

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Seventy-Seventh Session
March 6, 2013**

The Committee on Health and Human Services was called to order by Chair Marilyn Dondero Loop at 1:35 p.m. on Wednesday, March 6, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn Dondero Loop, Chair
Assemblywoman Ellen B. Spiegel, Vice Chair
Assemblywoman Teresa Benitez-Thompson
Assemblyman Wesley Duncan
Assemblyman Andy Eisen
Assemblywoman Michele Fiore
Assemblyman John Hambrick
Assemblyman Pat Hickey
Assemblyman Joseph M. Hogan
Assemblyman Andrew Martin
Assemblyman James Oscarson
Assemblywoman Peggy Pierce
Assemblyman Michael Sprinkle

COMMITTEE MEMBERS ABSENT:

Assemblyman Steven Brooks (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Lucy Flores, Clark County Assembly District No. 28



STAFF MEMBERS PRESENT:

Kirsten Bugenig, Committee Policy Analyst

Terry Horgan, Committee Secretary

Macy Young, Committee Assistant

OTHERS PRESENT:

Christopher Roller, representing the American Heart Association

Tom McCoy, Nevada Director, Government Relations, American Cancer Society
Cancer Action Network

Deborah M. Williams, Manager, Office of Chronic Disease Prevention and Health
Promotion, Southern Nevada Health District

Glenn D. Savage, Environmental Health Director, Southern Nevada Health
District

Mary Perry Wilson, Extension Nutrition Specialist, University of Nevada
Cooperative Extension

Warren B. Hardy II, representing the Nevada Restaurant Association

Lea Tauchen, representing the Retail Association of Nevada

Peter Krueger, representing the Nevada Petroleum Marketers and Convenience
Store Association

Tray Abney, representing The Chamber of Reno/Sparks/Northern Nevada

Justin Micatrotto, Chief Marketing Officer, MRG Marketing & Management Inc.,
Las Vegas

Chair Dondero Loop:

[Roll was taken. Committee rules and protocol were explained.]

Before we begin our agenda items, I want to mention that I asked Assemblywoman Benitez-Thompson to work with interested parties to coordinate all the amendments for a bill we heard Monday, so she will be reaching out to those individuals. Thank you very much for the extra time you will be putting into this, Mrs. Benitez-Thompson. Now I will open the hearing on Assembly Bill 126.

Assembly Bill 126: Requires the disclosure of certain nutritional information in certain chain restaurants. (BDR 51-81)

Assemblywoman Lucy Flores, Clark County Assembly District No. 28:

I want to state for the record that this excellent PowerPoint ([Exhibit C](#)) to highlight the features of A.B. 126 was created by my very talented attaché.

Assembly Bill 126 codifies federal law. In the Affordable Care Act (ACA), there was an emphasis on prevention in response to the obesity epidemic that unfortunately exists. We are now trying to deal with this problem through public policy decisions. One decision made through the ACA was ensuring that consumers were armed with the information they needed to make healthier eating decisions. There is a provision within the ACA that chain restaurants and similar retail food establishments make certain information available to consumers. This information is primarily the caloric content of their menu items. For purposes of the ACA, a retail food establishment is one whose menu items and menus are substantially similar throughout all their locations. The other main point of that provision in the ACA is that it applies to food establishments with 20 restaurants or more within the country.

In addition to codifying what exists in federal law, A.B. 126 would change that number to apply to a retail food establishment having more than ten restaurants located within Nevada. The idea behind that number was the fact that technically there could exist somewhat of a loophole. For example if someone had 19 restaurants all located within Nevada, they would not be subject to the disclosure of their menu items. I lowered that threshold to ten so if there are more than ten locations within Nevada, they would be subject to the disclosure of this information. Besides codifying what is in federal law ([Exhibit D](#)), section 2 of A.B. 126 relates to associated penalties should people not be in compliance with the federal law.

What are calories? My PowerPoint includes some background information and the reason why it is important to have this information out there [([Exhibit C](#)) slide 2]. At the end of the day, it is calories in/calories out. Obviously there is a lot more to that such as carbohydrates and sugars, but at this point we are requiring at least the disclosure of the calories. It is also important relative to what your minimum caloric intake should be [([Exhibit C](#)) slide 3]. I think for the most part people overestimate the amount of calories not only that food has, but also what they should be ingesting.

Slide 4 ([Exhibit C](#)) mentions how many people are eating out. Generally, we have seen an increase in the amount of people who not only dine at fast food establishments, but also just dine out in restaurants. More often than not, people are not eating at home. They actually are being served larger portions and food they may not know the nutritional content of. Slide 5 ([Exhibit C](#)) shows statistics as far as who is eating fast food. The average American eats it 159 times a year. The average fast food meal has 1,200 calories. If you add those up, that is 190,000 calories a year—which adds up to a whole lot of pounds, assuming you are not burning the calories off somehow.

Slide 6 ([Exhibit C](#)) contains more statistics regarding dining out and takeout food. Americans dine in and take out an average of 250 meals a year. Forty-two are breakfast meals, 135 are lunch meals, and 73 are dinner meals. Then there is the fact that we often think we are eating healthy, but we are really not. That is why it is so important to ensure consumers are armed with the appropriate information. Two things are important to clarify. One is that this requirement is in federal statute. The law has passed. The federal government is still developing regulations and folks are already beginning to comply with it. It is also about consumer behavior and having the appropriate information to make good decisions. If you want to have the IHOP chicken and spinach salad, which is actually 1,530 calories, or the Santa Fe Salad from the Cheesecake Factory that is close to 2,000 calories, which is close to your total daily caloric intake, you can still do that [([Exhibit C](#)) slide 7]. But at least you know what you are putting into your body. Also, you are not being misled. Just because it is called a salad does not mean that it is healthy for you. Oftentimes it is not. For instance, the California Pizza Kitchen Moroccan-Spiced Chicken salad sounds great, sounds healthy, but is actually 1,370 calories.

