

ASSEMBLY, No. 3358

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

SYNOPSIS

Requires entertainment facilities to provide calorie information for food and beverage items offered for sale.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning food served at entertainment facilities and
2 amending P.L.2009, c.306.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.2009, c.306 (C.26:3E-17) is amended to
8 read as follows:

9 2. Notwithstanding any provision of law to the contrary:

10 a. (1) A retail food establishment or entertainment facility
11 using a standard printed menu shall list next to each food or
12 beverage item on the menu, the total number of calories for that
13 item as usually prepared and offered for sale;

14 (2) A retail food establishment or entertainment facility using a
15 menu board system or similar signage shall list next to each food or
16 beverage item on the board or sign, the total number of calories for
17 that item as usually prepared and offered for sale;

18 (3) A retail food establishment or entertainment facility that has
19 a drive-through window shall display calorie content values either
20 on the drive-through menu board or on an adjacent stanchion visible
21 at the point of ordering, and the calorie content values shall be
22 posted adjacent to their respective menu item names as clearly and
23 conspicuously as the price or menu item is on the drive-through
24 menu board; and

25 (4) A retail food establishment or entertainment facility which
26 offers alcoholic beverages for sale may, as an alternative to listing
27 calorie information for each individual alcoholic beverage, list the
28 average caloric value for beers, wines, and spirits as established by
29 the United States Department of Agriculture, Agriculture Research
30 Service in the National Nutrient Database for Standard Reference.

31 A retail food establishment or entertainment facility that lists the
32 average caloric values for alcoholic beverages pursuant to this
33 paragraph shall add to the labeling the following statement:
34 "Signature drinks or liqueurs with added ingredients may increase
35 calorie content."

36 b. The calorie information listed pursuant to paragraphs (1) and
37 (2) of subsection a. of this section shall be posted clearly and
38 conspicuously adjacent or in close proximity to the applicable menu
39 item using a font and format that is at least as prominent, in size and
40 appearance, as that used to post either the name or price of the
41 menu item.

42 The calorie content values required by this act shall be based
43 upon a verifiable analysis of the menu item, which may include the
44 use of nutrient databases, laboratory testing, or other reliable
45 methods of analysis, and shall be rounded to the nearest 10 calories

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 for calorie content values above 50 calories and to the nearest five
2 calories for calorie content values 50 calories and below.

3 c. The provisions of this section shall apply to each menu item
4 that is served in portions the size and content of which are
5 standardized.

6 d. For menu items that come in different flavors and varieties
7 but that are listed as a single menu item, the minimum to maximum
8 numbers of calories for all flavors and varieties of that item shall be
9 listed on the menu, menu board, or stanchion, as applicable, for
10 each size offered for sale.

11 e. (1) The disclosure of calorie information on a menu, menu
12 board, or stanchion next to a standard menu item that is a
13 combination of at least two standard menu items on the menu, menu
14 board, or stanchion, shall, based upon all possible combinations for
15 that standard menu item, include both the minimum and the
16 maximum amount of calories. If there is only one possible total
17 amount of calories, that total shall be disclosed.

18 (2) The disclosure of calorie information on a menu, menu
19 board, or stanchion next to a standard menu item that is not an
20 appetizer or dessert, but is intended to serve more than one
21 individual, shall include both:

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

24 (b) the calorie information per individual serving.

25 If the standard menu item is a combination of at least two
26 standard menu items, the disclosure shall, based upon all possible
27 combinations for that standard menu item, include both the
28 minimum and the maximum amount of calories. If there is only one
29 possible total amount of calories, that total shall be disclosed.

30 f. Nothing in this section shall prohibit a retail food
31 establishment or entertainment facility from providing additional
32 nutrition information to its customers for each food or beverage
33 item listed on its menu.

34 g. The provisions of this section shall not apply to any:

35 (1) item not listed on a standard printed menu or menu board
36 system or similar signage, including, but not limited to, condiments
37 or other products placed on a table or counter for general use; or

38 (2) daily specials, temporary menu items appearing on the menu
39 for less than 60 days per calendar year, customized orders, or food
40 or beverage items from a consumer self-serve salad bar or buffet.

41 h. (1) The Department of Health or the local board of health or
42 the board, body, or officers exercising the functions of the local
43 board of health according to law, upon written complaint or having
44 reason to suspect that a violation of this act has occurred, shall, by
45 written notification, advise the proprietor of the retail food
46 establishment or owner of an entertainment facility accordingly and
47 order appropriate action to be taken.

1 (2) A proprietor of a retail food establishment or owner of an
2 entertainment facility who violates the provisions of this section by
3 failing to provide the information about food and beverage items as
4 required in this section, or knowingly misstating the number of
5 calories in a food or beverage item, shall be subject to a penalty of
6 not less than \$50 or more than \$100 for the first offense, and not
7 less than \$250 or more than \$500 for the second or any subsequent
8 offense. A municipal court shall have jurisdiction over proceedings
9 to enforce and collect any penalty imposed because of a violation of
10 this act, if the violation has occurred within the territorial
11 jurisdiction of the court. The proceedings shall be summary and in
12 accordance with the "Penalty Enforcement Law of 1999,"
13 P.L.1999, c.274 (C.2A:58-10 et seq.). Process shall be in the nature
14 of a summons or warrant and shall issue only at the suit of the
15 Commissioner of Health, or the local board of health, as the case
16 may be, as plaintiff.

