

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON EDUCATION  
Al Muratsuchi, Chair  
AB 95 (Hoover) – As Amended April 17, 2023

**SUBJECT:** Pupil nutrition: pupil meals

**SUMMARY:** Authorizes a school to sell the entrée portion from a federally reimbursable school meal to a pupil, after the pupil receives a federally reimbursable school meal. Specifically, **this bill:**

- 1) States that nothing shall be construed to prohibit an elementary school, middle school or high school from selling to a pupil, after the pupil has been provided a school meal, the entrée from an additional nutritiously adequate meal that qualifies for federal reimbursement, from the same meal service.

**EXISTING LAW:**

- 1) Provides that, from one-half hour before the start of the schoolday to one-half hour after the schoolday, the only food that may be sold to students as competitive foods include individually-sold dairy or whole grain foods, and individually-sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, vegetables that have not been deep fried, and legumes. (Education Code (EC) 49431)
- 2) Requires the *food* described above, if sold outside of a USDA meal program at an *elementary school*, to meet all of the following standards:
  - a) Not more than 35% of its total calories shall be from fat. Exempt from this standard are individually sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, vegetables that have not been deep fried, or legumes;
  - b) Not more than 10% of its total calories shall be from saturated fat. Exempt from these standards are eggs or cheese packaged for individual sale;
  - c) Not more than 35% of its total weight shall be composed of sugar, including naturally occurring and added sugar. Exempt from this standard are fruit or vegetables that have not been deep fried; and
  - d) Not more than 200 calories per individual food item. (EC 49431)
- 3) Requires, 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 to meet the following standards:
  - a) Contains not more than 400 calories per entrée item;
  - b) Not more than 35% of its total calories shall be from fat;

- c) Contains less than 0.5 grams of trans fat per serving; and
  - d) Is offered in the same or smaller portion sizes as in the federal National School Lunch Program or federal School Breakfast Program. (EC 49431.2)
- 4) Provides that, from one-half hour before the start of the schoolday to one-half hour after the schoolday at an *elementary or middle school*, only the following *beverages* may be sold:
- a) Fruit-based drinks that are composed of no less than 50% fruit juice and have no added sweetener;
  - b) Vegetable-based drinks that are composed of no less than 50% vegetable juice and have no added sweetener;
  - c) Plain water or plain carbonated water; and
  - d) 1%-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk. (EC 49431.5)
- 5) Provides that, from one-half hour before the start of the schoolday to one-half hour after the schoolday, at a *high school*, only the following *beverages* may be sold:
- a) Fruit-based drinks that are composed of no less than 50% fruit juice and have no added sweetener;
  - b) Vegetable-based drinks that are composed of no less than 50% vegetable juice and have no added sweetener;
  - c) Plain water or plain carbonated water;
  - d) One-percent-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk;
  - 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; and
  - 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. (EC 49431.5)

- 6) Prohibits a school or school district from selling food containing artificial trans fat to K-12 students, from one-half hour before the start of the schoolday to one-half hour after the schoolday. (EC 49431.7)
- 7) Requires, by July 1, 2023, the California Department of Education (CDE), in consultation with the State Department of Social Services (DSS), to develop guidance for local educational agencies (LEAs) that maintain kindergarten or any of grades 1 to 6, inclusive, on how to serve eligible nonschoolaged children breakfast or a morning snack at a LEA schoolsite. (EC 49495)
- 8) Requires, commencing with the 2022–23 school year all of the following:
  - a) A school district or county superintendent of schools maintaining kindergarten or any of grades 1 to 12, inclusive, to provide two school meals 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, with a maximum of one free meal for each meal service period, except when it requires family daycare homes to be reimbursed for 75% of the meals served. Requires the meals provided to be nutritiously adequate meals that qualify for federal reimbursement;
  - b) A charter school to provide two school meals 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, with a maximum of one free meal for each meal service period. The meals provided under this paragraph shall be nutritiously adequate meals that qualify for federal reimbursement; and
  - c) An LEA that has a reimbursable school breakfast program to not charge any pupil enrolled in transitional kindergarten, kindergarten, or any of grades 1 to 12, inclusive, any amount for any breakfast served to that pupil through the program, and to provide a breakfast free of charge to any pupil who requests one, without consideration of the pupil's eligibility for a federally funded free or reduced-price meal. The meals provided free of charge pursuant to this paragraph shall be nutritiously adequate, and shall count toward the total of two school meals required to be provided each schoolday. (EC 49501.5)
- 9) Requires each school district, or county superintendent of schools maintaining any kindergarten or any of grades 1 to 12, inclusive, to provide for each needy pupil one nutritionally adequate free or reduced-price meal during each schoolday. (EC 49550)
- 10) Requires a charter school to provide each needy pupil with one nutritionally adequate free or reduced-price meal during each schoolday. Requires a charter school that offers nonclassroom-based instruction to meet the requirements for any eligible pupil on any schoolday that the pupil is scheduled for educational activities lasting two or more hours at a schoolsite, resource center, meeting space, or other satellite facility operated by the charter school. (EC 47613.5)
- 11) Designates the CDE as the state agency responsible for managing and administering the Summer Food Service Program (SFSP). (42 U.S.C. Sec. 1761, EC 49547.5)

