

3600

2009-2010 Regular Sessions

I N S E N A T E

March 25, 2009

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT in relation to creating the menu nutritional disclosure act of 2009

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

- 1 Section 1. This act shall be known and may be cited as the "menu
2 nutritional disclosure act of 2009".
3 S 2. 1. For purposes of this act, the following definitions shall
4 apply:
5 (a) "Food facility" means a food facility in the state that operates
6 under common ownership or control with at least 9 other food facilities
7 with the same name in the state that offer for sale substantially the
8 same menu items, or operates as a franchised outlet of a parent company
9 with at least 9 other franchised outlets with the same name in the state
10 that offer for sale substantially the same menu items, except that a
11 "food facility" does not include the following:
12 (i) Certified farmer's markets.
13 (ii) Commissaries.
14 (iii) Licensed health care facilities.
15 (iv) Mobile support units.
16 (v) Restricted food service facilities.
17 (vi) Retail stores in which a majority of sales are from a pharmacy.
18 (vii) Vending machines.
19 (b) "Calorie content information" means the total number of calories
20 per standard menu item, as that item is usually prepared and offered for
21 sale.
22 (c) "Drive-through" means an area where a customer may provide an
23 order for and receive standard menu items while occupying a motor vehi-
24 cle.

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

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1 (d) "Menu board" means a posted list or pictorial display of food or
2 beverage items offered for sale by a food facility. "Menu board" does
3 not include printed or pictorial materials for the purpose of marketing.

4 (e) "Menu" means a printed list or pictorial display of food or beverage
5 items offered for sale by a food facility. "Menu" shall not include
6 printed or pictorial materials for the purpose of marketing.

7 (f) "Food item tag" means a label or placard that identifies any food
8 item displayed for sale at a food facility. "Food item tag" shall not
9 include printed or pictorial materials for the purpose of marketing.

10 (g) "Nutritional information" includes, but is not limited to, all of
11 the following, per standard menu item, as that item is usually prepared
12 and offered for sale:

13 (i) Total number of calories.

14 (ii) Total number of grams of carbohydrates.

15 (iii) Total number of grams of saturated fat.

16 (iv) Total number of milligrams of sodium.

17 (h) "Point of sale" means the location where a customer makes an
18 order.

19 (i) "Standard menu item" means a food or beverage item offered for
20 sale by a food facility through a menu, menu board, or food item tag at
21 least 180 days per calendar year, except that "standard menu item" does
22 not include any of the following:

23 (i) A food item that is customized on a case-by-case basis in response
24 to an unsolicited customer request.

25 (ii) An alcoholic beverage, the labeling of which is not regulated by
26 the federal food and drug administration.

27 (iii) A packaged food otherwise subject to the nutrition labeling
28 requirements of the federal Nutrition Labeling and Education Act of
29 1990.

30 (iv) A food item when served at a consumer self-service salad bar.

31 (v) A food or beverage item when served at a consumer self-service
32 buffet.

33 (vi) Condiments.

34 (vii) Other items placed on counters or tables for use without charge
35 to consumers.

36 (j) "Reasonable basis" means any reasonable means recognized by the
37 federal food and drug administration of determining nutritional informa-
38 tion, as well as calorie content information, for a standard menu item,
39 as usually prepared and offered for sale, including, but not limited to,
40 nutrient databases and laboratory analyses.

41 (k) "Appetizer" means a food item that is generally served prior to a
42 food item that is generally regarded as the primary food item in a meal.
43 An "appetizer" includes a first course, starter, or small plate.

44 (l) "Dessert" means a food item that is generally served after a food
45 item that is generally regarded as the primary food item in a meal.
46 "Dessert" includes, but is not limited to, cakes, pastries, pies, ice
47 cream and food items that contain ice cream, confections, and other
48 sweets.

49 2. (a) Commencing July 1, 2010 and remaining in effect until December
50 31, 2011, inclusive, every food facility shall disclose nutritional
51 information as required by paragraph (b) of this subdivision or comply
52 with the requirements of subdivision three of this section during this
53 time.

54 (b) (i) In order to comply with paragraph (a) of this subdivision, a
55 food facility that does not provide sit-down service shall disclose the
56 information in a clear and conspicuous manner on a brochure that is made

1 available at the point of sale prior to or during the placement of an
2 order. A food facility that provides sit-down service shall provide the
3 nutritional information in a clear and conspicuous size and typeface on
4 at least one of the following:

5 (1) A brochure available on the table.

6 (2) A menu next to each standard menu item.

7 (3) A menu, under an index section that is separate from the listing
8 of standard menu items.

9 (4) A menu insert.

10 (5) A table tent on the table.

11 (ii) Notwithstanding subparagraph (i) of this paragraph, a food facil-
12 ity that has a drive-through area and uses a menu board to display or
13 list standard menu items at the point of sale shall, for purposes of the
14 drive-through area only, disclose the nutritional information in a clear
15 and conspicuous manner on a brochure or other printed material that is
16 available upon request, and shall conspicuously display a notice at the
17 point of sale that reads: "NUTRITIONAL INFORMATION IS AVAILABLE UPON
18 REQUEST" or other similar statement that indicates the disclosure of
19 nutritional information is available upon request.

