

# **THE COMMON SENSE NUTRITION DISCLOSURE ACT (H.R. 2017)**

## **BACKGROUND:**

Legislation passed in 2010 mandating national calorie menu-labeling standards for chain restaurants and similar retail food establishments. FDA published its proposed rule on April 6, 2011 and during the rule-making process, restaurants and food retailers provided FDA with substantive information and alternatives for the FDA to acknowledge and accommodate for various different ways that foods are prepared and sold to customers, particularly those that do not fit neatly into a “one-size-fits-all” standardized menu. Members of Congress took notice as well and introduced the bipartisan CSNDA (HR 1249/S 1756) in the 113<sup>th</sup> Congress to provide substantive reforms to the challenges created by FDA’s proposed rule. When final rules were issued in November 2014 it became clear that FDA failed to address the concerns of small businesses and Members of Congress, and created additional burdens and complexities. In its final rule, FDA: (i) required establishments to create multiple menus throughout a store, contravening Congress’ s clear intent; (ii) defined most advertising and marketing materials as menus requiring labels; (iii) rejected alternative, effective approaches to labeling customizable, variable menu items; (iv) refused to accommodate modest requests of restaurants that specialize in food delivery (such as pizza restaurants); and, (v) established arbitrary, excessive penalties, including potential criminal penalties and jail time for small business owners. This rule, as determined by the White House Office of Management and Budget, will require more than 14 million compliance hours, in addition to costs exceeding \$1 billion. Something must be done to protect small businesses from onerous regulations.

FDA’s final rule spurred many questions and concerns that FDA could not answer, resulting in Congress prompting FDA to delay the regulation’s compliance date in order to provide guidance that allows for flexibility and clarity. But draft guidance released by FDA in September 2015, failed to address these concerns and reinforced the rigidity of the Final Rule, compelling the need for legislation to allow some flexibility and lessen the confusion this rule has created for businesses and consumers alike.

## **WHAT THIS BILL DOES:**

The CSNDA would protect small businesses from unnecessary costs without compromising FDA' s objective to provide customers with information they can use to make smart choices. This bill:

- Requires restaurants, supermarkets and convenience stores and other foodservice venues to designate a “primary” menu where most customers make their purchasing decision;
- Clarifies that advertisements – such as a coupon or Facebook post – are not menus;
- Clarifies that menu labeling regulations only apply to food items sold throughout a chain, to preserve local foods or fresh items that may only be sold at one or two locations;
- Permits establishments that offer variable made-to-order items that customers tailor to their liking, such as a pizza or sandwiches, to select one of various methods of providing calorie information, in order to provide consumers more useful information;
- Allows establishments that receive the majority of their orders remotely to provide calorie information on a remote access menu, such as one on the Internet which nearly all of their customers use in making order selections, instead of on in-store menu boards that most customers never see;
- Protects establishments from being penalized excessively for inadvertent human error;
- Places responsibility for compliance on corporate officials that design compliance programs and methods, rather than local store managers who simply implement corporate policies;
- Prohibits frivolous class-action suits;
- Provides flexibility to restaurants with buffet-style operations; and,
- Extends the effective date of menu-labeling requirements to provide covered establishments the necessary time to prepare and develop compliance plans.