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LAW/RWH

P.L. 2009, CHAPTER 306, *approved January 17, 2010*  
Senate Committee Substitute (*Second Reprint*) for  
Senate, No. 2905

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

3

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

6

7 1. The Legislature finds and declares that:

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

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

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SHH committee amendments adopted December 7, 2009.

<sup>2</sup> Assembly floor amendments adopted January 7, 2010.

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

6 d. Therefore, it is in the public's interest to enable families to  
7 make more informed choices about a significant part of their diets  
8 and help reduce the problem of overweight and obesity in the State.  
9

10 2. Notwithstanding any provision of law to the contrary:

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

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

19 (3) A retail food establishment that has a drive-through window  
20 shall display calorie content values either on the drive-through  
21 menu board or on an adjacent stanchion visible at the point of  
22 ordering, and the calorie content values shall be posted adjacent to  
23 their respective menu item names as clearly and conspicuously as  
24 the price or menu item is on the drive-through menu board; and

25 (4) A retail food establishment which offers alcoholic beverages  
26 for sale may, as an alternative to listing calorie information for each  
27 individual alcoholic beverage<sup>1</sup> [of the types and quantities listed in  
28 this paragraph, collectively label the average calorie value for the  
29 following beverage types and quantities:

30 (a) wine -- 5 ounces;

31 (b) regular beer -- 12 ounces;

32 (c) light beer -- 12 ounces; and

33 (d) distilled spirits (80 proof gin, rum, vodka, or whisky) -- 1.5  
34 ounces], list the average caloric value for beers, wines, and spirits  
35 as established by the United States Department of Agriculture,  
36 Agriculture Research Service in the National Nutrient Database for  
37 Standard Reference.<sup>1</sup>

38 A retail food establishment that <sup>1</sup>[collectively labels] lists the  
39 average caloric values for<sup>1</sup> alcoholic beverages pursuant to this  
40 paragraph shall add to the labeling the following statement:  
41 “Signature drinks or liqueurs with added ingredients may increase  
42 calorie content.”

43 b. The calorie information listed pursuant to paragraphs (1) and  
44 (2) of subsection a. of this section shall be posted clearly and  
45 conspicuously adjacent or in close proximity to the applicable menu  
46 item using a font and format that is at least as prominent, in size and  
47 appearance, as that used to post either the name or price of the

1 menu item.

2 The calorie content values required by this act shall be based  
3 upon a verifiable analysis of the menu item, which may include the  
4 use of nutrient databases, laboratory testing, or other reliable  
5 methods of analysis, and shall be rounded to the nearest 10 calories  
6 for calorie content values above 50 calories and to the nearest five  
7 calories for calorie content values 50 calories and below.

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

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

16 e. <sup>2</sup>(1) The disclosure of calorie information on a menu, menu  
17 board, or stanchion next to a standard menu item that is a  
18 combination of at least two standard menu items on the menu, menu  
19 board, or stanchion, shall, based upon all possible combinations for  
20 that standard menu item, include both the minimum and the  
21 maximum amount of calories. If there is only one possible total  
22 amount of calories, that total shall be disclosed.

23 (2) The disclosure of calorie information on a menu, menu  
24 board, or stanchion next to a standard menu item that is not an  
25 appetizer or dessert, but is intended to serve more than one  
26 individual, shall include both:

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

29 (b) the calorie information per individual serving.

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

35 f.<sup>2</sup> Nothing in this section shall prohibit a retail food  
36 establishment from providing additional nutrition information to its  
37 customers for each food or beverage item listed on its menu.

38 <sup>2</sup>[f.] g.<sup>2</sup> The provisions of this section shall not apply to any:

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

42 (2) daily specials, temporary menu items appearing on the menu  
43 for less than 60 days per calendar year, customized orders, or food  
44 or beverage items from a 'consumer self-serve' salad bar 'or  
45 buffet'.

46 <sup>2</sup>[g.] h.<sup>2</sup> <sup>1</sup>(1) The Department of Health and Senior Services  
47 or the local board of health or the board, body or officers exercising

1 the functions of the local board of health according to law, upon  
2 written complaint or having reason to suspect that a violation of this  
3 act has occurred, shall, by written notification, advise the proprietor  
4 of the retail food establishment accordingly and order appropriate  
5 action to be taken.<sup>1</sup>

