

1 A bill to be entitled
 2 An act relating to the prevention of obesity; amending s.
 3 381.0054, F.S.; providing definitions; authorizing the
 4 Department of Health to require certain food service
 5 establishments to display the number of calories in food
 6 items for sale; providing exemptions; providing penalties;
 7 providing immunity from liability under certain
 8 circumstances; providing conditions under which such
 9 nutritional-information requirements may be superseded by
 10 federal law, rules, or regulations; providing
 11 applicability; providing an effective date.

12
 13 WHEREAS, although death due to obesity is preventable, more
 14 than 40,000 Florida residents die annually from obesity-related
 15 diseases, and

16 WHEREAS, in 2008, more that 60 percent of the adults and 30
 17 percent of the children in Florida were overweight and at least
 18 half of this number were obese, with a body mass index greater
 19 than 30, and

20 WHEREAS, approximately 60 percent of overweight children
 21 have at least one risk factor for cardiovascular disease and 25
 22 percent of overweight children have two or more risk factors,
 23 and

24 WHEREAS, the number of overweight and obese children has
 25 tripled in the last 20 years, and

26 WHEREAS, excessive body weight affects virtually every
 27 organ system in the body and increases the risks of diabetes,
 28 myocardial infarction, stroke, cancer, sleep apnea, and

HB 783

2010

29 osteoarthritis, and

30 WHEREAS, obesity-related medical expenditures for adults in
31 this state total more than 5 billion dollars annually, with over
32 half of those costs being financed by Medicare and Medicaid, and
33 the direct economic effects of obesity are far greater than this
34 figure when missed workdays and other costs outside the medical
35 care system and the economic valuation of reduced longevity and
36 quality of life are considered, and

37 WHEREAS, in 2008, almost 50 percent of the money spent on
38 food was spent away from the home and, according to a recent
39 national poll by Peter D. Hart Research Associates, 79 percent
40 of registered voters favor a law that would require restaurants
41 to provide detailed nutritional information in a format
42 available to consumers, and

43 WHEREAS, the current economic crisis provides a unique
44 opportunity to examine questions of fundamental importance to
45 public health, especially those related to obesity and physical
46 activity, and

47 WHEREAS, the Labeling Education and Nutrition Act (LEAN)
48 has been reintroduced into the United States House of
49 Representatives and the United States Senate, NOW, THEREFORE,

50

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

52

53 Section 1. Section 381.0054, Florida Statutes, is amended
54 to read:

55 381.0054 Healthy lifestyles promotion.—

HB 783

2010

56 (1) The Department of Health shall promote healthy
57 lifestyles to reduce the prevalence of excess weight gain and
58 obesity in Florida by implementing appropriate physical activity
59 and nutrition programs that are directed towards all Floridians
60 by:

61 (a) Using all appropriate media to promote maximum public
62 awareness of the latest research on healthy lifestyles and
63 chronic diseases and disseminating relevant information through
64 a statewide clearinghouse relating to wellness, physical
65 activity, and nutrition and their impact on chronic diseases and
66 disabling conditions.

67 (b) Providing technical assistance, training, and
68 resources on healthy lifestyles and chronic diseases to the
69 public, county health departments, health care providers, school
70 districts, and other persons or entities, including faith-based
71 organizations, that request such assistance to promote physical
72 activity, nutrition, and healthy lifestyle programs.

73 (c) Developing, implementing, and using all available
74 research methods to collect data, including, but not limited to,
75 population-specific data, and track the incidence and effects of
76 weight gain, obesity, and related chronic diseases. The
77 department shall include an evaluation and data collection
78 component in all programs as appropriate.

79 (d) Partnering with the Department of Education, local
80 communities, school districts, and other entities to encourage
81 Florida schools to promote activities during and after school to
82 help students meet a minimum goal of 60 minutes of activity per
83 day.

HB 783

2010

84 (e) Partnering with the Department of Education, school
85 districts, and the Florida Sports Foundation to develop a
86 program that recognizes schools whose students demonstrate
87 excellent physical fitness or fitness improvement.

88 (f) Collaborating with other state agencies to develop
89 policies and strategies for preventing and treating obesity,
90 which shall be incorporated into programs administered by each
91 agency and shall include promoting healthy lifestyles of
92 employees of each agency.

93 (g) Advising, in accordance with s. 456.081, health care
94 practitioners licensed in this state regarding the morbidity,
95 mortality, and costs associated with the condition of being
96 overweight or obese, informing such practitioners of clinical
97 best practices for preventing and treating obesity, and
98 encouraging practitioners to counsel their patients regarding
99 the adoption of healthy lifestyles.