Concerning misleading branding [([Exhibit C](#)) slide 8], it is interesting to note that the Burger King Premium Alaskan Fish Sandwich was actually renamed from the big fish sandwich. Apparently, adding the words "premium" and "Alaskan" makes it sound healthier. Nothing else has changed with this sandwich. It has the same caloric content, same ingredients, and actually has more calories than does the Big Mac.

On slide 9 ([Exhibit C](#)) are more examples that what we think sounds healthy is actually not. Here are three beverages, the Baskin Robbins strawberry banana Fruit Blast smoothie, the Grape Expectations II from Smoothie King and the berry pomegranate banana Fruit Blast smoothie from Baskin Robbins. The Baskin Robbins smoothie is advertised as containing real fruit and being full of live and active cultures. However, it contains more than 1,000 calories. One drink is half your daily caloric input. It is the same with the Smoothie King drink at 822 calories and the other Baskin Robbins smoothie at 730 calories.

Madam Chair, on slide 10 ([Exhibit C](#)), which has more calories?

Chair Dondero Loop:

I was doing this on the plane recently—eat this and not that. I would venture to say that the croissant has more calories than the fruit Danish because of the butter in the croissant.

Assemblywoman Flores:

That is exactly what I thought, but it actually has less. The croissant has 270 calories and the fruit Danish has 530. The fat gram content is also more in the Danish than in the croissant.

By the way, Eat This, Not That! is a wonderful website. We got a lot of the information for this PowerPoint from it.

Another comparison [([Exhibit C](#)) slide 11] is Chili's smokehouse bacon triple-the-cheese Big Mouth Burger with jalapeno ranch dressing compared with the California Pizza Kitchen's Thai Crunch salad. Both sound appealing. Would you venture a guess about those two?

Chair Dondero Loop:

Well, Committee? How many think it is the Thai Crunch salad and how many think it is the Big Mouth Burger?

Assemblywoman Flores:

It is the Thai Crunch salad. Note another example; the sesame bagel with two tablespoons of cream cheese has 643 calories while the two eggs and cheese McMuffins actually have fewer calories [([Exhibit C](#)) slide 12]. Another comparison is between the Burger King Whopper and the Einstein Bros. Bistro Salad [([Exhibit C](#)) slide 13]. This comparison really surprised me. The Whopper has 670 calories while the Bros. Bistro Salad has 1,360 calories. The difference is the salad dressing, cheese, and candied pecans. A last comparison [([Exhibit C](#)) slide 14] is between Raising Cane's Caniac Combo and McDonald's Quarter Pounder with Cheese combo. I could not find Raising Cane's information on their website. They do not publish their nutritional content that we could find, so it is even harder for consumers to know what they are eating if the producer does not make that information available online. However, we were able to find it through various calorie-tracking programs and apps. The entire McDonald's combo with fries, burger, and drink is 890 calories. You can see a significant difference there as Raising Cane's Caniac Combo is 1,206 calories.

Here is one last example of how this information helps us [([Exhibit C](#)) slide 15]. If someone wants to reduce his or her intake by a couple of hundred calories, just make a different decision. You might not want to choose the Chipotle chicken burrito at 1,110 calories because you can get the Chipotle chicken burrito bowl at 720 calories. It will save you a couple hundred calories. But if you want the chicken burrito, by all means have it.

This is what the menus would look like [([Exhibit C](#)) slide 16]. These are before and after pictures. As you can see, the information just takes up a little space on the right side of the menu. The caloric content of the sizes of their meals is included right next to the prices. Some restaurants are already participating. In California, this has been state law for a number of years. Industry is responding to different consumer behavior; people want to try making different choices. Unfortunately, sometimes they do not necessarily respond in the right way, as I mentioned. I would not necessarily call it misleading labeling, but the way they are advertising things certainly leads you to believe that it might be healthier when in reality it is not. Here are the Subway and McDonald's menu examples [([Exhibit C](#)) slides 17 and 18]. You can see that the caloric content is included. That is essentially the bill and the reasons I think it is important for consumers to have this information.

Chair Dondero Loop:

Are there questions from the Committee?

Assemblyman Hambrick:

This question is more for our Legal staff. I talked with the bill's sponsor beforehand, but looking at section 2, subsection 1 compared with section 2, subsection 2, there seems to be a disconnect. Section 2, subsection 1 appears to come out of nowhere and does not seem to relate to the rest of the bill. The bill's sponsor said she had talked to staff and that it was one of the requirements, but it makes for a very awkward reading of the bill.

Kirsten Bugenig, Committee Policy Analyst:

I would have to defer to our legal counsel, so I will follow up with that question and get back to you.

Assemblyman Sprinkle:

I have a question about section 1, subsection 1(a) versus 1(b). Is there a reason why subsection 1(b) is even in the bill? I thought section 1, subsection 1(a) covers that when it says "10 or more."

