

6923

I N S E N A T E

February 25, 2010

Introduced by Sen. DUANE -- (at request of the Governor) -- 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-e to read as follows:
3 S 1352-E. CALORIC VALUE. 1. THE COMMISSIONER IS AUTHORIZED AND
4 DIRECTED TO PROMULGATE RULES AND REGULATIONS REQUIRING CHAIN RESTAURANTS
5 OR FOOD SERVICE ESTABLISHMENTS TO POST CALORIE CONTENT VALUES FOR MENU
6 ITEMS AS USUALLY PREPARED AND OFFERED FOR SALE ON STANDARD PRINTED MENUS
7 AND MENU BOARDS OR FOOD ITEMS AS USUALLY PREPARED AND OFFERED FOR SALE
8 THAT ARE IDENTIFIED BY TAGS OR LABELS PLACED IN CLOSE PROXIMITY TO SUCH
9 FOOD ITEMS DISPLAYED FOR SALE. THE RULES AND REGULATIONS SHALL REQUIRE
10 SUCH CHAIN RESTAURANTS AND FOOD SERVICE ESTABLISHMENTS TO POST THE
11 NUMBER OF CALORIES PER MENU ITEM ADJACENT TO SUCH MENU ITEMS ON MENU
12 BOARDS AND MENUS, AND ON FOOD ITEM TAGS. SUCH INFORMATION SHALL BE LIST-
13 ED CLEARLY AND CONSPICUOUSLY, ADJACENT TO OR IN CLOSE PROXIMITY TO THE
14 APPLICABLE MENU OR FOOD ITEM SO THAT IT IS CLEARLY ASSOCIATED WITH SUCH
15 ITEM, AND IN A FONT AND FORMAT THAT IS AT LEAST AS PROMINENT, IN SIZE
16 AND APPEARANCE, AS THAT USED TO POST EITHER THE NAME OR PRICE OF THE
17 MENU ITEM, AND TO POST THE RANGE OF CALORIE VALUES SHOWING THE MINIMUM
18 TO MAXIMUM NUMBERS OF CALORIES FOR ALL FLAVORS OR VARIETIES THAT ARE
19 LISTED AS A SINGLE MENU ITEM. FOR COMBINATIONS OF DIFFERENT FOOD ITEMS
20 LISTED OR PICTURED AS A SINGLE MENU ITEM, THE RANGE OF CALORIE CONTENT
21 VALUES SHOWING THE MINIMUM TO MAXIMUM NUMBERS OF CALORIES FOR ALL COMBI-
22 NATIONS OF THAT MENU ITEM SHALL BE LISTED ON MENUS AND MENU BOARDS. IF
23 THERE IS ONLY ONE POSSIBLE CALORIE TOTAL FOR THE COMBINATION, THEN THAT
24 TOTAL SHALL BE LISTED ON MENUS AND MENU BOARDS. THE COMMISSIONER SHALL
25 DEVELOP REGULATIONS: (A) FOR THE POSTING OF CALORIE CONTENT VALUE INFOR-
26 MATION PER SERVING FOR MENU ITEMS THAT ARE CLEARLY INTENDED FOR SERVING
27 MORE THAN ONE INDIVIDUAL; AND (B) TO PROVIDE FOR THE POSTING OF CALORIE

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

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1 CONTENT VALUE INFORMATION FOR ALCOHOLIC BEVERAGES BY TYPE. CALORIE
2 CONTENT VALUES AT DRIVE-THROUGH WINDOWS SHALL BE DISPLAYED ON EITHER THE
3 DRIVE-THROUGH MENU BOARD, OR ON AN ADJACENT STANCHION VISIBLE AT, OR
4 PRIOR TO THE POINT OF ORDERING, SO LONG AS THE CALORIE CONTENT VALUES
5 ARE CLEARLY AND CONSPICUOUSLY POSTED ON THE STANCHION ADJACENT TO THEIR
6 RESPECTIVE MENU ITEM NAMES, AND IN A FONT AND FORMAT THAT IS AT LEAST AS
7 PROMINENT, IN SIZE AND APPEARANCE, AS THAT USED TO POST THE PRICE OR
8 MENU ITEM ON THE DRIVE-THROUGH MENU BOARD. THE COMMISSIONER SHALL DEVEL-
9 OP REGULATIONS TO PROVIDE A TEMPORARY WAIVER OF THE PROVISIONS OF THIS
10 SECTION FOR POSTING CALORIE CONTENT VALUES ON A MENU BOARD OR STANCHION
11 FOR A CHAIN RESTAURANT OR FOOD SERVICE ESTABLISHMENT THAT IS IN THE
12 PROCESS OF SEEKING APPROVAL FROM A CITY, TOWN OR VILLAGE FOR
13 CONSTRUCTION OF SUCH STANCHIONS. THIS SECTION SHALL NOT APPLY TO MENU
14 ITEMS LISTED OR FOOD ITEMS DISPLAYED FOR LESS THAN THIRTY DAYS IN ONE
15 CALENDAR YEAR. NOTHING IN THIS SECTION SHALL PROHIBIT ANY RESTAURANT OR
16 FOOD ESTABLISHMENT FROM PROVIDING ADDITIONAL NUTRITIONAL INFORMATION FOR
17 MENU ITEMS OR A DISCLAIMER THAT THERE MAY BE MINOR VARIATIONS IN ACTUAL
18 CALORIE CONTENT BECAUSE OF VARIABILITY IN FACTORS SUCH AS INGREDIENTS,
19 ACTUAL SERVING SIZES AND CUSTOMER ORDERING PREFERENCES.