6 <sup>1</sup>(2) A proprietor of a retail food establishment who violates the  
7 provisions of this section by failing to provide the information  
8 about food and beverage items as required in this section, or  
9 knowingly misstating the number of calories in a food or beverage  
10 item, shall be subject to a penalty of not less than \$50 or more than  
11 \$100 for the first offense, and not less than \$250 or more than \$500  
12 for the second or any subsequent offense <sup>1</sup>[, to be sued for and  
13 recovered in a civil action in a summary proceeding pursuant to the  
14 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10  
15 et seq.)]<sup>1</sup>. A municipal court shall have jurisdiction over  
16 proceedings to enforce and collect any penalty imposed because of  
17 a violation of this act, if the violation has occurred within the  
18 territorial jurisdiction of the court. <sup>1</sup>The proceedings shall be  
19 summary and in accordance with the "Penalty Enforcement Law of  
20 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in  
21 the nature of a summons or warrant and shall issue only at the suit  
22 of the Commissioner of Health and Senior Services, or the local  
23 board of health, as the case may be, as plaintiff.

24 When the plaintiff is the Commissioner of Health and Senior  
25 Services, the penalty recovered shall be paid by the commissioner  
26 into the treasury of the State. When the plaintiff is a local board of  
27 health, the penalty recovered shall be paid by the local board into  
28 the treasury of the municipality where the violation occurred.<sup>1</sup>

29 <sup>2</sup>[h.] i.<sup>2</sup> <sup>1</sup>The provisions of this section shall not be construed to  
30 create or enhance any claim, right of action, or civil liability that  
31 did not previously exist under State law or limit any claim, right of  
32 action, or civil liability that otherwise exists under State law.

33 <sup>2</sup>[i.] j. There shall be no private right of action against the  
34 proprietor of a retail food establishment for failure to comply with  
35 the provisions of this section.

36 k.<sup>2</sup> To the extent consistent with federal law, the provisions of  
37 this section, as well as any other State law that regulates the  
38 disclosure of caloric information, shall be a matter of Statewide  
39 concern and shall occupy the entire field of regulation regarding the  
40 disclosure of caloric information by a retail food establishment, as  
41 well as content required to be posted on menus, menu board  
42 systems or similar signage, or stanchions, as applicable. No  
43 ordinance or regulation of a local government or local board of  
44 health shall regulate the dissemination of caloric information or the  
45 content required to be placed on menus, menu board systems or  
46 similar signage, or stanchions by a retail food establishment. Any  
47 local government or local board of health ordinance or regulation

1 that violates this prohibition is void and shall have no force or  
2 effect.

3 <sup>2</sup>~~['j. ']~~ <sup>1</sup> 1.<sup>2</sup> As used in this section, "retail food establishment"  
4 means a fixed restaurant or any similar place that is part of a chain  
5 with 20 or more locations nationally <sup>1</sup>and<sup>1</sup> doing business

6 <sup>1</sup>(1)<sup>1</sup> under the same trade name or under common ownership or  
7 control or

8 <sup>1</sup>(2)<sup>1</sup> as franchised outlets of a parent business,  
9 the principal activity of which consists of preparing for  
10 consumption within the establishment a meal or food to be eaten on  
11 the premises or picked up at a drive-through window.

12  
13 3. The Commissioner of Health and Senior Services shall adopt  
14 rules and regulations, pursuant to the "Administrative Procedure  
15 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the  
16 purposes of this act.

17  
18 4. This act shall take effect <sup>1</sup>~~['on the 180th day]~~ <sup>1</sup>one year<sup>1</sup> after  
19 the date of enactment, but the Commissioner of Health and Senior  
20 Services may take such anticipatory administrative action in  
21 advance thereof as shall be necessary for the implementation of this  
22 act.

23  
24  
25 \_\_\_\_\_  
26  
27 Requires chain restaurants to provide calorie information for  
28 food or beverage items offered for sale.

# SENATE, No. 2905

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 15, 2009

**Sponsored by:**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Senator SHIRLEY K. TURNER**

**District 15 (Mercer)**

**SYNOPSIS**

Requires chain restaurants to provide certain nutrition information for food or beverage items offered for sale.

**CURRENT VERSION OF TEXT**

As introduced.





