

HOUSE No. 3975

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 25, 2014.

The committee on Public Health to whom was referred the petition (accompanied by bill, House, No. 2011) of Stephen Kulik and others relative to expanding access to healthy food choices in vending machines on state property, reports recommending that the accompanying bill (House, No. 3975) ought to pass.

For the committee,

JEFFREY SANCHEZ.

HOUSE No. 3975

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to expanding access to healthy food choices in vending machines on state property.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 133A of chapter 6 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by striking out, in lines 17 to 18, the words “no later than
3 December thirty-first, nineteen hundred and eighty-three” and inserting in place thereof the
4 following words:- annually, on or before December thirty-first.

5 SECTION 2. Chapter 111 of the General Laws is hereby amended by adding the
6 following section:-

7 Section 230. (a) As used in this section, the following words shall, unless the context
8 clearly indicates otherwise, have the following meanings:-

9 “Government property”, all property owned or managed by the commonwealth including
10 government office buildings, road-side rest stops, state parks and recreation centers, state
11 colleges and universities and state-supported hospitals.

12 “Habitual violations”, instances in which a vendor or non-RSA vendor violates this
13 section 5 or more times within a 6 month period.

14 “Non RSA-vendor”, any person who by contract, agreement or ownership is responsible
15 for furnishing, installing, servicing, operating or maintaining a vending machine or vending
16 facility who is not licensed by the commission for the blind to operate such machine or facility.

17 “Nutritional standards”, the standards promulgated by the department in accordance with
18 subsections (b) and (c), which shall be in effect 24 hours per day.

19 “Vending facility”, snack bars, cart service, shelters, counters, and such other auxiliary
20 equipment necessary for the sale of newspapers, periodicals, confections, tobacco products,
21 foods, beverages, and other articles or services dispensed automatically or manually and
22 prepared on or off the premises in accordance with all applicable health laws, and including the
23 vending or exchange of chances for any lottery authorized by law, and conducted by any agency
24 of the commonwealth.

25 “Vending machine”, any self-service device offered for public use which, upon insertion
26 of a coin, coins, token, paper currency, or by any other means, dispenses servings of food or
27 beverage, either in bulk or in package.

28 “Vendor”, a blind person licensed by the commission for the blind to operate a vending
29 facility under the terms of the Randolph-Shepard Act, Public Law 74-732, as amended from time
30 to time.

31 (b) All foods or beverages sold through vending machines located in government
32 buildings or on property owned or managed by the commonwealth shall be limited to food and
33 beverage items that comply with the following nutritional standards:

34 (1) 100 per cent of beverage items shall be 1 or a combination of the following:

35 (a) water, including carbonated water; provided that such beverages shall not contain
36 added caloric sweeteners;

37 (b) coffee or tea; provided that such beverages shall not contain added caloric sweeteners;
38 provided further that condiments for such beverages may be provided, including sugar, sugar
39 substitutes and milk or creamer products, such as whole or two-per cent milk; provided further
40 that any condiments provided must have less fat than cream;

41 (c) fat-free or 1 per cent low-fat dairy milk or calcium- and vitamin-D-fortified soymilk
42 with less than 200 calories per container;

43 (d) 100 per cent fruit juice or fruit juice combined with water or carbonated water;
44 provided that such beverages are limited to a container that holds 12 fluid ounces or less;
45 provided further that such beverages do not contain added caloric sweeteners;

46 (e) 100 per cent vegetable juice; provided that such beverages are limited to a container
47 that holds 12 fluid ounces or less, contain 200 milligrams of sodium or less per container;
48 provided further that such beverages do not contain added caloric sweeteners; and

49 (f) low-calorie beverages that contain 40 calories or less per container.

50 (2) 100 per cent of snack-type food items shall meet all of the following criteria and
51 contain:

- 52 (a) no more than 200 calories per item as offered, per package;
- 53 (b) no more than 35 per cent of calories from fat; provided that packages that contain 100
54 per cent nuts or seeds may contain more than 35 per cent of calories from fat;
- 55 (c) no more than 10 per cent of calories from saturated fat; provided that packages that
56 contain 100 per cent nuts or seeds may contain more than 10 per cent of calories from saturated
57 fat;
- 58 (d) 0 grams of trans fat;
- 59 (e) no more than 35 per cent of calories from total sugars and a maximum of 10 grams of
60 total sugars per package; provided, that fruits and vegetables that do not contain added
61 sweeteners or fats may contain more than 35 per cent of calories from total sugars and 10 grams
62 of total sugars per package; provided further that yogurt may contain up to 30 grams of total
63 sugars per 8-ounce container, adjusted proportionally for smaller containers;
- 64 (f) no more than 200 milligrams of sodium per item as offered, per package; and
- 65 (g) at least 1 of the following: (i) a quarter cup of fruit, non-fried vegetable, or fat-free or
66 low-fat dairy; (ii) 1 ounce of nuts or seeds or 1 tablespoon of nut butter; (iii) grain ingredients
67 consisting of at least 50 per cent whole grain as determined by the product manufacturer listing
68 whole grain as the first ingredient or making a whole grain claim; or (iv) at least 10 per cent of
69 the daily value of a naturally occurring nutrient of public health concern: calcium, potassium,
70 vitamin D or fiber.
- 71 (h) sugarless chewing gum can be sold without having to meet the above nutrition
72 standards.
- 73 (3) 100 per cent of entrée-type food items such as sandwiches shall meet all of the
74 following criteria and contain:
- 75 (a) no more than 400 calories per item as offered, per package;
- 76 (b) no more than 35 per cent of calories from fat;
- 77 (c) no more than 10 per cent of calories from saturated fat;
- 78 (d) zero grams trans fat;
- 79 (e) no more than 35 per cent of calories from total sugars and no more than 15 grams of
80 total sugars per package;
- 81 (f) no more than 480 milligrams of sodium per package; and

82 (g) at least 2 of the following: (i) a quarter cup of fruit, non-fried vegetable, or fat-free or
83 low-fat dairy; (ii) 1 ounce of nuts or seeds or 1 tablespoon of nut butter; (iii) grain ingredients
84 consisting of at least 50 per cent whole grain as determined by the product manufacturer listing
85 whole grain as the first ingredient or making a whole grain claim; or (iv) at least 10 per cent of
86 the daily value of a naturally occurring nutrient of public health concern: calcium, potassium,
87 vitamin D or fiber.

