

2009 DRAFTING REQUEST

Bill

Received: **08/04/2009**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Chuck Benedict (608) 266-9967**

By/Representing: **Tara Vasby**

This file may be shown to any legislator: **NO**

Drafter: **tdodge**

May Contact: **Mary Matthias (Leg Council)**

Addl. Drafters:

Subject: **Health - public health**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Benedict@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Requiring chain restaurant menus to contain nutritional information

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|----------------------|------------------------|----------------|-----------------------|-----------------|-----------------|
| /? | tdodge 09/15/2009 | bkraft 09/15/2009 | | _____ | | | |
| /P1 | tdodge 10/20/2009 | bkraft 10/20/2009 | phenry 09/16/2009 | _____ | lparisi 09/16/2009 | | S&L |
| /1 | | | jfrantze 10/22/2009 | _____ | mbarman 10/22/2009 | | S&L |
| /2 | tdodge | kfollett | mduchek | _____ | sbasford | cduerst | |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| | 11/06/2009 | 11/10/2009 | 11/11/2009 | _____ | 11/11/2009 | 11/25/2009 | |

FE Sent For: *at intro*
1/22/10

<END>

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| /1 | | 125f 11/10 | jfrantze 10/22/2009 | _____ | mbarman 10/22/2009 | | |

Handwritten signatures and dates:
11/11 [Signature]
11/11 [Signature]

FE Sent For:

<END>

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| /P1 | | | phenry 09/16/2009 | _____ | lparisi 09/16/2009 | | |
| | | 1 bjk 10/20 | Jo 10/21 | MD PH | | | |
| FE Sent For: | | | | <END> 10/21 | | | |

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Drafter: **tdodge**

May Contact: **Mary Matthias (Leg Council)**

Addl. Drafters:

Subject: **Health - public health**

Extra Copies: **RPN**

Submit via email: **YES**

Requester's email: **Rep.Benedict@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

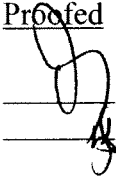
Topic:

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Instructions:

See attached

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|--------------|----------------|-----------------|--------------|---|------------------|-----------------|-----------------|
| /? | tdodge | /PI ljk 9/15 | 9/15 PH |  | | | |

FE Sent For: **<END>**

Dodge, Tamara

From: Matthias, Mary
Sent: Monday, August 31, 2009 2:34 PM
To: Dodge, Tamara
Cc: Vasby, Tara
Subject: RE: Menu Labeling Bill

Sure- you can give it a new number--that shouldn't be a problem.

thx--

Mary Matthias

Senior Staff Attorney
Wisconsin Legislative Council Staff
Ph.(608)266-0932;Fax (608)266-3830

From: Dodge, Tamara
Sent: Thursday, August 27, 2009 4:48 PM
To: Matthias, Mary
Subject: Menu Labeling Bill

I am working on the menu labeling bill that just switched from DATCP to DHS (LRB-2533). I was wondering if, since you say this is a work in progress, I could give this a new LRB number and make it a /P draft again. Things would move more quickly if I could, and I could embed notes in the draft if I come across questions.

If you want me to run this by Representative Benedict's office, please let me know.
Thanks,
Tami

Tamara J. Dodge

Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 267 - 7380
tamara.dodge@legis.wisconsin.gov

Sundberg, Christopher

From: Matthias, Mary
Sent: Tuesday, August 04, 2009 8:27 AM
To: Sundberg, Christopher
Cc: Vasby, Tara
Subject: LRB 2533/1-menu labeling
Attachments: Notes from July 21.doc

Chris-

Rep. Benedict would like LRB 2533/1 redrafted to incorporate the changes described in the attached document.

I realize some of the items in the document are rather vague. The group that is looking at the draft plans to meet again in late August or early September. If you need more clarification on any item (and talking to me doesn't resolve it) you can take your best shot at drafting it and the group can discuss and refine their ideas at the next meeting. It will really help move the process along if they have language (or specific options) to discuss at that meeting.