Assemblywoman Flores:

Yes, that is a good point and is probably another question for legal counsel. I do not know why they put both of those in the bill, because, as you can see, it does say, "subject to the requirements of 21 U.S.C. § 343(q)(5)(H)." The only thing that was intended to be different from the federal statute was the number of restaurants. I will definitely follow up with legal counsel and see if there is any particular reason why it had to be written that way.

Assemblyman Martin:

I am a former diabetic, so naturally I have a concern about nutritional information. What I do not see in this bill is what nutritional information is going to be proposed. We have the calories listed now, but not all calories are equal. There are calories from sugars, fat, and then of course there is sodium. How far does the nutritional-labeling intent of this bill go? Second, a lot of businesses will bring up the point that this requirement is a burden. Do you have any information about whether or not it has hurt McDonald's or Burger King, or anyone else who is doing this? Has it hurt their business?

Assemblywoman Flores:

The content is all dictated by federal law and regulations are still being developed around some of this. That is why I began my presentation by saying that calories are one issue, but there are certainly other things people need to take into consideration.

As far as my understanding of what the federal law requires, it does say that there needs to also be "a succinct statement concerning suggested daily caloric intake as specified by the Secretary by regulation and posted prominently on the menu" board ([Exhibit D](#)). Obviously, this is "in the context of your total daily diet, the significance of the caloric information that is provided on the menu" board. So that is included in federal law. Of course the way restaurants have to do that is still being developed.

We know that calories are not the only thing, but they are absolutely important and pretty substantial in trying to live a healthy lifestyle or make good food choices. As far as grams of fat and sugar, I do not believe that is in the federal law. I hope I am correct but I will certainly find out.

As far as the burden on business is concerned, industry responds to consumer behavior. Even before this passed under the Affordable Care Act, folks were already beginning to do this. I have noticed that several restaurants in southern Nevada have been doing this for several years now. In California, it has been in statute. The chain restaurants, especially the ones that are very large and located throughout the entire country, have already gone through the analysis and figured out the nutritional content of their menu items, developed their menus, and changed their menu boards either because it was required by law or because they are voluntarily doing it. Sure there is a cost associated with it, but this is a pro and con for me as far as public policy is concerned. Such a large amount of money is being spent on this obesity epidemic—we are talking about billions of dollars because of the associated health impact. I think this is a very smart and effective way to produce good public health policy.

Assemblyman Hickey:

I assume the reasoning for including restaurants with only ten or more locations, or chain restaurants, is in part because of the burden it would place on individual restaurants whose menus probably change frequently. There might be quite a financial impact reprinting menus on a regular basis as opposed to larger chains with standardized menus that print in bulk. In California, is that a direction it is going? To get this kind of information to all consumers and have smaller restaurants comply?

Assemblywoman Flores:

Actually no, they recently amended their state law to reflect federal law as well. They stuck with the 20-locations number. It is my understanding that they actually did not change anything connected with the federal statute.

Yes, you are correct. Ten was somewhat of an arbitrary number I arrived at. For instance, what is the difference between 10 and 11, and then between 11 and 15? And then in that case, what is the difference between 11 and 19? I checked with the Nevada Restaurant Association and others to figure out how many businesses would actually fall within that 10- to 19-locations range. They were only able to identify one grocery store chain that also is included in the federal law as a retail food establishment. Regardless of where the restaurant is located, whether it is in a grocery store, whether it is in a convenience store, or whether it is in a free-standing building, if it has substantially the same menu items and it has more than the required number of locations, then it is a restaurant for the purposes of this bill and what is currently in federal law.

Yes, I was very cognizant. If it is just two or three restaurants, then, yes, I think I do consider that a small business. The intent was to get to places where a majority of consumers are dining. We are trying to get at the fact that a large population is being serviced by these different retail establishments. I would not imagine two or three or five or even seven restaurants would be servicing a very large majority of our population. Once you have 10, 13, or 15 locations, at that point you are serving more people.

Assemblyman Hickey:

I am sure we are going to hear from retail folks about the implications of costs and you have taken that into consideration. What is your own opinion on how much of an impact it places upon businesses that have to comply with this?

Assemblywoman Flores:

I did want to ensure that those folks who just had a couple of locations were exempt. As you grow, there is a certain amount of responsibility in being a good corporate citizen and trying to be a part of this solution. This is

a solution that affects our entire community. Many businesses are already complying with this. I do not necessarily know how many businesses fall within the 10- to 20-locations cutoff. It is my opinion that if you have more than ten locations, then having an analysis done of your menu items is just a way to be a good corporate citizen and help us deal with this obesity epidemic.

Assemblywoman Spiegel:

From personal experience it is great to have consumer information. I dine in places that list the information; in fact, I had not eaten in McDonald's for years until they started listing things.

Wolfgang Puck is a restaurateur in Nevada who has 13 restaurants in Las Vegas with various names. Just about all of those restaurants have some version of the Chinois Chicken Salad. Would those restaurants fall under this? Some include the name Wolfgang Puck, but one is the Bistro, one is Spago, the names are all slightly different, but they all have versions of the same dish.

Assemblywoman Flores:

It is my interpretation that they probably would not. The federal language ([Exhibit D](#)) says "a restaurant or similar retail food establishment as part of the chain . . . doing business under the same name (regardless of the type of ownership of the locations) and offering for sale substantially the same menu items, the restaurant or similar retail food establishment shall disclose" That definition limits it. The example you gave where it is the same corporate parent with a bunch of different restaurants with different names that do not offer substantially the same menu, then no, this would not be applicable to them. Unfortunately you still have to go to the website to try to get the nutritional content of their food.

