

115TH CONGRESS
2D SESSION

S. 3019

To amend the Fair Packaging and Labeling Act to require that Federal and State mandated information declarations and labeling requirements applicable to the chemical composition of, and radiation emitted by, consumer products meet minimum scientific standards to deliver accurate and clear information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2018

Mr. MORAN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Fair Packaging and Labeling Act to require that Federal and State mandated information declarations and labeling requirements applicable to the chemical composition of, and radiation emitted by, consumer products meet minimum scientific standards to deliver accurate and clear information, 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 “Accurate Labels Act”.

1 **SEC. 2. STANDARD FOR PRODUCT LABELING INFORMATION**
2 **REGARDING CHEMICAL COMPOSITION AND**
3 **RADIATION.**

4 (a) IN GENERAL.—The Fair Packaging and Labeling
5 Act (15 U.S.C. 1451 et seq.) is amended by adding at
6 the end the following:

7 **“SEC. 14. STANDARD FOR PRODUCT LABELING INFORMA-**
8 **TION REGARDING CHEMICAL COMPOSITION**
9 **AND RADIATION.**

10 “(a) DEFINITIONS.—In this section:

11 “(1) BEST AVAILABLE SCIENCE.—The term
12 ‘best available science’ means science—

13 “(A) that is conducted in accordance with
14 sound and objective scientific practices;

15 “(B) the findings and underlying data of
16 which are—

17 “(i) reliable; and

18 “(ii) if available, peer-reviewed; and

19 “(C) that uses data that is collected by—

20 “(i) an accepted method; or

21 “(ii) the best available method if the
22 reliability of the method and the nature of
23 the decision to which the method applies
24 justifies the use of the data.

1 “(2) CONSTITUENT.—The term ‘constituent’
 2 means any organic or inorganic chemical substance
 3 of a particular molecular identity.

4 “(3) CONSUMER PRODUCT.—The term ‘con-
 5 sumer product’ has the meaning given the term in
 6 section 3(a) of the Consumer Product Safety Act
 7 (15 U.S.C. 2052(a)).

8 “(4) COVERED DECLARATION REQUIREMENT.—
 9 The term ‘covered declaration requirement’ means a
 10 legally enforceable requirement that—

11 “(A) requires a responsible person to dis-
 12 play or communicate covered information to a
 13 consumer; and

14 “(B) may be provided through—

15 “(i) a statement;

16 “(ii) a notice;

17 “(iii) a caution;

18 “(iv) a warning;

19 “(v) a symbol;

20 “(vi) a pictogram;

21 “(vii) a vignette;

22 “(viii) packaging information;

23 “(ix) an insert;

24 “(x) a sign;

25 “(xi) a pamphlet;

- 1 “(xii) an instruction;
- 2 “(xiii) a list of ingredients;
- 3 “(xiv) ingredient declaration informa-
- 4 tion;
- 5 “(xv) a database;
- 6 “(xvi) an internet website; or
- 7 “(xvii) other media, including social
- 8 media.

9 “(5) COVERED INFORMATION.—

10 “(A) IN GENERAL.—The term ‘covered in-

11 formation’ means information that—

12 “(i) relates to—

13 “(I) a product constituent; or

14 “(II) radiation emitted by a cov-

15 ered product; and

16 “(ii) expressly or by implication con-

17 veys a claim regarding or characterizing

18 the relationship between any constituent or

19 radiation and—

20 “(I) a disease;

21 “(II) a toxicological endpoint; or

22 “(III) a health-related condition.

23 “(B) IMPLIED CLAIMS.—For the purposes

24 of subparagraph (A)(ii), an implied claim in-

25 cludes a situation in which an item described in

1 clause (i), (v), (vi), (vii), or (xvii) of paragraph
2 (4)(B) suggests, within the context in which the
3 item is presented, that a relationship exists be-
4 tween the presence or level of a constituent in
5 a covered product, or the level of exposure to a
6 constituent, and—

7 “(i) a disease;

8 “(ii) a health-related condition; or

9 “(iii) the likelihood of a health-related
10 condition.

11 “(6) COVERED PRODUCT.—The term ‘covered
12 product’—

13 “(A) means—

14 “(i) a consumer product; or

15 “(ii) a consumer commodity; and

16 “(B) includes any packaging with respect
17 to a consumer product or consumer commodity
18 described in clause (i) and (ii) of subparagraph
19 (A), respectively.

20 “(7) DE MINIMIS RISK LEVEL.—The term ‘de
21 minimis risk level’ means—

22 “(A) a level of risk that is based on the
23 best available science and the weight of the evi-
24 dence;

1 “(B) with respect to a constituent or radi-
2 ation that is a carcinogen, that the level of risk
3 described in subparagraph (A)—

4 “(i) is determined based on a safety
5 evaluation that includes non-linear mod-
6 eling approaches that are consistent with
7 available data and scientific understanding
8 of endogenous exposures and a mode of ac-
9 tion in lieu of, or, at a minimum, in addi-
10 tion to, a linear default method;

11 “(ii) takes into consideration factors
12 that include the weight of the evidence,
13 data quality and study reliability, the na-
14 ture and severity of any health effects in-
15 volved, the size of any sensitive population
16 that is at risk with respect to the con-
17 stituent or radiation, as applicable, and the
18 kind and degree of any relevant scientific
19 uncertainties; and

