum standards for certification of all food service directors and managers in public early
17 childhood, elementary, secondary and vocational-technical schools. All food service directors
18 and managers hired after the effective date of this act shall be required to hold certification as a
19 condition of employment. All incumbent food service directors and managers must meet
20 certification requirements within a time period prescribed by the board in these rules and
21 regulations.

22 SECTION 3. Section 1D of chapter 69 of the General Laws, as so appearing, is hereby
23 amended by striking out the sentence beginning after the words "United States." in lines 30 to
24 32, inclusive, and replacing it with the following 2 sentences:-

25 The standards shall provide for instruction in the issues of nutrition and exercise. The standards
26 may provide for instruction in the issues of physical education, AIDS education, violence
27 prevention, and drug, alcohol, and tobacco abuse prevention.

28 SECTION 4. Chapter 71 of the General Laws is hereby amended by adding the following
29 2 sections:-

30 Section 90. The following words, as used in this section and in section 91, shall have the
31 following meaning, unless the context otherwise requires:-

32 “Added sweetener”, any additive that contains at least 1 kilocalorie per gram and enhances the
33 sweetness of a beverage, including but not limited to added sugar, but not including the natural
34 sugar or sugars that are contained within the fruit juice that is a component of the beverage.

35 “Full meal”, any combination of food items that meet a United States Department of Agriculture
36 approved meal pattern.

37 “Elementary school”, a public school that maintains any grade from pre-kindergarten to grade 6,
38 inclusive, but no grade higher than grade 8.

39 “Middle school”, a public school that maintains any of grades 6 to 9, inclusive, but no grade
40 higher than grade 9.

41 “High school”, a public school maintaining any of grades 9 to 12, inclusive.

42 Section 91. The following applies to any food or beverages sold in Massachusetts public schools
43 excluding the National School Lunch and Breakfast Programs.

44 (a) In elementary schools, only the following types of beverages shall be sold from 30 minutes
45 before the start of the school day until 30 minutes after the end of the school day:

46 (1) drinking water, in any size container;

47 (2) 100 per cent fruit juices in no more than 8 oz; and

48 (3) low-fat milk and non-fat milk, including but not limited to low-fat and non-fat chocolate
49 milk, soy milk, rice milk and other similar dairy or non-dairy milk in no more than 8 oz.

50 (b) In middle schools, only the following types of beverages shall be sold to 30 minutes before
51 the start of the school day until 30 minutes after the end of the school day:

52 (1) drinking water, in any size container;

53 (2) 100 per cent fruit juices in no more than 10 oz; and

54 (3) low-fat milk and non-fat milk, including but not limited to low-fat and non-fat chocolate

55 milk, soy milk, rice milk and other similar dairy or non-dairy milk in no more than 10 oz.

56 (c) In high schools, only the following types of beverages may be sold from 30 minutes before

57 the start of the school day until 30 minutes after the end of the school day:

58 (1) drinking water, in any size container;

59 (2) 100 per cent fruit juices in no more than 12 oz;

60 (3) isotonic (sports drinks) beverages no more than 75 calories and in no more than 12 oz;

61 (4) low or no calorie beverages in no more than 8 oz. and up to 10 calories

62 (5) milk, low-fat milk and non-fat milk, including but not limited to low-fat and non-fat

63 chocolate milk, soy milk, rice milk and other similar dairy or non-dairy milk in no more than 12

64 oz.

65 (6) At least 50 per cent of the beverage selections must be water and no or low calorie options.

66 (d) In elementary, middle and high schools candy, snacks, side items, and desserts offered for

67 sale as competitive foods in schools shall meet one of the following criteria.

68 These foods include but are not limited to fruits, vegetables, yogurts (including drinkable yogurt

69 and yogurt smoothies), puddings, soups, cheeses, snack chips (e.g., potato, tortilla, corn, veggie,

70 etc.), pretzels, crackers, popcorn, nuts, seeds, french fries, dried meat snacks, granola bars,

71 energy bars, breakfast bars, health bars, cookies, brownies, snack cakes, coffee cakes, pastries,
 72 doughnuts, danishes, cereal, candy, confectionery, chocolate, ice cream, frozen yogurt, sherbet,
 73 popsicles, frozen fruit bars, and other similar foods. Entrée items are not subject to these
 74 guidelines.

