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108TH CONGRESS
2D SESSION

S. 2108

To amend the Federal Food, Drug, and Cosmetic Act to ensure that consumers receive information about the nutritional content of restaurant food and vending machine food.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2004

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. LIEBERMAN, and Ms. CANTWELL) 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 the Federal Food, Drug, and Cosmetic Act to ensure that consumers receive information about the nutritional content of restaurant food and vending machine food.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Menu Education and Labeling Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) research continues to reveal that—

(A) there is a strong link between diet and health; and

(B) diet-related diseases start early in life;

(2)(A) increased caloric intake is a key factor contributing to the alarming increase in obesity in the United States;

(B) according to the Centers for Disease Control and Prevention, ⅔ of American adults are overweight or obese, and the rates of obesity have doubled in children and tripled in teens since 1980;

(C) obesity increases the risk of diabetes, heart disease, stroke, several types of cancer, and other health problems; and

(D) the annual cost of obesity to families, businesses, and governments in the United States is $117,000,000,000;

(3) over the past 2 decades, there has been a significant increase in the number of meals prepared or eaten outside the home, with an estimated ⅓ of calories and almost half of total food dollars being spent on food purchased from or eaten at restaurants and other food-service establishments;

(4) while nutrition labeling is currently required on most processed foods, nutrition information is re-

quired for restaurant food only if a nutrient content or health claim is made for a menu item;

(5)(A) about 75 percent of adults report using food labels on packaged foods, which are required by subsections (q) and (r) of section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343); and

(B) the use of food labels is associated with eating more healthful diets, and approximately half of people report that the nutrition information on food labels has caused them to change their minds about buying a food product;

(6)(A) it is difficult for consumers to limit their intake of calories at restaurants, given the limited availability of nutrition information and the popular practice of many restaurants of providing foods in larger-than-standard servings and super-sized portions; and

(B) studies show that people eat greater quantities of food when they are served more;

(7)(A) available information suggests that consumers would like to be provided nutritional information at restaurants; and

(B) specifically, studies show that consumers would like nutrition information to be provided at the time of ordering their food at a restaurant, at

the point of the sale, so as to enable consumers to make an educated decision on what to order; and

(8) a call to action from the Surgeon General and Secretary of Health and Human Services recommends that, to reduce the incidence of obesity, there be increased availability of nutrition information for foods eaten and prepared away from home.

SEC. 3. NUTRITION LABELING OF RESTAURANT FOODS.

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

(1) in clause (A)—

(A) in subclause (i), by inserting ''except as provided in clauses (H) and (I),'' before ''which'' the first place it appears; and

(B) in subclause (ii), by inserting ''except as provided in clauses (H) and (I),'' before ''which'' the first place it appears; and

(2) by adding at the end the following:

''(H) RESTAURANTS AND RETAIL FOOD ESTABLISHMENTS.—

''(i) IN GENERAL.—Except for food described in subclause (iii), in the case of food that—

''(I) is served in a restaurant or similar retail food establishment; or

"(II) is processed and prepared primarily in a retail establishment;

that is part of a chain with 20 or more locations doing business under the same trade name (regardless of the type of ownership of the locations), the restaurant of the establishment shall disclose the information described in subclause (ii).

"(ii) INFORMATION REQUIRED TO BE DISCLOSED.—Except as provided in clause (iii), the establishment shall disclose—

"(I)(aa) in a statement adjacent to the name of the food on any menu listing the food for sale, or by any other means approved by the Secretary, the number of calories, grams of saturated fat plus trans fat, and milligrams of sodium contained in a serving of the food, as offered for sale, in a clear and conspicuous manner; and

"(bb) information, specified by the Secretary by regulation, designed to enable the public to understand, in the context of a total daily diet, the significance of the nutrition information that is provided; and

"(II) in a statement adjacent to the name of the food on any menu board or other sign

listing the food for sale, or by any other means approved by the Secretary, the number of calories contained in a serving of the food, as offered for sale, in a clear and conspicuous manner.

''(iii) NONAPPLICABILITY TO CERTAIN FOOD.—This clause does not apply to—

''(I) items that are not listed on a menu or menu board (such as condiments, other items placed on the table or counter for general use, and items from salad bars or other self-service facilities); or

''(II) daily specials, temporary menu items, or other irregular menu items, as specified by the Secretary by regulation.

