

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 20

Introduced by Senator Padilla

December 6, 2010

~~An act to amend Section 114094 of the Health and Safety Code, relating to food facilities. An act to repeal and add Section 114094 of the Health and Safety Code, relating to food facilities.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 20, as amended, Padilla. Food facilities: menu labeling.

Existing law, the California Retail Food Code, requires, on and after January 1, 2011, each food facility in the state that operates under common ownership or control with at least 19 other food facilities with the same name in the state and that offers for sale substantially the same menu items or that meets other specified criteria to disclose calorie content information per standard menu item, as specified. The State Department of Public Health administers and local enforcement agencies enforce this code. Existing law provides that, on and after July 1, 2009, a food facility that violates these provisions is guilty of an infraction.

Existing law, the Federal Food, Drug, and Cosmetic Act, requires certain restaurants and similar retail food establishments that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items to disclose nutrient content information, as specified, and provides that certain state and local nutrient content information requirements that are not identical to the federal law are preempted.

~~This bill would provide that the calorie content disclosure requirements of the California Retail Food Code are instead applicable~~

to certain food facilities that are part of a chain with at least 20 locations doing business under the same name and offering for sale substantially the same menu items:

~~By revising the definition of a crime and changing the duties of local officials, this bill would impose a state mandated local program.~~

This bill would repeal the above-described state calorie content disclosure requirements of the California Retail Food Code, and would require a food facility that is subject to the federal disclosure provisions for nutrient content information or was subject to the state calorie content disclosure requirements, as specified, to comply with these federal disclosure requirements and the regulations adopted pursuant thereto. It would also require the department to administer and local enforcement agencies to enforce these provisions and would make a violation thereof an infraction. By expanding the definition of a crime and adding new local enforcement duties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) In 2008, the Legislature enacted Section 114094 of the
- 4 Health and Safety Code to provide consumers within California
- 5 with better access to nutritional information about prepared foods
- 6 sold at food facilities with at least 20 locations with the same name
- 7 in the state so that consumers can understand the nutritional value
- 8 of available foods.
- 9 (b) On March 23, 2010, the federal Patient Protection and
- 10 Affordable Care Act was enacted to, among other things, provide

1 consumers in all states with access to nutritional information about
2 the prepared foods sold at restaurants or similar retail food
3 establishments that are part of a chain with 20 or more locations
4 doing business under the same name.

5 *SEC. 2. Section 114094 of the Health and Safety Code is*
6 *repealed.*

7 ~~114094. (a) For purposes of this section, the following~~
8 ~~definitions shall apply:~~

9 ~~(1) “Food facility” means a food facility in the state that operates~~
10 ~~under common ownership or control with at least 19 other food~~
11 ~~facilities with the same name in the state that offer for sale~~
12 ~~substantially the same menu items, or operates as a franchised~~
13 ~~outlet of a parent company with at least 19 other franchised outlets~~
14 ~~with the same name in the state that offer for sale substantially the~~
15 ~~same menu items, except that a “food facility” does not include~~
16 ~~the following:~~

17 ~~(A) Certified farmer’s markets.~~

18 ~~(B) Commissaries.~~

19 ~~(C) Grocery stores, except for separately owned food facilities~~
20 ~~to which this section otherwise applies that are located in the~~
21 ~~grocery store. For purposes of this paragraph, “grocery store”~~
22 ~~means a store primarily engaged in the retail sale of canned food,~~
23 ~~dry goods, fresh fruits and vegetables, and fresh meats, fish, and~~
24 ~~poultry. “Grocery store” includes convenience stores.~~

25 ~~(D) Licensed health care facilities.~~

26 ~~(E) Mobile support units.~~

27 ~~(F) Public and private school cafeterias.~~

28 ~~(G) Restricted food service facilities.~~

29 ~~(H) Retail stores in which a majority of sales are from a~~
30 ~~pharmacy, as defined in Section 4037 of the Business and~~
31 ~~Professions Code.~~

32 ~~(I) Vending machines.~~

33 ~~(2) “Caloric content information” means the total number of~~
34 ~~calories per standard menu item, as that item is usually prepared~~
35 ~~and offered for sale.~~

36 ~~(3) “Drive-through” means an area where a customer may~~
37 ~~provide an order for and receive standard menu items while~~
38 ~~occupying a motor vehicle.~~

39 ~~(4) “Menu board” means a posted list or pictorial display of~~
40 ~~food or beverage items offered for sale by a food facility.~~

