

111TH CONGRESS
1ST SESSION

S. 558

To amend the Federal Food, Drug, and Cosmetic Act with respect to nutrition labeling of food offered for sale in food service establishments.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 2009

Mr. CARPER (for himself, Ms. MURKOWSKI, Mr. BURR, Ms. LANDRIEU, Mr. NELSON of Florida, and Mr. VOINOVICH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Federal Food, Drug, and Cosmetic Act with respect to nutrition labeling of food offered for sale in food service establishments.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Labeling Education and Nutrition Act of 2009” or the
6 “LEAN Act of 2009”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Findings.
- Sec. 3. Definitions.
- Sec. 4. Nutrition labeling exemption.
- Sec. 5. Voluntary nutrition labeling.
- Sec. 6. Mandatory nutrition labeling.
- Sec. 7. National uniformity.
- Sec. 8. Implementing regulations.
- Sec. 9. Effective dates.
- Sec. 10. Technical and conforming amendments.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) a healthy lifestyle includes a balanced diet
4 as well as physical activity;

5 (2) more than 60 percent of American adults
6 and 30 percent of American children suffer from
7 being overweight and obese, which can lead to many
8 chronic health risks, including diabetes, heart dis-
9 ease, and hypertension;

10 (3) the United States ranks last among nations
11 in reducing the number of preventable deaths result-
12 ing from obesity-related chronic illnesses;

13 (4) during the 2-decade period preceding the
14 date of enactment of this Act, there has been a sig-
15 nificant increase in the number of meals prepared or
16 eaten outside the home;

17 (5) nutrition labeling pursuant to the Nutrition
18 Labeling and Education Act of 1990 has increased
19 significantly American consumers' access to nutri-
20 tion information regarding the foods they consume;

1 (6) the Department of Agriculture and leading
2 health groups recognize that many individuals re-
3 quire different information based on individual and
4 specific health needs and risks;

5 (7) the nutrients provided pursuant to the Nu-
6 trition Labeling and Education Act of 1990 (Public
7 Law 101–535) provides consumers with all the tools
8 needed to make healthy choices;

9 (8) as of 2008, nutrition information for stand-
10 ard food items is voluntarily provided by various de-
11 livery methods at many major chains of food service
12 establishments;

13 (9) the nutrient content of a food offered for
14 sale in a food service establishment can be deter-
15 mined with appropriate accuracy by consulting nu-
16 trient databases, cookbooks, laboratory analyses, or
17 other sources that provide a reasonable basis for in-
18 formation regarding the nutrient content of a food,
19 notwithstanding variability in the portion size, for-
20 mulation, and other characteristics of such food or
21 its preparation method; and

22 (10) public health and welfare are advanced if
23 food service establishment nutrition information is
24 not subject to frivolous litigation.

1 **SEC. 3. DEFINITIONS.**

2 Section 403(q) of the Federal Food, Drug, and Cos-
3 metic Act (21 U.S.C. 343(q)) is amended by adding at
4 the end the following:

5 “(6) DEFINITIONS.—For purposes of subpara-
6 graphs (7) and (8):

7 “(A) The term ‘standard food item’ means
8 a food offered for sale at least 90 days per cal-
9 endar year, but does not include food not sepa-
10 rately offered for sale or food exempt under
11 subparagraph (5)(C).

12 “(B) The term ‘menu’ or ‘menu board’
13 means the primary writing on the premises of
14 the food service establishment from which con-
15 sumers make their order selection.

16 “(C) The term ‘reasonable basis’ means
17 any means of determining nutrition information
18 for a standard food item made without an in-
19 tent to deceive, including nutrient databases,
20 cookbooks, laboratory analyses, and other rea-
21 sonable means.

22 “(D) The term ‘food service establishment’
23 means an establishment that offers for sale food
24 described in subclause (i) or (ii) of subpara-
25 graph (5)(A).”.

1 **SEC. 4. NUTRITION LABELING EXEMPTION.**

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

4 (1) by adding at the end of subclause (i) the
5 following: “except that such food shall not be consid-
6 ered exempt under this subclause for purposes of
7 providing nutrition information under subparagraph
8 (7) or (8),”; and

9 (2) by adding at the end of subclause (ii) the
10 following: “except that such food shall not be consid-
11 ered exempt under this subclause for purposes of
12 providing nutrition information under subparagraph
13 (7) or (8),”.