20 3. (a) On and after January 1, 2012, every food facility that provides
21 a menu shall disclose calorie content information for a standard menu
22 item next to the item on the menu in a size and typeface that is clear
23 and conspicuous.

24 (b) On and after January 1, 2012, every food facility that uses an
25 indoor menu board shall disclose calorie content information for a stan-
26 dard menu item next to the item on the menu board in a size and typeface
27 that is clear and conspicuous.

28 (c) On and after January 1, 2012, every food facility that uses a food
29 item tag as an alternative to a menu or menu board to describe a stand-
30 ard menu item that is displayed for sale in a display case within the
31 food facility shall disclose calorie content information for that stand-
32 ard menu item on the food item tag for that item in a size and typeface
33 that is clear and conspicuous.

34 (d) On and after January 1, 2012, every food facility that has a
35 drive-through area and uses a menu board to display or list standard
36 menu items at the point of sale shall, for purposes of the drive-through
37 area only, disclose the nutritional information for each standard menu
38 item in a clear and conspicuous manner on a brochure or other printed
39 material that is available upon request, and shall clearly and conspicu-
40 ously display a notice at the point of sale that reads: "NUTRITIONAL
41 INFORMATION IS AVAILABLE UPON REQUEST" or other similar statement that
42 indicates the disclosure of nutritional information is available upon
43 request. If a food facility subject to this paragraph discloses nutri-
44 tional information in the manner described in paragraph (b) of this
45 subdivision, the food facility shall be deemed to be in compliance with
46 this paragraph.

47 4. For purposes of subdivision 3 of this section, the disclosure of
48 calorie content information on a menu or menu board next to a standard
49 menu item that is a combination of at least two standard menu items on
50 the menu or menu board, shall, based upon all possible combinations for
51 that standard menu item, include both the minimum amount of calories for
52 the calorie count information and the maximum amount of calories for the
53 calorie count information. If there is only one possible total amount of
54 calories, then this total shall be disclosed.

55 5. For purposes of subdivision 3 of this section, the disclosure of
56 calorie content information on a menu or menu board next to a standard

1 menu item that is not an appetizer or dessert, but is intended to serve
2 more than one individual, shall include both of the following:

3 (a) The number of individuals intended to be served by the standard
4 menu item.

5 (b) The calorie content information per individual serving. If the
6 standard menu item is a combination of at least two standard menu items,
7 this disclosure shall, based upon all possible combinations for that
8 standard menu item, include both the minimum amount of calories for the
9 calorie count information and the maximum amount of calories. If there
10 is only one possible total amount of calories, then this total shall be
11 disclosed.

12 6. For beverage items, a range of calorie count information may be
13 provided, which includes both the minimum amount of calories for any
14 beverage item and the maximum amount of calories.

15 7. The nutritional information and calorie content information
16 required by this act shall be determined on a reasonable basis. A
17 reasonable basis determination of nutritional information and calorie
18 content information shall be required only once per standard menu item,
19 provided that portion size is reasonably consistent and the food facili-
20 ty follows a standardized recipe and trains to a consistent method of
21 preparation.

22 8. Menus and menu boards may include a disclaimer that indicates that
23 there may be variations in nutritional content across servings, based on
24 variations in overall size and quantities of ingredients, and based on
25 special ordering.

26 9. This act shall not be construed to create or enhance any claim,
27 right of action, or civil liability that did not previously exist under
28 state law or limit any claim, right of action, or civil liability that
29 otherwise exists under state law. No private right of action shall arise
30 out of this act. The only enforcement mechanism of this act shall be the
31 local enforcement agency.

32 10. This act shall not be construed to preclude any food facility from
33 voluntarily providing nutritional information in addition to the
34 requirements of this act.

35 11. To the extent consistent with federal law, this act, as well as
36 any other state law that regulates the disclosure of nutritional infor-
37 mation, is a matter of statewide concern and occupies the whole field of
38 regulation regarding the disclosure of nutritional information by a food
39 facility as well as content required to be posted on menus, menu boards
40 and food item tags. No ordinance or regulation of a local government
41 shall regulate the dissemination of nutritional information or the
42 content required to be placed on menus, menu boards or food item tags by
43 a food facility. Any ordinance or regulation that violates this prohibi-
44 tion is void and shall have no force or effect.

45 12. Commencing July 1, 2010, a food facility that violates this act is
46 guilty of an infraction, punishable by a fine of not less than fifty
47 dollars or more than five hundred dollars, which may be assessed by a
48 local enforcement agency. However, a food facility may not be found to
49 violate this act more than once during an inspection visit. Notwith-
50 standing the penal law or any other provision of law to the contrary, a
51 violation of this act shall not constitute a misdemeanor.

52 13. Within 180 days after the effective date of this act, the New York
53 state department of health shall promulgate regulations defining the
54 specific requirements that constitute substantial compliance with this
55 act by food facilities.

1 14. If any provision of this act or the application thereof is for any
2 reason held invalid, ineffective, or unconstitutional by a court of
3 competent jurisdiction, the remainder of this act shall not be affected
4 thereby, and to this end, the provisions of this act are severable.
5 S 3. This act shall take effect immediately.