STATE OF NEW YORK

1002

2023-2024 Regular Sessions

IN ASSEMBLY

January 12, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the public health law and the agriculture and markets law, in relation to food allergy awareness in food service establishments and online food ordering services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1356 of the public health law, as added by a chapter of the laws of 2022 amending the public health law relating to food allergy awareness in food service establishments and online food ordering services, as proposed in legislative bills numbers S. 8102-A and A. 2344-A, is amended to read as follows:

§ 1356. Food allergies notice in food service establishments and online food ordering services. 1. Definitions. **For the purposes of this section:**

(a) "Food service establishment" shall mean a restaurant[~~,~~] **or** catering hall[~~, or grocery store~~] where food is prepared and served either on or off site.

(b) "Menu" shall mean a list or pictorial display of a prepared food item or items available for sale from a food establishment for the purpose of permitting a customer to order such food item or items, including such list or pictorial display posted [~~on the internet~~] **online** for a customer to place food orders for delivery or take out.

2. The commissioner shall make available on the department's website, in English and in the [~~top six languages other than English spoken in the state according to the latest available data from~~] **twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by** the United States Census Bureau, a notice containing information for staff of food service establishments regarding food allergies. Such notice shall include:

(a) the procedures to be followed if a customer informs staff of such food service establishment that such customer has a food allergy;

(b) any procedures to be followed to prevent cross contact; and

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

LBD03991-01-3

(c) the procedure to be followed if a customer has an allergic reaction, including a recommendation regarding the circumstances in which to call 911.

3. Every food service establishment shall post the notice containing information on food allergies established pursuant to subdivision two of this section in a conspicuous location accessible to all employees involved in the preparation or service of food, in at least one of the languages spoken by each employee to the extent such languages are among those in which the department makes the notice available pursuant to subdivision two of this section.

4. The commissioner shall make available on the department's website, in the [~~top six languages other than English spoken in the state according to the latest available data from~~] twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau, (a) a translation of the following: "If you have a food allergy, please notify us."; and (b) a food allergy message that food service establishments may use to inform customers about allergy information for prepared food items.

5. Every food service establishment operating in New York state that makes available a menu shall include in a conspicuous manner on each menu or the assembly upon which the menu or menus are included, either, (a) the following notice: "If you have a food allergy, please notify us."; or (b) a food allergy message that informs the customer about the allergy information for each prepared food item or items on such menu. If such menu is available in a language other than English for which the department makes a translation available pursuant to subdivision four of this section, such food service establishment shall also include such translation in a conspicuous manner. Every food service establishment that makes available a menu [~~on the internet~~] online for a customer to place food orders for delivery or take out, including under a third-party food delivery agreement pursuant to section three hundred ninety-one-v of the general business law, shall also include on such menu a food allergy notification to customers and either, (1) provide a method by which a customer may indicate any food allergy such customer has; or (2) provide a food allergy message that informs the customer about the allergy information for each prepared food item or items on such menu.

6. Any food service establishment that violates the provisions of this section or any of the rules or regulations promulgated hereunder shall be liable for a civil penalty not to exceed one hundred twenty-five dollars for each violation.

§ 2. The agriculture and markets law is amended by adding a new section 199-f to read as follows:

§ 199-f. Food allergies notice in food service establishments. 1. Definitions. For the purposes of this section:

(a) "Menu" shall mean a list or pictorial display of a prepared food item or items available for sale for the purpose of permitting a customer to order such food item or items, including such list or pictorial display posted online for a customer to place food orders for delivery or take out.

(b) "Food service establishment" shall mean any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided, whether consumption occurs on or off the premises, or whether or not there is a charge for

the food, including retail food stores, as defined in section five hundred of this chapter.

2. The commissioner shall make available on the department's website, in English and in the twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau, a notice containing information for staff of food service establishments regarding food allergies. Such notice shall include:

(a) the procedures to be followed if a customer informs staff of such food service establishment that such customer has a food allergy;

(b) any procedures to be followed to prevent cross contact; and

(c) the procedure to be followed if a customer has an allergic reaction, including a recommendation regarding the circumstances in which to call 911.

3. Every food service establishment shall post the notice containing information on food allergies established pursuant to subdivision two of this section in a conspicuous location accessible to all employees involved in the preparation or service of food, in at least one of the languages spoken by each employee to the extent such languages are among those in which the department makes the notice available pursuant to subdivision two of this section.

4. The commissioner shall make available on the department's website, in the twelve most common non-English languages spoken by limited-English proficient individuals in the state, based on the data in the most recent American Community Survey published by the United States Census Bureau, (a) a translation of the following: "If you have a food allergy, please notify us."; and (b) a food allergy message that food service establishments may use to inform customers about allergy information for prepared food items.

5. Every food service establishment that makes available a menu shall include in a conspicuous manner on each menu or the assembly upon which the menu or menus are included, either, (a) the following notice: "If you have a food allergy, please notify us."; or (b) a food allergy message that informs the customer about the allergy information for each prepared food item or items on such menu. If such menu is available in a language other than English for which the department makes a translation available pursuant to subdivision four of this section, such food service establishment shall also include such translation in a conspicuous manner. Every food service establishment that makes available a menu online for a customer to place orders for delivery or take out, including under a third-party food delivery agreement pursuant to section three hundred ninety-one-v of the general business law, shall also include on such menu a food allergy notification to customers and either, (1) provide a method by which a customer may indicate any food allergy such customer has; or (2) provide a food allergy message that informs the customer about the allergy information for each prepared food item or items on such menu.

6. Any food service establishment that violates the provisions of this section or any of the rules or regulations promulgated hereunder shall be liable for a civil penalty not to exceed one hundred twenty-five dollars for each violation.

§ 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2022 amending the public health law relating to food allergy awareness in food service establishments and

online food ordering services, as proposed in legislative bills numbers S. 8102-A and A. 2344-A, takes effect.