

114TH CONGRESS
1ST SESSION

H. R. 2017

To amend the Federal Food, Drug, and Cosmetic Act to improve and clarify certain disclosure requirements for restaurants and similar retail food establishments, and to amend the authority to bring proceedings under section 403A.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2015

Mrs. McMORRIS RODGERS (for herself and Ms. LORETTA SANCHEZ of California) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to improve and clarify certain disclosure requirements for restaurants and similar retail food establishments, and to amend the authority to bring proceedings under section 403A.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. AMENDING CERTAIN DISCLOSURE REQUIREMENTS**
2 **FOR RESTAURANTS AND SIMILAR RETAIL**
3 **FOOD ESTABLISHMENTS.**

4 Section 403(q)(5)(H) of the Federal Food, Drug, and
5 Cosmetic Act (21 U.S.C. 343(q)(5)(H)) is amended—

6 (1) in subclause (ii)—

7 (A) in item (I)(aa), by striking “the num-
8 ber of calories contained in the standard menu
9 item, as usually prepared and offered for sale”
10 and inserting “the number of calories contained
11 in the whole standard menu item, or the num-
12 ber of servings and number of calories per serv-
13 ing, or the number of calories per the common
14 unit division of the standard menu item, such
15 as for a multiserving item that is typically di-
16 vided before presentation to the consumer”;

17 (B) in item (II)(aa), by striking “the num-
18 ber of calories contained in the standard menu
19 item, as usually prepared and offered for sale”
20 and inserting “the number of calories contained
21 in the whole standard menu item, or the num-
22 ber of servings and number of calories per serv-
23 ing, or the number of calories per the common
24 unit division of the standard menu item, such
25 as for a multiserving item that is typically di-
26 vided before presentation to the consumer”; and

1 (C) by adding at the end the following
2 flush text:

3 “In the case of restaurants or similar retail food es-
4 tablishments where the majority of orders are placed
5 by customers who are off-premises at the time such
6 order is placed, the information required to be dis-
7 closed under items (I) through (IV) may be provided
8 by a remote-access menu (such as a menu available
9 on the Internet) as the sole method of disclosure in-
10 stead of on-premises writings.”;

11 (2) in subclause (iii)—

12 (A) by inserting “either” after “a res-
13 taurant or similar retail food establishment
14 shall”; and

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

17 (3) in subclause (iv)—

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

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

22 (B) by striking “and other reasonable
23 means” and inserting “or other reasonable
24 means”; and

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

1 “(II) REASONABLE BASIS DEFINED.—For
2 the purposes of this subclause, with respect to
3 a nutrient disclosure, the term ‘reasonable
4 basis’ means that the nutrient disclosure is
5 within acceptable allowances for variation in
6 nutrient content. Such acceptable allowances
7 shall include allowances for variation in serving
8 size, inadvertent human error in formulation or
9 preparation of menu items, and variations in in-
10 gredients.”;

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

13 “(v) MENU VARIABILITY AND COMBINATION
14 MEALS.—The Secretary shall establish by regulation
15 standards for determining and disclosing the nutri-
16 ent content for standard menu items that come in
17 different flavors, varieties, or combinations, but
18 which are listed as a single menu item, such as soft
19 drinks, ice cream, pizza, doughnuts, or children’s
20 combination meals. Such standards shall allow a res-
21 taurant or similar retail food establishment to
22 choose whether to determine and disclose such con-
23 tent for the whole standard menu item, for a serving
24 or common unit division thereof, or for a serving or
25 common unit division thereof accompanied by the

1 number of servings or common unit divisions in the
2 whole standard menu item. Such standards shall
3 allow a restaurant or similar retail food establish-
4 ment to determine and disclose such content by
5 using any of the following methods: ranges, aver-
6 ages, individual labeling of flavors or components, or
7 labeling of one preset standard build. In addition to
8 such methods, the Secretary may allow the use of
9 other methods, to be determined by the Secretary,
10 for which there is a reasonable basis (as such term
11 is defined in subclause (iv)(II)).”;

12 (5) in subclause (x)—

13 (A) by striking “Not later than 1 year
14 after the date of enactment of this clause, the
15 Secretary shall promulgate proposed regulations
16 to carry out this clause.” and inserting “Not
17 later than 1 year after the date of enactment of
18 the Common Sense Nutrition Disclosure Act of
19 2015, the Secretary shall issue proposed regula-
20 tions to carry out this clause, as amended by
21 such Act. Any final regulations that are pro-
22 mulgated pursuant to the Common Sense Nu-
23 trition Disclosure Act of 2015, and any final
24 regulations that were promulgated pursuant to
25 this clause before the date of enactment of the

1 Common Sense Nutrition Disclosure Act of
2 2015, shall not take effect earlier than 2 years
3 after the promulgation of final regulations pur-
4 suant to the Common Sense Nutrition Disclo-
5 sure Act of 2015.”; and

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

7 “(IV) CERTIFICATIONS.—Res-
8 taurants and similar retail food estab-
9 lishments shall not be required to pro-
10 vide certifications or similar signed
11 statements relating to compliance with
12 the requirements of this clause.”;

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

15 “(xi) DEFINITIONS.—In this clause:

16 “(I) MENU; MENU BOARD.—The term
17 ‘menu’ or ‘menu board’ means the one listing of
18 items which the restaurant or similar retail food
19 establishment reasonably believes to be, and
20 designates as, the primary listing from which
21 customers make a selection in placing an order.
22 The ability to order from an advertisement,
23 coupon, flyer, window display, packaging, social
24 media, or other similar writing does not make
25 the writing a menu or menu board.

1 “(II) PRESET STANDARD BUILD.—The
2 term ‘preset standard build’ means the finished
3 version of a menu item most commonly ordered
4 by consumers.

5 “(III) RESTAURANT OR SIMILAR RETAIL
6 FOOD ESTABLISHMENT.—The term ‘restaurant
7 or similar retail food establishment’ means a re-
8 tail food establishment that derives more than
9 50 percent of its total revenue from the sale of
10 food of the type described in subclause (i) or
11 (ii) of clause (A). For purposes of this defini-
12 tion, the sale of motor fuel shall not count to-
13 ward an establishment’s total revenue.

14 “(IV) STANDARD MENU ITEM.—The term
15 ‘standard menu item’ means a food item of the
16 type described in subclause (i) or (ii) of sub-
17 paragraph (5)(A) with the same recipe prepared
18 in substantially the same way with substantially
19 the same food components that—

20 “(aa) is routinely included on a menu
21 or menu board or routinely offered as a
22 self-service food or food on display at 20 or
23 more locations doing business under the
24 same name; and

1 “(bb) is not a food referenced in item
2 (vii).”; and

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

4 “(xii) COMPLIANCE.—Any establishment that
5 the Secretary determines is in violation of this clause
6 shall have 90 days after receiving notification of the
7 violation to correct the violation. The Secretary shall
8 take no enforcement action, including the issuance
9 of any public letter, for violations that are corrected
10 within such 90-day period.”.

11 **SEC. 3. LIMITATION ON LIABILITY FOR DAMAGES ARISING**
12 **FROM NONCOMPLIANCE WITH NUTRITION**
13 **LABELING REQUIREMENTS.**

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

18 “(xiii) LIMITATION ON LIABILITY.—A
19 restaurant or similar retail food establish-
20 ment shall not be liable in any civil action
21 in Federal or State court (other than an
22 action brought by the United States or a
23 State) for any claims arising out of an al-
24 leged violation of—

25 “(I) this clause; or

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

○