

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 539

(Senator Harrington, *et al.*)

Finance

Public Health - Chain Restaurants - Nutrition Information Labeling

This bill requires chain restaurants to provide nutritional information for standard menu items. Violators are subject to fines.

Fiscal Summary

State Effect: Any limited role the Department of Health and Mental Hygiene (DHMH) may have in enforcement can be handled with existing resources. Potential minimal increase in general fund revenues as a result of the bill's monetary penalty provisions.

Local Effect: Local health departments can handle the bill's requirements as part of their regular inspections, assuming they take responsibility for enforcement of the bill. Potential minimal increase in revenues due to the bill's monetary penalty provisions.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A "chain restaurant" is a food establishment that has more than 15 locations nationally; does business under the same trade name, regardless of ownership; serves food from a menu or other sales mechanism listing individual food items to be consumed in individual portions; and offers predominantly the same type of menu in each of its locations. A "menu" is the primary writing of the chain restaurant from which the consumer makes an order selection, including a menu board, take-out menu, and drive-thru display board.

A chain restaurant does not include a full-service supermarket or grocery store, a convenience store, or a movie theater. Standard menu items do not include a temporary menu item that appears on the menu less than 60 days per year, items not served in individual portions, items not listed on the menu, condiments and other items placed on a table or counter for general use without charge, or food items that are part of a market test and appear on the menu for less than 90 days under terms and conditions established by the Secretary.

Chain restaurants must list the number of calories for each standard menu item on their menus and, on request by a customer, must provide written information that includes the total number of calories, including calories derived from total fat; grams of fat, including saturated fat; milligrams of cholesterol; milligrams of sodium; grams of carbohydrates, including complex carbohydrates; grams of sugar; grams of dietary fiber; and grams of protein for each standard menu item. This information must be listed next to the name of the standard menu item, in a size and typeface of equal prominence to the price or name of the standard menu item, and for each standard menu item as usually prepared and offered for sale. Nutrition information must be calculated based on how the item is prepared and offered for sale and must be obtained using methods consistent with the Federal Food, Drug, and Cosmetic Act.

A clear and concise statement must also be placed on the menu that includes information on the suggested daily caloric intake, as specified by regulation and the significance of the caloric information in the context of a total daily diet.

In addition, the Secretary of Health and Mental Hygiene must adopt by regulation standards for determining and disclosing the nutrient information for menu items that come in different flavors, varieties, or combinations but are listed as a single menu item.

A county may designate a representative from the local health department to enforce the bill's provisions. If no representative is designated, DHMH is charged with enforcement. The enforcement entity does not have to verify the accuracy of the nutrition information, but it may request that the chain restaurant provide documentation of its accuracy.

The enforcing entity can issue civil citations to violators of the bill and impose a civil penalty of up to \$500 for the first violation and up to \$1,000 for each subsequent violation. Penalties imposed by local health departments are paid into the general fund for the county where the violation occurred. No more than one violation can be issued per inspection.

Current Law: State law does not address nutritional posting or labeling in restaurants. Restaurants are inspected and licensed by local health departments. Montgomery County requires menu labeling in certain fast food restaurants.

Background: While Americans spent 26% of their food dollars on away-from-home foods in 1970, about 46% of Americans' food dollars were spent this way in 2006. Eating away from home can contribute to an unhealthy diet and obesity, which are leading causes of premature death, disabilities, and high health care costs. Obesity rates in the United States are the highest in the world and obesity rates in Maryland are the 25th highest in the country.

While the federal Nutrition and Labeling Education Act of 1990 required nutrition labeling on foods regulated by the U.S. Food and Drug Administration, restaurants are exempt from the labeling requirements. More than 20 states and localities considered policies that would require fast-food restaurants to provide calories and other nutritional information on menus and menu boards in 2009. California, Maine, Massachusetts, New Jersey, and Oregon as well as the cities of Philadelphia, Seattle, and New York have passed laws requiring chain restaurants to provide nutrition information to customers.

The Food Policy Workgroup within DHMH conducted a study on issues related to a trans fat prohibition and menu labeling requirements in restaurants during the 2009 legislative interim. The study notes that national legislation was introduced as part of the health care reform legislation in March 2009 to require calories on menus, menu boards, and drive-through displays. Federal legislation would require chain restaurants with 20 or more outlets to provide additional nutrition information upon request. National legislation is the result of an agreement between the Center for Science in the Public Interest and the National Restaurant Association, brokered by federal legislative representatives to establish a national standard for the declaration of calorie information on menus and referred to as the Labeling Education and Nutrition (LEAN) Act.

Studies of menu labeling show conflicting results. A recent study by Stanford University's Graduate School of Business examined consumer behavior before and after calorie counts were posted on menu boards and determined that, when calories are posted, there is a 6% reduction in calories per transaction. In addition, the calorie reduction persisted for at least 10 months after calorie counts were posted on menu boards. In this study, calorie postings did not have an effect on store revenues. Although a 6% reduction is minimal, researchers hypothesize that long-term effects may be more dramatic if posting calories encourages restaurants to offer more low-calorie items. In comparison, *The New York Times* reported on a 2009 study conducted by several professors at New York University and Yale University that tracked customers at four fast-food chains (McDonald's, Wendy's, Burger King, and Kentucky Fried Chicken) in poor neighborhoods of New York City where there were high obesity rates. While 28% of the individuals included in the study noted that calorie postings had influenced their ordering, when researchers checked receipts of participants, people had ordered slightly more calories than the typical customer had ordered before menu labeling went into effect. The study focused on primarily poor black and Hispanic fast-food customers.

Similar studies have shown fast-food restaurants are more prevalent in low-income areas that have higher minority populations.

Small Business Effect: The U.S. Census Bureau's County Business Patterns (2007) data shows that there are 9,916 food establishments in the State with 170,613 employees, and an annual payroll of \$2.5 billion. It is unclear as to how many of these restaurants will be affected by the bill. Many fast-food and chain restaurants are franchises and are therefore considered small businesses. Requiring these restaurants to post nutrition information will require them to alter or replace menu boards, increasing their expenditures. It is unclear whether the bill will impact sales revenues at chain restaurants.

Additional Information

Prior Introductions: While not identical, SB 142/HB 601 of 2009 would have required chain restaurants to provide nutrition information for standard menu items. SB 142 received a hearing in the Senate Finance Committee, but no further action was taken. HB 601 was withdrawn after a hearing in the House Health and Government Operations Committee.

Cross File: Although HB 758 (Delegate Niemann, *et al.* - Health and Government Operations) is designated as a cross file, it is not identical.

Information Source(s): National Conference of State Legislatures, Stanford Graduate School of Business, *The New York Times*, U.S. Census Bureau, Department of Health and Mental Hygiene, Department of Legislative Services

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