WEST VIRGINIA CODE CHAPTER 18 ARTICLE 5D

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§18-5D-1. Short title.

This act shall be known and may be cited as the West Virginia Feed to Achieve Act.

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§18-5D-2. Legislative findings; intent.

(a) The Legislature finds and declares that:

(1) Every child in school needs to have nutritious meals in order to achieve his or her potential. Providing the best schools and teachers alone does not ensure a child is mentally present and able to learn. A growing body of research establishes that a hungry child is less able to process the information provided and is less likely to be attentive to the lessons being taught.

(2) President Harry S. Truman began the national school lunch program in 1946 as a measure of national security to safeguard the health and well-being of the nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food. Last year in West Virginia, 32.3 million school lunches were served to students in public schools.

(3) Research shows that healthy eating, proper nutrition and regular physical activity result in students who have: (A) Increased standardized achievement test scores; (B) improved attendance; (C) reduced tardiness; (D) improved academic, behavioral and emotional functioning; and (E) improved nutrition, and for many students, the nutritious breakfast at school is essential.

(4) Schools that provide universal breakfast programs also report: (A) Decreases in discipline and psychological problems; (B) decreases in visits to school nurses; (C) decreases in tardiness; (D) increases in student attentiveness; (E) increases in attendance; and (F) improved learning environments, and these positive attributes are furthered through comprehensive healthy schools policies that include quality nutrition, integrating physical activity during the school day, and teaching children about the importance of embracing a healthy active lifestyle.

(5) An effective school breakfast program is not an interruption of the school day; it is an integral and vital part of the school day.

(6) The participation rate for the school breakfast program varies greatly among our counties. Those counties which have made a determined effort to increase participation by offering programs to best meet student needs, such as Grab-And-Go Breakfasts, providing Breakfast in the Classroom or providing Breakfast After First Period, are feeding significantly higher percentages of their students.

(7) The West Virginia Center on Budget and Policy reports that in 2011 more than 25 percent of the children in West Virginia lived in homes with a household income below the federal poverty line, which is $23,050 for a family of four. About 50 percent of West Virginia children live in homes with a household income below twice the federal poverty level, $46,100 for a family of four, which is approximately the level of the Work Force West Virginia self-sufficiency standard.

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(8) The majority of students from families below the self-sufficiency standard are currently not eating breakfast at school. On the average school day during the 2011-2012 school year, less than half of the West Virginia students eligible for a federally funded free breakfast actually received one. On that same average day, only about one third of the students eligible to receive a reduced price breakfast actually received one.

(9) In order to maximize each child's potential to learn and develop, the Legislature, schools and communities must partner to provide the most basic support for learning: nutritious meals.

(10) In order to maximize student participation in school nutrition programs and to reduce the secondary adverse impacts of poverty, it is important that schools provide nutritious meals without a risk to students of being stigmatized as poor.

(11) High rates of childhood hunger and childhood obesity occur simultaneously because children are not receiving healthy, nutritious food. According to the Data Resource Center for Child and Adolescent Health and others, in 2008 West Virginia ranked 44 in overall prevalence of childhood obesity, with 35.5 percent of children considered either overweight or obese.

(12) According to the 2008 Pediatric Nutrition Surveillance System, which assesses weight status of children from low-income families participating in the Women, Infants and Children program, 28.3 percent of low income children age 2-5 are overweight or obese in West Virginia.

(13) The Food Research and Action Center has found that providing a balanced school breakfast may protect against childhood obesity. School breakfast participation, particularly when combined with comprehensive efforts that include regular physical activity and promote healthy eating habits, is associated with a lower body mass index, a lower probability of being overweight and lower probability of obesity, all of which help prevent a range of chronic diseases including Type II Diabetes, high blood cholesterol, high blood pressure, heart disease and stroke.

(14) Participation in federally funded meals in child care, preschool, school, or summer settings is associated with a lower body mass index among young, low income children.

(15) Private and nonprofit sectors have shown a willingness to commit significant resources to addressing hunger in America, leveraging federal programs and enlisting their employees, customers and clients to improve the availability and accessibility of affordable, healthy food for those in need of assistance.

