

By: Hinojosa

S.B. No. 171

A BILL TO BE ENTITLED

AN ACT

1
2 relating to disclosure of calorie content and nutrition information
3 by certain food establishments; providing an administrative
4 penalty.

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

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

8 SUBCHAPTER H. NUTRITION LABELING OF STANDARD MENU ITEMS AT CERTAIN
9 FOOD ESTABLISHMENTS

10 Sec. 438.131. DEFINITIONS. In this subchapter:

11 (1) "Commissioner" means the commissioner of state
12 health services.

13 (2) "Department" means the Department of State Health
14 Services.

15 (3) "Executive commissioner" means the executive
16 commissioner of the Health and Human Services Commission.

17 Sec. 438.132. ENFORCEMENT; RULES. (a) A food
18 establishment subject to Section 403(q)(5)(H), Federal Food, Drug,
19 and Cosmetic Act (21 U.S.C. Section 343), shall comply with that
20 section and the rules adopted under this subchapter.

21 (b) The department shall enforce Section 403(q)(5)(H),
22 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 343).

23 (c) The executive commissioner shall adopt rules to
24 implement this subchapter. The executive commissioner shall review

1 the regulations adopted by the United States Food and Drug
2 Administration under Section 403(q)(5)(H), Federal Food, Drug, and
3 Cosmetic Act (21 U.S.C. Section 343), before adopting rules under
4 this subsection.

5 (d) Rules adopted under Subsection (c) must be consistent
6 with the requirements of Section 403(q)(5)(H), Federal Food, Drug,
7 and Cosmetic Act (21 U.S.C. Section 343), and the regulations
8 adopted by the United States Food and Drug Administration under
9 that section.

10 Sec. 438.133. INSPECTION. (a) To enforce the rules adopted
11 under this subchapter, the commissioner, an authorized agent, or a
12 health authority may, on presenting appropriate credentials to the
13 owner, operator, or agent in charge of a food establishment, enter
14 an establishment to conduct an inspection to determine compliance
15 with rules adopted under this subchapter.

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

- 20 (1) a brief summary of the alleged violation;
21 (2) the amount of the recommended penalty; and
22 (3) a statement informing the owner or operator of the
23 food establishment of the owner's or operator's right to a hearing
24 on the occurrence of the violation, the amount of the penalty, or
25 both.

26 Sec. 438.134. 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. 438.135. 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. 438.136. PAYMENT AND COLLECTION OF ADMINISTRATIVE
3 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an
4 order of the commissioner under Section 438.135(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 enforcement
5 of the penalty on finding that the alleged facts are true. The
6 person who files an affidavit has the burden of proving that the
7 person is financially unable to pay the penalty or to give a
8 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 SECTION 2. The executive commissioner of the Health and
8 Human Services Commission may not adopt the rules required by
9 Section 438.132, Health and Safety Code, as added by this Act,
10 before the United States Food and Drug Administration has adopted
11 regulations under Section 403(q)(5)(H) of the Federal Food, Drug,
12 and Cosmetic Act (21 U.S.C. Section 343).

13 SECTION 3. This Act takes effect September 1, 2011.