

Rules of the City of New York -**Title 24****Department of Health**

§81.50 Posting of calorie information.

(a) *Definitions and construction of words and terms used in this section.*

(1) *Covered food service establishment* shall mean a food service establishment within the City of New York that is one of a group of 15 or more food service establishments doing business nationally, offering for sale substantially the same menu items, in servings that are standardized for portion size and content, that operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.

(2) *Menu* shall mean a printed list or pictorial display of a food item or items, and their price(s), that are available for sale from a covered food service establishment and shall include menus distributed or provided outside of the establishment.

(3) *Menu board* shall mean any list or pictorial display of a food item or items and their price(s) posted in and visible within a covered food service establishment or outside of a covered food service establishment for the purpose of ordering from a drive-through window.

(4) *Menu item* shall mean any individual food item, or combination of food items, listed or displayed on a menu board or menu that is/are sold by a covered food service establishment.

(5) *Food item tag* shall mean a label or tag that identifies any food item displayed for sale at a covered food service establishment.

(b) *Scope and applicability.* This section shall apply to menu items that are served in portions the size and content of which are standardized at a covered food service establishment. This section shall not apply to menu items that are listed on a menu or menu board for less than 30 days in a calendar year.

(c) *Posting calorie information for menu items.* All menu boards and menus in any covered food service establishment shall bear the total number of calories derived from any source for each menu item they list. Such information shall be listed clearly and conspicuously, adjacent or in close proximity such as to be clearly associated with the menu item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the menu item.

(1) *Calculating calories.* Calorie content values (in kcal) required by this section shall be based upon a verifiable analysis of the menu item, which may include the use of nutrient databases, laboratory testing, or other reliable methods of analysis, and shall be rounded to the nearest ten (10) calories for calorie content values above 50 calories and to the nearest five (5) calories for calorie content values 50 calories and below.

(2) *Food item tags.* When a food item is displayed for sale with a food item

tag, such food item tag shall include the calorie content value for that food item in a font size and format at least as prominent as the font size of the name of the food item.

(3) *Drive-through windows.* Calorie content values at drive-through windows shall be displayed on either the drive through menu board, or on an adjacent stanchion visible at or prior to the point of ordering, so long as the calorie content values are as clearly and conspicuously posted on the stanchion adjacent to their respective menu item names, as the price or menu item is on the drive through menu board.

(4) *Range of calorie content values for different flavors, varieties and combinations.*

(i) *Different flavors and varieties.* For menu items offered in different flavors and varieties, including, but not limited to, beverages, ice cream, pizza, and doughnuts, the range of calorie content values showing the minimum to maximum numbers of calories for all flavors and varieties of that item shall be listed on menu boards and menus for each size offered for sale, provided however that the range need not be displayed if calorie content information is included on the food item tag identifying each flavor or variety of the food item displayed for sale, in accordance with paragraph (2) of this subdivision.

(ii) *Combinations.* For combinations of different food items listed or pictured as a single menu item, the range of calorie content values showing the minimum to maximum numbers of calories for all combinations of that menu item shall be listed on menu boards and menus. If there is only one possible calorie total for the combination, then that total shall be listed on menu boards and menus.

(d) *Effective date.* This section shall take effect on March 31, 2008.

(e) *Severability.* If any provision of this section, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or the application of the section to other persons or circumstances shall not be affected.

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Senate Bill No. 1420

CHAPTER 600

An act to add Section 114094 to the Health and Safety Code, relating to food facilities.

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1420, Padilla. Food facilities: nutritional information.

The California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing this code. A violation of any of these provisions is punishable as a misdemeanor.

This bill would require, commencing July 1, 2009, to December 31, 2010, inclusive, each food facility, as defined, to either disclose nutritional information, as defined, or calorie count information, as defined.

The bill would require, on and after January 1, 2011, each food facility in the state that meets specified criteria to disclose calorie content information per standard menu item, as specified.

The bill would provide that, on and after July 1, 2009, a food facility that violates the provisions of the bill is guilty of an infraction, and would specifically provide that a violation of these provisions is not a misdemeanor. By creating an infraction and adding a new local enforcement duty, this bill would impose a state-mandated local program.

The bill would declare that its provisions, as well as other state laws that regulate the disclosure of nutritional information, is a matter of statewide concern and would prohibit an ordinance or regulation of a local government from regulating the disclosure of nutritional information by a subject food facility.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) Over the past two decades, there has been a significant increase in the number of meals prepared or eaten outside the home, with an estimated one-third of calories being consumed in, and almost one-half of total food dollars being spent on, food purchased from or eaten at restaurants and other food facilities.

