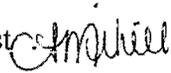


Worksession

MEMORANDUM

October 27, 2009

TO: Health and Human Services Committee

FROM: Amanda M. Mihill, Legislative Analyst 

SUBJECT: **Worksession:** Bill 19-07, Eating and Drinking Establishments – Nutrition Labeling, Resolution to adopt Board of Health Regulation requiring certain eating and drinking establishments to post certain nutrition information on menu boards and menus.

Bill 19-07, Eating and Drinking Establishments – Nutrition Labeling, and the Resolution to adopt a Board of Health Regulation requiring certain eating and drinking establishments to post certain nutrition information on menu boards and menus, sponsored by Councilmembers Leventhal and Trachtenberg, were introduced on July 31, 2007. A public hearing was held on September 18, 2007 at which speakers testified in support and opposition of Bill 19-07 and the Regulation.¹ The Health and Human Services Committee held a general discussion of the topic on June 18, 2007 and held worksessions on Bill 19-07 and the Regulation on September 14 and October 15, 2007. **Additional background information is provided in the September 24 and October 15, 2007 Health and Human Services Committee packets. Copies of these packets are available from Council staff.**

Background

Bill 19-07 as introduced. As introduced, Bill 19-07 would require certain eating and drinking establishments to post certain nutrition information on menu boards and menus. The bill would require an establishment with at least 10 national locations that offer the same type of menu to post the number of calories, grams of fat, and grams of sodium on menus for any standardized menu item. If a restaurant uses a menu board, Bill 19-07 would allow the restaurant to post only calorie information on the menu board, but the restaurant must make available, in writing, the additional information required to be posted on menus. A standardized menu item would be defined as “a food or drink item served in portions for which the size and content are

¹ Although this memorandum refers to Bill 19-07, any references or amendments discussed would also apply to the Board of Health Regulation unless the context indicates otherwise.

standardized.” A standardized menu item would not include a temporary menu item² or items that are placed on counters for general use (e.g., condiment packets). Bill 19-07 would allow restaurants to use a substitute ingredient in a menu item for up to 30 days without replacing a menu or menu board.

As introduced, Bill 19-07 would also require establishments to post a specific statement that identifies applicable Food and Drug Administration-recommended dietary limits. The legislation would also encourage a restaurant to include a statement about standard recipes and product formulation and the effect small variations in preparation have on the nutrition content of those items.

Substantial Committee recommendations to date.

- exclude wine lists from the nutrition labeling requirement;
- exclude “test-market” menu items that appear on the menu for less than 90 cumulative days per calendar year;
- specify that posted nutrition information must be within 20% of the actual nutrition content of a menu item or the margin of error allowed by federal law, whichever is the smallest variation (note that federal law currently has a 20% margin of error);
- specify that the bill is not intended to create a private right of action for civil damages or attorney’s fees;
- clarify that Bill 19-07 does not require nutrition labeling for items that are sold in non-standardized portions (e.g., salad bars, hot bars);
- clarify that single-item lists (e.g., placards on a donut basket in a donut shop) should be treated as menu boards (i.e., calorie information on the placard and other nutrition information in writing on request). Councilmember Berliner did not support this recommendation.

Action in other Jurisdictions. A number of jurisdictions have enacted or implemented menu labeling laws. A chart compiled by the Center for Science in the Public Interest (CSPI) shows the status of menu labeling legislation nationwide (©21). According to information from CSPI, the following locations have implemented menu labeling legislation: New York City and Westchester County, New York; King County, Washington; and Multnomah County, Oregon. The following locations have passed, but not necessarily implemented, similar legislation: Oregon; California; Maine; Massachusetts; Albany, Suffolk, and Ulster Counties, New York; Philadelphia, Pennsylvania; and Davidson County, Tennessee.

In addition, CSPI and the National Restaurant Association both support a bipartisan bill in Congress, which is part of the health care reform debate, to require nutrition labeling at restaurants that are part of a chain with 20 or more locations (see press releases on ©48-50 and a copy of the proposal on ©38-47). The national proposal would require chain restaurants to post the number of calories on the menu/menu board and provide the following nutrition information in writing on request: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total

² A temporary menu item is a food or drink item that “appears on the menu for less than 30 cumulative days per calendar year”.

carbohydrates, complex carbohydrates, sugars, fiber, and protein. A chart comparing provisions of Bill 19-07, the New York City Regulation, and the federal proposal is on ©51-52.

Committee members should note that if the federal proposal passes, state and local governments would be preempted from enforcing certain local nutrition labeling requirements.

Issues for Committee Discussion

1. Should Bill 19-07 be enacted? As noted above, the federal proposal would preempt state and local governments from enforcing certain local nutrition labeling requirements. Council staff continues to work through the proposal to understand the level of preemption in the proposal and will provide Committee members with an update at the worksession.

A central question that the Committee must answer is whether to enact Bill 19-07 given the possibility of federal preemption. On one hand, implementation of the federal proposal may take 1.5-2 years or more after passage of the legislation (including time to develop regulations). Depending on the County's implementation date and how long it takes to develop regulations, consumers might have nutrition information sooner if the Council enacts Bill 19-07. On the other hand, County staff time and resources could be used to implement a law that will be preempted by federal law. Finally, there is the possibility that the federal menu labeling law may not pass.

This is a close call in Council staff's judgment. Council staff believes that providing consumers with nutritional information about the food they may consume is a worthwhile and important objective. One option the Committee could consider is postponing enactment of Bill 19-07 for a short time. If in that specific time frame (for instance, 2 months), the federal legislation does not pass, then the Council could enact Bill 19-07.

2. What information should be provided? Bill 19-07 would require an establishment to list calories, grams of saturated fat, and milligrams of sodium on a menu for each standardized menu item (©6, lines 114-121). For menu boards, Bill 19-07 would allow establishments to limit the posted information to calories and provide saturated fat and sodium information in writing on request for each standardized menu item (©7, lines 139-145). The federal proposal would require an establishment to post the number of calories for an item on a menu and menu board (©39, lines 10-16; ©40, lines 1-6). The proposal would also require the establishment to provide the following information in writing on request: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, fiber, and protein (©40, lines 14-18).

Council staff recommends the Committee amend Bill 19-07 to reflect the information required in the federal proposal. The federal proposal ultimately provides a more complete nutritional profile of the menu items than Bill 19-07 would. The tradeoff with supporting the federal proposal is that Bill 19-07 would require certain information directly on the menu (saturated fat and sodium), whereas the federal proposal would require only the calories directly on the menu (although a statement on the menu indicating the availability of additional information is required under the federal proposal).

If the Committee concurs with Council staff's recommendation, Council staff recommends also amending Bill 19-07 to mirror the federal legislation by requiring a general statement about suggested caloric intake and a statement about the availability of additional nutritional information (©40, lines 7-13, 19-22). Bill 19-07 as amended currently requires a statement about suggested caloric intake (and sodium and saturated fat intake where applicable).

3. When should Bill 19-07 take effect? In its current form, Bill 19-07 would take effect on August 1, 2009. Because this date has already passed, Bill 19-07 must be amended to identify a new effective date. Council staff suggests 1 year from the date of enactment.

4. How should Bill 19-07 apply to grocery stores? This issue remains unresolved from the last Committee worksession. The Committee recommended applying requirements to grocery stores (2-0, Councilmember Berliner abstained), but did not make final recommendations on how the menu labeling requirements should apply. Council staff notes that according to Margo Wootan, CSPI, the federal proposal would apply to grocery stores, but the New York City Regulation would not (Ms. Wootan noted that the New York City Board of Health does not have jurisdiction over grocery stores).

Which sections of a grocery store should comply with Bill 19-07?

As an eating and drinking establishment inspected by the County Department of Health and Human Services, a grocery store would have to comply with Bill 19-07. Because Bill 19-07 in its current form does not specify what sections of the grocery store must comply with the requirements and therefore all sections of the store – including canned food aisles, the freezer section, and the dairy section – would be required to comply with the menu labeling requirements. Because most of the items sold in these sections are already required to comply with the federal Nutrition Labeling and Education Act, Council staff does not recommend requiring all grocery store sections to comply with Bill 19-07.

In Council staff's view, there are typically two sections of grocery stores that serve "ready to eat" food: the deli and the bakery. Therefore, **Council staff recommends amending Bill 19-07 to specify that the bill would only apply to the deli and bakery sections of the grocery store.**

How should grocery stores comply with Bill 19-07?

If the Committee supports Council staff's recommendation above (or a modified version of it), the next question the Committee must answer is which food items in certain sections of the grocery store must have nutrition labeling. There are certainly differences between how the two types of establishments operate. For instance, while many of the dishes served at restaurants are intended to serve one person, many of the "ready-to-eat" food items are sold at a random weight or are otherwise not strictly intended for consumption by one person in one setting (i.e., a loaf of bread or sheet cake). To respond to these issues, Council staff has identified the following options for the Committee's consideration:

A. Do not amend Bill 19-07. If the Committee chooses this option, the nutrition labeling requirement would apply to all food or drink items in the identified sections of the

grocery store. For example, in the bakery, this option would require nutrition labeling for individual muffins and bagels as well as sheet cakes and loaves of bread. In the deli, this would apply to individual sandwiches as well as whole roasted chickens, assuming that these items are standardized.

- B. Amend Bill 19-07 to specify that a grocery store must label food intended to serve a specific number of people.** Menu items in restaurants are typically, though not always, intended to serve a single person. As noted above, there are several items in grocery stores that are intended to serve multiple people. **An additional option, and the one that Council staff recommends, is to require grocery stores to label items that are intended to serve a single person.** For example, in the deli, this would include sandwiches and in the bakery, this would include muffins, doughnuts, and bagels. If the Committee is inclined to choose this option, Council staff recommends the following language:

(f) Grocery stores.

- (1) A grocery store must post the information required in subsection (d) or (e) for any standardized menu item that is:
 - (A) sold or prepared from the grocery store bakery or delicatessen section and not served in the manufacturer's original sealed package;
 - (B) prepared for immediate consumption and made ready by the grocery store to be eaten without substantial delay or additional preparation by the consumer; and
 - (C) intended to serve as an individual portion to be consumed by 1 person.
- (2) For purposes of this subsection, "grocery store" means a store primarily engaged in the retail sale of canned foods, dry goods, fresh fruits and vegetables, and fresh and prepared meats, fish, and poultry, and includes convenience stores.
- (3) A separately owned eating and drinking establishment located in a grocery store that would otherwise have to comply with this Section must still comply with subsection (d) or (e).

- C. Amend Bill 19-07 to exclude grocery stores from nutrition labeling requirements.** Although the Committee affirmed its support for applying Bill 19-07 to grocery stores, an additional option would be to exclude grocery stores from the bill's requirements.

<u>This packet contains:</u>	<u>Circle</u>
Committee Bill 19-07	1
Committee Board of Health Regulation	9
Legislative Request Report	16
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Press Release from the Office of Councilmember Leventhal	19
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Bill No. 19-07
 Concerning: Eating and Drinking
Establishments – Nutrition Labeling
 Revised: 10/27/2009 Draft No. 4
 Introduced: July 31, 2007
 Expires: [[February 28, 2009]]
August 31, 2010
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: _____
 Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Leventhal and Trachtenberg

AN ACT to:

- (1) require certain eating and drinking establishments to post certain nutrition information on menu boards and menus; and
- (2) generally amend County law regarding eating and drinking establishments.

By adding

Montgomery County Code
 Chapter 15, Eating and Drinking Establishments
 Section 15-5A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 15-15A is added as follows:**

2 **15-15A. Nutrition Labeling.**

3 (a) Legislative Findings.

4 (1) Research reveals the strong link between diet and health and that
5 diet-related diseases begin early in life.

6 (2) Increased caloric intake is a key factor contributing to the
7 increase in obesity in the United States. According to the Centers
8 for Disease Control and Prevention, two-thirds of American
9 adults are overweight or obese, and the rates of obesity have
10 tripled in children and teens since 1980. Data from the Maryland
11 Behavioral Risk Factor Surveillance System indicated that 50.8
12 percent of Montgomery County residents were overweight or
13 obese in 2005. According to the National Institutes of Health,
14 obesity increases the risk for diseases such as diabetes,
15 cardiovascular disease (heart disease and stroke), osteoarthritis,
16 sleep disorders, and cancer. According to the Maryland Vital
17 Statistics 2003 Annual Report, heart disease, cancer, stroke, and
18 diabetes accounted for nearly 60 percent of all deaths in
19 Maryland in 2003. The Report cites heart disease, cancer, stroke,
20 and diabetes as the first, second, third, and fifth leading causes of
21 deaths in Maryland in 2003. The United States Department of
22 Health and Human Services cited that in 2000 the economic cost
23 of obesity was \$117 billion in the United States.

24 (3) The National Institutes of Health identified saturated fat as the
25 biggest dietary cause of high low-density lipoprotein cholesterol.
26 High LDL cholesterol levels lead to the build up of cholesterol in
27 arteries; the higher the level of LDL in a person's blood, the

28 greater the risk of heart disease. In the United States, heart
29 disease is the leading cause of death and a leading cause of
30 disability among working adults. The American Heart
31 Association estimated that the economic cost of heart disease and
32 stroke in the United States in 2007 will be \$431.8 billion in health
33 care expenditures and lost productivity. The Maryland
34 Behavioral Risk Factor Surveillance System indicated that nearly
35 34 percent of Maryland adults were diagnosed with high
36 cholesterol in 2003. Overweight or obese adults were more likely
37 to have high cholesterol than normal weight adults. The
38 Maryland Vital Statistics 2003 Report cited heart disease as the
39 leading cause of death in Maryland during 2003, which
40 accounted for over 27 percent of all deaths.

41 (4) The National Institutes of Health identified that excess dietary
42 sodium will contribute to high blood pressure in people who are
43 sensitive to sodium. High blood pressure can lead to congestive
44 heart failure, kidney failure, and stroke. Nearly 1 in 3 American
45 adults have high blood pressure. The Maryland Behavioral Risk
46 Factor Surveillance System indicated that approximately 25
47 percent of Maryland adults were diagnosed with high blood
48 pressure in 2003. As with high cholesterol, obese adults were
49 more likely to have high blood pressure than normal weight
50 adults.

51 (5) Over the past 2 decades, there has been a significant increase in
52 the number of meals prepared and eaten outside of the home. A
53 study in the USDA Agriculture Information Bulletin reported that
54 Americans consume approximately one-third of their calories on

55 food purchased in eating and drinking establishments, and the
56 National Restaurant Association estimated that Americans spend
57 nearly 48 percent of total food dollars on food purchased from
58 eating and drinking establishments. Studies in the USDA
59 Agriculture Information Bulletin, the International Journal of
60 Obesity, the American Journal of Public Health, and the
61 American Journal of Epidemiology link eating out with obesity
62 and higher caloric intake. Studies in the USDA Agriculture
63 Information Bulletin and the American Journal of Epidemiology
64 report that food from eating and drinking establishments is
65 generally higher in calories and saturated fat and lower in
66 nutrients, such as calcium and fiber, than home-prepared foods.

67 (6) The federal Nutrition Labeling and Education Act, in effect since
68 1994, requires nutrition labeling on packaged foods sold in retail
69 stores. Using food labels is associated with healthier diets. The
70 United States Department of Health and Human Services cited
71 that three-quarters of American adults report using food labels on
72 packaged foods, and a report from the Food and Drug
73 Administration cited that 48 percent of people report that the
74 nutrition information on food labels has caused them to change
75 the food product they purchased.

76 ~~[(7)]~~ Nutrition information is required for food served in an eating
77 and drinking establishment only if a nutrient content or health
78 claim is made about the food. It is difficult for consumers to limit
79 caloric intake at eating and drinking establishments because of
80 the limited availability of nutrition information and the practice
81 of serving food in larger-than-standard serving sizes. Studies in

82 the Journal of Marketing and the American Journal of Clinical
 83 Nutrition show that people eat greater quantities of food when
 84 served more. A study in the Journal for Consumer Affairs
 85 indicated that people make healthier choices in eating and
 86 drinking establishments when provided with nutrition
 87 information at the point of purchase.

88 **(b) Definitions.** In this Section, the following words have the meaning
 89 indicated:

90 **(1)** “Menu” means a printed or handwritten list, provided at an eating
 91 and drinking establishment, of one or more food or drink items
 92 available at an eating and drinking establishment. A menu
 93 [[includes a beverage]] does not include a wine list.

94 **(2)** “Standardized Menu Item” or “Menu Item” means a food or drink
 95 item served in portions for which the size and content are
 96 standardized. “Standardized menu item” does not include a food
 97 or drink item that:

98 **(A)** appears on the menu for less than 30 cumulative days per
 99 calendar year; [[or]]

100 **(B)** is placed on a table or counter for general use without
 101 charge[.]; or

102 **(C)** is a test-market menu item that appears on the menu for
 103 less than 90 cumulative days per calendar year.

104 **(3)** “Wine list” means a printed or handwritten list, provided at an
 105 eating and drinking establishment, of the wines available as sold
 106 by the bottle.

107 (c) Applicability. This Section applies to an eating or drinking
 108 establishment that is part of a chain with at least 10 locations
 109 [[nationally]] in the United States and that:

- 110 (1) [[Does]] does business under the same trade name, regardless of
 111 the ownership of individual locations; and
 112 (2) [[Offers]] offers predominantly the same type of menu.

113 (d) Labeling Required.

114 (1) Except as provided in subsection (e), an eating and drinking
 115 establishment must post the following nutrition information,
 116 calculated according to applicable federal law, for any
 117 standardized menu item on each menu next to or beneath the
 118 listing of that item:

- 119 (A) number of calories;
 120 (B) grams of saturated fat; and
 121 (C) milligrams of sodium.

122 (2) An eating and drinking establishment is not required to post
 123 nutrition information for menu items that are not standardized.

124 (3) The posted nutrition information must be within 20% of the
 125 actual nutrition content of a menu item or the margin of error
 126 allowed by federal law, whichever is the smallest variation.

