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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. JOHANNS, Mr. BOOZMAN, and Mr. MORAN) 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.

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 ''Common Sense Nutrition Disclosure Act of 2012''.

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

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

(1) in subclause (ii)—

(A) in item (I)(aa) by striking ''the number of calories contained in the standard menu item, as usually prepared and offered for sale'' and inserting ''the number of calories contained in the whole product, or the number of servings and number of calories per serving, or the number of calories per the common unit division of the product, such as for a multi-serving item that is typically divided before presentation to the consumer'';

(B) in item (II)(aa), by striking ''the number of calories contained in the standard menu item, as usually prepared and offered for sale'' and inserting ''the number of calories contained in the whole product, or the number of servings and number of calories per serving, or the number of calories per the common unit division of the product, such as for a multi-serving 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 this subclause may be provided by a remote-access menu, such as one available on the internet, instead of an on-premises menu.";

(2) in subclause (iv)—

(A) by striking "For the purposes of this clause,", inserting the following (and indenting the text that follows appropriately):

"(I) IN GENERAL.—For the purposes of this clause,";

(B) by striking "and other reasonable means" and inserting "or other reasonable means"; and

(C) by adding at the end the following:

"(II) REASONABLE BASIS DEFINED.—For purposes of this subclause, with respect to a nutrient disclosure, the term 'reasonable basis'

means that the nutrient disclosure is within acceptable allowances for variation in nutrient content. Such acceptable allowances shall include allowances for variation in serving size, inadvertent human error in formulation of menu items, and variations in ingredients.'';

(3) in subclause (v)—

(A) by inserting ''contained in the whole product, or the number of servings and information per serving, or the common unit division of the product, such as for a multi-serving item that is typically divided before presentation to the consumer,'' before ''that come in different flavors, varieties, or combinations,'';

(B) by striking '', through means determined by the Secretary, including ranges, averages, or other methods''; and

(C) by adding at the end, after the period, the following: ''A restaurant or similar retail food establishment may determine and disclosure such content by using any of the following methods: ranges, averages, individual labeling of flavors or components; or labeling of one pre-

set standard build. In addition to such methods, the Secretary may allow the use of other methods, to be determined by the Secretary, for which there is a reasonable basis (as such term is used in subclause (iv).''; and

(4) in subclause (xi)—

(A) in the heading, by striking ''DEFINITION'' and inserting ''DEFINITIONS'';

(B) by striking ''clause, the term 'menu' '' and inserting the following (and indenting the text that follows appropriately): ''clause:

''(I) MENU; MENU BOARD.—The term 'menu' ''; and

(C) by adding at the end the following:

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

''(III) RESTAURANT OR SIMILAR RETAIL FOOD ESTABLISHMENT.—The term 'restaurant or similar retail food establishment' means a retail food establishment that derives more than 50 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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