108TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
108–770

NATIONAL UNIFORMITY FOR FOOD ACT OF 2004

OCTOBER 8, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2699]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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39–006

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Uniformity for Food Act of 2004".

SEC. 2. NATIONAL UNIFORMITY FOR FOOD.

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

(1) in paragraph (4), by striking "or" at the end;

(2) in paragraph (5), by striking the period and inserting ", or";

(3) by inserting after paragraph (5) the following:

"(6) any requirement for a food described in section 402(a)(1), 402(a)(2), 402(a)(6), 402(a)(7), 402(c), 404, 406, 409, 512, or 721(a), that is not identical to the requirement of such section."; and

(4) by adding at the end the following: "For purposes of paragraph (6) and section 403B, the term 'identical' means that the language under the laws of a State or a political subdivision of a State is substantially the same language as the comparable provision under this Act and that any differences in language do not result in the imposition of materially different requirements. For purposes of paragraph (6), the term 'any requirement for a food' does not refer to provisions of this Act that relate to procedures for Federal action under this Act.".

(b) UNIFORMITY IN FOOD SAFETY WARNING NOTIFICATION REQUIREMENTS.—Chapter IV of such Act (21 U.S.C. 341 et seq.) is amended—

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

(2) by inserting after section 403A the following new section:

"SEC. 403B. UNIFORMITY IN FOOD SAFETY WARNING NOTIFICATION REQUIREMENTS.

"(a) UNIFORMITY REQUIREMENT.—

"(1) IN GENERAL.—Except as provided in subsections (c) and (d), no State or political subdivision of a State may, directly or indirectly, establish or continue in effect under any authority any notification requirement for a food that provides for a warning concerning the safety of the food, or any component or package of the food, unless such a notification requirement has been prescribed under the authority of this Act and the State or political subdivision notification requirement is identical to the notification requirement prescribed under the authority of this Act.

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) the term 'notification requirement' includes any mandatory disclosure requirement relating to the dissemination of information about a food by a manufacturer or distributor of a food in any manner, such as through a label, labeling, poster, public notice, advertising, or any other means of communication, except as provided in paragraph (3);

"(B) the term 'warning', used with respect to a food, means any statement, vignette, or other representation that indicates, directly or by implication, that the food presents or may present a hazard to health or safety; and

"(C) a reference to a notification requirement that provides for a warning shall not be construed to refer to any requirement or prohibition relating to food safety that does not involve a notification requirement.

"(3) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a State from conducting the State's notification, disclosure, or other dissemination of information, or to prohibit any action taken relating to a mandatory recall, civil administrative order, embargo, detention order, or court proceeding involving food adulteration under a State statutory requirement identical to a food adulteration requirement under this Act.

"(b) REVIEW OF EXISTING STATE REQUIREMENTS.—

"(1) EXISTING STATE REQUIREMENTS; DEFERRAL.—Any requirement that—

"(A)(i) is a State notification requirement that expressly applies to a specified food or food component and that provides for a warning described in subsection (a) that does not meet the uniformity requirement specified in subsection (a); or

"(ii) is a State food safety requirement described in section 403A(6) that does not meet the uniformity requirement specified in that paragraph; and

"(B) is in effect on the date of enactment of the National Uniformity for Food Act of 2004,

shall remain in effect for 180 days after that date of enactment.

"(2) STATE PETITIONS.—With respect to a State notification or food safety requirement that is described in paragraph (1), the State may petition the Secretary for an exemption or a national standard under subsection (c). If a State submits such a petition within 180 days after the date of enactment of the National Uniformity for Food Act of 2004, the notification or food safety requirement shall remain in effect in accordance with subparagraph (C) of paragraph (3), and the time periods and provisions specified in subparagraphs (A) and (B) of such paragraph shall apply in lieu of the time periods and provisions specified in subsection (c)(3) (but not the time periods and provisions specified in subsection (d)(2)).

"(3) ACTION ON PETITIONS.—

"(A) PUBLICATION.—Not later than 270 days after the date of enactment of the National Uniformity for Food Act of 2004, the Secretary shall publish a notice in the Federal Register concerning any petition submitted under paragraph (2) and shall provide 180 days for public comment on the petition.

"(B) TIME PERIODS.—Not later than 360 days after the end of the period for public comment, the Secretary shall take final agency action on the petition.

"(C) ACTION.—

"(i) IN GENERAL.—With respect to a State that submits to the Secretary a petition in accordance with paragraph (2), the notification or food safety requirement involved shall remain in effect during the period beginning on the date of enactment of the National Uniformity for Food Act of 2004 and ending on the applicable date under subclause (I) or (II), as follows:

"(I) If the petition is denied by the Secretary, the date of such denial.

"(II) If the petition is approved by the Secretary, the effective date of the final rule that is promulgated under subsection (c) to provide an exemption or national standard pursuant to the petition, except that there is no applicable ending date under this subparagraph for a provision of State law that is part of such State requirement in any case in which the final rule does not establish any condition regarding such provision of law.

"(ii) NONCOMPLIANCE OF SECRETARY REGARDING TIMEFRAMES.—

"(I) JUDICIAL REVIEW.—The failure of the Secretary to comply with any requirement of subparagraph (A) or (B) shall constitute final agency action for purposes of judicial review. If the court conducting the review determines that the Secretary has failed to comply with the requirement, the court shall order the Secretary to comply within a period determined to be appropriate by the court.

"(II) STATUS OF STATE REQUIREMENT.—With respect to a State that submits to the Secretary a petition in accordance with paragraph (2), if the Secretary fails to take final agency action on the petition within the period that applies under subparagraph (B), the notification or food safety requirement involved remains in effect in accordance with clause (i).

"(c) EXEMPTIONS AND NATIONAL STANDARDS.—

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

"(A) protects an important public interest that would otherwise be unprotected, in the absence of the exemption;

"(B) would not cause any food to be in violation of any applicable requirement or prohibition under Federal law; and

"(C) would not unduly burden interstate commerce, balancing the importance of the public interest of the State or political subdivision against the impact on interstate commerce.