- 12) Prohibits a public school district or COE from denying a meal to any free or reduced-price eligible pupils, and requires that these pupils receive the same meal as all other pupils. (EC 49550 and 49557)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

***Need for the bill.*** According to the author, “Students are exposed to a broad range of foods and beverages through reimbursable school meals, à la carte lines, vending machines, school stores, classroom parties, fundraisers, and other school events. From three square meals a day to multiple snacks, kids need a lot of food and fuel to keep up with their activity levels and help them grow. AB 95 builds upon California’s Universal Meals program where schools can play a critical role of helping parents provide a substantial second entrée option to students during breakfast and lunch time.”

***What does this bill do?*** This bill authorizes a school to sell a second entrée to a student at breakfast or lunch, after the pupil receives their reimbursable meal as part of the national school breakfast program or school lunch program. Elementary schools are authorized to sell competitive foods with less than 200 calories, while middle and high schools are authorized to sell competitive entrees with less than 400 calories. This bill will authorize the sale of a second entrée, regardless of the calorie restriction, so long as the entrée that is sold was served during that schoolday.

***What are competitive foods?*** Competitive food and beverages are those items that are sold to students alongside the federally reimbursable school meal. For example, on the lunch line, a school can serve the federally reimbursable school meal and at the same time sell other snacks and beverages. These food sales are called competitive foods and beverages, because they compete with the sales of the federally reimbursable school meal. In California, all students receive a free federally reimbursable school meal for breakfast and lunch, however, a school may still sell competitive foods at the same time as serving breakfast and lunch. Competitive foods must meet specified statutory nutrition guidelines in order to be sold to students during the schoolday. There are different nutrition guidelines for competitive foods and beverages sold to students at elementary schools compared to the middle and high schools.

***What types of entrees meet the current calorie restrictions to be sold as competitive foods?*** The list of entrees below demonstrate that some offerings already meet the calorie restrictions for elementary, middle and high school offerings, while others do not. Within one meal period a school might offer several entrees, however, only some of the entrees can be sold to students, while others cannot. For example, a student can buy a second grilled cheese sandwich but not a second veggie burger. If the entree item meets the requirements to be a reimbursable meal for that schoolday, this bill would allow that entree to be sold as a second entrée that schoolday. Below are examples of typical entrée offerings and their respective calorie information.

Item	Calories	% Calories from Fat
Chicken Sandwich	400	33.75%
Grilled Cheese Sandwich	280	32.14%
Chicken Nuggets with Tater Tots	370	48.65%
Mini Cheeseburgers	320	25.31%
Orange Chicken with Fried Rice	365	19.73%
Edamame with Fried Rice	304	22.80%
Chicken Wings with Noodles	466	50.21%
Chicken Tikka with Naan Bread	287	29.16%
Spaghetti with Sauce and Cheese	380	21.32%
Cheese Pizza Slice	290	27.93%
Pepperoni Pizza Slice	309	29.13%
Veggie Burger with Cheese	414	36.30%

(Source: California School Nutrition Association)

**How much would a competitive entrée cost?** When schools price competitive foods, such as selling a second entrée, they consider the cost of the food item, the labor to prepare it, and the cost of the packaging. Often, schools consider these factors and then round to the nearest quarter for cash handling ease. The price of a second can differ significantly based on these factors. Some choose to price entrees all the same price for less confusion. For example, if a school were selling a bean burrito, a corn dog, and a hamburger as a second entrée, they may price them all at \$4.00 each.

