

By: Alvarado

H.B. No. 1522

A BILL TO BE ENTITLED

AN ACT

relating to a requirement that a chain restaurant disclose nutrition information; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 438, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. DISCLOSURE OF NUTRITION INFORMATION BY CHAIN RESTAURANT

Sec. 438.131. DEFINITIONS. In this subchapter:

(1) "Calorie content information" means the total number of calories for a standard menu item as the item is usually prepared or offered for sale.

(2) "Chain restaurant" means an establishment operating with the same name or as a franchised outlet of the same parent company, at 19 or more locations in this state and offering for sale substantially similar menu items. The term does not include:

(A) a farmers market;

(B) a commissary;

(C) a grocery store, except for a separately owned restaurant located inside a grocery store to which this section otherwise applies;

(D) a licensed health care facility;

(E) a mobile support unit; or

1 (F) a school cafeteria.

2 (3) "Commissioner" means the commissioner of state
3 health services.

4 (4) "Drive-through" means an area where a customer may
5 provide an order for and receive a standard menu item while
6 occupying a motor vehicle.

7 (5) "Menu board" means a posted list or pictorial
8 display of food or beverage items offered for sale by a chain
9 restaurant.

10 (6) "Standard menu item" means a food or beverage item
11 offered for sale by a chain restaurant through a menu, menu board,
12 or display tag at least 180 days a calendar year except:

13 (A) a food item that is customized on a
14 case-by-case basis in response to an unsolicited customer request;

15 (B) an alcoholic beverage, the labeling of which
16 is not regulated by the federal Food and Drug Administration;

17 (C) a packaged food subject to the nutrition
18 labeling requirements of the Federal Food, Drug, and Cosmetic Act
19 (21 U.S.C. Section 301 et seq.); or

20 (D) a food or beverage item served at a consumer
21 self-service buffet or salad bar.

22 Sec. 438.132. DISCLOSURE OF NUTRITION INFORMATION. (a) A
23 chain restaurant that offers sit-down service shall provide to
24 consumers nutrition information about each standard menu item by
25 including the information in:

26 (1) text next to the menu item on a printed menu;

27 (2) a menu insert;

1 (3) a brochure available at each table; or

2 (4) a menu tent available at each table.

3 (b) A chain restaurant that offers drive-through service
4 and uses a menu board to display standard menu items at the point of
5 sale shall provide nutrition information about a displayed standard
6 menu item in a brochure that is available on request and
7 conspicuously exhibited at the point of sale under a notice
8 indicating its availability.

9 (c) In a disclosure of nutrition information, a chain
10 restaurant shall include:

11 (1) calorie content information indicating:

12 (A) total calories; or

13 (B) if the standard menu item is a combination of
14 at least two separately listed standard menu items, a calorie range
15 including the minimum and maximum number of calories possible based
16 on all variations of the standard menu item;

17 (2) total grams of carbohydrates;

18 (3) total grams of saturated fat;

19 (4) total milligrams of sodium; and

20 (5) if a standard menu item is intended to serve more
21 than one individual:

22 (A) the number of individuals intended to be
23 served by the item; and

24 (B) the calorie content information for each
25 individual serving.

26 (d) A chain restaurant shall include with a disclosure of
27 nutrition information a statement that the recommended limits for a

1 2,000-calorie daily diet are 20 grams of saturated fat and 2,300
2 milligrams of sodium.

3 (e) This section expires December 31, 2010.

4 Sec. 438.133. DISCLOSURE OF CALORIE CONTENT INFORMATION.

5 (a) A chain restaurant that provides a menu shall disclose calorie
6 content information for a standard menu item by printing it next to
7 the item on the menu in a font size not more than one font size
8 smaller than the smallest font size used to list the menu items.

9 (b) A chain restaurant that uses an indoor menu board shall
10 disclose calorie content information for a standard menu item next
11 to the item on the menu board in a font size not more than one font
12 size smaller than the smallest font size used to list the menu
13 items.

14 (c) A chain restaurant that uses a display tag to describe a
15 standard menu item not listed on a menu or menu board that is
16 displayed for sale in a case inside the restaurant shall disclose
17 calorie content information for the item on a display tag on the
18 case in a font size not more than one font size smaller than the
19 smallest font size used to list the food items.

20 (d) A menu or menu board may include a disclaimer indicating
21 that variations in nutrition content may exist based on variations
22 in overall size of ingredients, quantities of ingredients, or
23 special ordering.

24 (e) In a disclosure of calorie content information, a chain
25 restaurant shall include:

26 (1) calorie content information indicating:

27 (A) total calories; or

1 (B) if the standard menu item is a combination of
2 at least two separately listed standard menu items, a calorie range
3 including the minimum and maximum number of calories possible based
4 on all variations of the standard menu item; and

5 (2) if a standard menu item is intended to serve more
6 than one individual:

7 (A) the number of individuals intended to be
8 served by the item; and

9 (B) the calorie content information for each
10 individual serving.

11 Sec. 438.134. INSPECTION. (a) To enforce this subchapter,
12 the commissioner, an authorized agent, or a health authority may,
13 on presenting appropriate credentials to the owner, operator, or
14 agent in charge of a chain restaurant, enter a restaurant to conduct
15 an inspection to determine compliance with this subchapter and
16 rules adopted under this subchapter.

