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

5003

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. DUANE -- 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:

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 PROMINENTLY POST CALORIE CONTENT FOR MENU ITEMS AS USUALLY PREPARED AND OFFERED FOR SALE ON STANDARD PRINTED MENUS AND MENU BOARDS OR SIGNS. 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, IF PRESENT, AND MENUS IN A SIZE OR TYPEFACE AT LEAST AS LARGE AS THE NAME AND PRICE OF THE MENU ITEM, WHICHEVER IS LARGER, AND TO POST THE RANGE OF CALORIE CONTENT VALUES SHOWING THE MINIMUM TO MAXIMUM NUMBERS OF CALORIES FOR ALL FLAVORS OR VARIETIES OR COMBINATIONS OF FOOD ITEMS FOR EACH SIZE OFFERED OF SUCH MENU ITEMS THAT COME IN DIFFERENT FLAVORS OR VARIETIES OR COMBINATIONS OF FOOD ITEMS BUT ARE LISTED AS A SINGLE MENU ITEM. THIS SECTION SHALL NOT APPLY TO MENU ITEMS LISTED 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

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

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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, INCLUDING THE SITE WHERE PORTIONS ARE PROVIDED REGARDLESS OF WHETHER CONSUMPTION TAKES PLACE ON OR OFF THE PREMISES, THAT IS ONE OF AT LEAST FIFTEEN SUCH RESTAURANTS OR ESTABLISHMENTS IN THE UNITED STATES AND AT LEAST FIVE SUCH RESTAURANTS OR ESTABLISHMENTS IN NEW YORK STATE DOING BUSINESS UNDER THE SAME TRADE NAME AND OFFERING PREDOMINANTLY THE SAME MENU ITEMS ON THE SAME MENUS OR MENU BOARDS OR SIGNS. 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 ESTABLISHMENTS THAT HAVE BEEN DETERMINED BY THE COMMISSIONER TO BE RESTAURANTS OR FOOD SERVICE ESTABLISHMENTS SUBJECT TO THE PROVISIONS OF 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 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 RESTAURANTS AND FOOD SERVICE ESTABLISHMENTS PROVIDE DOCUMENTATION OF THE ACCURACY. 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 NOT RESTRICT THE POWER OF ANY COUNTY, CITY, TOWN, OR VILLAGE TO ADOPT AND ENFORCE ADDITIONAL LOCAL LAWS, ORDINANCES, OR REGULATIONS WHICH COMPLY WITH AT LEAST THE MINIMUM APPLICABLE STANDARDS SET FORTH IN THIS SECTION.

S 2. This act shall take effect on the one hundred eightieth day 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.