

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~~

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

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

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

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

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

18 ~~(1) Drinking water.~~

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

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

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

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

30 ~~(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.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (C) CONTRACTS PROHIBITING A SCHOOL DISTRICT EMPLOYEE FROM  
30 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.