



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3355(PI)

TJD:bjk:ph

In: 10/20/09

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RmNE

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Inserts

D-note

regen.

1 AN ACT *to create* 254.61 (1m), 254.61 (3g), 254.713 and 895.508 of the statutes;
2 relating to: requiring certain chain restaurants to post or provide nutritional
3 information, providing immunity for restaurants that provide inaccurate
4 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:

5 SECTION 1. 254.61 (1m) of the statutes is created to read:

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

9 SECTION 2. 254.61 (3g) of the statutes is created to read:

10 254.61 (3g) "Menu item" does not include any of the following:

LSA

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

1 (d) A chain restaurant that offers customers a salad bar, buffet line, cafeteria
2 service, or similar arrangement where prepared food is on display shall disclose the
3 number of calories contained in a ^{single} ~~standard~~ serving of each item offered and the size
4 of a ^{single} ~~standard~~ serving of the item. A disclosure under this paragraph shall be
5 displayed next to the item offered and shall be ^{made} in a size and typeface that is
6 prominent and legible to customers. A chain restaurant subject to this paragraph
7 shall have the information described in par. (a) 2. to 4. on the premises and make the
8 information available to a customer in writing upon the customer's request.

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

9 (e) If a chain restaurant offers a menu item in different flavors, varieties, or
10 combinations and lists the item as a single menu item, the restaurant shall disclose
11 the information required under par. (a) based on the median number of calories,
12 grams of saturated fat and trans fat, grams of carbohydrates, and milligrams of
13 sodium for all flavors, varieties, or combinations, if the number of calories, grams of
14 saturated fat and trans fat, grams of carbohydrates, and milligrams of sodium for
15 each flavor, variety, or combination differs from the median number by 20 percent
16 or less. If the number of calories, grams of saturated fat and trans fat, grams of
17 carbohydrates, ^{or} ~~and~~ milligrams of sodium for any flavor, variety, or combination
18 differs from the median number by more than 20 percent, the chain restaurant shall
19 list the range of the number of calories, grams of saturated fat and trans fat, grams
20 of carbohydrates, and milligrams of sodium from the lowest to the highest value. If
21 a menu item that comes in different flavors, varieties, or combinations is on display
22 with a name placard or similar signage, the placard or signage shall disclose the

1 number of calories per serving of the menu item along with the name of the menu
2 item. If a chain restaurant does not display a menu item on a menu or menu board,
3 the chain restaurant shall disclose the number of calories, grams of saturated fat and
4 trans fat, grams of carbohydrates, and milligrams of sodium in each menu item that
5 is available to customers using a brochure (available at the chain restaurant) ^{and is}
6 booklet, a kiosk, or other device that is ^{move} easily accessible to customers at the point of
7 ordering.

8 (2) A chain restaurant shall include the following statement on its menus or
9 menu boards: "A 2,000 calorie daily diet is used as the basis for general nutritional
10 advice; however, individual calorie needs may vary."

11 (3) A chain restaurant may calculate the nutritional composition under sub.
12 (1) (a) for a single serving by dividing the total for the entire amount prepared by the
13 number of servings.

14 (4) ^{(a) The department may impose} A person who violates this section is subject to a forfeiture of not less than
15 \$50 nor more than \$500 ^{on a person who violates this section}

INSERT 4-16

16 (5) This section does not apply if a federal law or regulation requires a
17 ^{chain} 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?

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

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

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

INSERT 4-23

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

as described in s. 254.713 (1)(a) to 4,

1 **895.508 Civil liability exemption; nutritional information labeling.**

2 Any restaurant, as defined in s. 254.61 (5), that provides nutritional information of

3 a food is immune from any civil liability that results from providing inaccurate

4 nutritional information, if the nutritional information is provided in good 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.

Please change component 6

5 **SECTION 5. Effective dates.** This act takes effect on first day of the 6th month

beginning after publication, except follows:

7 (1) The treatment of section 254.713 (1) (c) of the statutes takes effect on the
8 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.

9

(END)

D-note

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1 INSERT A

This bill requires certain chain restaurants to disclose nutritional information for menu items. The requirements apply to a restaurant that is one of at least ten restaurants in this country doing business under the same trade name and offering menus with substantially identical menu items.

