

By: Wohlgemuth

H.B. No. 764

A BILL TO BE ENTITLED

AN ACT

relating to the health of school-age children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Many of today's youth suffer from obesity, which has reached epidemic proportions. There is a much higher percentage of children who are overweight than there was 20 years ago, and many children have increasingly sedentary lifestyles. Moreover, the number one risk factor for adult obesity is obesity in adolescence. Poor diet and physical inactivity together account for an estimated 300,000 deaths each year; only tobacco use causes more preventable deaths. That reality not only threatens quality of life but indicates looming health care costs for the state in the future. Studies show that comprehensive treatment programs have reduced obesity and prevented the onset of diabetes and that children who are physically fit perform better academically. The purpose of this Act is to better use schools to educate our children concerning obesity, prevent obesity, and raise to the levels of several other states' standards this state's standards concerning obesity prevention.

SECTION 2. Subchapter B, Chapter 7, Education Code, is amended by adding Section 7.027 to read as follows:

Sec. 7.027. INCENTIVES TO PROVIDE ACCESS TO SCHOOL CAMPUSES AFTER REGULAR SCHOOL HOURS. (a) The agency shall study incentives that could be provided to the board of trustees of a school district

1 to adopt rules under Section 11.165 or to otherwise provide  
2 community access to school campuses after regular school hours for  
3 indoor and outdoor recreational activities. Based on that study,  
4 the agency shall prepare a report recommending incentives.

5 (b) Not later than November 1, 2004, the agency shall submit  
6 a copy of the report prepared under Subsection (a) to the speaker of  
7 the house of representatives, the lieutenant governor, and the  
8 presiding officer of the standing committees in the house and  
9 senate primarily responsible for public education.

10 (c) This section expires December 31, 2004.

11 SECTION 3. (a) Section 28.004, Education Code, is amended  
12 by adding Subsections (d-1) and (k) to read as follows:

13 (d-1) In accordance with rules adopted by the commissioner,  
14 a school district shall report to the agency concerning the  
15 activities of the local school health education advisory council.

16 (k) A school district's health education faculty shall  
17 confer with the district's science and physical education faculty,  
18 as directed by the board of trustees of the district, in providing a  
19 comprehensive and coordinated health education curriculum. The  
20 health education curriculum in all grade levels in which health is a  
21 part of the required curriculum must include the study of:

22 (1) nutrition;

23 (2) fitness; and

24 (3) the causes and effects of obesity.

25 (b) Section 28.004(k), Education Code, as added by  
26 Subsection (a) of this section, applies beginning with the  
27 2004-2005 school year.

SECTION 4. (a) Subchapter A, Chapter 28, Education Code, is amended by adding Sections 28.008 and 28.009 to read as follows:

Sec. 28.008. PHYSICAL EDUCATION INSTRUCTION. (a) The State Board of Education, after consulting with educators, parents, and medical professionals, by rule shall require a student enrolled in kindergarten or a grade level below grade seven in an elementary school setting to participate in daily physical activity as part of a school district's physical education curriculum or through structured activity during a school campus's daily recess, except that the board may not require more than 30 minutes of daily physical activity. The rules must provide for an exemption for a student who is unable to participate in daily physical activity because of illness or disability.

(b) Each student enrolled in a middle school or junior high school shall participate in a physical education program as part of the curriculum for the student's grade level unless the student is unable to participate because of illness or disability. The State Board of Education shall adopt rules for a school district to use in determining whether a student is unable to participate in a physical education program under this subsection. A student may not substitute participation in an extracurricular activity of any type, including cheerleading or band, for participation in a physical education program.

(c) The State Board of Education by rule shall ensure that:

(1) each physical education class under Subsection (b) has a ratio of not less than one teacher for each 40 students in average daily attendance; and

1           (2) each student who participates in a physical  
2 education program under Subsection (b) actively engages in the  
3 program's activities and receives individualized instruction to  
4 the extent necessary.

