

Bill No. 19-07
Concerning: Eating and Drinking
Establishments – Nutrition Labeling
Revised: 11/17/2009 Draft No. 6
Introduced: July 31, 2007
Enacted: November 17, 2009
Executive: November 27, 2009
Effective: July 1, 2010
Sunset Date: None
Ch. 29, Laws of Mont. Co. 2009

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) [[“Convenience store” means a retail business less than 5,000
 91 square feet that has a primary emphasis placed on providing the
 92 public a convenient location to quickly purchase from a wide
 93 array of consumable products and services.]]

94 [[2) “Grocery store” means a store primarily engaged in the retail sale
 95 of canned foods, dry goods, fresh fruits and vegetables, fresh and
 96 prepared meats, fish, and poultry, and nonfood grocery products.
 97 In this Section, “grocery store” does not include a convenience
 98 store.]]

99 [[3)]] “Menu” or “menu board” means [[a printed or handwritten list,
 100 provided at an eating and drinking establishment, of one or more
 101 food or drink items available at]] the primary writing of an eating
 102 and drinking establishment from which a consumer makes an
 103 order selection. [[A menu [[includes a beverage]] does not
 104 include a wine list.]]

105 [[4)]] (2) “Standardized menu item” or “menu item” means a food or
 106 drink item [[served in portions for which the size and content are
 107 standardized]] as usually prepared and offered for sale.
 108 “Standardized menu item” does not include a food or drink item
 109 that:

110 (A) appears on the menu for less than [[30]] 60 cumulative
 111 days per calendar year; [[or]]

- 112 (B) is not listed on a menu or menu board, including an item
- 113 that is placed on a table or counter for general use without
- 114 charge[.]; [or]
- 115 (C) is a test-market menu item that appears on the menu for
- 116 less than 90 cumulative days per calendar year; or
- 117 (D) is a daily special.

118 [(3) "Wine list" means a printed or handwritten list, provided at an

119 eating and drinking establishment, of the wines available as sold

120 by the bottle.]]

121 (c) Applicability.

122 (1) [[This]] Except as provided by (c)(2), this Section applies to an

123 eating or drinking establishment that is part of a chain with at

124 least [[10]] 20 locations [[nationally]] in the United States and

125 that:

- 126 [[1]] (A) [[Does]] does business under the same trade name,
- 127 regardless of the ownership of individual locations; and
- 128 [[2]] (B) [[Offers]] offers [[predominantly]] substantially the
- 129 same [[type of]] menu items.

130 (2) This Section [[applies to a convenience store, but]] does not

131 apply to a:

- 132 (A) grocery store;
- 133 (B) convenience store; or
- 134 (C) movie theater.

135 (d) Labeling Required.

136 (1) [[Except as provided in subsection (e), an]] An eating and

137 drinking establishment must post [[the]] [[following nutrition

138 information]] the number of calories, calculated according to

139 applicable federal law, for any standardized menu item on each

140 menu or menu board [[next to or beneath]] adjacent to the
 141 [[listing]] name of that item[[:

- 142 (A) number of calories;
- 143 (B) grams of saturated fat; and
- 144 (C) milligrams of sodium]].

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

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

150 (2) An eating and drinking establishment must make the following
 151 nutrition information available in writing on request on its
 152 premises:

- 153 (a) calories;
- 154 (b) calories from fat;
- 155 (c) total fat;
- 156 (d) saturated fat;
- 157 (e) cholesterol;
- 158 (f) sodium;
- 159 (g) total carbohydrates;
- 160 (h) complex carbohydrates;
- 161 (i) sugars;
- 162 (j) fiber; and
- 163 (k) protein.

164 [[2)]] (3) The required nutrition information must be clear and
 165 conspicuous and located [[next to or beneath]] adjacent to each
 166 menu item [[in a size and typeface]] [[at least as large as the

167 name of the menu item or its price]] [[that is clear and
 168 conspicuous]] so as to be clearly associated with the menu item.

169 (4) Self-Service Food. For self-service food, an eating and drinking
 170 establishment must post a sign with the information required in
 171 (d)(1) per serving or per item adjacent to each food offered for
 172 sale. In this paragraph, “self-service food” includes:

173 (A) items in a salad bar, buffet line, cafeteria line, or a similar
 174 self-service facility;

175 (B) self-service beverages; and

176 (C) food that is on display and visible to customers.

177 ~~[[3]]~~ (5) Range of Calorie Content Required for Different Flavors and
 178 Varieties. If an eating and drinking establishment offers a
 179 standardized menu item in more than one flavor or variety and
 180 lists the item as a single menu item, (such as beverages, ice
 181 cream, pizza, or doughnuts), the establishment must post the
 182 range of nutrition information for each size offered for sale. The
 183 range must include the minimum and maximum values for each
 184 flavor or variety of that item.

185 ~~[[e)]~~ Menu Boards. If an eating and drinking establishment uses a menu
 186 board, the establishment may limit the nutrition information posted on
 187 the menu board to the number of calories per menu item. However, the
 188 establishment must provide the additional nutrition information required
 189 in subsection (d)(1) to each customer in writing on request. For
 190 purposes of this Section, a single-item list must be treated as a menu
 191 board.]]

192 ~~[[f)]~~ ~~[[1)]~~ The bottom of each menu page must contain the following
 193 statement:

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

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

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

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

202 The nutrition information provided is based on standard
 203 recipes and product formulations. Small variations may
 204 occur because of differences in preparation, serving sizes,
 205 ingredients, or special orders.]]

206 (e) Required statements. An eating and drinking establishment must
 207 include the following statements on each menu and menu board:

208 (1) a statement regarding suggested daily caloric intake as
 209 determined by the federal Department of Health and Human
 210 Services; and

211 (2) a statement regarding the availability of the written information
 212 required in paragraph (d)(2).

213 [(g) Substitute Ingredients. An establishment may use a substitute
 214 ingredient for any menu item for no more than 30 days without
 215 replacing the menu or menu board. However, if an establishment
 216 permanently substitutes an ingredient in any menu item, the
 217 establishment must comply with this Section within 90 days.]]

218 [(h)] (f) Enforcement. When an eating and drinking establishment is
 219 inspected under Section 15-3, the Director must verify that required
 220 nutrition information is posted. The Director is not required to verify
 221 the accuracy of the information provided, but may request the

222 establishment to document its accuracy. If the Director requests the
223 establishment to document the accuracy of the nutrition information
224 posted, the establishment must provide verification of the accuracy of
225 the posted information in 30 days.

226 [(i) Nothing in this Section is intended to create a private right of action for
227 civil damages or attorney’s fees.]]

228 **Sec. 2. Effective Date.**

229 Section 15-15A, inserted by Section 1 of this Act, takes effect on July 1, 2010.

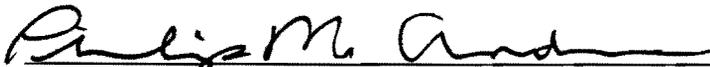
230 **[[:**

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

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

236 *Approved:*

237

238  November 18, 2009
239 Philip M. Andrews, President, County Council Date

240 *Approved:*

241

242  Nov 27, 2009
243 Isiah Leggett, County Executive Date

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

245

246  Nov 30, 2009
247 Linda M. Lauer, Clerk of the Council Date