

111TH CONGRESS  
1ST SESSION

# S. 1048

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.

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## IN THE SENATE OF THE UNITED STATES

MAY 14, 2009

Mr. HARKIN (for himself, Mr. KENNEDY, Mrs. GILLIBRAND, and Mr. REED) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## 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.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Howard M. Metzen-  
5 baum Menu Education and Labeling Act” or the “Howard  
6 M. Metzenbaum MEAL Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) research continues to reveal that—

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

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

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

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

14 (C) according to the Centers for Disease Con-  
15 trol and Prevention,  $\frac{2}{3}$  of American adults is over-  
16 weight or obese, and an estimated 34 percent of chil-  
17 dren and adolescents aged 2 to 19 is overweight or  
18 obese;

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

22 (E) the annual cost of obesity to families, busi-  
23 nesses, and governments in the United States is  
24 \$123,000,000,000, half of which is paid through  
25 Medicare & Medicaid;

1           (3) over the past 2 decades, there has been a  
2 significant increase in the number of meals prepared  
3 or eaten outside the home, with an estimated  $\frac{1}{3}$  of  
4 calories and almost half of total food dollars being  
5 spent on food purchased from or eaten at res-  
6 taurants and other food-service establishments;

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

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

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

20           (6)(A) increased sodium intake is associated  
21 with increased risk of high blood pressure, or hyper-  
22 tension, a condition that can lead to cardiovascular  
23 disease, especially stroke; and

1           (B) the proportion of adults with high blood  
2           pressure is 45 percent at age 50, 60 percent at age  
3           60, and more than 70 percent at age 70;

4           (7) the Nutrition Labeling and Education Act  
5           of 1990 (Public Law 101–535) requires food manu-  
6           facturers to provide nutrition information on almost  
7           all packaged foods; however, restaurant foods are ex-  
8           empt from those requirements unless a nutrient con-  
9           tent or health claim is made for a menu item;

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

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

19          (9) an important benefit of mandatory nutrition  
20          labeling on packaged foods has been the reformula-  
21          tion of existing products and the introduction of  
22          new, nutritionally-improved products, such as trans  
23          fat labeling on packaged food that led many pack-  
24          aged food companies to reformulate their products  
25          to remove trans fat;

1           (10)(A) because people have a right to informa-  
2           tion, companies are required to provide information  
3           regarding the fuel-efficiency of automobiles, what  
4           clothes are made of, care instructions for clothing,  
5           and energy and water consumption of certain home  
6           appliances; and

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

12          (11)(A) it is difficult for consumers to exercise  
13          personal responsibility and limit their intake of cal-  
14          ories at restaurants, given the limited availability of  
15          nutrition information at the point of ordering in res-  
16          taurants;

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

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

23          (12) the Food and Drug Administration, Sur-  
24          geon General, Department of Health and Human  
25          Services, National Cancer Institute, Institute of

1 Medicine of the National Academies, American Dia-  
 2 betes Association, American Heart Association, and  
 3 American Medical Association recommend that there  
 4 be increased availability of nutrition information for  
 5 foods eaten and prepared away from home; and

6 (13) menu labeling policies have been intro-  
 7 duced in more than 30 States and localities, and  
 8 menu labeling policies have passed in California;  
 9 New York City; Multnomah County (Portland), Or-  
 10 egon; King County (Seattle), Washington; and  
 11 Philadelphia, Pennsylvania.

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

15 (a) LABELING REQUIREMENTS.—Section 403(q)(5)  
 16 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
 17 343(q)(5)) is amended by adding at the end the following:

18 “(H) RESTAURANTS, RETAIL FOOD ESTABLISH-  
 19 MENTS, AND VENDING MACHINES.—

20 “(i) GENERAL REQUIREMENTS FOR RES-  
 21 TAURANTS AND SIMILAR RETAIL FOOD ESTABLISH-  
 22 MENTS.—Except for food described in subclause  
 23 (vii), in the case of food that is a menu item that  
 24 is served, processed, or prepared in a restaurant or  
 25 similar retail food establishment that is part of a

1 chain with 20 or more locations doing business  
 2 under the same name (regardless of the type of own-  
 3 ership of the locations) and offering for sale sub-  
 4 stantially the same menu items the restaurant or es-  
 5 tablishment shall disclose the information described  
 6 in subclauses (ii) and (iii).

