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1 A bill to be entitled

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9 information requirements may be superseded by federal law,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

11
12 WHEREAS, death due to obesity is preventable and more than
13 40,000 Florida residents die annually from obesity-related
14 diseases and

15 WHEREAS, in 2008, more that 60 percent of the adults and 30
16 percent of the children in Florida were overweight and at least
17 half of these numbers were obese, with a body mass index greater
18 than 30 and

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

22 WHEREAS, the number of overweight and obese children has
23 tripled in the last 20 years and

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

28 WHEREAS, obesity-related medical expenditures for adults in

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29 | this state total more than 5 billion dollars annually, with over
 30 | half of those costs being financed by Medicare and Medicaid, and
 31 | the direct economic effects of obesity are far greater than this
 32 | figure when missed workdays and other costs outside the medical
 33 | care system and the economic valuation of reduced longevity and
 34 | quality of life are considered and

35 | WHEREAS, in 2008 almost 50 percent of food dollars were
 36 | spent away from the home and according to a recent poll by Peter
 37 | D. Hart Research Associates 79 percent of registered voters
 38 | favor a law that would require restaurants to provide detailed
 39 | nutritional information in writing and

40 | WHEREAS, the current economic crisis provides a unique
 41 | opportunity to examine questions of fundamental importance to
 42 | public health, especially those related to obesity and physical
 43 | activity and

44 | WHEREAS, the Labeling Education and Nutrition Act (LEAN)
 45 | has been reintroduced into the U.S. House of Representatives and
 46 | the U.S.Senate, NOW, THEREFORE,

47 |

48 | Be It Enacted by the Legislature of the State of Florida:

49 |

50 | Section 1. Section 381.0054, Florida Statutes, is amended
 51 | to read:

52 | 381.0054 Healthy lifestyles promotion.--

53 | (1) The Department of Health shall promote healthy
 54 | lifestyles to reduce the prevalence of excess weight gain and
 55 | obesity in Florida by implementing appropriate physical activity

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56 and nutrition programs that are directed towards all Floridians
57 by:

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

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

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

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

81 (e) Partnering with the Department of Education, school
82 districts, and the Florida Sports Foundation to develop a

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83 program that recognizes schools whose students demonstrate
84 excellent physical fitness or fitness improvement.

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

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

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

102 (2) The Department of Health shall require standard food
103 items served or offered for sale at least 90 days per calendar
104 year in a food service establishment, as defined in s.
105 500.03(1)(p), to bear a label or display information that
106 indicates in a clear and conspicuous manner the number of
107 calories in each food item, to be determined within a reasonable
108 basis, as follows:

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109 (a) Calories displayed on menu board.--The number of
110 calories shall be displayed on the menu board prior to the point
111 of purchase by one of the following means:

112 1. On a menu board adjacent to the item or its price;

113 2. On a sign presenting standard food items in a manner
114 similar to the menu board and located on the same wall as the
115 menu board; or

116 3. On a sign at eye level in the consumer queue prior to
117 the point of purchase.

118 (b) Calories displayed on menu.--The number of calories
119 shall be displayed on the menu prior to the point of purchase by
120 one of the following means:

121 1. In the menu adjacent to the item or its price; or

122 2. In an insert that accompanies or is attached to the
123 menu.

124 (c) Referral statement.--A menu board or a menu shall bear
125 a statement directing the consumer to the location of additional
126 nutritional information that may be known and available but not
127 required, such as, but not limited to, the amount of sodium,
128 trans fat, saturated fat, cholesterol, carbohydrates, sugars,
129 and protein in each food item.

130 (d) Applicability.--This subsection does not apply to:

131 1. Food offered for sale at a not-for-profit food
132 establishment.

133 2. Food offered at no cost.

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

135 (e) One determination per item.--A reasonable basis for
136 determination of nutrition information can be made with

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137 appropriate accuracy by consulting nutrient databases,
 138 cookbooks, laboratory analyses, or other sources that provide a
 139 reasonable basis of information regarding the nutrient content
 140 of a food, notwithstanding variability in the portion size,
 141 formulation, and other characteristics of such food or its
 142 preparation method.

143 (f) Penalty.-- The department shall enforce this section
 144 during their routine inspections of food service establishments
 145 and a warning notice will be given for:

146 1. Failing to make a disclosure required by this
 147 subsection or

148 2. Making a disclosure under this subsection with an
 149 intent to deceive

150 If the food service establishment does not correct the
 151 deficiency within 90 days then an administrative fine of \$100
 152 per day will be assessed beginning on the 91st day after
 153 notification until the food service establishment is in
 154 complicance with the requirements of this section.

155 (g) Liability.--Unless a food service establishment
 156 knowingly and willfully violates paragraph (f), the
 157 establishment may not be held liable.

158 (3) DEFINITIONS - For purposes of subparagraphs (2):

159 (A)The term "standard food item" means a food offered for
 160 sale at least 90 days per calendar year, but does not include
 161 food not separately offered for sale or food exempt under
 162 subparagraph (2) (d).

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163 (B) The term "menu" or "menu board" means the primary
 164 writing on the premises of the food service establishment from
 165 which consumers make their order selection.

166 (C) The term "reasonable basis" means using any means of
 167 determining nutrition information for a standard food item
 168 including nutrient databases, cookbooks, laboratory analyses,
 169 and other reasonable means made without an intent to deceive.

170 ~~(4)-(2)~~ The department may adopt rules pursuant to ss.
 171 120.536(1) and 120.54 to administer this section.

172 ~~(5)-(3)~~ Subsection (1) ~~This section~~ shall be implemented
 173 contingent on an appropriation in the General Appropriations
 174 Act.

175 (6) Subsection (2) may be superseded by federal law if a
 176 single, consistent national nutrition labeling standard is
 177 established under federal law, rules, or regulations that
 178 accomplish the same purpose of providing responsible nutritional
 179 information to the consumer. Any restaurant can provide more
 180 information than subsection (2) requires without any penalty as
 181 long as the caloric information is included.

182 Section 2. This act shall take effect January 1, 2011,
 183 and, from January 1, 2011 through December 31, 2011, shall apply
 184 to all food service establishments having twenty or more
 185 establishments in the nation, and, on January 1, 2012, and
 186 thereafter, shall apply to all food service establishments in
 187 Florida.