

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2017
OFFERED BY MRS. McMORRIS RODGERS OF
WASHINGTON

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Common Sense Nutri-
3 tion Disclosure Act of 2015”.

4 SEC. 2. AMENDING CERTAIN DISCLOSURE REQUIREMENTS
5 FOR RESTAURANTS AND SIMILAR RETAIL
6 FOOD ESTABLISHMENTS.

7 (a) IN GENERAL.—Section 403(q)(5)(H) of the Fed-
8 eral Food, Drug, and Cosmetic Act (21 U.S.C.
9 343(q)(5)(H)) is amended—

10 (1) in subclause (ii)—

11 (A) in item (I)(aa), by striking “the num-
12 ber of calories contained in the standard menu
13 item, as usually prepared and offered for sale”
14 and inserting “the number of calories contained
15 in the whole standard menu item, or the num-
16 ber of servings (as reasonably determined by
17 the restaurant or similar retail food establish-

1 ment) and number of calories per serving, or
2 the number of calories per the common unit di-
3 vision of the standard menu item, such as for
4 a multiserving item that is typically divided be-
5 fore presentation to the consumer”;

6 (B) in item (II)(aa), by striking “the num-
7 ber of calories contained in the standard menu
8 item, as usually prepared and offered for sale”
9 and inserting “the number of calories contained
10 in the whole standard menu item, or the num-
11 ber of servings (as reasonably determined by
12 the restaurant or similar retail food establish-
13 ment) and number of calories per serving, or
14 the number of calories per the common unit di-
15 vision of the standard menu item, such as for
16 a multiserving item that is typically divided be-
17 fore presentation to the consumer”; and

18 (C) by adding at the end the following
19 flush text:

20 “In the case of restaurants or similar retail food es-
21 tablishments where the majority of orders are placed
22 by customers who are off-premises at the time such
23 order is placed, the information required to be dis-
24 closed under items (I) through (IV) may be provided
25 by a remote-access menu (such as a menu available

1 on the Internet) as the sole method of disclosure in-
2 stead of on-premises writings.”;

3 (2) in subclause (iii)—

4 (A) by inserting “either” after “a res-
5 taurant or similar retail food establishment
6 shall”; and

7 (B) by inserting “or comply with subclause
8 (ii)” after “per serving”;

9 (3) in subclause (iv)—

10 (A) by striking “For the purposes of this
11 clause” and inserting the following:

12 “(I) IN GENERAL.—For the purposes of
13 this clause,”;

14 (B) by striking “and other reasonable
15 means” and inserting “or other reasonable
16 means”; and

17 (C) by adding at the end the following:

18 “(II) REASONABLE BASIS DEFINED.—For
19 the purposes of this subclause, with respect to
20 a nutrient disclosure, the term ‘reasonable
21 basis’ means that the nutrient disclosure is
22 within acceptable allowances for variation in
23 nutrient content. Such acceptable allowances
24 shall include allowances for variation in serving
25 size, inadvertent human error in formulation or

1 preparation of menu items, and variations in in-
2 gredients.”;

3 (4) by amending subclause (v) to read as fol-
4 lows:

5 “(v) MENU VARIABILITY AND COMBINATION
6 MEALS.—The Secretary shall establish by regulation
7 standards for determining and disclosing the nutri-
8 ent content for standard menu items that come in
9 different flavors, varieties, or combinations, but
10 which are listed as a single menu item, such as soft
11 drinks, ice cream, pizza, doughnuts, or children’s
12 combination meals. Such standards shall allow a res-
13 taurant or similar retail food establishment to
14 choose whether to determine and disclose such con-
15 tent for the whole standard menu item, for a serving
16 or common unit division thereof, or for a serving or
17 common unit division thereof accompanied by the
18 number of servings or common unit divisions in the
19 whole standard menu item. Such standards shall
20 allow a restaurant or similar retail food establish-
21 ment to determine and disclose such content by
22 using any of the following methods: ranges, aver-
23 ages, individual labeling of flavors or components, or
24 labeling of one preset standard build. In addition to
25 such methods, the Secretary may allow the use of

