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AB-2316 Pupil nutrition: substances: prohibition. (2023-2024)

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Assembly Bill No. 2316

CHAPTER 914

An act to amend Sections 49431, 49431.2, 49431.5, 49501.5, and 49531 of the Education Code, relating to pupil nutrition.

[Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2316, Gabriel. Pupil nutrition: substances: prohibition.

Existing law requires the State Department of Education to develop and maintain nutrition guidelines for school lunches and breakfasts, and for all food and beverages sold on public school campuses. Existing law requires those nutrition guidelines to be consistent with the requirements for a nutritionally adequate breakfast and a nutritionally adequate lunch. Existing law defines a nutritionally adequate breakfast and a nutritionally adequate lunch for these purposes to mean those that qualify for reimbursement under the most current meal pattern for the federal School Breakfast Program and the federal National School Lunch Program, respectively.

Existing law requires a school district, county superintendent of schools, or charter school maintaining kindergarten or any of grades 1 to 12, inclusive, to make available a nutritionally adequate breakfast and a nutritionally adequate lunch, free of charge, during each schoolday to any pupil who requests a meal without consideration of the pupil's eligibility for a federally funded free or reduced-price meal. Existing law authorizes a school operated and maintained by a school district or county office of education, from the midnight before to 30 minutes after the end of the official schoolday, to sell food and beverages other than meals reimbursed by specified federal nutrition programs, only if the food or beverages meet dietary guidelines, as specified, depending on grade level.

This bill, beginning December 31, 2027, would prohibit a school district, county superintendent of schools, or charter school maintaining kindergarten or any of grades 1 to 12, inclusive, from offering a nutritionally adequate breakfast or lunch containing specified substances, including, among others, red 40 and yellow 5 and would prohibit a school operated and maintained by a school district or county office of education from selling food or beverages, except for food items sold as part of a school fundraising event, containing those specified substances, as provided. To the extent this bill would impose additional requirements on public schools, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

SECTION 1. This act shall be known, and may be cited, as the California School Food Safety Act.

SEC. 2. Section 49431 of the Education Code is amended to read:

49431. (a) From the midnight before to 30 minutes after the end of the official schoolday, at each elementary school, the only competitive foods that may be sold to a pupil are 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 that meets the following standards:

(1) Not more than 35 percent of its total calories shall be from fat. This paragraph shall not apply to individually sold portions of nuts, nut butters, seeds, seed butters, reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, eggs, fruits, vegetables that have not been deep fried, seafood, or a dried fruit and nut and seed combination.

(2) Less than 10 percent of its total calories shall be from saturated fat. This paragraph shall not apply to reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, eggs, nuts, nut butters, seeds, seed butters, or a dried fruit and nut and seed combination.

(3) Not more than 35 percent of its total weight shall be composed of sugar, including naturally occurring and added sugar. This paragraph shall not apply to fruits, vegetables that have not been deep fried, or a dried fruit and nut and seed combination.

(4) Contains less than 0.5 grams of trans fat per serving.

(5) Contains not more than 200 milligrams of sodium per item, package, or container sold to a pupil.

(6) Contains not more than 200 calories per individual food item.

(7) Beginning December 31, 2027, competitive foods do not contain any of the following substances:

(A) Blue 1 (CAS 3844-45-9).

(B) Blue 2 (CAS 860-22-0).

(C) Green 3 (CAS 2353-45-9).

(D) Red 40 (CAS 25956-17-6).

(E) Yellow 5 (CAS 1934-21-0).

(F) Yellow 6 (CAS 2783-94-0).

(b) An elementary school may permit the sale of food items that do not comply with subdivision (a) as part of a school fundraising event in either of the following circumstances:

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

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

(c) It is the intent of the Legislature that the governing board of a school district annually review its compliance with the nutrition standards described in this section and Section 49431.5.

(d) Nothing in this section shall be construed to prohibit a school from selling to a pupil, after the pupil has been provided a school meal pursuant to Section 49501.5, the entrée from an additional nutritiously adequate meal that qualifies for federal reimbursement, from the same meal service.

