

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1596

By: Bass

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; stating
8 legislative findings; stating legislative intent;
9 creating the Healthy Choices Act; providing short
10 title; defining terms; requiring food facilities to
11 disclosure certain nutritional information in
12 specified manner; requiring certain information to be
13 determined on a reasonable basis; requiring certain
14 statement; permitting certain disclaimer; clarifying
15 scope of act; prohibiting certain regulation;
16 providing for punishment; providing for
17 noncodification; providing for codification; and
18 providing an effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. NEW LAW A new section of law not to be
21 codified in the Oklahoma Statutes reads as follows:

22 The Legislature finds that:

23 1. Over the past two decades, there has been a significant
24 increase in the number of meals prepared or eaten outside the home,
with an estimated one-third (1/3) of calories being consumed in, and
almost one-half (1/2) of total food dollars being spent on, food
purchased from or eaten at restaurants and other food facilities;

1 2. Increased caloric intake is a key factor contributing to the
2 alarming increase in obesity in the United States. According to the
3 Centers for Disease Control and Prevention, two-thirds (2/3) of
4 American adults are overweight or obese, and the rates of obesity
5 have tripled in children and teens since 1980;

6 3. Obesity increases the risk of diabetes, heart disease,
7 stroke, some cancers, and other health problems;

8 4. Broader availability of nutrition information regarding
9 foods served at restaurants and other food service establishments
10 would allow customers to make more informed decisions about the food
11 they purchase;

12 5. Three-quarters (3/4) of American adults report using food
13 labels on packaged foods, which are required by the federal
14 Nutrition Labeling and Education Act of 1990;

15 6. Availability of nutrition information regarding restaurant
16 food assists consumers who are monitoring their diets or dealing
17 with chronic diseases, such as cardiovascular disease and diabetes;

18 7. Consumers should be provided with point-of-purchase access
19 to nutritional information when eating out in order to make informed
20 decisions involving their health and diet; and

21 8. It is the intent of the Legislature to provide consumers
22 with better access to nutritional information about prepared foods
23 sold at food facilities so that consumers understand the nutritional
24 value of available foods.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1150 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. This act shall be known and may be cited as the "Healthy
5 Choices Act".

6 B. For purposes of this act:

7 1. "Appetizer" means a food item that is generally served prior
8 to a food item that is generally regarded as the primary food item
9 in a meal. An appetizer includes a first course, starter, or small
10 plate;

11 2. "Calorie content information" means the total number of
12 calories per standard menu item, as that item is usually prepared
13 and offered for sale;

14 3. "Dessert" means a food item that is generally served after a
15 food item that is generally regarded as the primary food items in a
16 meal. Dessert includes, but is not limited to, cakes, pastries,
17 pies, ice cream, and food items that contain ice cream, confections,
18 and other sweets;

19 4. "Drive-through" means an area where a customer may provide
20 an order for and receive standard menu items while occupying a motor
21 vehicle;

22 5. "Food facility" means a food facility in the state that
23 operates under common ownership or control with at least ten other
24 food facilities with the same name in the state that offer for sale

1 substantially the same menu items, or operates as a franchised
2 outlet of a parent company with at least ten other franchised
3 outlets with the same name in the state that offer for sale
4 substantially the same menu items, except that a food facility shall
5 not include the following:

- 6 a. farmers' markets,
- 7 b. commissaries,
- 8 c. grocery stores, except for separately owned food
9 facilities to which this act otherwise applies that
10 are located in the grocery store. For purposes of
11 this subparagraph, "grocery store" means a store
12 primarily engaged in the retail sale of canned food,
13 dry goods, fresh fruits and vegetables, and fresh
14 meats, fish, and poultry, and shall include
15 convenience stores,
- 16 d. licensed health care facilities,
- 17 e. mobile support units,
- 18 f. public and private school cafeterias,
- 19 g. restricted food service facilities,
- 20 h. retail stores in which a majority of sales are from a
21 licensed pharmacy, and
- 22 i. vending machines;

23 6. "Menu board" means a posted list or pictorial display of
24 food or beverage items offered for sale by a food facility;

1 7. "Nutritional information" includes, but is not limited to,
2 all of the following, per standard menu item, as that item is
3 usually prepared and offered for sale:

- 4 a. total number of calories,
- 5 b. total number of grams of carbohydrates,
- 6 c. total number of grams of saturated fat, and
- 7 d. total number of milligrams of sodium;

8 8. "Point of sale" means the location where a customer makes an
9 order;

10 9. "Reasonable basis" means any reasonable means recognized by
11 the United States Food and Drug Administration of determining
12 nutritional information, as well as calorie content information, for
13 a standard menu item, as usually prepared and offered for sale,
14 including, but not limited to, nutrient databases and laboratory
15 analyses; and

16 10. "Standard menu item" means a food or beverage item offered
17 for sale by a food facility through a menu, menu board, or display
18 tag at least one hundred eighty (180) days per calendar year, except
19 that standard menu item does not include any of the following:

- 20 a. a food item that is customized on a case-by-case basis
21 in response to an unsolicited customer request,
- 22 b. an alcoholic beverage, the labeling of which is not
23 regulated by the United States Food and Drug
24 Administration,

- 1 c. a packaged food otherwise subject to the nutrition
2 labeling requirements of the federal Nutrition
3 Labeling and Education Act of 1990,
4 d. a food when served at a consumer self-service salad
5 bar, and
6 e. a food or beverage when served at a consumer self-
7 service buffet.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-1151 of Title 63, unless there
10 is created a duplication in numbering, reads as follows:

11 A. 1. Beginning July 1, 2011, and ending December 31, 2012,
12 every food facility shall either disclose nutritional information as
13 required by paragraph 2 of this subsection or comply with subsection
14 B of this section.