Under the bill, a chain restaurant must disclose in the menu, for each servings of a menu item, all of the following nutritional information: 1) the size of a single serving, 2) the number of calories, 3) the total number of grams of saturated fat and trans fat, 4) the number of grams of carbohydrates, and 5) the number of milligrams of sodium. The chain restaurant must also post the following statement on a menu or menu board: "A 2,000 calorie daily diet is used as the basis for general nutritional advice; however, individual calorie needs may vary."

If a chain restaurant uses a menu board, whether the board is inside or outside of the restaurant, the restaurant must display on the menu board the number of calories in each item and make additional information available upon request. If a chain restaurant offers a salad bar, buffet line, or cafeteria service, the restaurant must disclose the size of a single serving and the number of calories next to the item and make additional information available upon request. If a chain restaurant offers a menu item in various flavors, varieties, or combinations and lists the item as a single menu item, the restaurant shall disclose the median value for each item of nutritional information if the value for each flavor, variety, or combination varies by 20 percent or less. If the median value for an item of nutritional information varies by more than 20 percent for a flavor, variety, or combination, the chain restaurant must list the range of values for each item of nutritional information.

Under the bill, the department of health services may impose a forfeiture of between \$50 and \$500 for a violation of the requirements to post or provide nutritional information. Any restaurant that provides nutritional information of food is immune from civil liability as a result of providing inaccurate information, if the restaurant provided the nutritional information in good faith.

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

2
3 INSERT 4-16

4 (b) The department may directly assess a forfeiture provided for under par. (a).
5 If the department decides to assess a forfeiture under par. (a), it shall send a notice
6 of assessment to the chain restaurant. The notice shall specify the amount of the

a single serving of

must

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S

combination

1 forfeiture assessed, described the violation, and notify the chain restaurant of the
2 right to a hearing under par. (c).

3 (c) A person may contest an assessment of forfeiture under par. (b) by sending
4 a written request for hearing under s. 227.44 to the division of hearings and appeals
5 in the department of administration within 10 days after the receipt of the notice
6 issued under par. (b). The administrator of the division of hearings and appeals may
7 designate a hearing examiner to preside over the case and recommend a decision to
8 the administrator under s. 227.46. The decision of the administrator of the division
9 of hearings and appeals shall be the final administrative decision. The division of
10 hearings and appeals shall commence the hearing and issue a final decision within
11 60 days after receipt of the request for hearing unless all of the parties consent to a
12 later date. Proceedings before the division of hearings and appeals are governed by
13 ch. 227. In any petition for judicial review of a decision by the division of hearings
14 and appeals, the department, if not the petitioner who was in the proceeding before
15 the division of hearings and appeals, shall be the named respondent.

16
17 INSERT 4-23

18 SECTION 1. 254.88 of the statutes is amended to read:

19 **254.88 Penalty.** Anyone who violates this subchapter, except s. 254.713,
20 254.83, 254.84, or 254.85, or any rule of the department promulgated under this
21 subchapter shall be fined not less than \$100 nor more than \$1,000. Anyone who fails
22 to comply with an order of the department under this subchapter except s. 254.85
23 shall forfeit \$50 for each day of noncompliance after the order is served upon or

1 directed to him or her, and in case of action under s. 254.87, after lapse of a reasonable
2 time after final determination.

3 **History:** 1975 c. 413 ss. 13, 18; Stats. 1975 s. 50.59; 1983 a. 203; 1985 a. 332 s. 251 (1); 1989 a. 31; 1993 a. 27 s. 80; Stats. 1993 s. 254.88.

(END)

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

LRB-3355/1dn

TJD:.....

Lbjk

Date

To Tara Vasby:

Please review this draft to ensure it complies with your intent. Please note that I have made some wording changes and moved some phrases to improve the clarity of the draft.

Should you have any questions or redraft instructions, please contact me.

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-3355/1dn
TJD:bjk:jf

October 21, 2009

To Tara Vasby:

Please review this draft to ensure it complies with your intent. Please note that I have made some wording changes and moved some phrases to improve the clarity of the draft.