127 ~~[[2]]~~ (4) The required nutrition information must be located next to or
 128 beneath each menu item in a size and typeface ~~[[at least as large~~
 129 as the name of the menu item or its price]] that is clear and
 130 conspicuous.

131 ~~[[3]]~~ (5) Range of Calorie Content Required for Different Flavors and
 132 Varieties. If an eating and drinking establishment offers a
 133 standardized menu item in more than one flavor or variety and

134 lists the item as a single menu item, (such as beverages, ice
135 cream, pizza, or doughnuts), the establishment must post the
136 range of nutrition information for each size offered for sale. The
137 range must include the minimum and maximum values for each
138 flavor or variety of that item.

139 (e) Menu Boards. If an eating and drinking establishment uses a menu
140 board, the establishment may limit the nutrition information posted on
141 the menu board to the number of calories per menu item. However, the
142 establishment must provide the additional nutrition information required
143 in subsection (d)(1) to each customer in writing on request. For
144 purposes of this Section, a single-item list must be treated as a menu
145 board.

146 (f) (1) The bottom of each menu page must contain the following
147 statement:

148 Recommended limits for a 2,000 calorie daily diet are 20
149 grams of saturated fat and 2,300 milligrams of sodium.

150 (2) Each menu board must contain the following statement:

151 A 2,000 calorie daily diet is used as the basis for general
152 nutrition advice; however, individual calorie needs may
153 vary.

154 (3) An eating and drinking establishment may include the following
155 statement on a menu or menu board:

156 The nutrition information provided is based on standard
157 recipes and product formulations. Small variations may
158 occur because of differences in preparation, serving sizes,
159 ingredients, or special orders.

160 (g) Substitute Ingredients. An establishment may use a substitute
 161 ingredient for any menu item for no more than 30 days without
 162 replacing the menu or menu board. However, if an establishment
 163 permanently substitutes an ingredient in any menu item, the
 164 establishment must comply with this Section within 90 days.

165 (h) Enforcement. When an eating and drinking establishment is inspected
 166 under Section 15-3, the Director must verify that required nutrition
 167 information is posted. The Director is not required to verify the
 168 accuracy of the information provided, but may request the establishment
 169 to document its accuracy. If the Director requests the establishment to
 170 document the accuracy of the nutrition information posted, the
 171 establishment must provide verification of the accuracy of the posted
 172 information in 30 days.

173 (i) Nothing in this Section is intended to create a private right of action for
 174 civil damages or attorney's fees.

175 **Sec. 2. Effective Date.**

176 Section 15-15A, inserted by Section 1 of this Act takes effect on[[:

177 (a) August 1, 2008 for any eating and drinking establishment that must
 178 comply with a similar menu labeling requirement in any other
 179 jurisdiction by August 1, 2008; and

180 (b)] August 1, 2009 [[for all other eating and drinking establishments]].

181 *Approved:*

182

183

184 Philip M. Andrews, President, County Council

Date

185 *Approved:*

186

187

Resolution No.: _____
Introduced: July 31, 2007
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH

By: Councilmembers Leventhal and Trachtenberg

Subject: **Board of Health Regulation requiring certain eating and drinking establishments to post certain nutrition information on menu boards and menus.**

Background

1. County Code §2-65, as amended effective August 10, 2000, provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law.
2. Maryland Code Health-General Article §3-202(d) authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On [Date], the County Council held a public hearing on this regulation. As required by law, each municipality in the County and the public were properly notified of this hearing.
4. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that requiring nutrition labeling is necessary to protect the health of patrons of eating and drinking establishments in the County.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, approves the following regulation:

Nutrition labeling in eating and drinking establishments

(a) **Legislative Findings.**

- (1) Research reveals the strong link between diet and health and that diet-related diseases begin early in life.
- (2) Increased caloric intake is a key factor contributing to the increase in obesity in the United States. According to the Centers for Disease Control and Prevention, two-thirds of American adults are overweight or obese, and the rates of obesity have tripled in children and teens since 1980. Data from the Maryland Behavioral Risk Factor Surveillance System indicated that 50.8 percent of Montgomery County residents were overweight or obese in 2005. According to the National Institutes of Health, obesity increases the risk for diseases such as diabetes, cardiovascular disease (heart disease and stroke), osteoarthritis, sleep disorders, and cancer. According to the Maryland Vital Statistics 2003 Annual Report, heart disease, cancer, stroke, and diabetes accounted for nearly 60 percent of all deaths in Maryland in 2003. The Report cites heart disease, cancer, stroke, and diabetes as the first, second, third, and fifth leading causes of deaths in Maryland in 2003. The United States Department of Health and Human Services cited that in 2000 the economic cost of obesity was \$117 billion in the United States.
- (3) The National Institutes of Health identified saturated fat as the biggest dietary cause of high low-density lipoprotein cholesterol. High LDL cholesterol levels lead to the build up of cholesterol in arteries; the higher the level of LDL in a person's blood, the greater the risk of heart disease. In the United States, heart disease is the leading cause of death and a leading cause of disability among working adults. The American Heart Association estimated that the economic cost of heart disease and stroke in the United States in 2007 will be \$431.8 billion in health care expenditures and lost productivity. The Maryland Behavioral Risk Factor Surveillance System indicated that nearly 34 percent of Maryland adults were

diagnosed with high cholesterol in 2003. Overweight or obese adults were more likely to have high cholesterol than normal weight adults. The Maryland Vital Statistics 2003 Report cited heart disease as the leading cause of death in Maryland during 2003, which accounted for over 27 percent of all deaths.

- (4) The National Institutes of Health identified that excess dietary sodium will contribute to high blood pressure in people who are sensitive to sodium. High blood pressure can lead to congestive heart failure, kidney failure, and stroke. Nearly 1 in 3 American adults have high blood pressure. The Maryland Behavioral Risk Factor Surveillance System indicated that approximately 25 percent of Maryland adults were diagnosed with high blood pressure in 2003. As with high cholesterol, obese adults were more likely to have high blood pressure than normal weight adults.
- (5) Over the past 2 decades, there has been a significant increase in the number of meals prepared and eaten outside of the home. A study in the USDA Agriculture Information Bulletin reported that Americans consume approximately one-third of their calories on food purchased in eating and drinking establishments, and the National Restaurant Association estimated that Americans spend nearly 48 percent of total food dollars on food purchased from eating and drinking establishments. Studies in the USDA Agriculture Information Bulletin, the International Journal of Obesity, the American Journal of Public Health, and the American Journal of Epidemiology link eating out with obesity and higher caloric intake. Studies in the USDA Agriculture Information Bulletin and the American Journal of Epidemiology report that food from eating and drinking establishments is generally higher in calories and saturated fat and lower in nutrients, such as calcium and fiber, than home-prepared foods.
- (6) The federal Nutrition Labeling and Education Act, in effect since 1994, requires nutrition labeling on packaged foods sold in retail stores. Using food labels is associated with healthier diets. The United States

Department of Health and Human Services cited that three-quarters of American adults report using food labels on packaged foods, and a report from the Food and Drug Administration cited that 48 percent of people report that the nutrition information on food labels has caused them to change the food product they purchased.

[(7)] Nutrition information is required for food served in an eating and drinking establishment only if a nutrient content or health claim is made about the food. It is difficult for consumers to limit caloric intake at eating and drinking establishments because of the limited availability of nutrition information and the practice of serving food in larger-than-standard serving sizes. Studies in the Journal of Marketing and the American Journal of Clinical Nutrition show that people eat greater quantities of food when served more. A study in the Journal for Consumer Affairs indicated that people make healthier choices in eating and drinking establishments when provided with nutrition information at the point of purchase.

(b) **Definitions.**

- (1) Any term used in this regulation has the same meaning as in Section 15-1 of the County Code if the term is defined in that Section.
- (2) “**Menu**” means a printed or handwritten list, provided at an eating and drinking establishment, of one or more food or drink items available at an eating and drinking establishment. A menu ~~[[includes a beverage]]~~ does not include a wine list.
- (3) “**Standardized Menu Item**” or “**Menu Item**” means a food or drink item served in portions for which the size and content are standardized. “**Standardized menu item**” does not include a food or drink item that:
 - (A) appears on the menu for less than 30 cumulative days per calendar year; ~~[[or]]~~
 - (B) is placed on a table or counter for general use without charge~~[[.]]; or~~

(C) is a test-market menu item that appears on the menu for less than 90 cumulative days per calendar year.

(3) "Wine list" means a printed or handwritten list, provided at an eating and drinking establishment, of the wines available as sold by the bottle.

(c) **Applicability.** This regulation applies to an eating or drinking establishment that is part of a chain with at least 10 locations ~~[[nationally]]~~ in the United States and that:

(1) ~~[[Does]]~~ does business under the same trade name, regardless of the ownership of individual locations; and

(2) ~~[[Offers]]~~ offers predominantly the same type of menu.

(d) **Labeling Required.**

(1) Except as provided in subsection (e), an eating and drinking establishment must post the following nutrition information, calculated according to applicable federal law, for any standardized menu item on each menu next to or beneath the listing of that item:

(A) number of calories;

(B) grams of saturated fat; and

(C) milligrams of sodium.

(2) An eating and drinking establishment is not required to post nutrition information for menu items that are not standardized.

(3) The posted nutrition information must be within 20% of the actual nutrition content of a menu item or the margin of error allowed by federal law, whichever is the smallest variation.

~~[[2]]~~ (4) The required nutrition information must be located next to or beneath each menu item in a size and typeface at least as large as the name of the menu item or its price.

~~[[3]]~~ (5) **Range of Calorie Content Required for Different Flavors and Varieties.** If an eating and drinking establishment offers a standardized menu item in more than one flavor or variety and lists the item as a single menu item, (such as beverages, ice cream, pizza, or doughnuts), the establishment must post the range of nutrition information for each size

offered for sale. The range must include the minimum and maximum values for each flavor or variety of that item.

- (e) **Menu Boards.** If an eating and drinking establishment uses a menu board, the establishment may limit the nutrition information posted on the menu board to the number of calories per menu item. However, the establishment must provide the additional nutrition information required in subsection (d)(1) to each customer in writing on request. For purposes of this Section, a single-item list must be treated as a menu board.
- (f)
 - (1) The bottom of each menu page must contain the following statement:

Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium.
 - (2) Each menu board must contain the following statement:

A 2,000 calorie daily diet is used as the basis for general nutrition advice; however, individual calorie needs may vary.
 - (3) An eating and drinking establishment may include the following statement on a menu or menu board:

The nutrition information provided is based on standard recipes and product formulations. Small variations may occur because of differences in preparation, serving sizes, ingredients, or special orders.
- (g) **Substitute Ingredients.** An establishment may use a substitute ingredient for any menu item for no more than 30 days without replacing the menu or menu board. However, if an establishment permanently substitutes an ingredient in any menu item, the establishment must comply with this Section within 90 days.
- (h) **Enforcement.**
 - (1) Any violation of this regulation is a Class A civil violation. Each day a violation exists is a separate offense.
 - (2) The County Attorney or any affected party may file an action in a court with jurisdiction to enjoin repeated violations of this regulation.

- (3) The Department of Health and Human Services must investigate each complaint alleging a violation of this regulation and take appropriate action, including issuing a civil citation when compliance cannot be obtained otherwise.
 - (4) When an eating and drinking establishment is inspected by the Department of Health and Human Services for compliance with Chapter 15, the Department must verify that required nutrition information is posted. The Director is not required to verify the accuracy of the information provided, but may request the establishment to document its accuracy. If the Director requests the establishment to document the accuracy of the nutrition information posted, the establishment must provide verification of the accuracy of the posted information in 30 days.
 - (5) The Director of Health and Human Services may suspend a license issued under Chapter 15 for up to three days if the Director finds, under the procedures of Section 15-16, that the operator of an eating and drinking establishment has knowingly and repeatedly violated this regulation.
 - (i) Nothing in this Section is intended to create a private right of action for civil damages or attorney's fees.
- [[i)] (i) **Applicability.** This regulation applies Countywide.
- [[j)] (k) **Severability.** If the application of this regulation or any part of it to any facts or circumstances is held invalid, the rest of the regulation and its application to all other facts and circumstances is intended to remain in effect.
- [[k)] (l) **Effective Date.** This regulation takes effect on[[:
- (1) August 1, 2008 for any eating and drinking establishment that must comply with a similar menu labeling requirement in any other jurisdiction by August 1, 2008; and
 - (2)] August 1, 2009 [[for all other eating and drinking establishments]].

This is a correct copy of Council action.

LEGISLATIVE REQUEST REPORT

Bill 19-07, Eating and Drinking Establishments – Nutrition Labeling

DESCRIPTION:	Amends the current law governing eating and drinking establishments to require certain establishments to post the number of calories, grams of fat, and grams of sodium on menus for any standardized menu item. If an establishment uses a menu board, the establishment may post only calorie information on the menu board, but the establishment must provide the additional information in writing on request.
PROBLEM:	<p>Studies show that there is an increase in the number of Montgomery County, Maryland, and United States residents who are overweight or obese, which increases the risk for a variety of diseases, including heart disease, cancer, stroke, and diabetes. Saturated fat is the biggest dietary cause of high LDL cholesterol, which also increases the risk of heart disease. Excess dietary sodium can contribute to high blood pressure, which can lead to congestive heart failure, and stroke.</p> <p>There has been a significant increase in the number of meals prepared and eaten outside of the home. Federal law requires nutrition labeling on packaged foods sold in retail stores, but nutrition information is required for food served in eating and drinking establishments only if a nutrient content or health claim is made about the food. Studies indicate that people make healthier choices in establishments when provided with nutrition information at the point of purchase, but many establishments do not provide this information at the point of purchase.</p>
GOALS AND OBJECTIVES:	To provide County residents with information that will enable them to make more informed choices when eating food prepared away from home.
COORDINATION:	Department of Health and Human Services.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, Legislative Analyst, 240-777-7815.
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class A.



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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

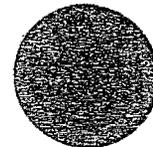
Joseph F. Beach
Director

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MEMORANDUM

September 11, 2007

030460



TO: Marilyn J. Praisner, Council President
FROM: ^{Bevyl Fairbank;} Joseph F. Beach, Director, Office of Management and Budget
SUBJECT: Council Bill 19-07 – Board of Health Regulation requiring certain eating and drinking establishments to post certain nutrition information on boards and menus

The purpose of this memorandum is to transmit a fiscal impact statement to the Council on the subject legislation.

LEGISLATION SUMMARY

The Board of Health regulation applies to an eating and drinking establishment that is part of a chain with at least 10 locations nationally that does business under the same trade name and serves predominately the same type of menu. This regulation requires the posting of the following nutrition information: number of calories, grams of saturated fat, and milligrams of sodium on any standardized menu. If an eating and drinking establishment uses a menu board, the establishment may limit the nutrition information posted on the menu board to the number of calories per menu item. However the establishment must provide the additional nutrition information on grams of saturated, and milligrams of sodium to each customer in writing on request. The bottom of each menu page must contain the following statement: Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium. Each menu board must contain the following statement: A 2,000 calorie diet is used as the basis for general nutrition advice, however, individual calorie need may vary.

FISCAL SUMMARY

Due to the minimal impact (.5WY and \$1,000 Operating Expense) of this bill, DHHS is not presently requesting positions or funds to implement this program. However, this regulation will result in an additional 2.8 % reduction in the mandated completion rate for routine food service inspections. Currently, Licensure and Regulatory Services (L&R) is only able to complete 80%-85% of its mandated Food Service Facility inspections.

To keep the workload impact to a minimum, initial and routine menu labeling inspections would be conducted in conjunction with routine food service inspections. In addition, an ongoing annual cost of \$1,000 would be needed to develop and distribute nutrition information requirements to certain food service facilities. The implementation phase would also require an estimated 600 work hours during the first year, which will result in short term impacts on other program areas L&R will absorb, including review and special projects outside of the routine inspection programs.

Office of the Director

The Menu Labeling Program will consist of developing enforcement interpretations, policies and guidelines; developing inspection procedures and inspection forms; providing a training program for Environmental Health Specialists; creation of a data base for tracking certain food service facilities; development of nutrition information for distribution to certain food service facilities; and a Menu Labeling review at the time plans and applications are submitted for review and approval. The Menu Labeling regulation will necessitate conducting approximately 725-750 initial inspections and 900-950 routine inspections the first year. In the subsequent years, 1650-1700 inspections would be conducted annually. This number will adjust as food service facilities meet the criteria for inclusion.

The following contributed to and concurred with this analysis: Richard Helfrich, Deputy Health Officer, DHHS; Jon Munley, Program Manager, Licensure and Regulatory Services, DHHS; Bonnie Leiter, Budget Manager, DHHS; and Kim Mayo, Senior Management and Budget Specialist, OMB.

jfb:km

cc: Timothy L. Firestine, CAO
Uma Ahluwalia, Director, Department of Health and Human Services
Dr. Ulder Tillman, Chief, Public Health Services, Department of Health and Human Services
Brady Goldsmith, OMB



Montgomery County Council

From the Office of Councilmember George Leventhal

July 31, 2007

Contact:

Walt Harris, Office of Council George Leventhal: 240-777-7945

Jason Shedlock, Office of Councilmember Phil Mendelson: 202-724-8779

MEDIA ADVISORY

Montgomery Councilmember Leventhal, D.C. Councilmember Mendelson Support Nutritional Labels for Restaurant Menus

*Rare Joint News Conference Featuring Montgomery, District
Legislators Set for Thursday, Aug. 2, at 10:30 a.m.*

ROCKVILLE, July 31, 2007—Montgomery County Councilmember George Leventhal and District of Columbia Councilmember Phil Mendelson will combine efforts in a rare joint news conference featuring members of the two neighboring Washington metropolitan area jurisdictions on Thursday, Aug. 2, to draw attention to their respective proposals to require chain restaurants to include certain nutritional information on menus and menu boards.

