

119TH CONGRESS
2D SESSION

S. 4940

To ensure the continued availability of specialized infant formula regulated by the Food and Drug Administration for preterm babies.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2026

Ms. ERNST introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure the continued availability of specialized infant formula regulated by the Food and Drug Administration for preterm babies.

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 “Specialized Infant For-
5 mula Protection Act”.

6 **SEC. 2. PURPOSE AND FINDINGS.**

7 (a) PURPOSE.—The purpose of this Act is to ensure
8 the continued availability of specialized infant formula
9 regulated by the Food and Drug Administration for
10 preterm babies.

1 (b) FINDINGS.—Congress finds the following:

2 (1) Each year, nearly 380,000 infants are born
3 preterm in the United States. Each year, specialized,
4 preterm infant formula is manufactured and ordered
5 by hospitals to nourish hospitalized and other
6 newborns who are unable to be fed by their mother’s
7 milk.

8 (2) Preterm infants in critical and intensive
9 care facilities depend on access to specialized
10 preterm infant formula, formula which is regulated
11 by the Food and Drug Administration.

12 (3) Efforts by some parties to engage in proce-
13 dural gamesmanship through court and jurisdiction
14 shopping in State courts for cases related to preterm
15 infant formula may lead to a limited domestic supply
16 of critical preterm infant formula for vulnerable ba-
17 bies in the United States.

18 (4) Because preterm infant formula is under
19 the jurisdiction and oversight of the Food and Drug
20 Administration, it is in the best interest of preterm
21 babies and their families who depend on specialized,
22 preterm formula to have Federal courts maintain ju-
23 risdiction over adjudication of civil claims, thus en-
24 suring uniform judicial remedies.

1 **SEC. 3. FEDERAL JURISDICTION OVER CERTAIN INFANT**
 2 **FORMULA ACTIONS.**

3 Section 1332 of title 28, United States Code, is
 4 amended—

5 (1) by redesignating subsection (e) as sub-
 6 section (f); and

7 (2) by inserting after subsection (d) the fol-
 8 lowing:

9 “(e) **INFANT FORMULA MASS CLAIMS.**—

10 “(1) **IN GENERAL.**—The district courts shall
 11 have original jurisdiction of any civil action arising
 12 out of alleged injury caused in whole or in part by
 13 preterm infant formula regulated by the Food and
 14 Drug Administration, if—

15 “(A) any plaintiff and any defendant in
 16 the action are citizens of different States; or

17 “(B) any plaintiff is a citizen of a State
 18 and any defendant is a citizen or subject of a
 19 foreign state.

20 “(2) **RULE OF CONSTRUCTION.**—Nothing in
 21 this subsection shall be construed to limit the au-
 22 thority of the judicial panel on multidistrict litiga-
 23 tion under section 1407.”.

24 **SEC. 4. REMOVAL.**

25 Section 1441 of title 28, United States Code, is
 26 amended by adding at the end the following:

1 “(g) INFANT FORMULA ACTIONS.—Any civil action
2 bought in a State court over which the district courts of
3 the United States would have jurisdiction under section
4 1332(e) shall be removable by any defendant without the
5 consent of all defendants.”.

6 **SEC. 5. APPLICABILITY.**

7 This Act, and the amendments made by this Act,
8 shall apply to any civil action pending on, or filed on or
9 after, the date of enactment of this Act, without regard
10 to the State court filing date.

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