1 other methods, to be determined by the Secretary,
2 for which there is a reasonable basis (as such term
3 is defined in subclause (iv)(II)).”;

4 (5) in subclause (x)—

5 (A) by striking “Not later than 1 year
6 after the date of enactment of this clause, the
7 Secretary shall promulgate proposed regulations
8 to carry out this clause.” and inserting “Not
9 later than 1 year after the date of enactment of
10 the Common Sense Nutrition Disclosure Act of
11 2015, the Secretary shall issue proposed regula-
12 tions to carry out this clause, as amended by
13 such Act. Any final regulations that are pro-
14 mulgated pursuant to the Common Sense Nu-
15 trition Disclosure Act of 2015, and any final
16 regulations that were promulgated pursuant to
17 this clause before the date of enactment of the
18 Common Sense Nutrition Disclosure Act of
19 2015, shall not take effect earlier than 2 years
20 after the promulgation of final regulations pur-
21 suant to the Common Sense Nutrition Disclo-
22 sure Act of 2015.”; and

23 (B) by adding at the end the following:

24 “(IV) CERTIFICATIONS.—Res-
25 taurants and similar retail food estab-

1 lishments shall not be required to pro-
2 vide certifications or similar signed
3 statements relating to compliance with
4 the requirements of this clause.”;

5 (6) by amending subclause (xi) to read as fol-
6 lows:

7 “(xi) DEFINITIONS.—In this clause:

8 “(I) MENU; MENU BOARD.—The term
9 ‘menu’ or ‘menu board’ means the one listing of
10 items which the restaurant or similar retail food
11 establishment reasonably believes to be, and
12 designates as, the primary listing from which
13 customers make a selection in placing an order.
14 The ability to order from an advertisement,
15 coupon, flyer, window display, packaging, social
16 media, or other similar writing does not make
17 the writing a menu or menu board.

18 “(II) PRESET STANDARD BUILD.—The
19 term ‘preset standard build’ means the finished
20 version of a menu item most commonly ordered
21 by consumers.

22 “(III) STANDARD MENU ITEM.—The term
23 ‘standard menu item’ means a food item of the
24 type described in subclause (i) or (ii) of sub-
25 paragraph (5)(A) with the same recipe prepared

1 in substantially the same way with substantially
2 the same food components that—

3 “(aa) is routinely included on a menu
4 or menu board or routinely offered as a
5 self-service food or food on display at 20 or
6 more locations doing business under the
7 same name; and

8 “(bb) is not a food referenced in sub-
9 clause (vii).”; and

10 (7) by adding at the end the following:

11 “(xii) OPPORTUNITY TO CORRECT VIOLA-
12 TIONS.—Any restaurant or similar retail food estab-
13 lishment that the Secretary determines is in viola-
14 tion of this clause shall have 90 days after receiving
15 notification of the violation to correct the violation.
16 The Secretary shall take no enforcement action, in-
17 cluding the issuance of any public letter, for viola-
18 tions that are corrected within such 90-day period.”.

19 (b) NATIONAL UNIFORMITY.—Section 403A(b) of the
20 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–
21 1(b)) is amended by striking “may exempt from sub-
22 section (a)” and inserting “may exempt from subsection
23 (a) (other than subsection (a)(4))”.

1 **SEC. 3. LIMITATION ON LIABILITY FOR DAMAGES ARISING**
2 **FROM NONCOMPLIANCE WITH NUTRITION**
3 **LABELING REQUIREMENTS.**

4 Section 403(q)(5)(H) of the Federal Food, Drug, and
5 Cosmetic Act (21 U.S.C. 343(q)(5)(H)), as amended by
6 section 2, is further amended by adding at the end the
7 following:

8 “(xiii) LIMITATION ON LIABILITY.—A
9 restaurant or similar retail food establish-
10 ment shall not be liable in any civil action
11 in Federal or State court (other than an
12 action brought by the United States or a
13 State) for any claims arising out of an al-
14 leged violation of—

15 “(I) this clause; or

16 “(II) any State law permitted
17 under section 403A(a)(4).”.