"(2) NATIONAL STANDARDS.—Any State may petition the Secretary to establish by regulation a national standard respecting any requirement under this Act or

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

"(3) ACTION ON PETITIONS.—

"(A) PUBLICATION.—Not later than 30 days after receipt of any petition under paragraph (1) or (2), the Secretary shall publish such petition in the Federal Register for public comment during a period specified by the Secretary.

"(B) TIME PERIODS FOR ACTION.—Not later than 60 days after the end of the period for public comment, the Secretary shall take final agency action on the petition or shall inform the petitioner, in writing, the reasons that taking the final agency action is not possible, the date by which the final agency action will be taken, and the final agency action that will be taken or is likely to be taken. In every case, the Secretary shall take final agency action on the petition not later than 120 days after the end of the period for public comment.

"(4) JUDICIAL REVIEW.—The failure of the Secretary to comply with any requirement of this subsection shall constitute final agency action for purposes of judicial review. If the court conducting the review determines that the Secretary has failed to comply with the requirement, the court shall order the Secretary to comply within a period determined to be appropriate by the court.

"(d) IMMINENT HAZARD AUTHORITY.—

"(1) IN GENERAL.—A State may establish a requirement that would otherwise violate section 403A(a)(6) or subsection (a), if—

"(A) the requirement is needed to address an imminent hazard to health that is likely to result in serious adverse health consequences or death;

"(B) the State has notified the Secretary about the matter involved and the Secretary has not initiated enforcement action with respect to the matter;

"(C) a petition is submitted by the State under subsection (c) for an exemption or national standard relating to the requirement not later than 30 days after the date that the State establishes the requirement under this subsection; and

"(D) the State institutes enforcement action with respect to the matter in compliance with State law within 30 days after the date that the State establishes the requirement under this subsection.

"(2) ACTION ON PETITION.—

"(A) IN GENERAL.—The Secretary shall take final agency action on any petition submitted under paragraph (1)(C) not later than 7 days after the petition is received, and the provisions of subsection (c) shall not apply to the petition.

"(B) JUDICIAL REVIEW.—The failure of the Secretary to comply with the requirement described in subparagraph (A) shall constitute final agency action for purposes of judicial review. If the court conducting the review determines that the Secretary has failed to comply with the requirement, the court shall order the Secretary to comply within a period determined to be appropriate by the court.

"(3) DURATION.—If a State establishes a requirement in accordance with paragraph (1), the requirement may remain in effect until the Secretary takes final agency action on a petition submitted under paragraph (1)(C).

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

"(f) NO EFFECT ON IDENTICAL LAW.—Nothing in this section relating to a food shall be construed to prevent a State or political subdivision of a State from establishing, enforcing, or continuing in effect a requirement that is identical to a requirement of this Act, whether or not the Secretary has promulgated a regulation or issued a policy statement relating to the requirement.

"(g) NO EFFECT ON CERTAIN STATE LAW.—Nothing in this section or section 403A relating to a food shall be construed to prevent a State or political subdivision of a State from establishing, enforcing, or continuing in effect a requirement relating to—

"(1) freshness dating, open date labeling, grade labeling, a State inspection stamp, religious dietary labeling, organic or natural designation, returnable bottle labeling, unit pricing, or a statement of geographic origin; or

"(2) a consumer advisory relating to food sanitation that is imposed on a food establishment, or that is recommended by the Secretary, under part 3–6 of the Food Code issued by the Food and Drug Administration and referred to in the notice published at 64 Fed. Reg. 8576 (1999) (or any corresponding similar provision of such a Code).

"(h) DEFINITIONS.—In section 403A and this section:

"(1) The term 'requirement', used with respect to a Federal action or prohibition, means a mandatory action or prohibition established under this Act or the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.), as appropriate, or by a regulation issued under or by a court order relating to, this Act or the Fair Packaging and Labeling Act, as appropriate.

"(2) The term 'petition' means a petition submitted in accordance with the provisions of section 10.30 of title 21, Code of Federal Regulations, containing all data and information relied upon by the petitioner to support an exemption or a national standard.".

(c) CONFORMING AMENDMENT.—Section 403A(b) of such Act (21 U.S.C. 343–1(b)) is amended by adding after and below paragraph (3) the following:

"The requirements of paragraphs (3) and (4) of section 403B(c) shall apply to any such petition, in the same manner and to the same extent as the requirements apply to a petition described in section 403B(c).".

PURPOSE AND SUMMARY

The purpose of H.R. 2699 is to provide uniform warning notification requirements for food. Different state food notifications requirements could be significantly disruptive to interstate commerce. This legislation would provide for uniformity for food notification requirements labels by amending the Federal Food, Drug and Cosmetic Act (FFDCA) to prevent states from enforcing requirements relating to food safety warnings that are not identical to national requirements under the FFDCA.

BACKGROUND AND NEED FOR LEGISLATION

Chapter IV of The Federal Food Drug and Cosmetic Act (FFDCA) sets forth the Food and Drug Administration's (FDA's) authority to regulate the safety of foods. The FFDCA prohibits the introduction of adulterated and misbranded foods into interstate commerce. States have their own individual food laws that regulate food within their jurisdiction. Many states have adopted food safety laws that are substantially similar to the Federal law. However, this multi-layered system can lead to a variety of different and sometimes inconsistent requirements.

The manufacturing and distribution of food has developed into a national industry. Conflicting labeling and notification requirements between states result in increased costs to manufacturers and distributors that are then passed on to consumers. Congress has repeatedly recognized the importance of uniformity in food regulation. The Nutrition Labeling and Education Act (1990), the Food Quality Protection Act (1996), the Poultry Products Inspection Act, and the Meat Inspection Act are programs that include Federal uniformity.

