

By Senator Wise

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1 A bill to be entitled

2 An act relating to the prevention of obesity; amending
3 s. 381.0054, F.S.; providing definitions; authorizing
4 the Department of Health to require certain food
5 service establishments to display the number of
6 calories in food items for sale; providing exemptions;
7 providing penalties; providing immunity from liability
8 under certain circumstances; providing conditions
9 under which such nutritional-information requirements
10 may be superseded by federal law, rules, or
11 regulations; providing applicability; providing an
12 effective date.

13
14 WHEREAS, although death due to obesity is preventable, more
15 than 40,000 Florida residents die annually from obesity-related
16 diseases, and

17 WHEREAS, in 2008, more that 60 percent of the adults and 30
18 percent of the children in Florida were overweight and at least
19 half of this number were obese, with a body mass index greater
20 than 30, and

21 WHEREAS, approximately 60 percent of overweight children
22 have at least one risk factor for cardiovascular disease and 25
23 percent of overweight children have two or more risk factors,
24 and

25 WHEREAS, the number of overweight and obese children has
26 tripled in the last 20 years, and

27 WHEREAS, excessive body weight affects virtually every
28 organ system in the body and increases the risks of diabetes,
29 myocardial infarction, stroke, cancer, sleep apnea, and

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30 osteoarthritis, and

31 WHEREAS, obesity-related medical expenditures for adults in
32 this state total more than 5 billion dollars annually, with over
33 half of those costs being financed by Medicare and Medicaid, and
34 the direct economic effects of obesity are far greater than this
35 figure when missed workdays and other costs outside the medical
36 care system and the economic valuation of reduced longevity and
37 quality of life are considered, and

38 WHEREAS, in 2008, almost 50 percent of the money spent on
39 food was spent away from the home and, according to a recent
40 national poll by Peter D. Hart Research Associates, 79 percent
41 of registered voters favor a law that would require restaurants
42 to provide detailed nutritional information in a format
43 available to consumers, and

44 WHEREAS, the current economic crisis provides a unique
45 opportunity to examine questions of fundamental importance to
46 public health, especially those related to obesity and physical
47 activity, and

48 WHEREAS, the Labeling Education and Nutrition Act (LEAN)
49 has been reintroduced into the United States House of
50 Representatives and the United States Senate, NOW, THEREFORE,

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Section 381.0054, Florida Statutes, is amended
55 to read:

56 381.0054 Healthy lifestyles promotion.—

57 (1) The Department of Health shall promote healthy
58 lifestyles to reduce the prevalence of excess weight gain and

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59 obesity in Florida by implementing appropriate physical activity
60 and nutrition programs that are directed towards all Floridians
61 by:

62 (a) Using all appropriate media to promote maximum public
63 awareness of the latest research on healthy lifestyles and
64 chronic diseases and disseminating relevant information through
65 a statewide clearinghouse relating to wellness, physical
66 activity, and nutrition and their impact on chronic diseases and
67 disabling conditions.

68 (b) Providing technical assistance, training, and resources
69 on healthy lifestyles and chronic diseases to the public, county
70 health departments, health care providers, school districts, and
71 other persons or entities, including faith-based organizations,
72 that request such assistance to promote physical activity,
73 nutrition, and healthy lifestyle programs.

74 (c) Developing, implementing, and using all available
75 research methods to collect data, including, but not limited to,
76 population-specific data, and track the incidence and effects of
77 weight gain, obesity, and related chronic diseases. The
78 department shall include an evaluation and data collection
79 component in all programs as appropriate.

80 (d) Partnering with the Department of Education, local
81 communities, school districts, and other entities to encourage
82 Florida schools to promote activities during and after school to
83 help students meet a minimum goal of 60 minutes of activity per
84 day.

85 (e) Partnering with the Department of Education, school
86 districts, and the Florida Sports Foundation to develop a
87 program that recognizes schools whose students demonstrate

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88 excellent physical fitness or fitness improvement.

89 (f) Collaborating with other state agencies to develop
90 policies and strategies for preventing and treating obesity,
91 which shall be incorporated into programs administered by each
92 agency and shall include promoting healthy lifestyles of
93 employees of each agency.

94 (g) Advising, in accordance with s. 456.081, health care
95 practitioners licensed in this state regarding the morbidity,
96 mortality, and costs associated with the condition of being
97 overweight or obese, informing such practitioners of clinical
98 best practices for preventing and treating obesity, and
99 encouraging practitioners to counsel their patients regarding
100 the adoption of healthy lifestyles.

