

9027

2009-2010 Regular Sessions

I N A S S E M B L Y

June 19, 2009

Introduced by M. of A. ORTIZ, GOTTFRIED -- read once and referred to the
Committee on Health

AN ACT to amend the public health law, in relation to requiring certain restaurants and food service establishments to post calorie value of food items; and to amend a chapter of the laws of 2009 amending the public health law relating to the posting of caloric value of food items, as proposed in legislative bill number A.2720-A, in relation to requiring certain restaurant and food service establishments to post the 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. Section 1352-d of the public health law, as added by a
2 chapter of the laws of 2009 amending the public health law relating to
3 the posting of caloric value of food items, as proposed in legislative
4 bill number A.2720-A, is relettered section 1352-e and amended to read
5 as follows:
6 S 1352-e. Caloric value. 1. The commissioner is authorized and
7 directed to promulgate rules and regulations requiring chain restaurants
8 or food service establishments [subject to the provisions of section
9 thirteen hundred fifty-one of this title] to post calorie content values
10 for menu items as usually prepared and offered for sale on standard
11 printed menus and menu boards or food items as usually prepared and
12 offered for sale that are identified by tags or labels placed in close
13 proximity to such food items displayed for sale. The rules and regu-
14 lations shall require such chain restaurants and food service establish-
15 ments to post the number of calories per menu item adjacent to such menu
16 items on menu boards and menus, and on food item tags. Such information
17 shall be listed clearly and conspicuously, adjacent to or in close prox-
18 imity to the applicable menu or food item so that it is clearly associ-
19 ated with such item, and in a font and format that is at least as promi-
20 nent, in size and appearance, as that used to post either the name or

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

LBD12112-02-9

1 price of the menu item, and to post the range of calorie values showing
2 the minimum to maximum numbers of calories for all flavors or varieties
3 that are listed as a single menu item. For combinations of different
4 food items listed or pictured as a single menu item, the range of calo-
5 rie content values showing the minimum to maximum numbers of calories
6 for all combinations of that menu item shall be listed on menus and menu
7 boards. If there is only one possible calorie total for the combination,
8 then that total shall be listed on menus and menu boards. The commis-
9 sioner shall develop regulations: (A) for the posting of calorie content
10 value information per serving for menu items that are clearly intended
11 for serving more than one individual; AND (B) TO PROVIDE FOR THE POSTING
12 OF CALORIE CONTENT VALUE INFORMATION FOR ALCOHOLIC BEVERAGES BY TYPE.
13 Calorie content values at drive-through windows shall be displayed on
14 either the drive-through menu board, or on an adjacent stanchion visible
15 at, or prior to the point of ordering, so long as the calorie content
16 values are [as] clearly and conspicuously posted on the stanchion adja-
17 cent to their respective menu item names, [as] AND IN A FONT AND FORMAT
18 THAT IS AT LEAST AS PROMINENT, IN SIZE AND APPEARANCE, AS THAT USED TO
19 POST the price or menu item [is] on the drive-through menu board. The
20 commissioner shall develop regulations to provide a temporary waiver of
21 the provisions of this section for posting calorie content values on a
22 menu board or stanchion for a chain restaurant or food service estab-
23 lishment that is in the process of seeking approval from a city, town or
24 village for construction of such stanchions. This section shall not
25 apply to menu items listed or food items displayed for less than thirty
26 days in one calendar year. Nothing in this section shall prohibit any
27 restaurant or food establishment from providing additional nutritional
28 information for menu items or a disclaimer that there may be MINOR vari-
29 ations in actual calorie content because of variability in factors such
30 as ingredients, actual serving sizes and customer ordering preferences.

31 2. As used in this section "chain restaurant or food service estab-
32 lishment" shall mean a restaurant or food establishment subject to the
33 provisions of section thirteen hundred fifty-one of this title engaged
34 in the preparation, serving and sale of food or beverages or meals with
35 standardized preparation, portion sizes and content intended for [public
36 consumption] INDIVIDUAL PORTION SERVICE, regardless of whether consump-
37 tion takes place on or off the premises, that is one of at least fifteen
38 such restaurants or establishments doing business nationally and operat-
39 ing under common ownership or control, or as franchised outlets of a
40 parent business or doing business under the same trade name and offering
41 predominantly the same menu items on the same menus or menu boards or
42 food items with food item tags or labels. The provisions of this
43 section shall not apply to food establishments that are licensed under
44 article twenty-C of the agriculture and markets law except for sections
45 within such licensed establishments that have been determined by the
46 commissioner to be chain restaurants or food service establishments as
47 defined in this section.

48 3. [For purposes of this section, the commissioner or his duly author-
49 ized agents or employees who inspect restaurants and food service estab-
50 lishments shall only be required to determine that the calorie content
51 value listings required under this section are listed on the menu or
52 menu board. Such inspectors] A CHAIN RESTAURANT OR FOOD SERVICE ESTAB-
53 LISHMENT VIOLATES THE PROVISIONS OF THIS SECTION IF THE RESTAURANT OR
54 FOOD SERVICE ESTABLISHMENT: (A) FAILS TO POST CALORIE CONTENT VALUES AS
55 REQUIRED BY THIS SECTION; (B) FAILS TO OBTAIN CALORIE CONTENT VALUE
56 ANALYSES AND MAINTAIN DOCUMENTATION OF SUCH ANALYSES AS REQUIRED BY THIS

1 SECTION; OR (C) KNOWINGLY OR RECKLESSLY LISTS ON MENUS, MENU BOARDS OR
2 FOOD ITEM TAGS CALORIE CONTENT VALUES THAT ARE MATERIALLY INCORRECT OR
3 MISLEADING. INSPECTORS shall not be required to verify the accuracy of
4 the listings but the commissioner may request that chain restaurants and
5 food service establishments provide documentation of the accuracy.

6 The commissioner shall develop regulations for such restaurants and
7 food service establishments: (A) to determine such calorie content
8 values using analysis such as nutrient databases, laboratory testing or
9 other acceptable methods of analysis; AND (B) TO MAINTAIN DOCUMENTATION
10 OF SUCH ANALYSES. Notwithstanding the provisions of section thirteen
11 hundred fifty-three of this title, the penalty for a violation of this
12 section shall be limited to the penalty set forth in section twelve of
13 this chapter.

14 The provisions of this section shall preempt the authority of any
15 county, city, town or village to adopt and enforce additional local
16 laws, ordinances or regulations that are more stringent than the stand-
17 ards set forth in this section and the rules and regulations promulgated
18 pursuant thereto[, including local laws, ordinances or regulations
19 requiring] AND THAT REQUIRE nutrition information posting on menus or
20 menu boards or food item tags.

21 S 2. Section 2 of a chapter of the laws of 2009, amending the public
22 health law relating to the posting of caloric value of food items, as
23 proposed in legislative bill number A.2720-A, is amended to read as
24 follows:

25 S 2. This act shall take effect one year after it shall have become a
26 law; provided, however, that effective immediately the commissioner of
27 health is authorized and directed to promulgate any rule or regulation
28 or to take any other necessary action to ensure the timely implementa-
29 tion of this act on its effective date[, and provided, further, that the
30 commissioner of health shall consult with nutrition and health profes-
31 sionals, representatives of restaurants or food service establishments,
32 and consumers prior to promulgating any such rule or regulation].

33 S 3. This act shall take effect immediately; provided that section one
34 of this act shall take effect on the same date and in the same manner as
35 a chapter of the laws of 2009 amending the public health law relating to
36 the posting of caloric value of food items, as proposed in legislative
37 bill number A.2720-A, takes effect.