17 (b) On finding an alleged violation, an authorized agent
18 conducting an inspection shall submit to the commissioner and the
19 owner or operator of the chain restaurant notice by certified mail
20 that includes:

21 (1) a brief summary of the alleged violation;

22 (2) the amount of the recommended penalty; and

23 (3) a statement informing the owner or operator of the
24 chain restaurant of the owner's or operator's right to a hearing on
25 the occurrence of the violation, the amount of the penalty, or both.

26 Sec. 438.135. ADMINISTRATIVE PENALTY. (a) The
27 commissioner may assess an administrative penalty against a person

1 who violates this subchapter.

2 (b) In determining the amount of the penalty, the
3 commissioner shall consider:

4 (1) the seriousness of the violation;

5 (2) the person's previous violations;

6 (3) the amount necessary to deter a future violation;

7 (4) the person's demonstrated good faith; and

8 (5) such other matters as justice may require.

9 (c) The penalty may not exceed \$500 for each violation.

10 (d) A person may not be charged with more than one violation
11 of this subchapter on the basis of evidence gathered during a single
12 inspection.

13 Sec. 438.136. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

14 (a) An administrative penalty may be assessed only after a person
15 charged with a violation is given an opportunity for a hearing.

16 (b) If a hearing is held, the commissioner shall make
17 findings of fact and shall issue a written decision regarding the
18 occurrence of the violation and the amount of the penalty that may
19 be warranted.

20 (c) If the person charged with the violation does not
21 request a hearing, the commissioner may assess a penalty after
22 determining that a violation has occurred and the amount of the
23 penalty that may be warranted.

24 (d) After making a determination under this section that a
25 penalty is to be assessed against a person, the commissioner shall
26 issue an order requiring that the person pay the penalty.

27 (e) The commissioner may consolidate a hearing held under

1 this section with another proceeding.

2 Sec. 438.137. PAYMENT AND COLLECTION OF ADMINISTRATIVE
3 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an
4 order of the commissioner under Section 438.136(d) that imposes an
5 administrative penalty becomes final, the person shall:

6 (1) pay the penalty; or

7 (2) file a petition for judicial review of the
8 commissioner's order contesting the occurrence of the violation,
9 the amount of the penalty, or both.

10 (b) Within the 30-day period prescribed by Subsection (a), a
11 person who files a petition for judicial review may:

12 (1) stay enforcement of the penalty by:

13 (A) paying the penalty to the court for placement
14 in an escrow account; or

15 (B) giving the court a supersedeas bond approved
16 by the court that:

17 (i) is for the amount of the penalty; and

18 (ii) is effective until all judicial review
19 of the commissioner's order is final; or

20 (2) request the court to stay enforcement of the
21 penalty by:

22 (A) filing with the court a sworn affidavit of
23 the person stating that the person is financially unable to pay the
24 penalty and is financially unable to give the supersedeas bond; and

25 (B) sending a copy of the affidavit to the
26 commissioner by certified mail.

27 (c) If the commissioner receives a copy of an affidavit

1 under Subsection (b)(2), the commissioner may file with the court,
2 within five days after the date the copy is received, a contest to
3 the affidavit. The court shall hold a hearing on the facts alleged
4 in the affidavit as soon as practicable and shall stay the
5 enforcement of the penalty on finding that the alleged facts are
6 true. The person who files an affidavit has the burden of proving
7 that the person is financially unable to pay the penalty or to give
8 a supersedeas bond.

9 (d) If the person does not pay the penalty and the
10 enforcement of the penalty is not stayed, the penalty may be
11 collected. The attorney general may sue to collect the penalty.

12 (e) If the court sustains the finding that a violation
13 occurred, the court may uphold or reduce the amount of the penalty
14 and order the person to pay the full or reduced amount of the
15 penalty.

16 (f) If the court does not sustain the finding that a
17 violation occurred, the court shall order that a penalty is not
18 owed.

19 (g) If the person paid the penalty and if the amount of the
20 penalty is reduced or the penalty is not upheld by the court, the
21 court shall order, when the court's judgment becomes final, that
22 the appropriate amount plus accrued interest be remitted to the
23 person within 30 days after the date that the judgment of the court
24 becomes final. The interest accrues at the rate charged on loans to
25 depository institutions by the New York Federal Reserve Bank. The
26 interest shall be paid for the period beginning on the date the
27 penalty is paid and ending on the date the penalty is remitted.

1 (h) If the person gave a supersedeas bond and the penalty is
2 not upheld by the court, the court shall order, when the court's
3 judgment becomes final, the release of the bond. If the person gave
4 a supersedeas bond and the amount of the penalty is reduced, the
5 court shall order the release of the bond after the person pays the
6 reduced amount.

7 Sec. 438.138. RULES. The executive commissioner of the
8 Health and Human Services Commission may adopt rules necessary to
9 implement this subchapter.

10 SECTION 2. This Act takes effect January 1, 2010, except
11 that Section 438.133, Health and Safety Code, as added by this Act,
12 takes effect January 1, 2011.