Should you have any questions or redraft instructions, please contact me.

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

Dodge, Tamara

From: Vasby, Tara
Sent: Tuesday, October 27, 2009 11:38 AM
To: Dodge, Tamara
Subject: RE: changes to LRB 3355 on menu labeling

Tamara,

After meeting with the WI Restaurant Assoc today, we need to make some changes to the language on the menu labeling bill. These changes are to reflect changes that were agreed upon at the Federal level.

1. Page 4 - paragraph E needs to be updated to reflect the new agreement at the Federal level. The only information that needs to be provided on the menus, menu boards or drive thru menu boards, is the number of calories per standard menu item. In addition, a succinct statement of suggested daily caloric intake and a referral statement regarding the availability of additional nutrition information.

Information that must be available upon request includes: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, carbohydrates, sugars, dietary fiber and protein. (The FDA will soon also be requiring info on Trans Fats)

2. We would like to include a brief statement that if a restaurant that is not a chain volunteers to comply with this law, that they are provided the same liability exemptions under Section 5.

Finally, we do have one question about a specific word. On page 2, line 3, you refer to the same "trade name". How is that different from "brand name"? The question came up would a group of restaurants - for example those owned by the Madison company Food Fight Inc - that are owned by the same company but do not have the same name or substantially similar menus be required to comply with this law? My guess is no, but we do need clarification.

We are still pushing for this bill to be circulated in early November, if that's even possible now.

Thanks much!
Tara Vasby
Leg. Assistant
Rep. Chuck Benedict

Dodge, Tamara

From: Vasby, Tara
Sent: Thursday, October 29, 2009 2:39 PM
To: Dodge, Tamara
Subject: RE: RE: changes to LRB 3355 on menu labeling

Hmm... I may have picked the wrong section for the first point. I guess we need to look at page 3, lines 1-6. The federal agreement says that only calories per standard menu item need to be shown on menu boards, and in the menus. The current bill requires size of single serving, number of calories, total grams of sat and trans fat, carbs and sodium. We just want it to be calories.

Which means, I think, that the stuff on page 4, paragraph (e) will also have to be modified?

Per the liability issue - I think the restaurant association wants it to be clear. And sometimes if it isn't in the language, they don't think it is clear. I can ask Dick Sweet or Mary Matthias to do a memo that says that restaurants that voluntarily put this info on their menus are covered.

Thanks for the clarification on the "Food Fight" issue. That's what we all thought, but we thought it best to ask.

From: Dodge, Tamara
Sent: Thursday, October 29, 2009 12:01 PM
To: Vasby, Tara
Subject: RE: RE: changes to LRB 3355 on menu labeling

See my comments and questions below.
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

From: Vasby, Tara
Sent: Tuesday, October 27, 2009 11:38 AM
To: Dodge, Tamara
Subject: RE: changes to LRB 3355 on menu labeling

Tamara,
After meeting with the WI Restaurant Assoc today, we need to make some changes to the language on the menu labeling bill. These changes are to reflect changes that were agreed upon at the Federal level.

1. Page 4 - paragraph E needs to be updated to reflect the new agreement at the Federal level. The only information that needs to be provided on the menus, menu boards or drive thru menu boards, is the number of calories per standard menu item. In addition, a succinct statement of suggested daily caloric intake and a referral statement regarding the availability of additional nutrition information.

Information that must be available upon request includes: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, carbohydrates, sugars, dietary fiber and protein. (The FDA will

soon also be requiring info on Trans Fats)

Paragraph (e) only applies to varieties of a menu item. Does that mean that the other paragraphs regarding menu items and menu boards will stay the same? What confuses me is that the list of the information that must be available upon request is much longer than the list currently in the draft. I don't understand why so much more information needs to be provided about a variety of a menu item than a menu item, on a standard menu or menu board, itself.

Also do you want to eliminate the required statement on the 2,000 calories per day and just require any statement on caloric intake?

2. We would like to include a brief statement that if a restaurant that is not a chain volunteers to comply with this law, that they are provided the same liability exemptions under Section 5.