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

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

17 “(AA) the number of calories;

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

20 “(CC) grams of carbohydrate; and

21 “(DD) milligrams of sodium,

22 per standard menu item, as usually pre-  
 23 pared and offered for sale; and

24 “(bb) information, specified by the Sec-  
 25 retary by regulation, provided in a prominent

1 location on the menu and designed to enable  
2 the public to understand, in the context of a  
3 total daily diet, the significance of the nutrition  
4 information that is provided, such as rec-  
5 ommended daily limits for calories, saturated  
6 fat, and sodium;

7 “(II) in a statement adjacent to the name  
8 of the standard menu item, so as to be clearly  
9 associated with the standard menu item, on any  
10 menu board, including a drive-through menu  
11 board or other sign listing the item for sale—

12 “(aa) the number of calories contained in  
13 the menu item, as usually prepared and offered  
14 for sale;

15 “(bb) notification that the information re-  
16 quired by subitem (aa) of item (I) is available  
17 in writing at the point of ordering; and

18 “(cc) information, specified by the Sec-  
19 retary by regulation and posted prominently on  
20 the menu board, designed to enable the public  
21 to understand, in the context of a total daily  
22 diet, the significance of the nutrition informa-  
23 tion that is provided.

24 “(iii) SELF-SERVICE FOOD AND FOOD ON DIS-  
25 PLAY.—In the case of food sold at a salad bar, buf-



1       fet line, cafeteria line, or similar self-service facility,  
2       and for self-service beverages or food that is on dis-  
3       play and that is visible to customers, a restaurant or  
4       similar retail food establishment shall place adjacent  
5       to each food offered a sign that lists calories per dis-  
6       played food item or per serving.

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

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

20              “(vi) ADDITIONAL INFORMATION.—If the Sec-  
21      retary determines that a nutrient other than those  
22      for which a statement is required under subclause  
23      (ii)(I) should be included in labeling of menu items  
24      for the purpose of providing information to assist  
25      consumers in maintaining healthy dietary practices,

1 the Secretary may promulgate regulations requiring  
2 that such information be included in labeling at res-  
3 taurants and similar retail food establishments.

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

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

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

13 “(viii) VENDING MACHINES.—

14 “(I) IN GENERAL.—In the case of an arti-  
15 cle of food sold from a vending machine that—

16 “(aa) does not permit a prospective  
17 purchaser to examine the Nutrition Facts  
18 Panel before purchasing the article or does  
19 not otherwise provide visible nutrition in-  
20 formation at the point of purchase; and

21 “(bb) is operated by a person who is  
22 engaged in the business of owning or oper-  
23 ating 20 or more vending machines,

24 the vending machine operator shall provide a  
25 sign in close proximity to each article of food or

1 the selection button that includes a clear and  
2 conspicuous statement disclosing the number of  
3 calories contained in the article.

4 “(ix) VOLUNTARY PROVISION OF NUTRITION IN-  
5 FORMATION; STATE REGULATION OF NUTRITION IN-  
6 FORMATION FOR RESTAURANT FOOD AND FOOD  
7 SOLD FROM VENDING MACHINES.—

8 “(I) ADDITIONAL INFORMATION.—Nothing  
9 in this clause precludes a restaurant or similar  
10 retail food establishment or a vending machine  
11 operator from providing additional nutrition in-  
12 formation, voluntarily, if the information com-  
13 plies with the nutrition labeling requirements  
14 under this Act.

15 “(II) OTHER FOOD ESTABLISHMENTS AND  
16 VENDING MACHINE OPERATORS.—Nothing in  
17 this clause precludes a restaurant or similar re-  
18 tail food establishment or a vending machine  
19 operator that is not required to disclose nutri-  
20 tion information under this clause from pro-  
21 viding nutrition information voluntarily, if the  
22 information complies with the nutrition labeling  
23 requirements under this subparagraph.

24 “(III) STATE OR LOCAL REQUIREMENTS.—  
25 Nothing in this clause precludes a State or po-

1           litical subdivision of a State from requiring that  
2           a restaurant or similar retail food establishment  
3           or a vending machine operator, including a res-  
4           taurant or similar retail food establishment or  
5           vending machine operator that is not required  
6           to disclose nutrition information under this  
7           clause, provide nutrition information in addition  
8           to that required under this clause.

9           “(x) REGULATIONS.—

10           “(I) PROPOSED REGULATION.—Not later  
11           than 1 year after the date of enactment of this  
12           clause, the Secretary shall promulgate proposed  
13           regulations to carry out this clause.

14           “(II) CONTENTS.—The regulations shall  
15           allow for reasonable variations in serving sizes  
16           and in food preparation that may result from  
17           inadvertent human error, training of food serv-  
18           ice workers, variations in ingredients, and other  
19           factors.

20           “(III) REPORTING.—The Secretary shall  
21           submit to the Committee on Health, Education,  
22           Labor, and Pensions of the Senate and the  
23           Committee on Energy and Commerce of the  
24           House of Representatives a quarterly report  
25           that describes the Secretary’s progress toward

1           promulgating final regulations under this sub-  
2           paragraph.”.

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

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