The news conference will be held at 10:30 a.m. near a McDonald's restaurant at 5300 Wisconsin Avenue NW, on the corner of Wisconsin and Western avenues in the District. The restaurant is located near by the Friendship Heights Metro Station on the Red Line.

On Tuesday, July 31, Councilmember Leventhal introduced a bill before the Montgomery County Council that would require a restaurant that is part of a chain of 10 or more national locations that offer the same type of menu to post the number of calories, grams of fat and grams of sodium on menus for any standardized menu item. Councilmember Duchy Trachtenberg is a co-sponsor of the bill.

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Councilmember Mendelson previously introduced a similar measure before the D.C. Council.

The Center for Science in the Public Interest (CSPI) has advocated for legislation that requires restaurants to provide nutritional information. CSPI asserts that providing this information will allow consumers to make informed choices when dining in restaurants.

“Among the most important functions of government is to do whatever possible to protect the health and safety of our residents,” said Councilmember Leventhal. “Heart disease is the No. 1 killer of Marylanders and we think that our residents might like to be better informed about what they are eating in chain restaurants. By making this a region-wide program, we can help protect residents when they enter a chain restaurant regardless of what jurisdiction in which it is located.”

Councilmember Mendelson said he agrees that the program is important, and so is the need to have it implemented in jurisdictions throughout the metropolitan area.

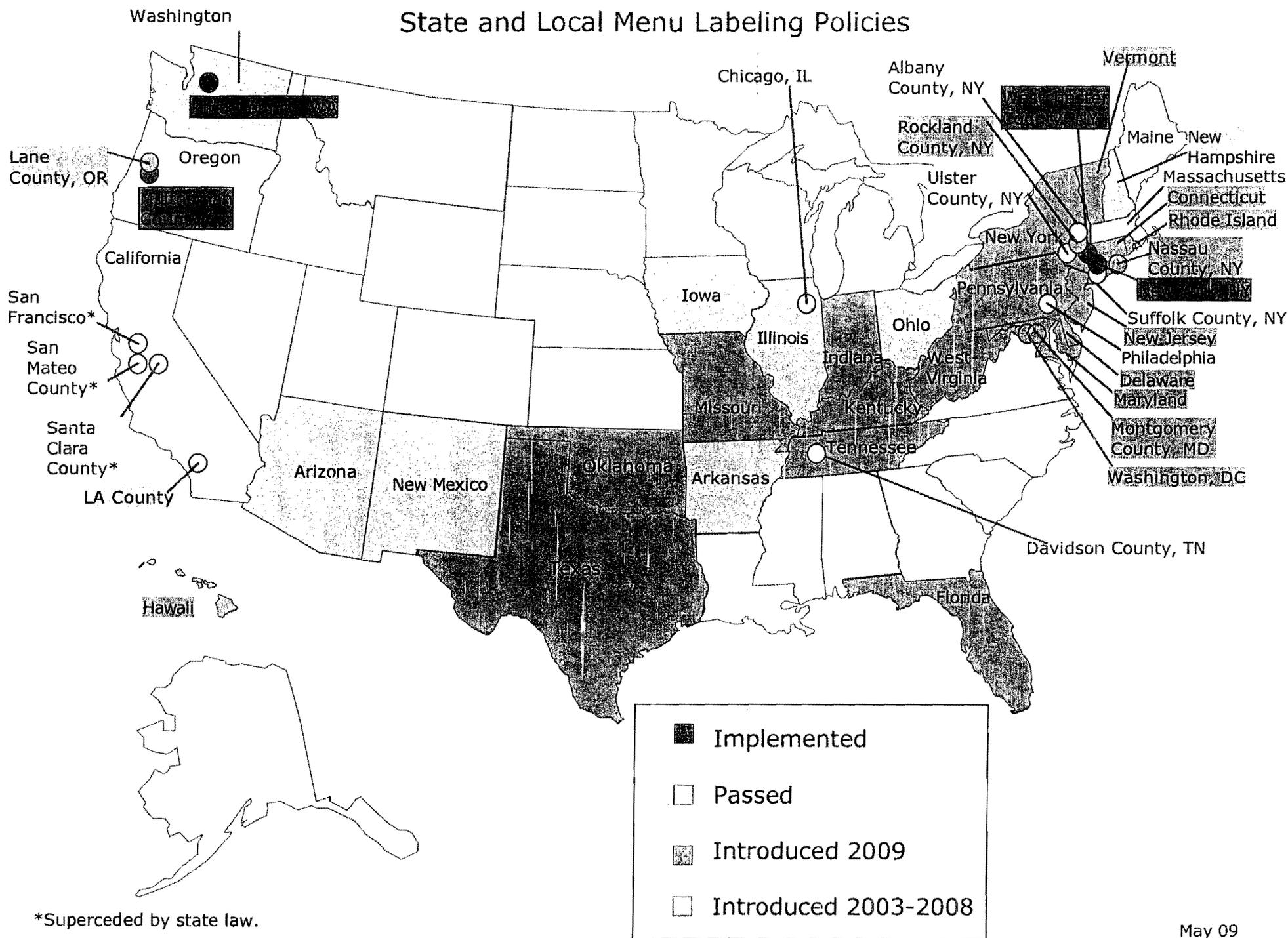
“Progressive jurisdictions across the country are acknowledging the importance of menu labeling as a tool to combat obesity, diabetes and other diet-related diseases,” said Councilmember Mendelson. “I’m excited to join with our neighbors in Montgomery County to advocate for legislation that would provide consumers the information they need to make informed choices when they dine out.”

If passed, the legislation introduced by Councilmember Leventhal would go in effect on Aug. 1, 2008. A public hearing on the proposal is scheduled for Sept. 18. Councilmember Mendelson introduced similar legislation in the District in March of this year, and the bill currently sits with the Council’s Committee on Health. A hearing has yet to be scheduled.

The only jurisdictions nationally that have adopted a requirement for restaurants to include nutritional information on menus and menu boards are New York City and King County, Wash.. The regulation took effect in New York on July 1. The regulation will be implemented in King County on Aug. 1, 2008.

####

State and Local Menu Labeling Policies



*Superseded by state law.

	Implemented
	Passed
	Introduced 2009
	Introduced 2003-2008

Nutrition Labeling in Chain Restaurants

State and Local Bills/Regulations – 2009-2010

Implemented

King County (Seattle), Washington

<http://www.metrokc.gov/health/>

Status: On July 19, 2007, the King County Board of Health adopted regulations to require nutrition disclosure on menus and menu boards at fast-food and other chain restaurants. In the Washington State Legislature's 2008 session, House Bill 3160, a bill that would have prohibited local boards of health from adopting restaurant labeling regulations, was passed out of the House of Representatives. The chair of the Commerce and Labor Committee urged the King County Department of Health to compromise with the Washington Restaurant Association (WRA) to avoid state legislation amending or preempting the King County menu labeling regulations.

As a result, the King County Board of Health and the WRA negotiated a set of amendments to the regulations, and the WRA requested that House Bill 3160 not be moved. On April 17, 2008 the King County Board of Health voted to amend their regulations. The negotiated regulations require nutrition disclosure at fast-food and other chain restaurants as of December 31, 2008. Labeling regulations for drive through menu boards go into effect August 1, 2009.

Summary: The regulations require chain restaurants with fifteen or more national locations and \$1 million in annual sales (collectively for the chain) to display calorie, saturated fat, sodium, and carbohydrate information for foods and beverages on menus (or approved methods at the point of ordering including menu inserts, menu appendices, supplemental menus, or electronic kiosks at each table, as long as the menu prominently states on each page the location and means by which nutrition information is provided). If the restaurant uses a menu board, calories must be posted on the board (or other approved, easily readable sign adjacent to the menu board and visible from the line prior to the point of ordering). The remaining nutrition information (saturated fat, sodium, and carbohydrates) must be provided in a plainly visible format at the point of ordering. Exemptions are provided for items on the menu for less than 90 days; unopened, prepackaged foods; foods in salad bars, buffet lines, cafeteria service, and other self serve arrangements; and food served by weight or custom-ordered quantity. Grocery and convenience stores are also exempt.

Multnomah County, OR

<http://www.co.multnomah.or.us/cc/>

Status: On July 31, 2008, the Multnomah County Board of Health passed a menu labeling measure (Order No. 08-114) four to one. The policy was reviewed by the Department of Health, which addressed the details of implementing the measure. The final regulations were adopted

February 12, 2009. The policy took effect March 12, 2009, and fines for restaurants that are found to be in violation will begin to be levied January 1, 2010.

Summary: This policy requires all chain restaurants with 15 or more outlets nationally to post calorie information on menus, menu boards, and food tags for standard menu items with additional nutrition information (saturated fat, trans fat, carbohydrates, and sodium) available upon request. Items that are offered for sale for 90 days or less and movie theaters are exempt.

New York City
www.nyc.gov/health

Status: On December 5, 2006, the Board of Health adopted regulations amending the Health Code (§81.50) to require menu labeling. The regulation was to become effective on July 1, 2007. The regulations were challenged in a lawsuit brought by the New York State Restaurant Association (NYSRA). On September 11, 2007, a federal judge in the United States District Court for the Southern District of New York held that the regulations were preempted by 21 U.S.C §343(r) because they applied only to restaurants that had voluntarily provided calorie information (voluntary claims in restaurants are regulated at the federal level), as opposed to simply requiring all chain restaurants to post calorie information, which would not be preempted.

The New York City Department of Health redrafted their menu labeling regulations and a revised §81.50 was adopted by the Board of Health on January 22, 2008. The New York State Restaurant Association brought another lawsuit challenging the new regulations. On April 16, 2008, the same federal judge for the U.S. District Court for the Southern District of New York upheld the New York City Board of Health regulations – ruling that the New York City menu labeling regulations are not preempted by federal law, nor do they infringe on restaurant’s First Amendment rights. The NYSRA requested a stay to keep the City from enforcing the regulations until an appeal was heard. The judge denied that request on April 18, 2008. The Second Circuit Court of Appeals also denied the NYSRA motion for a stay on April 29, 2008. The Court of Appeals heard the NYSRA’s appeal the week of June 9, 2008. They have not yet returned a ruling.

The New York City menu labeling regulations went into effect March 31, 2008; due to litigation, enforcement was delayed until May 5, 2008, and fines for noncompliant fast-food and chain restaurants began being issued starting July 19, 2008.

Summary: The regulations require food-service establishments, which are part of a chain of 15 or more restaurants nationally, to list calories for standard menu items on menu boards, menus, or food item display tags. Font and format used for calorie information must be at least as prominent in size as is used for the name or price of the menu item.

Westchester County, New York
<http://www.westchesterlegislators.com/index.htm>

Status: On January 22, 2008, the bill was introduced in the Westchester County Board of Legislators. The bill was referred to both the Legislation and Community Services Committees.

The measure passed out of both committees on September 22, 2008. The bill was passed on November 10, 2008 Westchester County Board of Legislators and enacted on November 13.

Summary: Chapter 708 requires chain food-service establishments with at least 15 locations anywhere to display calorie information on menu boards (including drive-thrus) and menus. With prior approval from the Westchester County Department of Health, chain food service establishments could use alternative means of making calorie information available to patrons, as long as the information is available at the point of purchase and is as prominent as menu labeling. The law will take effect 180 days after enactment (May 12, 2009).

Passed in to law

California

<http://www.leginfo.ca.gov/bilinfo.html>

SB1420: *Status:* Introduced February 21, 2008 by Senators Alex Padilla (D) and Carol Midgeon (D), with Assembly Member Mark DeSaulnier (D) as principal coauthor. This bill is a reintroduction of SB120 which was vetoed by Governor Schwarzenegger in 2007. The bill was referred to the Senate Committee on Rules for assignment. Voted out of the Senate Committee on Health on March 27, 2008. Passed by the Senate by a vote of 21 to 17 on May 22, 2008. Referred to the Assembly. Voted out of the Assembly Committee on Health by a vote of 10 to 5 on June 17, 2008. Voted out of the Assembly Appropriations Committee by a vote of 12 to 4 on August 7, 2008. Passed by the Assembly by a vote of 46 to 28 on August 27, 2008. The amended bill then returned to the Senate where it was passed by a vote of 24 to 13 on August 31, 2008. Governor Schwarzenegger signed the bill on September 31, 2008.

The predecessor of this bill, SB120, was referred to the Senate Committee on Health on February 1, 2007, and voted out of that committee on March 14, 2007. Voted out of Senate Appropriations Committee on April 16, 2007. Passed by the Senate by a vote of 22 to 17 on May 31, 2007. Referred to the Assembly. Voted out of the Assembly Health Committee on June 26, 2007. Passed by the Assembly September 10, 2007 by a vote of 43 to 32. Vetoed by Governor Schwarzenegger on October 14, 2007.

Summary: This law requires fast-food and other chain restaurants that have 20 or more locations in California to post calorie information for all standard menu items on menus, menu boards, and food display tags. The policy allows for a range of nutritional information (minimum to maximum) for combo meals that have options and/or side orders. Calorie information may be provided per serving for family meals and family meal combos intended for more than one person (but not for appetizers or desserts). Nutrition information is not required at grocery stores, for items on the menu for less than 180 days, alcoholic beverages, or self-service items at salad bars or buffet lines. This law supersedes and replaces any existing or future local ordinances in California related to the provision of nutrition information in restaurants.

The law will be phased-in with full implementation by January 1, 2011. The first phase: from July 1, 2009 to December 31, 2010, restaurants must provide a brochure placed at the point of sale that includes at least calories, sodium, saturated fat, and carbohydrate information per

menu item. For sit-down restaurants, the information must be provided at the table. Drive-thrus are required to have brochures available upon request and have a notice of the availability at the point of sale. The second phase: By January 2, 2011, calories must be listed on menus, menu boards, and food display tags next to the menu item. Drive-thrus shall continue to have a brochure available upon request and must have a notice that the information is available.

Davidson County, TN

<http://health.nashville.gov/default.asp>

Status: Regulations were proposed in November 2008 by the Metropolitan Public Health Department. On November 6, 2008, the Metropolitan Board of Health held a public hearing to consider the proposed menu labeling regulations. After amending the regulations, the Board of Health invited additional public comment. On March 5, they voted 4-1 to approve the regulations.

Summary: The regulations require chain restaurants with at least fifteen locations nationally to display calorie information on menus, menu boards, and food tags. They exempt entertainment facilities, lodging establishments, alcoholic beverages, and any menu items that are on the menu for less than 90 days in a calendar year. Menu items can be labeled as more than one serving. The regulation will go into effect March 31, 2010.

Philadelphia

<http://www.phila.gov/citycouncil/index.html>

Status: On February 14, 2008, Councilmember Blondell Reynolds Brown introduced a menu labeling ordinance (No. 080167). The bill was voted out of the Committee on Public Health and Human Services on April 10, 2008. On November 6, 2008, the bill passed by a 12 to 5 vote. The Mayor signed the bill into law on November 20, 2008.

Summary: This bill amends the city's health code to require that calories, saturated fat, trans fat, sodium, and carbohydrates be displayed on menus and calories on menu boards and food tags in restaurants with 15 or more units nationally. If a restaurant serves food in wrappers or boxes, it must display the nutrition information on the wrapper or box in a clear and conspicuous manner. The law goes into effect on January 1, 2010 and sets a fine of \$500 for noncompliance.

San Francisco City and County

http://www.sfgov.org/site/bdsupvrs_index.asp

Status: On March 18, 2008, the San Francisco Board of Supervisors passed a menu labeling ordinance (File No. 071661, Ordinance No. 40-08) that requires nutrition disclosure on menus, food tags, and posters by July 22, 2008 and menu boards by September 20, 2008 at fast-food and other chain restaurants. This ordinance was superseded by state law signed on September 31, 2008.

Summary: This ordinance amended the city's health code to require that calories for standard menu items be displayed on menu boards and food tags and calories, saturated fat, carbohydrates, and sodium be displayed on menus in chain restaurants with twenty or more units in California. Items placed at the counter for general use, alcoholic beverages, and items that are on the menu for less than 30 days would have been exempt. This ordinance also would have required chain restaurants to provide calories, total fat, saturated fat, sodium, protein, fiber, cholesterol, and carbohydrates on posters that are readily visible to customers. Chain restaurants were required to report annually their nutrition information to the Department of Public Health, which would have made the information available to the public.

San Mateo County, CA

http://www.co.sanmateo.ca.us/smc/departement/bos/home/0..1864_2133.00.html

Status: On August 12, 2008, the San Mateo County Board of Supervisors voted unanimously to adopt a menu labeling ordinance filed by Supervisors Jerry Hill and Rose Jacobs Gibson. Following the passage of the California state policy, this bill was repealed due to state level preemption.

Summary: This ordinance would have required chain restaurants in the unincorporated areas of the county with fifteen or more outlets in California to post calorie information on menu boards and food tags, and calories, saturated fat, trans fat, carbohydrates, and sodium on menus. The policy would have gone into effect on January 1, 2009.

Santa Clara County, CA

<http://www.sccgov.org/portal/site/bnc/>

Status: On December 4, 2007, Supervisor Liz Kniss recommended that the Administration and County Counsel draft a menu labeling ordinance. The draft ordinance was presented to the Health and Hospital Committee at its April 30, 2008 meeting. On June 3, 2008, the Santa Clara County Board of Supervisors unanimously passed a menu labeling ordinance, Ordinance No. NS-300.793. This ordinance has been superseded by state law signed on September 31, 2008.

Summary: This ordinance would have added Chapter XXII to the Santa Clara County Ordinance Code to require that calories for standard menu items be displayed on menu boards and food tags and that calories, saturated fat, trans fat, carbohydrates, and sodium be displayed on menus in chain restaurants (fourteen or more units in California) located within the unincorporated areas of the County. For restaurants that use menu boards or food tags, saturated fat, trans fat, carbohydrates, and sodium would have been provided in writing at the point of ordering. Items placed at the counter for general use, alcoholic beverages, and items that are on the menu for less than 30 days would have been exempt.

