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Public Law
124th Legislature
First Regular Session

Chapter 395
H.P. 878 - L.D. 1259

An Act To Increase Access to Nutrition Information

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §2491, sub-§2-A is enacted to read:

2-A. Calories per serving. "Calories per serving" means the caloric information for a food or beverage item being offered for consumption by one person, as usually prepared and as offered for sale on the menu, menu board or food display tag.

Sec. 2. 22 MRSA §2491, sub-§2-B is enacted to read:

2-B. Chain restaurant. "Chain restaurant" means an eating establishment that does business under the same trade name in 20 or more locations, at least one of which is located in the State, that offers predominantly the same type of meals, food, beverages or menus, regardless of the type of ownership of an individual location. "Chain restaurant" does not include a grocery store. "Chain restaurant" does not include a hotel or motel that provides a separately owned eating establishment but does include the separately owned eating establishment if the eating establishment meets the criteria of this subsection. "Chain restaurant" does not include a movie theater.

Sec. 3. 22 MRSA §2491, sub-§7-A is enacted to read:

7-A. Food display tag. "Food display tag" means a written or printed description of a food or beverage item, such as a label or placard, placed in the vicinity of the food or beverage item identifying the type or price of the food or beverage.

Sec. 4. 22 MRSA §2491, sub-§7-B is enacted to read:

7-B. Grocery store. "Grocery store" means a store primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry. "Grocery store" includes a convenience store, but does not include a separately owned eating establishment located within a grocery store.

Sec. 5. 22 MRSA §2491, sub-§7-C is enacted to read:

7-C. Menu. "Menu" means a written or printed list describing food or beverage items offered for sale at an eating establishment that may be distributed on or off the premises, but does not include a menu board.

Sec. 6. 22 MRSA §2491, sub-§7-D is enacted to read:

7-D. Menu board. "Menu board" means a list of food or beverage items offered for sale at an eating establishment that is posted in a public area for viewing by multiple customers, including a backlit marquee sign, chalkboard or drive-through menu sign.

Sec. 7. 22 MRSA §2500-A is enacted to read:

§ 2500-A. Menu labeling for chain restaurants

The provisions of this section apply to chain restaurants that are located in the State.

1. Caloric information. A chain restaurant shall state on a food display tag, menu or menu board the total amount of calories per serving of each food and beverage item listed for sale on the food display tag, menu or menu board. The statement of calories required in this subsection must be:

A. Clear and conspicuous;

B. Adjacent to or in close proximity and clearly associated with the item to which the statement refers;

C. Printed in a font and format at least as prominent in size and appearance as the name or the price of the item to which the statement refers; and

D. As it pertains to beer, wine and spirits must also meet the requirements of subsection 6.

2. Determining caloric content. The caloric content information required by subsection 1 must be determined on a reasonable basis and may be determined only once per standard menu item if the eating establishment follows a standardized recipe, trains to a consistent method of preparation and maintains a reasonably consistent portion size. For the purposes of this subsection a reasonable basis for determining caloric content means use of a recognized method for determining calorie content, including, but not limited to, nutrient databases, laboratory testing and other reliable methods of analysis. Caloric content may be rounded to the nearest 10 calories for caloric content above 50 calories and to the nearest 5 calories for caloric content of 50 calories and below.

3. Required statement. A menu or menu board or written nutrition information provided to a customer by a chain restaurant must contain the following statement in a clear and conspicuous manner and in a prominent location: "To maintain a healthy weight, a typical adult should consume approximately 2,000 calories per day; however, individual calorie needs may vary." A menu, menu board or written nutrition information provided to a customer by a chain restaurant may include the following statement or a statement similar to the following: "Nutrition information is based upon standard recipes and product formulations; however, modest variations may occur due to differences in preparation, serving sizes, ingredients or special orders."

4. Different varieties. For a food or beverage item that is listed as a single item but includes more than one variety, the caloric information required under subsection 1 for that item must be the median value of calories for all varieties offered for that item if the caloric information for each variety of the item is within 20% of the median for that item. If the caloric information required by subsection 1 for a variety of a food or beverage item is not within 20% of the median for that item, then the caloric

information must be stated for each variety of that item. If a food display tag is used to identify a specific variety of a food or beverage item, the caloric information required by subsection 1 must be for that specific variety of the item.

5. Exceptions. A chain restaurant is not required to provide information pursuant to subsection 1 for:

- A. Food items served at a self-service salad bar or buffet;
- B. An item offered for a limited time that appears on a menu, menu board or food display tag for less than 90 days per year;
- C. A condiment or other item offered to a customer for general use without charge;
- D. An item sold to a customer in a manufacturer's original sealed package that contains nutrition information as required by federal law; or
- E. A custom order for a food or beverage item that does not appear on a menu, menu board or food display tag.

6. Alcoholic beverages. A chain restaurant shall state on a food display tag, menu or menu board the average caloric value for beers, wines and spirits as established by the United States Department of Agriculture, Agriculture Research Service in the National Nutrient Database for Standard Reference. A food display tag, menu or menu board for beer, wine and spirits may include the following statement: "Signature drinks or liqueurs with added ingredients may contain increased caloric content."

7. Compliance; enforcement. The department or an agent authorized to inspect an eating establishment under section 2499 shall ensure compliance with the provisions of this section but is not required to verify the accuracy of the caloric information required by this section. Upon request a chain restaurant shall provide to the department documentation of the accuracy of the information required by subsection 1. A violation of this section is a violation of the Maine Unfair Trade Practices Act, enforceable against the owner or franchisee of the eating establishment, except that no private remedies exist under Title 5, section 213. This section may not be construed to create or enhance any claim, right of action or civil liability that did not exist under state law prior to the effective date of this subsection or limit any claim, right of action or civil liability that otherwise exists under state law. No private right of action arises out of this section. The only mechanism for enforcing this section is as provided in this subsection.

8. Uniformity of regulation; preemption. To the extent consistent with federal law, the regulation of disclosure of caloric and nutritional information is a matter of statewide concern, and state law governing that disclosure occupies the whole field of regulation regarding disclosure by chain restaurants of nutritional information and requirements regarding the content required to be posted on menus, menu boards and food display tags. A local government may not adopt an ordinance regulating the dissemination of caloric or nutritional information or requiring information to be placed on menus, menu boards or food display tags by a chain restaurant, and any ordinance or regulation that violates this subsection is void and has no force or effect.

Sec. 8. Effective date. This Act takes effect February 1, 2011.

Effective February 1, 2011.