II

111TH CONGRESS
2D SESSION

# S. 3114

To improve communication to consumers when there is a food recall.

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IN THE SENATE OF THE UNITED STATES

MARCH 15, 2010

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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# A BILL

To improve communication to consumers when there is a food recall.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Consumer Recall Notification Act''.

**SEC. 2. IMPROVING COMMUNICATION TO THE PUBLIC REGARDING CLASS I FOOD RECALLS.**

(a) DEFINITIONS.—In this section:

(1) CLASS I RECALL.—The term ''Class I recall'' refers to a food recall described in section 7.3(m)(1) of title 21, Code of Federal Regulations.

(2) FACILITY.—The term ''facility'' has the meaning given that term in section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350d).

(b) COMMUNICATION OF INFORMATION.—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs and in consultation with the Secretary of Agriculture, shall improve communication between State entities, State and local health departments, and facilities in order to provide consumers with more, and timely, notification of Class I recalls by—

(1) developing and distributing national and regional advisories concerning Class I recalls;

(2) developing standardized formats for such advisories, in written and broadcast form, to be used by Federal, State, and local health or food safety agencies; and

(3) providing frontline health professionals, such as emergency department practitioners, pediatricians, and family practitioners, with information about symptoms to document and tests that should be performed to diagnose foodborne illness in relation to specific regional outbreaks that may occur as a result of an adulterated product.

(c) DISTRIBUTION OF INFORMATION.—

(1) REQUIREMENT TO NOTIFY RETAILERS AND RESTAURANTS.—A facility that is subject to a Class I recall or a supplier that supplied products subject to such a recall shall notify applicable retail establishments and restaurants within 24 hours of the public announcement of such recall.

(2) INFORMATION.—In order to distribute information as necessary to carry out this Act, the Commissioner of Food and Drugs may, notwithstanding any other provision of law—

(A) share commercial or financial information and lists of facilities registered with such Commissioner, with Federal, State, local, and foreign agencies, provided such agencies assure confidentially of the information;

(B) publish on the Internet website of the Food and Drug Administration a list of retail establishments, restaurants, and locations that sell or have sold products that are subject to a Class I recall; and

(C) require on-site notification of a recalled product by posting notification in the freezer case or shelving unit in the retail establishment where the product is sold.

(3) ENFORCEMENT.—A facility that has not provided a notification as described under paragraph (1) shall be liable to the United States for a civil penalty in an amount of $1,000 per day, per notification of each level of distribution, that has not been made within 24 hours of the public announcement of the applicable Class I recall. Paragraphs (5), (6), (7) of section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) shall apply to a violation described in the preceding sentence in the same manner as such paragraphs apply to a violation of paragraph (1) of such section 303(f).

(d) NOTIFICATION TO CONSUMERS BY RETAIL ESTABLISHMENTS.—

(1) IN GENERAL.—Retail establishments that use a customer card system to track customer purchases or demographics shall use such tracking information in the event of a Class I recall to notify those customers that purchased a recalled product of the dangers of eating such product. Customers shall be notified by phone using the phone number the customer used to apply for the card and a letter mailed to the address the customer used to apply for the card.

(2) ENFORCEMENT.—A retail establishment that fails to comply with paragraph (1) shall be liable to the United States for a civil penalty in an amount of $100 per applicable customer for which a notification of such recall has not been attempted. Paragraphs (5), (6), (7) of section 303(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 333(f)) shall apply to a violation described in the preceding sentence in the same manner as such paragraphs apply to a violation of paragraph (1) of such section 303(f).

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