5           Sec. 28.009. FITNESS ASSESSMENTS; REPORT CARD. (a) The  
6 agency shall adopt or develop physical fitness standards that can  
7 be used by physical education teachers during physical education  
8 class to assess the physical fitness of students in kindergarten  
9 through grade 12.

10           (b) Each school district shall use the standards to assess  
11 the following three components of a student's physical fitness:

12                   (1) aerobic capacity;  
13                   (2) body composition; and  
14                   (3) muscle fitness, including strength, endurance,  
15 and flexibility.

16           (c) The agency, in adopting or developing the standards, and  
17 each school, in administering the standards, as applicable, shall  
18 ensure that:

19                   (1) each standard assesses important aspects of  
20 health-related fitness rather than skill or agility;

21                   (2) a student is not compared to another student;

22                   (3) each student is measured against fitness standards  
23 that have been established for the student's age and sex; and

24                   (4) each student receives an objective, personalized  
25 evaluation and positive reinforcement to enable the student to  
26 change any unhealthy behavior.

27           (d) Each school shall distribute to each student whose

1 physical fitness is assessed using standards adopted or developed  
2 under this section a physical fitness report card based on the  
3 results of the assessment. The fitness report card:

4 (1) must be in the form determined by the board of  
5 trustees of the school district; and

6 (2) shall be distributed in the same manner and at the  
7 same time as the student's regular report card.

8 (b) A student enrolled in kindergarten or a grade level  
9 below grade seven in an elementary school setting must participate  
10 in daily physical activity as provided by State Board of Education  
11 rules adopted under Section 28.008(a), Education Code, as added by  
12 Subsection (a) of this section, beginning with the 2003-2004 school  
13 year. A student enrolled in a middle school or junior high school  
14 must participate in a physical education program as provided by  
15 Section 28.008(b), Education Code, as added by Subsection (a) of  
16 this section, and by rules adopted under Section 28.008(b),  
17 beginning with the 2004-2005 school year.

18 (c) Not later than July 1, 2004, the Texas Education Agency  
19 shall adopt or develop physical fitness standards and the board of  
20 trustees of each school district shall establish the format for a  
21 physical fitness report card as provided by Section 28.009,  
22 Education Code, as added by Subsection (a) of this section. Each  
23 district shall use physical fitness diagnostic standards and  
24 distribute physical fitness report cards as provided by Section  
25 28.009, Education Code, as added by Subsection (a) of this section,  
26 beginning with the 2004-2005 school year.

27 SECTION 5. (a) Subchapter Z, Chapter 29, Education Code,

is amended by adding Section 29.909 to read as follows:

Sec. 29.909. LONE STAR HEALTHY PLUS SCHOOL PROGRAMS. (a) In this section, "program" means a Lone Star Healthy Plus School Program.

(b) A school district may provide a Lone Star Healthy Plus School Program.

(c) The agency shall adopt a comprehensive list of objectives relating to the promotion of the health of public school students, including sufficient physical activity and good nutrition, that a program must include.

(d) In developing or selecting a program, a school district shall consult with a committee selected by the district that consists of:

- (1) parents of district students;
- (2) educators, including physical education teachers;
- (3) health professionals, including doctors, nurses, dietitians, and physical fitness experts; and
- (4) other members of the community.

(e) The agency shall:

(1) maintain a list of programs that school districts have implemented that include the objectives the agency adopts under Subsection (c);

(2) based on data reported by districts, annually designate as a Lone Star Healthy Plus School each school that provides a program that:

(A) includes the objectives the agency adopts under Subsection (c); and

1                   (B) is approved by the committee selected under  
2 Subsection (d); and

3                   (3) include in the report required under Section  
4 39.182:

5                   (A) based on data reported by districts, an  
6 evaluation of the impact of the programs on student discipline and  
7 academic achievement; and

8                   (B) other reported data relating to the programs  
9 the agency considers appropriate for inclusion.

10                  (f) The agency may accept money from federal government and  
11 private sources to use in assisting school districts in  
12 implementing programs that include the objectives the agency adopts  
13 under Subsection (c).