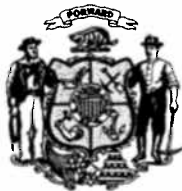
The provision, as drafted, exempts restaurants, chain or not, as that term is used in other statutes, from liability for any providing of any inaccurate nutritional information. This liability exemption applies regardless of whether they are following the law because they have to or volunteer to or whether they are just providing some nutritional information in some way that doesn't correspond to provisions in this bill, such as providing carbohydrate grams for diabetic customers or creating a special low fat menu and just listing fat grams for those items.

Finally, we do have one question about a specific word. On page 2, line 3, you refer to the same "trade name". How is that different from "brand name"? The question came up would a group of restaurants - for example those owned by the Madison company Food Fight Inc - that are owned by the same company but do not have the same name or substantially similar menus be required to comply with this law? My guess is no, but we do need clarification.

Trade name is the term that usually applies to differentiating businesses from each other where brand name can apply to the business but typically applies to the product. I believe trade name is the appropriate term for this circumstance. The definition of "chain restaurants" refers to the trade name but not the ownership. The reason for this is that Quiznos, for example, operates under the same trade name but I believe each restaurant may have a different owner since they have franchises. All Quiznos restaurants would have to comply with the law. The Food Fight restaurants do not have to comply with the law because they do not operate under the same trade name. Even if every restaurant that is currently owned by Food Fight went by the trade name "Food Fight" they still would not have to comply because they do not have substantially similar menu items at every restaurant. The same trade name and the substantially similar menus are required before the restaurant is defined as chain restaurant and has to comply with the bill.

We are still pushing for this bill to be circulated in early November, if that's even possible now.

Thanks much!
Tara Vasby
Leg. Assistant
Rep. Chuck Benedict



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3355 02

TJD:bjk:jf

In: 11/6/09 soon

1/3/10
RMA

2009 BILL

D-note

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1 AN ACT *to amend* 254.88; and *to create* 254.61 (1m), 254.61 (3g), 254.713 and
2 895.508 of the statutes; **relating to:** requiring certain chain restaurants to post
3 or provide nutritional information, providing immunity for restaurants that
4 provide inaccurate nutritional information, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill requires certain chain restaurants to disclose nutritional information for menu items. The requirements apply to a restaurant that is one of at least 20 restaurants in this country doing business under the same trade name and offering menus with substantially identical menu items.

Under the bill, a chain restaurant must disclose in the menu, for each menu item, all of the following nutritional information: 1) the size of a single serving, 2) the number of calories, 3) the total number of grams of saturated fat and trans fat, 4) the number of grams of carbohydrates, and 5) the number of milligrams of sodium. The chain restaurant must also post the following statement on a menu or menu board: "A 2,000 calorie daily diet is used as the basis for general nutritional advice; however, individual calorie needs may vary."

If a chain restaurant uses a menu board, whether the board is inside or outside of the restaurant, the restaurant must display on the menu board the number of calories in a single serving of each item and make additional information available upon request. If a chain restaurant offers a salad bar, buffet line, or cafeteria service, the restaurant must disclose the size of a single serving and the number of calories next to the item and make additional information available upon request. If a chain

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restaurant offers a menu item in various flavors, varieties, or combinations and lists the item as a single menu item, the restaurant must disclose the median value for each item of nutritional information if the value for each flavor, variety, or combination varies by 20 percent or less. If the median value for an item of nutritional information varies by more than 20 percent for a flavor, variety, or combination, the chain restaurant must list the range of values for each item of nutritional information.

Under the bill, the Department of Health Services may impose a forfeiture of between \$50 and \$500 for a violation of the requirements to post or provide nutritional information. Any restaurant that provides nutritional information is immune from civil liability as a result of providing inaccurate information, if the restaurant provided the nutritional information in good faith.

For further information see the *state and local* 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:

1 SECTION 1. 254.61 (1m) of the statutes is created to read:

2 254.61 (1m) "Chain restaurant" means a restaurant in this state that is one
3 of at least 20 restaurants in the United States doing business under the same trade
4 name and offering a menu with substantially identical menu items.