101 (h) Maximizing all local, state, and federal funding
102 sources, including grants, public-private partnerships, and
103 other mechanisms, to strengthen the department's current
104 physical activity and nutrition programs and to enhance similar
105 county health department programs.

106 (2) As used in this section, the term:

107 (a) "Menu" or "menu board" means the primary writing or
108 electronic means on the premises of the food service
109 establishment from which consumers make their order selection.

110 (b) "Reasonable basis" means using any means of determining
111 nutrition information for a standard food item, including
112 nutrient information for a standard food item provided by
113 nutrient databases, manufacturer's labels, cookbooks, laboratory
114 analyses, and other information offered without an intent to
115 deceive.

116 (c) "Standard food item" means food offered for sale at

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117 least 90 days per calendar year, but the term does not include
118 food not separately offered for sale or food exempt under
119 paragraph (3) (d).

120 (3) The Department of Health shall require standard food
121 items served or offered for sale at least 90 days per calendar
122 year in a food service establishment, as defined in s.
123 500.03(1) (p), to bear a label or display information that
124 indicates in a clear and conspicuous manner the number of
125 calories in each food item, to be determined within a reasonable
126 basis, as follows:

127 (a) *Calories displayed on a menu board.*—The number of
128 calories shall be displayed on the menu board prior to the point
129 of purchase by one of the following means:

- 130 1. On a menu board adjacent to the item or its price;
- 131 2. On a sign presenting standard food items in a manner
132 similar to the menu board and located on the same wall as the
133 menu board;
- 134 3. On a sign at eye level in the consumer queue prior to
135 the point of purchase; or
- 136 4. By electronic means accessible to the consumer.

137 (b) *Calories displayed on a menu.*—The number of calories
138 shall be displayed on the menu prior to the point of purchase by
139 one of the following means:

- 140 1. In the menu adjacent to the item or its price; or
- 141 2. In an insert that accompanies or is attached to the
142 menu.

143 (c) *Referral statement.*—A menu or a menu board shall bear a
144 statement directing the consumer to the location of additional
145 nutritional information that may be known and available but not

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146 required, including, but not limited to, the amount of sodium,
147 trans fat, saturated fat, cholesterol, carbohydrates, sugars,
148 and protein in each food item.

149 (d) Applicability.—This subsection does not apply to:

150 1. Food offered for sale at a not-for-profit food
151 establishment.

152 2. Food offered at no cost.

153 3. Food exempted by the State Surgeon General by rule.

154 (e) One determination per item.—A reasonable basis for
155 determination of nutrition information may be made with
156 appropriate accuracy by consulting nutrient databases,
157 manufacturer's labels, cookbooks, laboratory analyses, or other
158 sources that provide a reasonable basis of information regarding
159 the nutrient content of a food, notwithstanding variability in
160 the portion size, formulation, and other characteristics of such
161 food or its preparation method.

162 (f) Penalty.—The department shall enforce this section
163 during routine inspections of food service establishments and a
164 warning notice shall be given for:

165 1. Failing to make a disclosure required by this
166 subsection; or

167 2. Making a disclosure under this section with an intent to
168 deceive.

169
170 If the food service establishment does not correct the
171 deficiency within 90 days after receiving the warning notice, an
172 administrative fine of \$100 per day shall be assessed beginning
173 on the 91st day after notification until the food service
174 establishment is in compliance with the requirements of this

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175 section.

176 (g) Liability.—Unless a food service establishment
177 knowingly and willfully violates paragraph (f), the
178 establishment may not be held liable.

179 (4) ~~(2)~~ The department may adopt rules pursuant to ss.
180 120.536(1) and 120.54 to administer this section.

181 (5) ~~(3)~~ Subsection (1) ~~This section~~ shall be implemented
182 contingent on an appropriation in the General Appropriations
183 Act.

184 (6) Subsection (3) may be superseded by federal law if a
185 single, consistent national nutrition labeling standard is
186 established under federal law, rules, or regulations that
187 accomplish the same purpose of providing responsible nutritional
188 information to the consumer. Any restaurant may provide more
189 information than is required under subsection (3) without
190 penalty as long as the caloric information is included.

191 Section 2. This act shall take effect January 1, 2011, and,
192 from January 1, 2011, through December 31, 2011, shall apply to
193 all food service establishments having 20 or more separate
194 establishments in the state, and, on January 1, 2012, and
195 thereafter, shall apply to all food service establishments in
196 the state.