Suffolk County, NY

<http://www.co.suffolk.ny.us/legis/>

Resolution 2234-2008 Introduced in December 16, 2008 by Legislators D' Amaro and Gregory.

Status: On January 29, 2009 the Health and Human Services Committee of the Suffolk County Legislature heard the Resolution and voted in favor. February 3, 2009 the full legislature held a public hearing and voted 17-1 to pass the Resolution.

Summary: The resolution requires the Commissioner of Health Services and the Board of Health to write and implement regulations to require that chain restaurants with 15 or more locations nationally post calorie content information for all regular menu items on menus and menu boards (including drive-thrus).

Ulster County, NY

<http://www.co.ulster.ny.us/legislature.html>

Local Law No. 1 of 2009 Introduced in January 2009 by Legislator Rob Parete.

Status: The Ulster County Menu Labeling Act passed out of the Health Services Committee on January 22, 2009 and was referred to the committee on Laws and Rules. A public hearing was held on March 4. The legislature voted 17-9 to pass the policy on April 7, 2009 and it was signed by the county executive on April 9, 2009.

Summary: This policy will require chain restaurants with 15 or more locations nationally to post calorie information for regular menu items on menus, menu boards (including drive-thrus), and food tags. The policy will take effect 180 days after adoption (October 5, 2009).

Introduced – Cities and Counties

Albany County, NY

<http://www.albanycounty.com/portal-government.asp>

Local Law No. "B" for 2009 Introduced on April 13, 2009 by County Legislators Nichols, Higgins, and Scavo.

Status: Referred to the Health Committee on April 13, 2009.

Summary: This policy would require chain restaurants with 10 or more locations nationally to post calorie information for regular menu items on menus, menu boards (including drive-thrus), and food tags. The policy would take effect 180 days after its filing with the Office of the Secretary of State

Lane County, OR

<http://www.co.lane.or.us/BCC/default.htm>

Order #04-1-2 is being considered by the Board of County Commissioners of Lane County, sitting as the Lane County Board of Health.

Status: First reading April 1, 2009. Second reading and public hearing on April 15.

Summary: This policy would require chain restaurants with 15 or more locations nationally to post calorie information for regular menu items (including alcohol and self-serve items, such as from salad bars or buffets) on menus, menu boards (including drive-thrus), and food tags. Additional information including saturated fat, trans fat, carbohydrates, and sodium must be available in writing (through a supplemental menu, menu insert, brochure, kiosk, or an alternative method approved by the Department of Health and Human Services) upon request. Items on the menu for less than 90 days per year, movie and other theatres, grocery stores, convenience stores, and bed and breakfasts are excluded. The rules would take effect on April 15, 2009, with fines going into effect December 31, 2009.

Rockland County, NY

www.co.rockland.ny.us/Legislature/default.html

Local Law No. 9435 for 2009 Introduced on March 26, 2009 by County Legislator Joseph Meyers.

Status: Referred to the in the Multi Services Committee on May 12, 2009.

Summary: This policy would require chain restaurants with 15 or more locations to post calorie information for regular menu items on menus and menu boards (including drive-thrus). The policy would take after filing with the Office of the Secretary of State.

Introduced – States

Connecticut

<http://www.cga.ct.gov>

SB 1080 Introduced on February 27, 2009 as a committee bill by the Committee on Public Health.

Status: Referred to Joint Committee on Public Health. A public hearing was held on March 6, 2009. Amended bill passed out of committee on March 26, 2009. The bill was then referred to the Legislative Commissioner's office for fiscal analysis on March 27, was reported out favorably on April 9, and placed on the Senate calendar.

Summary: This bill would require chain restaurants with 15 or more locations nationally to disclose calorie counts on menus and menu boards. Grocery stores and items on the menu for 30 days or less would be exempt. Menu labeling would be required by July 1, 2010.

Delaware

<http://legis.delaware.gov/LEGISLATURE.NSF>

Senate Bill 81 Introduced April 30, 2009 by Senator Sokola and Representative Kowalko, and cosponsored by Senators Hall-Long and Henry, and Representatives Hudson, Longhurst and Schooley.

Status: Assigned to the Senate Small Business Committee on Apr 30, 2009.

Summary: This bill would require a food-service establishment with 10 or more outlets in Delaware or nationally to post calories, saturated fat, carbohydrates, and sodium on menus (including carry out menus). Menu boards (including drive-thrus) and food tags could post only calories, with the additional nutrition information available upon request. Items on the menu for less than 30 days would be exempt. The bill would require the Division of Public Health to conduct an education campaign and an evaluation of menu labeling. The bill would go into effect one year after enactment.

Florida

<http://www.flsenate.gov>

S2590 Introduced on March 2, 2009 by Senator Gary Siplin (D).

Status: On March 12, the bill was referred to the Committees on Health Regulation, Regulated Industries, Judiciary, and General Government Appropriations. The first reading of the bill was on March 19, 2009.

Summary: This bill would require that chain restaurants with 19 or more locations in the state provide nutrition information on menus, menu boards, and food tags. Alcoholic beverages, buffets, salad bars, and items on the menu for less than 180 days per year would be exempt. If a menu item is intended to serve more than one person, it may list the number of individuals it is intended to serve and the calorie content for each individual serving. The policy would preempt localities from requiring nutrition information in restaurants. The policy includes two phases:

Phase I (January 1-June 30, 2010) – Restaurants with sit-down service must provide nutrition information for each standard menu item on menus, in a menu insert, or on a brochure or menu tent at each table. Restaurants that use a drive-thru or indoor menu board must provide information in a brochure that is available upon request at the point of sale with a notice indicating its availability. The nutrition information to be provided would include: calories, carbohydrates, saturated fat, and sodium.

Phase II (would go into effect July 1, 2010) – Restaurants must post calorie information adjacent to each menu item on menus, indoor menu boards, and food tags.

Hawaii

<http://www.capitol.hawaii.gov>

HB 5 Introduced January 22, 2009 by Representative K. Mark Takai (D).

Status: Referred to Committee on Health and Committee on Consumer Protection and Commerce.

Summary: This bill would require a food-service establishment with 15 or more outlets nationwide to post calorie information on menus, menu boards, and food tags. Alternatives to drive-thru menu boards would be allowed. Items on the menu for less than 30 days would be exempt. The bill would go into effect on July 1, 2009

Indiana

<http://www.in.gov/>

HB 1207 Introduced January 12, 2009 by Representative Charlie Brown.

Status: Referred to Committee on Public Health. On January 27, 2009, Committee gave a favorable report. At second reading, on February 2, 2009, the Committee made amendments to the bill. On Feb 25, 2009, passed the out of the full House by a vote of 51-46. Referred to the Senate. On March 3, 2009, referred to the Senate Committee on Commerce and Public Policy & Interstate Cooperation.

Summary: This bill would require chain restaurants of 20 or more outlets in Indiana to post calories and carbohydrates on menus and menu boards. Other information including calories, total fat, saturated fat, trans fat, cholesterol, sodium, carbohydrates, fiber, sugars, and protein must be made available to customers in the restaurant. The effective date would be July 1, 2009.

Kentucky

Website: <http://www.lrc.ky.gov/>

SB 133 Introduced February 12, 2009 by Senator Denise Harper Angel (D).

Status: Referred to the Senate Health and Welfare Committee on February 23, 2009.

Summary: The Consumer Menu Education and Labeling (CMEAL) Act would require chain restaurants with 10 or more locations in Kentucky to provide calorie information for menu items on menus or menu boards, including drive-thrus. Additional information including calories,

carbohydrates, saturated fat, and sodium must be made available to customers; the format for that information is not specified.

Maine

Website: <http://janus.state.me.us/legis/>

LD 1259 Introduced March 31, 2009 by Speaker Hannah Pingree.

Status: Referred to House Committee on Health and Human Services on March 31, 2009, and the Senate Committee on Health and Human Services on April 7, 2009.

Summary: LD 1259, an Act to Increase Access to Nutrition Information, would require restaurants that have 15 or more locations nationally to provide caloric information for standard menu items on menus, menu boards (including drive-thrus), or food tags. Grocery and convenience stores and menu items that are on the menu for 30 days or less per year would be exempt. The bill would go into effect on May 1, 2010.

Maryland

<http://mlis.state.md.us/>

HB 601 Introduced on February 6, 2009 by Delegate Doyle Niemann (D). Cosponsors are Ali, Benson, Carr, Frush, Glenn, Healey, Holmes, Hubbard, Hucker, Lafferty, Levi, Manno, Montgomery, Nathan-Pulliam, Pena-Melnyk, Ross, Shewell, Stein, V. Turner, and Weir.

Status: Referred to the Committee on Health and Government Operations. Public hearing was held on March 3, 2009. At the request of the Department of Health and Mental Hygiene, the bill was withdrawn for further study.

Summary: This bill would require chain restaurants with 15 or more outlets nationwide to post nutrition information for all standard menu items. Restaurants using printed menus would be required to list calories, carbohydrates, saturated plus trans fat, and sodium. Restaurants may list only calories on menu boards including on drive-thrus, food tags, and for salad bars, buffets and other foods on display, as long as the other nutrition information is provided in writing at the point of ordering. The Act would take effect October 1, 2010.

SB 142 Introduced on January 19, 2009 by Senator David Harrington (D).

Status: Referred to the Senate Finance Committee. Public hearing was held February 19, 2009.

Summary: Same as HB 601 (see above).

Massachusetts

<http://www.mass.gov/dph>

Proposed Regulations are being considered by the Massachusetts Department of Public Health.

Status: Regulations were proposed in January 2009. Public hearings were held on February 24 and 25.

Summary: The regulations would require chain restaurants with 15 or more locations nationally to list calories on menus, menu boards, and food tags. Items that are on the menu for less than 30 days would be exempt. Restaurants using drive-thru menus may post calories either on the menu board or on an adjacent stanchion visible at or prior to the point of ordering. The disclosure of calorie content values for a menu item that is intended to serve more than one individual could include the number of individuals intended to be served and the number of calories per individual serving. Alcoholic beverages may be labeled using average calorie values for beers, wines, and spirits.

Missouri

<http://www.moga.mo.gov/>

HB 755 Introduced on February 17, 2009 by Representative Jason Grill (D).

Status: Second reading on February 18, 2009.

Summary: This bill would require restaurants with 15 or more outlets nationwide to post calorie contents on menus, menu boards, and food tags for each standard menu item. Restaurants that use drive-thru menus may post calorie information on the menu board or on an adjacent stanchion visible at or prior to the point of ordering. Items on the menu for less than 30 days per year would be exempt.

New York

<http://assembly.state.ny.us/leg/>

AB 2720 Introduced January 21, 2009 by Assemblymember Ortiz. Cosponsors include Gottfried, Cook, P. Rivera, Mayersohn, Gabryszak, Koon, Galef, Christensen, Fields, Boyland. Multi-sponsors include Brennan, Clark, Dinowitz, Greene, Hooper, Jacobs, Lavine, Maisel, Pheffer, J. Rivera, Towns, and Weisenberg.

Status: Read once and referred to the Committee on Health. Passed out of the Health Committee on February 4, 2009 and referred to the Committee on Codes. Reported out of the Codes Committee on April 27. Advanced to third reading April 30, 2009.

Summary: This bill would require chain restaurants with 15 or more locations nationally and 5 or more locations in New York State to list calorie information for all standard menu items on

printed menus and menu boards or signs. Items on the menu for less than 30 days per year would be exempt. The Commissioner of Health is directed to promulgate regulations to implement the act. The bill would take effect 180 days after enactment.

S 5003 Introduced on April 27, 2009 by Senator Thomas Duane (D).

Status: Referred to the Senate Health Committee.

Summary: Same as AB 2720 (see above).

Oklahoma

<http://www.lsb.state.ok.us/>

SB 1135 Introduced February 2, 2009 by Senators Randy Bass and Constance Johnson.

Status: The bill was referred to the Health and Human Services committee on February 9, 2009 and reported Do Pass on February 19. On February 23, the bill was amended and renamed by the Health and Human Services committee and reported Do Pass. The amended bill passed the Senate by a vote of 37-8 on March 9, 2009. On March 10, the bill was engrossed to the House. Representative Wes Hilliard is the coauthor in the House.

Summary: Prior to being amended, the Healthy Choices Act would have required that chain restaurants with 10 or more locations in the state provide nutrition information on menus and menu boards. Grocery stores, convenience stores, drug stores, vending machines, alcoholic beverages, buffets, salad bars, and items on the menu for less than 180 days per year would be exempt. If a menu item is intended to serve more than one person, it could list the number of individuals it is intended to serve and the calorie content for each individual serving. The bill would preempt localities from requiring nutrition disclosures in restaurants. The policy included two phases:

Phase I (July 1, 2010-December 31, 2011) – Restaurants with sit-down service must provide calories, saturated fat, carbohydrates, and sodium content for each standard menu item on menus, in a menu insert, or on a brochure or menu tent on each table. Restaurants that use a drive-thru or indoor menu board must provide information in a brochure that is available upon request at the point of sale under a notice indicating its availability.

Phase II (would go into effect January 1, 2012) – Restaurants must post calorie content information adjacent to each standard menu item on menus, indoor menu boards, and food tags.

The amended bill would create a Task Force on Dining Information and Nutritional Education until November 30, 2009. The task force would be charged with examining the feasibility of providing nutrition information to consumers in restaurants and recommend any actions or legislation which it deems necessary or appropriate.

Oregon

<http://www.leg.state.or.us>

HB 2726 Introduced March 11, 2009 by Representatives Kotek and Greenlick and Senators Bates and Morrisette.

Status: The bill was referred to the Speaker's desk on February 17 and to the Human Services committee on February 19, 2009. A public hearing was held on March 13, 2009. The bill was amended and reported out of Committee by a vote of 5-4 on April 27, 2009.

Summary: This bill would require chain restaurants with 15 or more outlets nationwide to post the calorie content for each menu item on menus, menu boards (including drive-thrus), and food tags. Calorie information for self-serve items must be provided on a menu board or food tag. Chain restaurants also must have the following information for each menu item available to customers upon request in the restaurant: saturated fat, trans fat, carbohydrates, and sodium. Movie theaters and items offered for sale less than 90 days per year would be exempt. The Department of Health Services shall adopt rules for labeling alcoholic beverages. If a menu item, other than an appetizer or dessert, is intended to serve more than one person, the restaurant could list the number of individuals it is intended to serve and the calorie content for each individual serving. The bill would prevent localities from requiring nutrition disclosures in chain restaurants. The Department of Human Services shall adopt implementing regulations. The bill would go into full effect January 1, 2011.

Rhode Island

<http://www.rilin.state.ri.us/>

H 5520 Introduced on February 24, 2009 by Representatives McNamara and Naughton.

Status: The bill was referred to House Health, Education and Welfare Committee on February 24, 2009. A hearing was held on April 2, 2009. The Committee recommended that the measure be held for further study.

Summary: This bill would require chain restaurants with 15 or more outlets nationwide to post calorie information for each menu item on menus, menu boards (including drive-thrus), and food tags. Items on the menu for less than 30 days per year would be exempt. This policy would take effect on January 1, 2010.

S 0534 Introduced on February 25, 2009 by Senators Sosnowski, Perry, and Sheehan.

Status: The bill was referred to Senate Health and Human Services Committee. On April 22, 2009, a hearing was held to consider the bill. The Committee recommended that the measure be held for further study.

Summary: Same as H 5520 (see above).

Tennessee

<http://www.legislature.state.tn.us/>

HB 2319 Introduced on February 26, 2009 by Representative Michael Turner.

Status: On March 4, 2009 the bill was referred to the Committee on Health and Human Resources and the Committee on Government Operations. On March 11, 2009, it was referred to the Public Health and Family Assistance subcommittee of Health and Human Resources. On April 22, the bill was amended. On May 5, 2009, the bill was sent to a summer study committee by the Public Health and Family Assistance Subcommittee of Health and Human Resources.

Summary: The Tennessee Healthful Menu Act would require a chain restaurant of 20 or more establishments nationwide to disclose, for all standard menu items, the total number calories per serving as usually prepared and offered for sale. The disclosure must be on the menu board (including drive-thrus), a food tag, the menu, or an insert that accompanies the menu that is printed in the same font size as the menu. Additional nutrition information must be located on the premises and available to customers upon request prior to the point of ordering. For each standard menu item, that information must include: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and protein. Items on the menu for less than 90 days per year would be exempt. The policy would go into effect on January 1, 2010.

In subcommittee, the bill was amended to allow alternatives to labeling on menus and menu boards, including signs instead of menu boards and menu appendices or supplemental menus instead of labeling directly on the menu. Drive-thru menu boards and alcoholic beverages would be exempt. The amended state bill would overturn the menu labeling policy passed in Davidson County and prevent other localities from implementing policies regarding nutrition information in restaurants. The implementation date would be moved back to June 30, 2010.

SB 2314 Introduced on February 26, 2009 by Senator James F. Kyle.

Status: On March 2, 2009, the bill was referred to the Committee on General Welfare, Health and Human Resources.

Summary: Same as HB 2319 (see above).

Texas

<http://www.legis.state.tx.us/>

HB 1522 Introduced on February 19, 2009 by Representative Carol Alvarado.

Status: On March 2, 2009 the bill was referred to the Committee on Public Health and read for the first time.

Summary: This bill would require that chain restaurants with 19 or more locations in the state provide nutrition information on menus and menu boards. Grocery stores, alcoholic beverages, buffets, salad bars, and items on the menu for less than 180 days per year would be exempt. If a menu item is intended to serve more than one person, it may list the number of individuals it is intended to serve and the calorie content for each individual serving. The policy includes two phases:

Phase I (January 1-December 31, 2010) – Restaurants with sit-down service must provide nutrition information for each standard menu item on menus, in a menu insert, or on a brochure or menu tent at each table. Restaurants that use a drive-thru or indoor menu board must provide information in a brochure that is available upon request at the point of sale with a notice indicating its availability. The nutrition information to be provided would include: calories, carbohydrates, saturated fat, and sodium.