100 (h) Maximizing all local, state, and federal funding
101 sources, including grants, public-private partnerships, and
102 other mechanisms, to strengthen the department's current
103 physical activity and nutrition programs and to enhance similar
104 county health department programs.

105 (2) As used in this section, the term:

106 (a) "Menu" or "menu board" means the primary writing or
107 electronic means on the premises of the food service
108 establishment from which consumers make their order selection.

109 (b) "Reasonable basis" means using any means of
110 determining nutrition information for a standard food item,
111 including nutrient information for a standard food item provided

HB 783

2010

112 by nutrient databases, manufacturer's labels, cookbooks,
113 laboratory analyses, and other information offered without an
114 intent to deceive.

115 (c) "Standard food item" means food offered for sale at
116 least 90 days per calendar year, but the term does not include
117 food not separately offered for sale or food exempt under
118 paragraph (3) (d).

119 (3) The Department of Health shall require standard food
120 items served or offered for sale at least 90 days per calendar
121 year in a food service establishment, as defined in s.
122 500.03(1) (p), to bear a label or display information that
123 indicates in a clear and conspicuous manner the number of
124 calories in each food item, to be determined within a reasonable
125 basis, as follows:

126 (a) Calories displayed on a menu board.—The number of
127 calories shall be displayed on the menu board prior to the point
128 of purchase by one of the following means:

129 1. On a menu board adjacent to the item or its price;

130 2. On a sign presenting standard food items in a manner
131 similar to the menu board and located on the same wall as the
132 menu board;

133 3. On a sign at eye level in the consumer queue prior to
134 the point of purchase; or

135 4. By electronic means accessible to the consumer.

136 (b) Calories displayed on a menu.—The number of calories
137 shall be displayed on the menu prior to the point of purchase by
138 one of the following means:

139 1. In the menu adjacent to the item or its price; or

HB 783

2010

140 2. In an insert that accompanies or is attached to the
141 menu.

142 (c) Referral statement.—A menu or a menu board shall bear
143 a statement directing the consumer to the location of additional
144 nutritional information that may be known and available but not
145 required, including, but not limited to, the amount of sodium,
146 trans fat, saturated fat, cholesterol, carbohydrates, sugars,
147 and protein in each food item.

148 (d) Applicability.—This subsection does not apply to:

149 1. Food offered for sale at a not-for-profit food
150 establishment.

151 2. Food offered at no cost.

152 3. Food exempted by the State Surgeon General by rule.

153 (e) One determination per item.—A reasonable basis for
154 determination of nutrition information may be made with
155 appropriate accuracy by consulting nutrient databases,
156 manufacturer's labels, cookbooks, laboratory analyses, or other
157 sources that provide a reasonable basis of information regarding
158 the nutrient content of a food, notwithstanding variability in
159 the portion size, formulation, and other characteristics of such
160 food or its preparation method.

161 (f) Penalty.—The department shall enforce this section
162 during routine inspections of food service establishments and a
163 warning notice shall be given for:

164 1. Failing to make a disclosure required by this
165 subsection; or

166 2. Making a disclosure under this section with an intent
167 to deceive.

168
169 If the food service establishment does not correct the
170 deficiency within 90 days after receiving the warning notice, an
171 administrative fine of \$100 per day shall be assessed beginning
172 on the 91st day after notification until the food service
173 establishment is in compliance with the requirements of this
174 section.

175 (g) Liability.—Unless a food service establishment
176 knowingly and willfully violates paragraph (f), the
177 establishment may not be held liable.

178 (4) ~~(2)~~ The department may adopt rules pursuant to ss.
179 120.536(1) and 120.54 to administer this section.

180 (5) ~~(3)~~ Subsection (1) ~~This section~~ shall be implemented
181 contingent on an appropriation in the General Appropriations
182 Act.

183 (6) Subsection (3) may be superseded by federal law if a
184 single, consistent national nutrition labeling standard is
185 established under federal law, rules, or regulations that
186 accomplish the same purpose of providing responsible nutritional
187 information to the consumer. Any restaurant may provide more
188 information than is required under subsection (3) without
189 penalty as long as the caloric information is included.

190 Section 2. This act shall take effect January 1, 2011,
191 and, from January 1, 2011, through December 31, 2011, shall
192 apply to all food service establishments having 20 or more
193 separate establishments in the state, and, on January 1, 2012,
194 and thereafter, shall apply to all food service establishments
195 in the state.