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

3

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

6

7 1. The Legislature finds and declares that:

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

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

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

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

45

46 2. a. Notwithstanding any provision of law to the contrary:

47 (1) a retail food establishment shall list in a clear and  
48 conspicuous manner adjacent to each food or beverage item on a

- 1 standard printed menu, the total number of calories, as usually  
2 prepared and offered for sale;
- 3 (2) a retail food establishment using a menu board system or  
4 similar signage shall list adjacent to each food or beverage item on  
5 the board or sign, the total number of calories per serving as usually  
6 prepared and offered for sale; and
- 7 (3) a retail food establishment shall provide information about  
8 saturated and trans fat, carbohydrates and sodium content to a  
9 customer upon request.
- 10 b. Nothing in this section shall prohibit a retail food  
11 establishment from providing additional nutrition information to its  
12 customers for each food or beverage item listed on its menu.
- 13 c. The provisions of this section shall not apply to any:
- 14 (1) item not listed on a standard printed menu, menu board  
15 system or similar signage, including, but not limited to, condiments  
16 or other products placed on a table or counter for general use; or
- 17 (2) daily specials, temporary menu items, customized orders, or  
18 food or beverage items from a salad bar.
- 19 d. A proprietor of a retail food establishment who violates the  
20 provisions of this section by failing to provide the information  
21 about food and beverage items as required in this section, or  
22 knowingly misstating the number of calories, grams of fat or  
23 carbohydrates, or milligrams of sodium in a food or beverage item,  
24 shall be subject to a penalty of not less than \$50 or more than \$100  
25 for the first offense, and not less than \$250 or more than \$500 for  
26 the second or any subsequent offense, to be sued for and recovered  
27 in a civil action in a summary proceeding pursuant to the "Penalty  
28 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).  
29 A municipal court shall have jurisdiction over proceedings to  
30 enforce and collect any penalty imposed because of a violation of  
31 this act, if the violation has occurred within the territorial  
32 jurisdiction of the court.
- 33 e. As used in this section, "retail food establishment" means any  
34 fixed restaurant or any similar place that is part of a chain with five  
35 or more locations in the State doing business under the same trade  
36 name, and in which food or drink is prepared for retail sale or  
37 service on the premises.
- 38
- 39 3. The Commissioner of Health and Senior Services shall adopt  
40 rules and regulations, pursuant to the "Administrative Procedure  
41 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the  
42 purposes of this act.
- 43
- 44 4. This act shall take effect on the 180th day after the date of  
45 enactment, but the Commissioner of Health and Senior Services  
46 may take such anticipatory administrative action in advance thereof  
47 as shall be necessary for the implementation of this act.

STATEMENT

1

2

3 While nutrition labeling is currently required on processed and  
4 packaged foods, restaurants where food and drink are prepared and  
5 sold are required to provide nutrition information only when a  
6 health claim is made for a food or beverage item listed on a menu.

7 Typically, fast food restaurants make nutrition information  
8 available to consumers only upon request through brochures or on  
9 corporate Internet sites, and other restaurants disclose the nutrition  
10 information of their menu items only via the Internet, if at all.

11 Approximately 50% of Americans report that the nutrition  
12 information on food labels has caused them to change their minds  
13 about purchasing a particular food product, and it has been shown  
14 that a large number of Americans would like to be provided with  
15 nutrition information for food and beverage items listed on a  
16 restaurant's menu.

17 It is the sponsor's intent, in accordance with the conclusions  
18 published in the *American Journal of Public Health* article,  
19 "Attacking the Obesity Epidemic: The Potential Health Benefits of  
20 Providing Nutrition Information in Restaurants," to enable families  
21 of this State to make educated decisions about the types of food  
22 they eat when dining outside the home and help reduce the  
23 incidence of obesity and other related health problems, including  
24 heart disease, stroke and diabetes, that cost families, businesses and  
25 the government of the United States \$117,000,000,000 each year.

26 This bill, therefore, directs chain retail food establishments to  
27 provide certain nutrition information for any food or beverage item  
28 listed on its menu. As used in the bill, "retail food establishment"  
29 means any fixed restaurant or any similar place that is part of a  
30 chain with five or more locations in the State doing business under  
31 the same trade name, and in which food or drink is prepared for  
32 retail sale or service on the premises.

33 Under the provisions of the bill, a retail food establishment shall  
34 list in a clear and conspicuous manner adjacent to each food or  
35 beverage item on a standard printed menu, the total number of  
36 calories, as usually prepared and offered for sale. If the retail food  
37 establishment uses a menu board system or similar signage, it shall  
38 be required to list caloric information adjacent to each food or  
39 beverage item on the board or sign. The retail food establishment  
40 shall also provide information about saturated and trans fat,  
41 carbohydrates and sodium content to a customer upon request.

42 The bill also stipulates that a retail food establishment shall not  
43 be required to provide nutrition information for any:

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

47 --daily specials, temporary menu items, customized orders, or  
48 food or beverage items from a salad bar.