Thanks—and I'll be happy to try and help clarify things as best I can.

Mary Matthias

Senior Staff Attorney
Wisconsin Legislative Council Staff
Ph.(608)266-0932;Fax (608)266-3830

From: Matthias, Mary
Sent: Monday, August 03, 2009 9:20 AM
To: Vasby, Tara
Subject: Notes from July 21.doc

Tara-

Here is the list of changes discussed at the meeting on the menu labeling bill. I haven't sent this to the drafter- let me know if you would like me to do that.

thx-

Mary

08/04/2009

Notes from July 21, 2009 meeting on menu labeling bill (LRB 2533/1)
Prepared by Mary Matthias, Leg. Council 266-0932

Attendees

Representative Chuck Benedict
Tara Vasby, aide to Rep. Benedict
Ed Lump- Wis. Restaurant Assn
Pete Hanson- Wis. Restaurant Assn
Chuck Warzecha- DHS
Rachel Currans-Sheehan - DHS
Amy Meinen- DHS
Keeley Moll -DATCP
Janet Jenkins -DATCP
Mary Matthias- Leg. Council

The group generally agreed on looking into making the following changes to the draft:

1. Move the program from DATCP to DHS and integrate it into the restaurant inspection program that is already required by statute.
2. Eliminate or minimize the need for DHS to promulgate rules to implement the program.
3. Provide "good faith" immunity from lawsuits based on inaccurate nutritional information provided under the program and provided voluntarily by a restaurant that is not covered by the program.
4. Provided an extended delayed effective date for required changes to menu boards.
5. Change the threshold number of restaurants in the definition of "chain restaurant" from 10 to 20.
6. Specify that if federal law requires a restaurant to post nutritional information, the state requirements do not apply.
7. Specify that local governments may not require the posting of any nutritional information that is not required under the state law.
8. Specify that local governments may not impose menu labeling requirements on any restaurant that is not covered by the state law.
9. Provide an exemption from the labeling requirements for "specials" that appear on a menu for 90 days or less.

DHS
253185

10. Allow a restaurant to determine the nutritional composition of an individual serving of an item by dividing the total for the entire amount prepared by the number of servings. (eg, determine the calorie count of a slice of pizza by dividing the total calorie count of a pizza by the number of slices into which it is cut.)

Sundberg, Christopher

From: Matthias, Mary
Sent: Tuesday, August 04, 2009 8:34 AM
To: Sundberg, Christopher
Cc: Vasby, Tara
Subject: FW: DHS Menu Labeling Feedback

Chris-

Here is some feedback from DHS. Please include the items DHS wants in the /2. Items 1 and 2 were discussed at the meeting in July and they are included in the document I sent you.

The item in red wasn't really discussed but seems straightforward. Items 3 and 4 look new to me and I don't have any more info than what is in this e-mail. If I get more I'll pass it on to you. If we don't get more info on those items, don't include them in the /2. I will get more direction from the group when we meet again to review /2.

This draft is a work in progress and we don't expect the /2 to be a final product, so your best attempts to get at what they're looking for will be enough for now.

Thanks!

Mary Matthias

Senior Staff Attorney
Wisconsin Legislative Council Staff
Ph.(608)266-0932;Fax (608)266-3830

From: Vasby, Tara
Sent: Monday, August 03, 2009 12:09 PM
To: Matthias, Mary
Subject: RE: DHS Menu Labeling Feedback

Yes, that would be good. I can ask Rachel for some clarification on points 3 and 4. Thanks!

From: Matthias, Mary
Sent: Monday, August 03, 2009 11:51 AM
To: Vasby, Tara
Subject: RE: DHS Menu Labeling Feedback

I think we need a bit more info from DHS before we can give complete drafting instructions- in particular, numbers 3 and 4 in Rachel's e-mail. Do you want me to send what we have to the drafter to have an updated draft ready for the next meeting with DHS?