**What does research say about competitive foods?** According to the 2007 report from the Institute of Medicine, *Nutrition Standards for Foods in Schools: Leading the Way Toward Healthier Youth*:

“Most U.S. children consume at least one snack per day, consuming nearly one quarter of their dietary energy intake as snacks. Energy intake should be commensurate with energy expenditure in order to achieve energy balance and avoid overweight and obesity. Unhealthy weight gain may develop over time from a relatively small daily excess of calories consumed, the energy density of foods being higher for snacks compared to meals.

In accordance with estimates of energy needs and accounting for physical activity levels, the committee calculated that approximately 91 percent of daily energy intake would be consumed as meals, leaving no more than 9 percent of total daily energy intake for discretionary energy consumption from snacks. The committee’s judgment is that a 200-calorie maximum limit per portion for snacks may be high for some children, but it is assumed that variations in other daily caloric intake will compensate for shortfalls or excesses.

Furthermore, à la carte entrée items should not provide more calories or larger portion sizes than the comparable NSLP entrée items they may replace.”

According to the 2005 Government Accountability Office (GAO) report, *Competitive Foods Are Widely Available and Generate Substantial Revenues for Schools*:

“Recent increases in child obesity have sparked concerns about competitive foods--foods sold to students at school that are not part of federally reimbursable school meals. The nutritional value of these foods is largely unregulated, and students can often purchase these foods in addition to or instead of school meals. In our April 2004 report on competitive foods (GAO-04-673), we reported that several states had enacted competitive food policies that were more restrictive than federal regulations. However, these policies differed widely in the type and extent of restrictions. In addition, it was unclear how and to what extent states were monitoring compliance with these policies. GAO was also asked to provide a national picture of competitive foods in schools, as well as strategies that districts and schools themselves are taking to limit the availability of less nutritious competitive foods. This report provides information from two nationally representative surveys about the prevalence of competitive foods in schools, competitive foods restrictions and groups involved in their sale, and the amounts and uses of revenue generated from the sale of competitive foods. It also provides information about strategies schools have used to limit the availability of less nutritious competitive foods, based on visits to a total of six school districts in California, Connecticut, Mississippi, Missouri, and South Carolina.”

***Selling a second entrée while offering universal school meals.*** This bill would allow schools to sell a second entrée to students after they receive their free meal. This could increase the inequity between students who have the means to pay for a second meal and those students who do not have the means to pay. To some extent, this inequity exists today as schools currently sell competitive foods such as snacks and entrees that meet the current calorie restrictions. ***The Committee may wish to consider*** whether this policy will exacerbate the existing inequity.

***USDA meal programs.*** The CDE, Nutrition Services Division administers many of the U.S. Department of Agriculture (USDA) meal programs at the state level, including:

***The National School Lunch Program (NSLP).*** The NSLP is a federally assisted meal program operating in public and nonprofit private schools and residential child care institutions. It provides nutritionally balanced, low-cost or free lunches to children each school day.

***The School Breakfast Program (SBP).*** The SBP provides reimbursement to states to operate nonprofit breakfast programs in schools and residential childcare institutions. The Food and Nutrition Service of the USDA administers the SBP at the federal level.

***The Child and Adult Care Food Program (CACFP).*** The CACFP is a federal program that provides reimbursements for nutritious meals and snacks to eligible children and adults who are enrolled for care at participating child care centers, day care homes, and adult day care centers. The CACFP also provides reimbursements for meals served to children and youth participating in afterschool care programs, children residing in emergency shelters, and adults over the age of 60 or living with a disability and enrolled in day care facilities.

*The Summer Food Service Program (SFSP).* The SFSP is a federally-funded, state-administered program. The SFSP reimburses program operators who serve free healthy meals and snacks to children and teens in low-income areas.

