
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 691 **Hearing Date:** June 14, 2017
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Version: February 15, 2017
Urgency: No **Fiscal:** No
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Subject: Pupil nutrition: almond milk

SUMMARY

This bill specifies excludes almond milk from the list of beverages that are “nonnutritious,” thereby specifically authorizing the governing board of a school district to enter into or renew a contract that grants exclusive or non-exclusive advertising or sales rights for almond milk without first holding a public hearing or adopting a policy.

BACKGROUND

Existing law:

- 1) Defines “nonnutritious beverages” as any beverage that is not any of the following:
 - a) Drinking water.
 - b) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.
 - c) An electrolyte replacement beverage that contains 42 grams or less of added sweetener per 20 once serving.
 - d) A 100 percent fruit juice, or fruit-based drink that is comprised of 50 percent or more fruit juice and that has non added sweeteners. (Education Code § 35182.5)
- 2) Defines “Non-dairy milk” alternative (e.g., rice milk, soy milk) as a beverage that:
 - a) Contains Vitamin A, Vitamin D and at least 25 percent of the daily recommendation for calcium per 8 ounces;
 - b) Contains no added sweeteners exceeding 28 grams of total sugars per 8 ounces;
 - c) Contains no more than 5 grams of fat per 8 ounces. (California Code of Regulations, Title 5, § 15576)

- 3) Prohibits the governing board of a school district from entering into a contract, or permitting a school within the school district to enter into or renew a contract, that grants exclusive or nonexclusive advertising or grants the right to the exclusive or nonexclusive sale of carbonated beverages, nonnutritious beverages, or nonnutritious food within the school district to a person, business, or corporation, unless the governing board of the school district does all of the following:
 - a) Adopts a policy after a public hearing of the governing board of the school district to ensure that the school district has internal controls in place to protect the integrity of the public funds and to ensure that funds raised benefit public education, and that the contracts are entered into on a competitive basis or through a request for proposal
 - b) Provides to parents, guardians, pupils, and members of the public the opportunity to comment on the contract by holding a public hearing on the contract during a regularly scheduled board meeting. (EC § 35182.5)
- 4) Provides that from the midnight before to 30 minutes after the end of the official school day, at each elementary or middle school, the only competitive beverages that may be sold to a pupil are:
 - 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, and other similar nondairy milk in a maximum serving size of 8 fluid ounces for elementary school or 12 fluid ounces for middle school. (EC § 49431.5)
- 5) Provides that from the midnight before to 30 minutes after the end of the official school day, at each high school, the only competitive beverages that may be sold to a pupil are:
 - 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, 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 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.
 - 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)
- 5) Defines ““Competitive foods” as all food and beverages other than meals reimbursed under programs authorized by the federal Richard B. Russell National School Lunch Act (Public Law 113-79) and the federal Child Nutrition Act of 1966 (42 U.S.C. Sec. 1771 et seq.) available for sale to pupils on the school campus during the schoolday.
- 6) Requires each 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)
- 7) Provides that a nutritionally adequate meal for this purpose is a breakfast or lunch meeting specified requirements that qualifies for reimbursement under the federal child nutrition program regulations. (EC § 49553)

Existing federal law:

- 1) Requires schools participating in the National School Lunch Program (NSLP) or the School Breakfast Program (SBP) to offer students at least two different options of milk, requires all milk to be fat-free or low-fat, and authorizes low fat or fat-free lactose-free and reduced-lactose fluid milk to be offered. (Code of Federal Regulations, Title 7, §210.10)
- 2) Requires all fluid milk served in the NSLP and SBP to be pasteurized fluid milk that meets state and local standards, to have vitamins A and D at levels specified by the national Food and Drug Administration (FDA), and to be consistent with state and local standards for such milk. (CFR, Title 7, §210.10)
- 3) Requires a school that chooses to offer one or more substitutes for fluid milk for non-disabled students with medical or special dietary needs to only offer

nondairy beverages that are fortified in accordance with fortification guidelines issued by the FDA and that meet all of the following nutrient requirements per 8 fluid ounces:

- a) 276 milligrams of Calcium.
- b) 8 grams of Protein.
- c) 500 International Units of Vitamin A.
- d) 100 International Units of Vitamin D.
- e) 24 milligrams of Magnesium.
- f) 222 milligrams of Phosphorus.
- g) 349 milligrams of Potassium.
- h) 0.44 milligrams of Riboflavin.
- i) 1.1 micrograms of Vitamin of B-12. (CFR, Title 7, §210.10)

