

HOUSE BILL REPORT

ESHB 3160

As Passed House:
February 19, 2008

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

Brief Description: Addressing the availability of nutrition information.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by 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].

Floor Activity:

Passed House: 2/19/08, 81-14.

Brief Summary of Engrossed Substitute Bill

- Establishes a legislative task force on nutritional information disclosure.
- Enacts a moratorium on local boards of health and health districts from regulating mandating menu labeling or nutritional information disclosure.

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).

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.

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 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.

Summary of Engrossed Substitute Bill:

A legislative task force on nutritional information disclosure is established. The task force will study current efforts on nutritional information disclosure at restaurants, including systems for estimating actual nutritional information, health impacts of menu labeling, cost and impact to the restaurant industry, and alternatives to any current approaches. The task force must also review how other states are addressing the issue.

The members of the task force are appointed by the Governor and consist of:

- one member from each of the two largest caucuses of the Senate;
- one member from each of the two largest caucuses of the House of Representatives;
- four representatives of the restaurant industry in consultation with the Washington Restaurant Association;
- two representatives of consumer groups in consultation with the American Heart Association and the American Diabetes Association;
- one representative from the State Board of Health; and
- one representative from a local Board of Health or Health District.

The task force shall choose its chair from among its membership. Staff support will be provided by the Senate Committee Services and the Office of Program Research. The task force must report its findings and recommendations to the appropriate committees of the Legislature by December 1, 2008.

A moratorium is enacted upon all local boards of health and health districts from adopting an ordinance, rule, policy, regulation, or permit requirement regarding mandatory menu labeling or nutritional information disclosure until April 26, 2009. Any regulation already adopted shall not be enforced until April 26, 2009. Local boards of health and health districts may adopt voluntary measures regarding menu labeling and nutritional information disclosure at restaurants.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: 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.