

SENATE BILL REPORT

ESHB 3160

As Reported By Senate Committee On:
Government Operations & Elections, February 28, 2008

Title: An act relating to the availability of nutrition information.

Brief Description: Addressing the availability of nutrition information.

Sponsors: House Committee on Commerce & Labor (originally sponsored by 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 History: Passed House: 2/19/08, 81-14.

Committee Activity: Government Operations & Elections: 2/26/08, 2/28/08 [DPA, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Kline, McDermott and Pridemore.

Minority Report: Do not pass.

Signed by Senators Roach, Ranking Minority Member; Benton.

Staff: Sharon Swanson (786-7447)

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 Nutrition Labeling and Education Act (Act) of 1990 amended the federal Food, Drug, and Cosmetic Act. It required labeling on packaged foods and regulated the making of claims concerning food. The Food, Drug, and Cosmetic Act, enacted in 1938 and enforced by the Food and Drug Administration (FDA), generally prohibited the misbranding of food. If a restaurant makes a health or nutrient-content claim, the restaurant is 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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 ten 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 (Recommended Amendments): A legislative task force on nutritional information disclosure is established. The task force will study current efforts on nutritional information disclosure at restaurants, including systems for estimating actual nutritional information, health impacts of menu labeling, cost and impact to the restaurant industry, and alternatives to any current approaches. The task force must also review how other states are addressing the issue. The members of the task force are appointed by the Governor and consist of:

- one member from each of the two largest caucuses of the Senate;
- one member from each of the two largest caucuses of the House;
- four representatives of the restaurant industry in consultation with the Washington Restaurant Association;
- two representatives of consumer groups in consultation with the American Heart Association and the American Diabetes Association;
- one representative from the State Board of Health; and
- one representative from a local Board of Health or Health District.

The task force must choose its chair from among its membership. Staff support will be provided by the Senate Committee Services and the Office of Program Research. The task force must report its findings and recommendations to the appropriate committees of the Legislature by December 1, 2008.

EFFECT OF CHANGES MADE BY GOVERNMENT OPERATIONS & ELECTIONS COMMITTEE (Recommended Amendment): Section 2 of the bill is removed. This removes the moratorium language from the bill.

Appropriation: None.

Fiscal Note: Requested on February 24, 2008.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute Bill: PRO: This bill is about promoting healthy eating choices. We need to ensure that nutritional information is available to consumers across the state. We need consistency so people can travel to any part of our state and get the same information. If this bill is passed, Washington will become a national leader. This bill attempts to create statewide uniformity to prevent restaurants in different counties having to deal with different regulations. Businesses need certainty. The bill has prompted very positive, and very useful dialogue between the stakeholders. It is agreed that all of the stakeholders have the same goal; we just need to work on how to accomplish this goal. The conversation is ongoing, and the work is promising.

CON: Preemption is not acceptable. The state should not be telling local jurisdictions that they cannot enforce their own rules and govern their own jurisdictions. The primary goal is that consumers will have the information in their hand when they make a decision on what to order and eat. Preemption always creates a chilling effect. Local communities can often lead by example. If the state creates a moratorium on local communities making their own rules and governing themselves, we will never have leadership by example. This bill is simply the wrong way to work this problem. We all have the same goal, we just don't agree on how to accomplish that goal. Local governments should be able to adapt regulations to fit their local needs. This experiment needs to take place to see if it will decrease obesity, and to see if people will make healthier choices if they have the necessary information.

Persons Testifying: PRO: Representative Springer, prime sponsor; Trent House, Washington Restaurant Association.

CON: Tom Bristow, King County; Michael Shaw, American Heart Association; Jeff Killip, Washington State Association of Local Public Health Officials.