

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 185 Session of
2005

INTRODUCED BY STAIRS, CALTAGIRONE, CORNELL, CRAHALLA, CREIGHTON,
DALEY, J. EVANS, GEIST, GEORGE, HERSHEY, KENNEY, LEACH,
LEDERER, MANDERINO, MCGILL, MELIO, PRESTON, REICHLEY, SEMMEL,
STERN, E. Z. TAYLOR, WILT, YOUNGBLOOD, CAUSER, SURRA AND
DENLINGER, FEBRUARY 1, 2005

AS REPORTED FROM COMMITTEE ON EDUCATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 13, 2005

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," ~~providing for contracts for sale of~~ <—
6 ~~carbonated beverages, non nutritious beverages and non-~~
7 ~~nutritious food.~~ PROVIDING FOR CONTRACTS FOR COMPETITIVE <—
8 FOOD, BEVERAGE AND ADVERTISING CONTRACTS.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
12 as the Public School Code of 1949, is amended by adding a
13 section to read:

14 ~~Section 504.1. Contracts for Sale of Carbonated Beverages,~~ <—
15 ~~Non nutritious Beverages and Non nutritious Food. (a) (1)~~
16 ~~State and Federal laws require all schools participating in meal~~
17 ~~programs to provide nutritious food and beverages to pupils.~~
18 ~~(2) State and Federal laws restrict the sale of food and~~
19 ~~beverages in competition with meal programs to enhance the~~

~~nutritional goals for pupils, and to protect the fiscal and nutritional integrity of the school food service programs.~~

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

~~(b) The following words and phrases when used in this section shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:~~

~~"Added sweetener" shall include any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within any fruit juice that is a component of the beverage.~~

~~"Non nutritious beverages" shall include any beverage that is not any of the following:~~

~~(1) Drinking water.~~

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

~~(3) An electrolyte replacement beverage that contains forty two (42) grams or less of added sweetener per twenty (20) ounce serving.~~

~~(4) A one hundred per centum fruit juice, or fruit based drink that is composed of fifty per centum or more fruit juice and that has no added sweeteners.~~

~~"Non nutritious food" shall mean food that is not sold as part of the school breakfast or lunch program as a full meal, and that meets any of the following standards:~~

~~(1) More than thirty five per centum of its total calories~~

1 ~~are from fat.~~

2 ~~(2) More than ten per centum of its total calories are from~~
3 ~~saturated fat.~~

4 ~~(3) More than thirty five per centum of its total weight is~~
5 ~~composed of sugar.~~

6 ~~(c) The governing board of a school district may not do any~~
7 ~~of the following:~~

8 ~~(1) Enter into or renew a contract or permit a school within~~
9 ~~the district to enter into or renew a contract that grants~~
10 ~~exclusive or non exclusive advertising or grants the right to~~
11 ~~the exclusive or non exclusive sale of carbonated beverages or~~
12 ~~non nutritious beverages or non nutritious food within the~~
13 ~~district to a person, business or corporation unless the~~
14 ~~governing board of the school district does all of the~~
15 ~~following:~~

16 ~~(i) Adopts a policy after a public hearing of the governing~~
17 ~~board to ensure that the district has internal controls in place~~
18 ~~to protect the integrity of the public funds and to ensure that~~
19 ~~funds raised benefit public education, and that the contracts~~
20 ~~are entered into on a competitive basis subject to 62 Pa.C.S.~~
21 ~~(relating to procurement).~~

22 ~~(ii) Provides to parents, guardians, pupils and members of~~
23 ~~the public the opportunity to comment on the contract by holding~~
24 ~~a public hearing on the contract during a regularly scheduled~~
25 ~~board meeting. The governing board shall clearly, and in a~~
26 ~~manner recognizable to the general public, identify in the~~
27 ~~agenda the contract to be discussed at the meeting.~~

28 ~~(2) Enter into a contract that prohibits a school district~~
29 ~~employe from disparaging the goods or services of the party~~
30 ~~contracting with the school board.~~

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

~~(i) Enters into the contract at a noticed public hearing of the governing board.~~

~~(ii) Makes a finding that the electronic product or service in question is or would be an integral component of the education of pupils.~~

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

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

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

~~(d) (1) An annual public hearing shall be held to review and discuss potential contracts for the sale of food and beverages on campuses, including food and beverages sold as full meals, through competitive sales such as fundraisers and vending machines.~~

~~(2) The public hearing shall include:~~

~~(i) The nutritional value of food and beverages sold within the district.~~

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

~~(iii) The amount of fat, sugar and additives in food and beverages discussed.~~

~~(iv) Barriers to pupil participation in school breakfast and lunch programs.~~

~~(3) The annual public requirement of this subsection does not release the governing board from the public hearing requirements of subsection (c)(1) for a potential contract that was not discussed at the annual meeting.~~

~~(c) The governing board of the school district shall make accessible to the public any contract entered into pursuant to this section and may not include in that contract a confidentiality clause that would prevent a school or school district from making any part of the contract public.~~

~~(f) The governing board of a school district may sell advertising, products or services on a non-exclusive basis.~~

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

~~(h) Contracts entered into prior to the effective date of this section may remain in effect but may not be renewed if in conflict with this section.~~

~~SECTION 504.1. COMPETITIVE FOOD, BEVERAGE OR ADVERTISING CONTRACTS.--(A) EXCLUSIVE AND NONEXCLUSIVE COMPETITIVE FOOD, BEVERAGE OR ADVERTISING CONTRACTS MAY NOT BE ENTERED INTO OR RENEWED BY THE DISTRICT OR A SCHOOL WITHIN THE DISTRICT UNLESS THE BOARD OF THE SCHOOL DISTRICT DOES THE FOLLOWING:~~

~~(1) HOLDS A PUBLIC HEARING DURING OR PRIOR TO A REGULARLY~~

SCHEDULED BOARD MEETING, AT WHICH TIME STUDENTS, PARENTS AND
OTHER MEMBERS OF THE COMMUNITY MAY COMMENT ON THE CONTRACT.

