

HOUSE No. 4438

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act relative to school nutrition..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 6 of the General Laws is hereby amended by adding at the end
2 thereof, the following new section:

3 Section 214. There is hereby established the Governor’s Commission on Childhood
4 Obesity which shall be responsible for developing, maintaining and coordinated a statewide plan
5 to reduce childhood obesity through promotion of evidence-based programs to provide proper
6 nutrition and exercise for the children of the Commonwealth. Said commission shall make a
7 comprehensive review of current evidence-based research and programs that promote proper
8 nutrition for children at each stage of development as well as appropriate levels of physical
9 education and activity for all children, and shall annually assess the progress in the state toward
10 reducing childhood obesity and report to the Governor and the general public. Said programs
11 shall, insofar as possible, involve parents and families to ensure that the effort to reduce
12 childhood obesity is not limited to time in school.

13 The commission shall be co-chaired by the commissioners of the departments of public
14 health, education, and early education and care, or their designees; and shall include: the

15 commissioner of mental health or his designee; the commissioner of medical assistance, or his
16 designee; the commissioner of agricultural resources, or his designee; the commissioner of
17 transitional assistance, or his designee, the commissioner of insurance, or his designee; the chair
18 of the statewide student advisory council, or a designee; and five additional members appointed
19 by the Governor; one of whom shall be an expert in childhood nutrition, one of whom shall be an
20 expert in exercise and fitness, and one of whom shall be an expert in eating disorders. Said
21 commission members shall serve without financial compensation.

22 In developing and evaluating said statewide plan to reduce childhood obesity, the
23 commission shall consider such concepts as:

24 a) Requiring health insurance programs supported in whole or in part with public funds,
25 to include coverage for nutrition counseling, weight loss clinics, wellness programs, and other
26 programs that promote proper nutrition and exercise;

27 b) Requiring private health insurers, by establishing mandated insurance benefits, to
28 cover nutrition counseling, weight loss clinics, wellness programs, and other programs that
29 promote proper nutrition and exercise;

30 c) Developing and implementing a method for evaluating annual progress toward the
31 goals of the statewide plan;

32 d) Making recommendations to the Governor and General Court relative to the revision
33 of school nutrition standards in coordination with ongoing efforts pursuant to section (e) of
34 section 92 of chapter 71.

35 SECTION 2. Chapter 15 of the General Laws is hereby amended by inserting after
36 section 1E the following section:—

37 Section 1E½ (a) The department of public health, in consultation with the department of
38 education, shall establish, and periodically review, regulations and guidelines for the training of
39 all elementary, middle, and high school nurses in behavioral health and appropriate treatment
40 and resources for eating disorders; recognition, treatment and resources for children at risk for
41 and diagnosed with type 2 diabetes; regulations and guidelines for professional development and
42 training of school nurses and aid staff to gain the most up-to-date knowledge on eating disorder
43 and type 2 diabetes treatment and identification; and guidelines to establish a referral program
44 where medical resources in the community shall collaborate with schools to identify children in
45 need of services and provide these resources through in-school, outpatient and inpatient settings,
46 where appropriate.

47 SECTION 3. Section 1D of chapter 69 of the General Laws, as appearing in the 2006
48 Official Edition, is hereby amended by striking out the ninth sentence and inserting in place
49 thereof the following 2 sentences:- The standards shall provide for instruction in the issues of
50 nutrition and exercise. The standards may provide for instruction in the issues of physical
51 education, AIDS education, violence prevention, and drug, alcohol, and tobacco abuse
52 prevention.

53 SECTION 4. Section 1I of said Chapter 69 is hereby amended by adding the following
54 subparagraph after the words “global education”: (l). nutrition and wellness programs.

55 SECTION 5. Chapter 71 of the General Laws is hereby amended by adding at the end
56 thereof the following section:—

57 Section 92. (a) The following words, as used in this section, shall have the following
58 meanings, unless the context clearly requires otherwise:—

59 “Competitive foods or beverages”, all foods or beverages sold or provided in à la carte
60 lines in school cafeterias, school stores, school snack bars or vending machines or any other
61 locations in public schools but not including foods sold as part of the National School Lunch
62 Program and School Breakfast and Child Care and Adult Programs.

63 “Elementary school”, a public school that maintains any grade from pre-kindergarten to
64 grade 6, inclusive, but no grade higher than grade 8.

65 “High school”, a public school maintaining any of grades 9 to 12, inclusive.