(b) Increased caloric intake is a key factor contributing to the alarming increase in obesity in the United States. According to the Centers for Disease Control and Prevention, two-thirds of American adults are overweight or obese, and the rates of obesity have tripled in children and teens since 1980.

(c) Obesity increases the risk of diabetes, heart disease, stroke, some cancers, and other health problems.

(d) Broader availability of nutrition information regarding foods served at restaurants and other food service establishments would allow customers to make more informed decisions about the food they purchase.

(e) Three-quarters of American adults report using food labels on packaged foods, which are required by the federal Nutrition Labeling and Education Act of 1990.

(f) Availability of nutrition information regarding restaurant food assists consumers who are monitoring their diets or dealing with chronic diseases, such as cardiovascular disease and diabetes.

(g) Consumers should be provided with point of purchase access to nutritional information when eating out in order to make informed decisions involving their health and diet.

(h) It is the intent of the Legislature to provide consumers with better access to nutritional information about prepared foods sold at food facilities so that consumers can understand the nutritional value of available foods.

SEC. 2. Section 114094 is added to the Health and Safety Code, to read:

114094. (a) For purposes of this section, the following definitions shall apply:

(1) "Food facility" means a food facility in the state that operates under common ownership or control with at least 19 other food facilities with the same name in the state that offer for sale substantially the same menu items, or operates as a franchised outlet of a parent company with at least 19 other franchised outlets with the same name in the state that offer for sale substantially the same menu items, except that a "food facility" does not include the following:

(A) Certified farmer's markets.

(B) Commissaries.

(C) Grocery stores, except for separately owned food facilities to which this section otherwise applies that are located in the grocery store. For purposes of this paragraph, "grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry. "Grocery store" includes convenience stores.

- (D) Licensed health care facilities.
- (E) Mobile support units.
- (F) Public and private school cafeterias.
- (G) Restricted food service facilities.
- (H) Retail stores in which a majority of sales are from a pharmacy, as defined in Section 4037 of the Business and Professions Code.
- (I) Vending machines.
- (2) "Calorie content information" means the total number of calories per standard menu item, as that item is usually prepared and offered for sale.
- (3) "Drive-through" means an area where a customer may provide an order for and receive standard menu items while occupying a motor vehicle.
- (4) "Menu board" means a posted list or pictorial display of food or beverage items offered for sale by a food facility.
- (5) "Nutritional information" includes, but is not limited to, all of the following, per standard menu item, as that item is usually prepared and offered for sale:
 - (A) Total number of calories.
 - (B) Total number of grams of carbohydrates.
 - (C) Total number of grams of saturated fat.
 - (D) Total number of milligrams of sodium.
- (6) "Point of sale" means the location where a customer makes an order.
- (7) "Standard menu item" means a food or beverage item offered for sale by a food facility through a menu, menu board, or display tag at least 180 days per calendar year, except that "standard menu item does not include any of the following:
 - (A) A food item that is customized on a case-by-case basis in response to an unsolicited customer request.
 - (B) An alcoholic beverage, the labeling of which is not regulated by the federal Food and Drug Administration.
 - (C) A packaged food otherwise subject to the nutrition labeling requirements of the federal Nutrition Labeling and Education Act of 1990.
 - (D) A food item when served at a consumer self-service salad bar.
 - (E) A food or beverage item when served at a consumer self-service buffet.
- (8) "Reasonable basis" means any reasonable means recognized by the federal Food and Drug Administration of determining nutritional information, as well as calorie content information, for a standard menu item, as usually prepared and offered for sale, including, but not limited to, nutrient databases and laboratory analyses.
- (9) "Appetizer" means a food item that is generally served prior to a food item that is generally regarded as the primary food item in a meal. An "appetizer" includes a first course, starter, or small plate.
- (10) "Dessert" means a food item that is generally served after a food item that is generally regarded as the primary food item in a meal. "Dessert" includes, but is not limited to, cakes, pastries, pies, ice cream and food items that contain ice cream, confections, and other sweets.

(b) (1) Commencing July 1, 2009, to December 31, 2010, inclusive, every food facility shall either disclose nutritional information as required by paragraph (2), or comply with subdivision (c) during this period of time.