The federal law, from my perspective, ensures that if you do have unique restaurants, one, two, or three, and they are all designed differently; even if they might share a couple of the same menu items, we are not being so burdensome or trying to cross that regulation line where we are not allowing business to be unique and offer different dining experiences. I think that is definitely a part of it in this situation. That is what Wolfgang Puck is known for—branding very unique types of dining experiences.

Assemblywoman Benitez-Thompson:

How will referencing *United States Code* in our *Nevada Revised Statutes* (NRS) work? If this is already codified in federal law, does that mean restaurants that fall under these regulations already have to be in compliance? I think I heard you say there are still some regulations being figured out. Does that mean we are putting regulations that have yet to be determined into the NRS?

Assemblywoman Flores:

I have to check with the Legal Division about that. It is my intention to make the parts that are currently federal law and applicable to restaurants effective immediately. But because there is still the process of regulations, I do not know if we can implement the federal law and then immediately have everyone begin to disclose caloric content. I would like that, and that is my intention on this bill; however, I would have to check with the Legal Division to figure out how that works. We are referring back to statute, but some of those regulations are not done yet.

Assemblywoman Benitez-Thompson:

I recall a bill from last session concerning manufacturing regulations and putting them in the NRS. We got into a spot where there was that question concerning how to codify NRS regulations in federal code that may be changing. I do not remember how that ended, but that is why I am asking the question.

Assemblywoman Flores:

Worst case scenario, if we cannot implement the provisions of A.B. 126 until full federal regulations are done, then that is where we will stand with it. If not, then I would like to implement it sooner rather than later.

Assemblyman Oscarson:

I am looking at these codified things you want to do and I am assuming the penalties are part of the federal statutes or are those from somewhere else? Oh, so those are from somewhere else. In asking that, the penalties seem fairly stiff. For instance it reads, "or operator." Is that the manager of the place? Would that be the people who have the franchise for the place? Can some of that fat be trimmed?

Assemblywoman Flores:

The penalties are not in line with the federal statute because I do not know what those fines are going to be. There is a fine portion that will be developed within the federal regulations. It could end up being more or it could end up being less. As a state, we cannot do less than what the federal government asks, but we can do more, so who knows where we will end up.

As far as the question of the owner or operator, that is an "or" so it could be whoever, because sometimes the retail food establishments are franchises. If the owner of that franchise is the person who is in violation, then it would be just for that franchise. If it was someone who independently owns 15 locations, then it would be whoever owns all of the 15 locations. It just depends on how that business is being held because the language states "or."

As far as the penalties are concerned, I am certainly open to talking about them. However, for the first offense and it is within five years, it is not less than \$50. If you are not making calorie information available, or even if you are lying, then you would want some sort of penalty involved. If that is \$50, I do not think that is too heavy a penalty. I am certainly willing to talk about it.

Chair Dondero Loop:

How do we know when we are told the salad is 590 calories, that the calorie count includes the salad dressing? Something can be 235 calories, but then when you add the sugar and milk to the oatmeal, it becomes 800 calories.

Assemblywoman Flores:

When they do the nutritional analysis of the meal, it includes all the ingredients in that meal. If it is sold as a combo, then the analysis includes all the ingredients in that combo and the analysis is listed that way. For example, there are different sizes. As I said, there are a number of businesses that are voluntarily complying with this right now. In my experience, the caloric content is given for the small size and then one for the large size. Those are based on the ingredients. If it is being sold as a meal, then for the entire meal. If not, then the individual item. This does not include condiments, so if they sold you fries, the catsup would be separate. That individual container can also be labeled. For instance, when you get a salad from McDonald's and they give you the dressing, the packaging for that dressing usually has the nutritional content already preprinted on the dressing package.

Chair Dondero Loop:

Are there any additional questions or comments from the Committee right now? [There was no response.] Now, I would like to hear from those in support of Assembly Bill 126.

Christopher Roller, representing the American Heart Association:

[Mr. Roller submitted written testimony in support of the bill ([Exhibit E](#)) and a fact sheet ([Exhibit F](#)).] We are in support of A.B. 126 requiring restaurant chains with more than ten locations in Nevada to post calorie information on their menus and menu boards. This will help consumers make informed choices about what they would like to order based on their calorie needs and preferences.

One example I would like to cite is one particular restaurant that has a very tasty large chocolate milk shake that is 1,100 calories. I was quite surprised to discover that was about half my caloric intake for a day, so the more information people have about the calories in the food they are ordering, the better choices they can make. That goes along with them educating

themselves as they find out about these calorie levels and their own caloric intake needs. A lot of folks are not aware of what that calorie range should be, and this can help with self-education towards that.

As was mentioned, we are in the midst of an obesity epidemic which is leading to heart disease, stroke, diabetes, and is also being linked to cancer. The Heart Association motto is "Learn and Live." We really believe in educating consumers in order to enable them to live longer and healthier lives, and this is one component of that.

