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(Original Signature of Member)

112TH CONGRESS
2D SESSION

H. R. _____

To amend section 403 of the 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 HOUSE OF REPRESENTATIVES

Mr. CARTER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend section 403 of the of the Federal Food, Drug, and Cosmetic Act to improve and clarify certain disclosure requirements for restaurants, similar retail food establishments, and vending machines.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. AMENDING CERTAIN DISCLOSURE REQUIRE-**
2 **MENTS FOR RESTAURANTS, SIMILAR RETAIL**
3 **FOOD ESTABLISHMENTS, AND VENDING MA-**
4 **CHINES.**

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

7 (1) in subclause (ii)—

8 (A) in item (I)(aa) by striking “the num-
9 ber of calories contained in the standard menu
10 item, as usually prepared and offered for sale”
11 and inserting “the number of calories contained
12 in the whole product, or the number of servings
13 and number of calories per serving, or the num-
14 ber of calories per the common unit division of
15 the product, such as for a multi-serving item
16 that is typically divided before presentation to
17 the consumer”;

18 (B) in item (II)(aa), by striking “the num-
19 ber of calories contained in the standard menu
20 item, as usually prepared and offered for sale”
21 and inserting “the number of calories contained
22 in the whole product, or the number of servings
23 and number of calories per serving, or the num-
24 ber of calories per the common unit division of
25 the product, such as for a multi-serving item

1 that is typically divided before presentation to
2 the consumer”; and

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

5 “In the case of restaurants or similar re-
6 tail food establishments where the majority
7 of orders are placed by customers who are
8 off-premises at the time such order is
9 placed, the information required to be dis-
10 closed under this subclause may be pro-
11 vided by a remote-access menu, such as
12 one available on the internet, instead of an
13 on-premises menu.”;

14 (2) in subclause (iv)—

15 (A) by striking “For the purposes of this
16 clause,”, inserting the following (and indenting
17 the text that follows appropriately):

18 “(I) IN GENERAL.—For the pur-
19 poses of this clause,”;

20 (B) by striking “and other reasonable
21 means” and inserting “or other reasonable
22 means”; and

23 (C) by adding at the end the following:

24 “(II) REASONABLE BASIS DE-
25 FINED.—For purposes of this sub-

1 clause, with respect to a nutrient dis-
2 closure, the term ‘reasonable basis’
3 means that the nutrient disclosure is
4 within acceptable allowances for vari-
5 ation in nutrient content. Such ac-
6 ceptable allowances shall include al-
7 lowances for variation in serving size,
8 inadvertent human error in formula-
9 tion of menu items, and variations in
10 ingredients.”;

11 (3) in subclause (v)—

12 (A) by inserting “contained in the whole
13 product, or the number of servings and infor-
14 mation per serving, or the common unit division
15 of the product, such as for a multi-serving item
16 that is typically divided before presentation to
17 the consumer,” before “that come in different
18 flavors, varieties, or combinations,”;

19 (B) by striking “, through means deter-
20 mined by the Secretary, including ranges, aver-
21 ages, or other methods”; and

22 (C) by adding at the end, after the period,
23 the following: “A restaurant or similar retail
24 food establishment may determine and disclo-
25 sure such content by using any of the following

1 methods: ranges, averages, individual labeling
2 of flavors or components; or labeling of one pre-
3 set standard build. In addition to such methods,
4 the Secretary may allow the use of other meth-
5 ods , to be determined by the Secretary, for
6 which there is a reasonable basis (as such term
7 is used in subclause (iv).”); and

8 (4) in subclause (xi)—

9 (A) in the heading, by striking “DEFINI-
10 TION” and inserting “DEFINITIONS”;

11 (B) by striking “clause, the term ‘menu’ ”
12 and inserting the following (and indenting the
13 text that follows appropriately): “clause:

14 “(I) MENU; MENU BOARD.—The
15 term ‘menu’ ”; and

16 (C) by adding at the end the following:

17 “(II) PRESET STANDARD
18 BUILD.—The term ‘preset standard
19 build’ means the finished version of a
20 menu item most commonly ordered by
21 consumers.

22 “(III) RESTAURANT OR SIMILAR
23 RETAIL FOOD ESTABLISHMENT.—The
24 term ‘restaurant or similar retail food
25 establishment’ means a retail food es-

1 tablshment that derives more than 50
2 percent of its total revenue from the
3 sale of food of the type described in
4 subclause (i) or (ii) of clause (A).”.