(2) (A) In order to comply with paragraph (1), a food facility that does not provide sit-down service shall disclose the information in a clear and conspicuous manner on a brochure that is made available at the point of sale prior to or during the placement of an order. A food facility that provides sit-down service shall provide the nutritional information in a clear and conspicuous size and typeface on at least one of the following:

- (i) A brochure available on the table.
- (ii) A menu next to each standard menu item.
- (iii) A menu, under an index section that is separate from the listing of standard menu items.
- (iv) A menu insert.
- (v) A table tent on the table.

(B) Notwithstanding subparagraph (A), a food facility that has a drive-through area and uses a menu board to display or list standard menu items at the point of sale shall, for purposes of the drive-through area only, disclose the nutritional information in a clear and conspicuous manner on a brochure that is available upon request, and shall conspicuously display a notice at the point of sale that reads: "NUTRITION INFORMATION IS AVAILABLE UPON REQUEST" or other similar statement that indicates the disclosure of nutrition information is available upon request.

(c) (1) On and after January 1, 2011, every food facility that provides a menu shall disclose calorie content information for a standard menu item next to the item on the menu in a size and typeface that is clear and conspicuous.

(2) On and after January 1, 2011, every food facility that uses an indoor menu board shall disclose calorie content information for a standard menu item next to the item on the menu board in a size and typeface that is clear and conspicuous.

(3) On and after January 1, 2011, every food facility that uses a display tag as an alternative to a menu or menu board to describe a standard menu item that is displayed for sale in a display case within the food facility shall disclose calorie content information for that standard menu item on the display tag for that item in a size and typeface that is clear and conspicuous.

(4) On and after January 1, 2011, every food facility that has a drive-through area and uses a menu board to display or list standard menu items at the point of sale shall, for purposes of the drive-through area only, disclose the nutritional information for each standard menu item in a clear and conspicuous manner on a brochure that is available upon request, and shall clearly and conspicuously display a notice at the point of sale that reads: "NUTRITION INFORMATION IS AVAILABLE UPON REQUEST" or other similar statement that indicates the disclosure of nutrition information upon request. If a food facility subject to this paragraph discloses nutritional information in the manner described in subparagraph (B) of

paragraph (2) of subdivision (b), the food facility shall be deemed to be in compliance with this paragraph.

(d) For purposes of subdivision (c), the disclosure of calorie content information on a menu or menu board next to a standard menu item that is a combination of at least two standard menu items on the menu or menu board, shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories for the calorie count information. If there is only one possible total amount of calories, then this total shall be disclosed.

(e) For purposes of subdivision (c), the disclosure of calorie content information on a menu or menu board next to a standard menu item that is not an appetizer or dessert, but is intended to serve more than one individual, shall include both of the following:

(1) The number of individuals intended to be served by the standard menu item.

(2) The calorie content information per individual serving. If the standard menu item is a combination of at least two standard menu items, this disclosure shall, based upon all possible combinations for that standard menu item, include both the minimum amount of calories for the calorie count information and the maximum amount of calories. If there is only one possible total amount of calories, then this total shall be disclosed.

(f) The nutritional information and calorie content information required by this section shall be determined on a reasonable basis. A reasonable basis determination of nutritional information and calorie content information shall be required only once per standard menu item, provided that portion size is reasonably consistent and the food facility follows a standardized recipe and trains to a consistent method of preparation.

(g) (1) Every brochure provided pursuant to this section shall include the statement: "Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium."

(2) Menus and menu boards may include a disclaimer that indicates that there may be variations in nutritional content across servings, based on variations in overall size and quantities of ingredients, and based on special ordering.

(h) This section shall not be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state law or limit any claim, right of action, or civil liability that otherwise exists under state law. The only enforcement mechanism of the section is the local enforcement agency.

(i) This section shall not be construed to preclude any food facility from voluntarily providing nutritional information in addition to the requirements of this section.

(j) To the extent consistent with federal law, this section, as well as any other state law that regulates the disclosure of nutritional information, is a matter of statewide concern and occupies the whole field of regulation regarding the disclosure of nutritional information by a food facility. No

ordinance or regulation of a local government shall regulate the dissemination of nutritional information by a food facility. Any ordinance or regulation that violates this prohibition is void and shall have no force or effect.

(k) Commencing July 1, 2009, a food facility that violates this section is guilty of an infraction, punishable by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500), which may be assessed by a local enforcement agency. However, a food facility may not be found to violate this section more than once during an inspection visit. Notwithstanding Section 114395, a violation of this section is not a misdemeanor.

(l) If any provision of this section, or the application thereof, is for any reason held invalid, ineffective, or unconstitutional by a court of competent jurisdiction, the remainder of this section, shall not be affected thereby, and to this end, the provisions of this section are severable.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.