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*Bill Analysis*  
*Legislative Service Commission*

## **S.B. 174**

125th General Assembly  
(As Introduced)

**Sens. Miller, Prentiss, Hagan, Fedor, Fingerhut, Zurz, Brady, Roberts**

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### **BILL SUMMARY**

- Establishes nutritional standards for food sold to students in public elementary schools, and requires school districts and community schools to designate persons to determine the nutritional content of food sold to elementary students to ensure that the standards are met.
- Specifies that school districts and community schools are not required to comply with the nutritional standards for food sales unless the General Assembly appropriates funds for their implementation.
- Restricts the sale of beverages to students in public elementary schools generally to (1) water, (2) milk, (3) 100% fruit juice, and (4) fruit-based drinks that are at least 50% fruit juice and contain no added sweeteners.
- Restricts the sale of beverages to students in public middle and high schools generally to (1) water, (2) milk, (3) 100% fruit juice, (4) fruit-based drinks that are at least 50% fruit juice and contain no added sweeteners, and (5) electrolyte replacement beverages, from one-half hour before the school day starts to one-half hour after the school day ends.
- Prohibits a school district or public school from entering into a contract with a beverage vendor if the contract would require selling the beverage to students in violation of the bill's provisions.
- Requires school districts to adopt standards governing beverage sales on school premises (in addition to food sales as under current law) and applies the requirement for adoption of standards regulating food and beverage sales on school premises to community schools.

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## CONTENT AND OPERATION

### *Nutritional standards for food sold in public elementary schools*

(R.C. 3313.816(A) to (D))

The bill establishes nutritional standards for food sold to students in public schools, including community schools, that serve any of grades K through 4. These standards are based upon the proportion of calories derived from fat and the amount of sugar contained in the food. A food meets the bill's nutritional standards if it satisfies the following criteria:

(1) No more than 35% of its total calories are derived from fat, except for nuts and seeds;

(2) No more than 10% of its total calories are derived from saturated fat; and

(3) No more than 35% of its total weight is composed of sugar, except for fruits and vegetables.

Generally, all food items sold individually must comply with these nutritional standards. Foods that do not meet the standards may be sold to students only in the following circumstances: (1) as part of an authorized school fundraiser, if the food is sold by students enrolled in the school or (2) as part of a full meal provided to students through a school breakfast or school lunch program.<sup>1</sup> A cookie, for example, might contain too much sugar to be sold separately, but it could be included as dessert in the daily lunch. Similarly, a candy bar sold by students to raise money for the school is permissible under the bill's provisions.

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<sup>1</sup> *Under continuing Ohio law, school districts must operate school lunch and breakfast programs that meet federal standards in schools where at least one-third of the students are eligible under federal regulations for free meals. They must also establish school breakfast programs in schools in which the parents of at least half of the students request such a program. Districts may apply for state or federal funds to operate school lunch and breakfast programs in schools where they are otherwise not required to do so. (R.C. 3313.813, not in the bill.) Districts may also choose to run their own food service programs for preparing and serving meals to students (R.C. 3313.81, not in the bill). It does not appear that community schools are required to have food service programs for their students under current Ohio law, but presumably they participate in the federal school lunch and breakfast programs or establish their own programs.*

Each school district and applicable community school must designate at least one person responsible for determining the nutritional content of food to ensure that the bill's requirements are met.

**Nutritional standards operational only upon appropriation of funds**

(R.C. 3313.816(E))

Under the bill, no school district or community school must enforce the nutritional standards unless the General Assembly appropriates funds to assist districts and schools with compliance. The need to comply with the nutritional standards, therefore, may vary from year to year based upon the availability of funding. In the absence of earmarked funds, any district or school could voluntarily adopt the standards.

**Restrictions on beverage sales in public schools**

(R.C. 3313.817; Section 3)

The bill requires school districts and community schools to restrict the sale of certain beverages, including soda, to students. These restrictions apply somewhat differently across schools according to the grade levels they serve. However, the restrictions do not apply to beverages sold as part of an authorized school fundraiser if the beverages are sold by students attending the school.

**Elementary schools**

(R.C. 3313.817(B))

Public schools that serve any of grades K through 4 may sell students only four types of beverages: (1) water, (2) milk,<sup>2</sup> (3) 100% fruit juice, and (4) fruit-based drinks that are at least 50% fruit juice and contain no added sweeteners.<sup>3</sup> These restrictions apply at all times the school is open.