(16) Public schools in this state and others are adopting a continuum of policies to implement low cost, effective programs that include physical activity, physical education, proper nutrition and the promotion of healthy eating habits, along with involvement by school staff, families and communities, and a variety of resources to assist schools in

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adopting and implementing these programs are easily accessible on the internet and through the Office of Healthy Schools in the West Virginia Department of Education.

(b) In order to maximize the economies of scale and to access all available federal funds to support our school nutrition programs, the Feed to Achieve initiative directs schools to make available and to promote the federally approved and subsidized meals to all pre-kindergarten through twelfth grade students, to make them readily available and to consider reducing or eliminating the cost to students if sufficient funds become available.

(c) The Legislature intends to provide a framework for the State Board of Education and the county boards of education to provide, as effectively and as efficiently as possible, a minimum of two nutritious meals each school day to all students.

(d) The Legislature intends for the state and county boards of education to enter into public-private partnerships to eventually provide free nutritious meals for all pre-kindergarten through twelfth grade school children in West Virginia.

(e) The Legislature encourages county boards to examine the options available for comprehensive policies and programs to improve student health and promote academic achievement and to establish a comprehensive policy on healthy schools that best meets the needs of their student population.

(f) It is not the intention of the Legislature to allow or encourage parents to abdicate their parental responsibility related to providing healthy, nutritious meals for their children. However, it is the intent of the Legislature that no child be denied nutritious meals.

(g) It is the intent of the Legislature that healthy nutritious school lunches be made available to all students in a manner which maximizes participation and minimizes stigma attached to participating low income students.

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§18-5D-3. School nutrition programs.

(a) Each county board of education shall establish and operate school nutrition programs under which, at a minimum, a nutritious breakfast and lunch are made effectively available to all students enrolled in the schools of the county in accordance with the State Board of Education standards. The standards shall include guidelines for determining the eligibility of students for paid, free and reduced meals. The standards shall also establish procedures and guidelines for the Feed to Achieve initiative to allow for the provision of healthy, nutritious meals to all elementary school students, without cost to students, where schools find it practical to do so.

(b) The Feed to Achieve initiative will be phased in for all elementary schools as sufficient funds become available, through donations, contributions and payments made by individuals, communities, businesses, organizations and parents or guardians on behalf of students. Nothing in this article prohibits any school from providing free meals to all of its students.

(c) Each county board of education shall:

(1) Require all schools to adopt a delivery system approved by the state Office of Child Nutrition, no later than the 2015 school year, that ensures all students are given an adequate opportunity to eat breakfast. These approved systems shall include, but are not limited to, Grab-And-Go Breakfasts, Breakfast in the Classroom or Breakfast After First Period; and

(2) Collaborate with the state Office of Child Nutrition to develop strategies and methods to increase the percentage of children participating in the school breakfast and lunch nutrition programs.

(d) In addition to other statistics, the county boards of education, in consultation with the state Office of Child Nutrition, shall determine the number of children in each school who are participating in each meal offered by the school; the number of children who are not eating each meal offered by the school; and the total daily attendance.

(e) The state Office of Child Nutrition shall report to the Joint Committee on Government and Finance, the Select Committee on Children and Poverty and the Legislative Oversight Commission on Education Accountability on or before December 31, 2015, and each year thereafter, on the impacts of the Feed to Achieve Act and any recommendations for legislation.

(f) County boards of education may utilize the nonprofit funds or foundations established in section four of this article or other available funds to offset the costs of providing free meals, after school and summer nutrition programs to elementary students.

(g) If at any time federal financial appropriations to this state for school nutrition programs are terminated, county boards of education are hereby authorized, but not required, to

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continue the programs at their own expense.

(h) Classroom teachers may not be required to participate in the operation of the school breakfast program as part of their regular duties.

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§18-5D-3A. Unsafe food additives prohibited.

