

5003

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to the posting of caloric value of food items

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The public health law is amended by adding a new section
2 1352-d to read as follows:

3 S 1352-D. CALORIC VALUE. 1. THE COMMISSIONER IS AUTHORIZED AND
4 DIRECTED TO PROMULGATE RULES AND REGULATIONS REQUIRING CHAIN RESTAURANTS
5 OR FOOD SERVICE ESTABLISHMENTS SUBJECT TO THE PROVISIONS OF SECTION
6 THIRTEEN HUNDRED FIFTY-ONE OF THIS TITLE TO PROMINENTLY POST CALORIE
7 CONTENT FOR MENU ITEMS AS USUALLY PREPARED AND OFFERED FOR SALE ON STAN-
8 DARD PRINTED MENUS AND MENU BOARDS OR SIGNS. THE RULES AND REGULATIONS
9 SHALL REQUIRE SUCH CHAIN RESTAURANTS AND FOOD SERVICE ESTABLISHMENTS TO
10 POST THE NUMBER OF CALORIES PER MENU ITEM ADJACENT TO SUCH MENU ITEMS ON
11 MENU BOARDS, IF PRESENT, AND MENUS IN A SIZE OR TYPEFACE AT LEAST AS
12 LARGE AS THE NAME AND PRICE OF THE MENU ITEM, WHICHEVER IS LARGER, AND
13 TO POST THE RANGE OF CALORIE CONTENT VALUES SHOWING THE MINIMUM TO MAXI-
14 MUM NUMBERS OF CALORIES FOR ALL FLAVORS OR VARIETIES OR COMBINATIONS OF
15 FOOD ITEMS FOR EACH SIZE OFFERED OF SUCH MENU ITEMS THAT COME IN DIFFER-
16 ENT FLAVORS OR VARIETIES OR COMBINATIONS OF FOOD ITEMS BUT ARE LISTED AS
17 A SINGLE MENU ITEM. THIS SECTION SHALL NOT APPLY TO MENU ITEMS LISTED
18 FOR LESS THAN THIRTY DAYS IN ONE CALENDAR YEAR. NOTHING IN THIS SECTION
19 SHALL PROHIBIT ANY RESTAURANT OR FOOD ESTABLISHMENT FROM PROVIDING ADDI-
20 TIONAL NUTRITIONAL INFORMATION FOR MENU ITEMS OR A DISCLAIMER THAT THERE
21 MAY BE VARIATIONS IN ACTUAL CALORIE CONTENT BECAUSE OF VARIABILITY IN
22 FACTORS SUCH AS INGREDIENTS, ACTUAL SERVING SIZES AND CUSTOMER ORDERING
23 PREFERENCES.

24 2. AS USED IN THIS SECTION "CHAIN RESTAURANT OR FOOD SERVICE ESTAB-
25 LISHMENT" SHALL MEAN A RESTAURANT OR FOOD ESTABLISHMENT SUBJECT TO THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD01896-02-9

1 PROVISIONS OF SECTION THIRTEEN HUNDRED FIFTY-ONE OF THIS TITLE ENGAGED
2 IN THE PREPARATION, SERVING AND SALE OF FOOD OR BEVERAGES OR MEALS WITH
3 STANDARDIZED PREPARATION, PORTION SIZES AND CONTENT INTENDED FOR PUBLIC
4 CONSUMPTION, INCLUDING THE SITE WHERE PORTIONS ARE PROVIDED REGARDLESS
5 OF WHETHER CONSUMPTION TAKES PLACE ON OR OFF THE PREMISES, THAT IS ONE
6 OF AT LEAST FIFTEEN SUCH RESTAURANTS OR ESTABLISHMENTS IN THE UNITED
7 STATES AND AT LEAST FIVE SUCH RESTAURANTS OR ESTABLISHMENTS IN NEW YORK
8 STATE DOING BUSINESS UNDER THE SAME TRADE NAME AND OFFERING PREDOMINANT-
9 LY THE SAME MENU ITEMS ON THE SAME MENUS OR MENU BOARDS OR SIGNS. THE
10 PROVISIONS OF THIS SECTION SHALL NOT APPLY TO FOOD ESTABLISHMENTS THAT
11 ARE LICENSED UNDER ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW
12 EXCEPT FOR SECTIONS WITHIN SUCH ESTABLISHMENTS THAT HAVE BEEN DETERMINED
13 BY THE COMMISSIONER TO BE RESTAURANTS OR FOOD SERVICE ESTABLISHMENTS
14 SUBJECT TO THE PROVISIONS OF THIS SECTION.

15 3. FOR PURPOSES OF THIS SECTION, THE COMMISSIONER OR HIS DULY AUTHOR-
16 IZED AGENTS OR EMPLOYEES WHO INSPECT RESTAURANTS AND FOOD SERVICE ESTAB-
17 LISHMENTS SHALL ONLY BE REQUIRED TO DETERMINE THAT THE CALORIE CONTENT
18 LISTINGS REQUIRED UNDER THIS SECTION ARE LISTED ON THE MENU OR MENU
19 BOARD. SUCH INSPECTORS SHALL NOT BE REQUIRED TO VERIFY THE ACCURACY OF
20 THE LISTINGS BUT THE COMMISSIONER MAY REQUEST THAT RESTAURANTS AND FOOD
21 SERVICE ESTABLISHMENTS PROVIDE DOCUMENTATION OF THE ACCURACY. NOTWITH-
22 STANDING THE PROVISIONS OF SECTION THIRTEEN HUNDRED FIFTY-THREE OF THIS
23 TITLE, THE PENALTY FOR A VIOLATION OF THIS SECTION SHALL BE LIMITED TO
24 THE PENALTY SET FORTH IN SECTION TWELVE OF THIS CHAPTER.

25 THE PROVISIONS OF THIS SECTION SHALL NOT RESTRICT THE POWER OF ANY
26 COUNTY, CITY, TOWN, OR VILLAGE TO ADOPT AND ENFORCE ADDITIONAL LOCAL
27 LAWS, ORDINANCES, OR REGULATIONS WHICH COMPLY WITH AT LEAST THE MINIMUM
28 APPLICABLE STANDARDS SET FORTH IN THIS SECTION.

29 S 2. This act shall take effect on the one hundred eightieth day after
30 it shall have become a law; provided, however, that effective immediate-
31 ly the commissioner of health is authorized and directed to promulgate
32 any rule or regulation or to take any other necessary action to ensure
33 the timely implementation of this act on its effective date, and
34 provided, further, that the commissioner of health shall consult with
35 nutrition and health professionals, representatives of restaurants or
36 food service establishments, and consumers prior to promulgating any
37 such rule or regulation.