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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2816

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)



Passed April 9, 2005

In Effect Ninety Days from Passage

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H. B. 2816

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[Passed April 9, 2005, in effect ninety days from passage]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-1E-1, §5-1E-2, §5-1E-3, §5-1E-4 and §5-1E-5; and to amend and reenact §18-2-6a, §18-2-7a and §18-2-9 of said code, all relating to promoting healthy lifestyles; creating a Healthy Lifestyles Office in the Department of Health and Human Resources; establishing the functions of the Office; creating a special revenue account; establishing a voluntary private sector partnership program to encourage healthy lifestyles; establishing physical activity requirements in the schools; using body mass index as an indicator of progress; encouraging the use of healthy beverages in schools; and adding requirements for health education.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-1E-1, §5-1E-2, §5-1E-

3, §5-1E-4 and §5-1E-5; and that §18-2-6a, §18-2-7a and §18-2-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 1E. HEALTHY WEST VIRGINIA PROGRAM.

§5-1E-1. Findings and purposes.

1 The Legislature finds and declares that the rise in obesity
2 and related weight problems accompanied by the resulting
3 incidence of chronic disease has created a health care crisis that
4 burdens the health care infrastructure of the state. The Legislature
5 also finds that the State of West Virginia must take an
6 informed, sensitive approach to communicate and educate the
7 citizens of the state about health issues related to obesity and
8 inappropriate weight gain. The Legislature further finds that the
9 state must take action to assist West Virginia citizens in
10 engaging in healthful eating and regular physical activity. The
11 Legislature further finds that the state must invest in research
12 that improves understanding of inappropriate weight gain and
13 obesity. These efforts are needed to coordinate the state's
14 interest in improving the health of its citizens and in reducing
15 the cost of healthcare. Therefore, it is the purpose of this article
16 to create, as an integral part of the Department of Health and
17 Human Resources, an entity to coordinate the efforts of all
18 agencies to prevent and remedy obesity and related weight
19 problems and to ensure that all citizens are being educated on
20 this serious health risk that is affecting the state.

§5-1E-2. Creation of the Office of Healthy Lifestyles.

1 There is hereby created the Office of Healthy Lifestyles
2 within the Department of Health and Human Resources. The
3 management of this office shall be provided in the manner
4 determined by the Secretary of the Department of Health and
5 Human Resources to be in the best interest of the state and its
6 citizens.

§5-1E-3. Powers and duties of the Office.

1 The Office of Healthy Lifestyles shall:

2 (1) Establish a Healthy Lifestyle Coalition to assure
3 consistency of the public health and private sector approach to
4 dealing with programs that address the problems that affect
5 overweight and obese individuals; to provide a forum for
6 discussing the issues that affect healthy lifestyles and to identify
7 best practices that can be replicated. By the first day of July,
8 two thousand five, the Governor shall appoint thirteen members
9 of the Coalition whose terms shall be for a period of four years,
10 and the members may be reappointed to a second term. The
11 terms may be staggered by the Governor to assure continuity of
12 experience on the coalition. Members shall represent state
13 agencies, community organizations and other entities which
14 have an interest and expertise in obesity. Members may not be
15 compensated but shall receive reimbursement for expenses
16 incurred while performing the business of the coalition. The
17 Coalition shall meet monthly for at least the first eighteen
18 months of the Coalition to develop and implement an action
19 plan to meet the goals established by the Coalition;

20 (2) Establish a clinical advisory committee to assure a
21 unified approach using the latest research to assure consistency
22 in program development;

23 (3) Establish a statewide voluntary private sector partner-
24 ship and recognition program for employers, merchants,

25 restaurants and other private sector businesses to encourage the
26 development or further advance current programs that encour-
27 age healthy lifestyles;

28 (4) Coordinate higher education training programs for
29 dietary and exercise physiology students with rural health care
30 providers;

31 (5) Coordinate existing health promotion initiatives to
32 assure clear, concise and consistent communication;

33 (6) Solicit, accept and expend grants, gifts, bequests,
34 donations and other funds from any source for programs that
35 will enable the state to accomplish the goals of this program;

36 (7) Develop a cross-agency series of goals to ensure
37 consistency throughout the system of providers and agencies
38 working in the area of improving lifestyles;

39 (8) Establish as a goal to increase the prevalence of healthy
40 weight among all people in the state because obesity leads to
41 diabetes, heart disease, strokes and kidney failure. These
42 diseases, often arising in older age as a result of unhealthy
43 lifestyles that began during a person's youth, place an undue
44 financial burden on individuals, the health care industry and
45 state health care programs;

