

# HOUSE BILL REPORT

## HB 3160

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**As Reported by House Committee On:**  
Commerce & Labor

**Title:** An act relating to the availability of nutrition information.

**Brief Description:** Addressing the availability of nutrition information.

**Sponsors:** Representatives Springer, Newhouse, Ericks, Goodman, Armstrong, Linville, McDonald, Kessler, Dickerson, Wood, Wallace, Hunter, Blake, Clibborn, Morrell, Williams, Loomis, Lias, Kelley, Eddy, Takko, Warnick, Jarrett, Rodne, Sullivan, Roach, VanDeWege, Kenney and Ormsby.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 2/7/08 [DPS].

**Brief Summary of Substitute Bill**

- States the Legislature's intent to provide consumers with greater access to nutrition information by recognizing that nutrition information determined with a reasonable basis is approximately accurate and allowing restaurants reasonable flexibility in providing nutrition information to consumers.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Condotta, Ranking Minority Member; Green, Moeller and Williams.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Chandler, Assistant Ranking Minority Member; Crouse.

**Staff:** Alison Hellberg (786-7152).

**Background:**

Under state law, restaurants are not required to make nutrition information available to customers. Federal law requires labeling of packaged and certain restaurant foods, and a

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

recently enacted King County Board of Health regulation requires nutritional labeling of food served at chain food establishments.

The Nutrition Labeling and Education Act (Act) of 1990 amended the federal Food, Drug, and Cosmetic Act. It required labeling on packaged foods and regulated the making of claims concerning food. The Food, Drug, and Cosmetic Act, enacted in 1938 and enforced by the Food and Drug Administration (FDA), generally prohibited the misbranding of food. If a restaurant makes a health or nutrient-content claim, the restaurant is required to provide nutrition information on menus, signs, or placards. Food subject to the federal labeling requirements has a "Nutrition Facts" label that must include information about total calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, and iron.

The King County Board of Health passed a nutrition labeling requirement that takes effect August 1, 2008. Chain food establishments must make nutritional labeling of food available to customers for all standard menu items. A "chain food establishment" means any one of at least 10 food establishments doing business under the same name and collectively having at least \$1 million in gross annual sales, and offering for sale substantially the same menu items. A "standard menu item" means food offered for sale for more than 60 days per year, except for foods offered in a salad bar, buffet line, cafeteria service, or similar self-serve arrangements, and condiments.

Chain food establishments must make the following information available to consumers for each standard menu item:

- total number of calories;
- total number of grams of saturated fat and trans fat;
- total number of grams of carbohydrates; and
- total number of milligrams of sodium.

Chain food establishments that provide menus must include this nutritional information next to the standard menu item in a size and typeface similar to other information about the menu item. The menu must also contain a warning that reads: "Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium." If the establishment offers menu items with trans fats, the menu must include this additional warning: "Eating artificial trans fat increases risk of heart disease."

If a chain food establishment uses menu boards, the total number of calories of each menu item must be posted next to the menu item in a size and typeface similar to other information about menu items. Other nutrition information should be made available to consumers at the point of ordering.

The Director of the King County Board of Health has authority to enforce these provisions.

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### **Summary of Substitute Bill:**

The Legislature makes several findings:

- there has been a significant increase in the number of meals prepared or eaten outside the home;
- broader availability of nutrition information at restaurants will facilitate consumers to make more informed decisions about the food they purchase;
- three-quarters of Americans report using food labels on packaged foods;
- availability of nutrition information assists consumers who closely monitor their diet;
- restaurants have used a variety of methods to provide nutrition information to customers;
- providing accurate nutrition information for food prepared in restaurants is significantly more difficult than for processed food;
- in implementing the Act, the FDA recognized the need for accuracy in nutrition information statements and addressed the challenges;
- public health will be advanced by providing nutrition information, determined with a reasonable basis, for standard food items generally available at restaurants; and
- restaurants are more likely to provide nutrition information if there is not a threat of overlapping governmental requirements or vulnerability to frivolous lawsuits regarding the accuracy of nutrition information.

The Legislature intends to provide consumers with greater access to nutrition information by recognizing that nutrition information determined with a reasonable basis is approximately accurate and allowing restaurants reasonable flexibility in providing nutrition information to consumers.

**Substitute Bill Compared to Original Bill:**

The provisions of the bill are deleted except for the Legislature's findings and intent.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:**

(In support) The purpose behind this legislation is to assure that nutritional information is available to consumers across Washington. There has been an increased public interest in what is in food as the obesity rate rises. If this bill is passed, Washington would become a national leader.

This bill attempts to create some statewide uniformity to prevent restaurants in different counties having to deal with different regulations. Businesses need some certainty.

A big issue with King County was the process. When Pierce County was considering rules, the process was open, cooperative, and lasted for years. King County only included one

affected restaurant representative on the subcommittee that examined the issue. The subcommittee met three times, for two hours each time. The rule was passed within a matter of months.

The research and science related to providing nutritional information is not conclusive. All of the research relates to grocery stores. The bill contains an effective date so it can be revisited in the future. Evaluation is important to determine whether the program has been effective or not.

This bill is also focused on the restaurants that are equipped to handle these additional regulations. Local and independent restaurants would be exempted. If the requirements turn out to be effective, they can be added later.

This is not preemption, but a moratorium.

(Opposed) The state Board of Health is opposed to the bill because of the preemption language. The opposite is generally done in public health regulation. Consistency is encouraged. If a statewide standard is set, however, it should allow local governments to adopt more stringent standards.

The preemption provision in this bill is of concern. Local governments should be able to adapt regulations to their local needs. This experiment needs to happen to see if it will decrease obesity levels. The local Board of Health has an obligation to do what is best for the residents of its county. In issues related to health and human services, the best decisions are made at the local level. This is not an issue of national defense.

Another issue with this bill is the location of the nutritional information. Research has shown how important it is to make nutrition information available at the point of decision, not at the point of purchase. This information can be put on a menu and be discreet and unobtrusive. Nutrition labeling is especially important for people who need to monitor their diet due to diseases like diabetes. Without information about carbohydrates, it is difficult to know about insulin levels.

Obesity, especially childhood obesity, affects low-income families more than others. Many low-income families eat at low-income restaurants and do not have access to the Internet. If information is not readily available, it is not useful.

There is some concern about the definitions. It is unclear what "restricted food service facilities" encompasses, as well as "trade name."

**Persons Testifying:** (In support) Representative Springer, prime sponsor; Representative Ericks; Trent House, Washington Restaurant Association; and Gordon Walgren, Motion Picture Exhibitors.

(Opposed) Craig McLaughlin, Washington State Board of Health; Tom Bristow, King County Government Relations; Laura Thelander, American Diabetes Association; Dr. George W. Counts, M.D.; Dave Hutchinson, Mayor of Lake Forest Park; Carrie Pfab, Washington Association of Local WIC Agencies; Michael Shaw, American Heart Association; Eric

Johnson, Washington Association of Counties; and Rick Mockler, Washington Association of Local Public Health Officials.

**Persons Signed In To Testify But Not Testifying:** (Opposed) Donna Oberg, Public Health - Seattle and King County.