88 (c) For each article of food sold from a vending machine that does not permit a purchaser
89 to examine the Nutrition Facts Panel, as provided for in federal law before purchasing the article,
90 or does not otherwise provide visible nutrition information at the point of purchase, a vendor or
91 non-RSA vendor shall provide a sign in close proximity to each article of food or the selection
92 button that includes a clear and conspicuous statement disclosing the number of calories
93 contained in the article. This subsection requires that calorie information is posted for each food
94 item, as packaged. Vendors and non-RSA vendors shall also align product labeling in conformity
95 with federal law, as amended from time to time for vending machines.

96 (d) (1) Until such time as either a non-RSA vendor or a vendor meets the requirements
97 of clause (v) of paragraphs (3) and (4), a vending machine for beverages shall comply with the
98 following product placement: (i) water, including carbonated water without added caloric
99 sweetener, shall be stocked in at least 2 slots or selection buttons per machine and shall be placed
100 at eye level, in the highest selling position or promoted on the most prominent selection button;
101 and (ii) beverages with added caloric sweeteners shall be placed farthest from eye level, or in the
102 lowest selling position.

103 (2) Until such time as either a non-RSA vendor or a vendor meets the requirements of
104 paragraphs (3) and (4), a vending machine for foods shall comply with the following product
105 placement: (1) fruit, nuts, seeds or whole grain as a first ingredient food shall be placed at eye
106 level, in the highest selling position or in the most prominent selection button; and (2) foods not
107 meeting the nutritional standard in paragraph (2) of subsection (b) shall be placed farthest from
108 eye level, or in the lowest selling position.

109 (3) A non-RSA vendor may meet the requirements in subsection (b) by: (i) offering 20
110 per cent of the food or beverages in a vending machine that meet nutritional standards by January
111 1, 2015; (ii) offering 40 per cent of the food or beverages required to meet nutritional standards
112 by January 1, 2016; (iii) offering 60 per cent of the food or beverages required to meet nutritional
113 standards by January 1, 2017; (iv) offering 80 per cent of the food or beverages required to meet
114 nutritional standards by January 1, 2018; and (v) offering 100 per cent of the food or beverages
115 required to meet accepted nutritional standards by January 1, 2017 and thereafter.

116 (4) A vendor licensed by the state licensing agency pursuant to sections 133A to 133F,
117 inclusive, of chapter 6 may meet the requirements in subsection (b) by: (i) offering 10 per cent of
118 the food or beverages in a vending machine that meet nutritional standards by January 1, 2015;

119 (ii) offering 30 per cent of the food or beverages required to meet nutritional standards by
120 January 1, 2016; (iii) offering 50 per cent of the food or beverages required to meet nutritional
121 standards by January 1, 2017; (iv) offering 70 per cent of the food or beverages required to meet
122 nutritional standards by January 1, 2018; and (v) offering 100 per cent of the food or beverages
123 required to meet accepted nutritional standards by January 1, 2019 and thereafter.

124 (d) Five years after enactment of this act and every 5 years thereafter, the department
125 shall review, and if necessary, revise and update the nutritional standards set forth subsections
126 (b) and (c) to reflect advancements in nutrition science, dietary data, and new product
127 availability.

128 (e) The department shall coordinate and supervise implementation of this section and
129 shall address acts of noncompliance. Noncompliance may be discovered by the department
130 through inspections or other means or through reports made by individuals or organizations. Any
131 vendor or non-RSA vendor who the department finds has failed to comply with this section shall
132 be subject to a penalty to be assessed as follows:

133 (1) The first violation shall result in a fine paid by the vending machine operator of
134 no less than \$100;

135 (2) Subsequent violations shall result in a fine paid by the vending machine operator
136 of no less than \$500; and

137 (3) Habitual violations shall result in a 6 month prohibition on the sale of foods and
138 beverages by the vending machine operator within any state facility or on state property and a
139 fine of no less than \$1,000.

140 Revenue collected as a result of the fines in this section shall be transferred to the
141 treasury. The department may, by rulemaking, increase the fines prescribed by this section.

142 (g) To assist in the implementation of the nutritional standards set forth in this section,
143 the department shall designate an appropriate position within the department to disseminate
144 information and train staff on the nutritional standards to ensure compliance. The designated
145 position shall monitor compliance and report back to the department every year on the status of
146 implementation. The annual report shall include: an assessment of compliance with the
147 nutritional standards; a list of successes, challenges, and barriers experienced in implementation;
148 and recommendations for improvement of the nutritional standards and compliance.

149 (h) The department shall take the following actions:

150 (1) contact current vendors and non-RSA vendors and request that they transition to
151 food and beverage items that comply with the nutritional standards within 6 months of
152 enactment;

153 (2) require future procurement or vending contracts to include a provision stipulating
154 that all food and beverage items will meet the nutritional standards; and

155 (3) make the final decision as to whether products to be vended meet the nutritional
156 standards.

157 (i) Nothing in this section shall be construed to require a state agency, institute, property,
158 administrator, or manager to place vending machines on government property.