

CALIFORNIA IS FIRST STATE TO ENACT MENU LABELING REQUIREMENTS

On September 30, 2008, Governor Arnold Schwarzenegger signed into law SB 1420 that will require chain restaurants (defined as restaurants with 20 or more locations in California) to provide their customers with certain nutritional information for standard menu items. The menu labeling law coincides with California's recent ban on trans fat. Not only are both laws designed to address obesity and health issues, but both laws will require full compliance by January 1, 2011. Although some cities and counties throughout the United States have passed similar laws, this is the first statewide law in the country.

The first of two tiers of compliance commences July 1, 2009, where restaurants at the point of sale or at tables must provide a brochure that contains the required nutritional information. Such information includes the total calories, fat, sodium and carbohydrates in each serving of standard menu items. A standard menu item is an item that is on the menu for at least six months of the year excluding seasonal items, specials or customized orders.

Secondly, by January 1, 2011, restaurants must have the same nutritional information on menus and, if applicable, on menu boards. A restaurant is also permitted to advise its customers that there can be some variation in the nutritional content of its servings.

With this bill's passage restaurants are afforded some protection. For instance, this law supersedes and preempts any local, county or state law or ordinance. This means that a restaurant doing business in California need not worry about complying with a patchwork of local menu labeling laws. In fact, the City of San Francisco and County of San Mateo recently enacted their own menu labeling laws – which have now been rendered moot.

Even more important for restaurants is that the new law specifically provides that it does not create any claim or right of action that did not previously exist under current state law. This means that legal action groups and plaintiff attorneys cannot rely on the new law to file suit against restaurants for inaccurate nutritional information.

Some of the local menu labeling laws and ordinances that have been enacted are currently the subject of legal challenge, most notably in New York City. We will keep you updated with any legal challenges that may arise against this new law.

If you have any questions regarding this client alert, please contact Bess Blank at 310.282.9400 or via email at bblank@silverfreedman.com.