

Date of Hearing: June 22, 2016

ASSEMBLY COMMITTEE ON EDUCATION  
Patrick O'Donnell, Chair  
SB 1169 (McGuire) – As Amended May 31, 2016

**SENATE VOTE:** 39-0

**SUBJECT:** Pupil nutrition: competitive food service and standards

**SUMMARY:** Makes changes to school nutrition requirements, as specified. Specifically, **this bill:**

- 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.”
- 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 to the list of exempt items.”
  - 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.

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

**EXISTING LAW:**

- 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 (EC) 49431)
- 2) Requires the food described above, if sold outside of a USDA 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)
- 3) Requires snacks sold outside of a USDA 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)
- 4) Prohibits entrée items sold outside of a USDA 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 four grams of fat per 100 calories. (EC 49431.2)
- 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)
- 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)
- 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)
- 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)

**FISCAL EFFECT:** According to the Senate Appropriations Committee, the provisions in this bill make changes to local authority and program requirements implemented at the local level, for participating schools, school districts, and county offices of education. These changes are unlikely to drive significant new cost to the state. They may result in additional costs to schools, but are conditions of their participation in a program for which they receive federal funding.

**COMMENTS: *Federal Healthy, Hunger-Free Kids Act of 2010.*** This bill comes on the heels of a major overhaul of federal nutrition standards for the National School Lunch Program (NSLP). The federal Healthy, Hunger-Free Kids Act of 2010, which was signed into law by President Obama in December of 2010, makes the first significant changes to the nutritional regulations over the NSLP since 1995. In January 2012, the United States Department of Agriculture released the Final Rule Nutrition Standards for the National School Lunch and School Breakfast Programs in accordance with the new federal legislation. As part of the new regulations, schools are required to serve food options that align with meal patterns specifying acceptable quantities of different types of food.

According to the author, "In recent years, the USDA 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. This bill makes changes to current state law in order to comply with the new federal laws and regulations that govern competitive foods and beverages under the Health, Hunger-Free Kids Act of 2010. This proposal makes the following changes:

1. Expands the variety of healthy items that can be sold in schools. These items must meet all current nutritional standards. For example, items may include, nuts, beef jerky, edamame (soybeans in the pod), dried soybeans, dried/roasted chickpeas, hummus, and dried fruit.
2. Caps the calorie limit at 200 for snacks that can be sold during the school day.
3. Prohibits caffeine in all beverages served and sold during the school day.
4. Clarifies and expands what no- or low-calorie beverages may be sold in high schools. For example, beverages may include, sparkling water (flavored or unflavored), fruit water, electrolyte replacement drinks, and teas. Sodas and diet sodas will continue to be prohibited.
5. Allows a school and district flexibility to determine the best way(s) to communicate their local school wellness policy to their community."

***Electrolyte Replacement Beverages (ERBs) and "other beverages" sold in High School.*** This bill deletes the authorization for ERBs to be sold to high school students and instead specifies that "other beverages" with less than 5 calories per 8 ounces in a maximum serving size of 20 ounces and "other beverages" with less than 40 calories per 8 ounces in a maximum serving size of 12 ounces may be sold. The committee should consider what types of beverages would be allowed under these provisions. The California Department of Education contends that the term "other beverages" includes ERBs, as well as other types of beverages such as flavored sparkling water, diet vitamin water, diet flavored water, and diet tea.

The committee should consider whether:

- 1) the previous authorization for ERB's should be expanded to include ANY type of beverage that falls under the calorie restrictions, so long as that beverage does not contain caffeine or is qualified as a soda; or,
- 2) the current authorization for ERB's alone should be changed to include the new lower calorie restrictions, which conforms to federal regulations.

If the intent is to open up more options for healthy low calorie beverages to be sold in high schools, the committee should consider amending the bill to authorize beverages such as sparkling water, instead of authorizing "other beverages" that could include unhealthy options.

ERBs are designed to replace fluids after exercise and generally contain sodium and potassium to improve fluid absorption in the body. According to a USDA report on Carbohydrate/Electrolyte Replacement Beverages, "carbohydrate/electrolyte beverages provide carbohydrate (glucose, sucrose, glucose polymers) replacement to sustain energy output, and electrolytes (sodium, potassium) to replace those lost in sweat." The USDA report states that ERBs may be useful for individuals who have lost large quantities of fluids through sweating on a daily basis, and those who perform continuous exercise for more than 60 minutes, however, the report concludes that there is no need to substitute ERBs for water as a primary form of fluid replacement. The committee should consider whether high school students receive enough daily exercise (and subsequent loss of fluids) to warrant the sale of ERBs to students during school hours.