ANALYSIS

This bill specifies excludes almond milk from the list of beverages that are “nonnutritious,” thereby specifically authorizing the governing board of a school district to enter into or renew a contract that grants exclusive or nonexclusive advertising or sales rights for almond milk without first holding a public hearing and adopting a policy. Specifically, this bill excludes contracts for almond milk from the following requirements:

- a) Adopting a policy after a public hearing of the governing board of the school district to ensure that the school district has internal controls in place to protect the integrity of the public funds and to ensure that funds raised benefit public education, and that the contracts are entered into on a competitive basis or through a request for proposal
- b) Providing to parents, guardians, pupils, and members of the public the opportunity to comment on the contract by holding a public hearing on the contract during a regularly scheduled board meeting. (EC § 35182.5)

STAFF COMMENTS

- 1) ***Need for the bill.*** “Almond milk has been a substitute for cow’s milk for hundreds of years and has recently gained popularity among the lactose-intollerant and vegan communitites. Nearly 10% of the population is lactose-intolerant and about 5% of the U.S. population identifies as vegan.

Almond milk has proven to be a wholesome alternative for students who are lactose-intolerant or vegan. Almond milk is a healthier option compared to cow’s milk. With 10 fewer carbohydrates per serving, almond milk can help minimize

blood sugar loss and is also cholesterol-free. Almond milk further contains heart-healthy monounsaturated fats that prevent high blood pressure and heart disease. Moreover, the low calorie content of almond milk helps drinkers lose or maintain weight.

In 2014, almond milk surpassed soy milk as the most popular plant-based milk product. Almonds are the number one agriculture export from California. Further, California produces over 80% of the world's supply of almonds and they contribute \$5.33 billion to our state economy."

- 2) **Not currently reimbursable?** In 2011, the United State Department of Agriculture issued a management bulletin regarding fluid milk substitutions in the Child and Adult Care Food Program, <https://www.fns.usda.gov/sites/default/files/CACFP-21-2011.pdf>. Regarding non-dairy beverages, the bulletin provides that "In the case of children who cannot consume fluid milk due to medical or other special dietary needs, other than a disability, non-dairy beverages may be served in lieu of fluid milk. Non-dairy beverages must be nutritionally equivalent to milk and meet the nutritional standards for fortification of calcium, protein, vitamin A, vitamin D, and other nutrients to levels found in cow's milk, as outlined in the National School Lunch Program (NSLP) regulations at 7 CFR 210.10." The California Department of Education (CDE) posted the bulletin on its internet website, and included supplemental questions and answers that were published after the bulletin was issued. Question S4 asked, "What about almond milk? Is that an allowable substitute?" Answer: "Currently, there are no almond milks on the market that meet the requirements outlined in 7 CFR 210.10."

Staff is informed by CDE that to the best of its knowledge there is still no almond milk on the market that meets the nutrition requirements of the NSLP. Accordingly, almond milk may not be offered as part of a reimbursable meal. However, this does not mean that there will not be almond milk on market in the future that does meet those requirements.

- 3) **Authority to sell?** In light of almond milk not being reimbursable under the NSLP, this bill appears to only specifically authorize school districts to enter into or renew a contract relating granting rights to advertise or sell almond milk. However, because almond milk would currently be considered a "competitive food" because it is not reimbursable, additionally authority is needed to actually allow the sale of almond milk during the school day. **Staff recommends that the bill be amended** to include an analogous amendment to Section 49431.5 Education Code to add almond milk to the list of milks and nondairy milks specifically authorized to be sold during the school day.
- 4) **Previous legislation.** SB 1169 (McGuire, Chapter 280, Statutes of 2016, made numerous changes to school nutrition standards for competitive food and beverages to better align to the federal Smart Snacks in Schools regulations, including eliminating the option for certain food to be sold to students before the beginning of the schoolday by narrowing the period of time in which certain food may be sold to students, from "one-half hour before the start of the schoolday to one-half hour after the schoolday," to "the midnight before to 30 minutes after the end of the official schoolday."

SUPPORT

Almond Alliance

OPPOSITION

None received

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