

6458

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:

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, CARBOHYDRATE, FAT AND SODIUM CONTENT. 1. A  
4 CHAIN RESTAURANT OR FOOD ESTABLISHMENT SHALL LIST ADJACENT TO EACH FOOD  
5 OR BEVERAGE ITEM ON THE STANDARD PRINTED MENU, THE TOTAL NUMBER OF CALO-  
6 RIES, GRAMS OF SATURATED AND TRANS FAT, GRAMS OF CARBOHYDRATES, AND  
7 MILLIGRAMS OF SODIUM PER SERVING, AS USUALLY PREPARED AND OFFERED FOR  
8 SALE, IN A CLEAR AND CONSPICUOUS MANNER. FOR FOOD OR BEVERAGES OFFERED  
9 FOR SALE IN A CHAIN RESTAURANT OR FOOD ESTABLISHMENT THAT USES ONLY MENU  
10 BOARDS OR SIMILAR SIGNS, THE INFORMATION REQUIRED MAY BE LIMITED TO THE  
11 TOTAL NUMBER OF CALORIES PER SERVING PER ITEM AS USUALLY PREPARED AND  
12 OFFERED FOR SALE AND SHALL BE LISTED ADJACENT TO EACH FOOD OR BEVERAGE  
13 ITEM ON THE STANDARD MENU BOARD OR SIGN, HOWEVER, INFORMATION ABOUT  
14 GRAMS OF SATURATED AND TRANS FAT AND GRAMS OF CARBOHYDRATES AND MILLI-  
15 GRAMS OF SODIUM SHALL BE MADE AVAILABLE TO CUSTOMERS UPON REQUEST.  
16 2. FOOD OR BEVERAGE ITEMS SHALL BE ANALYZED BY THE FRANCHISORS OR  
17 CORPORATE OWNERS OF THE CHAIN RESTAURANTS OR FOOD ESTABLISHMENTS FOR  
18 CALORIE, SATURATED AND TRANS FAT, CARBOHYDRATE AND SODIUM CONTENT USING  
19 METHODS APPROVED BY THE COMMISSIONER AND SUCH INFORMATION SHALL BE  
20 PROVIDED TO THEIR INDIVIDUAL CHAIN RESTAURANTS AND FOOD ESTABLISHMENTS  
21 FOR LISTING ON MENUS OR MENU BOARDS OR SIGNS. THE NUTRIENT CONTENT  
22 VALUES LISTED ON THE MENU OR MENU BOARD SHALL BE WITHIN TWENTY PERCENT  
23 OF THE VALUES OF REPRESENTATIVE ITEMS AS USUALLY PREPARED AND OFFERED  
24 FOR SALE. FRANCHISORS OR CORPORATE OWNERS SHALL PROVIDE TO THE COMMIS-  
25 SIONER, IF REQUESTED, INFORMATION DOCUMENTING THE ACCURACY OF THE NUTRI-  
26 ENT CONTENT VALUES. WHEN A FOOD OR BEVERAGE ITEM IS OFFERED IN MORE  
27 THAN ONE SIZE OR AMOUNT ON THE MENU OR MENU BOARD THE CHAIN RESTAURANT  
28 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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1 NUTRIENT INFORMATION FOR THE MEDIUM SIZE, WHEN OFFERED, OR THE RANGE OF  
2 NUTRIENT CONTENTS FOR ALL THE SIZES INSTEAD OF EACH SIZE INDIVIDUALLY.  
3 NOTHING IN THIS SECTION SHALL PROHIBIT ANY RESTAURANT OR FOOD ESTABLISH-  
4 MENT FROM PROVIDING ADDITIONAL NUTRITIONAL INFORMATION FOR FOOD OR  
5 BEVERAGE ITEMS.

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

23 4. FOR PURPOSES OF THIS SECTION, THE COMMISSIONER OR HIS DULY AUTHOR-  
24 IZED AGENTS OR EMPLOYEES WHO INSPECT CHAIN RESTAURANTS AND FOOD ESTAB-  
25 LISHMENTS SHALL ONLY BE REQUIRED TO DETERMINE THAT THE NUTRIENT CONTENT  
26 LISTINGS REQUIRED UNDER THIS SECTION ARE LISTED ON THE MENU OR MENU  
27 BOARD AND THAT ANY ADDITIONAL REQUIRED INFORMATION IS AVAILABLE FOR AND  
28 PROVIDED TO CUSTOMERS UPON REQUEST. SUCH INSPECTORS SHALL NOT BE  
29 REQUIRED TO VERIFY THE ACCURACY OF THE LISTINGS BUT THE COMMISSIONER MAY  
30 REQUEST THAT FRANCHISORS OR CORPORATE OWNERS OF CHAIN RESTAURANTS AND  
31 FOOD ESTABLISHMENTS PROVIDE DOCUMENTATION OF THE ACCURACY. VIOLATIONS OF  
32 THIS SECTION BY INDIVIDUAL CHAIN RESTAURANTS AND FOOD ESTABLISHMENTS  
33 SHALL BE LIMITED TO THE FAILURE TO LIST THE REQUIRED INFORMATION ON THE  
34 MENU OR MENU BOARDS OR SIGNS OR FAILURE TO PROVIDE THE ADDITIONAL  
35 REQUIRED INFORMATION TO CUSTOMERS UPON REQUEST AT CHAIN RESTAURANTS OR  
36 FOOD ESTABLISHMENTS WITH ONLY MENU BOARDS OR SIGNS. VIOLATIONS BY FRAN-  
37 CHISORS OR CORPORATE OWNERS OF SUCH RESTAURANTS AND ESTABLISHMENTS SHALL  
38 BE LIMITED TO FAILURE TO PROVIDE TO THE COMMISSIONER SATISFACTORY  
39 DOCUMENTATION OF THE ACCURACY OF SUCH LISTINGS OR FAILURE TO PROVIDE THE  
40 REQUIRED INFORMATION FOR SUCH LISTINGS TO THEIR RESTAURANTS OR FOOD  
41 ESTABLISHMENTS. NOTWITHSTANDING THE PROVISIONS OF SECTION THIRTEEN  
42 HUNDRED FIFTY-THREE OF THIS TITLE, THE PENALTY FOR A VIOLATION OF THIS  
43 SECTION SHALL BE LIMITED TO THE PENALTY SET FORTH IN SECTION TWELVE OF  
44 THIS CHAPTER.

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