*The Seamless Summer Option (SSO).* Schools participating in the NSLP or SBP are eligible to apply for the SSO. This option allows public schools to combine features of the School Nutrition Programs and the SFSP along with reduced paperwork requirements, making it easier for schools to feed children during the traditional summer vacation periods and, for year-round schools, long school vacation periods.

**School meal reimbursement rates.** School meal reimbursement, by both the federal government and the state, varies each year. In order to receive reimbursement, schools must follow a certain meal pattern determined by the USDA. Depending on the age range of the students served, a full meal consists of a specified amount of fruits, vegetables, grains, meat/meat alternative, and milk. Most schools throughout the state participate in “offer versus serve,” which allows a student to pick three of the aforementioned five components in order for the school to receive full reimbursement for that student’s meal.

The federal school lunch reimbursement rates are \$4.41 for free lunch and \$4.01 for reduced priced lunch. Schools that serve more than 60% low income students receive \$0.02 more for both free and reduced priced lunches, as shown in the chart below.

### National School Lunch Program

Description	Free	Free+8 cents*	Reduced-Price	Reduced-Price+8 cents*	Paid	Paid+8cents*
Agencies that served less than 60% free/reduced-price lunches in 2021–22	\$4.33	\$4.41	\$3.93	\$4.01	\$0.77	\$0.85
Agencies that served 60% or more free/reduced-price lunches in 2021–22	\$4.35	\$4.43	\$3.95	\$4.03	\$0.79	\$0.87
Commodity Value	\$0.4300	\$0.4300	\$0.4300	\$0.4300	\$0.4300	\$0.4300

**Note:** Payments listed for free and reduced-price lunches include both section 4 and section 11 funds of the National School Lunch Act.

(Source: CDE, 2022-23 school year)

Beginning with the 2022-23 school year, the state requires school districts and charter schools to provide two free meals per day to all students, regardless of free meal eligibility. The state reimburses school districts and charter schools for the cost of the meal, up to the federal free meal reimbursement rates for all students who are not eligible for federal free meals.

**Food insecurity related to the COVID-19 pandemic.** According to a 2020 article the American Journal of Public Health, *Food Insecurity During COVID-19: An Acute Crisis With Long-Term Health Implications*, as of March and April 2020, national estimates of food insecurity more than tripled to 38%. Among adults with incomes less than 250% of the 2020 federal poverty level (based on thresholds from the US Census), 44% of all households were food insecure including 48% of Black households, 52% of Hispanic households, and 54% of households with children.

According to a 2021 Centers for Disease Control research brief in Preventing Chronic Disease: Public Health Research, Practice, and Policy, *Very Low Food Security Among Low-Income Households With Children in California Before and Shortly After the Economic Downturn From COVID-19*, low-income households with children in California were surveyed before and during the pandemic for levels of very low food security (VLFS). From April 27 to July 21, 2020, 14% of mothers reported VLFS versus 19.3% from November 21, 2019, to March 14, 2020, suggesting that existing systems to quickly obtain food assistance benefits in California and new federal benefits available in response to COVID-19 may have reduced VLFS.

***Recommended Committee Amendments.*** *Staff recommends* the bill be amended to delete Section 49431.5 from the bill as it relates to beverages sold to pupils instead of food sold to pupils.

***Related legislation.*** AB 1169 (McGuire), Chapter 280, Statutes of 2016, makes numerous changes to school nutrition standards for competitive food and beverages to better align to the federal Smart Snacks in Schools regulations.

AB 626 (Skinner), Chapter 706, Statutes of 2013, makes numerous changes to school nutrition standards to conform with the federal Healthy and Hunger Free Kids Act (HHFKA), makes changes relative to the use of cafeteria funds, and deletes obsolete provisions.

SB 12 (Escutia), Chapter 235, Statutes of 2005, eliminates the pilot program on nutrition standards for competitive foods and instead implements nutrition standards for competitive foods in elementary schools, and extends the standards to secondary schools.

SB 19 (Escutia) Chapter 913, Statutes of 2001, establishes a pilot program for nutrition standards for competitive foods for elementary schools and limits the sale of certain beverages at secondary schools.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

None on file

### **Opposition**

None on file

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