As everyone is aware, in grocery or convenience stores and in many delis, you are able to buy prepackaged food that already has nutrition labels; so you are not only seeing calorie information, you are seeing all the other information. Back in the 1990s, there was initial resistance when this was first required but now it is uniformly accepted. Recent survey data shows that three-quarters of Americans read these nutrition labels. They have learned much more about what the nutrition labels mean. The Heart Association and others who are working on this believe when menus and menu boards showing calorie information becomes an industry standard, that we will have a more educated consumer base when it comes to what people should be eating, at least in terms of their calories. That is very encouraging in terms of helping to reduce overall obesity levels and addressing increases in heart disease and death. We are also seeing vastly increased diabetes in this country, which as we know leads to heart disease and stroke.

In conclusion I would like to encourage the Committee to vote yes on this bill. We believe it can contribute to a reduction of obesity levels in Nevada and to a healthier state.

Assemblyman Martin:

Do you sponsor programs that go into schools to educate children? It is one thing to post calories and make it the responsibility of businesses to post all this information, but we need to do more education. This should be part of your mission I would think, so do you have such programs, and do you have any indication of their effectiveness?

Christopher Roller:

We do have education materials such as a cookbook of heart-healthy recipes for kids we provide to schools. Many of the materials cost money, so we try to get grants to be able to get these items printed and distributed as much as possible. Of course, money is always a barrier in terms of getting that information out. For instance we have Jump Rope for Heart which is a program some of you may have participated in as a child. I did. In conjunction with doing

fund raising, it provides education and physical activity and nutrition to children as well.

I think we are doing everything we can. We have plenty of web-based information on this and on other heart-health issues, but there really is a need for more education. That goes back to how important this is, and not just for the instant-information piece in terms of the calories one is eating. This becomes a catalyst to get more information—not just for adults but also for parents. They need to learn more about what the calorie needs are for their kids. Posting that information is an opportunity for that education.

Tom McCoy, Nevada Director, Government Relations, American Cancer Society Cancer Action Network:

The American Cancer Society's goal in Nevada is "a lot less cancer and a lot more birthdays." To that end, it may be somewhat surprising to some of you to realize that when we talk about cancer, less than 10 percent is hereditary. Ninety percent is what we do to ourselves and through the environment. Recent studies have concluded that about one-third of all cancers are related to obesity, physical activity, and nutrition.

This is an opportunity, a good step forward, to assist Nevadans to have the information that is going to provide them with opportunities to make those decisions that can help improve their overall health. We support this as a great first step. I think there is an educational component that would be beneficial that would go along with this. To that end, the American Cancer Society is engaged in a massive study. Our first study linked smoking with cancer. This study is centered on obesity, physical activity, and nutrition. It is underway right now across the country, and when it is through, we will have more information to provide to you. I can tell you right now that about one-third of all cancers are dealing with the subject we are talking about this afternoon.

Chair Dondero Loop:

Do we have anyone in support in Las Vegas?

Deborah M. Williams, Manager, Office of Chronic Disease Prevention and Health Promotion, Southern Nevada Health District:

You have my written comments ([Exhibit G](#)). Most of what I was going to say has already been talked about, so I will briefly summarize. As has been said, our country is in the midst of an obesity epidemic. Unfortunately, our children have not escaped this epidemic. The rate of unhealthy body weight among children and adolescents in the United States has tripled since the 1980s. Our children's life expectancy is declining due to an increase

in overweight, and this is the first time in over 100 years that we have seen that trend.

We recognize that obesity is a very complex disease and that there are a lot of factors that contribute, but poor nutrition and overconsumption of unhealthy foods is a major risk. This bill will help to improve nutrition information available when people are eating out, and will help parents make healthier choices.

Glenn D. Savage, Environmental Health Director, Southern Nevada Health District:

I agree with my colleague Deb Williams concerning the intent of this legislation. However, I would like to make just a few comments concerning how this bill could be made a little bit better.

Chair Dondero Loop:

Are you supporting the bill, would you like to oppose the bill and suggest amendments, or would you like to remain neutral?

Glenn Savage:

I am supporting the bill, but I would like to make some suggestions as far as implementation of the bill is concerned.

Chair Dondero Loop:

If you will wait just a minute, we are going to hear support for the bill with no amendments. We will hear opposition next and then we will hear from those who are neutral.

Mary Perry Wilson, Extension Nutrition Specialist, University of Nevada Cooperative Extension:

[Ms. Wilson read her testimony in support of A.B. 126 from prepared text ([Exhibit H](#)).]

Chair Dondero Loop:

Is there anyone else in Las Vegas who wishes to speak in support? [There was no response.] All right, we will now hear from those in opposition here in Carson City.

Warren B. Hardy II, representing the Nevada Restaurant Association:

I am very reluctantly sitting in front of you today in opposition to this bill. I am reluctant for a couple of reasons. We believe the way to approach this problem is through education, and that is what Assemblywoman Flores is attempting to do here—provide a basis where the public can be informed. We do not believe any food, including the 1,100 calorie shake, is bad for you in and of itself.

However, it is up to the consumer to have the information available and to be able to balance and make those choices. We absolutely support the public education portion of this bill.

The other reason I am reluctant to be here is because I can only describe the sponsor's efforts in trying to address our concerns as bending over backwards. I do not know what else Ms. Flores could have done to try to address the concerns we have and I do appreciate that very much. She met with us a number of times, and sometimes it was on the spur of the moment, to try to help us work through. We had a very spirited discussion in our board meeting today about the position we ought to take on this bill in light of those two factors. Ultimately, we decided we needed to rise in opposition to A.B. 126 because it has been our position from day one that this needs to be addressed at the federal level. Our members participated and were an active part of helping decide and support the federal law relative to this. Part of the reason they stepped to the table to do that was the hope that it would not trickle down to the state level where there could be a variety of different rules and issues that needed to be dealt with.