Mary Matthias

Senior Staff Attorney
Wisconsin Legislative Council Staff
Ph.(608)266-0932;Fax (608)266-3830

08/04/2009

From: Vasby, Tara
Sent: Monday, August 03, 2009 10:35 AM
To: Matthias, Mary
Subject: FW: DHS Menu Labeling Feedback

Mary,

Your notes looked good. I'm forwarding DHS comments from the meeting. I've highlighted what I think is their one additional request - basically some kind of pamphlet I guess with the additional nutritional information on it. I'm fine with that, I just don't want to veer too far away from the Fed compromise.

I've sent the original jacket back to Chris Sundberg at LRB drafting. He's waiting for further instructions.

From: Currans-Sheehan, Rachel H - DHS [mailto:Rachel.CurransSheehan@dhs.wisconsin.gov]
Sent: Monday, July 27, 2009 6:05 PM
To: Vasby, Tara
Subject: DHS Menu Labeling Feedback

Tara:

Our DPH folks met and reviewed the recently compromised MEAL Act. They spoke with the Center for Science in the Public Interest (CSPI) about the federal compromised MEAL/LEAN Act that is in the Senate's version of the Health Reform Bill (Note: The House version of the Health Reform Bill contains the same language at this point). The compromise, which happened in June, is indeed supported by several public health organizations including the American Heart Association.

See attached documents that compare the MEAL Act to the compromised version. The two main differences between the MEAL Act and the compromised version is that only calories would appear on the menu board and that states/local municipalities would be preempted from passing a stronger law. The compromised version still contains labeling for vending, self-service salad bars, ready-to-eat foods, etc. It would also require calorie content labeling on drive-thru menu boards. The only issues that we see with this compromised version is that no implementation period is identified in the bill; CSPI is estimating a 2-4 year implementation period as FDA will be allowed one year for rule making.

After some research, the federal compromised version does still contain several components of the MEAL Act, and thus, we would recommend that Rep. Benedict's Office consider a version of this for the state bill. As part of this recommendation, we think the implementation phase-in period should be longer than 6 months (in Benedict's version now) but not as long as 20-30 months (what WRA was discussing). **We also think that if carbohydrate, sodium, saturated fat/trans fat are not posted on the menu board with the calories, that this information should be available near the point-of-purchase.** Rep. Benedict's current version on page 3, line 18 states, "available to customer in writing upon the customer's written request". The federal compromised version says that this additional information needs to be available "on the premise". Regardless, we think this could be strengthened by having this information available at or near the point-of-purchase.

It makes sense to site DHS as the agency responsible for monitoring/enforcement/evaluation.

A few other brief comments on the current draft... We haven't had time to review or make formal language suggestions, but here are our brief comments:

- 1) ensure DHS is agency to implement/enforce... (have not heard from my folks about Chap 254

08/04/2009

as the correct statute and unfortunately they are out this week.... I would assume yes at this point...)

- 2) per our conversation, examine revising language regarding DHS enforcement and placing in statute vs. admin rules
- 3) look again at language regarding nutrition standards in admin rule
- 4) would suggest clarifications on penalty language for enforcement

Thanks,

Rachel H. Currans-Sheehan
Legislative Liaison
Department of Health Services
Phone: (608) 266-3262
Email: rachel.curranssheehan@wisconsin.gov

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: TJD) (Date: 09 / 15 / 2009)



Please transfer the drafting file for

2007 LRB to the drafting file

for 2009 LRB

The final version of the 2007 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2007 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2007 draft was incorporated into a new 2009 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2009 drafting file. This request form will be inserted into the "guts" of the 2009 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

--- OR ---

Please copy the drafting file for

2009 LRB 2533 1 1 (include the version) and place it in the

drafting file for 2009 LRB 3355

For research purposes, because the original 2009 draft was incorporated into another 2009 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2009 drafting file. This request form will be inserted into the "guts" of the new 2009 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then be returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3355 ^{PI}

TJD:.....