Phase II (would go into effect January 1, 2011) – Restaurants must post calorie information adjacent to each menu item on menus, indoor menu boards, and food tags.

Vermont

<http://www.leg.state.vt.us/>

H. 120 Introduced on February 3, 2009 by Representatives Koch, Browning, Clarkson, Devereux, Donahue, Emmons, Frank, Greshin, Hooper, Larocque, Lenes, Martin, McFaun, Reis, Stevens, Turner, and Zuckerman.

Status: On February 3, 2009, the bill was read for the first time and referred to the Committee on Human Services.

Summary: The bill would require restaurants with 10 or more establishments nationwide to post nutrition information next to each item as offered for sale. If a restaurant uses a printed menu, it must include calories, saturated fat, carbohydrates, protein, and sodium for each menu item. If a restaurant uses a menu board, it must post calories next to each item on the menu and have the additional nutrition information available in writing upon request. Grocery and convenience stores and items on the menu for less than 30 days per year would be exempt. The Department of Health would have 12 months from enactment of the bill to adopt rules to implement the policy.

West Virginia

<http://www.legis.state.wv.us/>

HB 2745 Introduced on February 23, 2009 by Delegates Perdue, Hatfield, Marshall, Michael, Moore, and Rodighiero.

Status: Upon introduction, the bill was referred to the Committee on Health and Human Resources, then to the Committee on Government Organization. On March 5, 2009, the Committee on Health and Human Resources reported the bill Do Pass and sent it to Government Organization.

Summary: The bill would create the Healthy Lifestyles Restaurant Calorie Posting Program. The program would require the Governor's Office of Health Enhancement and Lifestyle to propose rules for legislative approval that would require restaurants with 15 or more locations nationally to post calorie information on menus, menu boards, and food tags. The Office would write rules for labeling at or near drive-thru menu boards. All state agencies would be required to market the program to their members.

SB 419 Introduced on March 3, 2009 by Senators Foster, Jenkins, Prezioso, and Stollings.

Status: Upon introduction, the bill was referred to the Committee on Health and Human Resources. It passed out of the Committee on March 25, 2009 and was referred to the full Senate. On March 30, the bill was defeated in the Senate. Senator Deem filed a motion to have the bill reconsidered on March 31, 2009. A floor amendment was adopted that would exempt restaurants that are not located in at least 10 states other than West Virginia. The amended bill passed out of the Senate on March 31, 2009 and was referred to the House.

The bill was then amended by the House Committee on Health and Human Resources to eliminate the exemption for restaurants operating in less than 10 other states. It passed out of the Committee on April 3, 2009 and was referred to the House Committee on Government Organization. The Committee on Government Organization defeated the bill on April 7, 2009.

Summary: Same as HB 2745 (see above).

5/13/09

1 **SEC. __. NUTRITION LABELING OF STANDARD MENU ITEMS**
2 **AT CHAIN RESTAURANTS AND OF ARTICLES**
3 **OF FOOD SOLD FROM VENDING MACHINES.**

4 (a) **TECHNICAL AMENDMENTS.**—Section
5 403(q)(5)(A) of the Federal Food, Drug, and Cosmetic
6 Act (21 U.S.C. 343(q)(5)(A)) is amended—

7 (1) in subitem (i), by inserting at the beginning
8 “except as provided in clause (H)(ii)(III),”; and

9 (2) in subitem (ii), by inserting at the begin-
10 ning “except as provided in clause (H)(ii)(III),”.

11 (b) **LABELING REQUIREMENTS.**—Section 403(q)(5)
12 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
13 343(q)(5)) is amended by adding at the end the following:

14 “(H) **RESTAURANTS, RETAIL FOOD ESTABLISH-**
15 **MENTS, AND VENDING MACHINES.**—

16 “(i) **GENERAL REQUIREMENTS FOR RES-**
17 **TAURANTS AND SIMILAR RETAIL FOOD ESTABLISH-**
18 **MENTS.**—Except for food described in subclause
19 (vii), in the case of food that is a standard menu
20 item that is offered for sale in a restaurant or simi-
21 lar retail food establishment that is part of a chain
22 with 20 or more locations doing business under the
23 same name (regardless of the type of ownership of
24 the locations) and offering for sale substantially the

1 same menu items, the restaurant or similar retail
2 food establishment shall disclose the information de-
3 scribed in subclauses (ii) and (iii).

4 “(ii) INFORMATION REQUIRED TO BE DIS-
5 CLOSED BY RESTAURANTS AND RETAIL FOOD ES-
6 TABLISHMENTS.—Except as provided in subclause
7 (vii), the restaurant or similar retail food establish-
8 ment shall disclose in a clear and conspicuous man-
9 ner—

10 “(I)(aa) in a nutrient content disclosure
11 statement adjacent to the name of the standard
12 menu item, so as to be clearly associated with
13 the standard menu item, on the menu listing
14 the item for sale, the number of calories con-
15 tained in the standard menu item, as usually
16 prepared and offered for sale; and

17 “(bb) a succinct statement concerning sug-
18 gested daily caloric intake, as specified by the
19 Secretary by regulation and posted prominently
20 on the menu and designed to enable the public
21 to understand, in the context of a total daily
22 diet, the significance of the caloric information
23 that is provided on the menu;

24 “(II)(aa) in a nutrient content disclosure
25 statement adjacent to the name of the standard

1 menu item, so as to be clearly associated with
2 the standard menu item, on the menu board,
3 including a drive-through menu board, the
4 number of calories contained in the standard
5 menu item, as usually prepared and offered for
6 sale; and

7 “(bb) a succinct statement concerning sug-
8 gested daily caloric intake, as specified by the
9 Secretary by regulation and posted prominently
10 on the menu board, designed to enable the pub-
11 lic to understand, in the context of a total daily
12 diet, the significance of the nutrition informa-
13 tion that is provided on the menu board;

14 “(III) in a written form, available on the prem-
15 ises of the restaurant or similar retail establishment
16 and to the consumer upon request, the nutrition in-
17 formation required under clauses (C) and (D) of
18 subparagraph (1); and

19 “(IV) on the menu or menu board, a promi-
20 nent, clear, and conspicuous statement regarding the
21 availability of the information described in item
22 (III).

23 “(iii) SELF-SERVICE FOOD AND FOOD ON DIS-
24 PLAY.—Except as provided in subclause (vii), in the
25 case of food sold at a salad bar, buffet line, cafeteria

1 line, or similar self-service facility, and for self-serv-
2 ice beverages or food that is on display and that is
3 visible to customers, a restaurant or similar retail
4 food establishment shall place adjacent to each food
5 offered a sign that lists calories per displayed food
6 item or per serving.

7 “(iv) REASONABLE BASIS.—For the purposes of
8 this clause, a restaurant or similar retail food estab-
9 lishment shall have a reasonable basis for its nutri-
10 ent content disclosures, including nutrient databases,
11 cookbooks, laboratory analyses, and other reasonable
12 means, as described in section 101.10 of title 21,
13 Code of Federal Regulations (or any successor regu-
14 lation) or in a related guidance of the Food and
15 Drug Administration.

16 “(v) MENU VARIABILITY AND COMBINATION
17 MEALS.—The Secretary shall establish by regulation
18 standards for determining and disclosing the nutri-
19 ent content for standard menu items that come in
20 different flavors, varieties, or combinations, but
21 which are listed as a single menu item, such as soft
22 drinks, ice cream, pizza, doughnuts, or children’s
23 combination meals, through means determined by
24 the Secretary, including ranges, averages, or other
25 methods.

1 “(vi) ADDITIONAL INFORMATION.—If the Sec-
2 retary determines that a nutrient, other than a nu-
3 trient required under subclause (ii)(III), should be
4 disclosed for the purpose of providing information to
5 assist consumers in maintaining healthy dietary
6 practices, the Secretary may require, by regulation,
7 disclosure of such nutrient in the written form re-
8 quired under subclause (ii)(III).

9 “(vii) NONAPPLICABILITY TO CERTAIN FOOD.—

10 “(I) IN GENERAL.—Subclauses (i) through
11 (vi) do not apply to—

12 “(aa) items that are not listed on a
13 menu or menu board (such as condiments
14 and other items placed on the table or
15 counter for general use);

16 “(bb) daily specials, temporary menu
17 items appearing on the menu for less than
18 60 days per calendar year, or custom or-
19 ders; or

20 “(cc) such other food that is part of
21 a customary market test appearing on the
22 menu for less than 90 days, under terms
23 and conditions established by the Sec-
24 retary.

1 “(II) WRITTEN FORMS.—Subparagraph
2 (5)(C) shall apply to any regulations promul-
3 gated under subclauses (ii)(III) and (vi).

4 “(viii) VENDING MACHINES.—

5 “(I) IN GENERAL.—In the case of an arti-
6 cle of food sold from a vending machine that—

7 “(aa) does not permit a prospective
8 purchaser to examine the Nutrition Facts
9 Panel before purchasing the article or does
10 not otherwise provide visible nutrition in-
11 formation at the point of purchase; and

12 “(bb) is operated by a person who is
13 engaged in the business of owning or oper-
14 ating 20 or more vending machines,

15 the vending machine operator shall provide a
16 sign in close proximity to each article of food or
17 the selection button that includes a clear and
18 conspicuous statement disclosing the number of
19 calories contained in the article.

20 “(ix) VOLUNTARY PROVISION OF NUTRITION IN-
21 FORMATION.—

22 “(I) IN GENERAL.—An authorized official
23 of any restaurant or similar retail food estab-
24 lishment or vending machine operator not sub-
25 ject to the requirements of this clause may elect

1 to be subject to the requirements of such
2 clause, by registering biannually the name and
3 address of such restaurant or similar retail food
4 establishment or vending machine operator with
5 the Secretary, as specified by the Secretary by
6 regulation.

7 “(II) REGISTRATION.—Within 120 days of
8 enactment of this clause, the Secretary shall
9 publish a notice in the Federal Register speci-
10 fying the terms and conditions for implementa-
11 tion of item (I), pending promulgation of regu-
12 lations.

13 “(III) RULE OF CONSTRUCTION.—Nothing
14 in this subclause shall be construed to authorize
15 the Secretary to require an application, review,
16 or licensing process for any entity to register
17 with the Secretary, as described in such item.

18 “(x) REGULATIONS.—

19 “(I) PROPOSED REGULATION.—Not later
20 than 1 year after the date of enactment of this
21 clause, the Secretary shall promulgate proposed
22 regulations to carry out this clause.

23 “(II) CONTENTS.—In promulgating regula-
24 tions, the Secretary shall—

1 “(aa) consider standardization of rec-
2 ipes and methods of preparation, reason-
3 able variation in serving size and formula-
4 tion of menu items, space on menus and
5 menu boards, inadvertent human error,
6 training of food service workers, variations
7 in ingredients, and other factors, as the
8 Secretary determines; and

9 “(bb) specify the format and manner
10 of the nutrient content disclosure require-
11 ments under this subclause.

12 “(III) REPORTING.—The Secretary shall
13 submit to the Committee on Health, Education,
14 Labor, and Pensions of the Senate and the
15 Committee on Energy and Commerce of the
16 House of Representatives a quarterly report
17 that describes the Secretary’s progress toward
18 promulgating final regulations under this sub-
19 paragraph.

20 “(xi) DEFINITION.—In this clause, the term
21 ‘menu’ or ‘menu board’ means the primary writing
22 of the restaurant or other similar retail food estab-
23 lishment from which a consumer makes an order se-
24 lection.”

1 (c) NATIONAL UNIFORMITY.—Section 403A(a)(4) of
2 the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
3 343-1(a)(4)) is amended by striking “except a require-
4 ment for nutrition labeling of food which is exempt under
5 subclause (i) or (ii) of section 403(q)(5)(A)” and inserting
6 “except that this paragraph does not apply to food that
7 is offered for sale in a restaurant or similar retail food
8 establishment that is not part of a chain with 20 or more
9 locations doing business under the same name (regardless
10 of the type of ownership of the locations) and offering for
11 sale substantially the same menu items unless such res-
12 taurant or similar retail food establishment complies with
13 the voluntary provision of nutrition information require-
14 ments under section 403(q)(5)(H)(ix)”.

15 (d) RULE OF CONSTRUCTION.—Nothing in the
16 amendments made by this section shall be construed—

17 (1) to preempt any provision of State or local
18 law, unless such provision establishes or continues
19 into effect nutrient content disclosures of the type
20 required under section 403(q)(5)(H) of the Federal
21 Food, Drug, and Cosmetic Act (as added by sub-
22 section (b)) and is expressly preempted under sub-
23 section (a)(4) of such section;

24 (2) to apply to any State or local requirement
25 respecting a statement in the labeling of food that

1 provides for a warning concerning the safety of the
2 food or component of the food; or

3 (3) except as provided in section
4 403(q)(5)(H)(ix) of the Federal Food, Drug, and
5 Cosmetic Act (as added by subsection (b)), to apply
6 to any restaurant or similar retail food establish-
7 ment other than a restaurant or similar retail food
8 establishment described in section 403(q)(5)(H)(i) of
9 such Act.

CSPI NEWSROOM

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

Menu-Labeling Legislation Gains Support from Chain Restaurants

National Restaurant Association Joins CSPI in Support of Legislation Requiring Calories on Menus, Menu Boards

For Immediate Release:
June 10, 2009

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Washington, DC 20005

WASHINGTON—Legislation that would require calories on chain restaurant menus and menu boards now has the support of the restaurant industry as well as health groups thanks to an agreement struck among senators who were previously supporting separate labeling bills. Besides requiring calories on menus, menu boards and drive-through displays, the new legislation would require chains with 20 or more outlets to provide additional nutrition information upon request.

That language is included among other prevention measures in the draft health reform legislation released last night by the Senate Health, Education, Labor and Pensions (HELP) Committee. Senator Tom Harkin (D-IA), the lead sponsor of the Menu Education and Labeling (MEAL) Act that has been long supported by the Center for Science in the Public Interest and other health groups, brokered the agreement with Senators Tom Carper (D-DE) and Lisa Murkowski (R-AK), sponsors of a separate bill backed by industry.

"Calories on menus will allow Americans to exercise responsibility for what they eat and what they order for their children," said CSPI nutrition policy director Margo G. Wootan. "Whether you're concerned about managing your weight or about getting your money's worth at chain restaurants, calorie counts are critical pieces of information. We're delighted to be working with the restaurant industry on legislation that will ensure that calories be listed on their menus and menu boards"

If enacted, the compromise bill would cover all chains of 20 or more restaurants; small businesses would be exempt. Custom orders and temporary specials would be exempt from the calorie labeling requirement, as would items not listed on menus or menu boards, such as condiments. Like the Nutrition Labeling and Education Act that requires Nutrition Facts labeling on packaged foods, the legislation would require national uniformity.

Similar bills or regulations have been adopted in New York City, Philadelphia, Massachusetts, California and a number of major counties. This month bills in Oregon, Maine and Connecticut passed their state legislatures and are awaiting final action.

82 percent of those surveyed in New York City after its calorie-labeling rule went into effect said seeing calories on menus affected their choices. And Starbucks, Cosi and other restaurants have reformulated menu items to bring down the calories.

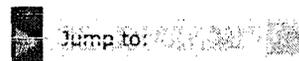
CSPI pointed out that companies are required to provide information on the fuel-efficiency of cars, care instructions for clothing, and energy and water consumption of certain home appliances.

"It seems more important that people be able to watch their calorie intake to avoid diabetes or heart disease than to know how to wash a blouse," said Wootan. "Putting calories on menu boards is a common-sense prevention measure that will help reduce Americans' risk of heart disease, diabetes



and other expensive-to-treat chronic diseases made more prevalent by rising obesity rates."

American adults and children consume, on average, one third of their calories from eating out. Studies link eating out with obesity and higher caloric intakes. For example, children eat almost twice as many calories when they eat a meal at a restaurant compared to a meal at home. Meals at chain restaurants can be unexpectedly high in calories, with appetizers, entrées and desserts sometimes providing an entire day's worth of calories on a single plate.





NEWS RELEASE

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FOR IMMEDIATE RELEASE
Wednesday, June 10, 2009

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National Restaurant Association Backs Bipartisan Senate Agreement To Empower Consumers Nationwide with More Nutrition Information

(Washington, D.C.) - The National Restaurant Association today released the following statement from President and CEO Dawn Sweeney about a bipartisan Senate agreement on a national nutrition information standard:

"Today, Senators Tom Harkin (D-Iowa), Tom Carper (D-Del.) and Lisa Murkowski (R-Alaska) announced an industry and consumer-backed agreement on a uniform national standard for chain restaurants that would provide consumers across the United States with a wide range of nutrition information at the point of purchase.

"We thank the Senators for their bipartisan leadership and for recognizing the importance of legislation that meets the needs of both the restaurant industry and our customers. We look forward to working with Congress to enact this legislation, which provides caloric information on the menu and additional information, such as sodium and carbohydrates, in other accessible formats.

"We know the importance of providing consumers with the information they want and need in a consistent format no matter where they are across the country. This legislation would replace varying state and local ordinances with a national standard that empowers consumers to make choices that are best for themselves and their families.

"The National Restaurant Association has led an industry-wide coalition that worked proactively with key stakeholders to provide a uniform approach that gives consumers one more way to live a healthy and active life."

###

Founded in 1919, the National Restaurant Association is the leading business association for the restaurant industry, which is comprised of 945,000 restaurant and foodservice outlets and a work force of 13 million employees. Together with the National Restaurant Association Educational Foundation, the Association works to lead America's restaurant industry into a new era of prosperity, prominence, and participation, enhancing the quality of life for all we serve. For more information, visit our Web site at www.restaurant.org.

