

SENATE BILL 2314

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 14 and Title 53, Chapter 8, relative to healthful menu choices.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 14, is amended by adding the language in Section 2-10 of this Act as a new Part 8.

SECTION 2. This part shall be known and may be cited as the Tennessee Healthful Menu Act.

SECTION 3. The General Assembly finds all of the following:

(a) Research continues to reveal that the strong link between diet and health and diet-related diseases starts early in life;

(b) Increased caloric intake is a key factor contributing to the alarming increase in obesity in the United States. Obesity increases the risk of diabetes, heart disease, stroke and other health problems;

(c) Excess saturated fat intake is a major risk factor for heart disease, which is the leading cause of death for men and women in the United States. Heart disease is also a leading cause of disability among working adults, and its impact in the U.S. economy is significant in health care expenditures and lost productivity;

(d) Over the past two decades, there has been a significant increase in the number of meals prepared and eaten outside the home;

(e) Studies link eating outside the home with obesity and higher caloric intake. Food from restaurants and other food service establishments is generally higher in calories and saturated fat and lower in nutrients than home-prepared food;

(f) While nutrition labeling is currently required on most packaged foods, such information is required only for restaurant foods for which nutrient content or health claims are made;

(g) Research shows that people make more healthful choices when restaurants provide point-of-purchase nutritional information; and

(h) It is difficult for consumers to limit their caloric intake at restaurants given the limited availability of nutritional information.

SECTION 3. As used in this part, unless the context otherwise requires:

(a) "Artificial trans fat" means vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil;

(b) "Covered food service establishment" means a food service establishment located within the state of Tennessee that is one of a group of twenty (20) or more such establishments, whether or not all are located within Tennessee, that operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name and offer for sale the same menu items, in servings that are standardized for portion size and content;

(c) "Food item tag" means a label or tag that identifies any food item displayed for sale at a covered food service establishment;

(d) "Food service establishment" means a food service establishment as defined in §68-14-302 6(B);

(e) "Menu" means a printed list or pictorial display of a food item or items, and their price(s) that are available for sale from a covered food service establishment, and shall include menu boards and menus distributed or provided outside of the establishment;

(f) "Menu board" means any list or pictorial display of a food item or items and their price(s) posted in and visible within a food service establishment or outside of a covered food service establishment for the purpose of ordering from a drive-through window;

(g) "Menu item" means any individual food item, or combination of food items, listed or displayed on a menu board or menu that is sold by a covered food service establishment; and

(h) "Standard menu item" means all menu items that are served in portions the size and content of which are standardized at a covered food service establishment. Standard menu item shall not include items that are listed on a menu or menu board for less than ninety (90) days in any calendar year. Standard menu items shall not include condiments and other items placed on the table or counter, or in a take-out package, for general use and without charge.

SECTION 4. A covered food service establishment shall disclose, for all standard menu items, in a clear and conspicuous manner, in a font size at least as prominent, in size and appearance, as that used to post either the name or the price of the menu item and prior to the point at which the consumer places an order, the total number calories per serving as usually prepared and offered for sale.

(a) The number of calories shall be disclosed by one of the following means:

(1) on the menu board;

(2) on a food tag;

(3) in the menu; or

(4) in an insert that accompanies the menu and is printed in the same font size as the menu.

(b) Calorie content values (in kcals) required by this section shall be calculated based upon a verifiable analysis of the menu item in accordance with 21 CFR § 101.9(c)(1)(i) as it may be amended from time to time, and shall be rounded to the nearest ten (10) calories for calorie content values above fifty (50) calories and to the nearest five (5) calories for calorie content values 50 calories and below.

(c) When a food item is displayed for sale with a food item tag, such food item tag shall include the calorie content value for that food item in a font size and format at least as prominent as the font size of the name of the food item.

(d) Covered food service establishments shall not be required to display calorie content values for menu items offered in different flavors and varieties, including, but not limited to, beverages, ice cream, pizza and doughnuts, for each flavor and/or variety provided that the menu or menu board lists a range of minimum and maximum numbers of calories for all flavors and varieties of each item offered for sale, and further provided that the range need not be displayed if calorie content information is included on the food item tag identifying each flavor or variety of the food item displayed for sale, in accordance with subsection (c).

(e) For combinations of different food items listed or pictured as a single menu item, the covered food service establishment shall list the range of calorie content values showing the minimum to maximum numbers of calories for all combinations of that menu item on menu boards and menus. If there is only one possible calorie total for the combination, then that total shall be listed on menu boards and menus.

SECTION 5. Additional nutrition information shall be located on the premises of the covered establishment, in writing, and available to the consumer upon request prior to the point at which the consumer places an order. A menu, menu board or other writing shall bear a

statement directing the consumer to the availability of such additional information. For each standard menu item, that information shall include:

(a) the total number of calories

(1) derived from any source; and

(2) derived from the total of fat

(b) the amount of the following nutrients: Total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and total protein.

SECTION 6. A food service establishment which is not a covered food service establishment under Section 3(b) may provide nutrition information for a standard menu item by providing nutrition information for all of the nutrients required by Sections 6(a) and 6(b) in written form on the premises of the food service establishment.

SECTION 7. Each food service establishment, upon the renewal of its permit pursuant to § 68-14-306, shall notify the department as to whether it is a covered food service establishment within the meaning of Section (2)(b) of this part.

SECTION 8. A covered food service establishment which knowingly fails to comply with any provision of this part shall be subject to the following:

(a) For a first violation in any twelve-month period, a written warning;

(b) For a second violation in any twelve-month period, a civil penalty of one hundred (\$100) dollars; and

(c) For a third or subsequent violation in any twelve month period, a civil penalty of five hundred (\$500) dollars.

Each day on which a knowing violation of this part occurs shall be a separate and distinct violation.

SECTION 9. The commissioner of health is authorized to promulgate rules and regulations, including public necessity rules, to effectuate this part.

SECTION 10. In the event of the enactment into law of federal legislation which preempts the state on the issue of caloric and/or nutritional labeling, Sections 4 through 6 of this Part shall be null and void. The invalidity or preemption of those provisions of this Part shall not affect the validity of any other provision.

SECTION 11. Tennessee Code Annotated, Title 53, Chapter 8, Part 2, is amended by adding the following language as a new section:

§ 53-8 -223. All food establishments subject to this Part shall also be subject to the Tennessee Healthful Menu Act, Title 68, Chapter 14, Part 8. The commissioner of agriculture shall cause that act to be enforced in the same manner and pursuant to the same regulations as it is enforced by the Tennessee department of health.

SECTION 12. For purposes of rulemaking, this Act shall become effective upon becoming law. For all other purposes, this Act shall become effective on January 1, 2010, the public welfare requiring it.