''(iv) SELF-SERVICE FACILITIES.—

''(I) IN GENERAL.—In the case of food sold at a salad bar, buffet line, cafeteria line, or similar self-service facility, a restaurant or other establishment shall place a sign that lists calories per standard serving adjacent to the name of each food offered.

''(II) VENDING MACHINES.—In the case of an article of food sold from a vending machine or other arrangement that does not permit a

prospective purchaser to examine the article so as to be able to read a statement affixed to the article as required under subclause (I) before purchasing the article, a restaurant or other establishment (or, in the case of a vending machine that is owned and operated by a vending machine operator, the vending machine operator) shall provide a conspicuous sign, in close proximity to the article, identifying the food and including a statement disclosing the number of calories contained in the article.

"(v) VOLUNTARY PROVISION OF NUTRITION INFORMATION; STATE REGULATION OF NUTRITION INFORMATION FOR RESTAURANT FOOD.—

"(I) RETAIL FOOD ESTABLISHMENTS.—Nothing in this clause precludes a restaurant or similar retail food establishment from providing additional nutrition information, voluntarily, if the information complies with the nutrition labeling requirements contained in this subparagraph.

"(II) STATE OR LOCAL REQUIREMENTS.—Nothing in this clause precludes a State or political subdivision of a State from requiring that a restaurant or similar food establishment pro-

vide nutrition information in addition to that required under this clause.

"(vi) REGULATIONS.—

"(I) PROPOSED REGULATION.—Not later than 1 year after the date of enactment of this clause, the Secretary shall promulgate proposed regulations to carry out this clause.

"(II) CONTENTS.—The regulations shall allow for the variations in serving sizes and in food preparation that can reasonably be expected to result from inadvertent human error, training of food service workers, and other factors.

"(III) FINAL REGULATIONS.—Not later than 2 years after the date of enactment of this clause, the Secretary shall promulgate final regulations to implement this clause.

"(IV) FAILURE TO PROMULGATE FINAL REGULATIONS BY REQUIRED DATE.—If the Secretary does not promulgate final regulations under item (III) by the date that is 2 years after the date of enactment of this clause—

"(aa) the proposed regulations issued in accordance with item (I) shall become

effective as the final regulations on the day after that date; and

"(bb) the Secretary shall publish in the Federal Register notice of the final regulations.

"(I) VENDING MACHINES.—

"(i) IN GENERAL.—In the case of an article of food sold from a vending machine that—

"(I) does not permit a prospective purchaser to examine the article so as to be able to read a statement affixed to the article before purchasing the article; and

"(II) is operated by a person that is engaged in the business of owning and operating 20 or more vending machines;

the vending machine operator shall provide a conspicuous sign, in close proximity to the article, identifying the food and including a statement disclosing the number of calories contained in the article.

"(ii) VOLUNTARY PROVISION OF NUTRITION INFORMATION; STATE REGULATION OF NUTRITION INFORMATION FOR VENDING MACHINES.—

"(I) VENDING MACHINE OPERATORS.—Nothing in this clause precludes a vending machine operator from providing additional nutri-

tion information, voluntarily, if the information complies with the nutrition labeling requirements contained in this subparagraph.

"(II) STATE OR LOCAL REQUIREMENTS.—Nothing in this title precludes a State or political subdivision of a State from requiring that a vending machine operator provide nutrition information in addition to that required under this clause.

"(iii) REGULATIONS.—

"(I) PROPOSED REGULATION.—Not later than 1 year after the date of enactment of this clause, the Secretary shall promulgate proposed regulations to carry out this clause.

"(II) FINAL REGULATIONS.—Not later than 2 years after the date of enactment of this clause, the Secretary shall promulgate final regulations to implement this clause.

"(III) FAILURE TO PROMULGATE FINAL REGULATIONS BY REQUIRED DATE.—If the Secretary does not promulgate final regulations under item (II) by the date that is 2 years after the date of enactment of this clause—

"(aa) the proposed regulations issued in accordance with item (I) shall become

effective as the final regulations on the day after that date; and

"(bb) the Secretary shall publish in the Federal Register notice of the final regulations.".

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