

[Second Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2905

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED NOVEMBER 23, 2009

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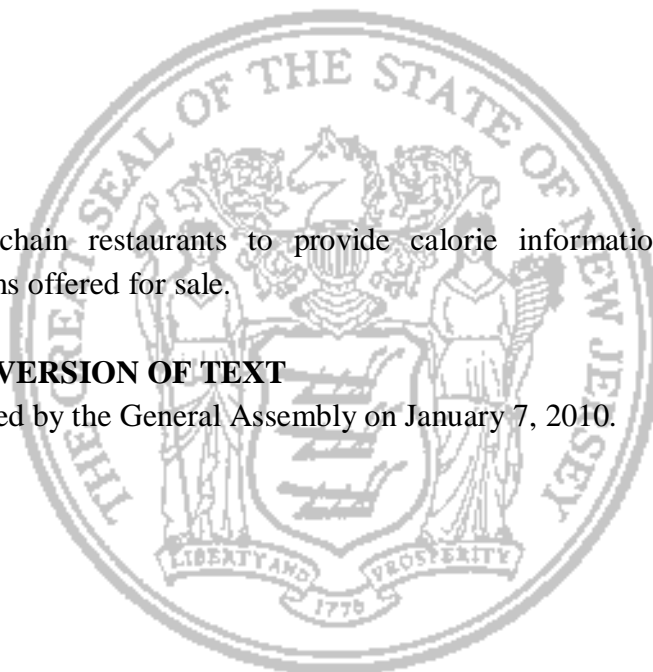
Assemblywomen Voss and Rodriguez

SYNOPSIS

Requires chain restaurants to provide calorie information for food or beverage items offered for sale.

CURRENT VERSION OF TEXT

As amended by the General Assembly on January 7, 2010.



(Sponsorship Updated As Of: 1/12/2010)

1 AN ACT concerning certain retail food establishments and
2 supplementing Title 26 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature finds and declares that:

8 a. Research continues to demonstrate that there is a strong link
9 between diet and health; in 2004, an estimated 65% of adults in the
10 United States were overweight or obese and 18% of children and
11 adolescents were overweight; today there are nearly twice as many
12 overweight children and almost three times as many overweight
13 adolescents as there were in 1980; while the rates of overweight and
14 obesity are rising, Americans are increasingly eating meals away
15 from home, and the food industry spends millions of dollars every
16 year encouraging families to eat in restaurants and other food
17 establishments; in 1970, Americans spent just 26% of their food
18 budget eating away from home, but currently, Americans spend
19 almost half of their food dollars dining out; furthermore, portion
20 sizes in restaurants have been increasing and it is not uncommon for
21 a restaurant entree to provide half of an individual's total
22 recommended daily allowance of calories, fat and sodium;

23 b. Surveys conducted by academicians from the University of
24 Arkansas and Villanova University, and reported in the *American*
25 *Journal of Public Health* article entitled "Attacking the Obesity
26 Epidemic: The Potential Health Benefits of Providing Nutrition
27 Information in Restaurants," showed that levels of calories and
28 saturated fats in less-healthy restaurant items were significantly
29 underestimated by consumers; actual fat and saturated fat levels
30 were twice consumers' estimates and calories approached two times
31 more than what consumers expected; based on these findings, the
32 authors of the article conducted an experiment demonstrating that
33 for food items for which levels of calories, fat and saturated fats
34 substantially exceeded consumers' expectations, the provision of
35 nutrition information had a significant influence on product attitude,
36 purchase intention, and choice;

37 c. A recent report of the Surgeon General of the United States
38 on overweight and obesity recommended that the food industry
39 provide reasonable food and beverage portions and increase the
40 availability of nutrition information on foods prepared and eaten
41 away from home; and

42 d. Therefore, it is in the public's interest to enable families to
43 make more informed choices about a significant part of their diets
44 and help reduce the problem of overweight and obesity in the State.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted December 7, 2009.

² Assembly floor amendments adopted January 7, 2010.