17 When the plaintiff is the Commissioner of Health, the penalty
18 recovered shall be paid by the commissioner into the treasury of the
19 State. When the plaintiff is a local board of health, the penalty
20 recovered shall be paid by the local board into the treasury of the
21 municipality where the violation occurred.

22 i. The provisions of this section shall not be construed to
23 create or enhance any claim, right of action, or civil liability that
24 did not previously exist under State law or limit any claim, right of
25 action, or civil liability that otherwise exists under State law.

26 j. There shall be no private right of action against the
27 proprietor of a retail food establishment or owner of an
28 entertainment facility for failure to comply with the provisions of
29 this section.

30 k. To the extent consistent with federal law, the provisions of
31 this section, as well as any other State law that regulates the
32 disclosure of caloric information, shall be a matter of Statewide
33 concern and shall occupy the entire field of regulation regarding the
34 disclosure of caloric information by a retail food establishment or
35 entertainment facility, as well as content required to be posted on
36 menus, menu board systems or similar signage, or stanchions, as
37 applicable. No ordinance or regulation of a local government or
38 local board of health shall regulate the dissemination of caloric
39 information or the content required to be placed on menus, menu
40 board systems or similar signage, or stanchions by a retail food
41 establishment or entertainment facility. Any local government or
42 local board of health ordinance or regulation that violates this
43 prohibition is void and shall have no force or effect.

44 l. As used in this section **[.]** :

45 "Entertainment facility" means any privately or publicly owned
46 or operated facility that is used primarily for sports contests,
47 entertainment, or both, such as a theater, stadium, museum, arena,

1 automobile racetrack, or other place where performances, concerts,
2 exhibits, games or contests are held.

3 "[retail] Retail food establishment" means a fixed restaurant or
4 any similar place that is part of a chain with 20 or more locations
5 nationally and doing business (1) under the same trade name or
6 under common ownership or control or (2) as franchised outlets of a
7 parent business, the principal activity of which consists of preparing
8 for consumption within the establishment a meal or food to be eaten
9 on the premises or picked up at a drive-through window.

10 (cf: P.L.2012, c.17, s.335)

11
12 2. This act shall take effect on the first day of the seventh
13 month next following enactment, but the Commissioner of Health
14 may take such anticipatory administrative action in advance thereof
15 as shall be necessary for the implementation of this act.

16 17 18 STATEMENT

19
20 This bill would require entertainment facilities to provide calorie
21 information for food and beverage items offered for sale, subject to
22 the same requirements that currently apply to chain restaurants.
23 The bill would define "entertainment facility" to mean any privately
24 or publicly owned or operated facility that is used primarily for
25 sports contests, entertainment, or both, such as a theater, stadium,
26 museum, arena, automobile racetrack, or other place where
27 performances, concerts, exhibits, games or contests are held.

28 Entertainment facilities would be required to list next to each
29 food or beverage item listed on a standard printed menu, a menu
30 board signage system, or a drive through window display, the total
31 number of calories for the item as usually prepared and offered for
32 sale. An entertainment facility that offers alcoholic beverages for
33 sale would be permitted to list, as an alternative to listing calorie
34 information for each individual alcoholic beverage, the average
35 caloric value for beers, wines, and spirits, along with a statement
36 that reads: "Signature drinks or liqueurs with added ingredients may
37 increase calorie content."

38 The bill would require that the calorie information be posted
39 clearly and conspicuously adjacent or in close proximity to the
40 applicable menu item using a font and format that is at least as
41 prominent, in size and appearance, as that used to post either the
42 name or price of the menu item. The calorie content values would
43 be based upon a verifiable analysis of the menu item and would be
44 rounded to the nearest 10 calories for calorie content values above
45 50 calories and to the nearest five calories for calorie content values
46 50 calories and below.

47 The bill would require that the minimum and maximum calorie
48 numbers be posted for items that come in different flavors and

1 varieties and for items that are a combination of two or more
2 standard menu items. For a standard menu item that is not an
3 appetizer or dessert, but is intended to serve more than one
4 individual, the facility would be required to indicate the number of
5 individuals intended to be served by the item and the calorie
6 information per individual serving.

7 Nothing in the bill would prohibit an entertainment facility from
8 providing additional nutrition information to its customers for each
9 food or beverage item listed on its menu. The bill would not apply
10 to items not listed on a standard printed menu or menu board
11 system or similar signage, such as condiments, daily specials,
12 temporary menu items appearing on the menu for less than 60 days
13 per calendar year, customized orders, or food or beverage items
14 from a consumer self-serve salad bar or buffet.

15 The Department of Health or the local board of health or the
16 board, body, or officers exercising the functions of the local board
17 of health according to law, upon written complaint or having reason
18 to suspect that a violation of the provisions of the bill has occurred,
19 would, by written notification, advise the owner of the
20 entertainment facility accordingly and order appropriate action to be
21 taken. The bill would permit the imposition of a civil penalty of not
22 less than \$50 or more than \$100 for a first offense, and not less than
23 \$250 or more than \$500 for a second or subsequent offense. The
24 bill would not create or enhance any claim, right of action, or civil
25 liability that did not previously exist under State law or limit any
26 claim, right of action, or civil liability that otherwise exists under
27 State law. Additionally, there would be no private right of action
28 against the owner of an entertainment facility for failure to comply
29 with the provisions of the bill.