75 (1) Any fruit with no added sweeteners or vegetables that are non-fried. Since fresh fruits and
 76 vegetables vary in size and calories naturally, they have no calorie limit. However, calories for
 77 packaged fruits and vegetables are easily ascertained according to package nutrition labeling. As
 78 such, calorie limits for these fruits and vegetables are specified as follows:

| 79 | Elementary | Middle | High |
|--------------------------|------------|----------|----------|
| 80 fresh | no limit | no limit | no limit |
| 81 packaged in own juice | 150 | 180 | 200 |
| 82 dried | 150 | 180 | 200 |

83 (2) Any reduced-fat or part-skim cheese ≤ 1.5 oz.

84 (3) Any other food that meets all of the following criteria:

85 a. $\leq 35\%$ of total calories from fat

86 i. Nuts, nut butters, seeds are exempt from above limitation and are permitted.

87 ii. Products specified in Addendum 1 are exempt and are permitted until August 31, 2008.

88 b. $\leq 10\%$ of calories from saturated fat –OR– ≤ 1 g saturated fat

89 c. 0 g trans fat

- 90 d. $\leq 35\%$ sugar by weight
- 91 e. ≤ 230 mg sodium
- 92 i. Lowfat and nonfat dairy products can have ≤ 480 mg sodium
- 93 ii. Vegetables with sauce, and soups can have ≤ 480 mg sodium if they contain one or more
94 of the following: ≥ 2 g fiber; or $\geq 10\%$ DV of Vitamin A, C, E, folate, calcium, magnesium,
95 potassium, iron, or protein; or $\geq \frac{1}{2}$ serving of fruit or vegetables.
- 96 iii. Vegetables with sauce and soups specified in Addendum 2 are exempt and are permitted
97 until August 31, 2008.
- 98 f. If products are dairy, they must be non-fat or low fat dairy
- 99 g. Meet 1 of the following calorie requirements
- 100 i. ≤ 100 calories
- 101 ii. Vegetables with sauce and soups meeting 3.e above can have 150 calories if they contain
102 two or more of the following: ≥ 2 g fiber; or $\geq 10\%$ DV of Vitamin A, C, E, folate, calcium,
103 magnesium, potassium, iron, or protein; or $\geq \frac{1}{2}$ serving of fruit or vegetables.
- 104 iii. Other foods can have increased calorie limits per below if they contain one or more of the
105 following: ≥ 2 g fiber; or $\geq 10\%$ DV of Vitamin A, C, E, folate, calcium, magnesium, potassium,
106 iron, or protein; or $\geq \frac{1}{2}$ serving of fruit or vegetables:
- 107 ≤ 150 calories for elementary schools
- 108 ≤ 180 calories for middle school

109 ≤200 calories for high school

110 For individual serving packages, these nutritional guidelines are defined for a whole package as
111 labeled on the package's Nutrition Facts panel. In the event that the food is bought in bulk but
112 served individually, such as on an à la carte line, then the criteria apply to the standard serving
113 size.

114 (e) Food items not prepackaged with nutritional information by the distributor shall be required
115 to have nutritional information (calories, percentage of calories from fat, percentage of calories
116 from saturated fat, cholesterol, protein, carbohydrate, fiber, calcium, iron, vitamin A and vitamin
117 C) available to students, either on a display case, in a binder or within information packets held
118 by food service staff for requests by students. This requirement shall take effect by the beginning
119 of the second school year that starts 180 days after the effective date of this bill.

120 (f) These shall apply to items sold on school grounds or at school activities during the regular
121 and extended school day when events are primarily under the control of the school or third
122 parties on behalf of the school. The extended school day is defined as the time before or after the
123 official school day that includes activities such as clubs, yearbook, band and choir practice,
124 student government, drama, sports practices, intramural sports, and childcare/latchkey programs.
125 These shall also apply to food supplied by schools during official transportation to and from
126 school and school sponsored activities, including but not limited to field trips and interscholastic
127 sporting events where the school is the visiting team except as specified herein.

128 These do not apply to school sponsored or school related bona fide fundraising activities that
129 take place off of school grounds and not in transit to and from school. Nor do they apply to
130 booster sales at school related events where parents and other adults are a significant part of an

131 audience or are selling food as boosters either during intermission or immediately before or after
132 such events. These school related events frequently occur during evenings and weekends.
133 Examples of these events include but are not limited to interscholastic sporting events, school
134 plays, and band concerts.

