

109TH CONGRESS
1ST SESSION

H. R. 1540

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2005

Mr. GARY G. MILLER of California (for himself and Mr. CALVERT) 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 2005”.

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;

22 (B) the technological capability of remov-
23 ing contaminants from public drinking water
24 supplies; and

1 (C) the importance of assuring that drink-
2 ing water is affordable to all Americans.

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

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

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

22 (8) The costs of defending against multiple
23 legal claims can be financially burdensome to any
24 water provider, but especially to small systems, and
25 the imposition of such costs cannot be justified when

1 a supplier complies with the requirements of the
2 Safe Drinking Water Act.

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

4 Section 1449 of the Safe Drinking Water Act (42
5 U.S.C. 300j–8) is amended as follows:

6 (1) In subsection (e)—

7 (A) in the first sentence, by striking
8 “Nothing” and inserting “Except as provided in
9 subsection (f), nothing”;

10 (B) at the end of the first sentence, by
11 striking “or to seek any other relief”;

12 (C) in the second sentence, by striking
13 “Nothing” and inserting “Except as provided in
14 subsection (f), nothing”; and

15 (D) by inserting after the first sentence
16 the following: “Nothing in subsection (f) creates
17 a new cause of action, and, except as otherwise
18 explicitly provided in this title, nothing in this
19 title expands liability otherwise imposed or lim-
20 its any defense otherwise available under Fed-
21 eral or State law.”.

22 (2) By adding the following new subsection at
23 the end thereof:

24 “(f)(1) No public water system shall be liable in a
25 civil suit brought before any Federal or State court for

1 damages arising from injury (including personal injury,
2 death, or property damage) allegedly caused by delivery
3 of contaminated water, unless the court determines that
4 the plaintiff has established the following:

5 “(A) In the case of a regulated contaminant,
6 the plaintiff must establish that each of the fol-
7 lowing criteria are met:

8 “(i) The substance in the delivered water
9 which the plaintiff claims caused the injury was
10 subject to a Federal or State regulation pre-
11 scribed under this Act at the time of delivery.

12 “(ii) There is substantial scientific evidence
13 that the substance in the delivered water which
14 the plaintiff claims caused the injury was of
15 such a nature, and in such amounts, that it was
16 reasonably likely to cause the kind of injury of
17 which the plaintiff complains.

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

20 “(iv) The violation was negligent.

21 “(v) The violation caused the injury.

22 “(B) In the case of an unregulated contami-
23 nant, the plaintiff must establish that each of the
24 following criteria are met:

1 “(i) The substance in the delivered water
2 which the plaintiff claims caused the injury was
3 not subject to any requirements prescribed
4 under this Act at the time of delivery.

5 “(ii) There is substantial scientific evidence
6 that the substance in the delivered water which
7 the plaintiff claims caused the injury was of
8 such a nature, and in such amounts, that it was
9 reasonably likely to cause the kind of injury of
10 which the plaintiff complains.

11 “(iii) The injury actually was caused by
12 delivery of water that contained such a sub-
13 stance.

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

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

21 “(2) The court shall, in a special pretrial proceeding,
22 subject to the requirements of paragraph (3), determine
23 whether the plaintiff has established either that criteria
24 in clauses (i), (ii), and (iii) of paragraph (1)(A) or criteria

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

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

11 “(A) requirements for drinking water quality
12 adequately protect the public;

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

15 “(C) public water systems are in compliance
16 with such requirements.”.

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