5 SECTION 2. 254.61 (3g) of the statutes is created to read:

6 254.61 (3g) "Menu item" does not include any of the following:

- 7 (a) Items that appear on the menu for fewer than 90 days per year.
- 8 (b) Condiments and other items placed on a table or counter for use without
- 9 charge.

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

11 **254.713 Nutritional information in chain restaurant menus.**

12 (1) (a) Subject to pars. (c) and (d), a chain restaurant shall disclose for each
13 menu item, as prepared and offered for sale at the chain restaurant, the size of a

not
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1 single serving of the menu item and all of the following regarding a single serving
2 of the menu item:

- 3 1. The number of calories.
- 4 2. The total number of grams of saturated fat and trans fat.
- 5 3. The number of grams of carbohydrates.
- 6 4. The number of milligrams of sodium.

7 (b) A chain restaurant shall include in its menu any disclosure required under
8 par. (a) next to each item on the menu in a size and typeface of equal prominence to
9 the price or name of the menu item.

10 (c) If a chain restaurant offers menu items to customers using a menu board
11 located inside or outside of the chain restaurant, the chain restaurant shall display
12 on the menu board the number of calories contained in a single serving of each item.
13 A disclosure under this paragraph shall appear in a size and typeface of equal
14 prominence to the price or name of the item. A chain restaurant subject to this
15 paragraph shall have the information described in par. (a) 2. to 4. on the premises
16 and make the information available to a customer in writing upon the customer's
17 request and may display the information described in par. (a) 2. to 4. on a menu
18 board.

19 (d) A chain restaurant that offers customers a salad bar, buffet line, cafeteria
20 service, or similar arrangement where prepared food is on display shall disclose the
21 number of calories contained in a single serving of each item offered and the size of
22 a single serving of the item. A disclosure under this paragraph shall be displayed
23 next to the item offered and shall be in a size and typeface that is prominent and
24 legible to customers. A chain restaurant subject to this paragraph shall have the

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1 information described in par. (a) 2. to 4. on the premises and make the information
2 available to a customer in writing upon the customer's request.

3 (e) If a chain restaurant offers a menu item in different flavors, varieties, or
4 combinations and lists the item as a single menu item, the restaurant shall disclose
5 the information required under par. (a) based on the median number of calories,
6 grams of saturated fat and trans fat, grams of carbohydrates, and milligrams of
7 sodium for all flavors, varieties, or combinations, if the number of calories, grams of
8 saturated fat and trans fat, grams of carbohydrates, and milligrams of sodium for
9 each flavor, variety, or combination differs from the median number by 20 percent
10 or less. If the number of calories, grams of saturated fat and trans fat, grams of
11 carbohydrates, or milligrams of sodium for any flavor, variety, or combination differs
12 from the median number by more than 20 percent, the chain restaurant shall list the
13 range of the number of calories, grams of saturated fat and trans fat, grams of
14 carbohydrates, and milligrams of sodium from the lowest to the highest value. If a
15 menu item that comes in different flavors, varieties, or combinations is on display
16 with a name placard or similar signage, the placard or signage shall disclose the
17 number of calories per serving of the menu item along with the name of the menu
18 item. If a chain restaurant does not display a menu item on a menu or menu board,
19 the chain restaurant shall disclose the number of calories, grams of saturated fat and
20 trans fat, grams of carbohydrates, and milligrams of sodium in each menu item that
21 is available to customers using a brochure, a booklet, a kiosk, or other device that is
22 available at the chain restaurant and is easily accessible to customers at the point
23 of ordering.

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

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

7 (4) (a) The department may impose a forfeiture of not less than \$50 nor more
8 than \$500 on a person who violates this section. ^{Subs. (1) to (3)}

9 (b) The department may directly assess a forfeiture provided for under par. (a).
10 If the department decides to assess a forfeiture under par. (a), it shall send a notice
11 of assessment to the chain restaurant. The notice shall specify the amount of the
12 forfeiture assessed, describe the violation, and notify the chain restaurant of the
13 right to a hearing under par. (c).