We fully support this issue being addressed at the federal level. I also think it is safe to say that we would support having this codified in state law as soon as the federal rule making is done and those things are established.

Again, I am reluctant to be here because of the efforts made by the bill's sponsor. Ms. Flores was very, very sensitive to the needs of the small businesses and the small restaurants and did everything she could. But, at the end of the day, we reluctantly rise in opposition simply because we believe this should be dealt with, and has been appropriately dealt with, at the federal level.

Lea Tauchen, representing the Retail Association of Nevada:

We are also in opposition to Assembly Bill 126. Our concern is in regard to the retail food establishments because they refer to grocery stores, convenience stores, and vending machines. In regard specifically to our grocers whom we represent, this would include their bakeries and delis—all the foods you see in the display cases, as well as any self-service items. We agree with Mr. Hardy in that we would like to see the federal Affordable Care Act continue to deal with this topic at the level that has already been established—the threshold of 20 locations. Our research points to the fact that that number was picked specifically to exempt small businesses because of the cost for them to comply. There is a big difference in a national chain's resources versus a locally owned business's resources. Those national chains employ chefs, nutritionists, and chemists. They typically have their own testing facilities and laboratories, so the costs for them to determine the nutritional analysis can be spread out and

amortized across their chain, which typically has a lot more locations. If you drop this down to a threshold of ten locations and a locally owned store has to reach out and hire a private testing facility to conduct this analysis, the cost is greater and spread out over a much smaller number.

Specific to our grocers, look at the cost to implement: For example, the typical bakery-deli combination would contain 500 to 1,000 items that would need to be nutritionally analyzed. We have found the cost for an independent laboratory, depending on the number of ingredients, would range from \$500 to \$1,000 per item. The alternative would be to hire someone to do that analysis in house. That could cost \$80,000 to \$120,000 per year.

In addition, menu boards would have to be redesigned. That has been estimated to take approximately 8 to 15 hours of labor. There would then be the cost for the new menu board, which ranges from \$1,000 to \$1,500. Each store typically has between two and five menu boards. Also in the ACA language, there is a requirement to provide additionally printed materials that have nutritional information, so there would be a cost for printing those brochures as well. There is also a record-keeping provision, which would be a burdensome addition to administrative costs, as well as the cost to train store-level associates on the ability to comply and to provide that information to their customers.

Another concern is since this menu-labeling process would have to be reinitiated for each item, there is a possibility these stores would begin limiting the number of items they offer. Unfortunately, that would create a barrier especially to locally sourced suppliers who may not then have access to stores and markets in this area. Another problem is that the consumer would ultimately suffer from the increased price and reduction in selection of products available to them.

Assemblyman Hickey:

The sponsor of the bill may want to address this in her closing remarks, but this is the second time I have heard convenience stores mentioned. Is it your interpretation that, for instance, delis or things like that in a chain of ten or more would be required to comply with this?

Lea Tauchen:

That is correct, although the regulations have not been completed yet. The Food and Drug Administration is responsible for completing the regulation process, but it has not been finished. That is the current interpretation, but that could change.

Assemblyman Eisen:

I am empathetic to the concerns about cost here, but I just want to make sure I am understanding clearly. It sounded as though you came forward as being in agreement for entities that had 20 or more locations nationwide. That is a nod, so I will take that as a "yes."

The way I read this bill, it applies exactly the same requirements to entities that have ten locations in Nevada, so we are really not talking about one- or two-location restaurants or mom-and-pop operations. Those operations are free to do this, and I would be happy if they did. We are talking about relatively large companies that have 10 locations in the state which would overlap considerably with those that have 20 nationwide. I am concerned about the characterization of the expense of the nutrition calculation. You quoted the numbers \$500 to \$1,000 per menu item to do this calculation. As I read the federal statute, what is required is the number of calories contained in the standard menu item. Slightly farther down in the federal statute that is referenced in the proposed legislation, it says that the "food establishments shall have a reasonable basis for its nutrient content disclosures, including nutrient databases, cookbooks, laboratory analyses, and other reasonable means." There are a variety of ways to do this. It does not say that you have to hire a nutritionist to do the analysis. On my phone, I have an app that I got for free that will do exactly that. You put in the ingredients and it will tell far more than just the caloric content, and it only takes a matter of seconds. What is in the bill that has you concerned that that would not suffice for developing the database for a restaurant that has 12 locations in the state of Nevada? I just do not see that as equating to \$1,000 per menu item for a nutritional analysis. Can you explain to me what is in the bill that raises that concern for you?

Lea Tauchen:

Your first question was in regard to the number of locations. If there was a chain that had 10 locations in the state but 20 nationwide, then that chain would have to comply under the ACA. If we look at just within this state, ten locations that are locally owned that are not nationwide, we do consider that a small business but they would then have to comply with this state law.

Assemblyman Eisen:

Do you have a sense of how many chains that would be? How many entities have 10 or more locations in Nevada but do not have 20 nationwide? Do you have an idea how many that is?

Lea Tauchen:

We are still working with our members to try and determine the true impact. There is a locally owned grocer in Reno that operates solely in northern Nevada. They would fall under this, so we know they are out there. We are still trying to determine the scope.