- 1 2. Notwithstanding any provision of law to the contrary:
- 2 a. (1) A retail food establishment using a standard printed
3 menu shall list next to each food or beverage item on the menu, the
4 total number of calories for that item as usually prepared and
5 offered for sale;
- 6 (2) A retail food establishment using a menu board system or
7 similar signage shall list next to each food or beverage item on the
8 board or sign, the total number of calories for that item as usually
9 prepared and offered for sale;
- 10 (3) A retail food establishment that has a drive-through window
11 shall display calorie content values either on the drive-through
12 menu board or on an adjacent stanchion visible at the point of
13 ordering, and the calorie content values shall be posted adjacent to
14 their respective menu item names as clearly and conspicuously as
15 the price or menu item is on the drive-through menu board; and
- 16 (4) A retail food establishment which offers alcoholic beverages
17 for sale may, as an alternative to listing calorie information for each
18 individual alcoholic beverage¹ [of the types and quantities listed in
19 this paragraph, collectively label the average calorie value for the
20 following beverage types and quantities:
- 21 (a) wine -- 5 ounces;
- 22 (b) regular beer -- 12 ounces;
- 23 (c) light beer --12 ounces; and
- 24 (d) distilled spirits (80 proof gin, rum, vodka, or whisky) -- 1.5
25 ounces], list the average caloric value for beers, wines, and spirits
26 as established by the United States Department of Agriculture,
27 Agriculture Research Service in the National Nutrient Database for
28 Standard Reference.¹
- 29 A retail food establishment that ¹[collectively labels] lists the
30 average caloric values for¹ alcoholic beverages pursuant to this
31 paragraph shall add to the labeling the following statement:
32 “Signature drinks or liqueurs with added ingredients may increase
33 calorie content.”
- 34 b. The calorie information listed pursuant to paragraphs (1) and
35 (2) of subsection a. of this section shall be posted clearly and
36 conspicuously adjacent or in close proximity to the applicable menu
37 item using a font and format that is at least as prominent, in size and
38 appearance, as that used to post either the name or price of the
39 menu item.
- 40 The calorie content values required by this act shall be based
41 upon a verifiable analysis of the menu item, which may include the
42 use of nutrient databases, laboratory testing, or other reliable
43 methods of analysis, and shall be rounded to the nearest 10 calories
44 for calorie content values above 50 calories and to the nearest five
45 calories for calorie content values 50 calories and below.
- 46 c. The provisions of this section shall apply to each menu item
47 that is served in portions the size and content of which are

1 standardized.

2 d. For menu items that come in different flavors and varieties
3 but that are listed as a single menu item, the minimum to maximum
4 numbers of calories for all flavors and varieties of that item shall be
5 listed on the menu, menu board, or stanchion, as applicable, for
6 each size offered for sale.

7 e. ²(1) The disclosure of calorie information on a menu, menu
8 board, or stanchion next to a standard menu item that is a
9 combination of at least two standard menu items on the menu, menu
10 board, or stanchion, shall, based upon all possible combinations for
11 that standard menu item, include both the minimum and the
12 maximum amount of calories. If there is only one possible total
13 amount of calories, that total shall be disclosed.

14 (2) The disclosure of calorie information on a menu, menu
15 board, or stanchion next to a standard menu item that is not an
16 appetizer or dessert, but is intended to serve more than one
17 individual, shall include both:

18 (a) the number of individuals intended to be served by the
19 standard menu item; and

20 (b) the calorie information per individual serving.

21 If the standard menu item is a combination of at least two
22 standard menu items, the disclosure shall, based upon all possible
23 combinations for that standard menu item, include both the
24 minimum and the maximum amount of calories. If there is only one
25 possible total amount of calories, that total shall be disclosed.

26 f.² Nothing in this section shall prohibit a retail food
27 establishment from providing additional nutrition information to its
28 customers for each food or beverage item listed on its menu.

