

Senate Bill No. 419

(By Senators Prezioso, Foster, Stollings and Jenkins)

[Introduced March 3, 2009; referred to the Committee on Health and Human
Resources.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-1E-6, relating to the Healthy West Virginia Program; initiating the Healthy Lifestyles Restaurant Calorie Posting Program; and providing for legislative rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-1E-6, to read as follows:

ARTICLE 1E. HEALTHY WEST VIRGINIA PROGRAM.

§5-1E-6. Restaurant calorie posting program.

(a) The Governor's Office of Health Enhancement and Lifestyle Planning shall establish a Healthy Lifestyles Restaurant Calorie Posting Program. The program shall require covered food service establishments as that term is defined in this section to post caloric information at the point of purchase. The program shall be designed to

address the problems affecting overweight and obese individuals, and encourage and promote healthy lifestyles.

(b) As used in this section the following words and phrases have the following meanings:

(1) "Covered food service establishment" means a food service establishment doing business in West Virginia and that has greater than fifteen locations nationally doing business under the same trade name, regardless of the type of ownership of the individual restaurant locations, offering for sale substantially similar menu items, in servings that are standardized for portion size and content and that operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.

(2) "Menu" means a printed list or pictorial display of a food item or items, and their price or prices that are available for sale from a covered food service establishment and shall include menus distributed or provided outside of the establishment.

(3) "Menu board" means any list or pictorial display of a food item or items and their price or prices, visibly posted at the point of purchase within a covered food service establishment or outside of a covered food service establishment for the purpose of ordering from a drive-through window.

(4) "Menu item" means any individual food item, or combination of food items, listed or displayed on a menu board or menu that are sold by a covered food service establishment.

(5) "Food item tag" means a label or tag that identifies any food item displayed for sale at a covered food service establishment.

(c) This section shall apply to menu items served in portions the size and content of which are standardized at a covered food service establishment. This section does not apply to menu items that are listed on a menu or menu board for less than thirty days in a calendar year or for condiments and other items placed on a table or counter for general use without charge.

(d) The Governor's Office of Health Enhancement and Lifestyle shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section. These rules shall provide for:

(1) The posting of calorie information for menu items that bear the total number of calories derived from any source for each menu item they list. This post shall be at the point of purchase;

(2) A means of calculating calories content values using analytic methods and express nutrient content based upon a verifiable analysis of the menu item;

(3) Standardize formatting for food item tags including font size and format. The size and typeface must be of equal prominence to the price or name of the item;

(4) Specific drive-through windows requirements including the manner in which the caloric content of menu items must be displayed at or near the drive-through menu board;

(5) Specific salad bar, buffet line, cafeteria service, or arrangement where food is

on display requirements that provide caloric content per standard service per item next to where the item is offered in a size and typeface that is prominent and legible from where customers are choosing those items;

(6) A means to account for the range of calorie content values for different flavors, varieties and food item combinations listed as a single menu item; and

(7) Anything additional the Governor's Office of Health Enhancement and Lifestyle finds necessary to effectuate the provisions of this section.

(e) Once the program begins operation, marketing shall take place through all state agencies. The West Virginia Public Employees Insurance Agency, the Bureau for Medical Services and the West Virginia Insurance Commission must aggressively market this program to their members for the purposes of health promotion among their members.

NOTE: The purpose of this bill is to initiate the Healthy Lifestyles Restaurant Calorie Posting Program, to require restaurants to participate in this program and will benefit from the marketing of this program through state agencies.

This section is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for passage during the 2009 Regular Session by Select Committee D on Health.