- 1 (5) “Nutritional information” includes, but is not limited to, all
2 of the following, per standard menu item, as that item is usually
3 prepared and offered for sale:
- 4 (A) Total number of calories.
 - 5 (B) Total number of grams of carbohydrates.
 - 6 (C) Total number of grams of saturated fat.
 - 7 (D) Total number of milligrams of sodium.
- 8 (6) “Point of sale” means the location where a customer makes
9 an order.
- 10 (7) “Standard menu item” means a food or beverage item offered
11 for sale by a food facility through a menu, menu board, or display
12 tag at least 180 days per calendar year, except that “standard menu
13 item” does not include any of the following:
- 14 (A) A food item that is customized on a case-by-case basis in
15 response to an unsolicited customer request.
 - 16 (B) An alcoholic beverage, the labeling of which is not regulated
17 by the federal Food and Drug Administration.
 - 18 (C) A packaged food otherwise subject to the nutrition labeling
19 requirements of the federal Nutrition Labeling and Education Act
20 of 1990.
 - 21 (D) A food item when served at a consumer self-service salad
22 bar.
 - 23 (E) A food or beverage item when served at a consumer
24 self-service buffet.
- 25 (8) “Reasonable basis” means any reasonable means recognized
26 by the federal Food and Drug Administration of determining
27 nutritional information, as well as calorie content information, for
28 a standard menu item, as usually prepared and offered for sale,
29 including, but not limited to, nutrient databases and laboratory
30 analyses.
- 31 (9) “Appetizer” means a food item that is generally served prior
32 to a food item that is generally regarded as the primary food item
33 in a meal. An “appetizer” includes a first course, starter, or small
34 plate.
- 35 (10) “Dessert” means a food item that is generally served after
36 a food item that is generally regarded as the primary food item in
37 a meal. “Dessert” includes, but is not limited to, cakes, pastries,
38 pies, ice cream and food items that contain ice cream, confections,
39 and other sweets.

1 ~~(b) (1) Commencing July 1, 2009, to December 31, 2010,~~
2 ~~inclusive, every food facility shall either disclose nutritional~~
3 ~~information as required by paragraph (2), or comply with~~
4 ~~subdivision (c) during this period of time.~~

5 ~~(2) (A) In order to comply with paragraph (1), a food facility~~
6 ~~that does not provide sit-down service shall disclose the~~
7 ~~information in a clear and conspicuous manner on a brochure that~~
8 ~~is made available at the point of sale prior to or during the~~
9 ~~placement of an order. A food facility that provides sit-down~~
10 ~~service shall provide the nutritional information in a clear and~~
11 ~~conspicuous size and typeface on at least one of the following:~~

- 12 ~~(i) A brochure available on the table.~~
- 13 ~~(ii) A menu next to each standard menu item.~~
- 14 ~~(iii) A menu, under an index section that is separate from the~~
15 ~~listing of standard menu items.~~
- 16 ~~(iv) A menu insert.~~
- 17 ~~(v) A table tent on the table.~~

18 ~~(B) Notwithstanding subparagraph (A), a food facility that has~~
19 ~~a drive-through area and uses a menu board to display or list~~
20 ~~standard menu items at the point of sale shall, for purposes of the~~
21 ~~drive-through area only, disclose the nutritional information in a~~
22 ~~clear and conspicuous manner on a brochure that is available upon~~
23 ~~request, and shall conspicuously display a notice at the point of~~
24 ~~sale that reads: "NUTRITION INFORMATION IS AVAILABLE~~
25 ~~UPON REQUEST" or other similar statement that indicates the~~
26 ~~disclosure of nutrition information is available upon request.~~

27 ~~(c) (1) On and after January 1, 2011, every food facility that~~
28 ~~provides a menu shall disclose calorie content information for a~~
29 ~~standard menu item next to the item on the menu in a size and~~
30 ~~typeface that is clear and conspicuous.~~

31 ~~(2) On and after January 1, 2011, every food facility that uses~~
32 ~~an indoor menu board shall disclose calorie content information~~
33 ~~for a standard menu item next to the item on the menu board in a~~
34 ~~size and typeface that is clear and conspicuous.~~

35 ~~(3) On and after January 1, 2011, every food facility that uses~~
36 ~~a display tag as an alternative to a menu or menu board to describe~~
37 ~~a standard menu item that is displayed for sale in a display case~~
38 ~~within the food facility shall disclose calorie content information~~
39 ~~for that standard menu item on the display tag for that item in a~~
40 ~~size and typeface that is clear and conspicuous.~~

