

1 S.171

2 Introduced by Senator Mullin

3 Referred to Committee on Health and Welfare

4 Date: January 5, 2010

5 Subject: Health; nutrition; labeling; chain restaurants

6 Statement of purpose: This bill proposes to require chain restaurants to post
7 nutritional information for all food sold.

8 An act relating to nutritional labeling of food by chain restaurants

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 ~~Sec. 1. STATUTORY REVISION~~

11 ~~Sections 4051 through 4071 of Title 18 shall be recodified as subchapter 1~~
12 ~~(labeling for marketing and sale) of chapter 82 of Title 18.~~

13 Sec. 2. 18 V.S.A. chapter 82, subchapter 2 is added to read:

14 Subchapter 2. Food Chain Menu Labeling

15 § 4091. DEFINITIONS

16 As used in this chapter:

17 (1) "Food chain" means any restaurant which is identified as operating
18 10 or more establishments nationally utilizing the same trade name, regardless
19 of the type of ownership of the individual restaurant enterprises, and offering
20 ~~predominantly the same types of meals, foods, or menus.~~

1 ~~(2) "Nutritional information" means the total number of calories, grams~~
2 ~~of saturated fat, grams of carbohydrates, grams of protein, and milligrams of~~
3 ~~sodium per serving.~~

4 ~~(3) "Restaurant" means an establishment from which food or beverage~~
5 ~~of the type for immediate consumption is sold, whether such food is consumed~~
6 ~~on the premises or not.~~

7 ~~(A) "Restaurant" shall not include any school, hospital, nursing~~
8 ~~home, assisted living facility, or any restaurant-like facility operated by or in~~
9 ~~connection with a school, hospital, medical clinic, nursing home, or assisted~~
10 ~~living facility providing food for students, patients, visitors, and their families.~~

11 ~~(B) "Restaurant" shall not include food sold on the premises of a~~
12 ~~retail grocery or convenience store by means of a counter with no seating at~~
13 ~~which prepared food is offered only for self-service.~~

14 ~~(4) "Standard menu item" means any menu item listed on the menu or~~
15 ~~menu board by the restaurant or food chain. "Standard menu items" do not~~
16 ~~include temporary menu items, such as specials that appear on the menu for~~
17 ~~fewer than 30 days per year; custom orders; and condiments and other items~~
18 ~~placed on the table or counter for general use without additional charge.~~

19 § 4092. MENU LABELING

20 (a) All food chains operating in the state of Vermont shall be required to
21 list next to each standard menu item, in a size and typeface similar to other

1 ~~information about the standard menu item, nutritional information as usually~~
2 ~~prepared and offered for sale. The bottom of each page of a menu must~~
3 ~~include, in a clear and conspicuous manner, the following statement:~~
4 ~~“Recommended limits for a 2,000 calorie daily diet are 20 g of saturated fat~~
5 ~~and 2,300 mg of sodium. Saturated fat numbers include trans fat.”~~

6 ~~(b) If the food chain uses only a menu board, it may limit the nutritional~~
7 ~~information listed on the menu board to the total number of calories per~~
8 ~~serving per standard menu item in a size and typeface similar to other~~
9 ~~information about the standard menu item. Additional information about the~~
10 ~~standard menu item shall be made available to customers in writing upon~~
11 ~~request. Menu boards must include, in a clear and conspicuous manner, the~~
12 ~~following statement: “A 2,000-calorie daily diet is used as the basis for~~
13 ~~general nutrition advice; however, individual calorie needs may vary.”~~

14 ~~(c) If a food chain provides a salad bar, buffet line, cafeteria service, or~~
15 ~~similar self-serve arrangement, it may limit the nutritional information~~
16 ~~provided for standard menu items offered in such an arrangement to the total~~
17 ~~number of calories per standard serving per standard menu item in a size and~~
18 ~~typeface that is prominent and legible from where customers are choosing~~
19 ~~those items. Additional information about the standard menu item shall be~~
20 ~~made available to customers in writing upon request.~~

1 ~~(d) Nothing in this subchapter precludes food chains from providing~~
2 ~~additional nutrition information voluntarily.~~

3 § 4093. NUTRIENT ANALYSIS

4 (a) For the purposes of this subchapter, restaurants and similar retail food
5 establishments shall obtain the nutrient analysis required by this subchapter
6 using analytic methods and express nutrient content in a manner consistent
7 with the Uniform Food, Drug, and Cosmetic Act and implementing rules.