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<sup>2</sup> Milk products may include chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

<sup>3</sup> As defined by the bill, "added sweeteners" are "additives that enhance the sweetness of a beverage, including processed sugar." Added sweeteners specifically do not include the natural sugars found in fruit juices. (R.C. 3313.817(A).)

### **Middle and high schools**

(R.C. 3313.817(C))

Public schools that serve any of grades 5 through 12 must limit the types of beverages sold to students each day from one-half hour before school starts to one-half hour after school ends.<sup>4</sup> During those hours, beverage sales are restricted to: (1) water, (2) milk, (3) 100% fruit juice, (4) fruit-based drinks that are at least 50% fruit juice and contain no added sweeteners, and (5) electrolyte replacement beverages (such as Gatorade) that contain no more than 42 grams of added sweeteners per 20-ounce serving. Beverage sales at interscholastic athletic contests and most other school-sponsored events for grades 5 to 12 probably would not be affected by the bill because they would likely occur outside of the time restrictions.

### **Contracts with beverage producers or distributors; vending machines**

(R.C. 3313.817(D) and (E); Section 3)

Many schools have exclusive contracts with beverage vendors under which the school sells the vendor's products in exchange for donations to the school or a percentage of the product sales. This income is used by schools for many purposes, such as buying supplies or supporting extracurricular activities. The beverages are often sold through vending machines maintained by the vendor.

The bill prohibits school districts and public schools, including community schools, from entering into a contract with the producer or distributor of a beverage if the contract would require the sale of beverages to students in violation of the bill's provisions. Schools may use vending machines to sell beverages to students, but the sale must satisfy the bill's provisions regarding the types of beverages that may be sold and the time limits for sales. A district or school that has an existing contract on the bill's effective date is exempt from the bill's restrictions on beverage sales until the contract expires. If the contract is renewed, the new contract must comply with the bill's restrictions.

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<sup>4</sup> Under the bill, if a school enrolls a combination of elementary and middle or high school grades, the school must comply only with the restrictions applicable to the largest number of grades it serves. For example, a K-6 school would have to comply with the restrictions on beverage sales for elementary schools because five of its seven grades fall within the elementary grade span (K-4). (R.C. 3313.817(F).)

**Adoption of standards for food and beverage sales by districts and community schools**

(R.C. 3313.814 and 3314.03(A)(11)(d))

Continuing law requires school districts to adopt standards governing the types of food that may be sold on school premises. These standards must specify the time and place each type of food may be sold. In adopting the standards, the district must consider each food's nutritional value.<sup>5</sup>

Under the bill, school districts must adopt standards regarding the sale of beverages just as they must do now for food sales. Community schools, which are currently exempt from the requirement to adopt standards for food sales, must adopt standards for both food and beverage sales under the bill. Districts and community schools must ensure that their standards for food and beverage sales comply with the bill's provisions regulating nutritional content and times of sale.

**Prohibition against waiver of requirement to adopt standards for food and beverage sales**

(R.C. 3302.07(A) and 3313.814)

Continuing law authorizes the State Board of Education to free *excellent* and *effective* school districts from specified statutes and administrative rules pertaining to education.<sup>6</sup> Individual districts also may apply for exemptions from certain statutes or rules for the purpose of implementing an innovative education pilot program approved by the Superintendent of Public Instruction. The bill explicitly prohibits the State Board from waiving the requirement to adopt standards for food and beverage sales for any school district.

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<sup>5</sup> *The State Board of Education has developed guidelines that districts may follow when adopting standards for the sale of foods (Ohio Administrative Code 3301-91-09).*

<sup>6</sup> *R.C. 3302.05, not in the bill. A school district is excellent if it (1) makes the federal standard of adequate yearly progress (AYP) and either meets 94%-100% of the performance indicators established by the State Board or attains a performance index score set by the Department of Education or (2) does not make AYP for no more than two consecutive years and either meets 94%-100% of the performance indicators or attains a performance index score set by the Department. A school district is effective if it (1) makes AYP and either meets 75%-93% of the performance indicators or attains a performance index score set by the Department or (2) does not make AYP and either meets 75%-100% of the performance indicators or attains a performance index score set by the Department. (R.C. 3302.03(B), not in the bill.)*

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-06-04	p. 1311

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