

House Bill 2726

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 **as introduced**.

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.

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.

Makes nutritional information requirements operative January 1, 2010.

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 5 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 10 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 nine 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; or**

19 (C) **A health care facility as defined in ORS 442.015.**

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

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

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

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

26 (6)(a) **"Menu board" means a pictorial or written description of menu items that is not**
27 **a menu or food tag.**

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 (b) "Menu board" does not mean:

2 (A) A sign consisting of a trade name or service mark; or

3 (B) A sign designed primarily for viewing by persons who are not on the premises of the
4 restaurant.

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

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

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

10 (B) Food products that are offered for sale less than 30 days during a calendar year.

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

13 (D) Food products in sealed manufacturer packaging.

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

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

17 (a) Total calories.

18 (b) Total grams of saturated fat.

19 (c) Total grams of trans fat.

20 (d) Total grams of carbohydrates.

21 (e) Total milligrams of sodium.

22 (2) The typical values described in subsection (1) of this section must be based on verifi-
23 able reference values, government standards, laboratory testing or other methods for de-
24 termining nutritional values recognized by the Department of Human Services by rule.

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

30 (4) A chain restaurant may not make available to customers any typical values deter-
31 mined under this section that are substantially inaccurate or that the restaurant knows or
32 should know to be false or misleading. For purposes of this subsection, a typical value is
33 substantially inaccurate if the value deviates by more than 20 percent from the value deter-
34 mined for that menu item by the department.

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

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

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

40 (2)(a) If a chain restaurant offers a menu item for self-service, the chain restaurant must
41 have a menu board or food tag, for each area of the restaurant in which the item is dis-
42 played, that:

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

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

45 (b) If a chain restaurant offers a menu item for self-service that the restaurant also of-

1 fers on a basis that is not self-service, the restaurant must ensure that the area where the
2 item is offered on a basis that is not self-service complies with subsection (1) of this section.

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

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

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

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

17 (4) If a chain restaurant uses food tags, the food tag must state the total calories for the
18 menu item in a conspicuous place on the tag. If the food tag states the price of the menu
19 item, the total calorie statement must be of a size and typeface no less prominent than the
20 size and typeface used to display the price of the menu item. If the food tag does not state
21 the price, the total calorie statement must be of a size and typeface no less prominent than
22 the size and typeface used to display the least prominent of any other information stated on
23 the tag.

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

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

29 **SECTION 4.** (1) The Department of Human Services shall adopt all rules the department
30 considers reasonable for the administration and enforcement of sections 1 to 5 of this 2009
31 Act. The rules adopted by the department must include, but need not be limited to, rules for
32 the rounding of stated values and the establishment of specifications for total calorie state-
33 ments and other required statements. In adopting rules under this section, to the extent the
34 department considers practicable, the department shall follow any relevant United States
35 Food and Drug Administration practices, standards and rules for nutritional labeling.

36 (2) The department shall adopt rules establishing nutritional information disclosure re-
37 quirements for menu items that a chain restaurant makes available in more than one size
38 or variety or with a choice of food products. The rules may include, but need not be limited
39 to, rules allowing a chain restaurant to state single values or ranges of values to disclose
40 nutritional information for the sizes, varieties or choices of food products.

41 (3) The department shall adopt rules establishing nutritional information disclosure re-
42 quirements for menu items that are intended to serve more than one individual. The rules
43 may include, but need not be limited to, rules for disclosing nutritional values of individual
44 servings. Notwithstanding any provision of section 2 or 3 of this 2009 Act, the department
45 may partially or fully exclude appetizer or dessert items that are intended to serve more

1 than one individual from any requirement imposed under section 2 or 3 of this 2009 Act.

2 (4)(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:

6 (i) Is a combination or mixture of ingredient beverages; and

7 (ii) Is offered by the chain restaurant for 180 or more days during a calendar year;

8 (B) Shall establish for each class of alcoholic ingredient beverage a standard calorie value
9 to be used in calculating the total calories of an alcoholic beverage; and

10 (C) May not require the use of food tags on containers or dispensers of alcoholic ingre-
11 dient beverages.

12 **SECTION 5.** (1) The Department of Human Services may inspect chain restaurants for
13 compliance with sections 2 and 3 of this 2009 Act and department rules adopted under section
14 4 of this 2009 Act. The person operating the chain restaurant shall, upon request of the de-
15 partment, permit access to all parts of the restaurant and any records in the possession of
16 the restaurant regarding nutritional values or menu items and provide menu item samples
17 for nutritional value testing by the department.

18 (2) If a chain restaurant violates a provision of section 2 or 3 of this 2009 Act or a rule
19 adopted under section 4 of this 2009 Act, the department shall provide the restaurant with
20 written notice informing the restaurant of the violation and stating that the restaurant may
21 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 for the violation of not less than \$250 and not more than \$1,000. 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.** Sections 1 to 3 and 5 of this 2009 Act become operative on January 1, 2010.

29 **SECTION 7.** This 2009 Act being necessary for the immediate preservation of the public
30 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
31 on its passage.
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