14                  (b) Not later than December 31, 2003, the Texas Education  
15 Agency shall develop a list of objectives relating to the promotion  
16 of the health of public school students as required by Section  
17 29.909(c), Education Code, as added by Subsection (a) of this  
18 section.

19                  SECTION 6. Section 38.013(a), Education Code, as added by  
20 Chapter 907, Acts of the 77th Legislature, Regular Session, 2001,  
21 is amended to read as follows:

22                  (a) The agency, with the assistance of the Obesity  
23 Prevention Coordinating Council, shall make available to each  
24 school district a coordinated health program designed to prevent  
25 obesity, cardiovascular disease, and Type II diabetes in elementary  
26 school students. The program must provide for coordinating:

27                   (1) health education;

- (2) physical education and physical activity;
- (3) nutrition services; and
- (4) parental involvement.

SECTION 7. (a) Subchapter A, Chapter 38, Education Code, is amended by adding Section 38.017 to read as follows:

Sec. 38.017. FOOD AND BEVERAGES OFFERED FOR SALE IN SCHOOLS. (a) An elementary school may not offer for sale at the school or permit another person to offer for sale at the school a food or beverage other than a food or beverage offered for sale as part of the regular school meal program authorized under federal law. The school shall provide an environment that promotes students' healthful eating habits.

(b) As part of an elementary or secondary school's regular school meal program, the school shall offer:

- (1) healthful entree portions; and
- (2) a variety of fruits and vegetables of good quality.

(c) A secondary school may not offer for sale at the school or permit another person to offer for sale at the school a snack food that derives more than 10 percent of its calories from saturated fat or that contains more than 35 percent sugar or other added sweetener by weight. The school may not offer for sale or permit another person to offer for sale at the school soft drinks, sports drinks, punch, iced tea, or any fruit juice beverage containing less than 50 percent fruit juice. The school may offer for sale at the school or permit another person to offer for sale at the school the following beverages only:



1           (1) water;

2           (2) nonfat or low fat milk; or

3           (3) beverages that contain at least 50 percent fruit  
4 juice and do not contain added sweetener.

5           (d) The agency shall work in cooperation with the United  
6 States Department of Agriculture to ensure implementation of this  
7 section.

8           (e) This section does not prohibit an elementary or  
9 secondary school from offering for sale at the school or permitting  
10 another person to offer for sale at the school food or beverages at  
11 a school bake sale, carnival, supper, or similar event held on an  
12 occasional basis.

13           (b) Section 38.017, Education Code, as added by Subsection  
14 (a) of this section, applies beginning with the 2003-2004 school  
15 year.

16           SECTION 8. Chapter 38, Education Code, is amended by adding  
17 Subchapter C to read as follows:

18           SUBCHAPTER C. FUNDING FOR SCHOOL NURSES

19           Sec. 38.101. GRANTS TO EMPLOY SCHOOL NURSES. Subject to  
20 the availability of federal or state appropriated funds, the  
21 commissioner of public health shall administer a program under  
22 which grants are awarded to assist school districts with the costs  
23 of employing school nurses in accordance with this subchapter.

24           Sec. 38.102. GRANT PROCEDURES. The commissioner of public  
25 health, by rules adopted in accordance with this subchapter, shall  
26 establish procedures for awarding grants. The rules must provide  
27 that grants are awarded to school districts on an annual basis

1 through a competitive process.

2 Sec. 38.103. ELIGIBILITY FOR INITIAL GRANT. (a) A school  
3 district is eligible for a grant under this subchapter only if the  
4 district, at the time of initial application for the grant, does not  
5 provide a health care program or health care services through  
6 school nurses or school-based health clinics.

7 (b) This section does not prohibit the renewal of a grant  
8 awarded under this subchapter.

9 Sec. 38.104. PARTICIPATION OF OTHER ENTITIES. A school  
10 district may cooperate with a public or private institution of  
11 higher education, clinic or other health care provider, or other  
12 entity to participate in a program to employ a school nurse under  
13 this subchapter. The entity may, in cooperation with the school  
14 district:

15 (1) apply on behalf of the school district for a grant  
16 under this subchapter;

17 (2) provide a school nurse or appropriate facilities;

18 (3) provide matching funds required under Section  
19 38.105 or assist the school district to obtain those funds; or

20 (4) provide other assistance to the school district to  
21 enable the school district to participate in the program.

