111TH CONGRESS  
1ST SESSION

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To amend the Federal Food, Drug, and Cosmetic Act to extend the food labeling requirements of the Nutrition Labeling and Education Act of 1990 to enable customers to make informed choices about the nutritional content of standard menu items in large chain restaurants.

IN THE SENATE OF THE UNITED STATES

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to extend the food labeling requirements of the Nutrition Labeling and Education Act of 1990 to enable customers to make informed choices about the nutritional content of standard menu items in large chain restaurants.

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 “Howard M. Metzen-
baum Menu Education and Labeling Act” or the “Howard
M. Metzenbaum MEAL Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) research continues to reveal that—

(A) there is a strong link between diet and health; and

(B) diet-related diseases start early in life;

(2)(A) increased caloric intake is a key factor contributing to the alarming increase in obesity in the United States;

(B) Americans’ average caloric intake increased by approximately 200 calories per day between 1977 and 1996, with restaurant and fast food accounting for the fastest growing source of those calories;

(C) according to the Centers for Disease Control and Prevention, 2/3 of American adults is overweight or obese, and an estimated 34 percent of children and adolescents aged 2 to 19 is overweight or obese;

(D) obesity increases the risk of diabetes, heart disease, stroke, several types of cancer, and other health problems; and

(E) the annual cost of obesity to families, businesses, and governments in the United States is $123,000,000,000, half of which is paid through Medicare and Medicaid;
(3) over the past 2 decades, there has been a significant increase in the number of meals prepared or eaten outside the home, with an estimated 1/3 of calories and almost half of total food dollars being spent on food purchased from or eaten at restaurants and other food-service establishments;

(4) studies link eating outside the home with obesity and higher caloric intakes, and children eat almost twice as many calories when they eat a meal at a restaurant compared to a meal they eat at home;

(5)(A) excess saturated fat intake is a major risk factor for heart disease, which is the leading cause of death in the United States; and

(B) heart disease is a leading cause of disability among working adults and its impact on the United States economy is significant, estimated in 2008 to total $156,400,000,000 in healthcare expenditures and lost productivity;

(6)(A) increased sodium intake is associated with increased risk of high blood pressure, or hypertension, a condition that can lead to cardiovascular disease, especially stroke; and
(B) the proportion of adults with high blood pressure is 45 percent at age 50, 60 percent at age 60, and more than 70 percent at age 70;

(7) the Nutrition Labeling and Education Act of 1990 (Public Law 101–535) requires food manufacturers to provide nutrition information on almost all packaged foods; however, restaurant foods are exempt from those requirements unless a nutrient content or health claim is made for a menu item;

(8)(A) about 75 percent of adults reports using food labels on packaged foods, which is associated with eating more healthful diets, and approximately half of adults reports that the nutrition information on food labels has caused them to change their minds about buying a food product; and

(B) studies have shown that the provision of nutrition information for away-from-home foods has a positive influence on food purchase decisions;

(9) an important benefit of mandatory nutrition labeling on packaged foods has been the reformulation of existing products and the introduction of new, nutritionally-improved products, such as trans fat labeling on packaged food that led many packaged food companies to reformulate their products to remove trans fat;
(10)(A) because people have a right to information, companies are required to provide information regarding the fuel-efficiency of automobiles, what clothes are made of, care instructions for clothing, and energy and water consumption of certain home appliances; and

(B) people need nutritional information to manage their weight and reduce the risk of, or manage, heart disease, diabetes, and high blood pressure, which are leading causes of death, disability, and high health care costs;

(11)(A) it is difficult for consumers to exercise personal responsibility and limit their intake of calories at restaurants, given the limited availability of nutrition information at the point of ordering in restaurants;

(B) standard portion sizes in fast food and chain restaurants have grown since the 1970s; and

(C) several studies show that people are unable to identify from among popular fast food and other chain restaurant menu items those items with the fewest, and those items with the most, calories;

(12) the Food and Drug Administration, Surgeon General, Department of Health and Human Services, National Cancer Institute, Institute of
Medicine of the National Academies, American Diabetes Association, American Heart Association, and American Medical Association recommend that there be increased availability of nutrition information for foods eaten and prepared away from home; and

(13) menu labeling policies have been introduced in more than 30 States and localities, and menu labeling policies have passed in California; New York City; Multnomah County (Portland), Oregon; King County (Seattle), Washington; and Philadelphia, Pennsylvania.

SEC. 3. NUTRITION LABELING OF STANDARD MENU ITEMS AT CHAIN RESTAURANTS AND OF ARTICLES OF FOOD SOLD FROM VENDING MACHINES.

(a) LABELING REQUIREMENTS.—Section 403(q)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)) is amended by adding at the end the following:

“(H) RESTAURANTS, RETAIL FOOD ESTABLISHMENTS, AND VENDING MACHINES.—

“(i) GENERAL REQUIREMENTS FOR RESTAURANTS AND SIMILAR RETAIL FOOD ESTABLISHMENTS.—Except for food described in subclause (vii), in the case of food that is a menu item that is served, processed, or prepared in a restaurant or similar retail food establishment that is part of a
chain with 20 or more locations doing business
under the same name (regardless of the type of own-
ership of the locations) and offering for sale sub-
stantially the same menu items the restaurant or es-
tablishment shall disclose the information described
in subclauses (ii) and (iii).

