

105TH CONGRESS
2D SESSION

S. 2356

To amend the Federal Food, Drug, and Cosmetic Act to provide for uniform food safety warning notification requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27, 1998

Mr. ROBERTS (for himself, Mr. ENZI, Mr. KERREY, Mr. HARKIN, Mr. LUGAR, Mr. WARNER, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Federal Food, Drug, and Cosmetic Act to provide for uniform food safety warning notification requirements, and for other purposes.

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 “National Uniformity
5 for Food Act of 1998”.

6 **SEC. 2. NATIONAL UNIFORMITY FOR FOOD.**

7 (a) NATIONAL UNIFORMITY.—Section 403A(a) of the
8 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–
9 1(a)) is amended—

1 (1) by striking “or” at the end of paragraph
2 (4);

3 (2) in paragraph (5), by striking the period and
4 inserting a comma; and

5 (3) by adding at the end the following:

6 “(6) any requirement for the labeling of food
7 described in section 403(j), or 403(s), that is not
8 identical to the requirement of such section, or

9 “(7) any requirement for a food described in
10 section 402(a)(1), 402(a)(2), 402(a)(6), 402(a)(7),
11 402(c), 402(f), 402(g), 404, 406, 408, 409, 512, or
12 721(a), that is not identical to the requirement of
13 such section.”.

14 (b) UNIFORMITY IN FOOD SAFETY WARNING NOTI-
15 FICATION REQUIREMENTS.—Chapter IV of such Act (21
16 U.S.C. 341 et seq.) is amended—

17 (1) by redesignating sections 403B and 403C
18 as sections 403C and 403D, respectively; and

19 (2) by inserting after section 403A the follow-
20 ing new section:

21 **“SEC. 403B. UNIFORMITY IN FOOD SAFETY WARNING NOTI-
22 FICATION REQUIREMENTS.**

23 **“(a) UNIFORMITY REQUIREMENT.—**

24 **“(1) IN GENERAL.—**Except as provided in sub-
25 sections (b) and (c), no State or political subdivision

1 of a State may, directly or indirectly, establish or
2 continue in effect under any authority any notifica-
3 tion requirement for a food that provides for a warn-
4 ing concerning the safety of the food, or any compo-
5 nent or package of the food, unless such a notifica-
6 tion requirement has been prescribed under the au-
7 thority of this Act and the State or political subdivi-
8 sion notification requirement is identical to the noti-
9 fication requirement prescribed under the authority
10 of this Act.

11 “(2) DEFINITIONS.—For purposes of paragraph
12 (1)—

13 “(A) the term ‘notification requirement’ in-
14 cludes any mandatory disclosure requirement
15 relating to the dissemination of information
16 about a food in any manner, such as through
17 a label, labeling, poster, public notice, advertis-
18 ing, or any other means of communication; and

19 “(B) the term ‘warning’, used with respect
20 to a food, means any statement, vignette, or
21 other representation that indicates, directly or
22 by implication, that the food presents or may
23 present a hazard to health or safety.

24 “(b) EXEMPTIONS AND NATIONAL STANDARDS.—

1 “(1) EXEMPTIONS.—Any State may petition
2 the Secretary to provide by regulation, after provid-
3 ing notice and an opportunity for written and oral
4 presentation of views, an exemption from subsection
5 (a) for a requirement of the State or a political sub-
6 division of the State. The Secretary may provide
7 such an exemption, under such conditions as the
8 Secretary may impose, for such a requirement
9 that—

10 “(A) protects an important public interest
11 that would otherwise be unprotected, in the ab-
12 sence of the exemption;

13 “(B) would not cause any food to be in
14 violation of any applicable requirement or prohi-
15 bition under Federal law; and

16 “(C) would not unduly burden interstate
17 commerce, balancing the importance of the pub-
18 lic interest of the State or political subdivision
19 against the impact on interstate commerce.