50

Comparison Chart of Bill 19-07, the New York City Regulation, and the Federal Legislation

Element	Bill 19-07 HHS Recommendation	N.Y. City Regulation	Fed. Harkin – Carper – Murkowski Proposal
Applicability	Establishment part of a chain with at least 10 national locations. (At its Oct. 15, 2007 meeting, the Committee recommended retaining this applicability level.)	Establishment part of a chain with at least 15 national locations.	Establishment part of a chain with at least 20 national locations.
Required nutrition information	Menu: calories, saturated fat, sodium. Menu board: calories on board; saturated fat, sodium in writing on request.	Menu/menu board: calories.	Menu/menu board: calories. In writing on request: calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, fiber, and protein.
Self-serve facilities (salad bar, etc.)	Nutrition labeling not required.	Nutrition labeling not required.	Calories on sign for standard serving size.
Temporary menu items	Labeling requirements do not apply for an item on the menu for less than 30 days and for test market items not on the menu for more than 90 cumulative days per year.	Labeling requirements are not applicable to items that are listed for less than 30 calendar days on a menu or menu board.	Labeling requirements do not apply for an item on the menu for less than 60 days and for test market items not on the menu for more than 90 cumulative days per year.
Items placed on the table/counter for general use (i.e., condiments)	Labeling requirements do not apply.		Doesn't apply to items not listed on the menu/menu board.
Menu items that come in different flavors or varieties (ex. doughnuts, ice cream)	Must provide the information for the range (min.-max.) for each size.	Must provide the information for the range (min.-max.) for each size, if not on a food tag.	Secretary will set requirements in the regulations.

Element	Bill 19-07 HHS Recommendation	N.Y. City Regulation	Fed. Harkin – Carper – Murkowski Proposal
Single item lists.	Treated same as menu boards	Food tags must contain calorie information.	Unclear – seeking clarification.
Posting requirements (size, typeface)	Posted information must be clear and conspicuous and next to or beneath each menu item.	Posted information must be clear and conspicuous and adjacent or in close proximity to the menu item. The font/format of the nutrition information must be at least as prominent in size and appearance as the price/ name of the menu item.	Posted information must be clear and conspicuous and adjacent to the menu item.
Alcoholic beverages	Wine lists excluded from labeling requirements.	Unclear – seeking clarification.	According to National Restaurant Association, labeling requirements are not expected to apply to alcoholic beverages.
Grocery stores	As drafted, would apply to grocery stores, but details yet to be finalized.	Not subject to labeling requirements.	Subject to labeling requirements.
General nutrition statements	Menu: statement indicating the recommended daily limits for calories, sodium, and fat. Menu board: statement indicating suggested limit for calories. Optional statement indicating that variations may change nutrition content.		2 statements are required on the menu/menu board: suggested caloric intake; availability of other nutrition information.
Calculating nutrition information	Calculated according to federal law; nutrition information must be within 20% of the actual content or the margin of error in federal law, whichever is smallest.	Calculated based on verifiable analysis of the menu item, rounded to the nearest 10 calories for items with caloric content greater than 50 and nearest 5 calories for items with caloric content less than 50.	Reasonable basis as provided in federal regulations (nutrient database, cookbooks, analysis, or other reasonable basis).

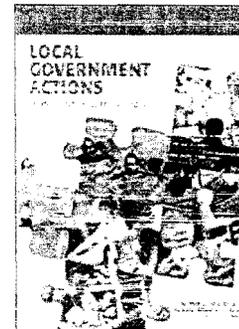
REPORT BRIEF • SEPTEMBER 2009

LOCAL GOVERNMENT ACTIONS TO PREVENT CHILDHOOD OBESITY

In the United States, 16.3 percent of children and adolescents between the ages of two and 19 are obese. This epidemic has exploded over just three decades. Among children two to five years old, obesity prevalence increased from 5 percent to 12.4 percent; among children six to 11, it increased from 6.5 percent to 17 percent; and among adolescents 12 to 19 years old, it increased from 5 percent to 17.6 percent (see Figure 1).

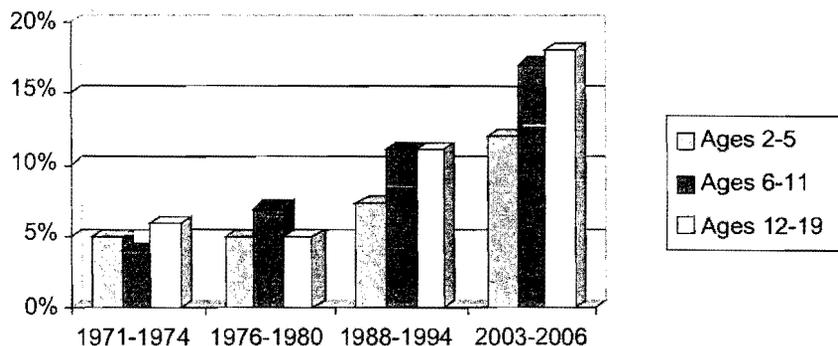
The prevalence of obesity is so high that it may reduce the life expectancy of today's generation of children and diminish the overall quality of their lives. Obese children and adolescents are more likely than their lower-weight counterparts to develop hypertension, high cholesterol, and type 2 diabetes when they are young, and they are more likely to be obese as adults.

In 2008, the Institute of Medicine (IOM) Committee on Childhood Obesity Prevention Actions for Local Governments was convened to identify promising ways to address this problem on what may well be the epidemic's frontlines. The good news is that there are numerous actions that show potential for use by local governments. Of course, parents and other adult caregivers play a fundamental role in teaching children about healthy behaviors, in modeling those behaviors, and in making decisions for children when needed. But those positive efforts can be undermined by local environments that are poorly suited to supporting healthy behaviors—and may even promote unhealthy behaviors. For example, many communities lack ready sources of healthy food choices, such as supermarkets and grocery stores. Or they may not provide safe places for children to walk or play. In such communities, even the most motivated child or adolescent may find it difficult to act in healthy ways.



... local governments are ideally positioned to promote behaviors that will help children and adolescents reach and maintain healthy weights.

FIGURE 1: PREVALENCE OF OBESITY AMONG CHILDREN, 1971-2006



SOURCE: Centers for Disease Control and Prevention, National Health and Nutrition Examination Survey

ACTING LOCALLY

Local governments are experienced in promoting children's health, as they historically have implemented policies intended to ensure, among other things, that children are immunized or they wear helmets when riding a bike. In the same way, local governments—with jurisdiction over many aspects of land use, food marketing, community planning, transportation, health and nutrition programs, and other community issues—are ideally positioned to promote behaviors that will help children and adolescents reach and maintain healthy weights. Promoting children's healthy eating and activity will require the involvement of an array of government officials, including mayors and commissioners or other leaders of counties, cities, or townships. Many departments, including those responsible for public health, public works, transportation, parks and recreation, public safety, planning, economic development, and housing will also need to be involved.

In addition, community involvement and evaluation are vital to childhood obesity prevention efforts. It is critical for local government officials and staff to involve constituents in determining local needs and identifying top priorities. Engaging community members in the process will help identify local assets, focus resources, and improve implementation plans. And, as obesity prevention actions are implemented, they need to be evaluated in order to provide important information on what does and does not work.

CREATING EQUAL OPPORTUNITIES FOR HEALTHY WEIGHT

In adopting policies and practices tailored to raising healthy children, local communities have an added opportunity to achieve health equity—put simply, the fair distribution of health resources among all population groups, regardless of their social standing. Poverty, poor housing, racial segregation, lack of access to quality education, and limited access to health care contribute to the uneven well-being of some groups of people, especially those living in historically disadvantaged communities. If local officials observe, for example, that many children in certain neighborhoods do not engage in sufficient physical activity or consume too few fruits and vegetables, they should examine the equity of access to recreation opportunities and grocery stores in those areas. These officials may then find themselves uniquely positioned to catalyze, support, or lead collaborations in the community and engage diverse constituent groups in efforts to improve the places where children live and play.

RECOMMENDING PROMISING ACTIONS

Evidence on the best childhood obesity prevention practices is still accumulating and is limited in many important topic areas. However, local government officials want to act now on the best available information. The IOM committee reviewed published literature, examined reports from organizations that work with local governments, heard presentations from experts on the role of local government in obesity prevention, and explored a variety of tool kits that have been developed for communities and their leaders.

In arriving at its recommendations, the committee looked for actions that are within the jurisdiction of local governments; likely to directly affect children; based on the experience of local governments or sources that work with local governments; take place outside of the school day; and have the potential to promote healthy eating and adequate physical activity. Healthy eating is characterized as consuming the types and amounts of foods, nutrients, and calories recommended by the Dietary Guidelines for Americans, and adequate physical activity for children constitutes a total of 60 minutes per day.

The committee recommends nine healthy eating strategies and six physical activity strategies for local government officials to consider in planning, implementing, and refining childhood obesity prevention efforts. The committee also recommends a number of specific action steps for each strategy and highlights 12 steps overall judged to have the most promise.

ACTIONS FOR HEALTHY EATING

GOAL 1: IMPROVE ACCESS TO AND CONSUMPTION OF HEALTHY, SAFE, AND AFFORDABLE FOODS

Strategy 1: Retail Outlets

Increase community access to healthy foods through supermarkets, grocery stores, and convenience/corner stores.

Action Steps

- Create incentive programs to attract supermarkets and grocery stores to underserved neighborhoods (e.g., tax credits, grant and loan programs, small business/economic development programs, and other economic incentives).
- Realign bus routes or provide other transportation, such as mobile community vans or shuttles to ensure that residents can access supermarkets or grocery stores easily and affordably through public transportation.
- Create incentive programs to enable current small food store owners in underserved areas to carry healthier, affordable food items (e.g., grants or loans to purchase refrigeration equipment to store fruits, vegetables, and fat-free/low-fat dairy; free publicity; a city awards program; or linkages to wholesale distributors).
- Use zoning regulations to enable healthy food providers to locate in underserved neighborhoods (e.g., "as of right" and "conditional use permits").
- Enhance accessibility to grocery stores through public safety efforts, such as better outdoor lighting and police patrolling.

Strategy 2: Restaurants

Improve the availability and identification of healthful foods in restaurants.

Action Steps

- Require menu labeling in chain restaurants to provide consumers with calorie information on in-store menus and menu boards.
- Encourage non-chain restaurants to provide consumers with calorie information on in-store menus and menu boards.
- Offer incentives (e.g., recognition or endorsement) for restaurants that promote healthier options (for example, by increasing the offerings of healthier foods, serving age-appropriate portion sizes, or making the default standard options healthy – i.e., apples or carrots instead of French fries, and non-fat milk instead of soda in "kids' meals").

Strategy 3: Community Food Access

Promote efforts to provide fruits and vegetables in a variety of settings, such as farmers' markets, farm stands, mobile markets, community gardens, and youth-focused gardens.

Action Steps

- Encourage farmers markets to accept Special Supplemental Nutrition Program for Women, Infants and Children (WIC) food package vouchers and WIC Farmers Market Nutrition Program coupons; and encourage and make it possible for farmers markets to accept Supplemental Nutrition Assistance Program (or SNAP, formerly the Food Stamp Program) and WIC Program Electronic Benefit Transfer (EBT) cards by allocating funding for equipment that uses electronic methods of payment.
- Improve funding for outreach, education, and transportation to encourage use of farmers markets and farm stands by residents of lower-income neighborhoods, and by WIC and SNAP recipients.

= Most Promising Steps

- Introduce or modify land use policies/zoning regulations to promote, expand, and protect potential sites for community gardens and farmers' markets, such as vacant city-owned land or unused parking lots.
- Develop community-based group activities (e.g., community kitchens) that link procurement of affordable, healthy food with improving skills in purchasing and preparing food.

Strategy 4: Public Programs and Worksites

Ensure that publicly-run entities such as after-school programs, child-care facilities, recreation centers, and local government worksites implement policies and practices to promote healthy foods and beverages and reduce or eliminate the availability of calorie-dense, nutrient-poor foods.

Action Steps

- Mandate and implement strong nutrition standards for foods and beverages available in government-run or regulated after-school programs, recreation centers, parks, and child care facilities (which includes limiting access to calorie-dense, nutrient-poor foods).
- Ensure that local government agencies that operate cafeterias and vending options have strong nutrition standards in place wherever foods and beverages are sold or available.
- Provide incentives or subsidies to government run or regulated programs and localities that provide healthy foods at competitive prices and limit calorie-dense, nutrient poor foods (e.g., after-school programs that provide fruits or vegetables every day, and eliminate calorie-dense, nutrient poor foods in vending machines or as part of the program).

Strategy 5: Government Nutrition Programs

Increase participation in federal, state, and local government nutrition assistance programs (e.g., WIC, school breakfast and lunch, the Child and Adult Care Food Program [CACFP], the Afterschool Snacks Program, the Summer Food Service Program, SNAP).

Action Steps

- Put policies in place that require government-run and -regulated agencies responsible for administering nutrition assistance programs to collaborate across agencies and programs to increase enrollment and participation in these programs (i.e., WIC agencies should ensure that those who are eligible are also participating in SNAP, etc.)
- Ensure that child care and after-school program licensing agencies encourage utilization of the nutrition assistance programs and increase nutrition program enrollment (CACFP, Afterschool Snack Program, and the Summer Food Service Program).

Strategy 6: Breastfeeding

Encourage breastfeeding and promote breastfeeding-friendly communities.

Action Steps

- Adopt practices in city and county hospitals that are consistent with the Baby-Friendly Hospital Initiative USA (United Nations Children's Fund/World Health Organization). This initiative promotes, protects, and supports breastfeeding through ten steps to successful breastfeeding for hospitals.
- Permit breastfeeding in public places and rescind any laws or regulations that discourage or do not allow breastfeeding in public places and encourage the creation of lactation rooms in public places.
- Develop incentive programs to encourage government agencies to ensure breastfeeding-friendly worksites, including providing lactation rooms.
- Allocate funding to WIC clinics to acquire breast pumps to loan to participants.

Strategy 7: Drinking Water Access

Increase access to free, safe drinking water in public places to encourage water consumption instead of sugar-sweetened beverages.

Action Steps

- Require that plain water be available in local government-operated and administered outdoor areas and other public places and facilities.
- Adopt building codes to require access to and maintenance of fresh drinking water fountains (e.g., public restroom codes).

GOAL 2: REDUCE ACCESS TO AND CONSUMPTION OF CALORIE-DENSE, NUTRIENT-POOR FOODS

Strategy 8: Policies and Ordinances

Implement fiscal policies and local ordinances to discourage the consumption of calorie-dense, nutrient-poor foods and beverages (e.g., taxes, incentives, land use and zoning regulations).

Action Steps

- Implement a tax strategy to discourage consumption of foods and beverages that have minimal nutritional value, such as sugar-sweetened beverages.
- Adopt land use and zoning policies that restrict fast food establishments near school grounds and public playgrounds.
- Implement local ordinances to restrict mobile vending of calorie-dense, nutrient-poor foods near schools and public playgrounds.
- Implement zoning designed to limit the density of fast food establishments in residential communities.
- Eliminate advertising and marketing of calorie-dense, nutrient-poor foods and beverages near school grounds and public places frequently visited by youths.
- Create incentive and recognition programs to encourage grocery stores and convenience stores to reduce point-of-sale marketing of calorie-dense, nutrient-poor foods (i.e., promote “candy-free” check out aisles and spaces).

GOAL 3: RAISE AWARENESS ABOUT THE IMPORTANCE OF HEALTHY EATING TO PREVENT CHILDHOOD OBESITY

Strategy 9: Media and Social Marketing

Promote media and social marketing campaigns on healthy eating and childhood obesity prevention.

Action Steps

- Develop media campaigns, utilizing multiple channels (print, radio, internet, television, social networking, and other promotional materials) to promote healthy eating (and active living) using consistent messages.
- Design a media campaign that establishes community access to healthy foods as a health equity issue and reframes obesity as a consequence of environmental inequities and not just the result of poor personal choices.
- Develop counter-advertising media approaches against unhealthy products to reach youth as has been used in the tobacco and alcohol prevention fields.

ACTIONS FOR INCREASING PHYSICAL ACTIVITY

GOAL 1: ENCOURAGE PHYSICAL ACTIVITY

Strategy 1: Built Environment

Encourage walking and bicycling for transportation and recreation through improvements in the built environment.

Action Steps

- Adopt a pedestrian and bicycle master plan to develop a long-term vision for walking and bicycling in the community and guide implementation.
- Plan, build, and maintain a network of sidewalks and street crossings that creates a safe and comfortable walking environment and that connects to schools, parks, and other destinations.
- Plan, build, and retrofit streets so as to reduce vehicle speeds, accommodate bicyclists, and improve the walking environment.
- Plan, build, and maintain a well-connected network of off-street trails and paths for pedestrians and bicyclists.
- Increase destinations within walking and bicycling distance.
- Collaborate with school districts and developers to build new schools in locations central to residential areas and away from heavily trafficked roads.

Strategy 2: Programs for Walking and Biking

Promote programs that support walking and bicycling for transportation and recreation.

Action Steps

- Adopt community policing strategies that improve safety and security of streets, especially in higher crime neighborhoods. *
- Collaborate with schools to develop and implement a Safe Routes to School program to increase the number of children safely walking and bicycling to schools.
- Improve access to bicycles, helmets, and related equipment for lower-income families, for example, through subsidies or repair programs.
- Promote increased transit use through reduced fares for children, families, and students, and improved service to schools, parks, recreation centers, and other family destinations.
- Implement a traffic enforcement program to improve safety for pedestrians and bicyclists.

Strategy 3: Recreational Physical Activity

Promote other forms of recreational physical activity.

Action Steps

- Build and maintain parks and playgrounds that are safe and attractive for playing and in close proximity to residential areas.
- Adopt community policing strategies that improve safety and security for park use, especially in higher crime neighborhoods.*
- Improve access to public and private recreational facilities in communities with limited recreational options through reduced costs, increased operating hours, and development of culturally appropriate activities.