14 (c) A person may contest an assessment of forfeiture under par. (b) by sending
15 a written request for hearing under s. 227.44 to the division of hearings and appeals
16 in the department of administration within 10 days after the receipt of the notice
17 issued under par. (b). The administrator of the division of hearings and appeals may
18 designate a hearing examiner to preside over the case and recommend a decision to
19 the administrator under s. 227.46. The decision of the administrator of the division
20 of hearings and appeals shall be the final administrative decision. The division of
21 hearings and appeals shall commence the hearing and issue a final decision within
22 60 days after receipt of the request for hearing unless all of the parties consent to a
23 later date. Proceedings before the division of hearings and appeals are governed by
24 ch. 227. In any petition for judicial review of a decision by the division of hearings

BILL

1 and appeals, the department, if not the petitioner who was in the proceeding before
2 the division of hearings and appeals, shall be the named respondent.

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

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

6 (a) Impose any menu labeling requirement on a restaurant that is not required

7 (to comply with this section) requirement to provide calorie or nutritional
information, as that term is used in sub.(1)(b),

8 (b) Require a chain restaurant to post any nutritional information that is not
9 required under this section. as that term is

10 SECTION 4. 254.88 of the statutes is amended to read:

11 **254.88 Penalty.** Anyone who violates this subchapter, except s. used in sub.(1)(b),
12 254.83, 254.84, or 254.85, or any rule of the department promulgated under this
13 subchapter shall be fined not less than \$100 nor more than \$1,000. Anyone who fails
14 to comply with an order of the department under this subchapter except s. 254.85
15 shall forfeit \$50 for each day of noncompliance after the order is served upon or
16 directed to him or her, and in case of action under s. 254.87, after lapse of a reasonable
17 time after final determination.

18 SECTION 5. 895.508 of the statutes is created to read:

19 **895.508 Civil liability exemption; nutritional information labeling.**

20 Any restaurant, as defined in s. 254.61 (5), that provides nutritional information, as
21 described in s. 254.713 (1) (a) 1. to 4., is immune from any civil liability that results
22 from providing inaccurate nutritional information, if the nutritional information is
23 provided in good faith.

24 SECTION 6. **Effective date.**

move

a chain restaurant

chain

as that term is used in sub.(1)(b)

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1 (1) This act takes effect on the first day of the 13th month beginning after
2 publication.

3

(END)

D-note

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3355/2ins
TJD:.....

1 INSERT A

Under the bill, a chain restaurant must disclose on a menu or menu board located inside or outside of the chain restaurant, the number of calories in a single order of the menu item. The chain restaurant must also disclose on the menu or menu board the suggested daily caloric intake and a statement that additional nutritional information is available upon request. If a chain restaurant offers menu items on a salad bar, buffet line, or cafeteria service, the restaurant must disclose the number of calories next to the menu item. If the chain restaurant offers a menu item in various flavors, varieties, or combinations, the chain restaurant must disclose the median number of calories per single order if the number of calories for each flavor, variety, or combination varies from the median by 20 percent or less. If the number of calories for each flavor, variety, or combination differ from the median by more than 20 percent, the chain restaurant must disclose the number of calories as a range from lowest to highest number of calories.

The bill requires every chain restaurant to have on the premises and make available to a customer upon request all of the following nutritional information for a single order of each menu item: the number of calories from fat, the number of grams of total fat, the number of grams of saturated fat, the number of grams of carbohydrates, the number of grams of sugar, the number of milligrams of sodium, the number of grams of dietary fiber, and the number of grams of protein.

2

3 INSERT 2-12

4 no \$ (1) (a) A chain restaurant shall disclose for each menu item, as prepared and
5 offered for sale at the chain restaurant, the number of calories of a single order of the
6 menu item.

7 (b) A chain restaurant shall have on the premises and make available to a
8 customer in writing upon the customer's request all of the following nutritional
9 information regarding a single order of each menu item:

- 10 1. The number of calories from fat.
- 11 2. The number of grams of total fat.
- 12 3. The number of grams of saturated fat.
- 13 4. The number of grams of carbohydrates.

1 5. The number of grams of sugar.

2 6. The number of milligrams of sodium.

3 7. The number of grams of dietary fiber.