20 “(2) NATIONAL STANDARDS.—Any State may
21 petition the Secretary to establish by regulation,
22 after providing notice and an opportunity for written
23 and oral presentation of views, a national standard
24 respecting any requirement under this Act or the

1 Fair Packaging and Labeling Act (15 U.S.C. 1451
2 et seq.) relating to the regulation of a food.

3 “(3) ACTION ON PETITIONS.—

4 “(A) PUBLICATION.—Not later than 30
5 days after receipt of any petition under para-
6 graph (1) or (2), the Secretary shall publish
7 such petition in the Federal Register for public
8 comment during a period specified by the Sec-
9 retary.

10 “(B) TIME PERIODS FOR ACTION.—Not
11 later than 60 days after the end of the period
12 for public comment, the Secretary shall take ac-
13 tion on the petition. If the Secretary is unable
14 to take action on the petition during the 60-day
15 period, the Secretary shall inform the peti-
16 tioner, in writing, the reasons that taking the
17 action is not possible, the date by which the ac-
18 tion will be taken, and the action that will be
19 taken or is likely to be taken. In every case, the
20 Secretary shall take action on the petition not
21 later than 120 days after the end of the period
22 for public comment.

23 “(4) JUDICIAL REVIEW.—The failure of the
24 Secretary to comply with any requirement of this
25 subsection shall constitute final agency action for

1 purposes of judicial review. If the court conducting
2 the review determines that the Secretary has failed
3 to comply with the requirement, the court shall
4 order the Secretary to comply within a period deter-
5 mined to be appropriate by the court.

6 “(c) IMMINENT HAZARD AUTHORITY.—

7 “(1) IN GENERAL.—A State may establish a re-
8 quirement that would otherwise violate section 403A
9 or subsection (a) if—

10 “(A) the requirement is needed to address
11 an imminent hazard to health that is likely to
12 result in serious adverse health consequences or
13 death;

14 “(B) the State has instituted enforcement
15 action with respect to the matter involved in
16 compliance with State law;

17 “(C) the State has informed the Secretary
18 about the matter and the Secretary has not ini-
19 tiated enforcement action with respect to the
20 matter; and

21 “(D) a petition is submitted by the State
22 under subsection (b) for an exemption or na-
23 tional standard relating to the requirement not
24 later than the date that the State establishes
25 the requirement under this subsection.

1 “(2) ACTION ON PETITION.—

2 “(A) IN GENERAL.—The Secretary shall
3 take action on any petition submitted under
4 paragraph (1)(D) not later than 7 days after
5 the petition is received.

6 “(B) JUDICIAL REVIEW.—The failure of
7 the Secretary to comply with the requirement
8 described in subparagraph (A) shall constitute
9 final agency action for purposes of judicial re-
10 view. If the court conducting the review deter-
11 mines that the Secretary has failed to comply
12 with the requirement, the court shall order the
13 Secretary to comply within a period determined
14 to be appropriate by the court.

15 “(d) AFFECT ON PRODUCT LIABILITY LAW.—Noth-
16 ing in this section shall be construed to modify or other-
17 wise affect the product liability law of any State.

18 “(e) NO AFFECT ON IDENTICAL LAW.—Nothing in
19 this section or section 403A relating to a food shall be
20 construed to prevent a State or political subdivision of a
21 State from establishing, enforcing, or continuing in effect
22 a requirement that is identical to a requirement of this
23 Act.

24 “(f) NO AFFECT ON CERTAIN STATE LAW.—Nothing
25 in this section or section 403A relating to a food shall

1 be construed to prevent a State or political subdivision of
2 a State from establishing, enforcing, or continuing in ef-
3 fect a requirement relating to freshness dating, open date
4 labeling, grade labeling, a State inspection stamp, reli-
5 gious dietary labeling, organic or natural designation, re-
6 turnable bottle labeling, unit pricing, or a statement of
7 origin.”.

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