In. 9/15/09 soon

bjk RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
x-ref

Inserts

d-notes

1 AN ACT ^{gen.} ...; **relating to:** requiring certain chain restaurants to post or provide
2 nutritional information, providing immunity for restaurants that provide
3 inaccurate nutritional information, and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 254.61 (1m) of the statutes is created to read:
5 254.61 (1m) "Chain restaurant" means a restaurant in this state that is one
6 of at least 20 restaurants in the United States doing business under the same trade
7 name and offering a menu with substantially identical menu items.

8 SECTION 2. 254.61 (3g) of the statutes is created to read:
9 254.61 (3g) "Menu item" does not include any of the following:

10 (a) Items that appear on the menu for less than 90 days per year.

1 (b) Condiments and other items placed on a table or counter for use without
2 charge.

3 SECTION 3. 254.713 of the statutes is created to read:

4 **254.713 Nutritional information in chain restaurant menus.**

INS
2-5

5 (3) A chain restaurant may calculate the nutritional composition under sub.
6 (2)(a) for a single serving by dividing the total for the entire amount prepared by the
7 number of servings.

INS
2-8

8 (5) This section does not apply if a federal law or regulation requires a
9 restaurant to post nutritional information.

***NOTE: What if the federal law only applied to restaurants in hospitals, would the state law be inapplicable? Should this preemption clause only apply if the federal law applies to chain restaurants?

10 (6) No local ordinance may do any of the following:

11 (a) Impose any menu labeling requirement on a restaurant that is not required
12 to comply with this section.

13 (b) Require a restaurant to post any nutritional information that is not
14 required under this section.

15 SECTION 4. 895.508 of the statutes is created to read:

16 **895.508 Civil liability exemption; nutritional information labeling. (1)**

17 **TITLE.** Any restaurant, as defined in s. 254.61 (5), that provides nutritional
18 information of a food is immune from any civil liability that results from providing
19 inaccurate nutritional information, if the nutritional information is provided in good
20 faith.

***NOTE: After consulting with the person who drafts civil procedure issues, I have placed the immunity section in the chapter that contains various other immunity provisions, including immunity provisions related to food. Please let me know if this is what you want.

as follows (i) treatment (D)(c)

#(1)

1

SECTION 5. Effective dates.

This act takes effect on first day of the 6th month

2

beginning after publication, except the creation of section 254.713 of the statutes

3

takes effect on the first day of the 13th month beginning after publication.

****NOTE: I was unsure from the two lists of changes whether you wanted a delayed effective date for the entire bill, a delayed effective date for only the menu board changes, or a combination of delayed effective dates. I created some sample language with a combination of delayed effective dates for your review.

4

(END)

D-Note

INSERT

BILL

more than 20 percent, a covered restaurant must list the range of values for all flavors, varieties, or combinations from lowest to highest. The bill also requires a covered restaurant to include on its menus or menu boards the following statement: "A 2,000 calorie daily diet is used as the basis for general nutritional advice; however, individual calorie needs may vary."

Violations of the provisions of the bill are subject to a forfeiture of \$50 to \$500.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 100.365 of the statutes is created to read:

~~100.365. Nutritional information in chain restaurant menus. (1) In this~~

~~section (b) (m) 254.61~~

(a) "Chain restaurant" means a restaurant in this state that is one of at least 10 restaurants in the United States doing business under the same trade name and offering menus with substantially identical menu items.

(b) "Menu item" does not include any of the following:

1. Items that appear on the menu for less than 30 days per year.
2. Condiments and other items placed on a table or counter for use without charge.

~~(c) "Restaurant" has the meaning given in s. 254.61(5).~~

INSERT 2-5

(1) (2) (a) Subject to pars. (c) and (d), a chain restaurant shall disclose for each serving of a menu item, as prepared and offered for sale at the chain restaurant, the size of a single serving of the menu item and all of the following regarding a single serving of the menu item:

1. The number of calories.
2. The total number of grams of saturated fat and trans fat.
3. The number of grams of carbohydrates.

BILL

1 4. The number of milligrams of sodium.

2 (b) A chain restaurant shall include in its menu any
3 disclosure required under par. (a) shall appear in a chain restaurant's

4 menu next to each item on the menu in a size and typeface of equal prominence to
5 the price or name of the menu item.

