

HOUSE No. 2005

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to expanding access to healthy food choices in vending machines on state property.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|-------------------------------|--------------------------------|-------------------|
| <i>Stephen Kulik</i> | <i>1st Franklin</i> | <i>1/15/2015</i> |
| <i>Louis L. Kafka</i> | <i>8th Norfolk</i> | <i>10/10/2019</i> |
| <i>Paul McMurtry</i> | <i>11th Norfolk</i> | <i>10/10/2019</i> |
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | <i>10/10/2019</i> |
| <i>Ruth B. Balsler</i> | <i>12th Middlesex</i> | <i>10/10/2019</i> |
| <i>Angelo J. Puppolo, Jr.</i> | <i>12th Hampden</i> | <i>10/10/2019</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>10/10/2019</i> |
| <i>Elizabeth A. Poirier</i> | <i>14th Bristol</i> | <i>10/10/2019</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>10/10/2019</i> |
| <i>Denise C. Garlick</i> | <i>13th Norfolk</i> | <i>10/10/2019</i> |
| <i>Frank I. Smizik</i> | <i>15th Norfolk</i> | <i>10/10/2019</i> |
| <i>Marcos A. Devers</i> | <i>16th Essex</i> | <i>10/10/2019</i> |
| <i>Jonathan Hecht</i> | <i>29th Middlesex</i> | <i>10/10/2019</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> | <i>10/10/2019</i> |
| <i>Alice Hanlon Peisch</i> | <i>14th Norfolk</i> | <i>10/10/2019</i> |
| <i>David M. Rogers</i> | <i>24th Middlesex</i> | <i>10/10/2019</i> |

HOUSE No. 2005

By Mr. Kulik of Worthington, a petition (accompanied by bill, House, No. 2005) of Stephen Kulik and others relative to expanding access to healthy food choices in vending machines on state property. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 4351 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to expanding access to healthy food choices in vending machines on state property.

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. Section 133A of chapter 6 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by striking out, in lines 17 to 18, the words “no later than
3 December thirty-first, nineteen hundred and eighty-three” and inserting in place thereof the
4 following words:- annually, on or before December thirty-first.

5 SECTION 2. Chapter 111 of the General Laws is hereby amended by adding the
6 following section: - Section 230. (a) As used in this section, the following words shall, unless the
7 context clearly indicates otherwise, have the following meanings:-

8 “Government property”, all property owned or managed by the commonwealth including
9 government office buildings, road-side rest stops, state parks and recreation centers, state
10 colleges and universities and state-supported hospitals.

11 “Habitual violations”, instances in which a vendor or non-RSA vendor violates this
12 section or more times within a 6 month period.

13 “Non RSA-vendor”, any person who by contract, agreement or ownership is responsible
14 for furnishing, installing, servicing, operating or maintaining a vending machine or vending
15 facility who is not licensed by the commission for the blind to operate such machine or facility.

16 “Nutritional standards”, the standards promulgated by the department in accordance with
17 subsections (b) and (c), which shall be in effect 24 hours per day.

18 “Vending facility”, snack bars, cart service, shelters, counters, and such other auxiliary
19 equipment necessary for the sale of newspapers, periodicals, confections, tobacco products,
20 foods, beverages, and other articles or services dispensed automatically or manually and
21 prepared on or off the premises in accordance with all applicable health laws, and including the
22 vending or exchange of chances for any lottery authorized by law, and conducted by any agency
23 of the commonwealth.

24 “Vending machine”, any self-service device offered for public use which, upon insertion
25 of a coin, coins, token, paper currency, or by any other means, dispenses servings of food or
26 beverage, either in bulk or in package.

27 “Vendor”, a blind person licensed by the commission for the blind to operate a vending
28 facility under the terms of the Randolph-Shepard Act, Public Law 74-732, as amended from time
29 to time.

