

By Senator Siplin

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1                   A bill to be entitled  
2       An act relating to nutrition labeling in restaurants;  
3       creating s. 509.321, F.S.; providing definitions;  
4       requiring certain restaurants to provide nutritional  
5       labeling of standard food items by a certain date;  
6       providing that the requirements of the act do not  
7       create civil liability and are enforceable only by the  
8       Division of Hotels and Restaurants of the Department  
9       of Business and Professional Regulation as part of its  
10      regular restaurant inspection program; providing that  
11      the act preempts any related municipal or county  
12      ordinance; providing fines for violations; authorizing  
13      the division to adopt rules; providing an effective  
14      date.

15  
16       WHEREAS, over the past two decades, there has been a  
17      significant increase in the number of meals prepared or eaten  
18      outside the home, with an estimated one-third of calories being  
19      consumed in, and almost one-half of total food dollars being  
20      spent on, food purchased from or eaten at restaurants and other  
21      food facilities, and

22       WHEREAS, increased caloric intake is a key factor  
23      contributing to the alarming increase in obesity in the United  
24      States, and according to the Centers for Disease Control and  
25      Prevention, two-thirds of American adults are overweight or  
26      obese, and the rates of obesity have tripled in children and  
27      teens since 1980, and

28       WHEREAS, obesity increases the risk of diabetes, heart  
29      disease, stroke, some cancers, and other health problems, which

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30 significantly contributes to health care costs, and

31 WHEREAS, broader availability of nutrition information  
32 regarding foods served at restaurants and other food service  
33 establishments would allow customers to make more informed  
34 decisions about the food they purchase and consume, and

35 WHEREAS, three-quarters of American adults report using  
36 food labels on packaged foods, which are required by the federal  
37 Nutrition Labeling and Education Act of 1990, and

38 WHEREAS, availability of nutrition information regarding  
39 restaurant food assists consumers who are monitoring their diets  
40 or dealing with chronic diseases, such as cardiovascular disease  
41 and diabetes, and

42 WHEREAS, consumers should be provided with point-of-  
43 purchase access to nutritional information when eating at  
44 certain food facilities in order to make informed decisions  
45 involving their health and diet, and

46 WHEREAS, it is the intent of the Legislature to provide  
47 consumers with better access to nutritional information about  
48 prepared foods sold at food facilities so that consumers can  
49 understand the nutritional value of available foods, NOW,

50 THEREFORE,

51  
52 Be It Enacted by the Legislature of the State of Florida:

53  
54 Section 1. Section 509.321, Florida Statutes, is created to  
55 read:

56 509.321 Restaurant nutrition labeling.-

57 (1) As used in this section, the term:

58 (a) "Food facility" means a public food service

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59 establishment that operates under common ownership or control,  
60 or as a franchised outlet of a parent company, along with at  
61 least 19 other food facilities that have the same name in this  
62 state and that offer for sale substantially the same menu items.

63 (b) "Calorie content information" means the total number of  
64 calories per standard menu item as that item is usually prepared  
65 and offered for sale.

66 (c) "Drive-through" means an area where a customer may  
67 provide an order for and receive standard menu items while  
68 occupying a motor vehicle.

69 (d) "Menu board" means a posted list or pictorial display  
70 of food or beverage items offered for sale by a food facility.

71 (e) "Nutritional information" includes, but is not limited  
72 to, all of the following, per standard menu item, as that item  
73 is usually prepared and offered for sale:

- 74 1. Total number of calories.
- 75 2. Total number of grams of carbohydrates.
- 76 3. Total number of grams of saturated fat.
- 77 4. Total number of milligrams of sodium.

78 (f) "Point of sale" means the location where a customer  
79 makes an order.

80 (g) "Standard menu item" means a food or beverage item  
81 offered for sale by a food facility through a menu, menu board,  
82 or display tag at least 180 days per calendar year, except that  
83 the term does not include:

- 84 1. A food item that is customized on a case-by-case basis  
85 in response to an unsolicited customer request.
- 86 2. An alcoholic beverage, the labeling of which is not  
87 regulated by the federal Food and Drug Administration.

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88       3. A packaged food otherwise subject to the nutrition  
89 labeling requirements of the federal Nutrition Labeling and  
90 Education Act of 1990.

91       4. A food item when served at a consumer self-service salad  
92 bar.

93       5. A food or beverage item when served at a consumer self-  
94 service buffet.

95       (h) "Reasonable basis" means any reasonable means  
96 recognized by the federal Food and Drug Administration of  
97 determining nutritional information, as well as calorie content  
98 information, for a standard menu item, as usually prepared and  
99 offered for sale, including, but not limited to, nutrient  
100 databases and laboratory analyses.