In regard to your second question concerning the testing, it is my understanding of the ACA that, in addition to that nutritional analysis, they require verification of accuracy. That is where the testing comes into play. They need two signed statements by employees that the menu item is going to be created the exact same way each time with the same amount of ingredients. This is my understanding of what is currently in the ACA. Again, that is all subject to change as the regulations are developed.

Assemblyman Eisen:

So that is your interpretation of what the federal law is currently. Let me make it clear again, it is not any different for an entity that has 20 locations nationwide regardless of the number of locations they have in Nevada. Is that correct?

Lea Tauchen:

That is correct. There is still a lot of confusion for our members as to what will apply. We are waiting for those regulations.

Peter Krueger, representing the Nevada Petroleum Marketers and Convenience Store Association:

There are a lot of references to convenience stores, and it is a broad-brush approach. I appreciate what a convenience store is and what it is not. About 95 percent of all offerings in a convenience store among the members I represent are prepackaged foods that do come from large-volume central kitchens. This is in contrast to the hot food prepared in these stores. A question was asked how many chains this legislation would affect. We have eight convenience store chains operating in the state of Nevada that have 10 but less than 20 locations. They include Rebel Oil, Herbst, and Jackson Oil.

We believe the federal legislation really should stand supreme and we need to see what it is. I believe this legislation may be a little premature. During the next session we could come back and see whether there are holes in the federal legislation that need to be addressed specifically.

The hot foods in a typical convenience store are prepared on site in a small kitchen, and the ingredients may vary from day to day as there are leftovers from other items. There are different quantities used to prepare the particular

offerings—soups are a good example. We look at things of that nature that are prepared on site. As you know, the kitchens are regulated by the health department as to their cleanliness. It is a big deal to have those items tested and certified. I am not quite sure having an app on my phone would satisfy some investigator or some consumer who would claim and want to sue the proprietor because they believed the soup contained 600 calories and not the 400 calories as advertised.

The other issue concerns hot dogs. Most of you have seen a hot dog roller. Where are we going to label that? On the roller? On a sleeve on the hot dog? Each of these situations is the real day-to-day issues involved here. Pretzels are another issue. How much salt goes on today's pretzels versus what goes on tomorrow's pretzels? These are the issues I believe are being addressed. As a matter of fact, there is possible federal legislation to exempt convenience stores from the federal legislation. If that happens and this body next session wants to include convenience stores then, as a policy decision, that would be something you could consider. Most convenience stores do not have menu boards, just paper notices that may change daily.

The sponsor testified that the amount of competitive edge when it comes to this kind of thing is important. We will find that if one convenience store chain is offering nutritional data and this information becomes important, the other stores will follow, which is how our free enterprise system works. Because we already have the federal legislation, the Legislature does not need to legislate where I believe federal legislation has supremacy.

Tray Abney, representing The Chamber of Reno/Sparks/Northern Nevada:

We are worried about the unfunded mandate this causes to locally owned Nevada businesses. In this building we talk a lot about job creation, and we do not believe this bill helps to create jobs. Every dollar spent on a mandate like this is one less dollar that an employer has to hire people. We do not believe it is a business owner's responsibility to assist with someone else's personal eating habits. We believe that we need personal responsibility and not expensive mandates on businesses.

Assemblywoman Pierce:

In some circumstances the argument that this needs to be done at the federal level is compelling, but if California does it, then no one has a problem with this. California is the eighth-biggest economy in the world. I would point out that Terrible Herbst has a couple of stores in California, so they are already complying with this. Very often California leads the nation. Once you are in the California market you are complying, and to me, that should be enough.

Assemblyman Sprinkle:

When you talk about personal responsibility, providing information to the consumer is allowing them to choose whether or not to consume it. Is that not taking personal responsibility?

Tray Abney:

It is the consumer's responsibility to take care of his or her own eating habits. It is not the business owner's responsibility to pay for giving that information to the consumer.

Chair Dondero Loop:

Any additional comments? [There were none.] Is there anyone in Las Vegas who is opposed?

**Justin Micatrotto, Chief Marketing Officer, MRG Marketing & Management, Inc.,
Las Vegas:**

We are a franchise group of operators and also members of the Nevada Restaurant Association. The big thing to remember is that federal regulations are coming. We know that. The effort to get to those federal regulations included industry folks, legislators, the federal Department of Health and Human Services, government agencies, and advocacy groups. The number of 20 locations was not arbitrarily picked. All of those groups came together and looked at the profile of a company that could afford what we are about to impose on them. At what level of sophistication can a company absorb this mandate? Twenty was not an arbitrary number. It has taken the last two years, working side by side, to come to that number.

Another point I want to bring up is the cost component. I am glad that the example of a phone app was brought up earlier. It was also mentioned that the level of scrutiny or certification is not included. If you read the fine print on those apps, they give themselves all kinds of outs concerning what the accuracy actually is because down the road, there is going to be liability. Potential litigation could ensue if information is not displayed correctly.

Some of these regulations are being written now, but the Nevada Restaurant Association, our franchise group, and more importantly the National Restaurant Association, have all worked side by side. My franchise group is completely part of the federal legislation, so this mandate is coming to our menus whether we like it or not. We understand and are ready because there is a responsibility for business owners to make this information available. In the request for proposal (RFP) process, we are trying to determine the certifications and the sciences. On the cheap end I have seen a five-figure calculation with our

franchisor all the way up to six-figure calculations on that RFP to see who is actually going to do our menu certification.