1 ~~(4) On and after January 1, 2011, every food facility that has a~~
2 ~~drive-through area and uses a menu board to display or list standard~~
3 ~~menu items at the point of sale shall, for purposes of the~~
4 ~~drive-through area only, disclose the nutritional information for~~
5 ~~each standard menu item in a clear and conspicuous manner on a~~
6 ~~brochure that is available upon request, and shall clearly and~~
7 ~~conspicuously display a notice at the point of sale that reads:~~
8 ~~“NUTRITION INFORMATION IS AVAILABLE UPON~~
9 ~~REQUEST” or other similar statement that indicates the disclosure~~
10 ~~of nutrition information upon request. If a food facility subject to~~
11 ~~this paragraph discloses nutritional information in the manner~~
12 ~~described in subparagraph (B) of paragraph (2) of subdivision (b),~~
13 ~~the food facility shall be deemed to be in compliance with this~~
14 ~~paragraph.~~

15 ~~(d) For purposes of subdivision (c), the disclosure of calorie~~
16 ~~content information on a menu or menu board next to a standard~~
17 ~~menu item that is a combination of at least two standard menu~~
18 ~~items on the menu or menu board, shall, based upon all possible~~
19 ~~combinations for that standard menu item, include both the~~
20 ~~minimum amount of calories for the calorie count information and~~
21 ~~the maximum amount of calories for the calorie count information.~~
22 ~~If there is only one possible total amount of calories, then this total~~
23 ~~shall be disclosed.~~

24 ~~(e) For purposes of subdivision (c), the disclosure of calorie~~
25 ~~content information on a menu or menu board next to a standard~~
26 ~~menu item that is not an appetizer or dessert, but is intended to~~
27 ~~serve more than one individual, shall include both of the following:~~

28 ~~(1) The number of individuals intended to be served by the~~
29 ~~standard menu item.~~

30 ~~(2) The calorie content information per individual serving. If~~
31 ~~the standard menu item is a combination of at least two standard~~
32 ~~menu items, this disclosure shall, based upon all possible~~
33 ~~combinations for that standard menu item, include both the~~
34 ~~minimum amount of calories for the calorie count information and~~
35 ~~the maximum amount of calories. If there is only one possible total~~
36 ~~amount of calories, then this total shall be disclosed.~~

37 ~~(f) The nutritional information and calorie content information~~
38 ~~required by this section shall be determined on a reasonable basis.~~
39 ~~A reasonable basis determination of nutritional information and~~
40 ~~calorie content information shall be required only once per standard~~

1 menu item, provided that portion size is reasonably consistent and
2 the food facility follows a standardized recipe and trains to a
3 consistent method of preparation.

4 (g) (1) Every brochure provided pursuant to this section shall
5 include the statement: “Recommended limits for a 2,000-calorie
6 daily diet are 20 grams of saturated fat and 2,300 milligrams of
7 sodium.”

8 (2) Menus and menu boards may include a disclaimer that
9 indicates that there may be variations in nutritional content across
10 servings, based on variations in overall size and quantities of
11 ingredients, and based on special ordering.

12 (h) This section shall not be construed to create or enhance any
13 claim, right of action, or civil liability that did not previously exist
14 under state law or limit any claim, right of action, or civil liability
15 that otherwise exists under state law. The only enforcement
16 mechanism of the section is the local enforcement agency.

17 (i) This section shall not be construed to preclude any food
18 facility from voluntarily providing nutritional information in
19 addition to the requirements of this section.

20 (j) To the extent consistent with federal law, this section, as
21 well as any other state law that regulates the disclosure of
22 nutritional information, is a matter of statewide concern and
23 occupies the whole field of regulation regarding the disclosure of
24 nutritional information by a food facility. No ordinance or
25 regulation of a local government shall regulate the dissemination
26 of nutritional information by a food facility. Any ordinance or
27 regulation that violates this prohibition is void and shall have no
28 force or effect.

29 (k) Commencing July 1, 2009, a food facility that violates this
30 section is guilty of an infraction, punishable by a fine of not less
31 than fifty dollars (\$50) or more than five hundred dollars (\$500);
32 which may be assessed by a local enforcement agency. However,
33 a food facility may not be found to violate this section more than
34 once during an inspection visit. Notwithstanding Section 114395,
35 a violation of this section is not a misdemeanor.

36 (l) If any provision of this section, or the application thereof, is
37 for any reason held invalid, ineffective, or unconstitutional by a
38 court of competent jurisdiction, the remainder of this section, shall
39 not be affected thereby, and to this end, the provisions of this
40 section are severable.

