

Enrolled
House Bill 2726

Sponsored by Representatives KOTEK, GREENLICK, Senator BATES; Senator MORRISETTE

CHAPTER

AN ACT

Relating to nutritional information for consumers; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 6 of this 2009 Act:

- (1) "Alcoholic beverage" has the meaning given that term in ORS 471.001.
- (2)(a) "Chain restaurant" means a restaurant located in Oregon that:
 - (A) Is part of an affiliation of 15 or more restaurants within the United States;
 - (B) Sells standardized menu items that constitute 80 percent or more of the menu items served in the restaurant and at least 14 of the other affiliated restaurants; and
 - (C) Operates under a trade name or service mark, both as defined in ORS 647.005, that is identical or substantially similar to the trade names or service marks of the affiliated restaurants.
- (b) "Chain restaurant" does not mean:
 - (A) A restaurant located inside a facility that is subject to State Department of Agriculture inspection under an interagency agreement described in ORS 624.530, unless the trade name or service mark for the restaurant differs from the trade name or service mark of the facility containing the restaurant;
 - (B) A cafeteria of a public or private educational institution;
 - (C) A health care facility as defined in ORS 442.015; or
 - (D) A motion picture theater.
- (3) "Food product" means a discrete unit serving of a ready-to-eat food or beverage.
- (4)(a) "Food tag" means an informational label placed near a menu item that is identified or indicated by the label.
 - (b) "Food tag" does not mean a menu or menu board.
- (5) "Menu" means a pictorial or written description of menu items that does not have a fixed location and is not intended for joint viewing by multiple patrons.
- (6)(a) "Menu board" means a pictorial display or written description of menu items that:
 - (A) Is located where the customer places an order for a menu item; and
 - (B) Is not a menu or a food tag.
- (b) "Menu board" does not mean a pictorial display used solely for the purpose of marketing.
- (7)(a) "Menu item" means a prepared food product or a group or combination of prepared food products that is offered on a menu, menu board or food tag as a distinct article for sale.
 - (b) "Menu item" does not mean the following:

(A) Condiments that are made available on tables or counters for general use without charge.

(B) Food products that are offered for sale less than 90 days during a calendar year.

(C) Alcoholic beverages, except as provided by rule by the Department of Human Services as described in section 4 of this 2009 Act.

(D) Food products in sealed manufacturer packaging.

(8) "Restaurant" has the meaning given that term in ORS 624.010.

SECTION 2. (1) A chain restaurant shall determine typical values of the following for each menu item offered by the restaurant:

(a) Total calories.

(b) Total grams of saturated fat.

(c) Total grams of trans fat.

(d) Total grams of carbohydrates.

(e) Total milligrams of sodium.

(2) The typical values described in subsection (1) of this section must be based on calorie and nutrient databases, verifiable reference values, government standards, laboratory testing or other methods for determining nutritional values recognized by the Department of Human Services by rule.

(3) The chain restaurant shall maintain a written list of the typical values described in subsection (1) of this section for all of the menu items of the restaurant and make copies of the list available for distribution to customers. The chain restaurant shall provide a copy of the list to a customer who is present in the restaurant and requests nutritional information regarding any menu item.

(4) A chain restaurant may not make available to customers any typical values determined under this section that are substantially inaccurate or that the restaurant knows or should know to be false or misleading.

SECTION 2a. (1) The disclosure of calorie content information under section 3 of this 2009 Act 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 must, based on all possible combinations for that standard menu item, include the minimum amounts of calories for the calorie content information and the maximum amounts of calories for the calorie content information. If there is only one possible total amount of calories, that total must be disclosed.

(2) 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:

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

(B) Include the calorie content information for an individual serving.

(b) If the standard menu item is a combination of at least two standard menu items, include the disclosure required under subsection (1) of this section.

SECTION 3. (1) If a chain restaurant serves a menu item that is not a self-service item, the chain restaurant shall have a menu, menu board or food tag that:

(a) Discloses nutritional information for the menu item as required by this section; and

(b) Is readily visible for customer use at the location where the customer places the order for the menu item.

(2)(a) If a chain restaurant offers a menu item for self-service, the chain restaurant shall have a menu board or food tag, for each area of the restaurant in which the item is displayed, that:

(A) Discloses nutritional information for the menu item as required by this section; and

(B) Is readily visible in the area where the menu item is displayed.

(b) If a chain restaurant offers a menu item for self-service that the restaurant also offers on a basis that is not self-service, the restaurant shall ensure that the area where the item is offered on a basis that is not self-service complies with subsection (1) of this section.

(3) If a chain restaurant uses a menu or menu board, the menu or menu board must include the following:

(a) A statement of the total calories for each of the menu items listed on that menu or menu board. The total calorie statement must be in a conspicuous place near the other menu or menu board information for that menu item. If the menu or menu board lists prices, the total calorie statement must be of a size and typeface no less prominent than the size and typeface used to display the price of the menu item. If the menu or menu board does not list prices, the total calorie statement must be of a size and typeface no less prominent than the size and typeface used to display the least prominent of any other information stated on the menu or menu board.