This bill is designed to standardize food notification requirements to achieve national uniformity without affecting the safety our nation's food supply. The bill allows a state to have notification requirements that address food safety issues unique to their area. This legislation provides for a petition process for a state to apply for an exemption to a uniformity requirement. The legislation also allows for a state to petition the FDA for a new national standard. If a state has identified a potential risk to food, this national standard petition process will compel the FDA to examine the standard to determine if such a standard should be established to protect consumers in all States.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On September 30, 2004, the Full Committee met in open markup session and favorably ordered H.R. 2699, reported to the House, as amended, by a record vote of 30 yeas and 15 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Barton to order H.R. 2699 reported to the House, as amended, was agreed to by a record vote of 30 yeas and 15 nays.

COMMITTEE ON ENERGY AND COMMERCE -- 108TH CONGRESS
ROLL CALL VOTE # 77

BILL: H.R. 2699, National Uniformity for Food Act of 2003.

MOTION: Motion by Mr. Barton to order H.R. 2699 reported to the House, amended.

DISPOSITION: **AGREED TO**, by a roll call vote of 30 yeas to 15 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Barton	X			Mr. Dingell	X		
Mr. Tauzin				Mr. Waxman		X	
Mr. Hall	X			Mr. Markey			
Mr. Bilirakis	X			Mr. Boucher			
Mr. Upton	X			Mr. Towns	X		
Mr. Stearns				Mr. Pallone			
Mr. Gillmor	X			Mr. Brown		X	
Mr. Greenwood				Mr. Gordon	X		
Mr. Cox		X		Mr. Deutsch		X	
Mr. Deal	X			Mr. Rush	X		
Mr. Burr	X			Ms. Eshoo		X	
Mr. Whitfield	X			Mr. Stupak		X	
Mr. Norwood				Mr. Engel		X	
Mrs. Cubin	X			Mr. Wynn	X		
Mr. Shimkus	X			Mr. Green		X	
Mrs. Wilson	X			Ms. McCarthy			
Mr. Shadegg	X			Mr. Strickland	X		
Mr. Pickering	X			Ms. DeGette		X	
Mr. Fossella	X			Ms. Capps		X	
Mr. Buyer	X			Mr. Doyle	X		
Mr. Radanovich				Mr. John			
Mr. Bass	X			Mr. Allen		X	
Mr. Pitts	X			Mr. Davis			
Ms. Bono		X		Ms. Schakowsky		X	
Mr. Walden	X			Ms. Solis		X	
Mr. Terry	X			Mr. Gonzalez		X	
Mr. Ferguson	X						
Mr. Rogers	X						
Mr. Issa							
Mr. Otter	X						
Mr. Sullivan	X						

9/30/2004

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 2699 is to provide for national uniformity in food labeling.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2699, the National Uniformity for Food Act of 2003, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 7, 2004.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2699, the National Uniformity for Food Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christopher J. Topoleski.

Sincerely,

ELIZABETH ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 2699—National Uniformity for Food Act of 2004

Summary: The National Uniformity for Food Act of 2004 would amend the Federal Food, Drug, and Cosmetic Act (FDCA) to prohibit states or local governments from establishing or continuing in effect requirements that are not identical to specified FDCA provisions concerning the definition of food adulteration or the issuance of warning notifications concerning the safety of food. Regulation of food sanitation would remain primarily a state responsibility.

H.R. 2699 would establish a petition process by which state, local, and national requirements would be set regarding food safety and warning notifications. The bill would allow a state or local government to establish a requirement that would be in conflict with national uniformity standards if the state requirement is needed to prevent imminent hazard to public health. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2699 would cost $11 million in 2005 and $106 million over the 2005–2009 period. Those costs would be incurred by the Food and Drug Administration (FDA). Enacting the bill would not affect direct spending or receipts.

H.R. 2699 would preempt state laws governing the labeling of food products and the issuance of warning notifications. Those preemptions would be intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The costs of complying with those mandates, however, would be minimal and would not exceed the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation). If states chose to seek exemptions from the federal prohibition, they might incur costs depending on the type of labeling requirement involved and subsequent legal actions. However, those activities, and any costs, would not be associated with complying with the mandate itself.

The bill contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2699 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By fiscal year, in millions of dollars—				
	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION					
FDA Spending Under Current Law [1]:					
Estimated Authorization Level	1,424	1,460	1,504	1,551	1,599
Estimated Outlays	1,367	1,412	1,465	1,519	1,569
Proposed Changes:					
Estimated Authorization Level	12	15	28	32	21
Estimated Outlays	11	15	27	32	22
FDA Spending Under H.R. 2699:					
Estimated Authorization Level	1,436	1,475	1,532	1,583	1,620
Estimated Outlays	1,378	1,427	1,492	1,551	1,591

[1] Current-law estimates are CBO baseline projections that reflect the 2004 appropriation ($1,387 million) adjusted for anticipated inflation.

Basis of estimate: For this estimate, CBO assumes that H.R. 2699 will be enacted early in fiscal year 2005 and that appropriations will be provided to pay for the additional resources needed by FDA to fulfill the requirements of this legislation. CBO also assumes that such appropriations will be provided near the start of each subsequent fiscal year and that outlays will follow the historical spending patterns for FDA.

The National Uniformity for Food Act of 2004 would amend the Federal Food, Drug, and Cosmetic Act to prohibit states or local governments from establishing or continuing in effect certain requirements involving food safety and warning notifications that are not identical to specified FDCA provisions. State level food warnings may not be issued unless the FDA requires that the warnings be issued for specific foods. Regulation of food sanitation would remain primarily a state responsibility.

The bill would establish a petition process by which notification requirements for state, local, and national food safety and warnings would be established. Under the petition process, states could solicit an exemption of state or local notification requirements from national uniformity standards. Currently, specific state and local requirements exist that may not be nationally applicable. In addition, state petitions also could request a national uniformity decision.