* These two action steps on community policing were combined for the most promising 12 action steps list.

- Create after-school activity programs, e.g., dance classes, city-sponsored sports, supervised play, and other publicly or privately supported active recreation.
- Collaborate with school districts and other organizations to establish joint use of facilities agreements allowing playing fields, playgrounds, and recreation centers to be used by community residents when schools are closed; if necessary, adopt regulatory and legislative policies to address liability issues that might block implementation.
- Create and promote youth athletic leagues and increase access to fields, with special emphasis on income and gender equity.
- Build and provide incentives to build recreation centers in neighborhoods.

Strategy 4: Routine Physical Activity

Promote policies that build physical activity into daily routines.

Action Steps

- Institute regulatory policies mandating minimum play space, physical equipment, and duration of play in preschool, after-school, and child-care programs.
- Develop worksite policies and practices that build physical activity into routines (for example, exercise breaks at a certain time of day and in meetings, or walking meetings). Target worksites with high percentages of youth employees and government-run and -regulated worksites.
- Create incentives for remote parking and drop-off zones and/or disincentives for nearby parking and drop-off zones at schools, public facilities, shopping malls, and other destinations.
- Improve stairway access and appeal, especially in places frequented by children.

GOAL 2: DECREASE SEDENTARY BEHAVIOR

Strategy 5: Screen Time

Promote policies that reduce sedentary screen time.

Action Steps

- Adopt regulatory policies limiting screen time in preschool and after-school programs.

GOAL 3: RAISE AWARENESS OF THE IMPORTANCE OF INCREASING PHYSICAL ACTIVITY

Strategy 6: Media and Social Marketing

Develop a social marketing program that emphasizes the multiple benefits for children and families of sustained physical activity.

Action Steps

- Develop media campaigns, utilizing multiple channels (print, radio, internet, television, other promotional materials) to promote physical activity using consistent messages.
- Design a media campaign that establishes physical activity as a health equity issue and reframes obesity as a consequence of environmental inequities and not just the result of poor personal choices.
- Develop counter-advertising media approaches against sedentary activity to reach youth as has been done in the tobacco and alcohol prevention fields.

FOR MORE INFORMATION . . .

Copies of *Local Government Actions to Prevent Childhood Obesity* are available from the National Academies Press, 500 Fifth Street, N.W., Lockbox 285, Washington, DC 20055; (800) 624-6242 or (202) 334-3313 (in the Washington metropolitan area); Internet, www.nap.edu. The full text of this report is available at www.nap.edu.

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COMMITTEE ON CHILDHOOD OBESITY PREVENTION ACTIONS FOR LOCAL GOVERNMENTS

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The Washington Post

Chewing the Fat

The nation is moving toward full disclosure of calorie counts at fast-food chains -- but too slowly.

Saturday, July 25, 2009

YOU COULD, if desperate to increase your waist size, clog your arteries and double your chin, pay a visit to the Cheesecake Factory and order the fried macaroni and cheese. Though merely an appetizer, this dish packs 1,570 calories and 69 grams of saturated fat into four crunchy, deep-fried orbs about the size of golf balls, slathered with marinara sauce and topped with grated cheese. Then again, you could just stay home and swallow a stick of butter.

As the Center for Science in the Public Interest pointed out, you'd be better off eating the butter.

But how's a consumer to know? For unless you live in New York City, King County, Wash. (Seattle), or a handful of other, smaller localities around the country, most chain restaurants near you are not required to provide calorie or nutritional information.

That's starting to change, and none too soon. This month California started mandating that its chain restaurants -- about 17,000 locations statewide -- provide on-site brochures listing calories, sodium, saturated fat and carbohydrates for each menu item. In 18 months, chains in California will have to list calorie counts directly on menus or menu boards, so diners can see them at a glance.

Massachusetts and Maine are moving in the same direction, and similar measures have been introduced in at least a dozen other states. Faced with this tidal wave, the restaurant industry last month dropped its long-standing opposition to listing calorie counts on menus, and it is backing federal legislation that would standardize and nationalize what threatens to become a hodgepodge of slightly differing state and local mandates. That measure is tied to sweeping health-care reform legislation in the Senate, so unfortunately full disclosure of calorie counts, while all but inevitable, may have to wait.

Some will moan about a nanny state; the real question is whether the requirements will come too late. Obesity is a nationwide epidemic; in California, it's the second-deadliest cause of preventable death, after smoking, and a third of the state's children

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The Washington Post

Chewing the Fat

are overweight. Chain restaurants, both fast food and full service, are prime contributors. Meanwhile, portion sizes are ballooning and Americans are spending nearly half their food budgets at restaurants.

In New York City, which pioneered calorie disclosure on fast-food menus, a large majority of patrons, shocked at the numbers they saw on the menus, changed their orders to favor less fattening items. If more Americans were confronted with those numbers, it would lead to healthier diets and a less obese nation.

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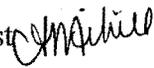
ADDENDUM
HHS COMMITTEE #1-2
October 29, 2009

Worksession

MEMORANDUM

October 29, 2009

TO: Health and Human Services Committee

FROM: Amanda M. Mihill, Legislative Analyst 

SUBJECT: **Worksession:** Bill 19-07, Eating and Drinking Establishments – Nutrition Labeling, Resolution to adopt Board of Health Regulation requiring certain eating and drinking establishments to post certain nutrition information on menu boards and menus.

Federal Preemption

In the regular Council staff packet for this worksession, Council staff noted that there may be an issue regarding potential federal preemption of County legislation in this area should the bipartisan menu labeling bill pass Congress. Council staff has studied the federal proposal and believes that under that proposal, state and local governments would be preempted from enacting requirements that are different from the federal law that would apply to restaurants part of a chain of 20 or more locations or restaurants that voluntarily comply with the federal law. The Council would not be prohibited from enacting legislation that is identical to the federal law or legislation that would apply to a restaurant that is part of a chain of less than 20 locations and does not voluntarily comply with the federal proposal.

One major unknown for this issue remains whether Congress will enact the federal legislation. If Congress does not enact the federal proposal, the County would be free to enact different menu labeling requirements. **Given this information, if the Committee wishes to enact menu labeling legislation and is convinced that Congress will pass federal menu labeling legislation, Council staff recommends amending Bill 19-07 to mirror the federal law.** An additional option, as identified in the regular Council staff packet, would be to wait a given period of time to see if the federal proposal passes before acting on Bill 19-07.

Suggested amendments to Bill 19-07 proposed by Yum! Brands, Inc.

After the Council staff packet on Bill 19-07 went to print, Council staff received the attached comments from Kevin Lundy on behalf of Yum! Brands, Inc. Council staff addresses each of Mr. Lundy's suggestions in turn.

1. Should Bill 19-07 include a definition for “menu board”?

Mr. Lundy suggests defining “menu board” as “a posted list or pictorial display of food or beverage items offered by sale by a food facility. ‘Menu board’ does not include printed or pictorial materials for the purpose of marketing.” **Council staff supports the concept of adding a definition of menu board and is comfortable with the first sentence of Mr. Lundy’s language.**

2. Should marketing material be subject to menu labeling requirements?

Mr. Lundy urges the Council to exclude marketing material such as marquee signs and window clings from labeling requirements. Council staff has not had the opportunity to research how other jurisdictions that have implemented menu labeling requirements address this issue and recommends that the Committee ask the CSPI representative what other jurisdictions have done with respect to this issue.

3. For how long should a temporary menu item be excluded from labeling requirements?

Bill 19-07 exempts menu items not on the menu for less than 30 cumulative days and test market menu items that are on the menu for less than 90 days from labeling requirements. Mr. Lundy urges the Council to exclude menu items that are not on the menu for less than 180 days and cites that California uses this standard.

A cursory glance at the material provided by CSPI shows that most jurisdictions use less than 180 days. The federal proposal would exclude menu items that are on the menu for less than 60 days. The chart below compares how long a menu item must be on the menu before it must be labeled.

Jurisdiction	Days allowed for a menu item to be excluded
California	180
King County, WA	90
New York City	30
Federal Proposal	60
Multnomah County, OR	90
Davidson County, TN	90

Council staff does not support the 180 day timeframe suggested, but is comfortable with the 60 day requirement identified in the federal proposal.

3. Applicability of self serve facilities, such as salad bars.

Mr. Lundy suggested an amendment to Bill 19-07 that would clarify that salad bars and buffets are excluded from menu labeling requirements. Council staff notes that Bill 19-07 does not apply to any menu item that is not standardized. Bill 19-07 as amended by the Committee clarifies this on ©6, lines 122-123 of the regular Council staff packet as follows:

An eating and drinking establishment is not required to post nutrition information for menu items that are not standardized.

If Committee members believe that further clarification is required, Council staff suggests adding the following to the end of the sentence “, such as a salad bar item, buffet item, and similar self-serve facilities.” Council staff notes, however, that the federal proposal requires posting of calorie information for standard serving sizes for these types of facilities. If the Committee recommends amending Bill 19-07 to mirror the federal proposal, this requirement should also be amended.

4. What nutrition information should be posted on the menu/menu board?

As amended by the Committee, Bill 19-07 requires restaurants to place calorie, saturated fat, and sodium information directly on a menu and calories directly on the menu board. Mr. Lundy urges the Council to amend Bill 19-07 to require that restaurants provide only calorie information on the menus. As noted in the regular Council staff packet, **Council staff recommends the Committee amend Bill 19-07 to require restaurants to post calorie information directly on the menu or menu board and provide other information in writing on request, which would mirror the federal proposal in this regard.**

5. How should the information be posted for combo meal offerings and family meals?

Mr. Lundy requests the Committee to amend Bill 19-07 to clarify how combination meals are calculated. The federal proposal does not specify how restaurants would post information for combination meals, but delegates that issue to the regulation process. If the Committee wishes to mirror the federal proposal, Bill 19-07 could be amended to specify that this issue be addressed during the regulatory process. If the Committee wishes to address this issue specifically in Bill 19-07, Council staff suggests the language used in the New York City regulation:

For combinations of different food items listed or pictured as a single menu item, the range of calorie content values showing the minimum to maximum number of calories for all combinations of that menu item must be listed on a menu board and menu. If there is only one possible calorie total for the combination, then that total must be listed on the menu or menu board.

Mr. Lundy also requests the Committee to amend Bill 19-07 to clarify how information is provided for meals intended to serve more than 1 person. The federal proposal does not address this issue directly, but the federal regulations may when issued. If the Committee is inclined to

specify different criteria for family meals, Council staff recommends the following language, much of which is taken from Mr. Lundy's proposed language:

For standardized menu items that are intended to serve more than 1 individual, an establishment must post:

- (A) the number of individuals the menu item is intended to serve; and
- (B) the nutrition information required by subsection (d)(1) or (e) per individual serving.

Request to exempt movie theaters from menu labeling requirements.

The Council also received a request from Doug Murdoch on behalf of the Mid-Atlantic National Association of Theatre Owners to exclude movie theaters from Bill 19-07's menu labeling requirement. Council staff has not had the opportunity to research how other jurisdictions have handled this issue and recommends that the Committee ask the CSPI representative what other jurisdictions have done on this issue. Council staff is also unsure of the applicability of the federal proposal to movie theaters.

Applicability of Bill 19-07 to convenience stores.

Finally, Council staff had conversations with a representative from the convenience store industry that opposes Bill 19-07 and expressed concerns with how the bill would apply to their facilities. Council staff understands that a representative will be available to discuss their concerns with the Committee at the worksession. Council staff understands that convenience stores would be subject to the federal proposal.

This packet contains:

Material from Yum! Brands, Inc.
Material from Mid-Atlantic NATO

Circle

1
15

Amendment Backgrounder

- Added definition of “menu board” for continuity within the bill. Provided clarification for the non-application to marketing materials such as marquee signs and window clings.
- Clarified that compliance for menu items is 180 days rather than 30 days. We have found that 30 days offers operational challenges for our special offers. It also impacts various programs centering around religious observances such as Lent (40 days), etc. Other jurisdictions have offered a longer consideration (California for example 180 days).
- Clarified the non-application to salad bars and buffets. In many cases, items available for the buffet or salad bars will already have calorie information posted on the menu or menu board. In many cases buffet and salad bar items change frequently, thus creating a difficulty in posting information for offerings. In other jurisdictions with menu labeling including California, King County, Maine and Oregon, buffets and salad bars have been exempt.
- Clarified that the nutrient to be placed on the menu/menu board is calories. This mirrors all other menu labeling laws and the federal proposal. We will continue to be providing other nutrient information in our brochures.
- Clarified the process for posting for combo meal offerings.
- Clarified that the posting for family meals/meals intended to be consumed by more than one person shall be posted using the number of people intended to be served and the calories per serving. Both pieces of information would be posted.
- Clarified that this regulation does not create new private right of action claims against restaurants. Many jurisdictions (Maine, California, Oregon, etc) adopted this language to ensure that costly and impactful suits against restaurants do not materialize.

Bill No. 19-07
Concerning: Eating and Drinking
Establishments – Nutrition Labeling
Revised: 7/27/07 Draft No. 3
Introduced: July 31, 2007
Expires: February 28, 2009
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Leventhal and Trachtenberg

AN ACT to:

- (1) require certain eating and drinking establishments to post certain nutrition information on menu boards and menus; and
- (2) generally amend County law regarding eating and drinking establishments.

By adding

Montgomery County Code
Chapter 15, Eating and Drinking Establishments
Section 15-5A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 15-15A is added as follows:

15-15A. Nutrition Labeling.

Legislative Findings.

- (1) Research reveals the strong link between diet and health and that diet-related diseases begin early in life.
- (2) Increased caloric intake is a key factor contributing to the increase in obesity in the United States. According to the Centers for Disease Control and Prevention, two-thirds of American adults are overweight or obese, and the rates of obesity have tripled in children and teens since 1980. Data from the Maryland Behavioral Risk Factor Surveillance System indicated that 50.8 percent of Montgomery County residents were overweight or obese in 2005. According to the National Institutes of Health, obesity increases the risk for diseases such as diabetes, cardiovascular disease (heart disease and stroke), osteoarthritis, sleep disorders, and cancer. According to the Maryland Vital Statistics 2003 Annual Report, heart disease, cancer, stroke, and diabetes accounted for nearly 60 percent of all deaths in Maryland in 2003. The Report cites heart disease, cancer, stroke, and diabetes as the first, second, third, and fifth leading causes of deaths in Maryland in 2003. The United States Department of Health and Human Services cited that in 2000 the economic cost of obesity was \$117 billion in the United States.
- (3) The National Institutes of Health identified saturated fat as the biggest dietary cause of high low-density lipoprotein cholesterol. High LDL cholesterol levels lead to the build up of cholesterol in arteries; the higher the level of LDL in a person's blood, the

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greater the risk of heart disease. In the United States, heart disease is the leading cause of death and a leading cause of disability among working adults. The American Heart Association estimated that the economic cost of heart disease and stroke in the United States in 2007 will be \$431.8 billion in health care expenditures and lost productivity. The Maryland Behavioral Risk Factor Surveillance System indicated that nearly 34 percent of Maryland adults were diagnosed with high cholesterol in 2003. Overweight or obese adults were more likely to have high cholesterol than normal weight adults. The Maryland Vital Statistics 2003 Report cited heart disease as the leading cause of death in Maryland during 2003, which accounted for over 27 percent of all deaths.

(4) The National Institutes of Health identified that excess dietary sodium will contribute to high blood pressure in people who are sensitive to sodium. High blood pressure can lead to congestive heart failure, kidney failure, and stroke. Nearly 1 in 3 American adults have high blood pressure. The Maryland Behavioral Risk Factor Surveillance System indicated that approximately 25 percent of Maryland adults were diagnosed with high blood pressure in 2003. As with high cholesterol, obese adults were more likely to have high blood pressure than normal weight adults.

(5) Over the past 2 decades, there has been a significant increase in the number of meals prepared and eaten outside of the home. A study in the USDA Agriculture Information Bulletin reported that Americans consume approximately one-third of their calories on

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55 food purchased in eating and drinking establishments, and the
 56 National Restaurant Association estimated that Americans spend
 57 nearly 48 percent of total food dollars on food purchased from
 58 eating and drinking establishments. Studies in the USDA
 59 Agriculture Information Bulletin, the International Journal of
 60 Obesity, the American Journal of Public Health, and the
 61 American Journal of Epidemiology link eating out with obesity
 62 and higher caloric intake. Studies in the USDA Agriculture
 63 Information Bulletin and the American Journal of Epidemiology
 64 report that food from eating and drinking establishments is
 65 generally higher in calories and saturated fat and lower in
 66 nutrients, such as calcium and fiber, than home-prepared foods.

67 (6) The federal Nutrition Labeling and Education Act, in effect since
 68 1994, requires nutrition labeling on packaged foods sold in retail
 69 stores. Using food labels is associated with healthier diets. The
 70 United States Department of Health and Human Services cited
 71 that three-quarters of American adults report using food labels on
 72 packaged foods, and a report from the Food and Drug
 73 Administration cited that 48 percent of people report that the
 74 nutrition information on food labels has caused them to change
 75 the food product they purchased.

76 (7) Nutrition information is required for food served in an eating and
 77 drinking establishment only if a nutrient content or health claim is
 78 made about the food. It is difficult for consumers to limit caloric
 79 intake at eating and drinking establishments because of the
 80 limited availability of nutrition information and the practice of
 81 -serving food in larger-than-standard serving sizes. Studies in the

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82 Journal of Marketing and the American Journal of Clinical
83 Nutrition show that people eat greater quantities of food when
84 served more. A study in the Journal for Consumer Affairs
85 indicated that people make healthier choices in eating and
86 drinking establishments when provided with nutrition
87 information at the point of purchase.

88 (b) Definitions. In this Section, the following words have the meaning
89 indicated:

90 (1) “Menu” means a printed or handwritten list, provided at an eating
91 and drinking establishment, of one or more food or drink items
92 available at an eating and drinking establishment. A menu
93 includes a beverage list, but does not include printed or pictorial
94 materials for the purpose of marketing.

