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

2720--A

Cal. No. 442

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. ORTIZ, GOTTFRIED, COOK, P. RIVERA, MAYERSOHN, GABRYSZAK, KOON, GALEF, CHRISTENSEN, FIELDS, BOYLAND, PAULIN, BARRON -- Multi-Sponsored by -- M. of A. BRENNAN, CLARK, DINOWITZ, GLICK, HOOPER, JACOBS, LATIMER, LAVINE, MAISEL, McENENY, MILLMAN, PHEFFER, J. RIVERA, ROSENTHAL, TOWNS, WEISENBERG -- read once and referred to the Committee on Health -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

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

S 1352-D. CALORIC VALUE. 1. THE COMMISSIONER IS AUTHORIZED AND DIRECTED TO PROMULGATE RULES AND REGULATIONS REQUIRING CHAIN RESTAURANTS OR FOOD SERVICE ESTABLISHMENTS SUBJECT TO THE PROVISIONS OF SECTION THIRTEEN HUNDRED FIFTY-ONE OF THIS TITLE TO POST CALORIE CONTENT VALUES FOR MENU ITEMS AS USUALLY PREPARED AND OFFERED FOR SALE ON STANDARD PRINTED MENUS AND MENU BOARDS OR FOOD ITEMS AS USUALLY PREPARED AND OFFERED FOR SALE THAT ARE IDENTIFIED BY TAGS OR LABELS PLACED IN CLOSE PROXIMITY TO SUCH FOOD ITEMS DISPLAYED FOR SALE. THE RULES AND REGULATIONS SHALL REQUIRE SUCH CHAIN RESTAURANTS AND FOOD SERVICE ESTABLISHMENTS TO POST THE NUMBER OF CALORIES PER MENU ITEM ADJACENT TO SUCH MENU ITEMS ON MENU BOARDS AND MENUS, AND ON FOOD ITEM TAGS. SUCH INFORMATION SHALL BE LISTED CLEARLY AND CONSPICUOUSLY, ADJACENT TO OR IN CLOSE PROXIMITY TO THE APPLICABLE MENU OR FOOD ITEM SO THAT IT IS CLEARLY ASSOCIATED WITH SUCH ITEM, AND IN A FONT AND FORMAT THAT IS AT LEAST AS PROMINENT, IN SIZE AND APPEARANCE, AS THAT USED TO POST EITHER THE NAME OR PRICE OF THE MENU ITEM, AND TO POST THE RANGE OF CALORIE VALUES SHOWING THE MINIMUM TO MAXIMUM NUMBERS OF CALORIES FOR ALL FLAVORS OR VARIETIES

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

THAT ARE LISTED AS A SINGLE MENU ITEM. FOR COMBINATIONS OF DIFFERENT FOOD ITEMS LISTED OR PICTURED AS A SINGLE MENU ITEM, THE RANGE OF CALORIE CONTENT VALUES SHOWING THE MINIMUM TO MAXIMUM NUMBERS OF CALORIES FOR ALL COMBINATIONS OF THAT MENU ITEM SHALL BE LISTED ON MENUS AND MENU BOARDS. IF THERE IS ONLY ONE POSSIBLE CALORIE TOTAL FOR THE COMBINATION, THEN THAT TOTAL SHALL BE LISTED ON MENUS AND MENU BOARDS. THE COMMISSIONER SHALL DEVELOP REGULATIONS FOR THE POSTING OF CALORIE CONTENT VALUE INFORMATION PER SERVING FOR MENU ITEMS THAT ARE CLEARLY INTENDED FOR SERVING MORE THAN ONE INDIVIDUAL. CALORIE CONTENT VALUES AT DRIVE-THROUGH WINDOWS SHALL BE DISPLAYED ON EITHER THE DRIVE-THROUGH MENU BOARD, OR ON AN ADJACENT STANCHION VISIBLE AT, OR PRIOR TO THE POINT OF ORDERING, SO LONG AS THE CALORIE CONTENT VALUES ARE AS CLEARLY AND CONSPICUOUSLY POSTED ON THE STANCHION ADJACENT TO THEIR RESPECTIVE MENU ITEM NAMES, AS THE PRICE OR MENU ITEM IS ON THE DRIVE-THROUGH MENU BOARD. THE COMMISSIONER SHALL DEVELOP REGULATIONS TO PROVIDE A TEMPORARY WAIVER OF THE PROVISIONS OF THIS SECTION FOR POSTING CALORIE CONTENT VALUES ON A MENU BOARD OR STANCHION FOR A CHAIN RESTAURANT OR FOOD SERVICE ESTABLISHMENT THAT IS IN THE PROCESS OF SEEKING APPROVAL FROM A CITY, TOWN OR VILLAGE FOR CONSTRUCTION OF SUCH STANCHIONS. THIS SECTION SHALL NOT APPLY TO MENU ITEMS LISTED OR FOOD ITEMS DISPLAYED FOR LESS THAN THIRTY DAYS IN ONE CALENDAR YEAR. NOTHING IN THIS SECTION SHALL PROHIBIT ANY RESTAURANT OR FOOD ESTABLISHMENT FROM PROVIDING ADDITIONAL NUTRITIONAL INFORMATION FOR MENU ITEMS OR A DISCLAIMER THAT THERE MAY BE VARIATIONS IN ACTUAL CALORIE CONTENT BECAUSE OF VARIABILITY IN FACTORS SUCH AS INGREDIENTS, ACTUAL SERVING SIZES AND CUSTOMER ORDERING PREFERENCES.