- 15 2. a. In order to comply with paragraph 1 of this
16 subsection, a food facility that does not provide sit-
17 down services shall disclose the information in a
18 clear and conspicuous manner on a brochure that is
19 made available at the point of sale prior to or during
20 the placement of an order. A food facility that
21 provides sit-down service shall provide the
22 nutritional information in a clear and conspicuous
23 size and typeface on at least one of the following:
24 (1) a brochure available on the table,

- 1 (2) a menu next to each standard menu item,
- 2 (3) a menu under an index section that is separate
- 3 from the listing of standard menu items,
- 4 (4) a menu insert, or
- 5 (5) a table tent on the table.

6 b. notwithstanding subparagraph a of this paragraph, a
7 food facility that has a drive-through area and uses a
8 menu board to display or list standard menu items at
9 the point of sale shall, for purposes of the drive-
10 through area only, disclose the nutritional
11 information in a clear and conspicuous manner on a
12 brochure that is available upon request, and shall
13 conspicuously display a notice at the point of sale
14 that reads: "NUTRITIONAL INFORMATION IS AVAILABLE
15 UPON REQUEST" or other similar statement that
16 indicates the disclosure of nutritional information is
17 available upon request.

18 B. 1. On and after January 1, 2013, every food facility that
19 provides a menu shall disclose calorie content information for a
20 standard menu item next to the item on the menu board in a size and
21 typeface that is clear and conspicuous.

22 2. On and after January 1, 2013, every food facility that uses
23 an indoor menu board shall disclose calorie content information for
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1 a standard menu item next to the item on the menu board in a size
2 and typeface that is clear and conspicuous.

3 3. On and after January 1, 2013, every food facility that uses
4 a display tag as an alternative to a menu or menu board to describe
5 a standard menu item that is displayed for sale in a display case
6 within the food facility shall disclose calorie content information
7 for that standard menu item on the display tag for that item in a
8 size and typeface that is clear and conspicuous.

9 4. On and after January 1, 2013, every food facility that has a
10 drive-through area and uses a menu board to display or list standard
11 menu items at the point of sale shall, for purposes of the drive-
12 through area only, disclose the nutritional information for each
13 standard menu item in a clear and conspicuous manner on a brochure
14 that is available upon request, and shall clearly and conspicuously
15 display a notice at the point of sale that reads: "NUTRITIONAL
16 INFORMATION IS AVAILABLE UPON REQUEST" or other similar statement
17 that indicates the disclosure of nutritional information upon
18 request. If a food facility subject to this paragraph discloses
19 nutritional information in the manner described in subparagraph b of
20 paragraph 2 of subsection A of this section, the food facility shall
21 be deemed to be in compliance with this paragraph.

22 C. For purposes of subsection B, the disclosure of calorie
23 content information on a menu or menu board next to a standard menu
24 item that is a combination of at least two standard menu items on

1 the menu or menu board shall, based upon all possible combinations
2 for that standard menu item, include both the minimum amount of
3 calories for the calorie count information and the maximum amount of
4 calories for the calorie count information. If there is only one
5 possible total amount of calories, then this total shall be
6 disclosed.

7 D. For purposes of subsection B, the disclosure of calorie
8 content information on a menu or menu board next to a standard menu
9 item that is not an appetizer or dessert, but is intended to serve
10 more than one individual, shall include both the following:

11 1. The number of individuals intended to be served by the
12 standard menu item; and

13 2. The calorie content information per individual serving. If
14 the standard menu item is a combination of at least two standard menu
15 items, this disclosure shall, based upon all possible combinations
16 for that standard menu item, include both the minimum amount of
17 calories for the calorie count information and the maximum amount of
18 calories. If there is only one possible total amount of calories,
19 then this total shall be disclosed.

20 E. The nutritional information and calorie content information
21 required by this act shall be determined on a reasonable basis. A
22 reasonable basis determination of nutritional information and
23 calorie content information shall be required only once per standard
24 menu item, provided that portion size is reasonably consistent and

1 the food facility follows a standardized recipe and trains to a
2 consistent method of preparation.

3 F. 1. Every brochure provided pursuant to this act shall
4 include the statement: "Recommended limits for a 2,000 calorie
5 daily diet are 20 grams of saturated fat and 2,300 milligrams of
6 sodium".

7 2. Menus and menu boards may include a disclaimer that
8 indicates that there may be variations in nutritional content across
9 servings, based on variations in overall size and quantities of
10 ingredients, and based on special ordering.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-1152 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 A. This act shall not be construed to create or enhance any
15 claim, right of action, or civil liability that did not previously
16 exist under state law or limit any claim, right of action, or civil
17 liability that otherwise exists under state law. A local
18 enforcement agency shall be the only enforcement mechanism of this
19 act.

20 B. This act shall not be construed to preclude any food
21 facility from voluntarily providing nutritional information in
22 addition to the requirements of this act.

23 C. To the extent consistent with federal law, this act, as well
24 as any other state law that regulates the disclosure of nutritional

1 information, shall be a matter of statewide concern and occupy the
2 whole field of regulation regarding the disclosure of nutritional
3 information by food facility. No ordinance or regulation of a local
4 government shall regulate the dissemination of nutritional
5 information by a food facility. Any ordinance or regulation that
6 violates this prohibition shall be void and shall have no force or
7 effect.

8 D. Beginning July 1, 2011, a food facility that violates this
9 section may be assessed a fine in the sum of not less than Fifty
10 Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) by a
11 local enforcement agency. However, a food facility may not be found
12 to violate this section more than once during an inspection visit.

13 SECTION 5. This act shall become effective November 1, 2010.

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