6 (c) If a chain restaurant that only offers menu items to customers using a menu
7 board, the chain restaurant may limit the information displayed on the menu board
8 to the number of calories contained in each item. A disclosure under this paragraph
9 shall appear in a size and typeface of equal prominence to the price or name of the

10 item. A chain restaurant subject to this paragraph shall make the information
11 described in par. (a) 2. to 4. on the premises and make the information

12 written request.

13 (d) A chain restaurant that offers customers a salad bar, buffet line, cafeteria
14 service, or similar arrangement where prepared food is on display shall disclose the
15 number of calories contained in a standard serving of each item offered and the size
16 of a standard serving of the item. A disclosure under this paragraph shall be
17 displayed next to the item offered and shall be made in a size and typeface that is
18 prominent and legible to customers. A chain restaurant subject to this paragraph
19 shall make have the information described in par. (a) 2. to 4. on the premises and make the

20 writing upon the customer's written request.

21 (e) If a chain restaurant offers a menu item in different flavors, varieties, or
22 combinations and lists the item as a single menu item, the restaurant shall disclose
23 the information required under par. (a) based on the median number of calories,
24 grams of saturated fat and trans fat, grams of carbohydrates, and milligrams of
25 sodium for all flavors, varieties, or combinations, if the number of calories, grams of
saturated fat and trans fat, grams of carbohydrates, and milligrams of sodium for

***Note: I eliminated the
word "only" in the 1st sentence because restaurant's
could avoid posting calories by having an online menu, for example.

***Note: I changed the language regarding availability of
additional information in response to the email correspondence
from DHS. Is this language okay?

BILL

1 each flavor, variety, or combination differs from the median number by 20 percent
 2 or less. If the number of calories, grams of saturated fat and trans fat, grams of
 3 carbohydrates, and milligrams of sodium for ~~each~~ ^{any} flavor, variety, or combination
 4 differs from the median number by more than 20 percent, the chain restaurant shall
 5 list the range of the number of calories, grams of saturated fat and trans fat, grams
 6 of carbohydrates, and milligrams of sodium from the lowest to the highest value. If
 7 a menu item that comes in different flavors, varieties, or combinations is on display
 8 with a name placard or similar signage, the placard or signage shall disclose the
 9 number of calories per serving of the menu item along with the name of the menu
 10 item. If a chain restaurant does not display a menu item on a menu or menu board,
 11 the chain restaurant shall disclose the number of calories, grams of saturated fat and
 12 trans fat, grams of carbohydrates, and milligrams of sodium in each menu item that
 13 is available to customers using a brochure available at the chain restaurant, a
 14 booklet, a kiosk, or other device that is easily accessible to customers at the point of
 15 ordering.

16 ^B (2) ^C (3) A chain restaurant shall include the following statement on its menus or
 17 menu boards: "A 2,000 calorie daily diet is used as the basis for general nutritional
 18 advice; however individual calorie needs may vary."

19 ~~(4) The department shall promulgate rules specifying methods for computing~~
 20 ~~nutritional information required to be disclosed under sub. (2).~~

(End of Ins 2-5)

21 ^B (4) ^C (5) A person who violates this section is subject to a forfeiture of not less than
 22 \$50 nor more than \$500.

INSERT 2-8

Section 2 Effective date. (End of Insert 2-8)

23

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-33557dn

TJD:.....

P1
bjk

Date

To Tara Vasby:

Since this draft was characterized as a work-in-progress by Mary Matthias, I have given this preliminary draft a new number. I have eliminated the analysis for now so I can get draft language to you more quickly.

Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3355/P1dn
TJD:bjk:ph

September 15, 2009

To Tara Vasby:

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Tamara J. Dodge
Legislative Attorney
Phone: (608) 267-7380
E-mail: tamara.dodge@legis.wisconsin.gov

Dodge, Tamara

From: Vasby, Tara
Sent: Thursday, October 01, 2009 1:12 PM
To: Dodge, Tamara
Subject: FW: Bill regarding nutritional information in chain restaurant menus

Tamara,

I looked over these recommendations from DHS - and it looks like they also spoke to you already. We're fine with the changes and recommendations. I did ask DHS about question 4. I believe the WI Restaurant Assoc wanted to make it clear that state law would not be stronger than any Federal law. If there is any change to this draft in the very near future, it would be to remove that language if the WRA agreed.

Our goal is to get this bill circulated as soon as possible this month - since we don't know what is going to come out of the Federal government negotiations with health care reform. Thanks much for your guidance on this issue!

Tara Vasby
Leg. Assistant
Rep. Chuck Benedict

From: Currans-Sheehan, Rachel H - DHS [mailto:Rachel.CurransSheehan@dhs.wisconsin.gov]
Sent: Thursday, October 01, 2009 12:48 PM
To: Vasby, Tara
Subject: FW: Bill regarding nutritional information in chain restaurant menus

Tara: We've had a chance to review the bill and have a few comments:

1. Page 2 line 18 – can we confirm with the drafters that menu board would mean for any menu inside or outside (drive thru)?
2. Per drafters note, we are OK with Page 2 language lines 21-23 and on Page 3, lines 6-8.... No problems with drafters notes.
3. Page 4 lines 14-15... (See notes below with DHS Counsel and Drafters...) **DHS would recommend inclusion of items 3, 4, 5, 6 below.**
4. Page 4 lines 16-17 – Really is this trying to say that Federal law will preempt state law? Per the drafters note, we don't see an issue with the hospital restaurants as the scope of the state bill is limited to the definition you included about chain restaurants...
5. Page 5 re: effective dates- DHS recommends effective date 13 months out simply because if federal law is passed, this would ensure that restaurants did not have to comply with more restrictive state law (additional items on menu, etc), than federal....

Let me know if you have questions.

Thanks,
Rachel H. Currans-Sheehan
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From: Wendorff, Eric J - DHS
Sent: Thursday, October 01, 2009 12:14 PM
To: Currans-Sheehan, Rachel H - DHS; Warzecha, Charles J - DHS
Subject: Bill regarding nutritional information in chain restaurant menus

I spoke with Tamara Dodge, the LRB drafting attorney.

(1) She agrees that DHS (and its agents) will have responsibility for enforcing this provision, since it is included within subchapter VII of ch. 254, Stats., and s. 254.71 (1) (a) states that the department "shall administer and enforce this subchapter."

(2) Regarding what is required of a DHS inspection, it is contemplated that the inspector will check to see that the required information is provided but will not be required to determine whether it is accurate.

(3) It is her opinion that DHS would be required to assess a forfeiture for a violation, even though the language says merely that a violator is subject to a forfeiture, rather than saying that a forfeiture shall be assessed, because the proposed language sets a minimum forfeiture amount. She suggested that the language could be changed so that it says explicitly that the department may assess a forfeiture. **I concur with this.**

(4) Regarding DHS authority to assess a forfeiture, she suggested that she could add language that would explicitly give DHS the authority to do so. Although I think we have authority to do so, this would eliminate any question about this. She indicated that it is fairly common practice to give an agency such explicit authority in the statutes. **I concur with her recommendation, provided we want to assume this responsibility.**

(5) A restaurant would have a right to appeal a forfeiture under the general hearing right in s. 227.42, Stats. She suggested a specific right to an administrative appeal could be added. In my opinion, we would need to give a restaurant hearing rights and adequate notice of its rights, regardless whether the statute spells this out.

(6) She indicated she should revise s. 254.88, Stats., which provides, with three current exceptions, that a person violating subchapter VII shall be fined, by adding an exception for a violation of the proposed nutritional information requirement. Thus, a violator would not be subject to both a fine and a forfeiture. [I would note that we do not follow this statutory mandate, in that we do not typically fine violators of our restaurant rules, but instead issue orders for compliance.]

(7) We should let her know whether we want any of these changes and consult with the legislator regarding the same.