Further, H.R. 2699 would allow a state to establish a requirement that would otherwise violate proposed FDCA uniformity standards if the requirement is needed to address an imminent adverse health consequence.

Finally, the bill specifically would exempt the following activities from national uniformity: freshness dating, open date labeling, state inspection stamps, unit pricing, religious dietary labeling, organic or natural designation, returnable bottle labeling, statement of geographical origin, and consumer advisories regarding food sanitation for food service establishments.

Based on information from the FDA and a review of states likely to be affected by the bill, CBO estimates that states would submit almost 100 petitions during 2005 and an additional 20 petitions over the 2006–2009 period. That estimate takes into account information that over 30 states currently have laws that would be affected by H.R. 2699, that additional states currently have regulations that would be affected, and that states will likely continue to implement such laws and regulations. CBO estimates that FDA would spend an average of about $1 million per petition. As a result, we estimate that implementing H.R. 2699 would cost $106 million over the 2005–2006 period. The majority of the costs of this bill would result from reviewing and issuing final determinations on petitions filed for existing and future food safety and warning notification laws. The remainder of the costs would stem from promulgating regulations to implement the bill.

The bill would impose restrictive limits on the time that FDA would have to review petitions and take final action. CBO assumes that FDA would not be able to fully comply with the time limits imposed under the bill. CBO's estimate of the annual cost of the petition review process reflects such a delay with the number of reviews peaking in 2008 and then declining. The estimate does not include any legal costs to the federal government that may be incurred should states, local governments, or private entities seek to challenge FDA's final rulings on petitions.

Estimated impact on state, local, and tribal governments: H.R. 2699 would prohibit states from establishing labeling requirements different from federal guidelines in a number of cases, including poisonous substances, color additives, products that could be contaminated with micro-organisms, food and color additives, and animal drugs. The bill also would prohibit states from requiring any warning notifications concerning food safety that are not identical to federal requirements. These preemptions of state regulatory authority would be intergovernmental mandates as defined in UMRA. However, the costs of complying with those mandates would be minimal and would not exceed the threshold established in UMRA ($60 million in 2004, adjusted annually for inflation).

Existing state laws that are not identical to federal requirements for the types of labels and warnings addressed by the bill could remain in effect for 180 days after enactment. During those 180 days, a state could petition the FDA for an exemption to the preemption or for the establishment of a national standard, and until the FDA takes final administrative action on the petition, the existing state law would remain in effect. States also could impose requirements that would not be identical to federal requirements to address an imminent health hazard. After issuing such requirements, states would have to file a petition with the FDA within 30 days. If states chose to petition FDA for exemptions from the federal prohibition on differing labeling requirements and warning notifications, they may incur costs depending on the type of requirement involved and subsequent legal actions. However, those activities, and any costs, would not be associated with complying with the mandate itself.

Estimated impact on the private sector: This bill contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Christopher J. Topoleski; Impact on State, Local, and Tribal Governments: Leo Lex; Impact on the Private Sector: Stuart Hagen.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section designates the title of the bill as the "National Uniformity for Food Act of 2004."

Section 2. National uniformity for food

Section 2 amends section 403A of the Federal Food Drug and Cosmetic Act (FFDCA) to expand current uniform labeling require-

ments to include food adulteration. The section also adds a new section 403B to the FFDCA that specifically requires uniformity in food safety warning notification requirements.

Section (a)(4) states for the purposes of paragraph (6) the new uniformity provisions for food adulteration and the new section 403B, the term "identical" means that the language is substantially the same language as the comparable provision of the Act, and that any difference does not result in the imposition of materially different requirements. For the purposes of this section and section 403A(a)(6), it is the Committee's intention that "identical" not be construed to mean the language of the states' food safety laws must be exactly the same. Rather, the language need only be substantially the same and does not lead to materially different results.

Section (a)(4) also clarifies that "any requirement for food" does not refer to procedures for Federal action. It is the Committee's intention that a requirement for food does not include the procedures a state utilizes to enforce its laws, but rather to the end requirements imposed on the food.

Section (b) redesignates sections 403B and 403C as 403C and 403D respectively, and inserts a new section 403B. The new section 403B provides that no state or political subdivision may directly or indirectly establish or continue in effect any notification requirement for food that provides for a warning concerning the safety of the food unless the state or political subdivision's requirement is identical to the notification requirement under the FFDCA. The Committee reiterates that the term "identical" means substantially similar that does not result in a materially different requirement.

The legislation defines "notification requirement" to include any mandatory disclosure requirement relating to the dissemination of information about a food by a manufacturer or distributor. The term "warning" is defined as any statement, vignette, or other representation that indicates, directly or indirectly, that the food presents or may present a hazard to health or safety.

A rule of construction provides that this section shall not be construed to prohibit a statement from conducting its notification, disclosure, or other dissemination of information, or prohibit any action taken relating to a mandatory recall, civil administrative order, embargo, detention order, or court proceeding involving food adulteration under a State statutory requirement identical to a food adulteration requirement under the FFDCA.

Section (b) provides for a petition process for states to receive an exemption for notification requirements that do not meet the uniformity requirements of this Act. A state notification requirement that was in effect on the date of enactment of this Act shall remain in effect for 180 days after the date of enactment.

For a state notification requirement that was in effect on the date of enactment of this Act, a state may submit a petition to the Secretary to provide by regulation an exemption to the uniformity requirements or for the Secretary to establish a new national standard. If the state submits a petition within 180 days of enactment of this Act, the state notification requirement shall remain in effect until final action until the Secretary either denies the petition, or if the petition is approved, the effective date of the final rule that is promulgated to provide the exemption or national standard. There is no ending date for a state requirement if the

final rule does not establish any condition for the requirement in the final rule.

Not later than 270 days after the enactment of the Act, the Secretary shall publish a notice in the Federal Register concerning any petition submitted for an exemption or new national standard for an existing state notification requirement. The Secretary shall provide 180 days for the public to comment on the petition. The Secretary shall take action on the petition not later than 360 days after the end of the public comment period.