**S2905 VITALE, TURNER**

5

1       A proprietor of a retail food establishment who violates the  
2 provisions of the bill by failing to provide the information about  
3 food and beverage items as required in this bill, or knowingly  
4 misstating the number of calories, grams of fat or carbohydrates, or  
5 milligrams of sodium in a food or beverage item, shall be liable for  
6 a civil penalty of not less than \$50 or more than \$100 for the first  
7 offense, and not less than \$250 or more than \$500 for the second or  
8 any subsequent offense. A municipal court shall have jurisdiction  
9 over proceedings to enforce and collect any penalty imposed  
10 because of a violation of this bill, if the violation has occurred  
11 within the territorial jurisdiction of the court.

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2905**

**STATE OF NEW JERSEY**

DATED: NOVEMBER 23, 2009

The Senate Health, Human Services and Senior Citizens Committee favorably reports a Senate Committee Substitute for Senate Bill No. 2905.

While nutrition labeling is currently required on processed and packaged foods, restaurants where food and drink are prepared and sold are required to provide nutrition information only when a health claim is made for a food or beverage item listed on a menu.

Typically, fast food restaurants make nutrition information available to consumers only upon request through brochures or on corporate Internet sites, and other restaurants disclose the nutrition information of their menu items only via the Internet, if at all.

Approximately 50% of Americans report that the nutrition information on food labels has caused them to change their minds about purchasing a particular food product, and it has been shown that a large number of Americans would like to be provided with nutrition information for food and beverage items listed on a restaurant's menu.

The purpose of this substitute, therefore, is to enable restaurant patrons in this State to make educated decisions about the types of food they eat when dining outside the home and help reduce the incidence of obesity and other related health problems, including heart disease, stroke and diabetes.

Accordingly, this substitute directs each chain retail food establishment to provide calorie information for any food or beverage item listed on its menu.

The substitute provides specifically as follows:

- "Retail food establishment" is defined to mean a fixed restaurant or any similar place that is part of a chain with 20 or more locations nationally doing business under the same trade name or under common ownership or control or 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.

- If the retail food establishment uses a standard printed menu, it is required to list next to each food or beverage item on the menu, the total number of calories, as usually prepared and offered for sale.
- If the retail food establishment uses a menu board system or similar signage, it is required to list the calorie information next to each food or beverage item on the board or sign.
- A retail food establishment which offers alcoholic beverages for sale may, as an alternative to listing calorie information for each individual alcoholic beverage of the types and quantities listed below, collectively label the average calorie value for the following beverage types and quantities:
  - (a) wine -- 5 ounces;
  - (b) regular beer -- 12 ounces;
  - (c) light beer --12 ounces; and
  - (d) distilled spirits (80 proof gin, rum, vodka, or whisky) -- 1.5 ounces.

A retail food establishment that collectively labels 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."

- The calorie information 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.
- 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.
- The calorie content values required by this substitute 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.
- The provisions of the substitute shall apply to each menu item that is served in portions the size and content of which are standardized. 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.
- A retail food establishment is not required to provide nutrition information for any:
  - 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  
-- daily specials, temporary menu items, customized orders, or food or beverage items from a salad bar.

- A proprietor of a retail food establishment who violates the provisions of the substitute by failing to provide the information about food and beverage items as required in this substitute, or knowingly misstating the number of calories in a food or beverage item, is liable for a civil 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 will have jurisdiction over proceedings to enforce and collect any penalty imposed because of a violation of this substitute, if the violation has occurred within the territorial jurisdiction of the court.
- The substitute takes effect on the 180th day after the date of enactment, but authorizes the Commissioner of Health and Senior Services to take anticipatory administrative action in advance as necessary for its implementation.

SENATE HEALTH, HUMAN SERVICES AND SENIOR  
CITIZENS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 2905**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 7, 2009

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments the Senate Committee Substitute for Senate Bill No. 2905.

As amended by the committee, this substitute requires chain restaurants in New Jersey with 20 or more locations nationally to provide calorie information for food or beverage items listed on their menus.

Specifically, the substitute requires retail food establishments which use standard printed menus, menu board systems or similar signage to list next to each food or beverage item the total number of calories for that item as it usually is prepared and offered for sale. Establishments that have drive-through windows are required to display calorie content values on their drive-through menu boards or on adjacent stanchions visible at the point of ordering. Calorie content values are to be clear and conspicuous.

Establishments which offer alcoholic beverages for sale may, as an alternative to listing calorie information for individual alcoholic beverages, list average caloric values as established by the United States Department of Agriculture, Agriculture Research Service in the National Nutrient Database for Standard Reference. If establishments choose this labeling alternative, they must include the statement: "Signature drinks or liqueurs with added ingredients may increase calorie content."

