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AB-691 Pupil nutrition: almond milk. (2017-2018)

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Assembly Bill No. 691

CHAPTER 382

An act to amend Sections 35182.5 and 49431.5 of the Education Code, relating to pupil nutrition.

[Approved by Governor September 30, 2017. Filed with Secretary of State September 30, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 691, Levine. Pupil nutrition: almond milk.

Existing law prohibits the governing board of a school district from entering into a contract that grants exclusive or nonexclusive advertising or grants the right to the exclusive or nonexclusive sale of carbonated beverages, nonnutritious beverages, or nonnutritious food within the school district to a person, business, or corporation unless the governing board of the school district has adopted a policy after a public hearing to ensure that the school district has internal controls in place regarding the expenditure of the public funds. Existing law defines "nonnutritious beverages," for purposes of that provision, to exclude, among other beverages, milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

This bill would specify, for purposes of exclusion from the definition of "nonnutritious beverages," that milk also includes almond milk.

Existing law permits the sale of only certain beverages to pupils at public schools. The beverages that may be sold include fruit-based and vegetable-based drinks, plain water, certain types of milk and nondairy milk and other similar nondairy milk, and, in high schools, electrolyte replacement beverages if those beverages meet certain nutritional requirements

This bill would specify that almond milk is a nondairy milk that is authorized to be sold to pupils at public schools.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 35182.5 of the Education Code is amended to read:

35182.5. (a) The Legislature finds and declares all of the following:

- (1) State and federal laws require all schools participating in meal programs to provide nutritious food and beverages to pupils.
- (2) State and federal laws restrict the sale of food and 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) For purposes of this section, the following terms have the following meanings:

(1) "Nonnutritious beverages" means any beverage that is not any of the following:

(A) Drinking water.

(B) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, almond milk, and other similar dairy or nondairy milk.

(C) An electrolyte replacement beverage that contains 42 grams or less of added sweetener per 20 ounce serving.

(D) A 100 percent fruit juice, or fruit-based drink that is composed of 50 percent or more fruit juice and that has no added sweeteners.

(2) "Added sweetener" means an 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.

(3) "Nonnutritious food" means 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:

(A) More than 35 percent of its total calories are from fat.

(B) More than 10 percent of its total calories are from saturated fat.

(C) More than 35 percent of its total weight is composed of sugar. This subparagraph does not apply to the sale of fruits or vegetables.

(c) The governing board of a school district shall not do any of the following:

(1) Enter into or renew a contract, or permit a school within the school district to enter into or renew a contract, that grants exclusive or nonexclusive advertising or grants the right to the exclusive or nonexclusive sale of carbonated beverages, nonnutritious beverages, or nonnutritious food within the school district to a person, business, or corporation, unless the governing board of the school district does all of the following:

(A) Adopts a policy after a public hearing of the governing board of the school district to ensure that the school district has internal controls in place to protect the integrity of the public funds and to ensure that funds raised benefit public education, and that the contracts are entered into on a competitive basis pursuant to procedures contained in Section 20111 of the Public Contract Code or through the issuance of a request for proposal.

(B) Provides to parents, guardians, pupils, and members of the public the opportunity to comment on the contract by holding a public hearing on the contract during a regularly scheduled meeting of the governing board of the school district. The governing board of the school district shall clearly, and in a manner recognizable to the general public, identify in the agenda the contract to be discussed at the meeting.

(2) Enter into a contract that prohibits a school district employee from disparaging the goods or services of the party contracting with the governing board of the school district.

(3) Enter into a contract or permit a school within the school 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:

(A) Enters into the contract at a noticed public hearing of the governing board of the school district.

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

(C) 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.

(D) 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 school district's normal ongoing communication to parents or guardians.

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

(d) A governing board of the school district may meet the public hearing requirement set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts that grant the right to the exclusive or nonexclusive sale of carbonated beverages, nonnutritious beverages, or nonnutritious food within the school district, by an annual public hearing to review and discuss existing and potential contracts for the sale of food and beverages on campuses, including food and beverages sold as full meals, through competitive sales, as fundraisers, and through vending machines.