The Secretary may provide for an exemption, under such conditions as the Secretary imposes, for a requirement that: protects an important public interest that would otherwise be unprotected in the absence of the exemption; would not cause the food to be in violation of any applicable requirement or prohibition under Federal law; and would not unduly burden interstate commerce, balancing the public interest of the State or political subdivision against the impact on interstate commerce.

The failure of the Secretary to comply with any timeframe set forth in subsection (b) shall constitute final agency action. For the purpose of judicial review the remedy available under this section is an order by the court to the Secretary to comply with a time period to take action. The court will determine that time period. If the Secretary fails to take action under any timeframe established in this subsection, the state notification shall remain in effect.

The legislation provides for a separate process for a petition for an exemption or national standard for notification requirement that was not effective at the date of enactment of this Act. The state may petition the Secretary to provide by regulation an exemption, under such conditions as the Secretary may impose, for a requirement that: protects an important public interest that would otherwise be unprotected in the absence of the exemption; would not cause the food to be in violation of any applicable requirement or prohibition under Federal law; and would not unduly burden interstate commerce, balancing the public interest of the state or political subdivision against the impact on interstate commerce.

The state may also petition the Secretary to establish by regulation a national standard regarding any requirement under the FFDCA or the Fair Packaging and Labeling Act relating to the regulation of a food.

The Secretary is required to publish the petition, within 30 days after the receipt, in the Federal Register. The Secretary must allow for public comment on the petition for a time period determined by the Secretary. Not later than 60 days after the end of the comment period, the Secretary shall take final agency action on the petition. If final agency action is not possible within 60 days, the Secretary must inform the petitioner why final agency action is not possible, the date final action will be taken, and the final action that will be taken or will likely be taken. In any event, the Secretary must take final action within 120 days after the end of the comment period.

The failure of the Secretary to comply with any timeframe set forth in subsection (b), shall constitute final agency action. For the purpose of judicial review, the remedy available under this section

is an order by the court to the Secretary to comply with a time period to take action. The court will determine that time period.

States would be allowed to respond to an imminent hazard even if such action would violate the uniformity requirements of 403A(a)(6) or subsection (a). Section (d) allows a state to take action under imminent hazard authority if the requirement is necessary to address an imminent hazard that is likely to result in serious health consequences or death. In addition, the state must have notified the Secretary about the matter involved, and the Secretary must not have already initiated enforcement action on the matter. The state must submit a petition for an exemption for a national standard not later than 30 days after the state establishes the requirement, and the state must have taken enforcement action with respect to compliance with the state law within 30 days of establishing the standard.

It is the Committee's intention that a state continues to have the ability to respond to imminent hazards to the safety of its food supply. This provision preserves a state's ability to respond to any immediate threat while ensuring coordination between the state and the FDA.

The Secretary shall take final agency action on a petition on an imminent hazard within 7 days of receiving the petition. The failure of the Secretary to comply with this timeframe shall represent final agency action for the purposes of judicial review. The remedy available for judicial review under this section shall be a court order for the Secretary to take action on the petition within a time period determined by the court. It is the Committee's intention that the State requirement under the imminent hazard authority shall remain in effect until final agency action is taken on the petition.

There is nothing in this section that shall be construed to modify or affect state product liability law.

There is nothing in this section that shall be construed to prevent a state or political subdivision of a state from establishing, enforcing, or continuing in effect a requirement that is identical to a requirement of this Act, whether or not the Secretary has promulgated a regulation or issued a policy statement relating to the requirement. It is the Committee's intention that states are free to provide warnings to the public if their laws are identical to the relevant provisions of Federal law. The term "identical," as defined earlier in the legislation, is to be construed as substantially similar and does not result in materially different requirements.

Nothing in this section or section 403A shall be construed to prevent a state or political subdivision of a state from establishing, enforcing, or continuing in effect a requirement relating to freshness dating, open date labeling, grade labeling, religious dietary labeling, organic or natural designation, returnable bottling labeling or a statement of geographic origin. It shall also not prevent a state or political subdivision of a state from establishing, enforcing, or continuing in effect a requirement relating to a consumer advisory relating to food sanitation that is imposed on a food establishment, or that is recommended by the Secretary under part 3–6 of the Food Code issued by the Food and Drug Administration.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL FOOD, DRUG, AND COSMETIC ACT

* * * * * * *

CHAPTER IV—FOOD

* * * * * * *

SEC. 403A. (a) Except as provided in subsection (b), no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—

(1) * * *

* * * * * * *

(4) any requirement for nutrition labeling of food that is not identical to the requirement of section 403(q), except a requirement for nutrition labeling of food which is exempt under subclause (i) or (ii) of section 403(q)(5)(A), [or]

(5) any requirement respecting any claim of the type described in section 403(r)(1) made in the label or labeling of food that is not identical to the requirement of section 403(r), except a requirement respecting a claim made in the label or labeling of food which is exempt under section 403(r)(5)(B)[.], *or*

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

Paragraph (3) shall take effect in accordance with section 6(b) of the Nutrition Labeling and Education Act of 1990. *For purposes of paragraph (6) and section 403B, the term "identical" means that the language under the laws of a State or a political subdivision of a State is substantially the same language as the comparable provision under this Act and that any differences in language do not result in the imposition of materially different requirements. For purposes of paragraph (6), the term "any requirement for a food" does not refer to provisions of this Act that relate to procedures for Federal action under this Act.*

(b) Upon petition of a State or a political subdivision of a State, the Secretary may exempt from subsection (a), under such conditions as may be prescribed by regulation, any State or local requirement that—

(1) * * *

* * * * * * *

The requirements of paragraphs (3) and (4) of section 403B(c) shall apply to any such petition, in the same manner and to the same extent as the requirements apply to a petition described in section 403B(c).

SEC. 403B. UNIFORMITY IN FOOD SAFETY WARNING NOTIFICATION REQUIREMENTS.

