
HOUSE BILL 3160

State of Washington

60th Legislature

2008 Regular Session

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

Read first time 01/23/08. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to the availability of nutrition information;
2 adding a new chapter to Title 19 RCW; and providing an expiration date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds and declares that:

5 (a) Over the past two decades, there has been a significant
6 increase in the number of meals prepared or eaten outside the home,
7 with an estimated one-third of calories and almost half of total food
8 dollars associated with food obtained from restaurants and other food
9 service establishments;

10 (b) Broader availability of nutrition information regarding foods
11 served at restaurants and other food service establishments will
12 facilitate consumers making more informed decisions about the food they
13 purchase;

14 (c) Three-quarters of American adults report using food labels on
15 packaged foods, which are required by the nutrition labeling and
16 education act of 1990;

17 (d) Availability of nutrition information regarding restaurant food
18 assists consumers who closely monitor their diet;

1 (e) Due to substantial variations in restaurant characteristics,
2 restaurants have used a variety of methods to provide broad nutrition
3 information that their customers desire;

4 (f) Providing accurate nutrition information for food prepared in
5 restaurants is significantly more difficult than for processed food
6 items because of greater variability of portion size, formulation, and
7 other characteristics of the restaurant food product and the processes
8 used to produce it;

9 (g) In implementing the federal nutrition labeling and education
10 act of 1990, the United States food and drug administration recognized
11 the need for accuracy in nutrition information statements and addressed
12 the challenges of determining restaurant food product nutrition
13 information by permitting nutrition information for such products to be
14 determined with a reasonable basis;

15 (h) Notwithstanding the substantial variability of nutrition
16 characteristics of standard food items served at restaurants and other
17 food service establishments, public health will be advanced by
18 providing nutrition information, determined with a reasonable basis,
19 for standard food items generally available at restaurants; and

20 (i) Restaurants and other food service establishments generally are
21 more likely to provide nutrition information regarding food items, if
22 there is not a threat of conflicting or overlapping governmental
23 requirements for disclosure of nutrition information, or vulnerability
24 to frivolous litigation regarding the accuracy of disclosure of
25 nutrition information.

26 (2) The legislature intends to provide consumers with greater
27 access to nutrition information regarding restaurant foods by (a)
28 recognizing that nutrition information determined with a reasonable
29 basis is appropriately accurate, and (b) allowing restaurants
30 reasonable flexibility in providing nutrition information to consumers.

31 NEW SECTION. **Sec. 2.** The definitions in this section apply
32 throughout this chapter unless the context clearly requires otherwise.

33 (1) "Covered food facility" means one of at least twenty-five food
34 facilities in the United States doing business under the same trade
35 name regardless of whether the food establishment is subject to the
36 same ownership or type of ownership. "Covered food facility" does not
37 include the following types of food facilities:

- 1 (a) Certified farmers' markets;
- 2 (b) Commissaries;
- 3 (c) Licensed health care facilities;
- 4 (d) Mobile support units;
- 5 (e) Restricted food service facilities;
- 6 (f) Temporary food facilities;
- 7 (g) Vending machines; and
- 8 (h) Public and private school cafeterias.

9 (2) "Same trade name" means a group of at least twenty-five or more
10 food facilities doing business in the United States that is deemed to
11 be doing business under the same trade name if each facility shares an
12 identical business name and provides substantially the same menu items.
13 Any food facility not sharing an identical trade name with a covered
14 food facility, regardless of common ownership, or which does not offer
15 substantially the same menu items is not deemed to be operating under
16 the same trade name.

17 (3) "Substantially the same menu items" means any group of twenty-
18 five or more facilities in the United States doing business under the
19 same trade name that is deemed to be serving substantially the same
20 menu items if the food facilities have more than eighty percent, by
21 number, of the same menu items, based on a standard recipe, such that
22 calories, fat, carbohydrates, and sodium content of each food item is
23 substantially the same from one food facility to another.

24 (4) "Standard recipe" means a recipe or formula used consistently
25 in preparing a standard food item from one food facility to another.

26 (5) "Standard food item" means a food item offered for sale at
27 least one hundred eighty days per calendar year, but does not include
28 food not separately offered for sale, including unsolicited requests
29 for product customization, alcoholic beverages the labeling of which is
30 not regulated by the United States food and drug administration, or
31 packaged foods otherwise subject to the nutrition requirements of the
32 nutrition labeling and education act of 1990.

