

106TH CONGRESS  
1ST SESSION

# H. R. 2129

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

JUNE 10, 1999

Mr. BURR of North Carolina (for himself, Mr. GREENWOOD, Mr. HALL of Texas, Mr. UPTON, Mr. STRICKLAND, Mr. EHRLICH, Mr. TOWNS, Mr. SHADEGG, Mr. BOUCHER, Mr. PICKERING, Mr. FORD, Mr. SHIMKUS, Mr. WYNN, and Mr. BLUNT) introduced the following bill; which was referred to the Committee on 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,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “National Uniformity  
5       for Food Act of 1999”.

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

2 (a) NATIONAL UNIFORMITY.—Section 403A(a) of the  
3 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343–  
4 1(a)) is amended—

5 (1) by striking “or” at the end of paragraph  
6 (4);

7 (2) in paragraph (5), by striking the period and  
8 inserting a comma; and

9 (3) by adding at the end the following:

10 “(6) any requirement for the labeling of food  
11 described in section 403(j), or 403(s), that is not  
12 identical to the requirement of such section, or

13 “(7) any requirement for a food described in  
14 section 402(a)(1), 402(a)(2), 402(a)(6), 402(a)(7),  
15 402(c), 402(f), 402(g), 404, 406, 408, 409, 512, or  
16 721(a), that is not identical to the requirement of  
17 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 (b) and (c), 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, but not  
25 relating to notification, disclosure, or other dis-

1           semination of information by a State or political  
2           subdivision;

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

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

13       “(b) EXEMPTIONS AND NATIONAL STANDARDS.—

14       “(1) EXEMPTIONS.—Any State may petition  
15       the Secretary to provide by regulation, after pro-  
16       viding notice and an opportunity for written and  
17       oral presentation of views during a public comment  
18       period described in paragraph (3), an exemption  
19       from paragraph (6) or (7) of section 403A(a) or  
20       subsection (a), for a requirement of the State or a  
21       political subdivision of the State. The Secretary may  
22       provide such an exemption, under such conditions as  
23       the Secretary may impose, for such a requirement  
24       that—

1           “(A) protects an important public interest  
2           that would otherwise be unprotected, in the ab-  
3           sence of the exemption;

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

7           “(C) would not unduly burden interstate  
8           commerce, balancing the importance of the pub-  
9           lic interest of the State or political subdivision  
10          against the impact on interstate commerce.

11          “(2) NATIONAL STANDARDS.—Any State may  
12          petition the Secretary to establish by regulation,  
13          after providing notice and an opportunity for written  
14          and oral presentation of views during a public com-  
15          ment period described in paragraph (3), a national  
16          standard respecting any requirement under this Act  
17          or the Fair Packaging and Labeling Act (15 U.S.C.  
18          1451 et seq.) relating to the regulation of a food.

19          “(3) ACTION ON PETITIONS.—

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

1           “(B) TIME PERIODS FOR ACTION.—Not  
2           later than 60 days after the end of the period  
3           for public comment, the Secretary shall take ac-  
4           tion on the petition. If the Secretary is unable  
5           to take action on the petition during the 60-day  
6           period, the Secretary shall inform the peti-  
7           tioner, in writing, the reasons that taking the  
8           action is not possible, the date by which the ac-  
9           tion will be taken, and the action that will be  
10          taken or is likely to be taken. In every case, the  
11          Secretary shall take action on the petition not  
12          later than 120 days after the end of the period  
13          for public comment.

14          “(4) JUDICIAL REVIEW.—The failure of the  
15          Secretary to comply with any requirement of this  
16          subsection shall constitute final agency action for  
17          purposes of judicial review. If the court conducting  
18          the review determines that the Secretary has failed  
19          to comply with the requirement, the court shall  
20          order the Secretary to comply within a period deter-  
21          mined to be appropriate by the court.

22          “(c) IMMINENT HAZARD AUTHORITY.—

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

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

5           “(B) the State has informed the Secretary  
6           about the matter involved and the Secretary  
7           has not initiated enforcement or other regu-  
8           latory action with respect to the matter;

9           “(C) a petition is submitted by the State  
10          under subsection (b) for an exemption or na-  
11          tional standard relating to the requirement not  
12          later than the date that the State establishes  
13          the requirement under this subsection; and

14          “(D) the State institutes enforcement ac-  
15          tion with respect to the matter in compliance  
16          with State law following submission of such pe-  
17          tition.

18          “(2) ACTION ON PETITION.—

19                 “(A) IN GENERAL.—The Secretary shall  
20                 take action on any petition submitted under  
21                 paragraph (1)(C) not later than 7 days after  
22                 the petition is received, notwithstanding sub-  
23                 section (b)(3)(B) and the public comment re-  
24                 quirements of subsection (b).

1           “(B) JUDICIAL REVIEW.—The failure of  
2           the Secretary to comply with the requirement  
3           described in subparagraph (A) shall constitute  
4           final agency action for purposes of judicial re-  
5           view. If the court conducting the review deter-  
6           mines that the Secretary has failed to comply  
7           with the requirement, the court shall order the  
8           Secretary to comply within a period determined  
9           to be appropriate by the court.

10          “(3) DURATION.—If a State establishes a re-  
11          quirement in accordance with paragraph (1), the re-  
12          quirement may remain in effect until the Secretary  
13          acts on a petition submitted under paragraph  
14          (1)(C).

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

18          “(e) NO EFFECT ON IDENTICAL LAW.—Nothing in  
19          this section or section 403A relating to a food shall be  
20          construed to prevent a State or political subdivision of a  
21          State from establishing, enforcing, or continuing in effect  
22          a requirement that is identical to a requirement of this  
23          Act, whether or not the Secretary has promulgated a regu-  
24          lation or issued a policy statement relating to the require-  
25          ment.



1       “(f) NO EFFECT ON CERTAIN STATE LAW.—Nothing  
2 in this section or section 403A relating to a food shall  
3 be construed to prevent a State or political subdivision of  
4 a State from establishing, enforcing, or continuing in ef-  
5 fect a requirement relating to—

6               “(1) freshness dating, open date labeling, grade  
7 labeling, a State inspection stamp, religious dietary  
8 labeling, organic or natural designation, returnable  
9 bottle labeling, unit pricing, or a statement of geo-  
10 graphic origin; or

11              “(2) a consumer advisory relating to food sani-  
12 tation that is imposed on a food service establish-  
13 ment, or that is recommended by the Secretary,  
14 under part 3–6 of the Food Code issued by the Food  
15 and Drug Administration and referred to in the no-  
16 tice published at 64 Fed. Reg. 8576 (1999) (or any  
17 corresponding similar provision of such a Code).”.

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

21       “The requirements of paragraphs (3) and (4) of section  
22 403B(b) shall apply to any such petition, in the same  
23 manner and to the same extent as the requirements apply  
24 to a petition described in section 403B(b).”.

○