

NOTE: The governor signed this measure on 5/15/2013.

An Act

HOUSE BILL 13-1006

BY REPRESENTATIVE(S) Moreno and Exum, Peniston, Court, McCann, Primavera, Salazar, Schafer, Tyler, Williams, Buckner, Duran, Fischer, Ginal, Hamner, Hullinghorst, Kraft-Tharp, Labuda, Lebsock, Lee, Levy, May, Mitsch Bush, Pabon, Pettersen, Rosenthal, Ryden, Singer, Young, Ferrandino;
also SENATOR(S) Giron, Hodge, Ulibarri, Aguilar, Carroll, Guzman, Heath, Jahn, Jones, Kefalas, Newell, Nicholson, Steadman, Tochtrop, Todd, Morse.

CONCERNING REQUIRING CERTAIN SCHOOLS TO OFFER BREAKFAST TO ALL STUDENTS FOLLOWING THE FIRST BELL.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 82.8 to title 22 as follows:

ARTICLE 82.8 **Breakfast After the Bell Nutrition Program**

22-82.8-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "BREAKFAST AFTER THE BELL NUTRITION PROGRAM".

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

22-82.8-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "DEPARTMENT" MEANS THE DEPARTMENT OF EDUCATION CREATED AND EXISTING PURSUANT TO SECTION 24-1-115, C.R.S.

(2) "PROGRAM" MEANS THE BREAKFAST AFTER THE BELL NUTRITION PROGRAM CREATED IN SECTION 22-82.8-103.

(3) "PUBLIC SCHOOL" MEANS A PUBLIC SCHOOL OR CHARTER SCHOOL AS DEFINED IN SECTION 22-1-101 OR AN APPROVED FACILITY SCHOOL AS DEFINED IN SECTION 22-2-402 (1).

(4) "SCHOOL BREAKFAST PROGRAM" MEANS THE FEDERAL "SCHOOL BREAKFAST PROGRAM" CREATED IN 42 U.S.C. SEC. 1773.

(5) "SCHOOL FOOD AUTHORITY" MEANS:

(a) A SCHOOL DISTRICT OR THE STATE CHARTER SCHOOL INSTITUTE;

(b) A CHARTER SCHOOL COLLABORATIVE FORMED PURSUANT TO SECTION 22-30.5-603;

(c) A BOARD OF COOPERATIVE SERVICES CREATED PURSUANT TO ARTICLE 5 OF THIS TITLE THAT ELECTS TO OPERATE AS A SCHOOL FOOD AUTHORITY PURSUANT TO SECTION 22-5-120; OR

(d) A DISTRICT CHARTER SCHOOL OR AN INSTITUTE CHARTER SCHOOL THAT:

(I) THE COMMISSIONER OF EDUCATION OR HIS OR HER DESIGNEE PROVISIONALLY AUTHORIZES AS A SCHOOL FOOD AUTHORITY PURSUANT TO SECTION 22-32-120 (6); OR

(II) THE DEPARTMENT AUTHORIZES AS A SCHOOL FOOD AUTHORITY PURSUANT TO SECTION 22-32-120 (5).

(6) "SCHOOL LUNCH PROGRAM" MEANS THE FEDERAL "NATIONAL SCHOOL LUNCH ACT" CREATED IN 42 U.S.C. SEC. 1751.

22-82.8-103. Breakfast after the bell nutrition program - creation - objectives - requirements - administration. (1) THERE IS HEREBY CREATED THE BREAKFAST AFTER THE BELL NUTRITION PROGRAM. THE PURPOSE OF THE PROGRAM IS TO OFFER A FREE BREAKFAST TO EACH STUDENT ENROLLED IN A PUBLIC SCHOOL THAT HAS SEVENTY PERCENT OR MORE STUDENTS WHO ARE ELIGIBLE FOR FREE OR REDUCED-COST LUNCH UNDER THE SCHOOL LUNCH PROGRAM.

