

112TH CONGRESS
2D SESSION

S. 3574

To amend section 403 of the Federal Food, Drug, and Cosmetic Act to improve and clarify certain disclosure requirements for restaurants, similar retail food establishments, and vending machines.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2012

Mr. BLUNT (for himself, Mr. BARRASSO, Mr. BROWN of Massachusetts, Mr. COBURN, Mr. ENZI, Mr. COCHRAN, Mr. JOHANNES, Mr. BOOZMAN, and Mr. MORAN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend section 403 of the Federal Food, Drug, and Cosmetic Act to improve and clarify certain disclosure requirements for restaurants, similar retail food establishments, and vending machines.

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 2012”.

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

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 product, or the number of servings
 12 and number of calories per serving, or the num-
 13 ber of calories per the common unit division of
 14 the product, such as for a multi-serving item
 15 that is typically divided before presentation to
 16 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 product, or the number of servings
 22 and number of calories per serving, or the num-
 23 ber of calories per the common unit division of
 24 the product, such as for a multi-serving item
 25 that is typically divided before presentation to
 26 the consumer”; and

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

3 “In the case of restaurants or similar re-
 4 tail food establishments where the majority
 5 of orders are placed by customers who are
 6 off-premises at the time such order is
 7 placed, the information required to be dis-
 8 closed under this subclause may be pro-
 9 vided by a remote-access menu, such as
 10 one available on the internet, instead of an
 11 on-premises menu.”;

12 (2) in subclause (iv)—

13 (A) by striking “For the purposes of this
 14 clause,”, inserting the following (and indenting
 15 the text that follows appropriately):

16 “(I) IN GENERAL.—For the pur-
 17 poses of this clause,”;

18 (B) by striking “and other reasonable
 19 means” and inserting “or other reasonable
 20 means”; and

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

22 “(II) REASONABLE BASIS DE-
 23 FINED.—For purposes of this sub-
 24 clause, with respect to a nutrient dis-
 25 closure, the term ‘reasonable basis’

1 means that the nutrient disclosure is
 2 within acceptable allowances for vari-
 3 ation in nutrient content. Such ac-
 4 ceptable allowances shall include al-
 5 lowances for variation in serving size,
 6 inadvertent human error in formula-
 7 tion of menu items, and variations in
 8 ingredients.”;

9 (3) in subclause (v)—

10 (A) by inserting “contained in the whole
 11 product, or the number of servings and infor-
 12 mation per serving, or the common unit division
 13 of the product, such as for a multi-serving item
 14 that is typically divided before presentation to
 15 the consumer,” before “that come in different
 16 flavors, varieties, or combinations,”;

17 (B) by striking “, through means deter-
 18 mined by the Secretary, including ranges, aver-
 19 ages, or other methods”; and

20 (C) by adding at the end, after the period,
 21 the following: “A restaurant or similar retail
 22 food establishment may determine and disclo-
 23 sure such content by using any of the following
 24 methods: ranges, averages, individual labeling
 25 of flavors or components; or labeling of one pre-

1 set standard build. In addition to such methods,
 2 the Secretary may allow the use of other meth-
 3 ods, to be determined by the Secretary, for
 4 which there is a reasonable basis (as such term
 5 is used in subclause (iv).”; and
 6 (4) in subclause (xi)—

7 (A) in the heading, by striking “DEFINI-
 8 TION” and inserting “DEFINITIONS”;

9 (B) by striking “clause, the term ‘menu’ ”
 10 and inserting the following (and indenting the
 11 text that follows appropriately): “clause:

12 “(I) MENU; MENU BOARD.—The
 13 term ‘menu’ ”; and

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

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

20 “(III) RESTAURANT OR SIMILAR
 21 RETAIL FOOD ESTABLISHMENT.—The
 22 term ‘restaurant or similar retail food
 23 establishment’ means a retail food es-
 24 tablishment that derives more than 50
 25 percent of its total revenue from the

- 1 sale of food of the type described in
- 2 subclause (i) or (ii) of clause (A).”.

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