14 **SEC. 5. VOLUNTARY NUTRITION LABELING.**

15 Section 403(q) of the Federal Food, Drug, and Cos-
16 metic Act (21 U.S.C. 343(q)), as amended by section 3,
17 is further amended by adding at the end the following:

18 “(7) VOLUNTARY NUTRITION LABELING OF
19 FOOD SERVICE ESTABLISHMENT FOOD.—A food
20 service establishment may provide nutrition informa-
21 tion for a food item under this subparagraph by
22 meeting the following requirements:

23 “(A) Providing nutrition information for
24 all of the nutrients required by subparagraphs
25 (1)(C) and (1)(D), determined with a reason-
26 able basis.

1 “(B) Disclosing such information in writ-
2 ten form on the premises of the food service es-
3 tablishment.

4 “(C) Making such disclosure available
5 upon request prior to purchase.”.

6 **SEC. 6. MANDATORY NUTRITION LABELING.**

7 Section 403(q) of the Federal Food, Drug, and Cos-
8 metic Act (21 U.S.C. 343(q)), as amended by section 5,
9 is further amended by adding at the end the following:

10 “(8) IN GENERAL.—The labeling of a standard
11 food item served or offered for sale in a food service
12 establishment that is part of a chain that operates
13 20 or more establishments under the same trade
14 name (regardless of the type of ownership of the es-
15 tablishments) shall, except as provided in clause (E),
16 disclose, in a clear and conspicuous manner in ac-
17 cordance with paragraph (f), the following informa-
18 tion, determined with a reasonable basis, as follows:

19 “(A) DISCLOSURE OF CALORIES.—

20 “(i) CALORIES ON THE MENU
21 BOARD.—The number of calories shall be
22 disclosed prior to the point of purchase by
23 1 of the following means:

24 “(I) On the menu board.

1 “(II) On a sign presenting stand-
2 ard food items in a manner similar to
3 the menu board and located on the
4 same wall as the menu board.

5 “(III) On a sign at eye level in
6 the consumer queue prior to the point
7 of purchase.

8 “(ii) CALORIES ON THE MENU.—The
9 number of calories shall be disclosed prior
10 to the point of purchase by 1 of the fol-
11 lowing means:

12 “(I) In the menu.

13 “(II) In an insert that accom-
14 panies the menu.

15 “(III) In an appendix that is at-
16 tached to the back of the menu.

17 “(IV) In a supplemental menu
18 that accompanies the menu.

19 “(B) ADDITIONAL NUTRITION INFORMA-
20 TION.—The nutrition information for all nutri-
21 ents required by subparagraphs (1)(C) and
22 (1)(D) shall be located on the premises of the
23 food service establishment, in writing, and
24 available to the consumer upon request prior to
25 the point of purchase.

1 “(C) REFERRAL STATEMENT.—A menu,
2 menu board, or other writing prior to the point
3 of purchase shall bear a statement directing the
4 consumer to the availability of additional nutri-
5 tion information required under clause (B).

6 “(D) CALORIE INFORMATION STATE-
7 MENT.—If calories are not listed directly on a
8 menu or menu board pursuant to subclause
9 (i)(I), (i)(II), or (ii)(I) of clause (A), then the
10 menu or menu board shall state the suggested
11 daily caloric intake as 2000 calories or an alter-
12 native statement prescribed by the Secretary
13 through guidance.

14 “(E) APPLICABILITY.—This subparagraph
15 shall not apply to—

16 “(i) food offered for sale in a non-
17 profit food service establishment;

18 “(ii) food that is not food described in
19 subclause (i) or (ii) of subparagraph
20 (5)(A); and

21 “(iii) such other food as the Secretary
22 may exempt by regulation.

23 “(F) VIOLATIONS.—A person shall have
24 knowingly or willfully violated the requirements
25 of this paragraph if the person—

1 “(i) purposefully failed to make a dis-
2 closure required by this paragraph; or

3 “(ii) made a disclosure under this
4 paragraph with an intent to deceive.