8 (b) If a standard menu item comes in different flavors and varieties and is
9 listed as a single standard menu item, the nutritional information required by
10 section 4092 of this title shall be the median value for calories or other
11 nutrients for all flavors or varieties if the values for all flavors or varieties are
12 within 20 percent of the median. If the values are not within 20 percent of the
13 median, the range of values for all the flavors or varieties of that standard
14 menu item shall be listed from the lowest to the highest value. If a standard
15 menu item that comes in different varieties is on display with a name placard
16 or similar signage, the calories per serving as offered for sale shall be listed on
17 the placard along with the name. Complete nutritional information for each
18 individual flavor or variety of the standard menu item shall be available in
19 writing from the food chain in an easily accessible format. The food chain
20 shall alert customers to the availability of written nutritional information in a
21 clear and conspicuous manner.

§ 4094. RULES

The department of health shall adopt rules to implement the provisions of this subchapter within 12 months of enactment. The rules shall provide that the required information be conveyed to the public in a manner that enables the public to observe readily and comprehend such information and to understand its relative significance in the context of a total daily diet.

§ 4095. ENFORCEMENT; PENALTY

(a) The commissioner of health or duly authorized agents or employees who inspect restaurants and food establishments on behalf of the department of health shall be required to determine that the nutrition information required under this subchapter is listed on the menu or menu board, and that any additional required information is available for customers upon request.

(b) A violation of this subchapter or the rules adopted pursuant to it is punishable by a fine of up to \$100.00 for a first violation and up to \$500.00 for each subsequent violation.

Sec. 1. STATUTORY REVISION

18 V.S.A. §§ 4051–4071 shall be recodified as subchapter 1 (labeling for marketing and sale) of chapter 82 of Title 18.

Sec. 2. 18 V.S.A. chapter 82, subchapter 2 is added to read:

Subchapter 2. Menu Labeling

§ 4086. MENUS AND MENU BOARDS

(a) Except as otherwise provided in 4091 of this title, in the case of food that is a standard menu item that is offered for sale in a restaurant or similar retail food establishment that is part of a chain with 20 or more locations doing business under the same name, regardless of the type of ownership of the

locations and offering for sale substantially the same menu items, the restaurant or similar retail food establishment shall disclose the information described in subsection (b) of this section.

(b) Except as otherwise provided in section 4091 of this title, the restaurant or similar retail food establishment shall disclose in a clear and conspicuous manner:

(1) On a menu listing an item for sale:

(A) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(B) a succinct statement concerning suggested daily caloric intake, as specified by federal regulation or, in the absence of an applicable federal regulation, by the commissioner of health by rule, posted prominently on the menu and designed to enable the public to understand, in the context of a total daily diet, the significance of the caloric information that is provided on the menu.

(2) On a menu board, including a drive-through menu board:

(A) in a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, the number of calories contained in the standard menu item, as usually prepared and offered for sale; and

(B) a succinct statement concerning suggested daily caloric intake, as specified by federal regulation or, in the absence of an applicable federal regulation, by the commissioner of health by rule, posted prominently on the menu board, designed to enable the public to understand, in the context of a total daily diet, the significance of the nutrition information that is provided on the menu board.

(3)(A) In a written form, available on the premises of the restaurant or similar retail establishment and to the consumer upon request, the following nutrition information:

(i) the total number of calories in each serving size or other unit of measure of the food that are:

(I) derived from any source; and

(I) derived from the total fat; and

(ii) the amount of each of the following nutrients: Total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex

carbohydrates, sugars, dietary fiber, and total protein contained in each serving size or other unit of measure;

(B) To the extent that federal statutes or regulations require disclosure of different or additional nutrition information, a restaurant or similar retail establishment that follows the federal law shall be deemed to be in compliance with the requirements of this subdivision (3).

(4) On the menu or menu board, a prominent, clear, and conspicuous statement regarding the availability of the information described in subdivision (3) of this subsection.

§ 4087. SELF-SERVICE FOOD AND FOOD ON DISPLAY

Except as otherwise provided in section 4091 of this title, in the case of food sold at a salad bar, buffet line, cafeteria line, or similar self-service facility, and for self-service beverages or food that is on display and that is visible to customers, a restaurant or similar retail food establishment shall place adjacent to each food offered a sign that lists calories per displayed food item or per serving.

§ 4088. REASONABLE BASIS

For the purposes of this chapter, a restaurant or similar retail food establishment shall have a reasonable basis for its nutrient content disclosures, including nutrient databases, cookbooks, laboratory analyses, and other reasonable means, as described in Section 101.10 of Title 21, Code of Federal Regulations, or any successor regulation, or in a related guidance of the United States Food and Drug Administration.

§ 4089. MENU VARIABILITY AND COMBINATION MEALS

Except as otherwise provided by federal law or regulation, the commissioner of health shall establish by rule, pursuant to chapter 25 of Title 3, standards for determining and disclosing the nutrient content for standard menu items that come in different flavors, varieties, or combinations, but which are listed as a single menu item, such as soft drinks, ice cream, pizza, doughnuts, or children's combination meals, through means determined by the commissioner, including ranges, averages, or other methods.

