

106TH CONGRESS
1ST SESSION

S. 1155

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

MAY 27, 1999

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

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 1999”.

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 fol-
20 lowing 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 by a manufacturer or distributor
17 of a food in any manner, such as through a
18 label, labeling, poster, public notice, advertising,
19 or any other means of communication, but not
20 relating to notification, disclosure, or other dis-
21 semination of information by a State or political
22 subdivision;

23 “(B) the term ‘warning’, used with respect
24 to a food, means any statement, vignette, or
25 other representation that indicates, directly or

1 by implication, that the food presents or may
2 present a hazard to health or safety; and

3 (C) a reference to a notification require-
4 ment that provides for a warning shall not be
5 construed to refer to any requirement or prohi-
6 bition relating to food safety that does not in-
7 volve a notification requirement.

8 “(b) EXEMPTIONS AND NATIONAL STANDARDS.—

9 “(1) EXEMPTIONS.—Any State may petition
10 the Secretary to provide by regulation, after pro-
11 viding notice and an opportunity for written and
12 oral presentation of views during a public comment
13 period described in paragraph (3), an exemption
14 from paragraph (6) or (7) of section 403A(a) or
15 subsection (a), for a requirement of the State or a
16 political subdivision of the State. The Secretary may
17 provide such an exemption, under such conditions as
18 the Secretary may impose, for such a requirement
19 that—

20 “(A) protects an important public interest
21 that would otherwise be unprotected, in the ab-
22 sence of the exemption;

23 “(B) would not cause any food to be in
24 violation of any applicable requirement or prohi-
25 bition under Federal law; and]

1 “(C) would not unduly burden interstate
2 commerce, balancing the importance of the pub-
3 lic interest of the State or political subdivision
4 against the impact on interstate commerce.

5 “(2) NATIONAL STANDARDS.—Any State may
6 petition the Secretary to establish by regulation,
7 after providing notice and an opportunity for written
8 and oral presentation of views during a public com-
9 ment period described in paragraph (3), a national
10 standard respecting any requirement under this Act
11 or the Fair Packaging and Labeling Act (15 U.S.C.
12 1451 et seq.) relating to the regulation of a food.

13 “(3) ACTION ON PETITIONS.—

14 “(A) PUBLICATION.—Not later than 30
15 days after receipt of any petition under para-
16 graph (1) or (2), the Secretary shall publish
17 such petition in the Federal Register for public
18 comment during a period specified by the Sec-
19 retary.

20 “(B) TIME PERIODS FOR ACTION.—Not
21 later than 60 days after the end of the period
22 for public comment, the Secretary shall take ac-
23 tion on the petition. If the Secretary is unable
24 to take action on the petition during the 60-day
25 period, the Secretary shall inform the peti-

1 tioner, in writing, the reasons that taking the
2 action is not possible, the date by which the ac-
3 tion will be taken, and the action that will be
4 taken or is likely to be taken. In every case, the
5 Secretary shall take action on the petition not
6 later than 120 days after the end of the period
7 for public comment.

8 “(4) JUDICIAL REVIEW.—The failure of the
9 Secretary to comply with any requirement of this
10 subsection shall constitute final agency action for
11 purposes of judicial review. If the court conducting
12 the review determines that the Secretary has failed
13 to comply with the requirement, the court shall
14 order the Secretary to comply within a period deter-
15 mined to be appropriate by the court.

16 “(c) IMMINENT HAZARD AUTHORITY.—

17 “(1) IN GENERAL.—A State may establish a re-
18 quirement that would otherwise violate paragraph
19 (6) or (7) of section 403A(a) or subsection (a), if—

20 “(A) the requirement is needed to address
21 an imminent hazard to health that is likely to
22 result in serious adverse health consequences or
23 death;

24 “(B) the State has informed the Secretary
25 about the matter involved and the Secretary

1 has not initiated enforcement or other regu-
2 latory action with respect to the matter;

3 “(C) a petition is submitted by the State
4 under subsection (b) for an exemption or na-
5 tional standard relating to the requirement not
6 later than the date that the State establishes
7 the requirement under this subsection; and

8 “(D) the State institutes enforcement ac-
9 tion with respect to the matter in compliance
10 with State law following submission of such pe-
11 tition.

12 “(2) ACTION ON PETITION.—

13 “(A) IN GENERAL.—The Secretary shall
14 take action on any petition submitted under
15 paragraph (1)(C) not later than 7 days after
16 the petition is received, notwithstanding sub-
17 section (b)(3)(B) and the public comment re-
18 quirements of subsection (b).

19 “(B) JUDICIAL REVIEW.—The failure of
20 the Secretary to comply with the requirement
21 described in subparagraph (A) shall constitute
22 final agency action for purposes of judicial re-
23 view. If the court conducting the review deter-
24 mines that the Secretary has failed to comply
25 with the requirement, the court shall order the

1 Secretary to comply within a period determined
2 to be appropriate by the court.

3 “(3) DURATION.—If a State establishes a re-
4 quirement in accordance with paragraph (1), the re-
5 quirement may remain in effect until the Secretary
6 acts on a petition submitted under paragraph
7 (1)(C).

8 “(d) NO EFFECT ON PRODUCT LIABILITY LAW.—
9 Nothing in this section shall be construed to modify or
10 otherwise affect the product liability law of any State.

11 “(e) NO EFFECT ON IDENTICAL LAW.—Nothing in
12 this section or section 403A relating to a food shall be
13 construed to prevent a State or political subdivision of a
14 State from establishing, enforcing, or continuing in effect
15 a requirement that is identical to a requirement of this
16 Act, whether or not the Secretary has promulgated a regu-
17 lation or issued a policy statement relating to the require-
18 ment.

19 “(f) NO EFFECT ON CERTAIN STATE LAW.—Nothing
20 in this section or section 403A relating to a food shall
21 be construed to prevent a State or political subdivision of
22 a State from establishing, enforcing, or continuing in ef-
23 fect a requirement relating to—

24 “(1) freshness dating, open date labeling, grade
25 labeling, a State inspection stamp, religious dietary

1 labeling, organic or natural designation, returnable
2 bottle labeling, unit pricing, or a statement of geo-
3 graphic origin; or

4 “(2) a consumer advisory relating to food sani-
5 tation that is imposed on a food service establish-
6 ment, or that is recommended by the Secretary,
7 under part 3–6 of the Food Code issued by the Food
8 and Drug Administration and referred to in the no-
9 tice published at 64 Fed. Reg. 8576 (1999) (or any
10 corresponding similar provision of such a Code).”.

11 (c) CONFORMING AMENDMENT.—Section 403A(b) of
12 such Act (21 U.S.C. 343–1(b)) is amended by adding at
13 the end the following:

14 “The requirements of paragraphs (3) and (4) of section
15 403B(b) shall apply to any such petition, in the same
16 manner and to the same extent as the requirements apply
17 to a petition described in section 403B(b).”.

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