1 SEC. 3. Section 114094 is added to the Health and Safety Code,
2 to read:

3 114094. (a) A food facility subject to Section 343(q)(5)(H) of
4 Title 21 of the United States Code or subject to this section as it
5 read on July 1, 2011, shall comply with the requirements of that
6 section of the United States Code and the regulations adopted
7 pursuant thereto.

8 (b) Notwithstanding the Sherman Food, Drug, and Cosmetic
9 Law (Part 5 (commencing with Section 109875) of Division 104),
10 and to the extent permitted by federal law:

11 (1) The department shall administer and the local enforcement
12 agency shall enforce this section.

13 (2) A violation of this section is an infraction, punishable by a
14 fine of not less than fifty dollars (\$50) nor more than five hundred
15 dollars (\$500), to be assessed by a local enforcement agency. A
16 second violation within a five year period from a prior violation
17 shall be punishable by a fine of not less than one hundred dollars
18 (\$100) nor more than one thousand dollars (\$1,000). For a third
19 or subsequent violation within a five year period, the fine shall be
20 not less than two hundred fifty dollars (\$250) nor more than two
21 thousand five hundred dollars (\$2,500). A food facility shall not
22 be found to have committed a violation under this paragraph more
23 than once during an inspection visit.

24 SEC. 4. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution for certain
26 costs that may be incurred by a local agency or school district
27 because, in that regard, this act creates a new crime or infraction,
28 eliminates a crime or infraction, or changes the penalty for a crime
29 or infraction, within the meaning of Section 17556 of the
30 Government Code, or changes the definition of a crime within the
31 meaning of Section 6 of Article XIII B of the California
32 Constitution.

33 However, if the Commission on State Mandates determines that
34 this act contains other costs mandated by the state, reimbursement
35 to local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.

38 ~~SEC. 2. Section 114094 of the Health and Safety Code is~~
39 ~~amended to read:~~

1 ~~114094. (a) For purposes of this section, the following~~
2 ~~definitions shall apply:~~
3 ~~(1) “Food facility” means a food facility that which is part of a~~
4 ~~chain with at least 20 locations doing business under the same~~
5 ~~name, regardless of the type of ownership of the locations, and~~
6 ~~that offers for sale substantially the same menu items, except that~~
7 ~~a “food facility” does not include the following:~~
8 ~~(A) Certified farmer’s markets.~~
9 ~~(B) Commissaries.~~
10 ~~(C) Grocery stores, except for separately owned food facilities~~
11 ~~to which this section otherwise applies that are located in the~~
12 ~~grocery store. For purposes of this paragraph, “grocery store”~~
13 ~~means a store primarily engaged in the retail sale of canned food,~~
14 ~~dry goods, fresh fruits and vegetables, and fresh meats, fish, and~~
15 ~~poultry. “Grocery store” includes convenience stores.~~
16 ~~(D) Licensed health care facilities.~~
17 ~~(E) Mobile support units.~~
18 ~~(F) Public and private school cafeterias.~~
19 ~~(G) Restricted food service facilities.~~
20 ~~(H) Retail stores in which a majority of sales are from a~~
21 ~~pharmacy, as defined in Section 4037 of the Business and~~
22 ~~Professions Code.~~
23 ~~(I) Vending machines.~~
24 ~~(2) “Calorie content information” means the total number of~~
25 ~~calories per standard menu item, as that item is usually prepared~~
26 ~~and offered for sale.~~
27 ~~(3) “Drive-through” means an area where a customer may~~
28 ~~provide an order for and receive standard menu items while~~
29 ~~occupying a motor vehicle.~~
30 ~~(4) “Menu board” means a posted list or pictorial display of~~
31 ~~food or beverage items offered for sale by a food facility.~~
32 ~~(5) “Nutritional information” includes, but is not limited to, all~~
33 ~~of the following, per standard menu item, as that item is usually~~
34 ~~prepared and offered for sale:~~
35 ~~(A) Total number of calories.~~
36 ~~(B) Total number of grams of carbohydrates.~~
37 ~~(C) Total number of grams of saturated fat.~~
38 ~~(D) Total number of milligrams of sodium.~~
39 ~~(6) “Point of sale” means the location where a customer makes~~
40 ~~an order.~~

