COMMITTEE PRINT

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114TH CONGRESS
1ST SESSION

H. R. 2017

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

APRIL 23, 2015

Mrs. McMorris Rodgers (for herself and Ms. Loretta Sanchez of California) introduced the following bill; which was referred to the Committee on Energy and Commerce

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.

1. Be it enacted by the Senate and House of Representa-
2. tives 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 2015”.

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 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”;

(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 num-
ber of servings (as reasonably determined by
the restaurant or similar retail food establish-
ment) and number of calories per serving, or
the number of calories per the common unit di-
vision of the standard menu item, such as for
a multiserving item that is typically divided be-
fore presentation to the consumer”; and

(C) by adding at the end the following
flush text:

“In the case of restaurants or similar retail food es-
tablishments 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 dis-
closed 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 in-
stead of on-premises writings.”;

(2) in subclause (iii)—

(A) by inserting “either” after “a res-
taurant 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,”; “(II) REASONABLE BASIS DEFINED.—For the 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 or preparation of menu items, and variations in ingredients.”;

(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 res-
taurant or similar retail food establishment to
choose whether to determine and disclose such con-
tent 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 establish-
ment to determine and disclose such content by
using any of the following methods: ranges, aver-
ages, 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 2015, the Secretary shall issue proposed regulations to carry out this clause, as amended by such Act. Any final regulations that are promulgated pursuant to the Common Sense Nutrition Disclosure Act of 2015, and any final regulations that were promulgated pursuant to this clause before the date of enactment of the Common Sense Nutrition Disclosure Act of 2015, shall not take effect earlier than 2 years after the promulgation of final regulations pursuant to the Common Sense Nutrition Disclosure Act of 2015.”; 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 sub-
paragraph (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 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–1(b)) 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 LABELING 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 section 2, is further amended by adding at the end the following:

“(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 violation of—

“(I) this clause; or

“(II) any State law permitted under section 403A(a)(4).”.