S T A T E O F N E W Y O R K

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I N S E N A T E

January 14, 2010

Introduced by Sen. HANNON -- 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, carbohydrate, fat and sodium content of food items

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

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

S 1352-D. CALORIC VALUE, CARBOHYDRATE, FAT AND SODIUM CONTENT. 1. A CHAIN RESTAURANT OR FOOD ESTABLISHMENT SHALL LIST ADJACENT TO EACH FOOD OR BEVERAGE ITEM ON THE STANDARD PRINTED MENU, THE TOTAL NUMBER OF CALORIES, GRAMS OF SATURATED AND TRANS FAT, GRAMS OF CARBOHYDRATES, AND MILLIGRAMS OF SODIUM PER SERVING, AS USUALLY PREPARED AND OFFERED FOR SALE, IN A CLEAR AND CONSPICUOUS MANNER. FOR FOOD OR BEVERAGES OFFERED FOR SALE IN A CHAIN RESTAURANT OR FOOD ESTABLISHMENT THAT USES ONLY MENU BOARDS OR SIMILAR SIGNS, THE INFORMATION REQUIRED MAY BE LIMITED TO THE TOTAL NUMBER OF CALORIES PER SERVING PER ITEM AS USUALLY PREPARED AND OFFERED FOR SALE AND SHALL BE LISTED ADJACENT TO EACH FOOD OR BEVERAGE ITEM ON THE STANDARD MENU BOARD OR SIGN, HOWEVER, INFORMATION ABOUT GRAMS OF SATURATED AND TRANS FAT AND GRAMS OF CARBOHYDRATES AND MILLIGRAMS OF SODIUM SHALL BE MADE AVAILABLE TO CUSTOMERS UPON REQUEST.

2. FOOD OR BEVERAGE ITEMS SHALL BE ANALYZED BY THE FRANCHISORS OR CORPORATE OWNERS OF THE CHAIN RESTAURANTS OR FOOD ESTABLISHMENTS FOR CALORIE, SATURATED AND TRANS FAT, CARBOHYDRATE AND SODIUM CONTENT USING METHODS APPROVED BY THE COMMISSIONER AND SUCH INFORMATION SHALL BE PROVIDED TO THEIR INDIVIDUAL CHAIN RESTAURANTS AND FOOD ESTABLISHMENTS FOR LISTING ON MENUS OR MENU BOARDS OR SIGNS. THE NUTRIENT CONTENT VALUES LISTED ON THE MENU OR MENU BOARD SHALL BE WITHIN TWENTY PERCENT OF THE VALUES OF REPRESENTATIVE ITEMS AS USUALLY PREPARED AND OFFERED FOR SALE. FRANCHISORS OR CORPORATE OWNERS SHALL PROVIDE TO THE COMMISSIONER, IF REQUESTED, INFORMATION DOCUMENTING THE ACCURACY OF THE NUTRIENT CONTENT VALUES. WHEN A FOOD OR BEVERAGE ITEM IS OFFERED IN MORE THAN ONE SIZE OR AMOUNT ON THE MENU OR MENU BOARD THE CHAIN RESTAURANT OR FOOD ESTABLISHMENT SHALL HAVE THE OPTION OF PROVIDING THE REQUIRED

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

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NUTRIENT INFORMATION FOR THE MEDIUM SIZE, WHEN OFFERED, OR THE RANGE OF NUTRIENT CONTENTS FOR ALL THE SIZES INSTEAD OF EACH SIZE INDIVIDUALLY. NOTHING IN THIS SECTION SHALL PROHIBIT ANY RESTAURANT OR FOOD ESTABLISHMENT FROM PROVIDING ADDITIONAL NUTRITIONAL INFORMATION FOR FOOD OR BEVERAGE ITEMS.