SEC. 3. Section 49431.2 of the Education Code is amended to read:

49431.2. (a) From the midnight before to 30 minutes after the end of the official schoolday, at each middle school or high school, the only competitive snack foods that may be sold to a pupil are 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 that meet all of the following standards:

(1) Not more than 35 percent of its total calories shall be from fat. This paragraph does not apply to the sale of nuts, nut butters, seeds, seed butters, reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, eggs, fruits, vegetables that have not been deep fried, seafood, or a dried fruit and nut and seed combination.

(2) Less than 10 percent of its total calories shall be from saturated fat. This paragraph shall not apply to reduced-fat cheese or part skim mozzarella cheese packaged for individual sale, eggs, nuts, nut butters, seeds, seed butters, or a dried fruit and nut and seed combination.

(3) Not more than 35 percent of its total weight shall be composed of sugar, including naturally occurring and added sugars. This paragraph shall not apply to the sale of fruits, vegetables that have not been deep fried, or a dried fruit and nut and seed combination.

(4) Contains less than 0.5 grams of trans fat per serving.

(5) Contains not more than 200 milligrams of sodium per item, package, or container sold to a pupil.

(6) Contains not more than 200 calories per individual food item.

(7) Beginning December 31, 2027, competitive foods do not contain any of the following substances:

(A) Blue 1 (CAS 3844-45-9).

(B) Blue 2 (CAS 860-22-0).

(C) Green 3 (CAS 2353-45-9).

(D) Red 40 (CAS 25956-17-6).

(E) Yellow 5 (CAS 1934-21-0).

(F) Yellow 6 (CAS 2783-94-0).

(b) (1) From the midnight before to 30 minutes after the end of the official schoolday, at each middle school or high school, a competitive entrée sold by the district food service department the day, or the day after, it is served on the federal National School Lunch Program or federal School Breakfast Program menu shall meet the following standards:

(A) Contains not more than 400 calories per entrée item.

(B) Not more than 35 percent of its total calories shall be from fat.

(C) Contains less than 0.5 grams trans fat per serving.

(D) Is offered in the same or smaller portion sizes as in the federal National School Lunch Program or federal School Breakfast Program.

(E) Beginning December 31, 2027, federal National School Lunch Program and federal School Breakfast Program entrées, excluding foods provided by the United States Department of Agriculture (USDA) Foods in Schools program, do not contain any of the following substances:

(i) Blue 1 (CAS 3844-45-9).

(ii) Blue 2 (CAS 860-22-0).

(iii) Green 3 (CAS 2353-45-9).

(iv) Red 40 (CAS 25956-17-6).

(v) Yellow 5 (CAS 1934-21-0).

(vi) Yellow 6 (CAS 2783-94-0).

(2) From the midnight before to 30 minutes after the end of the official schoolday, at each middle school or high school, a competitive entrée sold by the district food service department but not the day, or the day after, it is served on the federal National School Lunch Program or federal School Breakfast Program menu, or a competitive entrée sold by any other entity, shall meet the following standards:

(A) Not more than 35 percent of its total calories shall be from fat.

(B) Less than 10 percent of its calories shall be from saturated fat.

(C) Not more than 35 percent 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.

(G) Beginning December 31, 2027, federal National School Lunch Program and federal School Breakfast Program entrées and competitive entrées sold by any entity, excluding foods provided by the United States Department of Agriculture (USDA) Foods in Schools program, do not contain any of the following substances:

(i) Blue 1 (CAS 3844-45-9).

(ii) Blue 2 (CAS 860-22-0).

(iii) Green 3 (CAS 2353-45-9).

(iv) Red 40 (CAS 25956-17-6).

(v) Yellow 5 (CAS 1934-21-0).

(vi) Yellow 6 (CAS 2783-94-0).

