

ENROLLED

COMMITTEE SUBSTITUTE

FOR

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.

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

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

There is hereby created the Office of Healthy Lifestyles within the Department of Health and Human Resources. The management of this office shall be provided in the manner determined by the Secretary of the Department of Health and Human Resources

to be in the best interest of the state and its citizens.

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

The Office of Healthy Lifestyles shall:

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

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

(3) Establish a statewide voluntary private sector partnership and recognition program for employers, merchants, restaurants and other private sector businesses to encourage the development or further advance current programs that encourage healthy lifestyles;

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

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

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

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

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

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

(10) Encourage the development of incentives for participation in employee wellness programs. Incentives may be based upon, but should not be limited to, the employee's completion of health questionnaires or participating in healthy lifestyles initiatives, and may use experiences of successful initiatives that have occurred in this state. The action plan should include among its targets, state government employees in this incentive program;

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

(12) Report its progress annually by the first of December to the Legislative

Oversight Commission on Health and Human Resource Accountability.

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

(a) The West Virginia Healthy Lifestyles program will develop a statewide voluntary private sector partnership program to work with businesses throughout the State that encourage and promote healthy lifestyles among their employees and communities.

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

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

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

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

(f) The Office of Healthy Lifestyles shall market recognized programs to other businesses, as models, to help create additional programs promoting healthy lifestyles.

(g) The Office of Healthy Lifestyles shall report annually by the first day of December

to the Legislative Oversight Commission on Health and Human Resources Accountability: (1) The number of participants; (2) the impact on businesses as established by a survey of participating businesses; and (3) the results of consumer satisfaction surveys all designed by the Office of Healthy Lifestyles.

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

There is hereby created in the State Treasury a separate special revenue account, which shall be an interest bearing account, to be known as the "Healthy Lifestyles Fund".

The special revenue account shall consist of all appropriations made by the Legislature, income from the investment of moneys held in the special revenue account and all other sums available for deposit to the special revenue account from any source, public or private. No expenditures for purposes of this section are authorized from collections except in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the general revenue fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. No expenses incurred under this section shall 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.

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

(1) During a school day, soft drinks may not be sold in areas accessible to students

in an elementary school, middle school or junior high school through vending machines on the premises, in school stores or in school canteens or through fund raisers by students, teachers, groups or by any other means. In elementary, middle school or junior high school, only healthy beverages may be sold in vending machines on the premises, in school canteens or through fundraisers by students, teachers, groups or by any other means. Nothing in this section shall be construed to prohibit or limit sale or distribution of any food or beverage item through fund-raising activities of students, teachers or educational groups when the items are intended for sale off the school grounds. (2) Those high schools which permit the sale of soft drinks through vending machines also shall offer for sale healthy beverages. Of the total beverages offered for sale, at least fifty 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.

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

(b) For the purposes of this section:

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

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

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

(a) The Legislature hereby finds that obesity is a problem of epidemic proportions in this state. There is increasing evidence that all segments of the population, beginning with children, are becoming more sedentary, more overweight, and more likely to develop health risks and diseases including Type II Diabetes, high blood cholesterol and high blood pressure. The Legislature further finds that the promotion of physical activity during the school day for school children is a crucial step in combating this growing epidemic and in changing the attitudes and behavior of the residents of this state toward health promoting physical activity.

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

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

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

(3) *Grade nine to and including grade twelve.* — Not less than one full course credit of physical education, including physical exercise and age appropriate physical activities

which shall be required for graduation and the opportunity to enroll in an elective lifetime physical education course.

(c) Enrollment in physical education classes and activities required by the provisions of this section shall not exceed, and shall be consistent with, state guidelines for enrollment in all other subjects and classes: *Provided*, That schools which do not currently have the number of certified physical education teachers or required physical setting may develop alternate programs that will enable current staff and physical settings to be used to meet the physical education requirements established herein. These alternate programs shall be submitted to the State Department of Education and the Healthy Lifestyle Council for approval. Those schools needing to develop alternate programs shall not be required to implement this program until the school year commencing two thousand six.

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

(e) Body mass index measures shall be used as an indicator of progress toward promoting healthy lifestyles among school-aged children. The body mass index measures

shall be determined using student height and weight data and reported to the State Department of Education via the West Virginia Education Information System. Body mass index measures shall be included in kindergarten screening procedures. Students in grades four through eight and students enrolled in high school physical education courses shall have their body mass index measured through required fitness testing procedures. All school personnel responsible for conducting and reporting body mass index measures shall receive training or written documentation on the appropriate methodology for assessing the body mass index and reporting data in a manner that protects student confidentiality. All body mass index data shall be reported in aggregate to the Governor, the State Board of Education, the Healthy Lifestyles Coalition and the Legislative Oversight Commission on Health and Human Resource Accountability. **§18-2-9. Required courses of instruction; violation and penalty.**

(a) In all public, private, parochial and denominational schools located within this state there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the state of West Virginia. The schools shall require regular courses of instruction by the completion of the twelfth grade in the history of the United States, in civics, in the constitution of the United States, and in the government of the state of West Virginia for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and economic democracy in America and increasing the knowledge of the organization and machinery of the government of the United States and of the state of West Virginia. The State Board shall, with the advice of the State Superintendent, prescribe the courses of study covering these subjects for the public schools. It shall be the duty of the officials or boards having authority over the respective

private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools. To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to section twenty-two, article two, chapter three of this code.

(b) The State Board shall cause to be taught in all of the public schools of this state the subject of health education, including instruction in any of the grades six through twelve as considered appropriate by the county board, on (1) the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases, (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products, and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general and (3) the importance of healthy eating and physical activity to maintaining healthy weight. The course curriculum requirements and materials for the instruction shall be adopted by the State Board by rule in consultation with the Department of Health and Human Resources. The State Board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

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

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding ten dollars for each violation, and

each week during which there is a violation shall constitute a separate offense. If the person so convicted occupy a position in connection with the public schools, that person shall automatically be removed from that position and shall be ineligible for reappointment to that or a similar position for the period of one year.