66 “Middle school”, a public school that maintains any of grades 5 or 6 to 9, inclusive, but
67 no grade higher than grade 9.

68 “Public school”, an elementary, middle, high school or charter school as defined in this
69 chapter.

70 “Leading Nutritional Standards”, the Institute of Medicine April 2007 report, Nutrition
71 Standards for Foods in Schools: Leading the Way toward Healthier Youth.

72 (b) The department of public health in consultation with the department of education
73 shall establish guidelines for the phase-in and implementation of nutrition standards for
74 competitive foods and beverages sold or provided in public schools. In establishing these
75 guidelines, the department of public health in consultation with the department of education shall
76 consider such factors as: (1) adequate phase-in time for public schools to implement new
77 nutritional standards; (2) the times of the school day during which the guidelines shall apply; (3)

78 additional training in nutrition and diet available for school food service directors; (4) the current
79 capacity, resources, and equipment available in public school kitchens to prepare recommended
80 foods; (5) adequate amounts of time for school lunch periods; provided that the departments shall
81 create reasonable exceptions from said standards and guidelines for competitive foods or
82 beverages sold before or after the end of the school day, during school-sponsored fundraisers and
83 events, and at booster sales, concession stands and other activities at school-related events.

84 (c) The department of public health shall develop nutritional guidelines and standards for
85 the sale or provision of competitive foods or beverages in Massachusetts public schools within
86 the requirements of this section, provided that competitive foods or beverages sold or provided in
87 public schools shall be limited to foods or beverages that comply with the leading nutritional
88 standards and other regulations promulgated by the department. Such competitive foods and
89 beverages may include: (1) foods that are (i) non-fried fruits or non-fried vegetables; (ii) whole
90 grains, and related combination products; (iii) nonfat and low-fat dairy products; and (2)
91 beverages that are (i) water without additives or carbonation; (ii) 100 per cent fruit juice; (iii)
92 nonfat or low-fat dairy drinks.

93 (d) Competitive food items not prepackaged with nutritional information by the
94 distributor that are not fresh fruit or fresh vegetables shall be required to have nutritional
95 information (calories, percentage of calories from fat, percentage of calories from saturated fat,
96 cholesterol, protein, carbohydrate, fiber, calcium, iron, vitamin A and vitamin C) available to
97 students, either on a display case, in a binder or within information packets held by food service
98 staff for requests by students.

99 (e) The department of public health in consultation with the department of education shall
100 conduct a review of the implementation of this section and the appropriateness of maintaining
101 the standards recommended by the leading nutritional standards within 5 years of the effective
102 date of this section. Upon review of said standards, the department of public health shall use the
103 most updated recommendations made by authoritative scientific and public health organizations
104 concerning appropriate nutritional standards for foods sold outside of reimbursable meal
105 programs in schools as well as the United States department of health and human services' and
106 the United States department of agriculture's most current dietary guidelines for healthy
107 Americans. Included in its review, the department shall consider: (1) the proportion of public
108 schools that have successfully implemented the standards and guidelines for competitive foods
109 and beverages; (2) challenges or barriers experienced by public schools upon implementation of
110 the competitive foods and beverages standards; (3) changes in revenue received from the sale of
111 federally reimbursable school meals; (4) changes in total revenue (federal reimbursable meals
112 and competitive sales combined) lost or gained after implementation of the standards for
113 competitive foods and beverages; (5) notable changes in students participation in the federal
114 reimbursable meals programs; (6) recommendations for improvement of said standards and
115 guidelines.

116 (f) Public schools shall offer for sale fresh fruit and non-fried vegetables at any location
117 where food is sold.

118 (g) Public schools shall make available plain, potable water to all public school students
119 during the school day at no cost.

120 (h) The department of public health in consultation with the department of education
121 shall establish guidelines for the phase-out of fryolators in all public schools in the
122 commonwealth within five years from the effective date of this act. These guidelines shall
123 include, but need not be limited to (1) a timeline for the removal of all fryolators from public
124 schools; (2) a list of alternative products to replace those prepared in fryolators; (3) mechanisms
125 for monitoring and enforcing the removal of fryolators from all public schools in the
126 commonwealth.

127 (i) The department of education shall require implementation of competitive food and
128 beverage standards in public schools in accordance with this section and shall be responsible for
129 enforcing said standards.