3. AS USED IN THIS SECTION "CHAIN RESTAURANT OR FOOD ESTABLISHMENT" SHALL MEAN A RESTAURANT OR FOOD ESTABLISHMENT SUBJECT TO THE PROVISIONS OF SECTION THIRTEEN HUNDRED FIFTY-ONE OF THIS TITLE ENGAGED IN THE PREPARATION, SERVING AND SALE OF FOOD OR BEVERAGES OR MEALS INTENDED FOR PUBLIC CONSUMPTION, INCLUDING THE SITE WHERE PORTIONS ARE PROVIDED REGARDLESS OF WHETHER CONSUMPTION TAKES PLACE ON OR OFF THE PREMISES, THAT IS ONE OF AT LEAST TEN SUCH RESTAURANTS OR ESTABLISHMENTS IN THE UNITED STATES AND AT LEAST FIVE SUCH RESTAURANTS OR ESTABLISHMENTS IN NEW YORK STATE DOING BUSINESS UNDER THE SAME TRADE NAME AND OFFERING PREDOMINANTLY THE SAME MEALS OR FOOD AND MENUS OR MENU BOARDS. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO FOOD ESTABLISHMENTS THAT ARE LICENSED UNDER ARTICLE TWENTY-C OF THE AGRICULTURE AND MARKETS LAW EXCEPT FOR SECTIONS WITHIN SUCH ESTABLISHMENTS THAT HAVE BEEN DETERMINED BY THE DEPARTMENT TO MEET THE ABOVE DEFINITION OF CHAIN RESTAURANTS OR FOOD ESTABLISHMENTS INCLUDING THE USE OF A COMMON TRADE NAME FOR THE SECTION, STANDARDIZED MENUS OR MENU BOARDS AND THE OFFER OF ON-PREMISES CONSUMPTION.

4. FOR PURPOSES OF THIS SECTION, THE COMMISSIONER OR HIS DULY AUTHORIZED AGENTS OR EMPLOYEES WHO INSPECT CHAIN RESTAURANTS AND FOOD ESTABLISHMENTS SHALL ONLY BE REQUIRED TO DETERMINE THAT THE NUTRIENT CONTENT LISTINGS REQUIRED UNDER THIS SECTION ARE LISTED ON THE MENU OR MENU BOARD AND THAT ANY ADDITIONAL REQUIRED INFORMATION IS AVAILABLE FOR AND PROVIDED TO CUSTOMERS UPON REQUEST. SUCH INSPECTORS SHALL NOT BE REQUIRED TO VERIFY THE ACCURACY OF THE LISTINGS BUT THE COMMISSIONER MAY REQUEST THAT FRANCHISORS OR CORPORATE OWNERS OF CHAIN RESTAURANTS AND FOOD ESTABLISHMENTS PROVIDE DOCUMENTATION OF THE ACCURACY. VIOLATIONS OF THIS SECTION BY INDIVIDUAL CHAIN RESTAURANTS AND FOOD ESTABLISHMENTS SHALL BE LIMITED TO THE FAILURE TO LIST THE REQUIRED INFORMATION ON THE MENU OR MENU BOARDS OR SIGNS OR FAILURE TO PROVIDE THE ADDITIONAL REQUIRED INFORMATION TO CUSTOMERS UPON REQUEST AT CHAIN RESTAURANTS OR FOOD ESTABLISHMENTS WITH ONLY MENU BOARDS OR SIGNS. VIOLATIONS BY FRANCHISORS OR CORPORATE OWNERS OF SUCH RESTAURANTS AND ESTABLISHMENTS SHALL BE LIMITED TO FAILURE TO PROVIDE TO THE COMMISSIONER SATISFACTORY DOCUMENTATION OF THE ACCURACY OF SUCH LISTINGS OR FAILURE TO PROVIDE THE REQUIRED INFORMATION FOR SUCH LISTINGS TO THEIR RESTAURANTS OR FOOD ESTABLISHMENTS. NOTWITHSTANDING THE PROVISIONS OF SECTION THIRTEEN HUNDRED FIFTY-THREE OF THIS TITLE, THE PENALTY FOR A VIOLATION OF THIS SECTION SHALL BE LIMITED TO THE PENALTY SET FORTH IN SECTION TWELVE OF THIS CHAPTER.

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