

B-Engrossed
House Bill 2726

Ordered by the House May 13
Including House Amendments dated May 1 and May 13

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires chain restaurant to make certain nutritional information regarding menu items offered by restaurant available to customers. Requires chain restaurant to inform customers of information availability. Requires chain restaurant to post total calorie information in specified manners and locations. Directs Department of Human Services to adopt rules to administer and enforce requirements. **Directs department to create exception for drive-through areas under specified circumstances.**

Assigns caloric and other nutritional values to certain alcoholic beverages.

Authorizes imposition of civil penalty for violation of nutritional information provisions that remains uncorrected following opportunity to cure violation without penalty. Limits civil penalty to not less than \$250 and not more than \$1,000.

Preempts local governments from adopting requirements for determination or disclosure of nutritional information by [*chain*] restaurant.

Makes nutrition typical value determination requirement operative January 1, 2010.

Makes nutritional information disclosure requirements operative January 1, 2011.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to nutritional information for consumers; and declaring an emergency.

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

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

5 (1) "Alcoholic beverage" has the meaning given that term in ORS 471.001.

6 (2)(a) "Chain restaurant" means a restaurant located in Oregon that:

7 (A) Is part of an affiliation of 15 or more restaurants within the United States;

8 (B) Sells standardized menu items that constitute 80 percent or more of the menu items
9 served in the restaurant and at least 14 of the other affiliated restaurants; and

10 (C) Operates under a trade name or service mark, both as defined in ORS 647.005, that
11 is identical or substantially similar to the trade names or service marks of the affiliated
12 restaurants.

13 (b) "Chain restaurant" does not mean:

14 (A) A restaurant located inside a facility that is subject to State Department of Agri-
15 culture inspection under an interagency agreement described in ORS 624.530, unless the
16 trade name or service mark for the restaurant differs from the trade name or service mark
17 of the facility containing the restaurant;

18 (B) A cafeteria of a public or private educational institution;

19 (C) A health care facility as defined in ORS 442.015; or

20 (D) A motion picture theater.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (3) "Food product" means a discrete unit serving of a ready-to-eat food or beverage.

2 (4)(a) "Food tag" means an informational label placed near a menu item that is identified
3 or indicated by the label.

4 (b) "Food tag" does not mean a menu or menu board.

5 (5) "Menu" means a pictorial or written description of menu items that does not have a
6 fixed location and is not intended for joint viewing by multiple patrons.

7 (6)(a) "Menu board" means a pictorial display or written description of menu items that:

8 (A) Is located where the customer places an order for a menu item; and

9 (B) Is not a menu or a food tag.

10 (b) "Menu board" does not mean a pictorial display used solely for the purpose of mar-
11 keting.

12 (7)(a) "Menu item" means a prepared food product or a group or combination of prepared
13 food products that is offered on a menu, menu board or food tag as a distinct article for sale.

14 (b) "Menu item" does not mean the following:

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

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

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

20 (D) Food products in sealed manufacturer packaging.

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

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

24 (a) Total calories.

25 (b) Total grams of saturated fat.

26 (c) Total grams of trans fat.

27 (d) Total grams of carbohydrates.

28 (e) Total milligrams of sodium.

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

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

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

41 **SECTION 2a.** (1) The disclosure of calorie content information under section 3 of this
42 2009 Act on a menu or menu board next to a standard menu item that is a combination of
43 at least two standard menu items on the menu or menu board must, based on all possible
44 combinations for that standard menu item, include the minimum amounts of calories for the
45 calorie content information and the maximum amounts of calories for the calorie content

1 information. If there is only one possible total amount of calories, that total must be dis-
2 closed.

3 (2) The disclosure of calorie content information on a menu or menu board next to a
4 standard menu item that is not an appetizer or dessert, but is intended to serve more than
5 one individual, shall:

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

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

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

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

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

14 (b) Is readily visible for customer use at the location where the customer places the or-
15 der for the menu item.

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

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

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

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

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

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

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

36 (c) In a conspicuous place, a statement that additional nutritional information is avail-
37 able upon request.

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

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

45 (b) In a conspicuous place, a statement listing the daily intake amounts of calories, sat-

1 urated fat and sodium recommended by the Department of Human Services.

2 (c) In a conspicuous place, a statement that additional nutritional information is avail-
3 able upon request.

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

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

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

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

17 (b) Seek input from representatives of chain restaurants.

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

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

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

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

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

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

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

37 (c) The department:

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

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

43 **SECTION 5.** (1) The Department of Human Services may inspect chain restaurants for
44 compliance with sections 2, 2a and 3 of this 2009 Act and department rules adopted under
45 section 4 of this 2009 Act. The person operating the chain restaurant shall, upon request of

1 the department, permit access to all parts of the restaurant and any records in the pos-
2 session of the restaurant regarding nutritional values or menu items and provide menu item
3 samples for nutritional value testing by the department.

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

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

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

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

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

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