(2) ADOPTS A POLICY AFTER THE PUBLIC HEARING ENSURING THAT
SUCH CONTRACTS ARE ENTERED INTO OR RENEWED PURSUANT TO 62
PA.C.S. (RELATING TO PROCUREMENT) AND FUNDS RAISED FROM SUCH
CONTRACTS GO TO THE DISTRICT'S FOOD SERVICE DEPARTMENT,
EDUCATIONAL PROGRAMS OR STUDENT ORGANIZATIONS OR ACTIVITIES
APPROVED BY THE SCHOOL BOARD.

(B) CONTRACTS FOR ELECTRONIC PRODUCTS OR SERVICES REQUIRING
THE DISSEMINATION OF ADVERTISING TO PUPILS MAY NOT BE ENTERED
UNLESS THE SCHOOL BOARD DOES THE FOLLOWING:

(1) ENTERS INTO THE CONTRACT AT A PROPERLY ADVERTISED PUBLIC
HEARING OF THE SCHOOL BOARD.

(2) DETERMINES THAT THE ELECTRONIC PRODUCT OR SERVICE WOULD
BE AN INTEGRAL COMPONENT IN EDUCATING STUDENTS.

(3) FINDS THAT THE SCHOOL DISTRICT CANNOT AFFORD TO PROVIDE
THE ELECTRONIC PRODUCT OR SERVICE UNLESS IT CONTRACTS TO PERMIT
THE DISSEMINATION OF ADVERTISING TO PUPILS.

(4) PROVIDES WRITTEN NOTICE TO THE PARENTS OR GUARDIANS OF
STUDENTS THROUGH THE DISTRICT'S NORMAL ONGOING COMMUNICATION
THAT THE ADVERTISING WILL BE USED IN THE CLASSROOM OR OTHER
LEARNING CENTERS.

(5) OFFERS PARENTS AND GUARDIANS THE OPPORTUNITY TO REQUEST
IN WRITING THAT THE STUDENT NOT BE EXPOSED TO THE PROGRAM THAT
CONTAINS THE ADVERTISING.

ANY REQUEST SHALL BE HONORED FOR THE SCHOOL YEAR IN WHICH IT IS
SUBMITTED OR LONGER, IF SPECIFIED, BUT MAY BE WITHDRAWN BY THE
STUDENT'S PARENTS OR GUARDIANS AT ANY TIME.

(C) CONTRACTS PROHIBITING A SCHOOL DISTRICT EMPLOYEE FROM
DISPARAGING THE GOODS OR SERVICES OF THE PARTY CONTRACTING WITH

1 THE SCHOOL BOARD MAY NOT BE ENTERED INTO BY ANY SCHOOL BOARD.

2 (D) ANY CONTRACT ENTERED INTO UNDER THIS SECTION MAY NOT
3 INCLUDE A CONFIDENTIALITY CLAUSE PROHIBITING A SCHOOL OR SCHOOL
4 DISTRICT FROM MAKING ANY PART OF THE CONTRACT PUBLIC. CONTRACTS
5 ENTERED INTO OR RENEWED UNDER THIS SECTION SHALL BE MADE
6 ACCESSIBLE TO THE PUBLIC PURSUANT TO SECTION 2 OF THE ACT OF
7 JUNE 21, 1957 (P.L.390, NO.212), REFERRED TO AS THE RIGHT-TO-
8 KNOW LAW.

9 (E) THE SCHOOL BOARD SHALL REPORT TO THE PARENTS AND THE
10 COMMUNITY THE AMOUNTS AND SPECIFIC SOURCES OF FUNDS RECEIVED AND
11 THE NATURE OF EXPENDITURES MADE FROM FUNDS RECEIVED FROM
12 COMPETITIVE FOOD, BEVERAGE OR ADVERTISING CONTRACTS. AN ANNUAL
13 PUBLIC HEARING MAY BE HELD TO FULFILL THIS REQUIREMENT.

14 (F) ADVERTISING, PRODUCTS OR SERVICES ON A NONEXCLUSIVE
15 BASIS MAY BE SOLD ONLY WITH THE APPROVAL OF THE SCHOOL BOARD.

16 (G) THE SCHOOL BOARD MAY POST SIGNS PUBLICLY EXPRESSING THE
17 DISTRICT'S APPRECIATION OF A BUSINESS OR PERSON FOR THEIR
18 SUPPORT OF THE DISTRICT'S EDUCATIONAL PROGRAMS.

19 (H) AS USED IN THIS SECTION, THE TERM "COMPETITIVE FOOD"
20 MEANS ANY FOOD OR BEVERAGES OFFERED OR SOLD IN COMPETITION WITH
21 REIMBURSABLE MEALS SERVED UNDER THE NATIONAL SCHOOL LUNCH OR
22 SCHOOL BREAKFAST PROGRAM.

23 Section 2. This act shall take effect in 60 days.