The substitute specifies that caloric values are to be based upon a verifiable analysis, using nutrient databases, laboratory testing, or other reliable methods of analysis. Calorie content values above 50 calories are to be rounded to the nearest 10 calories, and to the nearest five calories for calorie content values of 50 calories and below.

The substitute applies to menu items served in portions the size and content of which are standardized. This substitute does not apply to items which are not listed on standard printed menus, menu boards or similar signage, nor does it apply to daily specials, temporary menu



items appearing on the menu for less than 60 days per calendar year, customized orders, and items from consumer self-serve salad bars and buffets.

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 are to be listed for each size offered for sale.

The substitute provides that the Department of Health and Senior Services or a local board of health has enforcement authority. A proprietor who fails to provide the information about food and beverage items as required by the substitute or knowingly misstates caloric content is 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 will have jurisdiction over proceedings to enforce and collect any penalties for violations occurring within its territorial jurisdiction. The proceedings will be summary and in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (N.J.S.2A:58-10 et seq.), and suit may be brought only by the Commissioner of Health and Senior Services, or the local board of health, as the case may be. When the plaintiff is the Commissioner of Health and Senior Services, the penalty recovered is to be paid by the commissioner into the treasury of the State. When the plaintiff is a local board of health, the penalty recovered is to be paid by the local board into the treasury of the municipality where the violation occurred.

In addition, the substitute is not to be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under State law or to limit any claim, right of action, or civil liability that otherwise exists under State law.

The substitute provides that local laws regulating the disclosure of caloric information are preempted by State law and that any such local ordinance or regulation is void and has no force or effect.

The substitute takes effect one year after enactment.

The committee amendments:

- clarify that the provisions of this substitute are not to apply to consumer self-serve salad bars or buffets;
- provide that retail food establishments which offer alcoholic beverages for sale, as an alternative to listing calorie information for each individual alcoholic beverage, may 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, rather than collectively labeling average caloric values for specific amounts as the substitute originally provided;

- clarify that the Department of Health and Senior Services or a local board of health has enforcement authority, and clarify the process for enforcing the provisions of the substitute;
- add language stating that the substitute is not to be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under State law, or otherwise limit any claim, right of action, or civil liability that may exist under State law;
- add a provision preempting local laws regulating the disclosure of caloric information;
- clarify in the definition of “retail food establishment” that the provisions of the bill only apply to restaurants with 20 or more locations nationally; and
- change the effective date from 180 days after enactment to one year after enactment.

As amended by the committee, this substitute is similar to Assembly Bill No. 4236 (1R) (Wagner/Conaway), which is pending in the Assembly.

# STATEMENT TO

[First Reprint]

## SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 2905**

with Assembly Floor Amendments  
(Proposed by Assemblywoman WAGNER)

ADOPTED: JANUARY 7, 2010

These amendments add the following provisions to the committee substitute to be consistent with the menu labeling provisions of similar enactments and pending legislation in other states across the country:

- The disclosure of calorie content 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, must, based upon all possible combinations for that standard menu item, include both the minimum and maximum amount of calories. If there is only one possible total amount of calories, that total is to be disclosed.
- 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, must include both:
  - the number of individuals intended to be served by the standard menu item; and
  - the calorie information per individual serving.
- If the standard menu item is a combination of at least two standard menu items, the disclosure must, based upon all possible combinations for that standard menu item, include both the minimum and maximum amount of calories. If there is only one possible total amount of calories, that total is to be disclosed.
- There will be no private right of action against the proprietor of a retail food establishment for failure to comply with the provisions of the substitute.

# ASSEMBLY, No. 4236

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED NOVEMBER 30, 2009

**Sponsored by:**

**Assemblywoman CONNIE WAGNER**

**District 38 (Bergen)**

**Assemblyman HERB CONAWAY, JR.**

**District 7 (Burlington and Camden)**

**SYNOPSIS**

Requires chain restaurants to provide calorie information for food or beverage items offered for sale.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/1/2009)**

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

3

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

6

7 1. The Legislature finds and declares that:

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

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

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

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

45

46 2. Notwithstanding any provision of law to the contrary:

47 a. (1) A retail food establishment using a standard printed  
48 menu shall list next to each food or beverage item on the menu, the

1 total number of calories for that item as usually prepared and  
2 offered for sale;

