

CHAPTER 306

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

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

C.26:3E-16 Findings, declarations relative to provision of calorie information by certain chain restaurants.

1. The Legislature finds and declares that:

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

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

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

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

C.26:3E-17 Requirements for certain retail food establishments.

2. Notwithstanding any provision of law to the contrary:

a. (1) A retail food establishment using a standard printed menu shall list next to each food or beverage item on the menu, the total number of calories for that item as usually prepared and offered for sale;

(2) A retail food establishment using a menu board system or similar signage shall list next to each food or beverage item on the board or sign, the total number of calories for that item as usually prepared and offered for sale;

(3) A retail food establishment that has a drive-through window shall display calorie content values either on the drive-through menu board or on an adjacent stanchion visible at the point of ordering, and the calorie content values shall be posted adjacent to their

respective menu item names as clearly and conspicuously as the price or menu item is on the drive-through menu board; and

(4) A retail food establishment which offers alcoholic beverages for sale may, as an alternative to listing calorie information for each individual alcoholic beverage, list the average caloric value for beers, wines, and spirits as established by the United States Department of Agriculture, Agriculture Research Service in the National Nutrient Database for Standard Reference.

A retail food establishment that lists the average caloric values for alcoholic beverages pursuant to this paragraph shall add to the labeling the following statement: "Signature drinks or liqueurs with added ingredients may increase calorie content."

b. The calorie information listed pursuant to paragraphs (1) and (2) of subsection a. of this section shall be posted clearly and conspicuously adjacent or in close proximity to the applicable 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.

The calorie content values required by this act 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 10 calories for calorie content values above 50 calories and to the nearest five calories for calorie content values 50 calories and below.

c. The provisions of this section shall apply to each menu item that is served in portions the size and content of which are standardized.

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

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

(2) The disclosure of calorie information on a menu, menu board, or stanchion 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:

- (a) the number of individuals intended to be served by the standard menu item; and
- (b) the calorie information per individual serving.

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

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

g. The provisions of this section shall not apply to any:

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

(2) daily specials, temporary menu items appearing on the menu for less than 60 days per

calendar year, customized orders, or food or beverage items from a consumer self-serve salad bar or buffet.

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

(2) A proprietor of a retail food establishment who violates the provisions of this section by failing to provide the information about food and beverage items as required in this section, or knowingly misstating the number of calories in a food or beverage item, shall be subject to a penalty of not less than \$50 or more than \$100 for the first offense, and not less than \$250 or more than \$500 for the second or any subsequent offense. A municipal court shall have jurisdiction over proceedings to enforce and collect any penalty imposed because of a violation of this act, if the violation has occurred within the territorial jurisdiction of the court. The proceedings shall be summary and in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature of a summons or warrant and shall issue only at the suit of the Commissioner of Health and Senior Services, or the local board of health, as the case may be, as plaintiff.

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

i. The provisions of 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.

j. There shall be no private right of action against the proprietor of a retail food establishment for failure to comply with the provisions of this section.

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

l. As used in this section, "retail food establishment" means a fixed restaurant or any similar place that is part of a chain with 20 or more locations nationally and doing business

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

(2) as franchised outlets of a parent business,

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

C.26:3E-18 Rules, regulations.

3. The Commissioner of Health and Senior Services shall adopt rules and regulations,

pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this act.

4. This act shall take effect one year after the date of enactment, but the Commissioner of Health and Senior Services may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved January 17, 2010.