



2009 SENATE BILL 313

September 30, 2009 – Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Education.

1 **AN ACT** *to renumber and amend* 48.659; *to amend* 119.04 (1); and *to create*
2 48.659 (1) (a) to (d), 48.659 (2), 118.075 and 118.076 of the statutes; **relating**
3 **to:** physical fitness assessments, school nutrition, a quality rating system for
4 day care centers, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in
the bill.

***The people of the state of Wisconsin, represented in senate and assembly, do
enact as follows:***

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint
Legislative Council's Special Committee on Performance-Based Disease Management
for Large Populations. Subsequent to the committee's approval of the preliminary drafts
upon which this bill is based, the 2009-11 biennial budget act, 2009 Wisconsin Act 28, was
enacted. This bill, in addition to compiling those drafts, reconciles the provisions of those
drafts with current law, as affected by the biennial budget act.

The Department of Public Instruction (DPI) and the University of Wisconsin (UW)
received a three-year grant, which ends in 2010, to administer the FitnessGram physical
fitness test in middle schools that volunteer to participate. The FitnessGram is a
software program which is comprised of four tests: body mass index measurement, a
quasi-situps abdominal strength test, a flexibility test, and the Progressive Aerobic

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Cardiovascular Endurance Run (PACER). For all elements of the FitnessGram, age and gender norms have been developed and individual scores are measured against these norms. The PACER is a 20-meter shuttle run (back and forth) which is conducted in a class-based setting in which 20–50 children can run at a time. The PACER is designed to measure aerobic capacity. The UW has found that the PACER test is a good measure of fitness and a good indicator of diabetes risk.

This bill directs public schools, charter schools, and private schools to ensure that the physical fitness of pupils in grades 3 through 12 is assessed annually and specifies that the assessment must include an evaluation of pupils' aerobic capacity. These schools are not required to assess pupils who have a disability or other condition as specified by DPI administrative rule. The results must be kept confidential but schools are required to send results to DPI and provide an individual child's results to their parent or guardian.

The national school lunch and school breakfast programs provide federal funding to schools to serve free and reduced-priced meals and snacks. In exchange for receiving federal funds, schools must serve meals and snacks that adhere to federal nutritional requirements set by the U.S. Department of Agriculture (USDA). USDA requires that school lunches must meet the applicable recommendations of the 1995 Dietary Guidelines for Americans, which recommend that no more than 30% of an individual's calories come from fat and less than 10% from saturated fat. Federal guidelines do not apply to or limit the sale of a la carte or vending machine foods sold in addition to federally funded meals and snacks.

The bill requires all public schools, charter schools, and private schools, beginning in the 2012–13 school year, to use the following requirements for foods sold outside of federally reimbursed USDA meal programs: no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day at school or on school grounds. During the school day until the end of the school day, only water, milk, 100% fruit juice, 100% vegetable juice, or a blend of those juices may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold at school or on school grounds. Candy may not be sold in vending machines at any time of the day at school or on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements. Beginning on July 1, 2011, all public schools, charter schools, and private schools may not enter into, modify or renew a contract with a vending machine operator or vendor unless the terms of the contract that will be in effect on July 1, 2012, comply with the restrictions in the bill.

The Department of Children and Families (DCF) licenses day care centers. Current law requires anyone caring for four or more children under age seven who are unrelated to the provider to be licensed. The two types of licensed day care centers are: 1) family day care centers (up to eight children in care at any given time); and 2) group day care centers (nine or more children at any given time). Current law, as created by the 2009–11 biennial budget act, 2009 Wisconsin Act 28, requires DCF to provide a child care quality rating system that rates the quality of the child care provided by a licensed day care center that receives reimbursement under the Wisconsin Works Program or that volunteers for rating under the system and to make the rating information provided under that system available to the parents, guardians, and legal custodians of children who are recipients, or prospective recipients, of care and supervision from a day care center that is rated under the system. Current licensing requirements specify that meals and snacks provided at a licensed day care center must comply with the U.S. Department of Agriculture Child and Adult Care Food Program minimum meal requirements. Also

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under current licensing requirements, licensed day care centers must provide children with experiences that promote large and small muscle development and children must go outside daily unless the weather prohibits doing so. Current licensing requirements do not specifically direct licensed day care centers to provide nutrition education to children.