(a) UNIFORMITY REQUIREMENT.—

(1) IN GENERAL.—Except as provided in subsections (c) and (d), no State or political subdivision of a State may, directly or indirectly, establish or continue in effect under any authority any notification requirement for a food that provides for a warning concerning the safety of the food, or any component or package of the food, unless such a notification requirement has been prescribed under the authority of this Act and the State or political subdivision notification requirement is identical to the notification requirement prescribed under the authority of this Act.

(2) DEFINITIONS.—For purposes of paragraph (1)—

(A) the term "notification requirement" includes any mandatory disclosure requirement relating to the dissemination of information about a food by a manufacturer or distributor of a food in any manner, such as through a label, labeling, poster, public notice, advertising, or any other means of communication, except as provided in paragraph (3);

(B) the term "warning", used with respect to a food, means any statement, vignette, or other representation that indicates, directly or by implication, that the food presents or may present a hazard to health or safety; and

(C) a reference to a notification requirement that provides for a warning shall not be construed to refer to any requirement or prohibition relating to food safety that does not involve a notification requirement.

(3) CONSTRUCTION.—Nothing in this section shall be construed to prohibit a State from conducting the State's notification, disclosure, or other dissemination of information, or to prohibit any action taken relating to a mandatory recall, civil administrative order, embargo, detention order, or court proceeding involving food adulteration under a State statutory requirement identical to a food adulteration requirement under this Act.

(b) REVIEW OF EXISTING STATE REQUIREMENTS.—

(1) EXISTING STATE REQUIREMENTS; DEFERRAL.—Any requirement that—

(A)(i) is a State notification requirement that expressly applies to a specified food or food component and that provides for a warning described in subsection (a) that does not meet the uniformity requirement specified in subsection (a); or

(ii) is a State food safety requirement described in section 403A(6) that does not meet the uniformity requirement specified in that paragraph; and

(B) is in effect on the date of enactment of the National Uniformity for Food Act of 2004,

shall remain in effect for 180 days after that date of enactment.

(2) STATE PETITIONS.—With respect to a State notification or food safety requirement that is described in paragraph (1), the State may petition the Secretary for an exemption or a national standard under subsection (c). If a State submits such a peti-

tion within 180 days after the date of enactment of the National Uniformity for Food Act of 2004, the notification or food safety requirement shall remain in effect in accordance with subparagraph (C) of paragraph (3), and the time periods and provisions specified in subparagraphs (A) and (B) of such paragraph shall apply in lieu of the time periods and provisions specified in subsection (c)(3) (but not the time periods and provisions specified in subsection (d)(2)).

(3) ACTION ON PETITIONS.—

(A) PUBLICATION.—Not later than 270 days after the date of enactment of the National Uniformity for Food Act of 2004, the Secretary shall publish a notice in the Federal Register concerning any petition submitted under paragraph (2) and shall provide 180 days for public comment on the petition.

(B) TIME PERIODS.—Not later than 360 days after the end of the period for public comment, the Secretary shall take final agency action on the petition.

(C) ACTION.—

(i) IN GENERAL.—With respect to a State that submits to the Secretary a petition in accordance with paragraph (2), the notification or food safety requirement involved shall remain in effect during the period beginning on the date of enactment of the National Uniformity for Food Act of 2004 and ending on the applicable date under subclause (I) or (II), as follows:

(I) If the petition is denied by the Secretary, the date of such denial.

(II) If the petition is approved by the Secretary, the effective date of the final rule that is promulgated under subsection (c) to provide an exemption or national standard pursuant to the petition, except that there is no applicable ending date under this subparagraph for a provision of State law that is part of such State requirement in any case in which the final rule does not establish any condition regarding such provision of law.

(ii) NONCOMPLIANCE OF SECRETARY REGARDING TIMEFRAMES.—

(I) JUDICIAL REVIEW.—The failure of the Secretary to comply with any requirement of subparagraph (A) or (B) shall constitute final agency action for purposes of judicial review. If the court conducting the review determines that the Secretary has failed to comply with the requirement, the court shall order the Secretary to comply within a period determined to be appropriate by the court.

(II) STATUS OF STATE REQUIREMENT.—With respect to a State that submits to the Secretary a petition in accordance with paragraph (2), if the Secretary fails to take final agency action on the petition within the period that applies under subparagraph (B), the notification or food safety require-

ment involved remains in effect in accordance with clause (i).

(c) EXEMPTIONS AND NATIONAL STANDARDS.—

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

(A) protects an important public interest that would otherwise be unprotected, in the absence of the exemption;

(B) would not cause any food to be in violation of any applicable requirement or prohibition under Federal law; and

(C) would not unduly burden interstate commerce, balancing the importance of the public interest of the State or political subdivision against the impact on interstate commerce.

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

(3) ACTION ON PETITIONS.—

(A) PUBLICATION.—Not later than 30 days after receipt of any petition under paragraph (1) or (2), the Secretary shall publish such petition in the Federal Register for public comment during a period specified by the Secretary.

(B) TIME PERIODS FOR ACTION.—Not later than 60 days after the end of the period for public comment, the Secretary shall take final agency action on the petition or shall inform the petitioner, in writing, the reasons that taking the final agency action is not possible, the date by which the final agency action will be taken, and the final agency action that will be taken or is likely to be taken. In every case, the Secretary shall take final agency action on the petition not later than 120 days after the end of the period for public comment.

(4) JUDICIAL REVIEW.—The failure of the Secretary to comply with any requirement of this subsection shall constitute final agency action for purposes of judicial review. If the court conducting the review determines that the Secretary has failed to comply with the requirement, the court shall order the Secretary to comply within a period determined to be appropriate by the court.

