

By: Lucio III

H.B. No. 2831

A BILL TO BE ENTITLED

AN ACT

relating to disclosure of calorie content and nutrition information by certain food establishments; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 438, Health and Safety Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. NUTRITION LABELING OF STANDARD MENU ITEMS AT CERTAIN FOOD ESTABLISHMENTS; ADMINISTRATIVE PENALTY

Sec. 438.201. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 438.202. ENFORCEMENT; RULES. (a) A food establishment subject to Section 403(q)(5)(H), Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 343), shall comply with that section and the rules adopted under this subchapter.

(b) The department shall enforce Section 403(q)(5)(H), Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 343).

(c) The executive commissioner shall adopt rules to implement this subchapter. The executive commissioner shall review the regulations adopted by the United States Food and Drug Administration under Section 403(q)(5)(H), Federal Food, Drug, and

1 Cosmetic Act (21 U.S.C. Section 343), before adopting rules under  
2 this subsection.

3 (d) Rules adopted under Subsection (c) must be consistent  
4 with the requirements of Section 403(q)(5)(H), Federal Food, Drug,  
5 and Cosmetic Act (21 U.S.C. Section 343), and the regulations  
6 adopted by the United States Food and Drug Administration under  
7 that section.

8 Sec. 438.203. INSPECTION. (a) To enforce the rules adopted  
9 under this subchapter, the department, an authorized agent, or a  
10 health authority may, on presenting appropriate credentials to the  
11 owner, operator, or agent in charge of a food establishment, enter  
12 an establishment to conduct an inspection to determine compliance  
13 with rules adopted under this subchapter.

14 (b) On finding an alleged violation, an authorized agent  
15 conducting an inspection shall submit to the department and the  
16 owner or operator of the food establishment notice by certified  
17 mail that includes:

18 (1) a brief summary of the alleged violation;  
19 (2) the amount of the recommended penalty; and  
20 (3) a statement informing the owner or operator of the  
21 food establishment of the owner's or operator's right to a hearing  
22 on the occurrence of the violation, the amount of the penalty, or  
23 both.

24 Sec. 438.204. ADMINISTRATIVE PENALTY: IMPOSITION AND  
25 AMOUNT. (a) The department may impose an administrative penalty  
26 against a person who violates this subchapter.

27 (b) In determining the amount of the penalty, the department

1 shall consider:

2 (1) the seriousness of the violation;

3 (2) the person's previous violations;

4 (3) the amount necessary to deter a future violation;

5 (4) the person's demonstrated good faith; and

6 (5) such other matters as justice may require.

7 (c) The penalty may not exceed \$500 for each violation.

8 (d) A person may not be charged with more than one violation  
9 of this subchapter on the basis of evidence gathered during a single  
10 inspection.

11 Sec. 438.205. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

12 (a) An administrative penalty may be assessed only after a person  
13 charged with a violation is given an opportunity for a hearing.

14 (b) If the person requests a hearing, the department shall  
15 refer the matter to the State Office of Administrative Hearings and  
16 shall give notice of the hearing to the person. The hearing shall  
17 be held by an administrative law judge of that office. The  
18 administrative law judge shall make findings of fact and  
19 conclusions of law and promptly issue to the department a written  
20 proposal for decision about the occurrence of the violation and the  
21 amount of any proposed penalty. Based on the findings of fact,  
22 conclusions of law, and proposal for decision, the department by  
23 order may find that a violation has occurred and impose a penalty or  
24 may find that no violation occurred.

25 (c) If the person charged with the violation does not  
26 request a hearing, the department may assess a penalty after  
27 determining that a violation has occurred and the amount of the

1 penalty that may be warranted.

2 (d) The notice of the department's order given to the person  
3 under Chapter 2001, Government Code, must include a statement of  
4 the right of the person to judicial review of the order.

5 Sec. 438.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE  
6 PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an  
7 order of the department under Section 438.205 that imposes an  
8 administrative penalty becomes final, the person shall:

9 (1) pay the penalty; or

10 (2) file a petition for judicial review of the  
11 department's order contesting the occurrence of the violation, the  
12 amount of the penalty, or both.

13 (b) Within the 30-day period prescribed by Subsection (a), a  
14 person who files a petition for judicial review may:

15 (1) stay enforcement of the penalty by:

16 (A) paying the penalty to the court for placement  
17 in an escrow account; or

18 (B) giving the court a supersedeas bond approved  
19 by the court that:

20 (i) is for the amount of the penalty; and

21 (ii) is effective until all judicial review  
22 of the department's order is final; or

23 (2) request the court to stay enforcement of the  
24 penalty by:

25 (A) filing with the court a sworn affidavit of  
26 the person stating that the person is financially unable to pay the  
27 penalty and is financially unable to give the supersedeas bond; and

1           (B) sending a copy of the affidavit to the  
2 department by certified mail.

3           (c) If the department receives a copy of an affidavit under  
4 Subsection (b)(2), the department may file with the court, within  
5 five days after the date the copy is received, a contest to the  
6 affidavit. The court shall hold a hearing on the facts alleged in  
7 the affidavit as soon as practicable and shall stay enforcement of  
8 the penalty on finding that the alleged facts are true. The person  
9 who files an affidavit has the burden of proving that the person is  
10 financially unable to pay the penalty or to give a supersedeas bond.

11           (d) If the person does not pay the penalty and the  
12 enforcement of the penalty is not stayed, the penalty may be  
13 collected. The attorney general may sue to collect the penalty.

14           (e) If the court sustains the finding that a violation  
15 occurred, the court may uphold or reduce the amount of the penalty  
16 and order the person to pay the full or reduced amount of the  
17 penalty.

18           (f) If the court does not sustain the finding that a  
19 violation occurred, the court shall order that a penalty is not  
20 owed.

21           (g) If the person paid the penalty and if the amount of the  
22 penalty is reduced or the penalty is not upheld by the court, the  
23 court shall order, when the court's judgment becomes final, that  
24 the appropriate amount plus accrued interest be remitted to the  
25 person within 30 days after the date that the judgment of the court  
26 becomes final. The interest accrues at the rate charged on loans to  
27 depository institutions by the New York Federal Reserve Bank. The

1 interest shall be paid for the period beginning on the date the  
2 penalty is paid and ending on the date the penalty is remitted.

3 (h) If the person gave a supersedeas bond and the penalty is  
4 not upheld by the court, the court shall order, when the court's  
5 judgment becomes final, the release of the bond. If the person gave  
6 a supersedeas bond and the amount of the penalty is reduced, the  
7 court shall order the release of the bond after the person pays the  
8 reduced amount.

9 SECTION 2. The executive commissioner of the Health and  
10 Human Services Commission may not adopt the rules required by  
11 Section 438.202, Health and Safety Code, as added by this Act,  
12 before the United States Food and Drug Administration has adopted  
13 and published regulations under Section 403(q)(5)(H), Federal  
14 Food, Drug, and Cosmetic Act (21 U.S.C. Section 343).

15 SECTION 3. This Act takes effect September 1, 2015.