(2) THE OBJECTIVES OF THE PROGRAM ARE TO:

(a) INCREASE THE TOTAL NUMBER OF CHILDREN EATING BREAKFAST ON SCHOOL DAYS;

(b) INCREASE THE CONSUMPTION OF HIGH-NUTRITION FOODS, MAKING BREAKFAST PROGRAMS MORE EFFECTIVE;

(c) IMPROVE ACADEMIC PERFORMANCE BY PREPARING CHILDREN TO LEARN;

(d) IMPROVE THE OVERALL HEALTH OF THE CHILDREN OF COLORADO;
AND

(e) GENERATE ADDITIONAL REVENUE FOR SCHOOL NUTRITION PROGRAMS THROUGH FEDERAL AND STATE REIMBURSEMENTS.

(3) (a) BEGINNING IN THE 2014-2015 SCHOOL YEAR, EXCEPT AS PROVIDED FOR IN PARAGRAPH (d) OF THIS SUBSECTION (3) AND SUBSECTION (4) OF THIS SECTION, EACH PUBLIC SCHOOL IN THE STATE THAT HAS EIGHTY PERCENT OR MORE STUDENTS WHO ARE ELIGIBLE FOR FREE OR REDUCED-COST LUNCH UNDER THE SCHOOL LUNCH PROGRAM IN THE PRIOR SCHOOL YEAR SHALL OFFER A FREE BREAKFAST TO EACH STUDENT IN THE SCHOOL. IF A PUBLIC SCHOOL FALLS BELOW THE EIGHTY PERCENT THRESHOLD FOR TWO CONSECUTIVE YEARS, IT HAS THE OPTION TO CONTINUE PARTICIPATING IN THE PROGRAM BUT IS NOT REQUIRED TO DO SO. A PUBLIC OR CHARTER SCHOOL THAT DOES NOT PARTICIPATE IN THE SCHOOL LUNCH PROGRAM IS NOT REQUIRED TO PARTICIPATE.

(b) BEGINNING IN THE 2015-2016 SCHOOL YEAR, AND EACH YEAR THEREAFTER, EXCEPT AS PROVIDED FOR IN THIS SUBSECTION (3) AND SUBSECTION (4) OF THIS SECTION, EACH PUBLIC SCHOOL IN THE STATE THAT

HAS SEVENTY PERCENT OR MORE STUDENTS WHO ARE ELIGIBLE FOR FREE OR REDUCED-COST LUNCH UNDER THE SCHOOL LUNCH PROGRAM IN THE PRIOR SCHOOL YEAR SHALL OFFER A FREE BREAKFAST TO EACH STUDENT IN THE SCHOOL. IF A PUBLIC SCHOOL FALLS BELOW THE SEVENTY PERCENT THRESHOLD FOR TWO CONSECUTIVE YEARS, IT HAS THE OPTION TO CONTINUE PARTICIPATING IN THE PROGRAM BUT IS NOT REQUIRED TO DO SO. A PUBLIC SCHOOL OR CHARTER SCHOOL THAT DOES NOT PARTICIPATE IN THE SCHOOL LUNCH PROGRAM IS NOT REQUIRED TO PARTICIPATE.

(c) EACH PUBLIC SCHOOL, SCHOOL DISTRICT, OR BOARD OF COOPERATIVE SERVICES MAY DETERMINE THE BREAKFAST SERVING MODEL THAT BEST SUITS ITS STUDENTS. SERVING MODELS MAY INCLUDE, BUT NEED NOT BE LIMITED TO, BREAKFAST IN THE CLASSROOM, GRAB AND GO BREAKFAST, OR A BREAKFAST AFTER FIRST PERIOD. THE BREAKFAST SHALL BE SERVED AT A TIME TO BE DETERMINED BY THE PUBLIC SCHOOL OR SCHOOL DISTRICT, SO LONG AS IT OCCURS AFTER THE FIRST BELL. A SCHOOL THAT HAS SEVENTY PERCENT OR MORE STUDENTS RECEIVING FREE OR REDUCED LUNCH UNDER THE SCHOOL LUNCH PROGRAM AND THAT CAN DEMONSTRATE THAT AT LEAST NINETY PERCENT OF ITS STUDENTS TAKE BUS TRANSPORTATION TO SCHOOL MAY OPT TO OFFER ITS BREAKFAST PROGRAM ON THE BUS RATHER THAN ON SCHOOL GROUNDS. SUCH A SCHOOL IS REQUIRED TO OFFER BREAKFAST AFTER THE BELL TO ANY STUDENT WHO ARRIVES LATE OR ARRIVES BY ANOTHER MODE OF TRANSPORTATION.

