H. R. 772

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 HOUSE OF REPRESENTATIVES

JANUARY 31, 2017

Mrs. McMorris Rodgers (for herself, Mr. Allen, Mr. Barletta, Mr. Blum, Mr. Bucshon, Mr. Cardenas, Mr. Collins of New York, Mr. Collins of Georgia, Mr. Crawford, Mr. Cuellar, Mr. Gosar, Mr. Harris, Mrs. Hartzler, Mr. Hudson, Ms. Jenkins of Kansas, Mr. Jones, Mr. Kind, Mr. Latta, Mr. Moolenaar, Mr. Mooney of West Virginia, Mr. Mullin, Mr. Newhouse, Mr. Pearce, Mr. Poe of Texas, Mr. Rokita, Ms. Sinema, Mr. Smith of New Jersey, Ms. Stefanik, Mr. Valadao, Mrs. Wagner, Mr. Walberg, Mrs. Walorski, Mrs. Mimi Walters of California, Mr. Walz, Mr. Westerman, and Mr. Young of Iowa) introduced the following bill; which was referred to the Committee on Energy and Commerce

JANUARY 8, 2018

Additional sponsors: Mrs. Brooks of Indiana, Mr. Lance, Mr. Aguilar, Mr. Holding, Mr. Rokita, Mr. Thomas J. Rooney of Florida, Mr. Carter of Georgia, Mr. Lucas, Mr. Barr, Mr. Ferguson, Mr. Roe of Tennessee, Mr. Carter of Texas, Mr. Turner, Ms. Tenney, Mr. Buck, Mr. Gallagher, Mr. Posey, Mr. Womack, Mr. Shuster, Mr. Luetkemeyer, Mr. Gibbs, Mr. King of Iowa, Mr. Russell, Mr. Griffith, Mr. Mitchell, Mr. Lewis of Minnesota, Mr. Rutherford, Mr. Bilirakis, Mr. Kinzinger, Mr. Fleischmann, Mr. Budd, Mr. Lamborn, Mr. Higgins of Louisiana, Ms. Herrera Beutler, Mr. Smith of Missouri, Mr. Grothman, Mr. Cramer, Mr. Joyce of Ohio, Mr. Dunn, Mrs. Love, Mr. Messer, Mr. Murphy of Pennsylvania, Mr. Sanford, Mr. Harper, Mr. Rouzer, Mr. Shimkus, Mr. Chadot, Mr. Walker, Mr. Fitzpatrick, Mr. Ratcliffe, and Mr. Issa
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.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Common Sense Nutri-
tion Disclosure Act of 2017”.

SEC. 2. AMENDING CERTAIN DISCLOSURE REQUIREMENTS

FOR RESTAURANTS AND SIMILAR RETAIL

FOOD ESTABLISHMENTS.

(a) IN GENERAL.—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 num-
ber 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 standard menu item, or the number
of servings (as reasonably determined by the res-
taurant or similar retail food establishment) 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”;
(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 standard menu item, or the number of servings (as reasonably determined by the restaurant or similar retail food establishment) 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:

“(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) PERMISSIBLE VARIATION.—If the restaurant or similar food establishment uses such means as the basis for its nutrient content disclosures, such disclosures shall be treated as having a reasonable basis even if such disclosures vary from actual nutrient content, including but not limited to variations in serving size, inadvertent human error in formulation or preparation of menu items, variations in ingredients, or other reasonable variations.”;

(4) by amending subclause (v) to read as follows:
“(v) Menu Variability and Combination Meals.—The Secretary shall establish by regulation standards for determining and disclosing the nutrient content for standard menu items that come in different flavors, varieties, or combinations, but which are listed as a single menu item, such as soft drinks, ice cream, pizza, doughnuts, or children’s combination meals. Such standards shall allow a restaurant or similar retail food establishment to choose whether to determine and disclose such content for the whole standard menu item, for a serving or common unit division thereof, or for a serving or common unit division thereof accompanied by the number of servings or common unit divisions in the whole standard menu item. Such standards shall allow a restaurant or similar retail food establishment to determine and disclose such content by using any of the following methods: ranges, averages, individual labeling of flavors or components, or labeling of one preset 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 defined in subclause (iv)(II)).”;

(5) in subclause (x)—
(A) by striking "Not later than 1 year after the date of enactment of this clause, the Secretary shall promulgate proposed regulations to carry out this clause." and inserting "Not later than 1 year after the date of enactment of the Common Sense Nutrition Disclosure Act of 2017, the Secretary shall issue proposed regulations to carry out this clause, as amended by such Act. Final regulations to carry out this clause, including any regulations promulgated before the date of enactment of the Common Sense Nutrition Disclosure Act of 2017, shall not take effect until such compliance date as shall be specified by the Secretary in the regulations promulgated pursuant to the Common Sense Nutrition Disclosure Act of 2017."; 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 sub-
clause (vii).”; and

(7) by adding at the end the following:

“(xii) OPPORTUNITY TO CORRECT VIOLATIONS.—
Any restaurant or similar retail food establishment
that the Secretary determines is in violation of this
clause shall have 90 days after receiving notification
of the violation to correct the violation. The Secretary
shall take no enforcement action, including the
issuance of any public letter, for violations that are
corrected within such 90-day period.”.

(b) NATIONAL UNIFORMITY.—Section 403A(b) of the
is amended by striking “may exempt from subsection (a)”
and inserting “may exempt from subsection (a) (other than
subsection (a)(4))”.

SEC. 3. LIMITATION ON LIABILITY FOR DAMAGES ARISING
FROM NONCOMPLIANCE WITH NUTRITION LA-
BELING REQUIREMENTS.

Section 403(q)(5)(H) of the Federal Food, Drug, and
Cosmetic Act (21 U.S.C. 343(q)(5)(H)), as amended by sec-
tion 2, is further amended by adding at the end the fol-
lowing:

“(xiii) LIMITATION ON LIABILITY.—A restaurant
or similar retail food establishment shall not be liable
in any civil action in Federal or State court (other
than an action brought by the United States or a
State) for any claims arising out of an alleged viola-
tion of—

“(I) this clause; or
“(II) any State law permitted under section
403A(a)(4).”).
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.

A BILL

[Report No. 115-486]

H. R. 772

Union Calendar No. 360