46 (9) Consider the resources of the local health departments
47 and recommend ongoing relationships, as appropriate, between
48 local health departments, family resource networks, faith-based
49 organizations, cooperative extension services, farm bureaus and
50 other health care providers;

51 (10) Encourage the development of incentives for participa-
52 tion in employee wellness programs. Incentives may be based
53 upon, but should not be limited to, the employee's completion
54 of health questionnaires or participating in healthy lifestyles

55 initiatives, and may use experiences of successful initiatives
56 that have occurred in this state. The action plan should include
57 among its targets, state government employees in this incentive
58 program;

59 (11) Build upon existing initiatives that focus on any of the
60 coalition's goals, soliciting input from these initiatives and
61 eliminating duplication of efforts;

62 (12) Report its progress annually by the first of December
63 to the Legislative Oversight Commission on Health and Human
64 Resource Accountability.

**§5-1E-4. Partnership to encourage healthy lifestyles by children
and families.**

1 (a) The West Virginia Healthy Lifestyles program will
2 develop a statewide voluntary private sector partnership
3 program to work with businesses throughout the State that
4 encourage and promote healthy lifestyles among their employ-
5 ees and communities.

6 (b) Beginning the first day of July, two thousand five, those
7 businesses voluntarily choosing to participate in the Healthy
8 Lifestyles program shall submit their own detailed programs to
9 the Office of Healthy Lifestyles for review. The programs
10 should be creative and unique, highlighting the efforts of the
11 business to promote healthy lifestyles to West Virginians
12 through sensible diet and physical fitness.

13 (c) The West Virginia Healthy Lifestyles program will
14 develop a recognition program for private sector enterprises
15 that develop or advance programs that address the problems
16 affecting overweight and obese individuals and that promote a
17 healthy lifestyle.

18 (d) Any business program promoting healthy lifestyles that
19 is recognized by the Office of Healthy Lifestyles will be issued
20 a universally recognized logo, suitable for public display by the
21 business.

22 (e) Marketing of programs recognized by the Office of
23 Healthy Lifestyles shall take place through all state agencies.
24 The West Virginia Public Employees Insurance Agency, the
25 Bureau for Medical Services and the West Virginia Workers'
26 Compensation Commission shall aggressively market this
27 program to their members for the purposes of health promotion
28 among their members.

29 (f) The Office of Healthy Lifestyles shall market recog-
30 nized programs to other businesses, as models, to help create
31 additional programs promoting healthy lifestyles.

32 (g) The Office of Healthy Lifestyles shall report annually
33 by the first day of December to the Legislative Oversight
34 Commission on Health and Human Resources Accountability:
35 (1) The number of participants; (2) the impact on businesses as
36 established by a survey of participating businesses; and (3) the
37 results of consumer satisfaction surveys all designed by the
38 Office of Healthy Lifestyles.

§5-1E-5. Creation of a Healthy Lifestyles Fund.

1 There is hereby created in the State Treasury a separate
2 special revenue account, which shall be an interest bearing
3 account, to be known as the " Healthy Lifestyles Fund" . The
4 special revenue account shall consist of all appropriations made
5 by the Legislature, income from the investment of moneys held
6 in the special revenue account and all other sums available for
7 deposit to the special revenue account from any source, public
8 or private. No expenditures for purposes of this section are
9 authorized from collections except in accordance with the

10 provisions of article three, chapter twelve of this code and upon
11 fulfillment of the provisions set forth in article two, chapter
12 eleven-b of this code. Any balance remaining in the special
13 revenue account at the end of any state fiscal year does not
14 revert to the general revenue fund but remains in the special
15 revenue account and shall be used solely in a manner consistent
16 with this article. No expenses incurred under this section shall
17 be a charge against the general funds of the state.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6a. Sale of healthy beverages and soft drinks in schools.

1 (a) In order to generate funding for necessary programs and
2 supplies, county boards may permit the sale of healthy bever-
3 ages and soft drinks in county schools except during breakfast
4 and lunch periods as follows:

5 (1) During a school day, soft drinks may not be sold in
6 areas accessible to students in an elementary school, middle
7 school or junior high school through vending machines on the
8 premises, in school stores or in school canteens or through fund
9 raisers by students, teachers, groups or by any other means. In
10 elementary, middle school or junior high school, only healthy
11 beverages may be sold in vending machines on the premises, in
12 school canteens or through fundraisers by students, teachers,
13 groups or by any other means. Nothing in this section shall be
14 construed to prohibit or limit sale or distribution of any food or
15 beverage item through fund-raising activities of students,
16 teachers or educational groups when the items are intended for
17 sale off the school grounds.