“(ii) INFORMATION REQUIRED TO BE DIS-
CLOSED BY RESTAURANTS AND RETAIL FOOD ES-
TABLISHMENTS.—Except as provided in subclause
(vii), the restaurant or similar retail food establish-
ment shall disclose in a clear and conspicuous man-
ner—

“(I)(aa) in a statement adjacent to the
name of the standard menu item, so as to be
clearly associated with the standard menu item,
on any menu listing the item for sale—

“(AA) the number of calories;

“(BB) grams of saturated fat plus
trans fat;

“(CC) grams of carbohydrate; and

“(DD) milligrams of sodium,
per standard menu item, as usually pre-
pared and offered for sale; and

“(bb) information, specified by the Sec-
retary by regulation, provided in a prominent
location on the menu and designed to enable
the public to understand, in the context of a
total daily diet, the significance of the nutrition
information that is provided, such as rec-
ommended daily limits for calories, saturated
fat, and sodium;
“(II) in a statement adjacent to the name of
the standard menu item, so as to be clearly associ-
ated with the standard menu item, on any menu
board, including a drive-through menu board or
other sign listing the item for sale—
“(aa) the number of calories con-
tained in the menu item, as usually pre-
pared and offered for sale;
“(bb) notification that the information
required by subitem (aa) of item (I) is
available in writing at the point of order-
ing; and
“(cc) information, specified by the
Secretary by regulation and posted promi-
nently on the menu board, designed to en-
able the public to understand, in the con-
text of a total daily diet, the significance of
the nutrition information that is provided.
“(iii) S ELF-SERVICE FOOD AND FOOD ON DIS-
play.—In the case of food sold at a salad bar, buff-
fet line, cafeteria line, or similar self-service facility,
and for self-service beverages or food that is on dis-
play and that is visible to customers, a restaurant or
similar retail food establishment shall place adjacent
to each food offered a sign that lists calories per dis-
played food item or per serving.

“(iv) N UTRITION ANALYSIS.—For the purposes
of this clause, a restaurant or similar retail food es-
tablishment shall obtain the nutrient analysis re-
quired by this clause using analytic methods and ex-
press nutrient content in a manner consistent with
this Act.

“(v) M ENU VARIABILITY AND COMBINATION
meals.—The Secretary shall establish by regulation
standards for labeling menu items that come in dif-
ferent flavors, varieties, or combinations, but which
are listed as a single menu item, such as soft drinks,
ice cream, pizza, doughnuts, or children’s combina-
tion meals.

“(vi) A DDITIONAL INFORMATION.—If the Sec-
retary determines that a nutrient other than those
for which a statement is required under subclause
(ii)(I) should be included in labeling of menu items
for the purpose of providing information to assist consumers in maintaining healthy dietary practices, the Secretary may promulgate regulations requiring that such information be included in labeling at restaurants and similar retail food establishments.

“(vii) NONAPPLICABILITY TO CERTAIN FOOD.— Subclauses (i)-(vi) do not apply to—

“(I) items that are not listed on a menu or menu board (such as condiments and other items placed on the table or counter for general use); or

“(II) daily specials, temporary menu items appearing on the menu for less than 30 days, or custom orders.

“(viii) VENDING MACHINES.—

“(I) IN GENERAL.—In the case of an article of food sold from a vending machine that—

“(aa) does not permit a prospective purchaser to examine the Nutrition Facts Panel before purchasing the article or does not otherwise provide visible nutrition information at the point of purchase; and

“(bb) is operated by a person who is engaged in the business of owning or operating 20 or more vending machines,
the vending machine operator shall provide a sign in close proximity to each article of food or the selection button that includes a clear and conspicuous statement disclosing the number of calories contained in the article.

“(ix) VOLUNTARY PROVISION OF NUTRITION INFORMATION; STATE REGULATION OF NUTRITION INFORMATION FOR RESTAURANT FOOD AND FOOD SOLD FROM VENDING MACHINES.—

“(I) ADDITIONAL INFORMATION.—Nothing in this clause precludes a restaurant or similar retail food establishment or a vending machine operator from providing additional nutrition information, voluntarily, if the information complies with the nutrition labeling requirements under this Act.

“(II) OTHER FOOD ESTABLISHMENTS AND VENDING MACHINE OPERATORS.—Nothing in this clause precludes a restaurant or similar retail food establishment or a vending machine operator that is not required to disclose nutrition information under this clause from providing nutrition information voluntarily, if the information complies with the nutrition labeling requirements under this subparagraph.
“(III) State or Local Requirements.—

Nothing in this clause precludes a State or political subdivision of a State from requiring that a restaurant or similar retail food establishment or a vending machine operator, including a restaurant or similar retail food establishment or vending machine operator that is not required to disclose nutrition information under this clause, provide nutrition information in addition to that required under this clause.

“(x) Regulations.—

“(I) Proposed Regulation.—Not later than 1 year after the date of enactment of this clause, the Secretary shall promulgate proposed regulations to carry out this clause.

“(II) Contents.—The regulations shall allow for reasonable variations in serving sizes and in food preparation that may result from inadvertent human error, training of food service workers, variations in ingredients, and other factors.

“(III) Reporting.—The Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the
House of Representatives a quarterly report that describes the Secretary’s progress toward promulgating final regulations under this subparagraph.”.

(b) NON-PREEMPTION.—Subsection (a)(4) of section 403A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343-1(a)(4)) is amended by inserting “or a labeling requirement under section 403(q)(5)(H)” after “section 403(q)(5)(A)”.