

108TH CONGRESS
1ST SESSION

H. R. 2699

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 10, 2003

Mr. BURR (for himself, Mr. GILLMOR, Ms. MCCARTHY of Missouri, Mr. OTTER, Mr. BRADLEY of New Hampshire, Ms. DUNN, Mr. DEAL of Georgia, Mr. PETRI, Mr. THOMPSON of Mississippi, Mr. TERRY, Mr. ISSA, Mr. TOWNS, Mr. BOEHNER, Mr. FOLEY, Mr. SHUSTER, Mr. KOLBE, and Mr. CRENSHAW) 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 2003”.

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”;

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, 409, 512, or 721(a), that is not
17 identical to the requirement of such section.”; and

18 (4) by adding at the end the following: “For
19 purposes of paragraph (6) and section 403B, the
20 term ‘identical’ means that the language under the
21 laws of a State or a political subdivision of a State
22 is substantially the same language as the comparable
23 provision under this Act and that any differences in
24 language do not result in the imposition of materi-
25 ally different requirements.”.

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

4 (1) by redesignating sections 403B and 403C
 5 as sections 403C and 403D, respectively; and

6 (2) by inserting after section 403A the fol-
 7 lowing new section:

8 **“SEC. 403B. UNIFORMITY IN FOOD SAFETY WARNING NOTI-**
 9 **FICATION REQUIREMENTS.**

10 **“(a) UNIFORMITY REQUIREMENT.—**

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

23 **“(2) DEFINITIONS.—**For purposes of paragraph
 24 (1)—

1 “(A) the term ‘notification requirement’ in-
2 cludes any mandatory disclosure requirement
3 relating to the dissemination of information
4 about a food by a manufacturer or distributor
5 of a food in any manner, such as through a
6 label, labeling, poster, public notice, advertising,
7 or any other means of communication, except
8 as provided in paragraph (3);

9 “(B) the term ‘warning’, used with respect
10 to a food, means any statement, vignette, or
11 other representation that indicates, directly or
12 by implication, that the food presents or may
13 present a hazard to health or safety; and

14 “(C) a reference to a notification require-
15 ment that provides for a warning shall not be
16 construed to refer to any requirement or prohi-
17 bition relating to food safety that does not in-
18 volve a notification requirement.

19 “(3) CONSTRUCTION.—Nothing in this section
20 shall be construed to prohibit a State from con-
21 ducting the State’s notification, disclosure, or other
22 dissemination of information, or to prohibit any ac-
23 tion taken relating to a mandatory recall or court in-
24 junction involving food adulteration under a State

1 statutory requirement identical to a food adultera-
2 tion requirement under this Act.

3 “(b) REVIEW OF EXISTING STATE REQUIRE-
4 MENTS.—

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

7 “(A)(i) is a State notification requirement
8 that expressly applies to a specified food or food
9 component and that provides for a warning de-
10 scribed in subsection (a) that does not meet the
11 uniformity requirement specified in subsection
12 (a); or

13 “(ii) is a State food safety requirement de-
14 scribed in section 403A(6) that does not meet
15 the uniformity requirement specified in that
16 paragraph; and

17 “(B) is in effect on the date of enactment
18 of the National Uniformity for Food Act of
19 2003,
20 shall remain in effect for 180 days after that date
21 of enactment.

22 “(2) STATE PETITIONS.—With respect to a
23 State notification or food safety requirement that is
24 described in paragraph (1), the State may petition
25 the Secretary for an exemption or a national stand-

1 ard under subsection (c). If a State submits such a
2 petition within 180 days after the date of enactment
3 of the National Uniformity for Food Act of 2003,
4 the notification or food safety requirement shall re-
5 main in effect until the Secretary takes all adminis-
6 trative action on the petition pursuant to paragraph
7 (3), and the time periods and provisions specified in
8 paragraph (3) shall apply in lieu of the time periods
9 and provisions specified in subsection (c)(3) (but not
10 the time periods and provisions specified in sub-
11 section (d)(2)).

12 “(3) ACTION ON PETITIONS.—

13 “(A) PUBLICATION.—Not later than 270
14 days after the date of enactment of the Na-
15 tional Uniformity for Food Act of 2003, the
16 Secretary shall publish a notice in the Federal
17 Register concerning any petition submitted
18 under paragraph (2) and shall provide 180 days
19 for public comment on the petition.

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

24 “(C) JUDICIAL REVIEW.—The failure of
25 the Secretary to comply with any requirement

1 of this paragraph shall constitute final agency
2 action for purposes of judicial review. If the
3 court conducting the review determines that the
4 Secretary has failed to comply with the require-
5 ment, the court shall order the Secretary to
6 comply within a period determined to be appro-
7 priate by the court.