22 Sec. 38.105. PROGRAM REQUIREMENTS. (a) A program to  
23 employ a school nurse funded through a grant awarded under this  
24 subchapter must be designed to:

25 (1) reduce student absenteeism by means that include  
26 authorizing a school nurse to administer immunizations;

27 (2) increase a student's ability to meet the student's

1 academic potential; and

2 (3) stabilize the physical well-being of a student.

3 (b) The commissioner of public health shall adopt rules  
4 establishing standards for employment of school nurses funded  
5 through grants that place primary emphasis on delivery of health  
6 services and secondary emphasis on population-based models that  
7 prevent emerging health threats.

8 Sec. 38.106. MATCHING FUNDS; LIMITATIONS ON GRANTS. (a)  
9 To be eligible to receive a grant, a district must provide matching  
10 funds in accordance with rules adopted under Section 38.102. The  
11 matching funds may be obtained from any source available to the  
12 district, including in-kind contributions, community or foundation  
13 grants, individual contributions, and local governmental agency  
14 operating funds.

15 (b) A school district may not receive more than \$50,000 in a  
16 state fiscal biennium through grants awarded under this subchapter.

17 Sec. 38.107. SURVEY RELATING TO SERVICES. The commissioner  
18 of public health shall require client surveys to be conducted in  
19 relation to the services of nurses funded through grants awarded  
20 under this subchapter, and the results of those surveys must be  
21 included in the annual report required under Section 38.064.

22 SECTION 9. (a) Section 39.023(a), Education Code, is  
23 amended to read as follows:

24 (a) The agency shall adopt or develop appropriate  
25 criterion-referenced assessment instruments designed to assess  
26 essential knowledge and skills in reading, writing, mathematics,  
27 social studies, health, and science. All students, except students

1 assessed under Subsection (b) or (1) or exempted under Section  
2 39.027, shall be assessed in:

3 (1) mathematics, annually in grades three through  
4 seven without the aid of technology and in grades eight through 11  
5 with the aid of technology on any assessment instruments that  
6 include algebra;

7 (2) reading, annually in grades three through nine;

8 (3) writing, including spelling and grammar, in grades  
9 four and seven;

10 (4) English language arts, in grade 10;

11 (5) social studies, in grades eight and 10; ~~and~~

12 (6) science, in grades five and 10; and

13 (7) health, annually in grades three through nine.

14 (b) Not later than December 31, 2003, the State Board of  
15 Education shall adopt rules for the administration of assessment  
16 instruments designed to test essential knowledge and skills in  
17 health education as provided by Section 39.023(a), Education Code,  
18 as amended by Subsection (a) of this section. Beginning with the  
19 2004-2005 school year, the State Board of Education shall  
20 administer assessment instruments in accordance with the rules  
21 adopted under this subsection.

22 SECTION 10. Subchapter C, Chapter 61, Education Code, is  
23 amended by adding Section 61.0551 to read as follows:

24 Sec. 61.0551. COORDINATION OF NUTRITION AND PHYSICAL  
25 FITNESS PROGRAMS WITH ELEMENTARY SCHOOLS. (a) The board shall  
26 develop procedures for establishing a partnership or affiliation  
27 between a general academic teaching institution and an elementary

1 school to coordinate and promote nutrition and physical fitness  
2 programs.

3 (b) Through a partnership or affiliation established under  
4 Subsection (a), a general academic teaching institution may:

5 (1) establish a program to place students seeking  
6 degrees in fields involving nutrition or physical fitness, such as  
7 health, dietetics, nutrition, physical education, dance, sport  
8 management, and kinesiology, in an elementary school to obtain  
9 clinical or field experience;

10 (2) develop a program to provide training to  
11 elementary school teachers or other staff whose teaching curriculum  
12 or other duties involve nutrition or physical fitness; and

13 (3) test and promote a curriculum or other program  
14 involving nutrition or physical fitness as a pilot program in an  
15 elementary school.