(a) Effective August 1, 2025, the following food additives shall be deemed unsafe and shall not be permitted as an ingredient in any meal served in a school nutrition program as set forth in this article:

(1) Red Dye No. 3 (CAS Reg. No. 16423-68-0);

(2) Red Dye No. 40 (CAS Reg. No. 25956-17-6);

(3) Yellow Dye No. 5 (CAS Reg. No. 1934-21-0);

(4) Yellow Dye No. 6 (CAS Reg. No. 2783-94-0);

(5) Blue Dye No. 1 (CAS Reg. No.3844-45-8);

(6) Blue Dye No. 2 (CAS Reg. No. 860-22-0); and

(7) Green Dye No. 3 (CAS Reg. No. 2353-45-9).

(b) An elementary, middle, or high school may permit the sale of food items that do not comply with this section as part of a school fundraising event if the sale of those items takes place off of and away from school premises or the sale of those items takes place on the school premises at least one-half hour after the end of the school day.

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§18-5D-4. Creating public-private partnerships; creating nonprofit foundation or fund; audit.

(a) The Department of Education and each county board of education shall promptly establish a fund that is restricted solely for the receipt and expenditure of gifts, grants and bequests for the purposes of this article and may establish in lieu thereof a nonprofit foundation for this purpose. The purpose of the fund or nonprofit foundation is to provide supplemental or matching funds to increase participation in the nutrition programs in the Feed to Achieve initiative set forth in subsection (c) of this section. The Department of Education shall utilize its fund or nonprofit foundation to assist county boards of education in counties whose fund or foundation lacks sufficient business, industry and individual contributors to fund the Feed to Achieve nutrition programs.

(b) Financial support for the fund or foundation may come from either public or private gifts, grants, contributions, bequests and endowments.

(c) Expenditures from the state or county funds or by the foundations shall be used for provision of food to students through any of the programs or initiatives approved by the Office of Child Nutrition, including the following programs: School Breakfast Program, National School Lunch Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, the Child and Adult Care Food Program, the farm-to-school initiative and community gardens. Expenditures may also be made for initiatives developed with the Department of Human Services and public-private partnerships to provide outreach and nutritional meals when students are not in school.

(d) No administrative expenses or personnel expenses for any of the state departments implementing this act, the State Board of Education, any county board of education, school or program may be paid from the funds or by the foundations.

(e) Individuals or businesses that contribute to the funds or foundations may specify schools or nutrition programs for which the contribution is to be used.

(f) The Department of Education and county boards of education may establish public-private partnerships to enhance current or advance additional nutrition programs that provide nutritious food for children to take home for weekend meals.

(g) The West Virginia Board of Education will work with the Office of Healthy Lifestyles and the West Virginia Department of Agriculture to implement and fund a sustainable "Farm-to-School" program. The outcomes of this program will be included in the annual report provided by the Office of Healthy Lifestyles required by §16-67-5 of this code.

(h) The Department of Education shall collaborate with the Department of Human Services to develop effective strategies and programs such as after school nutrition outreach and programs that improve the healthy lifestyle of all students in pre-kindergarten through twelfth grade. The Department of Human Services may propose rules for promulgation in

accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate any programs so developed.

(i) All moneys contributed to a fund or foundation established pursuant to this section and all expenditures made therefrom shall be audited as part of the annual independent audit of the State Board of Education and the county boards of education.

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§18-5D-5. Shared table initiative.

(a) The Legislature finds and determines that:

(1) In West Virginia, one in four children suffer from food insecurity; however, every day each school has a large percentage of food that is left uneaten and thrown away, and in many cases this food can be reused;

(2) A new initiative called "The Shared Table" encourages schools to collect unused food appropriate for redistribution, and make that food available throughout the day to students who may be hungry, to provide a method for discrete distribution of that food to be taken home by kids with food insecurity, and to donate any unused food to local food pantries and other entities that distribute food to those in need;

(3) This program has begun to catch on nationally and has shown itself to be an effective way to distribute excess school food;

(4) The Shared Table initiative can be as simple as designating a table or location in the school for food to be taken by students through the school day, and can also provide a system of discretely placing food in containers in student's lockers each day to take home, and other creative initiatives to promote consumption of unused food already provided by schools to students and others who have food insecurity at home; and

(5) The Shared Table initiative does not require school cafeterias to produce extra food and is only intended to promote the more effective consumption of existing food particularly to students who may otherwise go without. Similar initiatives have been implemented in various states and have been very successful in safely distributing food consistent with U.S. Food and Drug Administration and local health agencies requirements.