I represent Raising Cane's Chicken Fingers, and the information given during the presentation [([Exhibit C](#)) slide 13] has not been certified. The information on our website was taken down because it has not been certified. All our menu information will absolutely be posted once our items have been certified. We will comply with the federal law because we are not trying to hide anything; we just want to make sure our information is accurate and correct. A lot of websites take it on themselves to put information out. In some instances, that information is just not accurate.

Ironically, every one of the brands used as examples in the PowerPoint presentation ([Exhibit C](#)), whether there are 2 units in the state of Nevada or 20 units or 10 units, is going to fall under the federal statute anyway. All those examples brought up earlier are actually going to be seen in the state of Nevada.

Taking on something costing five or six figures to truly certify your menu is a monumental cost. The average quick-service restaurant is probably looking at around \$900 to have printing done. That is not a significant amount when it comes to designing and printing or reprinting menu boards. That is not a huge cost, but the component to satisfy the certifications that are being discussed on a national level, which are being done side by side with the National Restaurant Association and legislators, is going to be thousands and hundreds of thousands of dollars and it is to protect against all those things in the future. Really, the unintended consequence here is that brands will manage to the target whatever it is, whether it is ten, whether it is eight, you will have brands that will come up with the concepts. This has been done around the country already. If one state requires 15, the brands will manage to 14, repackage, rebrand and come out with another concept. You will stymie growth. Look at the concepts in our state that have six, eight, nine restaurants. This kind of situation would help deter them from making that next step and going to 10 or 12 or 15 restaurants.

As I mentioned earlier, the litigation is an issue. The bottom line is that growth is a scary enough proposition. Federal regulations are being worked on as we speak and they are being done with a lot of due diligence. They will absolutely take effect. The examples that were brought up earlier ([Exhibit C](#)) will fall under that. A number of fellow restaurateurs who I know very well, and who are worried enough about health care as it is, will already fall under the federal law. As it stands right now, anything under 20 restaurants is premature at this point, in my opinion. I would really like that aspect of it to be considered. A lot of

collaboration occurred to make the number what it is, and I think that number is sufficient for our state and for any other state in this country.

Glenn Savage:

My comments address the implementation of A.B. 126. I have had the attorneys at the Southern Nevada Health District read the bill and one of our concerns is that the "health authority" mentioned in the bill that "may" enforce this program does not have criminal prosecution power. Any noncompliance cases or citations that my inspectors might develop would have to be presented to a local district attorney's office. When we worked with a local district attorney in cases involving the Nevada Clean Indoor Air Act, those cases never saw the light of day in a courtroom.

My proposal would be to take language under NRS 444.629 that I am currently using for my solid waste cases. I will read my suggested language into the record: "The health authority may delegate to an independent hearing officer or hearing board the authority to determine violations and levy administrative penalties for violations of the provisions of NRS . . . " and we could plug the statute numbers in. That would give me the opportunity to go forward with noncompliance activities in our food establishments. That would work well for us in implementing this bill.

Chair Dondero Loop:

Thank you very much. If you would get that information to the sponsor of the bill, I would appreciate it.

Is there anyone else in Las Vegas who is opposed? [There was no response.]
Is there anyone neutral in Carson City or Las Vegas? [There was no response.]
Will the bill's sponsor come up and give her closing comments?

Assemblywoman Flores:

The argument that we are stymieing business in some way can be made for 19 locations moving into 20 or into 21, whatever the case may be. The industry and I have only been able to identify one business that has 14 locations in Nevada. That might be just a difference in opinion concerning whether or not a very large organization with 14 very large grocery stores can provide this very important information to the consumer so that consumer can make wise decisions about themselves. One of the previous speakers acknowledged that business has a part to play in this.

To me, it is a good form of public policy. On slide 6 ([Exhibit C](#)) a study is noted and referenced. That study showed that calorie labeling entrees led to selection of entrees with lower calories without reducing overall sales revenue.

That addresses a point made by Assemblyman Hickey relating to the impact on business revenue.

Clearly, this is a very, very important public health policy issue. At the end of the day it is just whether or not you think 14 locations need to participate in helping to solve this obesity epidemic and all these health-related epidemics and problems we are facing as a community, as a state, and as a country. I would say the answer to that question is yes. I hope the members of this Committee can support us in this effort to become a healthier state.

Chair Dondero Loop:

Are there any comments from the Committee? Seeing none, I will close the hearing on Assembly Bill 126. We are going to roll our presentation on the Nevada Food Security Plan to another day. Is there any public comment in the room here or in Las Vegas? [There was no response.] All right, this meeting is adjourned [at 3:01 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn Dondero Loop, Chair

DATE: _____

EXHIBITS

Committee on Health and Human Services

Date: March 6, 2013

Time of Meeting: 1:35 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 126	C	Assemblywoman Lucy Flores	PowerPoint
A.B. 126	D	Assemblywoman Lucy Flores	Copy of U.S. Code concerning misbranded food
A.B. 126	E	Christopher Roller, representing the American Heart Association	Written testimony in support
A.B. 126	F	Christopher Roller	Fact sheet
A.B. 126	G	Deborah M. Williams, Manager, Office of Chronic Disease Prevention and Health Promotion, So. NV Health District	Written testimony in support
A.B. 126	H	Mary Perry Wilson, Extension Nutrition Specialist, Univ. of NV Cooperative Extension	Written testimony in support