



July 26, 2017

The Honorable Frank Pallone
237 Cannon House Office Building
House of Representatives
Washington, D.C. 20515

Dear Representative Pallone:

We write in opposition to H.R. 772, Common Sense Nutrition Disclosure Act. At a time when obesity and nutrition-related health problems are at an all-time high, it is essential that Americans have access to clear, accurate and reliable nutritional information at retail food establishments. However, H.R. 772 undermines the benefits of nutritional labeling and provides immunity to restaurants and other establishments for any claims arising from or even related to the labeling requirements.

The Common Sense Nutrition Disclosure Act contains a limitation on liability that is so broad that it will provide immunity for a variety of state law claims. Primarily, the bill will preclude any consumer's claim that a food establishment's failed to comply with the labeling standards. However, it would also eliminate claims brought under state consumer protection laws, such as state unfair and deceptive acts and practices laws, in cases when retail food establishments knew they were deceiving consumers about nutritional information such as calories, sodium or sugar, but continued to do so anyway. If a consumer wanted to hold a restaurant accountable for falsely marketing their food, the immunity provisions would bar them from doing so, regardless of the consumers' injury or the egregiousness of the restaurant's actions.

In addition to weakening state consumer protection laws, the immunity language removes retail food establishment's incentive to comply with menu labeling requirements. Removing the ability of private parties to hold retail food establishments accountable for violations leaves the Food and Drug Administration (FDA) wholly responsible for ensuring menu labeling requirements are being properly followed and enforced. This will put a considerable strain on the time and resources of FDA, which is already struggling to meet its current responsibilities. Without an effective enforcement mechanism, covered establishments will have no accountability if they do not provide nutritional information in accordance with the law.

AAJ opposes the Common Sense Nutrition Disclosure Act. Retail food establishments should not be given a free pass on failing to comply with nutritional disclosures and state consumer protection laws should not be weakened.

Sincerely,

Linda A. Lipsen
Chief Executive Officer
American Association for Justice