(c) A middle school or high school may permit the sale of food items that do not comply with subdivision (a) or (b) in any of the following circumstances:

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

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

(d) It is the intent of the Legislature that the governing board of a school district annually review its compliance with the nutrition standards described in this section.

(e) Nothing in this section shall be construed to prohibit a school from selling to a pupil, after the pupil has been provided a school meal pursuant to Section 49501.5, the entrée from an additional nutritiously adequate meal that qualifies for federal reimbursement, from the same meal service.

SEC. 4. 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 either of the following:

(i) Caffeine, with the exception of trace amounts of naturally occurring caffeine substances.

(ii) Beginning December 31, 2027, any of the following substances:

(I) Blue 1 (CAS 3844-45-9).

(II) Blue 2 (CAS 860-22-0).

(III) Green 3 (CAS 2353-45-9).

(IV) Red 40 (CAS 25956-17-6).

(V) Yellow 5 (CAS 1934-21-0).

(VI) Yellow 6 (CAS 2783-94-0).

(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 five 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 five 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 either of the following:

(i) Caffeine, with the exception of trace amounts of naturally occurring caffeine substances.

(ii) Beginning December 31, 2027, any of the following substances:

(I) Blue 1 (CAS 3844-45-9).

(II) Blue 2 (CAS 860-22-0).

(III) Green 3 (CAS 2353-45-9).

(IV) Red 40 (CAS 25956-17-6).

(V) Yellow 5 (CAS 1934-21-0).

(VI) Yellow 6 (CAS 2783-94-0).

(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.

SEC. 5. Section 49501.5 of the Education Code, as amended by Section 58 of Chapter 38 of the Statutes of 2024, is amended to read:

49501.5. (a) Notwithstanding any other provision of this chapter, commencing with the 2022–23 school year all of the following shall apply:

(1) (A) (i) A school district, county superintendent of schools, or charter school maintaining kindergarten or any of grades 1 to 12, inclusive, shall make available a nutritionally adequate breakfast and a nutritionally adequate lunch free of charge and with adequate time to eat, as determined by that school district, county superintendent of schools, or charter school in consideration of the recommendations provided by the department pursuant to subdivision (e), during each schoolday to any pupil who requests a meal without consideration of the pupil's eligibility for a federally funded free or reduced-price meal, except as described in clauses (i) and (ii) of subparagraph (B), with a maximum of one free breakfast meal and one free lunch meal, except for family daycare homes that shall be reimbursed for 75 percent of the meals served. The meals made available under this paragraph shall be nutritionally adequate meals that qualify for federal reimbursement. Participating school districts, county superintendents of schools, and charter schools shall comply with federal regulations for the National School Lunch Program and School Breakfast Program, which includes established mealtimes and shall comply with state requirements for meals served.

(ii) Meals served that do not meet federal requirements shall not be eligible for federal or state meal reimbursement.

(iii) Meals served that do not meet state requirements shall not be eligible for state meal reimbursement.

(B) (i) The department shall submit a waiver request to the United States Department of Agriculture to allow for one meal provided during a schoolday lasting four hours or less to be served in a noncongregate manner.

(ii) If the department receives approval for the federal noncongregate waiver required by clause (i), school districts, county superintendents of schools, and charter schools may make available either a nutritionally adequate breakfast or a nutritionally adequate lunch in a noncongregate manner for meal service combinations resulting in either (I) a congregate nutritionally adequate breakfast and a noncongregate nutritionally adequate lunch or (II) a noncongregate nutritionally adequate breakfast and a congregate nutritionally adequate lunch. These meals shall be reimbursed under the provisions of paragraph (2) if both state and federal requirements are met.

(2) (A) The department shall provide state meal reimbursement to school districts, county offices of education, and charter schools that participate in, and comply with the requirements of, the federal School Breakfast Program and National School Lunch Program, and any applicable state laws and regulations. State meal reimbursement shall be provided for reduced-price and paid meals served to pupils, as described in subdivision (b).