5 “(G) ONE DETERMINATION PER ITEM.—A
6 reasonable basis determination of nutrition in-
7 formation shall be required only once per stand-
8 ard food item if the portion size is reasonably
9 consistent and the food service establishment
10 follows a standardized recipe and trains to a
11 consistent method of preparation.”.

12 **SEC. 7. NATIONAL UNIFORMITY.**

13 Section 403A(a)(4) of the Federal Food, Drug, and
14 Cosmetic Act (21 U.S.C. 343–1(a)(4)) is amended to read
15 as follows:

16 “(4) any requirement for nutrition labeling of
17 food that is not identical to the requirement of sec-
18 tion 403(q), except a requirement for nutrition label-
19 ing of food which is exempt under subclause (i) or
20 (ii) of section 403(q)(5)(A), other than food served
21 in an establishment that is not part of a chain that
22 operates 20 or more establishments under the same
23 trade name, or”.

1 **SEC. 8. IMPLEMENTING REGULATIONS.**

2 The Secretary of Health and Human Services (re-
3 ferred to in this section as the “Secretary”) shall carry
4 out the following:

5 (1) Not later than 1 year after the date of en-
6 actment of this Act, the Secretary shall promulgate
7 proposed regulations to mandate nutrition labeling
8 of food service establishment food in accordance with
9 section 403(q)(8) of the Federal Food, Drug, and
10 Cosmetic Act (21 U.S.C. 343(q)(8)) (as added by
11 section 6).

12 (2) Not later than 2 years after the date of en-
13 actment of this Act, the Secretary shall promulgate
14 final regulations to mandate nutrition labeling of
15 food service establishment food in accordance with
16 section 403(q)(8) of the Federal Food, Drug, and
17 Cosmetic Act (21 U.S.C. 343(q)(8)) (as added by
18 section 6).

19 (3) If the Secretary determines that a nutrient
20 other than a nutrient required by section 403(q)(8)
21 of the Federal Food, Drug, and Cosmetic Act (21
22 U.S.C. 343(q)(8)) should be included in the labeling
23 of food menu items subject to such section 403(q)(8)
24 for purposes of providing information regarding the
25 nutritional value of such food that will assist con-
26 sumers in maintaining healthy dietary practices, the

1 Secretary may by regulation require that informa-
2 tion relating to such an additional nutrient be in-
3 cluded in the labeling of such food items.

4 (4) If the Secretary determines that the infor-
5 mation relating to a nutrient required by section
6 403(q)(8) of the Federal Food, Drug, and Cosmetic
7 Act (21 U.S.C. 343(q)(8)) or paragraph (3) of this
8 section to be included in the labeling of food menu
9 items is not necessary to assist consumers in main-
10 taining healthy dietary practices, the Secretary may
11 by regulation strike the requirement to include such
12 information relating to such nutrient.

13 (5) The Secretary may prescribe by regulation
14 alternative clear and conspicuous means of meeting
15 the requirements of section 403(q)(8)(A) of the Fed-
16 eral Food, Drug, and Cosmetic Act (21 U.S.C.
17 343(q)(8)(A)) (as added by section 6).

18 **SEC. 9. EFFECTIVE DATES.**

19 The amendments made by this Act shall take effect
20 on the date of enactment of this Act, except that the
21 amendment made by section 6 shall take effect 180 days
22 after the Secretary of Health and Human Services pro-
23 mulgates final regulations under section 8(2).

1 **SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) Section 403(q)(1) of the Federal Food, Drug, and
3 Cosmetic Act (21 U.S.C. 343(q)(1)) is amended by strik-
4 ing “subparagraphs (3), (4), and (5)” and inserting “sub-
5 paragraphs (3), (4), (5), (7), and (8).”

6 (b) Section 403(q)(5)(G) of the Federal Food, Drug,
7 and Cosmetic Act (21 U.S.C. 343(q)(5)(G)) is amended
8 by striking “Subparagraphs (1), (2), (3) and (4)” and in-
9 serting “Subparagraphs (1), (2), (3), (4), (7) and (8).”

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