135 (g) A school may permit the sale of food items that do not comply with this section as part of a
136 school or other fundraising event in any of the following circumstances:

137 (1) if students of the school sell these food items off school premises; or

138 (2) if students of the school sell these items 30 minutes before the start of the school day or at
139 least 30 minutes after the end of the school day; or

140 (3) if students sell these food items at a school-sponsored event 30 minutes after the end of the
141 school day.

142 (h) Fruit and non-fried vegetables shall be offered for sale at any location where food is sold with
143 the exception of non-refrigerated vending machines and vending machines which dispense only
144 beverages.

145 SECTION 5. Chapter 111 of the General Laws, as appearing in the 2004 Official Edition,
146 is hereby amended by adding the following 2 sections:-

147 Section 220. The department of public health, in collaboration with the department of education,
148 shall review and analyze the trend in reported cases of obesity and eating disorders in students.

149 This review shall include but not be limited to:

150 (a) Development and promulgation of data collection and reporting regulations and guidelines
151 associated with the implementation of this section;

- 152 (b) Evaluation of the trends of reported cases of obesity and eating disorders across the
153 commonwealth; and
- 154 (c) Study of the access to quality health care and whether students are receiving appropriate and
155 adequate care in the treatment of their obesity or eating disorders.

156 Section 221. The department of public health shall establish an annual public service
157 campaign to raise awareness of the issue of pediatric overweight, and of the state's initiative to
158 reduce the epidemic through available resources and support programs. The campaign shall
159 include, but not be limited to:

- 160 (a) Public service announcements regarding physical activity, nutrition and healthy lifestyles,
161 (b) Encouraging a reduction in the number of television viewing hours by children,
162 (c) Increasing state and local initiatives for free-time physical activity for children,
163 (d) Reducing potential transportation barriers to available free- time physical activities in the
164 community.
165 (e) Increasing community areas of green space and indoor facilities for out-of-school and free-
166 time physical activities as well as addressing concerns about neighborhood safety,
167 (f) Distributing a kit of information to schools including brochures and tapes on pediatric
168 overweight, and
169 (g) Creating an interactive website with information and resources on pediatric overweight.

170 SECTION 6. Paragraph (c) of section 197 of chapter 184 of the acts of 2002 is hereby
171 amended by inserting after the word "any", in line 1, the following words: -beverages with

172 added artificial or refined sweeteners, including but not limited to soft drinks, fruit drinks and
173 sports drinks; candy; processed foods containing more than 35 per cent of calories from fat, more
174 than 10 per cent of calories from saturated fat, or more than 35 per cent sugar by weight; fast
175 food restaurants; or any.

176 SECTION 7. There shall be a special commission to conduct an analysis of childhood
177 obesity, nutrition, physical activity and education and wellness in the commonwealth. The
178 commission shall consist of: the commissioner of public health, or his designee, who shall serve
179 as the chair; the commissioner of medical assistance, or his designee; 1 person to be appointed
180 by the governor; 1 person to be appointed by the speaker of the house; 1 person to be appointed
181 by the senate president; a board-certified dietician or nutritionist, to be appointed by the chair; a
182 board-certified pediatrician from the American Academy of Pediatrics; a representative from the
183 Massachusetts Board of
184 Psychology; a representative from the Massachusetts Public Health Association; a representative
185 from the Massachusetts School Nurse Organization; a representative from the Massachusetts
186 Dental Society; a board-certified physician from the American Academy of Family Physicians;
187 and 1 person appointed by the commissioner of the department of education. The commission
188 shall evaluate the state of childhood obesity in Massachusetts, including but not limited to
189 physical education programs, school lunches, school snack and soda vending machines, adequate
190 amounts of time for school lunch periods, mental health issues related to eating disorders
191 including but not limited to anorexia, bulimia, and obesity, and after school program and national
192 standards.

193 The commission shall report its findings, and file any draft legislation with the clerks of the
194 House of Representatives and the Senate, the joint committee on public health and the house and
195 senate committees on ways and means not later than 1 year after the effective date of this act.
196 After this act's effective date, the department of public health shall conduct analyses every 2
197 years to evaluate childhood obesity in Massachusetts and shall report its findings to the
198 committee on public health 60 days after the conclusion of the review.

199 SECTION 8. This act shall take effect on the next September 1 occurring 180 days after
200 its passage.