- 1 (7) “Standard menu item” means a food or beverage item offered
2 for sale by a food facility through a menu, menu board, or display
3 tag at least 180 days per calendar year, except that “standard menu
4 item” does not include any of the following:
- 5 (A) A food item that is customized on a case-by-case basis in
6 response to an unsolicited customer request.
- 7 (B) An alcoholic beverage, the labeling of which is not regulated
8 by the federal Food and Drug Administration.
- 9 (C) A packaged food otherwise subject to the nutrition labeling
10 requirements of the federal Nutrition Labeling and Education Act
11 of 1990.
- 12 (D) A food item when served at a consumer self-service salad
13 bar.
- 14 (E) A food or beverage item when served at a consumer
15 self-service buffet.
- 16 (8) “Reasonable basis” means any reasonable means recognized
17 by the federal Food and Drug Administration of determining
18 nutritional information, as well as calorie content information, for
19 a standard menu item, as usually prepared and offered for sale,
20 including, but not limited to, nutrient databases and laboratory
21 analyses.
- 22 (9) “Appetizer” means a food item that is generally served prior
23 to a food item that is generally regarded as the primary food item
24 in a meal. An “appetizer” includes a first course, starter, or small
25 plate.
- 26 (10) “Dessert” means a food item that is generally served after
27 a food item that is generally regarded as the primary food item in
28 a meal. “Dessert” includes, but is not limited to, cakes, pastries,
29 pies, ice cream and food items that contain ice cream, confections,
30 and other sweets.
- 31 (b) (1) Commencing July 1, 2009, to December 31, 2010,
32 inclusive, every food facility shall either disclose nutritional
33 information as required by paragraph (2), or comply with
34 subdivision (c) during this period of time.
- 35 (2) (A) In order to comply with paragraph (1), a food facility
36 that does not provide sit-down service shall disclose the
37 information in a clear and conspicuous manner on a brochure that
38 is made available at the point of sale prior to or during the
39 placement of an order. A food facility that provides sit-down

1 service shall provide the nutritional information in a clear and
2 conspicuous size and typeface on at least one of the following:
3 (i) ~~A brochure available on the table.~~
4 (ii) ~~A menu next to each standard menu item.~~
5 (iii) ~~A menu, under an index section that is separate from the~~
6 ~~listing of standard menu items.~~
7 (iv) ~~A menu insert.~~
8 (v) ~~A table tent on the table.~~
9 (B) ~~Notwithstanding subparagraph (A), a food facility that has~~
10 ~~a drive-through area and uses a menu board to display or list~~
11 ~~standard menu items at the point of sale shall, for purposes of the~~
12 ~~drive-through area only, disclose the nutritional information in a~~
13 ~~clear and conspicuous manner on a brochure that is available upon~~
14 ~~request, and shall conspicuously display a notice at the point of~~
15 ~~sale that reads: “NUTRITION INFORMATION IS AVAILABLE~~
16 ~~UPON REQUEST” or other similar statement that indicates the~~
17 ~~disclosure of nutrition information is available upon request.~~
18 (e) (1) ~~On and after January 1, 2011, every food facility that~~
19 ~~provides a menu shall disclose calorie content information for a~~
20 ~~standard menu item next to the item on the menu in a size and~~
21 ~~typeface that is clear and conspicuous.~~
22 (2) ~~On and after January 1, 2011, every food facility that uses~~
23 ~~an indoor menu board shall disclose calorie content information~~
24 ~~for a standard menu item next to the item on the menu board in a~~
25 ~~size and typeface that is clear and conspicuous.~~
26 (3) ~~On and after January 1, 2011, every food facility that uses~~
27 ~~a display tag as an alternative to a menu or menu board to describe~~
28 ~~a standard menu item that is displayed for sale in a display case~~
29 ~~within the food facility shall disclose calorie content information~~
30 ~~for that standard menu item on the display tag for that item in a~~
31 ~~size and typeface that is clear and conspicuous.~~
32 (4) ~~On and after January 1, 2011, every food facility that has a~~
33 ~~drive-through area and uses a menu board to display or list standard~~
34 ~~menu items at the point of sale shall, for purposes of the~~
35 ~~drive-through area only, disclose the nutritional information for~~
36 ~~each standard menu item in a clear and conspicuous manner on a~~
37 ~~brochure that is available upon request, and shall clearly and~~
38 ~~conspicuously display a notice at the point of sale that reads:~~
39 ~~“NUTRITION INFORMATION IS AVAILABLE UPON~~
40 ~~REQUEST” or other similar statement that indicates the disclosure~~

1 of nutrition information upon request. If a food facility subject to
2 this paragraph discloses nutritional information in the manner
3 described in subparagraph (B) of paragraph (2) of subdivision (b),
4 the food facility shall be deemed to be in compliance with this
5 paragraph.

