

# STATE OF NEW YORK

819

2023-2024 Regular Sessions

## IN SENATE

January 6, 2023

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

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:

1 Section 1. Section 1356 of the public health law, as added by a chap-  
2 ter of the laws of 2022 amending the public health law relating to food  
3 allergy awareness in food service establishments and online food order-  
4 ing services, as proposed in legislative bills numbers S. 8102-A and A.  
5 2344-A, is amended to read as follows:

6 § 1356. Food allergies notice in food service establishments and  
7 online food ordering services. 1. Definitions. For the purposes of this  
8 section:

9 (a) "Food service establishment" shall mean a restaurant[~~7~~] or cater-  
10 ing hall[~~7, or grocery store~~] where food is prepared and served either on  
11 or off site.

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

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

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

LBD03991-01-3

(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 [~~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

1 site at which individual portions are provided, whether consumption  
2 occurs on or off the premises, or whether or not there is a charge for  
3 the food, including retail food stores, as defined in section five  
4 hundred of this chapter.

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

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

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

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

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

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

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

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

55 § 3. This act shall take effect on the same date and in the same  
56 manner as a chapter of the laws of 2022 amending the public health law

1 relating to food allergy awareness in food service establishments and  
2 online food ordering services, as proposed in legislative bills numbers  
3 S. 8102-A and A. 2344-A, takes effect.