§ 4090. ADDITIONAL INFORMATION

Except as otherwise provided by federal law or regulation, if the commissioner of health determines that a nutrient, other than a nutrient required under subdivision 4086(b)(3) of this title, should be disclosed for the purpose of providing information to assist consumers in maintaining healthy dietary practices, the commissioner may require, by rule, disclosure of such nutrient in the written form required under subdivision 4086(b)(3).

4091. NONAPPLICABILITY TO CERTAIN FOOD

Sections 4086 through 4090, inclusive, of this chapter shall not apply to:

(1) items that are not listed on a menu or menu board, such as condiments and other items placed on the table or counter for general use;

(2) daily specials, temporary menu items appearing on the menu for fewer than 60 days per calendar year, or custom orders;

(3) such other food that is part of a customary market test appearing on the menu for fewer than 90 days, under terms and conditions established by federal law or regulation, if applicable; if not applicable, then under terms and conditions established by the commissioner of health by rule; or

(4) alcoholic beverages.

§ 4092. VOLUNTARY PROVISION OF NUTRITION INFORMATION

(a) An authorized official of any restaurant or similar retail food establishment not subject to the requirements of this chapter may elect to be subject to such requirements by registering biannually the name and address of such restaurant or similar retail food establishment with the Secretary of the U.S. Department of Health and Human Services and the commissioner of health, as specified by the Secretary by regulation and the commissioner by rule.

(b) To the extent allowed by federal law, within 120 days following the effective date of this chapter, the commissioner of health shall engage in rulemaking pursuant to chapter 25 of Title 3 specifying the terms and conditions for implementation of subsection (a) of this section.

(c) Nothing in this section shall be construed to authorize the commissioner of health to require an application, review, or licensing process for any entity to register with the Secretary pursuant to subsection (a) of this section.

§ 4093. RULEMAKING

(a) To the extent permitted under federal law, within one year after the effective date of this chapter, the commissioner of health shall adopt rules pursuant to chapter 25 of Title 3 to carry out the purposes of this chapter.

(b) In adopting rules, the commissioner shall:

(1) consider standardization of recipes and methods of preparation, reasonable variation in serving size and formulation of menu items, space on menus and menu boards, inadvertent human error, training of food service workers, variations in ingredients, and other factors, as the commissioner shall determine;

(2) specify the format and manner of the nutrient content disclosure requirements under this chapter; and

(3) reasonably align the rules, to the extent practicable, with federal and other states' laws on menu labeling.

(c) No later than January 15, 2011, the commissioner shall report to the house committee on human services and the senate committee on health and welfare a report on the commissioner's progress toward adopting rules under this section.

§ 4094. DEFINITIONS

To the extent not inconsistent with federal law, as used in this chapter:

(1) "Menu" or "menu board" means the primary writing of the restaurant or other similar retail food establishment from which a consumer makes an order selection.

(2) "Restaurant" or "other similar retail food establishment" means an establishment from which food or beverage of the type for immediate consumption is sold, whether such food is consumed on the premises or not.

(A) "Restaurant" shall not include any school, hospital, nursing home, assisted living facility, or any restaurant-like facility operated by or in connection with a school, hospital, medical clinic, nursing home, or assisted living facility providing food for students, patients, visitors, and their families.

(B) "Restaurant" shall not include grocery stores, except for separately owned food facilities to which this section otherwise applies that are located in a grocery store. For purposes of this subdivision, "grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, and fresh meats, fish, and poultry. The term "grocery store" includes convenience stores.

(C) "Restaurant" shall not include any fraternal organization or any organization whose members consist solely of veterans of the armed forces of the United States.

(3) "Standard menu item" means any item listed on a menu or menu board by a restaurant, but excluding alcoholic beverages.

§ 4095. ENFORCEMENT; LIABILITY; PENALTY

(a) The commissioner of health or duly authorized agents or employees who inspect restaurants and food establishments on behalf of the department of health shall be required to determine that the nutrition information required under this subchapter is listed on the menu or menu board, and that any additional required information is available for customers upon request. If,

upon inspection, the required information is not clearly visible on a menu or menu board or the additional required information is not available upon request, the commissioner or inspector shall note such fact on the inspection report and cause a corresponding reduction in points from the restaurant's or other food establishment's rating score.

(b) Nothing in this section shall be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state or federal law or to limit any claim, right of action, or civil liability that otherwise exists under state or federal law.

(c) No private right of action shall arise from this subchapter. The sole enforcement authority for this subchapter shall be the state of Vermont.

§ 4096. RELATION TO OTHER LAWS

To the extent permitted by federal law, nothing in this chapter shall be construed to restrict the ability of cities or towns to impose labeling requirements in excess of those required by this chapter.