101       (i) "Appetizer" means a food item generally served before  
102 the food item that is regarded as the primary food item in a  
103 meal. The term includes a first course, starter, or small plate  
104 item.

105       (j) "Dessert" means a food item generally served after the  
106 food item that is generally regarded as the primary food item in  
107 a meal. The term includes, but is not limited to, cakes,  
108 pastries, pies, ice cream and food items that contain ice cream,  
109 confections, and other sweets.

110       (2) Effective January 1, 2010:

111       (a) A food facility that does not provide sit-down service  
112 shall disclose nutritional information in a clear and  
113 conspicuous manner on a brochure that is made available at the  
114 point of sale before or during the placement of an order.

115       (b) A food facility that provides sit-down service shall  
116 provide the nutritional information in a clear and conspicuous

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117 size and typeface on at least one of the following:

118 1. A brochure available on the table.

119 2. A menu next to each standard menu item.

120 3. A menu under an index section that is separate from the  
121 listing of standard menu items.

122 4. A menu insert.

123 5. A table tent on the table.

124 (c) A food facility that has a drive-through area and uses  
125 a menu board to display or list standard menu items at the point  
126 of sale shall, for purposes of the drive-through area only,  
127 disclose the nutritional information in a clear and conspicuous  
128 manner on a brochure that is available upon request, and shall  
129 conspicuously display a notice at the point of sale which reads:  
130 "NUTRITION INFORMATION IS AVAILABLE UPON REQUEST."

131 (3) Effective July 1, 2010:

132 (a) A food facility that provides a menu shall disclose  
133 calorie content information for a standard menu item next to the  
134 item on the menu in a size and typeface that is clear and  
135 conspicuous.

136 (b) A food facility that uses an indoor menu board shall  
137 disclose calorie content information for a standard menu item  
138 next to the item on the menu board in a size and typeface that  
139 is clear and conspicuous.

140 (c) A food facility that uses a display tag as an  
141 alternative to a menu or menu board to describe a standard menu  
142 item that is displayed for sale in a display case shall disclose  
143 calorie content information for that standard menu item on the  
144 display tag for that item in a size and typeface that is clear  
145 and conspicuous.

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146       (4) For the purposes of subsection (3), the disclosure of  
147 calorie content information on a menu or menu board next to a  
148 standard menu item which is a combination of at least two  
149 standard menu items must, based upon all possible combinations  
150 for that standard menu item, include both the minimum and  
151 maximum amount of calories for the calorie content information.  
152 If there is only one possible total amount of calories, the  
153 total must be disclosed.

154       (5) For purposes of subsection (3), the disclosure of  
155 calorie content information on a menu or menu board next to a  
156 standard menu item that is not an appetizer or dessert, but is  
157 intended to serve more than one individual, must include:

158       (a) The number of individuals intended to be served by the  
159 standard menu item; and

160       (b) The calorie content information per individual serving.  
161 If the standard menu item is a combination of at least two  
162 standard menu items, the disclosure must, based upon all  
163 possible combinations for that item, include both the minimum  
164 and maximum amount of calories for the calorie count  
165 information. If there is only one possible total amount of  
166 calories, the total must be disclosed.

167       (6) The nutritional information required by this section  
168 shall be determined on a reasonable basis. Such determination is  
169 required only once per standard menu item if the portion size is  
170 reasonably consistent and the food facility follows a  
171 standardized recipe and trains its employees to follow a  
172 consistent method of preparation.

173       (7) Each brochure provided pursuant to this section shall  
174 include the statement: "Recommended limits for a 2,000 calorie

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175 daily diet are 20 grams of saturated fat and 2,300 milligrams of  
176 sodium."

177 (8) Menus and menu boards may include a disclaimer that  
178 there may be variations in nutritional content across servings,  
179 based on variations in overall size and quantities of  
180 ingredients, and based on special ordering.

181 (9) This section does not create or enhance any claim,  
182 right of action, or civil liability that did not previously  
183 exist under state law or limit any claim, right of action, or  
184 civil liability that otherwise exists under state law. The only  
185 enforcement mechanism of the section is pursuant to subsection  
186 (12).

187 (10) This section does not preclude a food facility from  
188 voluntarily providing nutritional information in addition to the  
189 requirements of this section.

190 (11) To the extent consistent with federal law, this  
191 section expressly preempts any requirement relating to the  
192 labeling of nutritional information in food facilities to the  
193 state and supersedes any municipal or county ordinance  
194 regulating the subject.

195 (12) The provisions of this section shall be enforced by  
196 the division as part of its regular inspection of public food  
197 service establishments. A food facility that violates this  
198 section is subject to a fine of not less than \$50 or more than  
199 \$500 as established by the division by rule.

200 (13) The division may adopt rules to administer this  
201 section.

202 Section 2. This act shall take effect July 1, 2009.