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.

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 2015”.

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

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 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

(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 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) 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 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 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) 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 sale of food of the type described in subclause (i) or (ii) of clause (A). For purposes of this definition, the sale of motor fuel shall not count toward an establishment’s total revenue.

“(IV) 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 item (vii).”; and

(7) by adding at the end the following:

“(xii) COMPLIANCE.—Any 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.”.

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).”.