(d) IMMINENT HAZARD AUTHORITY.—

(1) IN GENERAL.—A State may establish a requirement that would otherwise violate section 403A(a)(6) or subsection (a), if—

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

(B) the State has notified the Secretary about the matter involved and the Secretary has not initiated enforcement action with respect to the matter;

(C) a petition is submitted by the State under subsection (c) for an exemption or national standard relating to the re-

quirement not later than 30 days after the date that the State establishes the requirement under this subsection; and

(D) the State institutes enforcement action with respect to the matter in compliance with State law within 30 days after the date that the State establishes the requirement under this subsection.

(2) ACTION ON PETITION.—

(A) IN GENERAL.—The Secretary shall take final agency action on any petition submitted under paragraph (1)(C) not later than 7 days after the petition is received, and the provisions of subsection (c) shall not apply to the petition.

(B) JUDICIAL REVIEW.—The failure of the Secretary to comply with the requirement described in subparagraph (A) shall constitute final agency action for purposes of judicial review. If the court conducting the review determines that the Secretary has failed to comply with the requirement, the court shall order the Secretary to comply within a period determined to be appropriate by the court.

(3) DURATION.—If a State establishes a requirement in accordance with paragraph (1), the requirement may remain in effect until the Secretary takes final agency action on a petition submitted under paragraph (1)(C).

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

(f) NO EFFECT ON IDENTICAL LAW.—Nothing in this section relating to a food shall be construed to prevent a State or political subdivision of a State from establishing, enforcing, or continuing in effect a requirement that is identical to a requirement of this Act, whether or not the Secretary has promulgated a regulation or issued a policy statement relating to the requirement.

(g) NO EFFECT ON CERTAIN STATE LAW.—Nothing in this section or section 403A relating to a food shall be construed to prevent a State or political subdivision of a State from establishing, enforcing, or continuing in effect a requirement relating to—

(1) freshness dating, open date labeling, grade labeling, a State inspection stamp, religious dietary labeling, organic or natural designation, returnable bottle labeling, unit pricing, or a statement of geographic origin; or

(2) a consumer advisory relating to food sanitation that is imposed on a food establishment, or that is recommended by the Secretary, under part 3–6 of the Food Code issued by the Food and Drug Administration and referred to in the notice published at 64 Fed. Reg. 8576 (1999) (or any corresponding similar provision of such a Code).

(h) DEFINITIONS.—In section 403A and this section:

(1) The term "requirement", used with respect to a Federal action or prohibition, means a mandatory action or prohibition established under this Act or the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.), as appropriate, or by a regulation issued under or by a court order relating to, this Act or the Fair Packaging and Labeling Act, as appropriate.

(2) The term "petition" means a petition submitted in accordance with the provisions of section 10.30 of title 21, Code of

Federal Regulations, containing all data and information relied upon by the petitioner to support an exemption or a national standard.

DIETARY SUPPLEMENT LABELING EXEMPTIONS

SEC. ⟦403B⟧ *403C*. (a) IN GENERAL.—A publication, including an article, a chapter in a book, or an official abstract of a peer-reviewed scientific publication that appears in an article and was prepared by the author or the editors of the publication, which is reprinted in its entirety, shall not be defined as labeling when used in connection with the sale of a dietary supplement to consumers when it—

(1) * * *

* * * * * * *

DISCLOSURE

SEC. ⟦403C⟧ *403D*. (a) No provision of section 201(n), 403(a), or 409 shall be construed to require on the label or labeling of a food a separate radiation disclosure statement that is more prominent than the declaration of ingredients required by section 403(i)(2).

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DISSENTING VIEWS

We strongly oppose H.R. 2699, National Uniformity in Food Act of 2003, for both procedural and substantive reasons. This is a major piece of legislation that would have serious impacts on the nation's regulation of food safety, and state officials warn that it would jeopardize our ability to fight bioterrorism. This legislation was reported by the Committee without the benefit of any Subcommittee hearings or markups, without full Committee hearings, and without any Committee effort to develop a factual record to support this legislation. In short, the Committee took none of the expected and required action to develop sound policy and defensible legislative language.

As a result, H.R. 2699 is substantively deeply flawed. This bill, which has been touted as improving the safety of our nation's food supply, will have precisely the opposite effect. It would eliminate almost every state and local law that provides greater consumer protection than our limited federal food laws. Its effect is not to raise the level of protection from unsafe food, but to protect the food industry from strong state consumer protection laws.

Food safety is simply not an appropriate target for federal preemption. Unlike drugs and medical devices, which are primarily regulated by the federal government, states are the primary guardians of food safety. Food safety is not pervasively regulated at the federal level. State and local governments conduct fully 80% of food safety inspections. And the FDA relies heavily on the states to carry out food safety activities under state laws, and even to ensure the safety of imported foods.

Despite the predominant role played by the states and local governments in protecting Americans from unsafe food, the bill recklessly eliminates the great bulk of state and local food safety laws. H.R. 2699 is a sweeping law with potentially disastrous consequences for the safety of the American food supply. First, it eliminates all state and local laws that are not identical to federal law. Second, it specifically preempts all existing warnings about the safety of foods.

Effect of preemption of all non-identical laws

State food safety officials have repeatedly warned that the bill would disrupt the day-to-day enforcement activities of state and local governments and jeopardize their ability to protect their citizens from unsafe foods. By eliminating all laws that are not identical to federal law, this bill will leave most state governments without food safety laws to enforce, for an indefinite period. State and local governments whose laws are preempted will not even be able to warn their citizens about the presence of poisonous contaminants in local food. This will leave consumers with only the most limited federal protection from unsafe foods until the effects

of this bill have been worked out. That is likely to be a lengthy period, because this complex, ambiguous bill will be extensively litigated in the courts, and it could take years for state legislatures to laboriously reenact all of their food laws.