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

7 (3) A retail food establishment that has a drive-through window  
8 shall display calorie content values either on the drive-through  
9 menu board or on an adjacent stanchion visible at the point of  
10 ordering, and the calorie content values shall be posted adjacent to  
11 their respective menu item names as clearly and conspicuously as  
12 the price or menu item is on the drive-through menu board; and

13 (4) A retail food establishment which offers alcoholic beverages  
14 for sale may, as an alternative to listing calorie information for each  
15 individual alcoholic beverage of the types and quantities listed in  
16 this paragraph, collectively label the average calorie value for the  
17 following beverage types and quantities:

18 (a) wine -- 5 ounces;

19 (b) regular beer -- 12 ounces;

20 (c) light beer --12 ounces; and

21 (d) distilled spirits (80 proof gin, rum, vodka, or whisky) -- 1.5  
22 ounces.

23 A retail food establishment that collectively labels alcoholic  
24 beverages pursuant to this paragraph shall add to the labeling the  
25 following statement: "Signature drinks or liqueurs with added  
26 ingredients may increase calorie content."

27 b. The calorie information listed pursuant to paragraphs (1) and  
28 (2) of subsection a. of this section shall be posted clearly and  
29 conspicuously adjacent or in close proximity to the applicable menu  
30 item using a font and format that is at least as prominent, in size and  
31 appearance, as that used to post either the name or price of the  
32 menu item.

33 The calorie content values required by this act shall be based  
34 upon a verifiable analysis of the menu item, which may include the  
35 use of nutrient databases, laboratory testing, or other reliable  
36 methods of analysis, and shall be rounded to the nearest 10 calories  
37 for calorie content values above 50 calories and to the nearest five  
38 calories for calorie content values 50 calories and below.

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

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

47 e. Nothing in this section shall prohibit a retail food  
48 establishment from providing additional nutrition information to its

1 customers for each food or beverage item listed on its menu.

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

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

6 (2) daily specials, temporary menu items appearing on the menu  
7 for less than 60 days per calendar year, customized orders, or food  
8 or beverage items from a salad bar.

9 g. A proprietor of a retail food establishment who violates the  
10 provisions of this section by failing to provide the information  
11 about food and beverage items as required in this section, or  
12 knowingly misstating the number of calories in a food or beverage  
13 item, shall be subject to a penalty of not less than \$50 or more than  
14 \$100 for the first offense, and not less than \$250 or more than \$500  
15 for the second or any subsequent offense, to be sued for and  
16 recovered in a civil action in a summary proceeding pursuant to the  
17 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10  
18 et seq.). A municipal court shall have jurisdiction over proceedings  
19 to enforce and collect any penalty imposed because of a violation of  
20 this act, if the violation has occurred within the territorial  
21 jurisdiction of the court.

22 h. As used in this section, "retail food establishment" means a  
23 fixed restaurant or any similar place that is part of a chain with 20  
24 or more locations nationally doing business under the same trade  
25 name or under common ownership or control or as franchised  
26 outlets of a parent business, the principal activity of which consists  
27 of preparing for consumption within the establishment a meal or  
28 food to be eaten on the premises or picked up at a drive-through  
29 window.

30  
31 3. The Commissioner of Health and Senior Services shall adopt  
32 rules and regulations, pursuant to the "Administrative Procedure  
33 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the  
34 purposes of this act.

35  
36 4. This act shall take effect on the 180th day after the date of  
37 enactment, but the Commissioner of Health and Senior Services  
38 may take such anticipatory administrative action in advance thereof  
39 as shall be necessary for the implementation of this act.

40

41

42

STATEMENT

43

44 While nutrition labeling is currently required on processed and  
45 packaged foods, restaurants where food and drink are prepared and  
46 sold are required to provide nutrition information only when a  
47 health claim is made for a food or beverage item listed on a menu.

48 Typically, fast food restaurants make nutrition information

1 available to consumers only upon request through brochures or on  
2 corporate Internet sites, and other restaurants disclose the nutrition  
3 information of their menu items only via the Internet, if at all.

4 Approximately 50% of Americans report that the nutrition  
5 information on food labels has caused them to change their minds  
6 about purchasing a particular food product, and it has been shown  
7 that a large number of Americans would like to be provided with  
8 nutrition information for food and beverage items listed on a  
9 restaurant's menu.

10 It is the sponsor's intent, in accordance with the conclusions  
11 published in the *American Journal of Public Health* article,  
12 "Attacking the Obesity Epidemic: The Potential Health Benefits of  
13 Providing Nutrition Information in Restaurants," to restaurant  
14 patrons in this State to make educated decisions about the types of  
15 food they eat when dining outside the home and help reduce the  
16 incidence of obesity and other related health problems, including  
17 heart disease, stroke and diabetes, that cost families, businesses and  
18 the government of the United States \$117,000,000,000 each year.