(d) SMALL RURAL SCHOOL DISTRICTS, AS DEFINED BY THE DEPARTMENT, THAT HAVE A STUDENT POPULATION OF FEWER THAN ONE THOUSAND ARE EXEMPT FROM THE PROGRAM BUT MAY PARTICIPATE IF OTHERWISE ELIGIBLE.

(4) IN THE EVENT THAT FEDERAL PER-MEAL REIMBURSEMENTS FOR FREE OR REDUCED SCHOOL BREAKFASTS ARE DECREASED BELOW THE 2013 LEVELS OR ELIMINATED BY CONGRESS UNDER THE "CHILD NUTRITION ACT", 42 U.S.C. 1773(b) OR THE SCHOOL LUNCH PROGRAM, SCHOOLS THAT ARE OTHERWISE REQUIRED TO OFFER BREAKFAST PURSUANT TO THIS SECTION ARE EXEMPT FROM THE PROGRAM.

(5) A SCHOOL THAT HAS SEVENTY PERCENT OR MORE STUDENTS RECEIVING FREE OR REDUCED LUNCH UNDER THE SCHOOL LUNCH PROGRAM AND THAT HAS A STATE-LICENSED BEFORE-SCHOOL CARE PROGRAM MAY OPT TO OFFER ITS BREAKFAST PROGRAM DURING THE BEFORE-SCHOOL CARE

PROGRAM TO THOSE STUDENTS ENROLLED IN SUCH PROGRAM RATHER THAN AFTER THE BELL. THE SCHOOL MUST OFFER BREAKFAST AFTER THE BELL TO ANY STUDENT WHO DOES NOT PARTICIPATE IN THE BEFORE-SCHOOL CARE PROGRAM.

(6) ALL BREAKFASTS SERVED IN A PROGRAM REQUIRED BY THIS ARTICLE MUST COMPLY WITH FEDERAL MEAL PATTERNS AND NUTRITION STANDARDS FOR SCHOOL BREAKFAST PROGRAMS THAT ARE SET FORTH IN THE FEDERAL "HEALTHY, HUNGER-FREE KIDS ACT OF 2010", PUB.L. 111-296, AND ANY REGULATIONS OR RULES INTERPRETING THAT ACT.

22-82.8-104. Procedures - technical assistance. (1) (a) ON OR BEFORE MAY 1, 2014, THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE PROCEDURES FOR THE IMPLEMENTATION AND ENFORCEMENT OF THIS ARTICLE. SUCH PROCEDURES MUST BE IN COMPLIANCE WITH THE SCHOOL BREAKFAST PROGRAM AND SCHOOL LUNCH PROGRAM.

(b) THE DEPARTMENT SHALL OFFER TECHNICAL ASSISTANCE TO PUBLIC SCHOOLS AND SCHOOL DISTRICTS RELATED TO SUBMITTING CLAIMS FOR REIMBURSEMENT TO THE SCHOOL BREAKFAST PROGRAM.

(2) THE DEPARTMENT SHALL DEVELOP PROCEDURES TO ALLOCATE AND DISBURSE FEDERAL MONEYS TO PARTICIPATING SCHOOL FOOD AUTHORITIES AND PUBLIC SCHOOLS IN COMPLIANCE WITH THE REQUIREMENTS OF THE SCHOOL BREAKFAST PROGRAM AND SCHOOL LUNCH PROGRAM.

(3) ANY FEDERAL OR STATE MONEYS RECEIVED BY ANY SCHOOL OR SCHOOL DISTRICT AS REIMBURSEMENT FOR BREAKFASTS SERVED PURSUANT TO THIS ARTICLE MUST ONLY BE USED FOR THE FOOD AND OPERATIONS ASSOCIATED WITH THE SCHOOL'S OR SCHOOL DISTRICT'S FOOD SERVICE PROGRAM.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO