

107TH CONGRESS
1ST SESSION

H. R. 2649

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

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2001

Mr. BURR of North Carolina (for himself, Mr. TOWNS, Mr. BORSKI, Mr. SCARBOROUGH, Mr. BOUCHER, Mr. COX, Mr. KOLBE, Mr. ISAKSON, Mr. OXLEY, Mr. WHITFIELD, Mrs. EMERSON, Mr. SWEENEY, Mr. EHRLICH, Mr. GOODE, Mr. BARTON of Texas, Mr. BARCIA, Mr. NORWOOD, Mr. BISHOP, Mr. WYNN, Mr. GREENWOOD, Mr. LEWIS of Georgia, Mr. UPTON, Mr. BRYANT, Mrs. BIGGERT, Mr. RUSH, and Mr. HALL of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Uniformity
3 for Food Act of 2001”.

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

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

8 (1) in paragraph (4), by striking “or” at the
9 end;

10 (2) in paragraph (5), by striking the period and
11 inserting “, or”; and

12 (3) by inserting after paragraph (5) the fol-
13 lowing:

14 “(6) any requirement for a food described in
15 section 402(a)(1), 402(a)(2), 402(a)(6), 402(a)(7),
16 402(c), 404, 406, 408, 409, 512, or 721(a), that is
17 not identical to the requirement of such section.”.

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

21 (1) by redesignating sections 403B and 403C
22 as sections 403C and 403D, respectively; and

23 (2) by inserting after section 403A the fol-
24 lowing new section:

1 **“SEC. 403B. UNIFORMITY IN FOOD SAFETY WARNING NOTI-**
2 **FICATION REQUIREMENTS.**

3 “(a) UNIFORMITY REQUIREMENT.—

4 “(1) IN GENERAL.—Except as provided in sub-
5 sections (c) and (d), no State or political subdivision
6 of a State may, directly or indirectly, establish or
7 continue in effect under any authority any notifica-
8 tion requirement for a food that provides for a warn-
9 ing concerning the safety of the food, or any compo-
10 nent or package of the food, unless such a notifica-
11 tion requirement has been prescribed under the au-
12 thority of this Act and the State or political subdivi-
13 sion notification requirement is identical to the noti-
14 fication requirement prescribed under the authority
15 of this Act.

16 “(2) DEFINITIONS.—For purposes of paragraph
17 (1)—

18 “(A) the term ‘notification requirement’ in-
19 cludes any mandatory disclosure requirement
20 relating to the dissemination of information
21 about a food by a manufacturer or distributor
22 of a food in any manner, such as through a
23 label, labeling, poster, public notice, advertising,
24 or any other means of communication, except
25 as provided in paragraph (3);

1 “(B) the term ‘warning’, used with respect
2 to a food, means any statement, vignette, or
3 other representation that indicates, directly or
4 by implication, that the food presents or may
5 present a hazard to health or safety; and

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

11 “(3) CONSTRUCTION.—Nothing in this section
12 shall be construed to prohibit a State from con-
13 ducting the State’s notification, disclosure, or other
14 dissemination of information, or to prohibit any ac-
15 tion taken relating to a mandatory recall or court in-
16 junction involving food adulteration under a State
17 statutory requirement identical to a food adultera-
18 tion requirement under this Act.

19 “(b) REVIEW OF EXISTING STATE REQUIRE-
20 MENTS.—

21 “(1) EXISTING STATE REQUIREMENTS; DEFER-
22 RAL.—Any requirement that—

23 “(A)(i) is a State notification requirement
24 for a food that provides for a warning described
25 in subsection (a) that does not meet the uni-

1 formity requirement specified in subsection (a);
2 or

3 “(ii) is a State food safety requirement de-
4 scribed in paragraph (6) or (7) of section 403A
5 that does not meet the uniformity requirement
6 specified in that paragraph; and

7 “(B) is in effect on the date of enactment
8 of the National Uniformity for Food Act of
9 2001,
10 shall remain in effect for 180 days after that date
11 of enactment.

12 “(2) STATE PETITIONS.—With respect to a
13 State notification or food safety requirement that is
14 described in paragraph (1), the State may petition
15 the Secretary for an exemption or a national stand-
16 ard under subsection (c). If a State submits such a
17 petition within 180 days after the date of enactment
18 of the National Uniformity for Food Act of 2001,
19 the notification or food safety requirement shall re-
20 main in effect until the Secretary takes all adminis-
21 trative action on the petition pursuant to paragraph
22 (3), and the time periods and provisions specified in
23 paragraph (3) shall apply in lieu of the time periods
24 and provisions specified in subsection (c)(3) (but not

1 the time periods and provisions specified in sub-
2 section (d)(2)).

3 “(3) ACTION ON PETITIONS.—

4 “(A) PUBLICATION.—Not later than 270
5 days after the date of enactment of the Na-
6 tional Uniformity for Food Act of 2001, the
7 Secretary shall publish a notice in the Federal
8 Register concerning any petition submitted
9 under paragraph (2) and shall provide 180 days
10 for public comment on the petition.

11 “(B) TIME PERIODS.—Not later than 360
12 days after the end of the period for public com-
13 ment, the Secretary shall take final agency ac-
14 tion on the petition.

15 “(C) JUDICIAL REVIEW.—The failure of
16 the Secretary to comply with any requirement
17 of this paragraph shall constitute final agency
18 action for purposes of judicial review. If the
19 court conducting the review determines that the
20 Secretary has failed to comply with the require-
21 ment, the court shall order the Secretary to
22 comply within a period determined to be appro-
23 priate by the court.

24 “(c) EXEMPTIONS AND NATIONAL STANDARDS.—

1 “(1) EXEMPTIONS.—Any State may petition
2 the Secretary to provide by regulation an exemption
3 from paragraph (6) or (7) of section 403A(a) or
4 subsection (a), for a requirement of the State or a
5 political subdivision of the State. The Secretary may
6 provide such an exemption, under such conditions as
7 the Secretary may impose, for such a requirement
8 that—

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

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

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

19 “(2) NATIONAL STANDARDS.—Any State may
20 petition the Secretary to establish by regulation a
21 national standard respecting any requirement under
22 this Act or the Fair Packaging and Labeling Act
23 (15 U.S.C. 1451 et seq.) relating to the regulation
24 of a food.

25 “(3) ACTION ON PETITIONS.—

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

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

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

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

5 “(d) IMMINENT HAZARD AUTHORITY.—

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

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

13 “(B) the State has notified the Secretary
14 about the matter involved and the Secretary
15 has not initiated enforcement action with re-
16 spect to the matter;

17 “(C) a petition is submitted by the State
18 under subsection (c) for an exemption or na-
19 tional standard relating to the requirement not
20 later than 30 days after the date that the State
21 establishes the requirement under this sub-
22 section; and

23 “(D) the State institutes enforcement ac-
24 tion with respect to the matter in compliance
25 with State law within 30 days after the date

1 that the State establishes the requirement
2 under this subsection.

3 “(2) ACTION ON PETITION.—

4 “(A) IN GENERAL.—The Secretary shall
5 take final agency action on any petition sub-
6 mitted under paragraph (1)(C) not later than 7
7 days after the petition is received, and the pro-
8 visions of subsection (c) shall not apply to the
9 petition.

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

19 “(3) DURATION.—If a State establishes a re-
20 quirement in accordance with paragraph (1), the re-
21 quirement may remain in effect until the Secretary
22 takes final agency action on a petition submitted
23 under paragraph (1)(C).

1 “(e) NO EFFECT ON PRODUCT LIABILITY LAW.—
2 Nothing in this section shall be construed to modify or
3 otherwise affect the product liability law of any State.

4 “(f) NO EFFECT ON IDENTICAL LAW.—Nothing in
5 this section or section 403A relating to a food shall be
6 construed to prevent a State or political subdivision of a
7 State from establishing, enforcing, or continuing in effect
8 a requirement that is identical to a requirement of this
9 Act, whether or not the Secretary has promulgated a regu-
10 lation or issued a policy statement relating to the require-
11 ment.

12 “(g) NO EFFECT ON CERTAIN STATE LAW.—Noth-
13 ing in this section or section 403A relating to a food shall
14 be construed to prevent a State or political subdivision of
15 a State from establishing, enforcing, or continuing in ef-
16 fect a requirement relating to—

17 “(1) freshness dating, open date labeling, grade
18 labeling, a State inspection stamp, religious dietary
19 labeling, organic or natural designation, returnable
20 bottle labeling, unit pricing, or a statement of geo-
21 graphic origin; or

22 “(2) a consumer advisory relating to food sani-
23 tation that is imposed on a food establishment, or
24 that is recommended by the Secretary, under part
25 3–6 of the Food Code issued by the Food and Drug

1 Administration and referred to in the notice pub-
2 lished at 64 Fed. Reg. 8576 (1999) (or any cor-
3 responding similar provision of such a Code).

4 “(h) DEFINITION.—In section 403A and this section,
5 the term ‘requirement’, used with respect to a Federal ac-
6 tion or prohibition, means a mandatory action or prohibi-
7 tion established under this Act or the Fair Packaging and
8 Labeling Act (15 U.S.C. 1451 et seq.), as appropriate, or
9 by a regulation issued under or by a court order relating
10 to, this Act or the Fair Packaging and Labeling Act, as
11 appropriate.”.

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

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

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