33 (6) "Reasonable basis" means any way of determining nutrition
34 information for a standard food item made without a malicious intent to
35 deceive, including but not limited to, nutrient databases, cookbooks,
36 laboratory analyses, and other reasonable means. A "reasonable basis"
37 determination of nutrition information is required only once per

1 standard food item, provided that portion size is reasonably consistent
2 and the food service establishment follows a standardized recipe and
3 trains to a consistent method of preparation.

4 NEW SECTION. **Sec. 3.** (1)(a) A covered food facility shall make
5 the following nutrition information available to consumers for each
6 standard food item:

- 7 (i) The total number of calories;
- 8 (ii) The amount of total fat, saturated fat, and trans fat;
- 9 (iii) The amount of carbohydrates; and
- 10 (iv) The amount of sodium.

11 (b) The nutrition information shall be determined with a reasonable
12 basis and disclosed on a per item basis in accordance with the United
13 States food and drug administration's requirements for disclosure under
14 the nutrition labeling and education act of 1990.

15 (2)(a) Except as provided in subsection (3) of this section, a
16 covered food facility shall disclose in written form the information
17 listed in subsection (1) of this section, within the facility, by one
18 or more methods, including, but not limited to:

- 19 (i) Menu or other writing at the point of sale;
- 20 (ii) Standard food item packaging;
- 21 (iii) Counter or table tent;
- 22 (iv) Tray liner;
- 23 (v) Poster;
- 24 (vi) Brochure or other printed material; or
- 25 (vii) Electronic medium, including electronic kiosk.

26 (b) When nutrition information is disclosed by means other than a
27 menu or other writing at the point of sale, the covered food facility
28 shall conspicuously display at or near the point of sale a notice that
29 reads: "NUTRITION INFORMATION IS AVAILABLE UPON REQUEST" or other
30 similar referral statement that discloses the availability of the
31 nutrition information.

32 (3) If a covered food facility provides consumers a point of sale
33 in an outdoor area drive-thru or drive-in auto stall, then that covered
34 food facility shall conspicuously display at or near the point of sale
35 the nutritional information required in subsection (1) of this section
36 or shall conspicuously display at or near the point of sale a notice
37 that reads: "NUTRITION INFORMATION IS AVAILABLE UPON REQUEST" or other

1 similar referral statement that discloses the availability of the
2 nutrition information by at least one of the methods listed in
3 subsection (2) of this section.

4 (4) A covered food facility is exempt from providing the nutrition
5 information required by subsections (1) and (2) of this section if it
6 determines with a reasonable basis the total number of calories per
7 standard food item and provides that information in a size and typeface
8 similar to other information on the printed menu or on the menu board
9 next to each standard menu item on the printed menu or menu board.

10 NEW SECTION. **Sec. 4.** Any food facility may voluntarily provide
11 under this chapter nutrition information for a standard food item,
12 provided that all of the nutrients required by section 3(1) of this act
13 are determined with a reasonable basis and disclosed in written form
14 within the facility.

15 NEW SECTION. **Sec. 5.** Notwithstanding any other provision of law,
16 this chapter is the exclusive authority regarding nutrition
17 information, including but not limited to, means of determination and
18 dissemination of nutrition information provided under section 3 or 4 of
19 this act. If a food facility, not covered under section 2 of this act,
20 elects to provide the nutritional information required under section 3
21 of this act in a manner listed under section 3 of this act, then the
22 state has the same jurisdiction with regard to nutrition information in
23 that food facility.

24 NEW SECTION. **Sec. 6.** Local boards of health or health districts
25 are preempted from adopting an ordinance, rule, policy, regulation, or
26 permit requirement regarding mandatory menu labeling or nutritional
27 information disclosure at restaurants as shown in section 3 of this
28 act. Any ordinance, rule, policy, regulation, or permit requirement
29 regarding mandatory menu labeling or nutritional information disclosure
30 at restaurants adopted prior to the effective date of this section is
31 null and void and is superseded by the requirements of section 3 of
32 this act. However, this chapter does not prohibit a local board of
33 health or health district from adopting or encouraging voluntary
34 measures regarding menu labeling or nutritional information disclosure
35 at restaurants.

1 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
2 a new chapter in Title 19 RCW.

3 NEW SECTION. **Sec. 8.** This act expires January 1, 2013.

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