16 SECTION 11. (a) Subchapter D, Chapter 62, Health and Safety  
17 Code, is amended by adding Section 62.161 to read as follows:

18 Sec. 62.161. REIMBURSEMENT FOR PREVENTION AND TREATMENT OF  
19 OBESITY. (a) The commission shall periodically examine and  
20 evaluate the degree to which services provided by health care  
21 providers to children relating to prevention and treatment of  
22 obesity are covered under the child health plan.

23 (b) Based on the results of the examination and evaluation  
24 required by Subsection (a), the commission, to the extent  
25 practicable, shall take all action necessary to promote  
26 availability of services relating to prevention and treatment of  
27 obesity for children under the child health plan, including:

1           (1) modifying billing codes in a manner that  
2 facilitates coverage for those services; and

3           (2) seeking additional sources of state and federal  
4 funding for coverage for those services.

5           (b) Not later than December 1, 2004, the Health and Human  
6 Services Commission shall prepare and submit a report to the  
7 legislature regarding the results of the initial examination and  
8 evaluation required by Section 62.161, Health and Safety Code, as  
9 added by Subsection (a) of this section, and the commission's  
10 actions taken in accordance with the requirements of Section  
11 62.161.

12           SECTION 12. (a) Subtitle E, Title 2, Health and Safety  
13 Code, is amended by adding Chapter 112 to read as follows:

14           CHAPTER 112. OBESITY PREVENTION COORDINATING COUNCIL

15                   SUBCHAPTER A. GENERAL PROVISIONS

16           Sec. 112.001. DEFINITION. In this chapter, "council" means  
17 the Obesity Prevention Coordinating Council.

18           Sec. 112.002. COUNCIL. The department and the Texas  
19 Education Agency shall jointly establish and support the council.

20           Sec. 112.003. COMPOSITION; TERMS. (a) The council is  
21 composed of six members who serve staggered two-year terms. Three  
22 members' terms expire February 1 of each year.

23           (b) The department and the Texas Education Agency shall each  
24 appoint three members to the council. Each member must be  
25 affiliated with a nonprofit or community organization in this state  
26 that is concerned with:

27                   (1) the health of children in this state; or

1           (2) the prevention or treatment of obesity or of one or  
2 more diseases that are caused or aggravated by obesity.

3           (c) No two members may be affiliated with the same nonprofit  
4 or community organization of a type described by Subsection (b),  
5 except that members who are affiliated with different local or  
6 regional nonprofit or community organizations of a type described  
7 by Subsection (b) may be affiliated with the same statewide  
8 nonprofit or community organization.

9           (d) The department and the Texas Education Agency shall make  
10 appointments in a manner that provides for a balanced  
11 representation of the geographic regions of this state.

12           Sec. 112.004. OFFICERS. The council shall elect one of its  
13 members to serve as presiding officer and another member to serve as  
14 assistant presiding officer. The council may elect other officers  
15 that it considers necessary.

16           Sec. 112.005. MEETINGS. The council shall meet at least  
17 quarterly and may meet more often at the call of the presiding  
18 officer.

19           Sec. 112.006. REIMBURSEMENT FOR EXPENSES. A member of the  
20 council is not entitled to compensation but is entitled to  
21 reimbursement for the member's travel expenses as provided by  
22 Chapter 660, Government Code, and the General Appropriations Act.

23           Sec. 112.007. PERSONNEL AND FACILITIES. The department and  
24 the Texas Education Agency are jointly responsible for the  
25 administration of the council. The department and the education  
26 agency shall adopt a memorandum of understanding that prescribes  
27 the extent to which each agency, using existing staff and

1 facilities, shall provide the necessary staff and facilities to  
2 assist the council in performing its duties.

3 Sec. 112.008. APPLICABILITY OF ADVISORY COMMITTEE LAW.  
4 Chapter 2110, Government Code, does not apply to the council.