The bill requires the child care quality rating system to rate the quality of the child care provided by *all* licensed day care centers. The bill also requires the quality rating system to include indicators regarding the quality of the nutrition education provided by the day care center, including the developmental appropriateness of that education, the physical activity included in the day care center's program, including the developmental appropriateness of that activity, the nutritional value of the food and beverages served at the day care center, and any other nutritional policies implemented by the day care center. In addition, the bill requires DCF to consult with the Department of Health Services in establishing the indicators used to evaluate the quality of care provided at a licensed day care center. Finally, the bill requires DCF to seek funding to provide financial assistance to licensed day care centers that wish to improve their rating under the quality rating system.

1 **SECTION 1.** 48.659 of the statutes, as created by 2009 Wisconsin Act 28, is
2 renumbered 48.659 (1) (intro.) and amended to read:

3 48.659 (1) (intro.) The department shall provide a child care quality rating
4 system that rates the quality of the child care provided by a ~~child care provider~~ day
5 care center licensed under s. 48.65 ~~that receives reimbursement under s. 49.155 for~~
6 ~~the child care provided or that volunteers for rating under this section.~~ The
7 department shall make the rating information provided under ~~that~~ the quality
8 rating system available to the parents, guardians, and legal custodians of children
9 who are recipients, or prospective recipients, of care and supervision from a ~~child~~
10 ~~care provider~~ day care center that is rated under ~~this section~~ the quality rating
11 system, including making that information available on the department's Internet
12 site. The quality rating system shall include indicators regarding the relative
13 quality of all of the following:

14 **SECTION 2.** 48.659 (1) (a) to (d) of the statutes are created to read:

15 48.659 (1) (a) The nutrition education provided to children by the day care
16 center, including the developmental appropriateness of that education.

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1 (b) The physical activity that is included in the day care center's program,
2 including the developmental appropriateness of that activity.

3 (c) The nutritional value of food and beverages served to children by the day
4 care center.

5 (d) Any other nutritional policies implemented by the day care center.

6 **SECTION 3.** 48.659 (2) of the statutes is created to read:

7 48.659 (2) The department shall do all of the following:

8 (a) Consult with the department of health services in establishing the
9 indicators used to evaluate the quality of care provided by day care centers.

10 (b) Seek funding to provide financial assistance to day care centers that wish
11 to improve their rating under the quality rating system.

NOTE: Requires the a child care quality rating system provided by DCF to rate the quality of the child care provided by *all* licensed day care centers. Requires the quality rating system to include indicators regarding the relative quality of the nutrition education provided by the day care center, including the developmental appropriateness of that education, the physical activity included in the day care center's program, including the developmental appropriateness of that activity, the nutritional value of the food and beverages served by the day care center, and any other nutritional policies implemented by the day care center. Requires DCF to work with the Department of Health Services in establishing the indicators used to evaluate the quality of care provided by a day care center. Finally, requires DCF to seek funding to provide financial assistance to day care centers that wish to improve their rating under the quality rating system.

12 **SECTION 4.** 118.075 of the statutes is created to read:

13 **118.075 Assessment of pupil physical fitness.** (1) Beginning in the
14 2010-11 school year, every school board, the operator of every charter school under
15 s. 118.40 (2r), and the governing body of every private school shall do all of the
16 following:

17 (a) Except as provided in sub. (2), annually assess the physical fitness of each
18 pupil enrolled in grades 3 to 12. The assessment shall include an evaluation of the

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1 aerobic capacity of each pupil based upon criterion-referenced standards specific to
2 age and sex and the physical fitness level required for good health.

3 (b) Provide to each pupil and to the parent or guardian of each pupil a copy of
4 the results of the pupil’s physical fitness assessment under par. (a).

