

108TH CONGRESS
1ST SESSION

H. R. 306

To amend the Safe Drinking Water Act to provide procedures for claims relating to drinking water.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 2003

Mr. GARY G. MILLER of California (for himself, Mr. CALVERT, and Mr. DOOLEY of California) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Safe Drinking Water Act to provide procedures for claims relating to drinking water.

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 “Drinking Water Stand-
5 ards Preservation Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) The safety of drinking water, and the ade-
2 quacy of water supplies, is a national concern. In the
3 29 years since Congress first mandated the estab-
4 lishment of uniform national minimum drinking
5 water standards, national standards have been es-
6 tablished for more than 100 contaminants and pa-
7 rameters.

8 (2) The States have been authorized to enforce
9 those standards, and, in appropriate cases, set
10 stricter standards on a statewide basis.

11 (3) It is technologically infeasible for a drinking
12 water system to provide water with a zero level of
13 contaminants, and a determination that drinking
14 water must contain no contaminants would threaten
15 the adequacy of water supplies.

16 (4) The setting of drinking water standards is
17 a complex public policy determination requiring a
18 careful analysis and balancing of a number of fac-
19 tors, including—

20 (A) the maximum safe level for each drink-
21 ing water contaminant, the technological capa-
22 bility of removing contaminants from public
23 drinking water supplies; and

24 (B) the importance of assuring that drink-
25 ing water is affordable to all Americans.

1 (5) The setting of these standards is not appro-
2 priate for individual juries deciding individual cases
3 in the separate States, but rather is fundamentally
4 a scientific issue to be resolved by the appropriate
5 Federal and State agencies in accordance with the
6 rulemaking provisions of the Safe Drinking Water
7 Act and the applicable State authorities.

8 (6) Claims for monetary damages brought
9 against public water providers under the common
10 law of the various States based on alleged contami-
11 nation of drinking water threaten to undermine the
12 science-based uniform national system of water qual-
13 ity regulation.

14 (7) The States should retain maximum flexi-
15 bility to handle claims for monetary damages
16 brought against public water providers based on al-
17 leged contamination of drinking water, including the
18 authority to decide whether such claims should be
19 heard by the courts or an administrative agency.

20 (8) The costs of defending against multiple
21 legal claims can be financially burdensome to any
22 water provider, but especially to small systems, and
23 the imposition of such costs cannot be justified when
24 a supplier complies with the requirements of the
25 Safe Drinking Water Act.

1 **SEC. 3. AMENDMENTS TO THE SAFE DRINKING WATER ACT.**

2 Section 1449 of the Safe Drinking Water Act (42
3 U.S.C. 300j-8) is amended as follows:

4 (1) By striking “Nothing” in the first sentence
5 of subsection (e) and inserting “(1) Except as pro-
6 vided in subsection (f), nothing”.

7 (2) By striking “or to seek any other relief” at
8 the end of the first sentence of subsection (e).

9 (3) By adding after the first sentence of sub-
10 section (e) the following: “Nothing in subsection (f)
11 creates a new cause of action, and, except as other-
12 wise explicitly provided in this title, nothing in this
13 title expands liability otherwise imposed or limits
14 any defense otherwise available under Federal or
15 State law.” .

16 (4) By striking “Nothing” in the second sen-
17 tence of subsection (e) and inserting “Except as pro-
18 vided in subsection (f), nothing”.

19 (5) By adding the following new subsection at
20 the end thereof:

21 “(f)(1) No public water system shall be liable in a
22 civil suit brought before any Federal or State court for
23 damages arising from injury (including personal injury,
24 death, or property damage) allegedly caused by delivery
25 of contaminated water, unless the court determines that
26 the plaintiff has established the following:

1 “(A) In the case of a regulated contami-
2 nant, the plaintiff must establish that each of
3 the following criteria are met:

4 “(i) The substance in the delivered
5 water which the plaintiff claims caused the
6 injury was subject to a Federal or State
7 regulation prescribed under this Act at the
8 time of delivery.

9 “(ii) There is substantial scientific
10 evidence that the substance in the deliv-
11 ered water which the plaintiff claims
12 caused the injury was of such a nature,
13 and in such amounts, that it was reason-
14 ably likely to cause the kind of injury of
15 which the plaintiff complains.

16 “(iii) The public water system violated
17 the regulation referred to in clause (i).

18 “(iv) The violation was negligent.

19 “(v) The violation caused the injury.

20 “(B) In the case of an unregulated con-
21 taminant, the plaintiff must establish that each
22 of the following criteria are met:

23 “(i) The substance in the delivered
24 water which the plaintiff claims caused the
25 injury was not subject to any requirements

1 prescribed under this Act at the time of
2 delivery.

3 “(ii) There is substantial scientific
4 evidence that the substance in the deliv-
5 ered water which the plaintiff claims
6 caused the injury was of such a nature,
7 and in such amounts, that it was reason-
8 ably likely to cause the kind of injury of
9 which the plaintiff complains.

10 “(iii) The injury actually was caused
11 by delivery of water that contained such a
12 substance.

13 “(iv) The public water system knew or
14 should have known that the substance was
15 in the drinking water at such a level and
16 was likely to cause the injury.

17 “(v) It was feasible for the supplier to
18 have removed such contaminant to a level
19 below which it was not likely to cause such
20 injury.

21 “(2) The court shall, in a special pretrial pro-
22 ceeding, subject to the requirements of paragraph
23 (3), determine whether the plaintiff has established
24 either that criteria in clauses (i), (ii), and (iii) of

1 paragraph (1)(A) or criteria in clauses (i), (ii), and
2 (v) in paragraph (1)(B) have been met.

3 “(3) The court, in making the determinations
4 required in paragraphs (1)(A) and (1)(B), shall
5 adopt and give binding effect to any findings of fact,
6 conclusions of law, or determination of any agency
7 of a State exercising primary enforcement authority
8 for purposes of this title. Nothing in this section lim-
9 its the jurisdiction or authority of any State agency
10 to make findings and determinations with respect to
11 whether—

12 “(A) requirements for drinking water qual-
13 ity adequately protect the public;

14 “(B) additional requirements for regulated
15 or unregulated contaminants are warranted;
16 and

17 “(C) public water systems are in compli-
18 ance with such requirements.”.

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