5 [Sections 112.009-112.050 reserved for expansion]

6 SUBCHAPTER B. POWERS AND DUTIES

7 Sec. 112.051. COORDINATION WITH STEERING COMMITTEE;  
8 STRATEGIC PLAN. The council shall coordinate its activities with  
9 the Statewide Obesity Task Force Steering Committee established by  
10 the department. To the extent possible, the council shall ensure  
11 that its activities are consistent with the Strategic Plan for the  
12 Prevention of Obesity in Texas issued by the task force steering  
13 committee.

14 Sec. 112.052. COORDINATED HEALTH PROGRAM FOR ELEMENTARY  
15 SCHOOL STUDENTS. (a) The council shall assist the Texas Education  
16 Agency in developing and facilitating the implementation of the  
17 coordinated health program for elementary school students under  
18 Sections 38.013 and 38.014, Education Code, as added by Chapter  
19 907, Acts of the 77th Legislature, Regular Session, 2001.

20 (b) The council shall develop a plan that the department and  
21 the Texas Education Agency shall follow to periodically evaluate  
22 the progress made in implementing the coordinated health program at  
23 all school districts in this state. The plan must involve obtaining  
24 information from the local school health education advisory council  
25 for a school district in a manner that is independent of the means  
26 used to obtain information from the school district.

27 Sec. 112.053. CAMPAIGNS AND PROGRAMS. The council, working



1 with other appropriate public and private entities, shall:

2 (1) develop health promotion campaigns that use  
3 appropriate media to target children, adolescents, and the parents  
4 and other caregivers of children and adolescents;

5 (2) help establish community-based childhood obesity  
6 prevention programs that involve parents and other caregivers and  
7 that include nutrition education and physical activity programs;  
8 and

9 (3) develop training programs for medical and other  
10 health professionals.

11 Sec. 112.054. COORDINATION WITH OTHER GOVERNMENT PROGRAMS.  
12 The council shall assist appropriate federal, state, and local  
13 government agencies to incorporate strategies to prevent or reduce  
14 childhood obesity into government food assistance, health  
15 education, and recreation programs.

16 Sec. 112.055. CONFERENCES AND RECOMMENDATIONS. The council  
17 shall work with other entities concerned with the prevention of  
18 obesity to sponsor meetings and conferences at which experts in  
19 nutrition, exercise, public health, mental health, education,  
20 parenting, media campaigns, food marketing, food security,  
21 agriculture, community planning, and other relevant disciplines  
22 gather to examine solutions to the problem of childhood obesity and  
23 to propose recommendations for state policy and guidelines for  
24 educators, parents, and other caregivers.

25 Sec. 112.056. GRANTS. (a) The council may accept gifts,  
26 grants, and donations to accomplish its purposes, including the  
27 making of grants under Subsection (b).

1        (b) To the extent that state, federal, or private funds are  
2 made available to the council for this purpose, the council may make  
3 grants to appropriate public or private entities for the purpose of  
4 implementing community-based programs to prevent or reduce  
5 childhood obesity that incorporate methods that the council  
6 considers to be efficient and effective. The council shall award  
7 each grant by contract. The contract must:

- 8                (1) specify the methods the program will use;  
9                (2) provide that the grant money will be accounted  
10 for; and  
11                (3) provide for inspections or reports that will allow  
12 the council to evaluate the success of the program.

13        (b) The terms of the initial members of the Obesity  
14 Prevention Coordinating Council established as provided by Chapter  
15 112, Health and Safety Code, as added by Subsection (a) of this  
16 section, shall be determined by lot so that:

- 17                (1) three members' terms expire February 1, 2005; and  
18                (2) three members' terms expire February 1, 2006.

19        SECTION 13. Section 28.002(1), Education Code, as added by  
20 Chapter 907, Acts of the 77th Legislature, Regular Session, 2001,  
21 is repealed.

22        SECTION 14. This Act takes effect immediately if it  
23 receives a vote of two-thirds of all the members elected to each  
24 house, as provided by Section 39, Article III, Texas Constitution.  
25 If this Act does not receive the vote necessary for immediate  
26 effect, this Act takes effect September 1, 2003.