19 This bill, therefore, directs each chain retail food establishment  
20 to provide calorie information for any food or beverage item listed  
21 on its menu.

22 The bill provides specifically as follows:

- 23 • The bill defines "retail food establishment" to mean a fixed  
24 restaurant or any similar place that is part of a chain with 20 or  
25 more locations nationally doing business under the same trade  
26 name or under common ownership or control or as franchised  
27 outlets of a parent business, the principal activity of which  
28 consists of preparing for consumption within the establishment a  
29 meal or food to be eaten on the premises or picked up at a drive-  
30 through window.
- 31 • If the retail food establishment uses a standard printed menu, it is  
32 required to list next to each food or beverage item on the menu,  
33 the total number of calories, as usually prepared and offered for  
34 sale.
- 35 • If the retail food establishment uses a menu board system or  
36 similar signage, it is required to list the calorie information next  
37 to each food or beverage item on the board or sign.
- 38 • A retail food establishment which offers alcoholic beverages for  
39 sale may, as an alternative to listing calorie information for each  
40 individual alcoholic beverage of the types and quantities listed  
41 below, collectively label the average calorie value for the  
42 following beverage types and quantities:
  - 43 (a) wine -- 5 ounces;
  - 44 (b) regular beer -- 12 ounces;
  - 45 (c) light beer --12 ounces; and
  - 46 (d) distilled spirits (80 proof gin, rum, vodka, or whisky) -- 1.5  
47 ounces.

48 A retail food establishment that collectively labels alcoholic



- 1 beverages pursuant to this paragraph shall add to the labeling the  
2 following statement: “Signature drinks or liqueurs with added  
3 ingredients may increase calorie content.”
- 4 • The calorie information shall be posted clearly and conspicuously  
5 adjacent or in close proximity to the applicable menu item using a  
6 font and format that is at least as prominent, in size and  
7 appearance, as that used to post either the name or price of the  
8 menu item.
  - 9 • A retail food establishment that has a drive-through window shall  
10 display calorie content values either on the drive-through menu  
11 board or on an adjacent stanchion visible at the point of ordering,  
12 and the calorie content values shall be posted adjacent to their  
13 respective menu item names as clearly and conspicuously as the  
14 price or menu item is on the drive-through menu board.
  - 15 • The calorie content values required by this bill shall be based  
16 upon a verifiable analysis of the menu item, which may include  
17 the use of nutrient databases, laboratory testing, or other reliable  
18 methods of analysis, and shall be rounded to the nearest 10  
19 calories for calorie content values above 50 calories and to the  
20 nearest five calories for calorie content values 50 calories and  
21 below.
  - 22 • The provisions of the bill shall apply to each menu item that is  
23 served in portions the size and content of which are standardized.  
24 For menu items that come in different flavors and varieties but  
25 that are listed as a single menu item, the minimum to maximum  
26 numbers of calories for all flavors and varieties of that item shall  
27 be listed on the menu, menu board, or stanchion, as applicable,  
28 for each size offered for sale.
  - 29 • A retail food establishment is not required to provide nutrition  
30 information for any:
    - 31 -- item not listed on a standard printed menu or menu board
    - 32 system or similar signage, including, but not limited to,
    - 33 condiments or other products placed on a table or counter for
    - 34 general use; or
    - 35 -- daily specials, temporary menu items, customized orders, or
    - 36 food or beverage items from a salad bar.
  - 37 • A retail food establishment is not required to provide nutrition  
38 information for any:
    - 39 -- item not listed on a standard printed menu or menu board
    - 40 system or similar signage, including, but not limited to,
    - 41 condiments or other products placed on a table or counter for
    - 42 general use; or
    - 43 -- daily specials, temporary menu items, customized orders, or
    - 44 food or beverage items from a salad bar.
  - 45 • A proprietor of a retail food establishment who violates the  
46 provisions of the bill by failing to provide the information about  
47 food and beverage items as required in this bill, or knowingly  
48 misstating the number of calories in a food or beverage item, is

**A4236 WAGNER, CONAWAY**

7

- 1     liable for a civil penalty of not less than \$50 or more than \$100  
2     for the first offense, and not less than \$250 or more than \$500 for  
3     the second or any subsequent offense. A municipal court will  
4     have jurisdiction over proceedings to enforce and collect any  
5     penalty imposed because of a violation of this bill, if the violation  
6     has occurred within the territorial jurisdiction of the court.
- 7     • The bill takes effect on the 180th day after the date of enactment,  
8     but authorizes the Commissioner of Health and Senior Services to  
9     take anticipatory administrative action in advance as necessary  
10    for its implementation.