20 2. AS USED IN THIS SECTION "CHAIN RESTAURANT OR FOOD SERVICE ESTAB-
21 LISHMENT" SHALL MEAN A RESTAURANT OR FOOD ESTABLISHMENT SUBJECT TO THE
22 PROVISIONS OF SECTION THIRTEEN HUNDRED FIFTY-ONE OF THIS TITLE ENGAGED
23 IN THE PREPARATION, SERVING AND SALE OF FOOD OR BEVERAGES OR MEALS WITH
24 STANDARDIZED PREPARATION, PORTION SIZES AND CONTENT INTENDED FOR INDI-
25 VIDUAL PORTION SERVICE, REGARDLESS OF WHETHER CONSUMPTION TAKES PLACE ON
26 OR OFF THE PREMISES, THAT IS ONE OF AT LEAST FIFTEEN SUCH RESTAURANTS OR
27 ESTABLISHMENTS DOING BUSINESS NATIONALLY AND OPERATING UNDER COMMON
28 OWNERSHIP OR CONTROL, OR AS FRANCHISED OUTLETS OF A PARENT BUSINESS OR
29 DOING BUSINESS UNDER THE SAME TRADE NAME AND OFFERING PREDOMINANTLY THE
30 SAME MENU ITEMS ON THE SAME MENUS OR MENU BOARDS OR FOOD ITEMS WITH FOOD
31 ITEM TAGS OR LABELS. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO
32 FOOD ESTABLISHMENTS THAT ARE LICENSED UNDER ARTICLE TWENTY-C OF THE
33 AGRICULTURE AND MARKETS LAW EXCEPT FOR SECTIONS WITHIN SUCH LICENSED
34 ESTABLISHMENTS THAT HAVE BEEN DETERMINED BY THE COMMISSIONER TO BE CHAIN
35 RESTAURANTS OR FOOD SERVICE ESTABLISHMENTS AS DEFINED IN THIS SECTION.

36 3. A CHAIN RESTAURANT OR FOOD SERVICE ESTABLISHMENT VIOLATES THE
37 PROVISIONS OF THIS SECTION IF THE RESTAURANT OR FOOD SERVICE ESTABLISH-
38 MENT: (A) FAILS TO POST CALORIE CONTENT VALUES AS REQUIRED BY THIS
39 SECTION; (B) FAILS TO OBTAIN CALORIE CONTENT VALUE ANALYSES AND MAINTAIN
40 DOCUMENTATION OF SUCH ANALYSES AS REQUIRED BY THIS SECTION; OR (C) KNOW-
41 INGLY OR RECKLESSLY LISTS ON MENUS, MENU BOARDS OR FOOD ITEM TAGS CALO-
42 RIE CONTENT VALUES THAT ARE MATERIALLY INCORRECT OR MISLEADING. INSPEC-
43 TORS SHALL NOT BE REQUIRED TO VERIFY THE ACCURACY OF THE LISTINGS BUT
44 THE COMMISSIONER MAY REQUEST THAT CHAIN RESTAURANTS AND FOOD SERVICE
45 ESTABLISHMENTS PROVIDE DOCUMENTATION OF THE ACCURACY.

46 4. THE COMMISSIONER SHALL DEVELOP REGULATIONS FOR SUCH RESTAURANTS AND
47 FOOD SERVICE ESTABLISHMENTS: (A) TO DETERMINE SUCH CALORIE CONTENT
48 VALUES USING ANALYSIS SUCH AS NUTRIENT DATABASES, LABORATORY TESTING OR
49 OTHER ACCEPTABLE METHODS OF ANALYSIS; AND (B) TO MAINTAIN DOCUMENTATION
50 OF SUCH ANALYSES. NOTWITHSTANDING THE PROVISIONS OF SECTION THIRTEEN
51 HUNDRED FIFTY-THREE OF THIS TITLE, THE PENALTY FOR A VIOLATION OF THIS
52 SECTION SHALL BE LIMITED TO THE PENALTY SET FORTH IN SECTION TWELVE OF
53 THIS CHAPTER.

54 THE PROVISIONS OF THIS SECTION SHALL PREEMPT THE AUTHORITY OF ANY
55 COUNTY, CITY, TOWN OR VILLAGE TO ADOPT AND ENFORCE ADDITIONAL LOCAL
56 LAWS, ORDINANCES OR REGULATIONS THAT ARE MORE STRINGENT THAN THE STAND-

1 ARDS SET FORTH IN THIS SECTION AND THE RULES AND REGULATIONS PROMULGATED
2 PURSUANT THERETO AND THAT REQUIRE NUTRITION INFORMATION POSTING ON MENUS
3 OR MENU BOARDS OR FOOD ITEM TAGS.

4 S 2. This act shall take effect one year after it shall have become a
5 law; provided, however, that effective immediately the commissioner of
6 health is authorized and directed to promulgate any rule or regulation
7 or to take any other necessary action to ensure the timely implementa-
8 tion of this act on its effective date.