5 (c) Annually compile the results of the physical fitness assessment conducted
6 under par. (a) and provide a summary of the results to the department. The summary
7 may not contain the names of individual pupils or the teachers or instructional staff
8 of individual pupils. In this paragraph, “instructional staff” has the meaning given
9 in the rules promulgated by the department under s. 121.02 (1) (a) 2.

10 **(2)** (a) The requirement under sub. (1) (a) does not apply to a pupil for whom
11 the assessment is inappropriate as determined by the state superintendent by rule.

12 (b) The state superintendent shall promulgate rules to implement and
13 administer this section, including all of the following:

14 1. Criteria to determine when the assessment required under sub. (1) (a) is
15 inappropriate for or should not be administered to a pupil.

16 2. The assessment instrument to be used in the assessment required under sub.
17 (1) (a).

NOTE: Directs public schools, charter schools, and private schools to ensure that the physical fitness of pupils enrolled in grades 3 to 12 is assessed annually beginning in the 2010–11 school year. Those schools are not required to assess pupils for whom the assessment is inappropriate, as specified by DPI administrative rule. The assessment must include an evaluation of pupils’ aerobic capacity based upon criterion-referenced standards that are specific to a pupil’s age and gender and based on the physical fitness level required for good health. The results must be kept confidential, but must be provided to DPI and to a child’s parent or guardian.

18 **SECTION 5.** 118.076 of the statutes is created to read:

19 **118.076 School nutrition.** (1) In this section:

20 (a) “Bottled drinking water” has the meaning given in s. 97.34 (1) (a).

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1 (b) “Candy” means any food item that has brown sugar, corn sweetener, corn
2 syrup, dextrose, fructose, fruit juice concentrates, glucose, high-fructose corn syrup,
3 honey, invert sugar, lactose, maltose, malt syrup, molasses, raw sugar, sucrose,
4 sugar, or syrup, listed first or second in the list of ingredients.

5 (c) “Soda water beverage” has the meaning given in s. 97.34 (1) (b).

6 (d) “Soft drink” means a soda water beverage that contains brown sugar, corn
7 sweetener, corn syrup, dextrose, fructose, fruit juice concentrates, glucose,
8 high-fructose corn syrup, honey, invert sugar, lactose, maltose, malt syrup,
9 molasses, raw sugar, sucrose, sugar, syrup, artificial sweetener, or stevia, except that
10 “soft drink” does not include a soda water beverage that contains at least 10 percent
11 natural fruit or vegetable juice.

12 (e) “Vending machine” means any self-service device that, upon insertion of
13 coins or currency, or by other means, dispenses unit servings of food or beverage,
14 without the necessity of replenishing the device between each vending operation.

15 **(2)** (a) Except as provided in par. (c), no school board, operator of a charter
16 school under s. 118.40 (2r), or governing body of a private school may sell candy, or
17 allow the sale of candy from a vending machine or by any vendor, at school or on
18 school grounds.

19 (b) Except as provided in par. (c), no school board, operator of a charter school
20 under s. 118.40 (2r), or governing body of a private school may sell any beverage other
21 than the following, or allow the sale of any beverage other than the following from
22 a vending machine or by any vendor, at school or on school grounds:

- 23 1. Bottled drinking water.
- 24 2. Milk, including chocolate milk.
- 25 3. One hundred percent fruit juice.

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1 4. One hundred percent vegetable juice.

2 5. A blend of the beverages in subds. 3. and 4.

3 (c) 1. Beginning 30 minutes after the end of the school day and until the school
4 is closed for the night, candy and soda water beverages may be sold by a school board,
5 operator of a charter school under s. 118.40 (2r), governing body of a private school,
6 or vendor at school or on school grounds.

7 2. Beginning 30 minutes after the end of the school day and until the school is
8 closed for the night, soda water beverages that contain at least 10 percent natural
9 fruit or vegetable juice may be sold from a vending machine located at school or on
10 school grounds.