(B) As a condition of receiving funding pursuant to this paragraph, school districts, county offices of education, and charter schools shall conduct direct certification matching through the California Longitudinal Pupil Achievement Data System on a monthly basis.

(b) The amount of per-meal reimbursements provided under this section shall not exceed the difference between the sum of the amounts calculated from meals claimed based on the free combined breakfast and lunch reimbursement rates established by the United States Department of Agriculture and state meal contribution established in Section 49559, and the combined federal and state amounts reimbursed for reduced-price and paid meals claimed.

(c) The reimbursement required pursuant to this section shall be provided upon appropriation by the Legislature. This section shall not be operative until the Legislature has appropriated funds for purposes of this section.

(d) (1) The department may adopt, and as necessary revise, guidelines in accordance with this section at a publicly noticed meeting if the department complies with all of the following:

(A) Provides an opportunity for public comment at the meeting.

(B) Provides written public notice of a meeting at least 30 days before the meeting at which the guideline to be adopted will be considered or approved.

(C) For a substantive revision of the guidelines, the department provides written notice of a meeting at least 15 days before the meeting at which the revision will be considered or approved.

(2) The adoption or revision of guidelines pursuant to this subdivision is exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code until July 1, 2023.

(e) The department shall review available evidence-based research, studies, and survey findings with school food authorities and school food workers, or their representatives, to make a recommendation for the amount of time that is adequate for a pupil to eat a school meal, including, but not limited to, the steps necessary to ensure that a pupil has adequate time to eat school meals that are served pursuant to this section and examining the role that breakfast in the classroom and other innovative breakfast models

can play in supporting adequate time to eat. These recommendations shall be made public on the department's internet website on or before June 30, 2025.

(f) Notwithstanding subdivision (a), a school district, county office of education, or charter school that offers independent study, pursuant to Article 5.5 (commencing with Section 51744) of Chapter 5 of Part 28, shall meet the requirements of this section for any pupil on any schoolday that the pupil is scheduled for educational activities, as defined in Section 49010, lasting two or more hours, at a schoolsite, resource center, meeting space, or other satellite facility. Pupils who are present during established meal times shall have a nutritionally adequate breakfast and nutritionally adequate lunch made available.

(g) The chartering authority shall, upon request by a charter school and to the extent feasible within existing resources, provide technical assistance to the charter school in implementing this section.

(h) A charter school may enter into a partnership with an existing school food authority for the purposes of implementing this section.

(i) The chartering authority shall, upon request by a new charter school, contract with a charter school to make available a nutritionally adequate school breakfast and a nutritionally adequate school lunch until the charter school is an approved school food authority or until July 1 of the school year after the charter school becomes operational, whichever occurs first. The contract shall not exceed the actual costs to provide meals to the charter school, including, but not limited to, additional staffing costs and delivery of meals to the schoolsite, that are not covered by federal or state meal reimbursement.

(j) To comply with subdivision (a), a school district, county office of education, or charter school may use funds made available through any federal or state program the purpose of which includes the provision of meals to a pupil, including the federal School Breakfast Program, the federal National School Lunch Program, the federal Summer Food Service Program, the federal Seamless Summer Option, or the state meal program, or may do so at the expense of the school district, county office of education, or charter school.

(k) For purposes of this section, the following definitions apply:

(1) "Nutritionally adequate breakfast" is one that qualifies for reimbursement under the most current meal pattern for the federal School Breakfast Program, as defined in Section 220.8 of Title 7 of the Code of Federal Regulations and, beginning December 31, 2027, excluding foods provided by the United States Department of Agriculture (USDA) Foods in Schools program, does not contain any of the following substances:

(A) Blue 1 (CAS 3844-45-9).

(B) Blue 2 (CAS 860-22-0).

(C) Green 3 (CAS 2353-45-9).

(D) Red 40 (CAS 25956-17-6).

(E) Yellow 5 (CAS 1934-21-0).

(F) Yellow 6 (CAS 2783-94-0).