8 “(c) EXEMPTIONS AND NATIONAL STANDARDS.—

9 “(1) EXEMPTIONS.—Any State may petition
10 the Secretary to provide by regulation an exemption
11 from paragraph (6) or (7) of section 403A(a) or
12 subsection (a), for a requirement of the State or a
13 political subdivision of the State. The Secretary may
14 provide such an exemption, under such conditions as
15 the Secretary may impose, for such a requirement
16 that—

17 “(A) protects an important public interest
18 that would otherwise be unprotected, in the ab-
19 sence of the exemption;

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

23 “(C) would not unduly burden interstate
24 commerce, balancing the importance of the pub-

1 lic interest of the State or political subdivision
2 against the impact on interstate commerce.

3 “(2) NATIONAL STANDARDS.—Any State may
4 petition the Secretary to establish by regulation a
5 national standard respecting any requirement under
6 this Act or the Fair Packaging and Labeling Act
7 (15 U.S.C. 1451 et seq.) relating to the regulation
8 of a food.

9 “(3) ACTION ON PETITIONS.—

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

16 “(B) TIME PERIODS FOR ACTION.—Not
17 later than 60 days after the end of the period
18 for public comment, the Secretary shall take
19 final agency action on the petition. If the Sec-
20 retary is unable to take final agency action on
21 the petition during the 60-day period, the Sec-
22 retary shall inform the petitioner, in writing,
23 the reasons that taking the final agency action
24 is not possible, the date by which the final
25 agency action will be taken, and the final agen-

1 cy action that will be taken or is likely to be
2 taken. In every case, the Secretary shall take
3 final agency action on the petition not later
4 than 120 days after the end of the period for
5 public comment.

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

14 “(d) IMMINENT HAZARD AUTHORITY.—

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

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

22 “(B) the State has notified the Secretary
23 about the matter involved and the Secretary
24 has not initiated enforcement action with re-
25 spect to the matter;

1 “(C) a petition is submitted by the State
2 under subsection (c) for an exemption or na-
3 tional standard relating to the requirement not
4 later than 30 days after the date that the State
5 establishes the requirement under this sub-
6 section; and

7 “(D) the State institutes enforcement ac-
8 tion with respect to the matter in compliance
9 with State law within 30 days after the date
10 that the State establishes the requirement
11 under this subsection.

12 “(2) ACTION ON PETITION.—

13 “(A) IN GENERAL.—The Secretary shall
14 take final agency action on any petition sub-
15 mitted under paragraph (1)(C) not later than 7
16 days after the petition is received, and the pro-
17 visions of subsection (c) shall not apply to the
18 petition.

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 takes final agency action on a petition submitted
7 under paragraph (1)(C).

8 “(e) 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 “(f) NO EFFECT ON IDENTICAL LAW.—Nothing in
12 this section relating to a food shall be construed to prevent
13 a State or political subdivision of a State from estab-
14 lishing, enforcing, or continuing in effect a requirement
15 that is identical to a requirement of this Act, whether or
16 not the Secretary has promulgated a regulation or issued
17 a policy statement relating to the requirement.

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

23 “(1) freshness dating, open date labeling, grade
24 labeling, a State inspection stamp, religious dietary
25 labeling, organic or natural designation, returnable

1 bottle labeling, unit pricing, or a statement of geo-
2 graphic origin; or

3 “(2) a consumer advisory relating to food sani-
4 tation that is imposed on a food establishment, or
5 that is recommended by the Secretary, under part
6 3–6 of the Food Code issued by the Food and Drug
7 Administration and referred to in the notice pub-
8 lished at 64 Fed. Reg. 8576 (1999) (or any cor-
9 responding similar provision of such a Code).

10 “(h) DEFINITIONS.—In section 403A and this sec-
11 tion:

12 “(1) The term ‘requirement’, used with respect
13 to a Federal action or prohibition, means a manda-
14 tory action or prohibition established under this Act
15 or the Fair Packaging and Labeling Act (15 U.S.C.
16 1451 et seq.), as appropriate, or by a regulation
17 issued under or by a court order relating to, this Act
18 or the Fair Packaging and Labeling Act, as appro-
19 priate.

20 “(2) The term ‘petition’ means a petition sub-
21 mitted in accordance with the provisions of section
22 10.30 of title 21, Code of Federal Regulations, con-
23 taining all data and information relied upon by the
24 petitioner to support an exemption or a national
25 standard.”.

1 (c) CONFORMING AMENDMENT.—Section 403A(b) of
2 such Act (21 U.S.C. 343–1(b)) is amended by adding after
3 and below paragraph (3) the following:
4 “The requirements of paragraphs (3) and (4) of section
5 403B(c) shall apply to any such petition, in the same man-
6 ner and to the same extent as the requirements apply to
7 a petition described in section 403B(c).”.

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