6 ~~(d) For purposes of subdivision (c), the disclosure of caloric~~
7 ~~content information on a menu or menu board next to a standard~~
8 ~~menu item that is a combination of at least two standard menu~~
9 ~~items on the menu or menu board, shall, based upon all possible~~
10 ~~combinations for that standard menu item, include both the~~
11 ~~minimum amount of calories for the caloric count information and~~
12 ~~the maximum amount of calories for the caloric count information.~~
13 ~~If there is only one possible total amount of calories, then this total~~
14 ~~shall be disclosed.~~

15 ~~(e) For purposes of subdivision (c), the disclosure of caloric~~
16 ~~content information on a menu or menu board next to a standard~~
17 ~~menu item that is not an appetizer or dessert, but is intended to~~
18 ~~serve more than one individual, shall include both of the following:~~

19 ~~(1) The number of individuals intended to be served by the~~
20 ~~standard menu item.~~

21 ~~(2) The caloric content information per individual serving. If~~
22 ~~the standard menu item is a combination of at least two standard~~
23 ~~menu items, this disclosure shall, based upon all possible~~
24 ~~combinations for that standard menu item, include both the~~
25 ~~minimum amount of calories for the caloric count information and~~
26 ~~the maximum amount of calories. If there is only one possible total~~
27 ~~amount of calories, then this total shall be disclosed.~~

28 ~~(f) The nutritional information and caloric content information~~
29 ~~required by this section shall be determined on a reasonable basis.~~
30 ~~A reasonable basis determination of nutritional information and~~
31 ~~caloric content information shall be required only once per standard~~
32 ~~menu item, provided that portion size is reasonably consistent and~~
33 ~~the food facility follows a standardized recipe and trains to a~~
34 ~~consistent method of preparation.~~

35 ~~(g) (1) Every brochure provided pursuant to this section shall~~
36 ~~include the statement: “Recommended limits for a 2,000-calorie~~
37 ~~daily diet are 20 grams of saturated fat and 2,300 milligrams of~~
38 ~~sodium.”~~

39 ~~(2) Menus and menu boards may include a disclaimer that~~
40 ~~indicates that there may be variations in nutritional content across~~

1 servings, based on variations in overall size and quantities of
2 ingredients, and based on special ordering.

3 (h) This section shall not be construed to create or enhance any
4 claim, right of action, or civil liability that did not previously exist
5 under state law or limit any claim, right of action, or civil liability
6 that otherwise exists under state law. The only enforcement
7 mechanism of the section is the local enforcement agency.

8 (i) This section shall not be construed to preclude any food
9 facility from voluntarily providing nutritional information in
10 addition to the requirements of this section.

11 (j) To the extent consistent with federal law, this section, as
12 well as any other state law that regulates the disclosure of
13 nutritional information, is a matter of statewide concern and
14 occupies the whole field of regulation regarding the disclosure of
15 nutritional information by a food facility. No ordinance or
16 regulation of a local government shall regulate the dissemination
17 of nutritional information by a food facility. Any ordinance or
18 regulation that violates this prohibition is void and shall have no
19 force or effect.

20 (k) Commencing July 1, 2009, a food facility that violates this
21 section is guilty of an infraction, punishable by a fine of not less
22 than fifty dollars (\$50) or more than five hundred dollars (\$500);
23 which may be assessed by a local enforcement agency. However,
24 a food facility may not be found to violate this section more than
25 once during an inspection visit. Notwithstanding Section 114395,
26 a violation of this section is not a misdemeanor.

27 (l) If any provision of this section, or the application thereof, is
28 for any reason held invalid, ineffective, or unconstitutional by a
29 court of competent jurisdiction, the remainder of this section, shall
30 not be affected thereby, and to this end, the provisions of this
31 section are severable.

32 SEC. 3. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution for certain
34 costs that may be incurred by a local agency or school district
35 because, in that regard, this act creates a new crime or infraction,
36 eliminates a crime or infraction, or changes the penalty for a crime
37 or infraction, within the meaning of Section 17556 of the
38 Government Code, or changes the definition of a crime within the
39 meaning of Section 6 of Article XIII B of the California
40 Constitution.

1 However, if the Commission on State Mandates determines that
2 this act contains other costs mandated by the state, reimbursement
3 to local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

O