# ASSEMBLY HEALTH AND SENIOR SERVICES COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 4236**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 3, 2009

The Assembly Health and Senior Services Committee reports favorably and with committee amendments Assembly Bill No. 4236.

As amended by the committee, this bill requires chain restaurants in New Jersey with 20 or more locations nationally to provide calorie information for food or beverage items listed on their menus.

Specifically, the bill requires retail food establishments which use standard printed menus, menu board systems or similar signage to list next to each food or beverage item the total number of calories for that item as it usually is prepared and offered for sale. Establishments that have drive-through windows are required to display calorie content values on their drive-through menu boards or on adjacent stanchions visible at the point of ordering. Calorie content values are to be clear and conspicuous.

Establishments which offer alcoholic beverages for sale may, as an alternative to listing calorie information for individual alcoholic beverages, list average caloric values as established by the United States Department of Agriculture, Agriculture Research Service in the National Nutrient Database for Standard Reference. If establishments choose this labeling alternative, they must include the statement: "Signature drinks or liqueurs with added ingredients may increase calorie content."

The bill specifies that caloric values are to be based upon a verifiable analysis, using nutrient databases, laboratory testing, or other reliable methods of analysis. Calorie content values above 50 calories are to be rounded to the nearest 10 calories, and to the nearest five calories for calorie content values 50 calories and below.

The bill applies to menu items served in portions the size and content of which are standardized. The bill does not apply to items which are not listed on standard printed menus, menu boards or similar signage, nor does it apply to daily specials, temporary menu items appearing on the menu for less than 60 days per calendar year, customized orders, and items from consumer self-serve salad bars and buffets.

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 are to be listed for each size offered for sale.

The bill provides that the Department of Health and Senior Services or a local board of health has enforcement authority. A proprietor who fails to provide the information about food and beverage items as required by the bill or knowingly misstates caloric content is 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 will have jurisdiction over proceedings to enforce and collect any penalties for violations occurring within its territorial jurisdiction. The proceedings will be summary and in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (N.J.S.2A:58-10 et seq.), and suit may be brought only by the Commissioner of Health and Senior Services, or the local board of health, as the case may be. When the plaintiff is the Commissioner of Health and Senior Services, the penalty recovered is to be paid by the commissioner into the treasury of the State. When the plaintiff is a local board of health, the penalty recovered is to be paid by the local board into the treasury of the municipality where the violation occurred.

In addition, the bill is not to 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.

The bill provides that local laws regulating the disclosure of caloric information are preempted by State law and that any such local ordinance or regulation is void and has no force or effect.

The bill takes effect one year after enactment.

#### COMMITTEE AMENDMENTS:

The committee amendments:

- clarify that the provisions of this bill are not to apply to consumer self-serve salad bars or buffets;
- provide that retail food establishments which offer alcoholic beverages for sale, as an alternative to listing calorie information for each individual alcoholic beverage, may 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, rather than collectively labeling average caloric values for specific amounts as the bill originally provided;
- clarify that the Department of Health and Senior Services or a local board of health has enforcement authority, and clarify the process for enforcing the provisions of the bill;
- add language stating that the bill is not to be construed to create or enhance any claim, right of action, or civil liability that did

not previously exist under State law, or otherwise limit any claim, right of action, or civil liability that may exist under State law;

- add a provision preempting local laws regulating the disclosure of caloric information; and
- change the effective date from 180 days after enactment to one year after enactment.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 4236**

with Assembly Floor Amendments  
(Proposed by Assemblywoman WAGNER)

ADOPTED: JANUARY 7, 2010

These amendments add the following provisions to the bill to be consistent with the menu labeling provisions of similar enactments and pending legislation in other states across the country:

- The disclosure of calorie content 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, must, based upon all possible combinations for that standard menu item, include both the minimum and maximum amount of calories. If there is only one possible total amount of calories, that total is to be disclosed.
- 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, must include both:
  - the number of individuals intended to be served by the standard menu item; and
  - the calorie information per individual serving.
- If the standard menu item is a combination of at least two standard menu items, the disclosure must, based upon all possible combinations for that standard menu item, include both the minimum and maximum amount of calories. If there is only one possible total amount of calories, that total is to be disclosed.
- There will be no private right of action against the proprietor of a retail food establishment for failure to comply with the provisions of the bill.