18 (2) Those high schools which permit the sale of soft drinks
19 through vending machines also shall offer for sale healthy
20 beverages. Of the total beverages offered for sale, at least fifty

21 percent shall be healthy beverages. Vending machines containing healthy beverages shall be in the same location or substantially similar location as vending machines containing soft drinks.

25 (3) The sale of healthy beverages and soft drinks shall be in
26 compliance with the rules of the National School Lunch
27 Program and the School Breakfast Program of the State Board
28 and the Nutrition Service of the United States Department of
29 Agriculture, which became effective on the seventeenth day of
30 June, one thousand nine hundred eighty-five. Seventy-five
31 percent of the profits from the sale of healthy beverages and
32 soft drinks shall be allocated by a majority vote of the faculty
33 senate of each school and twenty-five percent of the profits
34 from the sale of healthy beverages and soft drinks shall be
35 allocated to the purchase of necessary supplies by the principal
36 of the school.

37 (b) For the purposes of this section:

38 (1) "School day" means the period of time between the
39 arrival of the first student at the school building and the end of
40 the last instructional period; and

41 (2) "Healthy beverage" means water, one hundred percent
42 fruit and vegetable juice, low-fat milk and other juice beverages
43 with a minimum of twenty percent real juice.

§18-2-7a. Legislative findings; required physical education; program in physical fitness.

1 (a) The Legislature hereby finds that obesity is a problem
2 of epidemic proportions in this state. There is increasing
3 evidence that all segments of the population, beginning with
4 children, are becoming more sedentary, more overweight, and
5 more likely to develop health risks and diseases including Type
6 II Diabetes, high blood cholesterol and high blood pressure. The

7 Legislature further finds that the promotion of physical activity
8 during the school day for school children is a crucial step in
9 combating this growing epidemic and in changing the attitudes
10 and behavior of the residents of this state toward health
11 promoting physical activity.

12 (b) As a result of these findings, the State Department of
13 Education shall establish the requirement that each child
14 enrolled in the public schools of this state actively participates
15 in physical education classes during the school year to the level
16 of his or her ability as follows:

17 (1) *Kindergarten to and including grade five.* -- Not less
18 than thirty minutes of physical education, including physical
19 exercise and age appropriate physical activities, for not less
20 than three days a week.

21 (2) *Grade six to and including grade eight.* -- Not less than
22 one full period of physical education, including physical
23 exercise and age appropriate physical activities, each school
24 day of one semester of the school year.

25 (3) *Grade nine to and including grade twelve.* -- Not less
26 than one full course credit of physical education, including
27 physical exercise and age appropriate physical activities which
28 shall be required for graduation and the opportunity to enroll in
29 an elective lifetime physical education course.

30 (c) Enrollment in physical education classes and activities
31 required by the provisions of this section shall not exceed, and
32 shall be consistent with, state guidelines for enrollment in all
33 other subjects and classes: *Provided*, That schools which do not
34 currently have the number of certified physical education
35 teachers or required physical setting may develop alternate
36 programs that will enable current staff and physical settings to
37 be used to meet the physical education requirements established
38 herein. These alternate programs shall be submitted to the State

39 Department of Education and the Healthy Lifestyle Council for
40 approval. Those schools needing to develop alternate programs
41 shall not be required to implement this program until the school
42 year commencing two thousand six.

43 (d) The State Board shall prescribe a program within the
44 existing health and physical education program which incorpo-
45 rates fitness testing, reporting, recognition, fitness events and
46 incentive programs which requires the participation in grades
47 four through eight and the required high school course. The
48 program shall be selected from nationally accepted fitness
49 testing programs designed for school-aged children that test
50 cardiovascular fitness, muscular strength and endurance,
51 flexibility and body composition: *Provided*, That nothing in this
52 subsection shall be construed to prohibit the use of programs
53 designed under the auspices of the President's Council on
54 Physical Fitness and Sports. The program shall include modi-
55 fied tests for exceptional students. Each school in the state shall
56 participate in National Physical Fitness and Sports Month in
57 May of each year and shall make every effort to involve the
58 community it serves in the related events.

