

114TH CONGRESS
1ST SESSION

S. 2217

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 SENATE OF THE UNITED STATES

OCTOBER 29, 2015

Mr. BLUNT (for himself and Mr. KING) 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 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 (a) IN GENERAL.—Section 403(q)(5)(H) of the Fed-
5 eral Food, Drug, and Cosmetic Act (21 U.S.C.
6 343(q)(5)(H)) is amended—

7 (1) in subclause (ii)—

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

20 (B) in item (II)(aa), by striking “the num-
21 ber of calories contained in the standard menu
22 item, as usually prepared and offered for sale”
23 and inserting “the number of calories contained
24 in the whole standard menu item, or the num-
25 ber of servings (as reasonably determined by
26 the restaurant or similar retail food establish-

ment) and number of calories per serving, or the number of calories per the common unit division of the standard menu item, such as for a multiserving item that is typically divided before presentation to the consumer”; and

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

“In the case of restaurants or similar retail food establishments where the majority of orders are placed by customers who are off-premises at the time such order is placed, the information required to be disclosed under items (I) through (IV) may be provided by a remote-access menu (such as a menu available on the Internet) as the sole method of disclosure instead of on-premises writings.”;

(2) in subclause (iii)—

(A) by inserting “either” after “a restaurant or similar retail food establishment shall”; and

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

(3) in subclause (iv)—

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

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

3 (B) by striking “and other reasonable
4 means” and inserting “or other reasonable
5 means”; and

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

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

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

19 “(v) MENU VARIABILITY AND COMBINATION
20 MEALS.—The Secretary shall establish by regulation
21 standards for determining and disclosing the nutri-
22 ent content for standard menu items that come in
23 different flavors, varieties, or combinations, but
24 which are listed as a single menu item, such as soft
25 drinks, ice cream, pizza, doughnuts, or children’s

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

18 (5) in subclause (x)—

19 (A) by striking “Not later than 1 year
 20 after the date of enactment of this clause, the
 21 Secretary shall promulgate proposed regulations
 22 to carry out this clause.” and inserting “Not
 23 later than 1 year after the date of enactment of
 24 the Common Sense Nutrition Disclosure Act of
 25 2015, the Secretary shall issue proposed regula-

tions to carry out this clause, as amended by such Act. Any final regulations that are promulgated pursuant to the Common Sense Nutrition Disclosure Act of 2015, and any final regulations that were promulgated pursuant to this clause before the date of enactment of the Common Sense Nutrition Disclosure Act of 2015, shall not take effect earlier than 2 years after the promulgation of final regulations pursuant to the Common Sense Nutrition Disclosure Act of 2015.”; and

(B) by adding at the end the following:

“(IV) CERTIFICATIONS.—Restaurants and similar retail food establishments shall not be required to provide certifications or similar signed statements relating to compliance with the requirements of this clause.”;

(6) by amending subclause (xi) to read as follows:

“(xi) DEFINITIONS.—In this clause:

“(I) MENU; MENU BOARD.—The term ‘menu’ or ‘menu board’ means the one listing of items which the restaurant or similar retail food establishment reasonably believes to be, and

designates as, the primary listing from which customers make a selection in placing an order. The ability to order from an advertisement, coupon, flyer, window display, packaging, social media, or other similar writing does not make the writing a menu or menu board.

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

“(III) STANDARD MENU ITEM.—The term ‘standard menu item’ means a food item of the type described in subclause (i) or (ii) of subparagraph (5)(A) with the same recipe prepared in substantially the same way with substantially the same food components that—

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

“(bb) is not a food referenced in subclause (vii).”; and

(7) by adding at the end the following:

1 “(xii) OPPORTUNITY TO CORRECT VIOLA-
 2 TIONS.—Any restaurant or similar retail food estab-
 3 lishment that the Secretary determines is in viola-
 4 tion of this clause shall have 90 days after receiving
 5 notification of the violation to correct the violation.
 6 The Secretary shall take no enforcement action, in-
 7 cluding the issuance of any public letter, for viola-
 8 tions that are corrected within such 90-day period.”.

9 (b) NATIONAL UNIFORMITY.—Section 403A(b) of the
 10 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–
 11 1(b)) is amended by striking “may exempt from sub-
 12 section (a)” and inserting “may exempt from subsection
 13 (a) (other than subsection (a)(4))”.

14 **SEC. 3. LIMITATION ON LIABILITY FOR DAMAGES ARISING**
 15 **FROM NONCOMPLIANCE WITH NUTRITION**
 16 **LABELING REQUIREMENTS.**

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

21 “(xiii) LIMITATION ON LIABILITY.—A
 22 restaurant or similar retail food establish-
 23 ment shall not be liable in any civil action
 24 in Federal or State court (other than an
 25 action brought by the United States or a

1 State) for any claims arising out of an al-
2 leged violation of—

3 “(I) this clause; or

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

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