130 SECTION 6. Section 92 of Chapter 71 of the General Laws is hereby amended by
131 striking the definition “Leading Nutrition Standards” and inserting in place thereof the
132 definition:—

133 “Leading Nutrition Standards””, the Institute of Medicine April 2007 report, Nutrition
134 Standards for Foods in Schools: Leading the Way toward Healthier Youth and other
135 recommendations made pursuant to subsection (e) of section 92 of chapter 71.

136 SECTION 7. Chapter 111 of the General Laws is hereby amended by adding the
137 following section:—

138 Section 222. The department of public health in consultation with the department of
139 education shall review and analyze the trend in reported cases of obesity and eating disorders in
140 students. Such review shall include but not be limited to:

141 (a) development and promulgation of data collection and reporting regulations and
142 guidelines associated with the implementation of this section;

143 (b) evaluation of the trends of reported cases of obesity and eating disorders across the
144 Commonwealth;

145 (c) study of the access to quality health care and whether students are receiving
146 appropriate and adequate care in the treatment of their obesity or eating disorder.

147 Said information shall be reported to the governor's commission on childhood obesity
148 established pursuant to section 6 of this act.

149 SECTION 8. (a) Notwithstanding any general or special law to the contrary, the
150 department of agricultural resources in consultation with the department of education shall make
151 an investigation into the feasibility of developing and establishing a farm-to-school program to
152 facilitate and promote the purchase of Massachusetts' farm products by schools, universities and
153 other educational institutions in the commonwealth. The investigation shall include: (1) the
154 development of a farm-to-school program that facilitates the acquisition of Massachusetts' farm
155 products by schools, universities and educational institutions; (2) the development of
156 procurement channels to more efficiently access Massachusetts' farm products; (3) an analysis of
157 the capacity of schools to appropriately store, process, prepare, and serve farm products in
158 schools, labor costs required to support the program; and (4) the manner in which such a
159 program may include 1 or more activities that promote a comprehensive approach to nutrition
160 and wellness, including, but not limited to school garden programs, cooking demonstrations and
161 food samplings, and farm tours.

162 (b) The department of agricultural resources in collaboration with the department of
163 education shall collect data including, but not limited to: (1) school districts and other
164 educational institutions interested in purchasing Massachusetts' farm products; (2) the type and
165 amount of such products schools wish to purchase; (3) the name of the appropriate contact
166 person from the interested school district; (4) farm organizations and businesses that market
167 Massachusetts' farm products; and (5) the availability of Massachusetts' farm products,
168 including but not limited to, the types and amount of products, the names and contact
169 information of farmers, and farm organizations and businesses marketing such products.

170 (c) Based upon the data collected from the investigation, the department of agriculture in
171 collaboration with the department of education shall develop a mechanism and process by which
172 schools interested in purchasing Massachusetts' farm products may notify farms; provided that
173 such a process ensures fair opportunities for all farms interested in selling products to schools;
174 and provided that fair negotiation and pricing processes are established for purchasing and
175 selling of Massachusetts' farm products to schools.

176 (d) A report shall be made to the speaker of the house of representatives, the president of
177 the senate, the governor, the house and senate chairs of the joint committee on health care
178 financing, the house and senate chairs of the joint committee on public health, and the house and
179 senate chairs of the joint committee on environment, natural resources and agriculture that details
180 the results of the investigation and study and provides recommendations, together with drafts of
181 legislation necessary to carry recommendations into effect, not less than 1 year after the effective
182 date of this section.

183 SECTION 9. Notwithstanding the provisions of any other general or special law to the
184 contrary, the department of education shall evaluate the success of the chef's pilot program in the
185 Boston Public Schools and identify other schools in the commonwealth where such a program
186 could be implemented including, but not limited to a proposed budget for implementing a similar
187 program in such additional schools.

188 SECTION 10. The department of public health shall report the findings of the review
189 made pursuant to paragraph (e) of section 92 of chapter 71 to the speaker of the house of
190 representatives, the president of the senate, the house and senate chairs of the joint committee on
191 health care financing and the house and senate chairs of the joint committee on public health on
192 or before September 1, 2014.

193 SECTION 11. The departments of public health and education shall promulgate rules
194 and regulations to carry out the provisions of section 92 of chapter 71 within 90 days of its
195 implementation, provided that these regulations shall become effective for the fiscal year
196 following final approval of said regulations, provided, however, that not less than twelve months
197 shall have elapsed between final approval of the regulations and the date of implementation in
198 order to provide sufficient time to implement the regulations.

199 SECTION 12. Section 6 shall take effect five years after the implementation of this act.