(1) The public hearing shall include, but not be limited to, a discussion of all of the following:

(A) The nutritional value of food and beverages sold within the school district.

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

(C) The amount of fat, sugar, and additives in the food and beverages discussed.

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

(2) A school district that holds an annual public hearing consistent with this subdivision is not released from the public hearing requirements set forth in subparagraph (B) of paragraph (1) of subdivision (c) for those contracts not discussed at the annual public hearing.

(e) The governing board of the school district shall make accessible to the public a contract entered into pursuant to paragraph (1) of subdivision (c) and shall 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 nonexclusive basis.

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

(h) Contracts entered into before January 1, 2004, may remain in effect, but shall not be renewed if they are in conflict with this section.

SEC. 2. Section 49431.5 of the Education Code is amended to read:

49431.5. (a) (1) From the midnight before to 30 minutes after the end of the official schoolday, at each elementary or middle school, the only competitive beverages that may be sold to a pupil are the following:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweetener in a maximum serving size of 8 fluid ounces for elementary school or 12 fluid ounces for middle school.

(B) Vegetable-based drinks that are composed of no less than 50 percent vegetable juice and have no added sweetener in a maximum serving size of 8 fluid ounces for elementary school or 12 fluid ounces for middle school.

(C) Plain water or plain carbonated water.

(D) One-percent-fat unflavored milk, nonfat flavored or unflavored milk, soy milk, rice milk, almond milk, and other similar nondairy milk in a maximum serving size of 8 fluid ounces for elementary school or 12 fluid ounces for middle school.

(E) A beverage shall not contain caffeine with the exception of trace amounts of naturally occurring caffeine substances.

(2) An elementary school or middle school may permit the sale of beverages that do not comply with paragraph (1) as part of a school fundraising event in either of the following circumstances:

(A) The sale of those items takes place off and away from the premises of the school.

(B) The sale of those items takes place on school premises at least one-half hour after the end of the schoolday.

(3) From the midnight before to 30 minutes after the end of the official schoolday, at each high school, the only competitive beverages that may be sold to a pupil are the following:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweetener in a maximum serving size of 12 fluid ounces.

(B) Vegetable-based drinks that are composed of no less than 50 percent vegetable juice and have no added sweetener in a maximum serving size of 12 fluid ounces.

(C) Plain water or plain carbonated water.

(D) One-percent-fat unflavored milk, nonfat flavored or unflavored milk, soy milk, rice milk, almond milk, and other similar nondairy milk in a maximum serving size of 12 fluid ounces.

(E) Flavored water or flavored carbonated water with no added sweetener that is labeled to contain less than 5 calories per 8 fluid ounces in a maximum serving size of 20 fluid ounces.

(F) Flavored water or flavored carbonated water with no added sweetener that is labeled to contain no more than 40 calories per 8 fluid ounces in a maximum serving size of 12 fluid ounces.

(G) Electrolyte replacement beverages that are labeled to contain less than 5 calories per 8 fluid ounces in a maximum serving size of 20 fluid ounces.

(H) Electrolyte replacement beverages that are labeled to contain no more than 40 calories per 8 fluid ounces in a maximum serving size of 12 fluid ounces.

(I) Beverages labeled or commonly referred to as sodas, colas, or soft drinks are not allowed.

(J) A beverage shall not contain caffeine with the exception of trace amounts of naturally occurring caffeine substances.

(4) A high school may permit the sale of beverages that do not comply with paragraph (3) as part of a school event if the sale of those items meets either of the following criteria:

(A) The sale of those items takes place off and away from the premises of the school.

(B) The sale of those items takes place on school premises at least one-half hour after the end of the schoolday.

(b) It is the intent of the Legislature that the governing board of a school district annually review its compliance with this section.

(c) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20 of Division 2, compliance with this section shall not be waived.