
Commerce & Labor Committee

HB 3160

Brief Description: Addressing the availability of nutrition information.

Sponsors: Representatives Springer, Newhouse, Ericks, Goodman, Armstrong, Linville, McDonald, Kessler, Dickerson, Wood, Wallace, Hunter, Blake, Clibborn, Morrell, Williams, Loomis, Lias, Kelley, Eddy, Takko, Warnick, Jarrett, Rodne, Sullivan, Roach, VanDeWege, Kenney and Ormsby.

Brief Summary of Bill

- Requires covered food facilities to make certain nutrition information about standard food items available to customers.
- Pre-empts local boards of health and health districts from adopting or continuing in effect ordinances, rules, policies, regulations, or permit requirements regarding mandatory menu labeling or nutritional information disclosure at restaurants.

Hearing Date: 2/7/08

Staff: Alison Hellberg (786-7152).

Background:

Under state law, restaurants are not required to make nutrition information available to customers. Federal law requires labeling of packaged and certain restaurant foods, and a recently enacted King County Board of Health regulation requires nutritional labeling of food served at chain food establishments.

The Federal Nutrition Labeling and Education Act of 1990 (Act) requires nutrition labeling for most prepared foods, including bread, cereals, canned and frozen foods, snacks, desserts, and drinks. Nutrition labeling for raw fruits and vegetables, fish, and the 45 best-selling cuts of meat is voluntary. If an exempt food does carry nutrition information or makes a claim about health or nutrient-content, however, it must comply with regulations of the United States Food and Drug Administration (FDA). If a restaurant makes a health or nutrient-content claim, the restaurant is

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required to provide nutrition information on menus, signs, or placards. Food subject to the federal labeling requirements has a "Nutrition Facts" label that must include information about total calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, and iron.

The King County Board of Health passed a nutrition labeling requirement that takes effect August 1, 2008. Chain food establishments must make nutritional labeling of food available to customers for all standard menu items. A "chain food establishment" means any one of at least 10 food establishments doing business under the same name and collectively having at least \$1 million in gross annual sales and offering for sale substantially the same menu items. A "standard menu item" means food offered for sale for more than 60 days per year, except for foods offered in a salad bar, buffet line, cafeteria service, or similar self-serve arrangements, and condiments.

Chain food establishments must make the following information available to consumers for each standard menu item:

- total number of calories;
- total number of grams of saturated fat and trans fat;
- total number of grams of carbohydrates; and
- total number of milligrams of sodium.

Chain food establishments that provide menus must include this nutritional information next to the standard menu item in a size and typeface similar to other information about the menu item. The menu must also contain a warning that reads: "Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium." If the establishment offers menu items with trans fats, the menu must include this additional warning: "Eating artificial trans fat increases risk of heart disease."

If a chain food establishment uses menu boards, the total number of calories of each menu item must be posted next to the menu item in a size and typeface similar to other information about menu items. Other nutrition information should be made available to consumers at the point of ordering.

The Director of the King County Board of Health has authority to enforce these provisions.

Summary of Bill:

Covered food facilities are required to make certain nutrition information about each standard food item available to consumers.

A "covered food facility" is defined as a one of at least 25 food facilities in the United States doing business under the same trade name regardless of whether the food establishment is subject to the same ownership or type of ownership. Specifically excluded are certified farmers' markets, commissaries, licensed health care facilities, mobile support units, restricted food service facilities, temporary food facilities, vending machines, and public and private school cafeterias.

"Standard food item" is defined as a food item offered for sale at least 180 days per calendar year. It does not, however, include: food not separately offered for sale, including unsolicited requests for product customization; alcoholic beverages whose labeling is not regulated by the FDA; or packaged foods otherwise subject to labeling requirements under the Act.

Covered food facilities must make the following information available to consumers for each standard food item:

- total number of calories;
- amount of total fat, saturated fat, and trans fat;
- amount of carbohydrates; and
- amount of sodium.

The nutrition information must be determined with a "reasonable basis" and disclosed on a per-item basis in accordance with the FDA's requirements for disclosure under the Act.

"Reasonable basis" is defined as any way of determining nutrition information for a standard food item without a malicious intent to deceive, including but not limited to, nutrient databases, cookbooks, laboratory analyses, and other reasonable means. A "reasonable basis" determination of nutrition information is required only once per standard food item, provided that portion size is reasonably consistent and the food service establishment follows a standardized recipe and trains to a consistent method of preparation.

A covered food facility has several options for the manner in which the nutritional information is disclosed. These include:

- menu, or other writing at the point of sale;
- standard food item packaging;
- counter or table tent;
- tray liner;
- poster;
- brochure or other printed material; or
- electronic medium, including electronic kiosk.

If the nutrition information is disclosed in a manner other than a menu or other writing at the point of sale, the covered food facility must conspicuously display a notice near the point of sale that indicates that nutrition information is available upon request. Covered food facilities with a drive-thru or drive-in auto stall must also post this notice at the point of sale.

Food facilities may voluntarily provide nutrition information for a standard food item if it follows these requirements. Exempt from these provisions are covered facilities who provide the total number of calories of each food item next to the menu item on the printed menu or menu board.

These requirements are the exclusive authority regarding nutrition information. Local boards of health and health districts are pre-empted from adopting an ordinance rule, policy, regulation, or permit requirements regarding mandatory menu labeling or nutritional information disclosure at restaurants.

The Act expires on January 1, 2013.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.