

113TH CONGRESS  
1ST SESSION

# S. 1756

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.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 21, 2013

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

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## 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 2013”.

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,” and inserting the following:

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

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

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

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

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

8 (3) in subclause (v)—

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

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

19 (C) by adding after the period at the end  
20 the following: “A restaurant or similar retail  
21 food establishment may determine and disclose  
22 such content by using any of the following  
23 methods: ranges, averages, individual labeling  
24 of flavors or components, or labeling of one pre-  
25 set standard build. In addition to such methods,

1 the Secretary may allow the use of other meth-  
2 ods, to be determined by the Secretary, for  
3 which there is a reasonable basis (as such term  
4 is defined in subclause (iv)(II)).”; and

5 (4) in subclause (xi)—

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

8 (B) by striking “clause, the term ‘menu’ ”  
9 and inserting the following: “clause:

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

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

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

18 “(III) RESTAURANT OR SIMILAR  
19 RETAIL FOOD ESTABLISHMENT.—The  
20 term ‘restaurant or similar retail food  
21 establishment’ means a retail food es-  
22 tablishment that derives more than 50  
23 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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