

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1608 Session of
2009

INTRODUCED BY DALEY, CURRY AND MAHONEY, JUNE 3, 2009

REFERRED TO COMMITTEE ON COMMERCE, JUNE 3, 2009

AN ACT

1 Providing for menu labeling in restaurants; and providing for
2 powers and duties of the Department of Health.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Menu Labeling
7 Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Calorie content information." The total number of calories
13 per standard menu item as that item is usually prepared and
14 offered for sale.

15 "Drive-through." An area where a customer may provide an
16 order for and receive standard menu items while occupying a
17 motor vehicle.

18 "Food facility." A food service establishment in this

1 Commonwealth that sells any prepared food not subject to the
2 nutrition disclosure requirements of section 343(q) of the
3 Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §
4 343(q)) and that has averaged at least \$500,000 in prepared food
5 sales over the most recent three consecutive calendar years. The
6 term does not include a certified farmer's market, military
7 commissary, licensed health care facility, mobile support unit
8 or vending machine.

9 "Food tag." A label or tag that identifies any food item
10 displayed for sale, such as in a display case.

11 "Menu." A printed list or pictorial display of food or
12 beverage items and prices offered for sale that is distributed
13 to customers for the purpose of ordering. The term does not
14 include printed or pictorial materials for the purpose of
15 marketing.

16 "Menu board." A posted list or pictorial display of food or
17 beverage items and prices at the point of sale offered for sale
18 by a food facility and used for the purpose of ordering. The
19 term does not include any printed or pictorial material for the
20 purpose of marketing.

21 "Nutritional information." All of the following, per
22 standard menu item, as that item is usually prepared and offered
23 for sale:

- 24 (1) Total number of calories.
- 25 (2) Total number of grams of carbohydrates.
- 26 (3) Total number of grams of saturated fat.
- 27 (4) Total number of milligrams of sodium.

28 "Point of sale." The location where a customer makes an
29 order.

30 "Reasonable basis." Any reasonable means recognized by the

1 Food and Drug Administration of determining nutritional
2 information, as well as caloric content information, for a
3 standard menu item, as usually prepared and offered for sale,
4 including, but not limited to, nutrient databases and laboratory
5 analyses.

6 "Standard menu item." A food or beverage item offered for
7 sale by a food facility through a menu, menu board or display
8 tag at least 180 days per calendar year. The term does not
9 include any of the following:

10 (1) A food item customized on a case-by-case basis in
11 response to a customer request.

12 (2) An alcoholic beverage, the labeling of which is not
13 regulated by the Food and Drug Administration.

14 (3) A packaged food otherwise subject to the nutrition
15 labeling requirements of section 343(q) of the Federal Food,
16 Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 343(q)).

17 (4) A food item served at a consumer self-service salad
18 bar or drink station.

19 (5) A food or beverage item served at a consumer self-
20 service buffet or drink station.

21 (6) A condiment.

22 (7) An item placed on a counter or table for use without
23 charge to consumers.

24 Section 3. Disclosure requirements.

25 (a) Nutritional information.--

26 (1) During the period beginning January 1, 2011, through
27 June 30, 2012, a food facility shall either disclose
28 nutritional information as required by paragraph (2) or
29 comply with subsection (b). When a food facility complies
30 with the requirement enumerated in subsection (b), the food

1 facility shall be exempt from this subsection.

2 (2) (i) In order to comply with paragraph (1), a food
3 facility that does not provide sit-down service shall
4 disclose the information in a clear and conspicuous
5 manner on a brochure that is made available at the point
6 of sale prior to or during the placement of an order.

7 (ii) In order to comply with paragraph (1), a food
8 facility that provides sit-down service shall provide the
9 nutritional information in a clear and conspicuous size
10 and typeface on at least one of the following:

11 (A) A brochure available on the table.

12 (B) A menu next to each standard menu item.

13 (C) A menu, under an index section that is
14 separate from the listing of standard menu items.

15 (D) A menu insert.

16 (E) A table tent on the table.

17 (3) Notwithstanding subparagraph (i), a food facility
18 that has a drive-through area and uses a menu board to
19 display or list standard menu items at the point of sale
20 shall, for purposes of the drive-through area only, disclose
21 the nutritional information in a clear and conspicuous manner
22 on a brochure that is available upon request and shall
23 conspicuously display a notice at the point of sale that
24 reads: "NUTRITIONAL INFORMATION IS AVAILABLE UPON REQUEST" or
25 other similar statement that indicates the disclosure of
26 nutritional information is available upon request.