11 **(3)** Every school board, the operator of every charter school under s. 118.40 (2r),
12 and the governing body of every private school shall do all of the following:

13 (a) With the exception of food sold or distributed through the programs under
14 ss. 115.34, 115.341, 115.343, and 115.345, ensure that all food sold at school or on
15 school grounds on a school day satisfies the following minimum standards:

16 1. Except for nuts and seeds, no more than 30 percent of the total calories of
17 the food come from fat.

18 2. No more than 10 percent of the total calories of the food come from saturated
19 fats.

20 (b) Encourage the consumption by pupils of whole grains, fresh fruits, and fresh
21 vegetables.

22 (c) Encourage parent teacher organizations, school clubs, school teams, and
23 other school groups conducting fund raising in which the sale of food is involved to
24 follow the standards, policies, and requirements established in pars. (a) and (b) and
25 sub. (2).

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1 **SECTION 6.** 119.04 (1) of the statutes, as affected by 2009 Wisconsin Act 28, is
2 amended to read:

3 119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c),
4 66.0603 (1m) to (3), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343,
5 115.345, 115.361, 115.365 (3), 115.38 (2), 115.445, 115.45, 118.001 to 118.04, 118.045,
6 118.06, 118.07, 118.075, 118.076, 118.10, 118.12, 118.125 to 118.14, 118.145 (4),
7 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.24 (1),
8 (2) (c) to (f), (6) and (8), 118.255, 118.258, 118.291, 118.30 to 118.43, 118.51, 118.52,
9 118.55, 120.12 (5) and (15) to (25), 120.125, 120.13 (1), (2) (b) to (g), (3), (14), (17) to
10 (19), (26), (34), (35), (37), (37m), and (38), 120.14, 120.21 (3), and 120.25 are
11 applicable to a 1st class city school district and board.

12 **SECTION 7. Nonstatutory provisions.**

13 (1) No school board, operator of a charter school under section 118.40 (2r) of the
14 statutes, or operator of a private school, as defined under section 115.001 (3r) of the
15 statutes, may enter into, modify, or renew a contract with a vending machine
16 operator or a vendor unless the terms of the contract in effect on July 1, 2012, comply
17 with the requirements of section 118.076 (2) of the statutes, as created by this act.

18 **SECTION 8. Initial applicability.**

19 (1) The treatment of section 118.076 (2) and (3) (a) of the statutes first applies
20 to a contract between a vendor or a vending machine operator and a school board,
21 operator of a charter school under section 118.40 (2r) of the statutes, or governing
22 body of a private school, as defined in section 115.001 (3r) of the statutes, entered
23 into, modified, or renewed on July 1, 2012.

24 **SECTION 9. Effective dates.** This act takes effect on the day after publication,
25 except as follows:

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1 (1) The treatment of section 118.076 of the statutes takes effect on July 1, 2012.

2 (2) SECTION 7 (1) of this act takes effect on July 1, 2011.

NOTE: Requires all public schools, charter schools, and private schools, beginning in the 2012-13 school year, to use the following requirements for foods sold outside of federally reimbursed USDA meal programs: no more than 30% of its total calories shall be from fat (except for the sale of nuts or seeds), no more than 10% of its total calories shall be from saturated fat and the consumption of whole grains, fresh fruits, and fresh vegetables is encouraged. Soft drinks may not be sold in vending machines at any time of day at school or on school grounds. During the school day until the end of the school day, only water, milk, 100% fruit juice, 100% vegetable juice, or a blend of those juices may be sold on school grounds. One-half hour after the end of the school day, soft drinks that are not sold or dispensed by a vending machine may be sold at school or on school grounds. Candy may not be sold in vending machines at any time of the day at school or on school grounds. Candy that is not sold or dispensed by a vending machine may be sold one-half hour after the end of the school day. School fund raising which involves the sale of food on or off of school grounds is encouraged to follow these requirements. Beginning on July 1, 2011, all public schools, charter schools, and private schools may not enter into, modify or renew a contract with a vending machine operator or vendor unless the terms of the contract that will be in effect on July 1, 2012, comply with the restrictions in the bill.

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(END)