30 (b) All foods or beverages sold through vending machines located in government
31 buildings or on property owned or managed by the commonwealth shall be limited to food and
32 beverage items that comply with the following nutritional standards:

33 (1) 100 per cent of beverage items shall be 1 or a combination of the following:

34 (a) water, including carbonated water; provided that such beverages shall not contain
35 added caloric sweeteners;

36 (b) coffee or tea; provided that such beverages shall not contain added caloric sweeteners;
37 provided further that condiments for such beverages may be provided, including sugar, sugar
38 substitutes and milk or creamer products, such as whole or two-per cent milk; provided further
39 that any condiments provided must have less fat than cream;

40 (c) fat-free or 1 per cent low-fat dairy milk

41 (d) calcium- and vitamin-D-fortified soymilk with less than 200 calories per container

42 (e) 100 per cent fruit juice or fruit juice combined with water or carbonated water;
43 provided that such beverages are limited to a container that holds 12 fluid ounces or less;
44 provided further that such beverages do not contain added caloric sweeteners;

45 (f) 100 per cent vegetable juice; provided that such beverages are limited to a container
46 that holds 12 fluid ounces or less, contain 200 milligrams of sodium or less per container;
47 provided further that such beverages do not contain added caloric sweeteners; and

48 (g) low-calorie beverages that contain 40 calories or less per container.

49 (2) 100 per cent of snack-type food items shall meet all of the following criteria and
50 contain:

51 (a) no more than 200 calories per item as offered, per package;

52 (b) no more than 35 per cent of calories from fat; provided that packages that contain 100
53 per cent nuts or seeds may contain more than 35 per cent of calories from fat;

54 (c) no more than 10 per cent of calories from saturated fat; provided that packages that
55 contain 100 per cent nuts or seeds may contain more than 10 per cent of calories from saturated
56 fat;

57 (d) 0 grams of trans fat;

58 (e) no more than 35 per cent of calories from total sugars and a maximum of 10 grams of
59 total sugars per package; provided, that fruits and vegetables that do not contain added
60 sweeteners or fats may contain more than 35 per cent of calories from total sugars and 10 grams
61 of total sugars per package; provided further that yogurt may contain up to 30 grams of total
62 sugars per 8-ounce container, adjusted proportionally for smaller containers;

63 (f) no more than 200 milligrams of sodium per item as offered, per package; and

64 (g) at least 1 of the following: (i) a quarter cup of fruit, non-fried vegetable, or fat-free or
65 low-fat dairy; (ii) 1 ounce of nuts or seeds or 1 tablespoon of nut butter; (iii) grain ingredients
66 consisting of at least 50 per cent whole grain as determined by the product manufacturer listing
67 whole grain as the first ingredient or making a whole grain claim; or (iv) at least 10 per cent of

68 the daily value of a naturally occurring nutrient of public health concern: calcium, potassium,
69 vitamin D or fiber.

70 (h) sugarless chewing gum can be sold without having to meet the above nutrition
71 standards.

72 (3) 100 per cent of entrée-type food items such as sandwiches shall meet all of the
73 following criteria and contain:

74 (a) no more than 400 calories per item as offered, per package;

75 (b) no more than 35 per cent of calories from fat;

76 (c) no more than 10 per cent of calories from saturated fat;

77 (d) zero grams trans fat;

78 (e) no more than 35 per cent of calories from total sugars and no more than 15 grams of
79 total sugars per package;

80 (f) no more than 480 milligrams of sodium per package; and

81 (g) at least 2 of the following: (i) a quarter cup of fruit, non-fried vegetable, or fat-free or
82 low-fat dairy; (ii) 1 ounce of nuts or seeds or 1 tablespoon of nut butter; (iii) grain ingredients
83 consisting of at least 50 per cent whole grain as determined by the product manufacturer listing
84 whole grain as the first ingredient or making a whole grain claim; or (iv) at least 10 per cent of
85 the daily value of a naturally occurring nutrient of public health concern: calcium, potassium,
86 vitamin D or fiber.

87 (c) For each article of food sold from a vending machine that does not permit a purchaser
88 to examine the Nutrition Facts Panel, as provided for in federal law before purchasing the article,
89 or does not otherwise provide visible nutrition information at the point of purchase, a vendor or
90 non-RSA vendor shall provide a sign in close proximity to each article of food or the selection
91 button that includes a clear and conspicuous statement disclosing the number of calories
92 contained in the article. This subsection requires that calorie information is posted for each food
93 item, as packaged. Vendors and non-RSA vendors shall also align product labeling in conformity
94 with federal law, as amended from time to time for vending machines.

95 (d) (1) Until such time as either a non-RSA vendor or a vendor meets the requirements of
96 clause (v) of paragraphs (3) and (4), a vending machine for beverages shall comply with the
97 following product placement: (i) water, including carbonated water without added caloric
98 sweetener, shall be stocked in at least 2 slots or selection buttons per machine and shall be placed
99 at eye level, in the highest selling position or promoted on the most prominent selection button;
100 and (ii) beverages with added caloric sweeteners shall be placed farthest from eye level, or in the
101 lowest selling position.

102 (2) Until such time as either a non-RSA vendor or a vendor meets the requirements of
103 paragraphs (3) and (4), a vending machine for foods shall comply with the following product
104 placement: (1) fruit, nuts, seeds or whole grain as a first ingredient food shall be placed at eye
105 level, in the highest selling position or in the most prominent selection button; and (2) foods not
106 meeting the nutritional standard in paragraph (2) of subsection (b) shall be placed farthest from
107 eye level, or in the lowest selling position.

108 (3) A non-RSA vendor may meet the requirements in subsection (b) by: (i) offering 20
109 per cent of the food or beverages in a vending machine that meet nutritional standards by January
110 1, 2017; (ii) offering 40 per cent of the food or beverages required to meet nutritional standards
111 by January 1, 2018; (iii) offering 60 per cent of the food or beverages required to meet nutritional
112 standards by January 1, 2019; (iv) offering 80 per cent of the food or beverages required to meet
113 nutritional standards by January 1, 2020; and (v) offering 100 per cent of the food or beverages
114 required to meet accepted nutritional standards by January 1, 2021 and thereafter.

115 (4) A vendor licensed by the state licensing agency pursuant to sections 133A to 133F,
116 inclusive, of chapter 6 may meet the requirements in subsection (b) by: (i) offering 10 per cent of
117 the food or beverages in a vending machine that meet nutritional standards by January 1, 2017;
118 (ii) offering 30 per cent of the food or beverages required to meet nutritional standards by
119 January 1, 2018; (iii) offering 50 per cent of the food or beverages required to meet nutritional
120 standards by January 1, 2019; (iv) offering 70 per cent of the food or beverages required to meet
121 nutritional standards by January 1, 2020; and (v) offering 100 per cent of the food or beverages
122 required to meet accepted nutritional standards by January 1, 2022 and thereafter.

123 (d) Five years after enactment of this act and every 5 years thereafter, the department
124 shall review, and if necessary, revise and update the nutritional standards set forth subsections
125 (b) and (c) to reflect advancements in nutrition science, dietary data, and new product
126 availability.

127 (e) To assist in the implementation of the nutritional standards set forth in this section, the
128 department shall designate an appropriate position within the department to disseminate
129 information and train staff on the nutritional standards to ensure compliance. The designated

130 position shall monitor compliance and report back to the department every year on the status of
131 implementation. The annual report shall include: an assessment of compliance with the
132 nutritional standards; a list of successes, challenges, and barriers experienced in implementation;
133 and recommendations for improvement of the nutritional standards and compliance.

134 (g) The department shall take the following actions:

135 (1) contact current vendors and non-RSA vendors and request that they transition to food
136 and beverage items that comply with the nutritional standards within 6 months of enactment;

137 (2) require future procurement or vending contracts to include a provision stipulating that
138 all food and beverage items will meet the nutritional standards; and

139 (3) make the final decision as to whether products to be vended meet the nutritional
140 standards.

141 (4) Any vendor or non-RSA vendor who is found to be in noncompliance shall be subject
142 to termination of contract within any state facility or on state property.

143 (i) Nothing in this section shall be construed to require a state agency, institute, property,
144 administrator, or manager to place vending machines on government property.