27 (b) Calorie count information.--

28 (1) On and after July 1, 2012, a food facility that
29 provides a menu shall disclose calorie content information
30 for a standard menu item next to or in close proximity to the

1 item on the menu in a size and typeface that is clear and
2 conspicuous.

3 (2) On and after July 1, 2012, a food facility that uses
4 an indoor menu board shall disclose calorie content
5 information for a standard menu item next to or in close
6 proximity to the item on the menu board in a size and
7 typeface that is clear and conspicuous.

8 (3) On and after July 1, 2012, a food facility that uses
9 a display tag as an alternative to a menu or menu board to
10 describe a standard menu item that is displayed for sale in a
11 display case within the food facility shall disclose calorie
12 content information for that standard menu item on the
13 display tag for that item in a size and typeface that is
14 clear and conspicuous.

15 (4) (i) On and after July 1, 2012, a food facility that
16 has a drive-through area and uses a menu board to display
17 or list standard menu items at the point of sale shall,
18 for purposes of the drive-through area only, disclose the
19 nutritional information for each standard menu item in a
20 clear and conspicuous manner on a brochure that is
21 available upon request and shall clearly and
22 conspicuously display a notice at the point of sale that
23 reads: "NUTRITIONAL INFORMATION IS AVAILABLE UPON
24 REQUEST" or other similar statement that indicates the
25 disclosure of nutritional information upon request.

26 (ii) If a food facility subject to this paragraph
27 discloses nutritional information in the manner described
28 in subsection (a)(3), the food facility shall be deemed
29 to be in compliance with this paragraph.

30 (5) For purposes of this subsection, disclosure of

1 calorie content information on a menu or menu board next to
2 or in close proximity to a standard menu item that is a
3 combination of at least two standard menu items on the menu
4 or menu board shall, based upon all possible combinations for
5 that standard menu item, include both the minimum amount of
6 calories for the calorie count information and the maximum
7 amount of calories for the calorie count information. If
8 there is only one possible total amount of calories, then
9 this total shall be disclosed.

10 (6) For purposes of this subsection, the disclosure of
11 calorie content information on a menu or menu board next to
12 or in close proximity to a standard menu item that is
13 intended to serve more than one individual shall include both
14 of the following:

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

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

25 (iii) For beverage items, a range of calorie count
26 information may be provided to include both the minimum
27 and maximum number of calories per serving.

28 (c) Reasonable basis of determination.--

29 (1) The nutritional information and calorie content
30 information required by this section shall be determined on a

1 reasonable basis.

2 (2) A reasonable basis determination of nutritional
3 information and calorie content information shall be required
4 only once per standard menu item, provided that portion size
5 is reasonably consistent and the food facility follows a
6 standardized recipe and trains to a consistent method of
7 preparation.

8 (d) Disclaimers.--Menus and menu boards may include a
9 disclaimer that indicates that there may be variations in
10 nutritional content across servings based on variations in
11 overall size and quantities of ingredients and based on special
12 ordering.

13 Section 4. Construction.

14 This section shall not be construed to:

15 (1) Establish or enhance any claim, right of action or
16 civil liability that did not previously exist under State law
17 or limit any claim, right of action or civil liability that
18 otherwise exists under State law.

19 (2) Preclude a food facility from voluntarily providing
20 nutritional information in addition to the requirements of
21 this section.

22 Section 5. No right of action.

23 No private right of action shall arise out of a violation of
24 this act.

25 Section 6. Preemption.

26 To the extent consistent with Federal law, this section, as
27 well as any other State law that regulates the disclosure of
28 nutritional information, is a matter of Statewide concern and
29 occupies the whole field of regulation regarding the disclosure
30 of nutritional information by a food facility as well as content

1 required to be posted on menus, menu boards and food tags. No
2 ordinance or regulation of a local government shall regulate the
3 dissemination of nutritional information or the content required
4 to be placed on menus, menu boards or food tags by a food
5 facility. Any ordinance or regulation that violates this
6 prohibition is void and shall have no force or effect.

7 Section 7. Penalty.

8 Commencing January 1, 2010, a food facility that violates
9 this act commits a summary offense, and shall, upon conviction,
10 be sentenced to a fine of not less than \$50 or more than \$500. A
11 food facility may not be found to violate this section more than
12 once during an inspection visit.

13 Section 8. Regulations.

14 Within 180 days after the date of enactment, the Department
15 of Health shall promulgate regulations defining the specific
16 requirements that constitute substantial compliance with this
17 act by food facilities.

18 Section 9. Effective date.

19 This act shall take effect in 60 days.