According to the University of California Center for Weight and Health, "Research shows that water is the best drink for children during the school day and at most sports practices. Water doesn't contain unnecessary calories or artificial sweeteners and children don't need the extra electrolytes and minerals that sports drinks may provide. Children get plenty of electrolytes from the food they eat, so during the school day and at most practices, sports drinks don't provide any extra benefit over water." The Center further finds that, "many sports drinks contain high fructose corn syrup (also the main sweetener in soda), which may be linked to increased rates of obesity. While manufacturers are developing products with lower sugar content, they are replacing the sugar with artificial sweeteners such as Sucralose that have no nutritional value. Studies suggest that artificial sweeteners may increase people's taste for sweets and even lead people to eat more after exercising."

***What about Vitamin Water?*** Some argue that this bill authorizes vitamin water drinks to be authorized to be sold in high schools during the schoolday. Many vitamin water drinks, however, contain sugar sweetener and/or artificial sweetener, similar to regular and diet soda. Vitamin water drinks that contain sugar sweetener could contain as many or more calories than ERBs or soda. Some argue that vitamin water drinks that contain artificial sweetener are equivalent to diet soda and should not be sold in schools. In fact, vitamin water drinks that contain artificial sweetener are sometimes referred to as diet water, and one brand is named "Skinny Water."

The committee should consider whether it is appropriate for schools to sell vitamin water drinks to students of any age.

Similarly, there are ERBs on the market that do not contain any added sweetener. One such example of these products is "Smartwater." These products contain water with added electrolytes but do not contain sweeteners. These products may also fall under the current definition of "drinking water with no added sweetener" because they do not meet the definition of an ERB as outlined in regulations which establishes minimum levels of sodium and potassium. According to the "Smartwater" label, it contains electrolytes, but the label does not list the amount of electrolytes contained in the bottle. Because the label does not list the amount of these ingredients it is unclear whether the amount is appropriate for children. The committee should consider whether it is appropriate to sell unsweetened electrolyte water to students during the school day, particularly to elementary school students. The committee should also consider

whether to specifically authorize or prohibit unsweetened electrolyte water to be sold in schools during the schoolday, and to what age students.

**Vitamin Toxicity.** The committee should consider whether there could be a risk of vitamin toxicity for children who drink more than one vitamin water drink per day, and for children who drink vitamin water drinks in addition to taking a daily multivitamin. It is unclear whether drinking one or more bottles of vitamin water drinks alone, or in addition to a multivitamin, could put students at risk for ingesting the upper limits of these vitamins, which could cause toxicity concerns.

The Tolerable Upper Intake Level (UL) is the maximum level of daily nutrient intake that is likely to pose no risk of adverse effects, based on the Dietary Reference Index (DRI) established by the National Academy of Sciences and the Institute of Medicine. According to the USDA, as intake increases above the UL, the potential risk of adverse effects may increase.

For purposes of illustration, the established UL for Niacin (Vitamin B3) for children ages 9-13 is 20 milligrams (mg) per day. According to the listed amount of Niacin on a bottle of "vitaminwater" brand beverage, a child age 9-13 who drinks two bottles of "vitaminwater" brand beverage will reach the UL for Niacin.<sup>1</sup> As another example, if a child age 9-13 is taking a daily multivitamin such as "Flintstones Complete" which contains 15mg of Niacin,<sup>2</sup> that child would reach the UL for Niacin after drinking only half a bottle of "vitaminwater" brand beverage. The committee should consider whether it is appropriate to sell vitamin water drinks to children in school at any age.

***Committee Amendments:***

- 1) Amend the bill to delete the authorization for "other beverages" and instead reinstate the authorization for ERB's with the new lower calorie restrictions.
- 2) Add an authorization for plain and flavored sparkling water with no artificial sweeteners, that contain fewer than five calories per eight fluid ounces in a maximum serving size of 20 fluid ounces or 40 calories per eight fluid ounces in a maximum serving size of 12 fluid ounces.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Heart Association  
American Stroke Association  
California Food Policy Advocates  
State Superintendent of Public Instruction Tom Torlakson

**Opposition**

None on file.

**Analysis Prepared by:** Chelsea Kelley / ED. / (916) 319-2087

---

<sup>1</sup> Source: University of California Center for Weight and Health.

<sup>2</sup> Source: Flintstones Website. <http://flintstonesvitamins.com/complete/index.html>