4 8. The number of grams of protein.

5 (c) If a chain restaurant offers a menu item to customers using a menu, the
6 chain restaurant shall display the calorie information required under par. (a) next
7 to each item on the menu in a size and typeface of equal prominence to the price or
8 name of the menu item.

9 (d) If the chain restaurant offers a menu item to customers using a menu board
10 located inside or outside of the chain restaurant, the chain restaurant shall display
11 the calorie information required under par. (a) on the menu board next to each item
12 in a size and typeface of equal prominence to the price or name of the item.

13 (e) If a chain restaurant offers food to customers in a salad bar, buffet line,
14 cafeteria service, or similar arrangement where prepared food is on display, the chain
15 restaurant shall display the calorie information required under par. (a) next to the
16 food offered in a size and typeface that is prominent and legible to customers.

17 (f) If a chain restaurant offers a menu item in various flavors, varieties, or
18 combinations and lists the item as a single menu item, the chain restaurant shall
19 display the calorie information required under par. (a) based on the median number of calories
20 for all flavors, varieties, or combinations, if the number of calories for each flavor,
21 variety, or combination differs from the median number by 20 percent or less. If the
22 number of calories for any flavor, variety, or combination differs from the median
23 number by more than 20 percent, the chain restaurant shall list the range of the
24 number of calories from the lowest to highest value. If a menu item that comes in
25 different flavors, varieties, or combinations is on display with a name placard or

or offer food in a salad bar, buffet line, or cafeteria service

1 similar signage, the chain restaurant shall disclose the number of calories per single
2 order of the menu item along with the name of the menu item.

3 (g) If a chain restaurant does not display a menu item on a menu or menu board
4 the chain restaurant shall provide the disclosure required in part (a) and (b) in a
5 brochure, booklet, kiosk, or other device that is available at the chain restaurant and
6 is easily accessible to customers at the point of ordering.

Calorie information

under

7 (2) A chain restaurant shall include all of the following information on its menu
8 or menu board:

9 (a) A statement describing the suggested daily caloric intake based on
10 recommendations by the U.S. department of agriculture and the U.S. department of
11 health and human services.

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the federal

12 (b) A statement that additional nutritional information is available upon
13 request.

14 (3) A chain restaurant may calculate the nutritional information required to
15 be disclosed under sub. (1) (a) or (b) for a single order by dividing the total for the
16 entire amount prepared by the number of orders.

17 (END)

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

LRB-3355/2dn

TJD...

gf

Date

To Tara Vasby:

Please review this draft carefully to ensure I incorporated the changes you requested. Please note that I eliminated the requirement to post a serving size and instead require the number of calories to be posted by a single order. This means that a chain restaurant will need to post the calories of an order of onion rings even if they intend that it be shared and that each customer only eat two of the onion rings. The wording may need to be altered for the salad bar provision because the phrase "single order" doesn't apply. Please let me know how you want to handle this issue.

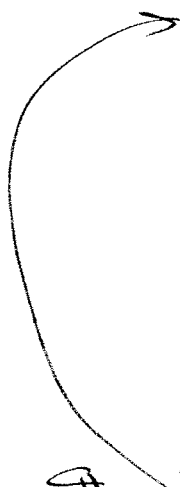
I was unsure whether you wanted to keep the exact text of the suggested daily caloric intake from the previous draft. This draft only requires a statement regarding the daily caloric intake based on recommendations by the U.S. Department of Agriculture and the U.S. Department of Health and Human Services. Are these the appropriate federal agencies to list as sources of the caloric intake information? Please carefully review the wording of the requirement to display caloric intake information to ensure it complies with your intent.

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

Please note that I made some additional wording changes for clarification.

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

LRB-3355/2dn
TJD:kjf:md

November 10, 2009

To Tara Vasby:

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Please note that I made some additional wording changes for clarification.

Tamara J. Dodge
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Duerst, Christina

From: Vasby, Tara
Sent: Wednesday, November 25, 2009 9:56 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-3355/2 Topic: Requiring chain restaurant menus to contain nutritional information

Please Jacket LRB 09-3355/2 for the ASSEMBLY.