59 (e) Body mass index measures shall be used as an indicator
60 of progress toward promoting healthy lifestyles among school-
61 aged children. The body mass index measures shall be deter-
62 mined using student height and weight data and reported to the
63 State Department of Education via the West Virginia Education
64 Information System. Body mass index measures shall be
65 included in kindergarten screening procedures. Students in
66 grades four through eight and students enrolled in high school
67 physical education courses shall have their body mass index
68 measured through required fitness testing procedures. All
69 school personnel responsible for conducting and reporting body
70 mass index measures shall receive training or written documen-
71 tation on the appropriate methodology for assessing the body
72 mass index and reporting data in a manner that protects student

73 confidentiality. All body mass index data shall be reported in
74 aggregate to the Governor, the State Board of Education, the
75 Healthy Lifestyles Coalition and the Legislative Oversight
76 Commission on Health and Human Resource Accountability.

§18-2-9. Required courses of instruction; violation and penalty.

1 (a) In all public, private, parochial and denominational
2 schools located within this state there shall be given prior to the
3 completion of the eighth grade at least one year of instruction
4 in the history of the state of West Virginia. The schools shall
5 require regular courses of instruction by the completion of the
6 twelfth grade in the history of the United States, in civics, in the
7 constitution of the United States, and in the government of the
8 state of West Virginia for the purpose of teaching, fostering and
9 perpetuating the ideals, principles and spirit of political and
10 economic democracy in America and increasing the knowledge
11 of the organization and machinery of the government of the
12 United States and of the state of West Virginia. The State Board
13 shall, with the advice of the State Superintendent, prescribe the
14 courses of study covering these subjects for the public schools.
15 It shall be the duty of the officials or boards having authority
16 over the respective private, parochial and denominational
17 schools to prescribe courses of study for the schools under their
18 control and supervision similar to those required for the public
19 schools. To further such study, every high school student
20 eligible by age for voter registration shall be afforded the
21 opportunity to register to vote pursuant to section twenty-two,
22 article two, chapter three of this code.

23 (b) The State Board shall cause to be taught in all of the
24 public schools of this state the subject of health education,
25 including instruction in any of the grades six through twelve as
26 considered appropriate by the county board, on (1) the prevention,
27 transmission and spread of acquired immune deficiency
28 syndrome and other sexually transmitted diseases, (2) substance

29 abuse, including the nature of alcoholic drinks and narcotics,
30 tobacco products, and other potentially harmful drugs, with
31 special instruction as to their effect upon the human system and
32 upon society in general and (3) the importance of healthy eating
33 and physical activity to maintaining healthy weight. The course
34 curriculum requirements and materials for the instruction shall
35 be adopted by the State Board by rule in consultation with the
36 Department of Health and Human Resources. The State Board
37 shall prescribe a standardized health education assessment to be
38 administered within health education classes to measure student
39 health knowledge and program effectiveness.

40 An opportunity shall be afforded to the parent or guardian
41 of a child subject to instruction in the prevention, transmission
42 and spread of acquired immune deficiency syndrome and other
43 sexually transmitted diseases to examine the course curriculum
44 requirements and materials to be used in the instruction. The
45 parent or guardian may exempt the child from participation in
46 the instruction by giving notice to that effect in writing to the
47 school principal.

48 (c) Any person violating the provisions of this section shall
49 be guilty of a misdemeanor, and, upon conviction thereof, shall
50 be fined not exceeding ten dollars for each violation, and each
51 week during which there is a violation shall constitute a
52 separate offense. If the person so convicted occupy a position
53 in connection with the public schools, that person shall auto-
54 matically be removed from that position and shall be ineligible
55 for reappointment to that or a similar position for the period of
56 one year.

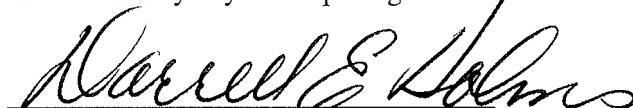
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

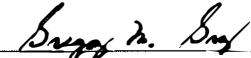

Randy White
Chairman Senate Committee

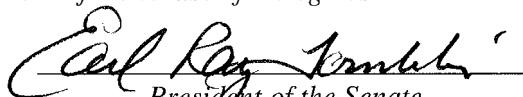

D. Rich Bay
Chairman House Committee

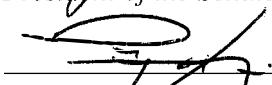
Originating in the House.

In effect ninety days from passage.


Darrell E. Johnson
Clerk of the Senate


Bryan D. Bay
Clerk of the House of Delegates


Earl Ray Tomblin
President of the Senate


Speaker of the House of Delegates

The within is approved this the 2nd _____
day of May, 2005.


Joe Hutchinson III
Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 10:00 am