29 ²[f.] g.² The provisions of this section shall not apply to any:

30 (1) item not listed on a standard printed menu or menu board
31 system or similar signage, including, but not limited to, condiments
32 or other products placed on a table or counter for general use; or

33 (2) daily specials, temporary menu items appearing on the menu
34 for less than 60 days per calendar year, customized orders, or food
35 or beverage items from a ¹'consumer self-serve' salad bar ¹or
36 buffet'.

37 ²[g.] h.² ¹(1) The Department of Health and Senior Services
38 or the local board of health or the board, body or officers exercising
39 the functions of the local board of health according to law, upon
40 written complaint or having reason to suspect that a violation of this
41 act has occurred, shall, by written notification, advise the proprietor
42 of the retail food establishment accordingly and order appropriate
43 action to be taken.¹

44 ¹(2)¹ A proprietor of a retail food establishment who violates the
45 provisions of this section by failing to provide the information
46 about food and beverage items as required in this section, or
47 knowingly misstating the number of calories in a food or beverage

1 item, shall be subject to a penalty of not less than \$50 or more than
2 \$100 for the first offense, and not less than \$250 or more than \$500
3 for the second or any subsequent offense ¹[, to be sued for and
4 recovered in a civil action in a summary proceeding pursuant to the
5 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
6 et seq.)]¹. A municipal court shall have jurisdiction over
7 proceedings to enforce and collect any penalty imposed because of
8 a violation of this act, if the violation has occurred within the
9 territorial jurisdiction of the court. ¹The proceedings shall be
10 summary and in accordance with the "Penalty Enforcement Law of
11 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in
12 the nature of a summons or warrant and shall issue only at the suit
13 of the Commissioner of Health and Senior Services, or the local
14 board of health, as the case may be, as plaintiff.

15 When the plaintiff is the Commissioner of Health and Senior
16 Services, the penalty recovered shall be paid by the commissioner
17 into the treasury of the State. When the plaintiff is a local board of
18 health, the penalty recovered shall be paid by the local board into
19 the treasury of the municipality where the violation occurred.¹

20 ²[h.] i.² ¹The provisions of this section shall not be construed to
21 create or enhance any claim, right of action, or civil liability that
22 did not previously exist under State law or limit any claim, right of
23 action, or civil liability that otherwise exists under State law.

24 ²[i.] j. There shall be no private right of action against the
25 proprietor of a retail food establishment for failure to comply with
26 the provisions of this section.

27 k.² To the extent consistent with federal law, the provisions of
28 this section, as well as any other State law that regulates the
29 disclosure of caloric information, shall be a matter of Statewide
30 concern and shall occupy the entire field of regulation regarding the
31 disclosure of caloric information by a retail food establishment, as
32 well as content required to be posted on menus, menu board
33 systems or similar signage, or stanchions, as applicable. No
34 ordinance or regulation of a local government or local board of
35 health shall regulate the dissemination of caloric information or the
36 content required to be placed on menus, menu board systems or
37 similar signage, or stanchions by a retail food establishment. Any
38 local government or local board of health ordinance or regulation
39 that violates this prohibition is void and shall have no force or
40 effect.

41 ²[j.] 1.² As used in this section, "retail food establishment"
42 means a fixed restaurant or any similar place that is part of a chain
43 with 20 or more locations nationally ¹and¹ doing business

44 ¹(1)¹ under the same trade name or under common ownership or
45 control or

46 ¹(2)¹ as franchised outlets of a parent business,

1 the principal activity of which consists of preparing for
2 consumption within the establishment a meal or food to be eaten on
3 the premises or picked up at a drive-through window.

4

5 3. The Commissioner of Health and Senior Services shall adopt
6 rules and regulations, pursuant to the "Administrative Procedure
7 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the
8 purposes of this act.

9

10 4. This act shall take effect '**[on the 180th day]** one year' after
11 the date of enactment, but the Commissioner of Health and Senior
12 Services may take such anticipatory administrative action in
13 advance thereof as shall be necessary for the implementation of this
14 act.