2. AS USED IN THIS SECTION "CHAIN RESTAURANT OR FOOD SERVICE 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 WITH STANDARDIZED PREPARATION, PORTION SIZES AND CONTENT INTENDED FOR PUBLIC CONSUMPTION, REGARDLESS OF WHETHER CONSUMPTION TAKES PLACE ON OR OFF THE PREMISES, THAT IS ONE OF AT LEAST FIFTEEN SUCH RESTAURANTS OR ESTABLISHMENTS DOING BUSINESS NATIONALLY AND OPERATING UNDER COMMON OWNERSHIP OR CONTROL, OR AS FRANCHISED OUTLETS OF A PARENT BUSINESS OR DOING BUSINESS UNDER THE SAME TRADE NAME AND OFFERING PREDOMINANTLY THE SAME MENU ITEMS ON THE SAME MENUS OR MENU BOARDS OR FOOD ITEMS WITH FOOD ITEM TAGS OR LABELS. 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 LICENSED ESTABLISHMENTS THAT HAVE BEEN DETERMINED BY THE COMMISSIONER TO BE CHAIN RESTAURANTS OR FOOD SERVICE ESTABLISHMENTS AS DEFINED IN THIS SECTION.

3. FOR PURPOSES OF THIS SECTION, THE COMMISSIONER OR HIS DULY AUTHORIZED AGENTS OR EMPLOYEES WHO INSPECT RESTAURANTS AND FOOD SERVICE ESTABLISHMENTS SHALL ONLY BE REQUIRED TO DETERMINE THAT THE CALORIE CONTENT VALUE LISTINGS REQUIRED UNDER THIS SECTION ARE LISTED ON THE MENU OR MENU BOARD. SUCH INSPECTORS SHALL NOT BE REQUIRED TO VERIFY THE ACCURACY OF THE LISTINGS BUT THE COMMISSIONER MAY REQUEST THAT CHAIN RESTAURANTS AND FOOD SERVICE ESTABLISHMENTS PROVIDE DOCUMENTATION OF THE ACCURACY. THE COMMISSIONER SHALL DEVELOP REGULATIONS FOR SUCH RESTAURANTS AND FOOD SERVICE ESTABLISHMENTS TO DETERMINE SUCH CALORIE CONTENT VALUES USING ANALYSIS SUCH AS NUTRIENT DATABASES, LABORATORY TESTING OR OTHER ACCEPTABLE METHODS OF ANALYSIS. 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.

THE PROVISIONS OF THIS SECTION SHALL PREEMPT THE AUTHORITY OF ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT AND ENFORCE ADDITIONAL LOCAL LAWS, ORDINANCES OR REGULATIONS THAT ARE MORE STRINGENT THAN THE STANDARDS SET FORTH IN THIS SECTION AND THE RULES AND REGULATIONS PROMULGATED PURSUANT THERETO, INCLUDING LOCAL LAWS, ORDINANCES OR REGULATIONS REQUIRING NUTRITION INFORMATION POSTING ON MENUS OR MENU BOARDS OR FOOD ITEM TAGS.

S 2. This act shall take effect one year 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 service establishments, and consumers prior to promulgating any such rule or regulation.