(2) "Nutritionally adequate lunch" is one that qualifies for reimbursement under the most current meal pattern for the federal National School Lunch Program, as defined in Section 210.10 of Title 7 of the Code of Federal Regulations and, beginning December 31, 2027, excluding foods provided by the United States Department of Agriculture (USDA) Foods in Schools program, does not contain any of the following substances:

(A) Blue 1 (CAS 3844-45-9).

(B) Blue 2 (CAS 860-22-0).

(C) Green 3 (CAS 2353-45-9).

(D) Red 40 (CAS 25956-17-6).

(E) Yellow 5 (CAS 1934-21-0).

(F) Yellow 6 (CAS 2783-94-0).

(3) "Schoolday" means any day that pupils in kindergarten or any of grades 1 to 12, inclusive, are present at a schoolsite or school facility for purposes of instruction or educational activities, as defined in Section 49010, including, but not limited to, pupil attendance at minimum days, state-funded preschool, transitional kindergarten, summer school including incoming

kindergarten pupils, extended school year days, school-sponsored field trips, independent study when a pupil is onsite during the schoolday, and Saturday school sessions.

SEC. 6. Section 49531 of the Education Code is amended to read:

49531. (a) A school district, county superintendent of schools, or charter school may apply to the department for all available federal and state funds that they are eligible for so that a nutritionally adequate breakfast and lunch may be made available to pupils each schoolday at each schoolsite or school facility where pupils are present during the schoolday and to children receiving child development services. A school district, county superintendent of schools, or charter school that receives state funds pursuant to this article shall make available breakfasts and lunches in accordance with state and federal guidelines. If an entity's school meal service is not in compliance with state and federal guidelines or regulations, or both, including noncompliance determined during administrative reviews, procurement reviews, or complaint investigations conducted by the department, the entity shall be ineligible for state meal reimbursement.

(b) (1) A nutritionally adequate breakfast, for the purposes of this article, is one that qualifies for reimbursement under the most current meal pattern for the federal School Breakfast Program, as defined in Section 220.8 of Title 7 of the Code of Federal Regulations and paragraph (2). A nutritionally adequate lunch for purposes of this article is one that qualifies for reimbursement under the most current meal pattern for the federal National School Lunch Program, as defined in Section 210.10 of Title 7 of the Code of Federal Regulations and paragraph (2).

(2) A nutritionally adequate breakfast or lunch shall not consist of more added sugar than the amount allowed by the federal School Breakfast Program and the federal National School Lunch Program, respectively.

(3) Beginning December 31, 2027, a nutritionally adequate breakfast or lunch, excluding foods provided by the United States Department of Agriculture (USDA) Foods in Schools program, shall not contain any of the following substances:

(A) Blue 1 (CAS 3844-45-9).

(B) Blue 2 (CAS 860-22-0).

(C) Green 3 (CAS 2353-45-9).

(D) Red 40 (CAS 25956-17-6).

(E) Yellow 5 (CAS 1934-21-0).

(F) Yellow 6 (CAS 2783-94-0).

(c) (1) If the federal School Breakfast Program and federal National School Lunch Program allow more added sugar or sodium than is recommended by the most recent Dietary Guidelines for Americans, established by the United States Department of Agriculture and the United States Department of Health and Human Services, the State Department of Education shall convene representatives from the California School Nutrition Association and cafeteria workers, or their representatives, to work in partnership to provide the following:

(A) Maximum daily added sugar intake recommendations for each grade level commensurate with the American Academy of Pediatrics' standards for children two years of age or older.

(B) Maximum daily added sodium intake recommendations for each grade level commensurate with recommendations for children and adolescents in the Dietary Guidelines for Americans.

(2) Recommendations pursuant to this subdivision shall encourage the prioritization of foods with higher nutritional density when there is added sugar or sodium in the food.

(d) State reimbursement for meals provided pursuant to this article shall be limited to meals made available to pupils pursuant to Section 49501.5.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.