95 (2) “Menu board” means a posted list or pictorial display of food or
96 beverage items offered for sale by a food facility. “Menu board”
97 does not include printed or pictorial materials for the purpose of
98 marketing. (3) “Standardized Menu Item” or “Menu Item”
99 means a food or drink item served in portions for which the size
100 and content are standardized. “Standardized menu item” does not
101 include a food or drink item that:

102 (A) appears on the menu for less than 180 cumulative days per
103 calendar year; or

104 (B) is placed on a table or counter for general use without
105 charge; or

106 (C) is self-served in a salad bar or buffet.

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107 (c) Applicability. This Section applies to an eating or drinking
108 establishment that is part of a chain with at least 10 locations nationally
109 and that:

110 (1) Does business under the same trade name, regardless of the
111 ownership of individual locations; and

112 (2) Offers predominantly the same type of menu.

113 (d) Labeling Required.

114 (1) An eating and drinking establishment must post calories for any
115 standardized menu item on each menu or menu board next to or
116 beneath the listing of that item in size and typeface that is clear
117 and conspicuous.

Deleted: Except as provided in subsection (e), an

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Deleted: the following nutrition information, calculated according to applicable federal law.

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(A) number of calories;¶
(B) grams of saturated fat; and¶
(C) milligrams of sodium.

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118 Q
119 (2) Range of Calorie Content Required for Different Flavors and
120 Varieties. If an eating and drinking establishment offers a
121 standardized menu item in more than one flavor or variety and
122 lists the item as a single menu item, (such as beverages, ice
123 cream, pizza, or doughnuts), the establishment must post the
124 range of nutrition information for each size offered for sale. The
125 range must include the minimum and maximum values for each
126 flavor or variety of that item.

Deleted: The required nutrition information must be located next to or beneath each menu item in a size and typeface at least as large as the name of the menu item or its price.

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127 (3) The disclosure of calorie information on a menu or menu board
128 next to a standardized menu item that is a combination of at least
129 two standardized menu items on the menu or menu board, shall,
130 based upon all possible combinations for that standardized menu
131 item, include both the minimum amount of calories for the calorie
132 count information and the maximum amount of calories for

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133 calorie count information. If there is only one possible total
134 amount of calories, then this total shall be disclosed.

135 (4) The disclosure of calorie information on a menu or menu board
136 next to a standardized menu item that is intended to serve more
137 than one individual shall include both of the following:

138 7 (a) The number of individuals intended to be served by the
139 standardized menu item.

140 9 (b) The calorie information per individual serving. If the
141 standardized menu item is a combination of at least two
142 standardized menu items, this disclosure shall, based upon all
143 possible combinations for that standard menu item, include both
144 the minimum amount of calories for the calorie count information
145 and the maximum amount of calories. If there is only one
146 possible total amount of calories, then this total shall be
147 disclosed.

148 0
149 (e) (1) The bottom of each menu page must contain the following
150 statement:

Recommended limits for a 2,000 calorie daily diet are 20
grams of saturated fat and 2,300 milligrams of sodium.

153 (2) Each menu board must contain the following statement:

A 2,000 calorie daily diet is used as the basis for general
nutrition advice; however, individual calorie needs may
vary.

157 (3) An eating and drinking establishment may include the following
158 statement on a menu or menu board:

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Deleted: *Menu Boards*. If an eating and drinking establishment uses a menu board, the establishment may limit the nutrition information posted on the menu board to the number of calories per menu item. However, the establishment must provide the additional nutrition information required in subsection (d)(1) to each customer in writing on request.

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159 The nutrition information provided is based on standard
160 recipes and product formulations. Small variations may
161 occur because of differences in preparation, serving sizes,
162 ingredients, or special orders.

163 Q
164 (f) Enforcement. When an eating and drinking establishment is inspected
165 under Section 15-3, the Director must verify that required nutrition
166 information is posted. The Director is not required to verify the
167 accuracy of the information provided, but may request the establishment
168 to document its accuracy. This section may not be construed to create
169 or enhance any claim, right of action or civil liability that did not exist
170 under state law prior to the effective date of this subsection or limit any
171 claim, right of action or civil liability that otherwise exists under state
172 law. No private right of action arises out of this section. The only
173 mechanism for enforcing this section is as provided in this subsection.

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Deleted: *Substitute Ingredients. An establishment may use a substitute ingredient for any menu item for no more than 30 days without replacing the menu or menu board. However, if an establishment permanently substitutes an ingredient in any menu item, the establishment must comply with this Section within 90 days.*

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175 **Sec. 2. Effective Date.**

176 Section 15-15A, inserted by Section 1 of this Act takes effect on:

- 177 (a) August 1, 2008 for any eating and drinking establishment that must
- 178 comply with a similar menu labeling requirement in any other
- 179 jurisdiction by August 1, 2008; and
- 180 (b) August 1, 2009 for all other eating and drinking establishments.

181 *Approved:*

182

183

184 _____
Marilyn J. Praisner, President, County Council

_____ Date

185 *Approved:*

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187

188 Isiah Leggett, County Executive Date

189 *This is a correct copy of Council action.*

190

191

192 Linda M. Lauer, Clerk of the Council Date

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**YUM! Brands Announced U.S. Divisions Will Place Calories on All Company Restaurant Menu Boards
Calls for Federal Legislation To Establish Uniform Menu Board Labeling**

LOUISVILLE, KY, October 1, 2008 – Yum! Brands, Inc. (NYSE:YUM) today announced that its U.S. divisions, Kentucky Fried Chicken, Taco Bell, Pizza Hut, Long John Silver's and A&W All-American Food, will become the first national restaurant chains to begin voluntarily placing product calorie information on their respective menu boards in company-owned restaurants nationwide. Franchisees will be encouraged to provide the same information on their menu boards. Calorie information will be based on individual serving sizes and will be phased onto menu boards beginning this year and completed by January 1, 2011. The Company also will call for federal legislation using the recently-enacted legislation in California as a model to establish uniform guidelines for menu board labeling with calorie information.

Each of the Company's brands currently offers lower calorie "Better For You" menu options (see attached list). Its Taco Bell restaurants offer a Fresco Menu, including nine items with nine grams of fat or less, many of which are lower calorie options. KFC currently offers lower calorie Sandwiches, Snackers, side items, salads and Tender Roast Chicken, and plans to introduce Kentucky Grilled Chicken early next year. Pizza Hut currently offers a number of lower calorie menu options, including Fit 'N Delicious lower fat pizzas, and will begin offering The Natural in December, a pizza made with all natural ingredients, including a multigrain crust, all natural old world sauce, all natural mozzarella cheese and natural toppings free from artificial colors, flavors or preservatives such as naturally-preserved Italian sausage, pepperoni without added nitrates and nitrites and 100% real beef with no fillers. Long John Silver's will begin offering a new Freshside Grille menu next month, which features grilled shrimp, salmon and tilapia, along with mixed vegetables and rice.

As part of a broader Health and Wellness effort across the United States, the Company also announced a new policy not to advertise its products on television programs specifically aimed at children under 12 years old. It also will continue to provide full nutritional information on its Web sites and in brochures, available upon request, at its restaurant drive-thru windows and in-store ordering counters. Additionally, the Company will launch national on-line exercise programs, featuring renowned University of Louisville men's basketball Coach Rick Pitino, to help educate consumers about maintaining a balanced lifestyle. In early 2007, both Taco Bell and KFC were pioneers in switching to cooking oils with zero grams trans fat per serving. Each of the company's brands is looking at ways to reduce sodium and making continuous improvements to the nutritional profile of its products.

"We believe we have a continued responsibility to offer "Better For You" options, educate consumers about the foods they eat, and promote exercise so they can maintain a balanced lifestyle," said Jonathan Blum, Yum! Brands chief public affairs officer. "Our customers have told us they would find calorie information useful, along with other nutritional information we make accessible in restaurant brochures and on our Web sites. We now call on the U.S. Congress to enact federal legislation that would create uniform menu board guidelines for all who sell prepared food so there is a consistent way to educate the public about the nutritional value of the food they eat."

The Center for Science in the Public Interest (CSPI) praised Yum! Brands for adding calorie counts to its menu boards. "Yum! Brands groundbreaking announcement that it will add calorie counts to the menu boards at KFC, Pizza Hut and Taco Bell is fabulous news for health-conscious consumers. Yum! is leaping ahead of all its competitors by providing the one piece of nutrition information that consumers most want. We applaud this move and encourage other major chains to follow this bold example. Yum! has gone an important step further by voicing its support for legislation that would require restaurants to list calories on menus and menu boards," added Michael Jacobson, CSPI executive director. "This announcement that calories will be displayed on menu boards deserves loud applause," said Walter Willett, chair of the Department of Nutrition at Harvard University's School of Public Health. "Yum! Brand's call for national legislation to create uniform menu board guidelines on nutrition is greatly appreciated. It is exactly the kind of industry leadership that we need."

The Company's restaurant brands currently offer Lower Calorie "Better for You" Menu Options, for example:

<u>KFC Lower Calorie Options</u> (available nationally)	<u>Calories per Serving</u>
KFC Snacker, Original Recipe®	270
KFC Snacker, Honey BBQ	210
HBBQ Dipping Wings (5)	390
Hot Wings (5)	350

Chicken Breast, Original Recipe® (without skin)	140
Drumstick, Original Recipe®	110
Original Recipe® Strips (2)	190
Green Beans - side	50
Mashed Potatoes (without gravy) - side	100
Mashed Potatoes (with gravy) - side	120
Corn on the Cob (3") - side	70

(available at participating restaurants)

Roasted Chicken BLT Salad with Fat Free ranch	235
Honey BBQ Sandwich	300
Tender Roast Twister (no sauce)	340
Tender Roast Sandwich (no sauce)	290
Tender Roast Toasted Wrap	319

Taco Bell Lower Calorie Options
(available nationally)

Calories per Serving

Fresco Crunchy Taco	150
Fresco Grilled Steak Soft Taco	160
Fresco Ranchero Chicken Soft Taco	170
Crunchy Taco	170
Spicy Chicken Soft Taco	170
Fresco Soft Taco	180
Crunchy Taco Supreme®	200
Soft Taco Supreme® - Beef	240
Grilled Steak Soft Taco	260
Ranchero Chicken Soft Taco	270
Gordita Nacho Cheese – Steak	270
Gordita Supreme® -Steak	270
Gordita Supreme® -Chicken	280
Gordita Nacho Cheese -Chicken	280
Mexican Rice	110
Pintos 'n Cheese	160

Pizza Hut Lower Calorie Options
(1 slice = 1/8 pizza)
(made to order upon request)

Per slice

12" Medium Fit 'N Delicious Pizza	
- Diced Chicken, Red Onion, Green Pepper	180
- Ham, Pineapple & Diced Red Tomato	160
- Green Pepper, Red Onion & Diced Red Tomato	150
14" Large Fit 'N Delicious Pizza	
- Diced Chicken, Red Onion, Green Pepper	250

- Ham, Pineapple and Diced Red Tomato	230
- Green Pepper, Red Onion & Diced Red Tomato	210
12" Medium Thin 'N Crispy Pizza	
- Green Pepper, Red Onion & Tomato	180
- Chicken, Red Onion & Green Pepper	190
- Ham, Pineapple & Diced Tomato	180
14" Large Thin 'N Crispy Pizza	
- Cheese Only	260
- Green Pepper, Red Onion & Diced Tomato	250
- Chicken, Red Onion, & Green Pepper	270
- Ham, Pineapple & Diced Tomato	260
- Pepperoni & Mushroom	270
12" Medium Hand Tossed	
- Cheese Only	220
- Pepperoni	220
- Ham and Pineapple	210
- Veggie Lover's	200

Long John Silver's Lower Calorie Menu Options
(available nationally)

Calories per Serving

Battered Fish	230
Baked Cod	120
Battered Shrimp	45/each
Giant Shrimp	90/each
Chicken Plank	140
Shrimp & Seafood Salad (without dressing)	260
Lite Italian Dressing	20
Hushpuppies – side	60/each
Lobster Stuffed Crab Cake	170/each
Corn Coblette – side	90
Cheesesticks	140
Rice	180

A&W All-American Food Lower Calorie Menu Options
(available nationally)

1/4 lb. Hamburger	460
Grilled Chicken Sandwich	430
Hot Dog (plain)	260
Coney (Chili) Dog	310
Coney (Chili)/Cheese Dog	350

A b-roll package is available via satellite at the following times and coordinates:

WEDNESDAY, OCT. 1	11:00 – 11:15 AM ET	Galaxy 3C, Tr. 4, DL 3780V
	2:15 – 2:30 PM ET	Galaxy 3C, Tr. 4, DL 3780V
THURSDAY, OCT. 2	4:00 – 4:15 AM ET	AMC 3, Tr. 8, DL 3860V

Technical Info DURING FEED ONLY, NBN TOC, 212 - 684 – 8910, ext. 221

The b-roll package is also available via Pathfire: Story # NBN 25582

Instructions: For DMG -- from the navigation panel on the left, select News, Video News Feeds, (NBN). For Browser DMG -- login, click the Provider Directory, and select News Broadcast Network (NBN). This story will be available on Pathfire as of 11:00 AM ET on Wednesday, October 1, 2008.

Yum! Brands, Inc., based in Louisville, Kentucky, is the world's largest restaurant company in terms of system restaurants, with nearly 36,000 restaurants in over 100 countries and territories. The company is ranked #253 on the Fortune 500 List, with revenues in excess of \$10 billion in 2007. Four of the company's restaurant brands – KFC, Pizza Hut, Taco Bell and Long John Silver's – are the global leaders of the chicken, pizza, Mexican-style food and quick-service seafood categories, respectively. Outside the United States, the Yum! Brands system opened about four new restaurants each day of the year, making it the largest retail developer in the world. The company has consistently been recognized for its reward and recognition culture, diversity leadership, community giving, and consistent shareholder returns. Since its spin-off as a publicly traded company in 1997, its stock has quintupled. Last year, the company launched the world's largest private sector hunger relief effort, in partnership with the United Nations World Food Programme and other hunger relief agencies. This effort helped save over 1.6 million people from starvation in remote corners of the world, where hunger is most prevalent.

Mihill, Amanda

From: Leventhal's Office, Councilmember
Sent: Wednesday, October 28, 2009 5:29 PM
To: Mihill, Amanda
Subject: FW: Proposed Bill 19-07: Nutrition Labeling

-----Original Message-----

From: Doug Murdoch [mailto:doug@midatlanticnato.com]
Sent: Wednesday, October 28, 2009 4:24 PM
To: Leventhal's Office, Councilmember
Cc: Gillis, Chris
Subject: Proposed Bill 19-07: Nutrition Labeling

Dear Councilmember Leventhal,

On behalf of Mid-Atlantic NATO (National Association of Theatre Owners), an association representing Movie Theatres throughout Maryland, we respectfully submit these written comments regarding Bill 19-07 and **specifically request that Movie Theatres be exempt from any menu labeling regulation.** Our position is based on the following issues:

- The proposed regulation's definition of "certain eating and drinking establishments" is broad and far reaching. As loosely outlined, any business requiring a food permit might be included in the described "eating establishment." If left to interpretation this would include movie theatre concession stands that sell mainly pre-packaged items vs. prepared meals for which this bill was intended. In other words, the proposed bill implies that the regulation will only apply to "certain" chain restaurants, but has no clear definition of what those "certain" establishments would include. As written, this bill will have numerous unintended consequences.
- According to the Motion Picture Association of America, the average American moviegoer attends a movie at a theatre 4.64 times per year. Concession sales are only incidental to the primary service of motion picture entertainment. Additionally, according to Regal Entertainment Group, the largest theatre circuit in the world, only 51% of their patrons visit the concession stand. Of those 51%, many purchase only bottled water and many more purchase prepackaged snacks already listing nutritional information on the package. Therefore, since moviegoers purchase concessions only 2.3 times per year and since only a portion of such purchases would be subject to menu labeling requirements, the burdens (including the cost of producing and maintaining menu labeling requirements) imposed on the movie theatre businesses would significantly outweigh any benefit to the residents of Montgomery County.
- Where the movie theatre industry has had an opportunity to provide information and participate in the process, regulators have specifically exempted movie theatres. Earlier this year, the attached amendment was offered to the committee handling Maryland House Bill 601 by its sponsor Delegate Niemann. Others such as Multnomah County (Portland, Ore) voted 5-0 to adopt an ordinance that specifically excludes movie theaters. This also occurred in Seattle Washington when the King County Board of Health exempted movie theatres from menu labeling requirements.

For these reasons we request that movie theatres be exempt.

Respectfully submitted,

10/29/2009

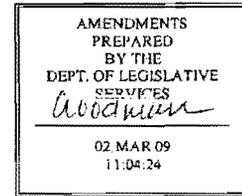
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HB0601/513426/1



BY: Delegate Niemann
(To be offered in the Health and Government Operations
Committee)

AMENDMENTS TO HOUSE BILL 601
(First Reading File Bill)

AMENDMENT NO. 1

On page 2, in line 20, after "(B)" insert "(1)"; in lines 21, 22, and 25, strike "(1)", "(2)", and "(3)", respectively, and substitute "(I)", "(II)", and "(III)", respectively; and after line 26, insert:

"(2) "CHAIN RESTAURANT" DOES NOT INCLUDE:

- (I) A FULL SERVICE SUPERMARKET OR GROCERY STORE;
- (II) A CONVENIENCE STORE; OR
- (III) A MOVIE THEATER."

AMENDMENT NO. 2

On page 3, in line 2, strike "OR"; in line 4, after "CHARGE" insert "; OR

(3) ITEMS SERVED ON A BUFFET THAT HAVE NO STANDARD SERVING SIZE";

and in line 24, after "DISPLAY" insert "AND SERVED IN STANDARD-SIZED PORTIONS".

(Over)