State officials have also warned that this bill will paralyze the states' ability to respond to bioterrorist threats to the food supply. The Association of Food and Drug Officials testified before congress earlier this year, at a hearing before the Subcommittee on Health on food security and bioterrorism, that H.R. 2699 "will effectively eliminate our nation's food biosecurity shields, and will undermine our whole food safety and biosurveillance capability." As the National Association of State Departments of Agriculture said in a letter to this Committee, "It is inconceivable that the committee would consider radically altering the existing food safety system at a time when many experts agree our food supply is vulnerable."

It has been suggested that the imminent hazard authority in the bill would allow states and local governments to address emergencies. In fact, the imminent hazard authority in the bill is burdensome and impractical. Having already swept arise all state and local laws that are not identical to federal law, the imminent hazard provision then requires the state facing an emergency to first enact a requirement (i.e., pass a law) that would address the problem, notify the federal government about the situation and then make a determination about whether the federal government is going to act on the threat. This is an unrealistic approach for addressing a true emergency.

For example, the bill invalidates most state laws against contaminants in the food supply (unless they are identical to federal law). If a state whose food contamination laws had been preempted believed that a particular warehouse or truck contained contaminated food, to take advantage of the imminent hazard authority, the state would have to first pass a law to address the contamination, notify the federal government about the situation, and then wait to see if the federal government wanted to act. By the time these steps had been taken, the contaminated food could be dispersed through commerce. This is hardly a practical answer to a suspected bioterrorist threat or other emergency.

This puts aside the important threshold question of whether a state might even be prevented from learning of an imminent hazard once many of its key safety laws were preempted. Since testimony was never heard on these provisions it is unclear how the authors of the bill anticipate these provisions to work.

Second, imminent hazard authority is only available if the threat is likely to result in serious adverse health consequences or death. This is a very high standard to meet in ordinary food safety situations, where, for example, food contamination is suspected but not confirmed. The imminent hazard authority is simply not an answer to most food safety problems a state or local government encounters every day.

Preemption of specific laws

The preemption of existing warnings about the safety of specific foods and non-identical laws would also trample states' rights by preempting many state laws that are designed to protect their citi-

zens against problems particular to their food supplies. For example:

- It would nullify laws in California, Louisiana, and Florida requiring warning labels on shellfish.
- It would eliminate laws in Wisconsin and Michigan regulating smoked fish.
- It would preempt laws in Alabama setting minimum nutritional requirements for grits and setting tolerances for infested, moldy, decayed pecans or other nuts.
- It would nullify laws in Arkansas, Louisiana, and Mississippi requiring labeling about the source of catfish, and in Alaska requiring labeling about the source on salmon.
- It would eliminate numerous laws in Florida concerning the labeling of citrus fruits and juices.
- It would preempt laws in Rhode Island regulating the packing of fish in casks, requiring disclosure of whether uncooked fish and shellfish have been frozen, and regulating the labeling of packages of apples.
- It would eliminate laws in Wisconsin requiring labels showing the age and type of cheese made in the state.

The bill would also eliminate many state and local laws setting higher consumer protection standards than are set by the federal government. For example:

- It would nullify laws in California, Colorado, Florida, Hawaii, Illinois, Indiana, Kansas, Maryland, Michigan, Montana, New Hampshire, North Dakota, Oregon, South Carolina, Texas, Utah, and Virginia allowing the state to adopt tolerances for food and color additives that are more protective of human health than federal tolerances.
- It would nullify laws in Arkansas, Illinois, and Pennsylvania imposing additional requirements for egg safety.
- It would eliminate laws in California, North Dakota, and Pennsylvania requiring disclosure of the presence of specific toxic chemicals in foods.

The proponents of the bill concede that one of its primary purposes is to pre-empt a specific California law, known as Proposition 65. Proposition 65 warnings on food if the food contains chemicals known to cause cancer or birth defects at levels which cause significant risk. While Proposition 65 has resulted in some warnings, it has more importantly created a market incentive to remove dangerous chemicals from foods and to bring safe foods to market. The California Attorney General reports that Proposition 65 has been a useful supplement to federal standards.

The proponents of this bill have offered no justification for the elimination of these consumer protection laws, nor pointed to any unreasonable burden to which they have been subjected as a result of these laws. The implications of this bill are vast, yet no hearings have ever been held on HR 2699, and certainly no examination of the consequences of the bill since the escalation of the bioterrorist threat. We owe it to the American people to carefully consider the consequences of such a sweeping bill, and certainly not to rush it through the legislative process at the end of session.

Broad opposition to H.R. 2699

Given the short notice for consideration of this legislation and the abbreviated Committee process, all key stakeholder groups have not been contacted for their position on this bill. For example, the Bush administration has not taken a position on this bill. However, even in the short time available, numerous groups have taken a position strongly opposing H.R. 2699. No list of supporters have been provided. The following groups oppose H.R. 2699:

GOVERNMENTAL GROUPS

The Association of Food and Drug Officials
National Association of State Departments of Agriculture
Attorney General of California
Wisconsin Department of Agriculture, Trade and Consumer Protection

NATIONAL GROUPS

Center for Science in the Public Interest
Consumers Union
League of Conservation Voters
Environmental Defense
Natural Resources Defense Council
National Environmental Trust
US Public Interest Research Group
Greenpeace
Center for International Environmental Law
The Ocean Conservancy
Oceana

CALIFORNIA GROUPS

California Communities Against Toxics
California League of Conservation Voters
California League for Environmental Enforcement Now
California for Alternatives to Toxics
Communities for a Better Environment
Ecological Rights Foundation
Environmental Law Foundation
Environmental Working Group/EWG Action Fund
Mateel Environmental Law Foundation
Natural Resources Defense Council
Physicians for Social Responsibility—Los Angeles
SF Bay Area—Physicians for Social Responsibility
Sierra Club—California

For all of these reasons, we strongly oppose H.R. 2699.

HENRY A. WAXMAN.
LOIS CAPPS.
HILDA L. SOLIS.
GENE GREEN.
SHERROD BROWN.
TOM ALLEN.
ANNA G. ESHOO.
DIANA DEGETTE.
EDWARD J. MARKEY.

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