(b) In a conspicuous place, a statement listing the daily intake amounts of calories, saturated fat and sodium recommended by the Department of Human Services.

(c) In a conspicuous place, a statement that additional nutritional information is available upon request.

(4) If a chain restaurant uses food tags, the restaurant shall display the following:

(a) A statement of the total calories for the menu item in a conspicuous place on the tag. If the food tag states the price of the menu item, the total calorie statement must be of a size and typeface no less prominent than the size and typeface used to display the price of the menu item. If the food tag does not state the price, the total calorie statement must be of a size and typeface no less prominent than the size and typeface used to display the least prominent of any other information stated on the tag.

(b) In a conspicuous place, a statement listing the daily intake amounts of calories, saturated fat and sodium recommended by the Department of Human Services.

(c) In a conspicuous place, a statement that additional nutritional information is available upon request.

(5) A chain restaurant may post disclaimers stating that the actual nutritional value of menu items may vary from the stated total calories or other nutritional information due to variations in preparation, size or ingredients or for custom orders.

(6) A chain restaurant may supplement the nutritional information disclosures required by this section and sections 2 and 2a of this 2009 Act with additional consumer information.

SECTION 4. (1) The Department of Human Services shall adopt rules the department considers reasonable for the administration and enforcement of sections 1 to 5 of this 2009 Act. The rules adopted by the department must include, but need not be limited to, rules for the rounding of stated values and the establishment of specifications for total calorie statements and other required statements. In adopting rules under this section, the department shall:

(a) To the extent the department considers practicable, follow any relevant United States Food and Drug Administration practices, standards and rules for nutritional labeling; and

(b) Seek input from representatives of chain restaurants.

(2) The department shall adopt rules establishing conditions under which a menu board serving the drive-through area of a chain restaurant may qualify for a full or partial exception from sections 2a and 3 of this 2009 Act. The rules shall make an exception available only if compliance with section 2a or 3 of this 2009 Act would require the violation of local land use laws or sign ordinances, or is impracticable due to site-specific conditions. As used in this subsection, "drive-through area" means an area where customers place orders for and receive menu items while occupying motor vehicles.

(3)(a) Notwithstanding subsection (1) of this section, the following are the typical values for alcoholic beverages:

(A) For wine, 122 calories, 4 grams of carbohydrate and 7 milligrams of sodium for a five-ounce serving;

(B) For beer other than light beer, 153 calories, 13 grams of carbohydrate and 14 milligrams of sodium for a 12-ounce serving;

(C) For light beer, 103 calories, 6 grams of carbohydrate and 14 milligrams of sodium for a 12-ounce serving; and

(D) For distilled spirits, 96 calories for a 1.5-ounce serving.

(b) A chain restaurant shall use the typical values described in paragraph (a) of this subsection when calculating the total calories for a menu item that includes one or more alcoholic beverages.

(c) The department:

(A) May adopt rules to require total calorie disclosures for an alcoholic beverage or a menu item that contains an alcoholic beverage, only if the alcoholic beverage or menu item is offered by a chain restaurant for 90 or more days during a calendar year; and

(B) May adopt rules that exempt containers or dispensers of alcoholic beverages from the use of food tags to state standard calorie values.

SECTION 5. (1) The Department of Human Services may inspect chain restaurants for compliance with sections 2, 2a and 3 of this 2009 Act and department rules adopted under section 4 of this 2009 Act. The person operating the chain restaurant shall, upon request of the department, permit access to all parts of the restaurant and any records in the possession of the restaurant regarding nutritional values or menu items and provide menu item samples for nutritional value testing by the department.

(2) If a chain restaurant violates a provision of section 2, 2a or 3 of this 2009 Act or a rule adopted under section 4 of this 2009 Act, the department shall provide the restaurant with written notice informing the restaurant of the violation and stating that the restaurant may avoid a civil penalty for the violation by curing the violation within 60 days. If the chain restaurant fails to cure the violation within 60 days, the department may impose a civil penalty of not less than \$250 and not more than \$1,000 for the violation. For a continuing violation, each 30-day period that the violation continues after the preceding imposition of a civil penalty is a separate offense subject to a separate civil penalty. The department is not required to provide the chain restaurant with an opportunity to cure the continuing violation before imposing a civil penalty for the continuing violation.

SECTION 6. A local government may not adopt or enforce a local requirement for the determination or disclosure of nutritional information by a restaurant.

SECTION 7. Sections 1 to 6 of this 2009 Act do not create a cause of action and may not be asserted as the basis for a per se negligence claim.

SECTION 8. (1) Sections 1 and 2 of this 2009 Act become operative January 1, 2010.

(2) Sections 2a, 3 and 5 of this 2009 Act become operative on January 1, 2011.

SECTION 9. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House May 15, 2009

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate June 1, 2009

.....
President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2009

.....
Secretary of State