

## HOUSE AMENDMENTS TO HOUSE BILL 2726

By COMMITTEE ON HUMAN SERVICES

May 1

1 On page 1 of the printed bill, delete lines 4 through 27 and delete pages 2 through 4 and insert:

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

3 **“(1) ‘Alcoholic beverage’ has the meaning given that term in ORS 471.001.**

4 **“(2)(a) ‘Chain restaurant’ means a restaurant located in Oregon that:**

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

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

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

11 **“(b) ‘Chain restaurant’ does not mean:**

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

16 **“(B) A cafeteria of a public or private educational institution;**

17 **“(C) A health care facility as defined in ORS 442.015; or**

18 **“(D) A motion picture theater.**

19 **“(3) ‘Food product’ means a discrete unit serving of a ready-to-eat food or beverage.**

20 **“(4)(a) ‘Food tag’ means an informational label placed near a menu item that is identified**  
21 **or indicated by the label.**

22 **“(b) ‘Food tag’ does not mean a menu or menu board.**

23 **“(5) ‘Menu’ means a pictorial or written description of menu items that does not have a**  
24 **fixed location and is not intended for joint viewing by multiple patrons.**

25 **“(6)(a) ‘Menu board’ means a pictorial display or written description of menu items that:**

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

27 **“(B) Is not a menu or a food tag.**

28 **“(b) ‘Menu board’ does not mean a pictorial display used solely for the purpose of mar-**  
29 **keting.**

30 **“(7)(a) ‘Menu item’ means a prepared food product or a group or combination of prepared**  
31 **food products that is offered on a menu, menu board or food tag as a distinct article for sale.**

32 **“(b) ‘Menu item’ does not mean the following:**

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

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

1       “(C) Alcoholic beverages, except as provided by rule by the Department of Human Ser-  
2 vices as described in section 4 of this 2009 Act.

3       “(D) Food products in sealed manufacturer packaging.

4       “(8) ‘Restaurant’ has the meaning given that term in ORS 624.010.

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

7       “(a) Total calories.

8       “(b) Total grams of saturated fat.

9       “(c) Total grams of trans fat.

10       “(d) Total grams of carbohydrates.

11       “(e) Total milligrams of sodium.

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

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

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

24       “SECTION 2a. (1) The disclosure of calorie content information under section 3 of this  
25 2009 Act on a menu or menu board next to a standard menu item that is a combination of  
26 at least two standard menu items on the menu or menu board must, based on all possible  
27 combinations for that standard menu item, include the minimum amounts of calories for the  
28 calorie content information and the maximum amounts of calories for the calorie content  
29 information. If there is only one possible total amount of calories, that total must be dis-  
30 closed.

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

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

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

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

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

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

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

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

1 displayed, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           “(b) Seek input from representatives of chain restaurants.  
2           “(2)(a) As used in this subsection, ‘ingredient beverage’ does not include water.  
3           “(b) The department shall adopt rules establishing total calorie disclosure requirements  
4 for alcoholic beverages. The rules adopted by the department:  
5           “(A) Shall apply only for an alcoholic beverage that is offered by the chain restaurant for  
6 90 or more days during a calendar year;  
7           “(B) Shall establish for each class of alcoholic ingredient beverage a standard calorie  
8 value to be used in calculating the total calories of an alcoholic beverage that is a combina-  
9 tion or mixture of ingredient beverages; and  
10           “(C) May exempt containers or dispensers of alcoholic ingredient beverages from the use  
11 of food tags to state standard calorie values.  
12           “SECTION 5. (1) The Department of Human Services may inspect chain restaurants for  
13 compliance with sections 2, 2a and 3 of this 2009 Act and department rules adopted under  
14 section 4 of this 2009 Act. The person operating the chain restaurant shall, upon request of  
15 the department, permit access to all parts of the restaurant and any records in the pos-  
16 session of the restaurant regarding nutritional values or menu items and provide menu item  
17 samples for nutritional value testing by the department.  
18           “(2) If a chain restaurant violates a provision of section 2, 2a or 3 of this 2009 Act or a  
19 rule adopted under section 4 of this 2009 Act, the department shall provide the restaurant  
20 with written notice informing the restaurant of the violation and stating that the restaurant  
21 may avoid a civil penalty for the violation by curing the violation within 60 days. If the chain  
22 restaurant fails to cure the violation within 60 days, the department may impose a civil  
23 penalty of not less than \$250 and not more than \$1,000 for the violation. For a continuing  
24 violation, each 30-day period that the violation continues after the preceding imposition of a  
25 civil penalty is a separate offense subject to a separate civil penalty. The department is not  
26 required to provide the chain restaurant with an opportunity to cure the continuing violation  
27 before imposing a civil penalty for the continuing violation.  
28           “SECTION 6. A local government may not adopt a requirement for the determination or  
29 disclosure of nutritional information by a chain restaurant.  
30           “SECTION 7. Sections 1 to 6 of this 2009 Act do not create a cause of action and may  
31 not be asserted as the basis for a per se negligence claim.  
32           “SECTION 8. (1) Sections 1 and 2 of this 2009 Act become operative January 1, 2010.  
33           “(2) Sections 2a, 3 and 5 of this 2009 Act become operative on January 1, 2011.  
34           “SECTION 9. This 2009 Act being necessary for the immediate preservation of the public  
35 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect  
36 on its passage.”  
37

---