Therefore, the purpose of this section is to establish a statewide initiative to facilitate this worthwhile program.

(b) The state board shall promulgate a rule in accordance with §29A-3B-1 et seq. of this code that provides policy guidance to county boards on the management and distribution of excess school food consistent with state and county health department and United States Food and Drug Administration requirements and guidelines for the distribution of excess foods. The guidance policy at a minimum shall provide a list of food products and methodologies for distribution that include, but are not limited to:

(1) The types of foods that may be distributed;

(2) Methods of distribution to make excess food available at other times during the school day;

(3) Methods of distributing excess food to students to consume after school; and

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(4) Methods to otherwise donate excess food to persons or organizations providing food to persons or families suffering from food insecurity.

(c) The preparation, safety, and donation of food made available to students during a regular school meal time and donated to a food bank or any other nonprofit charitable organization for distribution, shall comply with and be thereby covered by the Good Samaritan Food Donation Act, §55-7D-1 et seq. of this code.

(d) The methods of distributing excess food to students within a school may include a sharing table where food service staff, students and faculty may return appropriate food items consistent with state board guidelines to make those food items available to students during the school day.

(e) Each county board of education shall establish a program to assist and encourage schools to participate in the Shared Table initiative.

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§18-5D-6. West Virginia Emergency School Food Act.

(a) The Legislature finds and declares that:

(1) The Feed to Achieve initiative has successfully improved the availability and awareness for the need to provide nutritious food to state students and the Shared Table Initiative has facilitated a spirit of innovation and consciousness in our counties to find alternative ways to feed children in need;

(2) A periodic assessment of the needs for county students and availability of county resources would be helpful in determining what type of resources are available and needed to reduce food insecurity for students when they are not in school;

(3) That expansion of the Shared Table Initiative to include a program to encourage county schools to locate, participate in, and initiate programs to provide meals during summers and non-school-day times when some children may not have access to healthy meals could assist in reducing food insecurity for thousands of children in this state, and therefore, creating a mechanism that is not a directive from the Legislature upon county school boards, but rather an authorization to use school resources to find innovative ways, within the means of the county school systems, to assist the communities they serve, will provide a public benefit.

(b) Any county public school system may conduct an annual countywide survey of public-school students to determine their noninstructional or nontraditional remote learning and virtual school day eating patterns and the availability of nutritious food to them when schools are closed. The West Virginia Office of Child Nutrition may assist and facilitate with this survey to determine the needs for supplemental food services in every county.

(c) Any county board may collect and compile information regarding the availability of food resources in the county during noninstructional or nontraditional remote learning days as well as include a plan that includes virtual school students and distribute this information to all students. These resources may include any public, private, religious group, or charity that will provide food to children with food insecurity.

(d) Any county school board may investigate and implement any program that may facilitate this initiative including, but not limited to, entrepreneurship programs to foster innovation in providing assistance, utilizing participation in programs as a positive discipline option, and creating mentorship programs or other opportunities to participate in the feeding program.

(e) Any county school board may provide an annual countywide or a coordinated regional training opportunity, with assistance from the West Virginia Office of Child Nutrition, that ensures that any entity that potentially qualifies as a summer feeding site according to the county survey, is afforded the opportunity to receive training on operation of a feeding site.

(f) Any county board may provide its survey, a summary of its activities, and any findings or recommendations the county school board has related thereto, to the West Virginia Office of

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Child Nutrition at a date determined each year by that office.

(g) Each West Virginia public school may include in its crisis response plan, created pursuant to §18-9F-9, an assessment and plan to feed students during noninstructional or nontraditional remote learning days and public virtual school students that includes emergency situations that may require innovative ways to deliver food to student homes. Community support and resources should be utilized when creating this plan.

(h) The West Virginia Office of Child Nutrition may monitor these activities and share between counties information about innovative and successful program initiatives around the state to promote and facilitate the West Virginia Emergency School Food Act.

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