20 “(iii) after applying the principles de-
21 scribed in clauses (i) and (ii)—

22 “(I) if the likely operative cancer
23 mode of action with respect to the
24 constituent or radiation supports use
25 of a linear default model, is the level

1 of exposure to the constituent or radi-
 2 ation every day for 70 years that
 3 would result in a not greater than 1
 4 in 100,000 chance of developing can-
 5 cer for an individual who is exposed to
 6 the constituent or radiation; and

7 “(II) if the likely operative can-
 8 cer mode of action with respect to the
 9 constituent or radiation is non-linear,
 10 is the level of exposure to the con-
 11 stituent or radiation every day for 70
 12 years that would result in a not great-
 13 er than 1 in 1,000 chance of devel-
 14 oping cancer for an individual who is
 15 exposed to the constituent or radi-
 16 ation; and

17 “(C) with respect to a constituent or radi-
 18 ation that is a systemic toxicant, including a re-
 19 productive or developmental toxicant, the level
 20 of exposure to the constituent or radiation, as
 21 applicable, that would result in a not greater
 22 than 1 in 1,000 chance of a significant adverse
 23 health impact.

24 “(8) NATURALLY OCCURRING.—The term ‘nat-
 25 urally occurring’ means, with respect to a con-

stituent and a covered product, that the constituent occurs in—

“(A) any plant, animal, or microorganism, or any raw material or a constituent derived from a plant, animal, or microorganism, that composes or is a part of the covered product; and

“(B) the covered product because of—

“(i)(I) activity that is authorized pursuant to regulation or permitting; or

“(II) human activity; and

“(ii) any physical processing, preparation, or packaging of—

“(I) a plant, animal, or microorganism; or

“(II) any raw material or constituent derived from an entity described in subclause (I).

“(9) NON-FUNCTIONAL CONSTITUENT.—The term ‘non-functional constituent’ means, with respect to a covered product, any constituent—

“(A) that—

“(i) is an incidental component, at insignificant levels, of an ingredient of the covered product;

1 “(ii) is, at insignificant levels, a
 2 breakdown product of an ingredient of the
 3 covered product;

4 “(iii) is a byproduct of the manufac-
 5 turing process with respect to the covered
 6 product;

7 “(iv) has not been intentionally added
 8 as a separate substance during the manu-
 9 facturing process with respect to the cov-
 10 ered product; and

11 “(v) serves no technical or functional
 12 effect with respect to the covered product;
 13 and

14 “(B) the presence of which does not en-
 15 danger public health.

16 “(10) PRODUCT CONSTITUENT.—The term
 17 ‘product constituent’ means a chemical or chemical
 18 substance that—

19 “(A) comprises a covered product (or a
 20 component of, or material with respect to, a
 21 covered product) in whole or part; and

22 “(B) is present in a covered product as—

23 “(i) part of a specified set of ingredi-
 24 ents; or

25 “(ii) a non-functional constituent.

1 “(11) RADIATION.—

2 “(A) IN GENERAL.—The term ‘radiation’
3 means—

4 “(i) electromagnetic radiation, includ-
5 ing the entire electromagnetic spectrum of
6 radiation of any wavelength; and

7 “(ii) radiation from naturally occur-
8 ring radioactive elements, including—

9 “(I) uranium, thorium, and po-
10 tassium;

11 “(II) any radioactive decay prod-
12 ucts of an element described in sub-
13 clause (I), trace concentrations of
14 which may occur in materials such as
15 stone or granite; and

16 “(III) any other naturally occur-
17 ring radioactive material.

18 “(B) ELECTROMAGNETIC SPECTRUM.—For
19 the purposes of subparagraph (A), the electro-
20 magnetic spectrum of radiation includes gamma
21 rays, x-rays, ultraviolet rays, visible rays, infra-
22 red rays, microwaves, radiowaves, and low fre-
23 quency radiation.

24 “(12) RESPONSIBLE PERSON.—The term ‘re-
25 sponsible person’ means—

1 “(A) the manufacturer, distributor, re-
2 tailer, or packager of a covered product that is
3 subject to a covered declaration requirement;
4 and

5 “(B) the supplier of any constituent, com-
6 ponent, material, chemical or chemical sub-
7 stance, food, or packaging to an entity de-
8 scribed in subparagraph (A).

9 “(13) RISK-BASED.—The term ‘risk-based’
10 means, with respect to a covered declaration require-
11 ment or a de minimis risk level, that the require-
12 ment or risk level, as applicable, is based on—

13 “(A) the likelihood and degree of injury;

14 “(B) the integration and assessment of in-
15 formation, including data, regarding hazards re-
16 sulting from specific exposures of 1 or more
17 constituents in, or radiation in or emitted from,
18 a covered product; and

19 “(C) the recognition of a mode of action
20 within a systematic compilation of scientific
21 data that, within a structured framework, sup-
22 ports a hypothesized, biologically plausible path-
23 way.

1 “(14) TRADE SECRET.—The term ‘trade secret’
2 has the meaning given the term in section 1839 of
3 title 18, United States Code.

4 “(15) WEIGHT OF THE EVIDENCE.—The term
5 ‘weight of the evidence’ means a systematic review
6 method, applied in a manner that is suited to the
7 nature of evidential information or the decision to
8 which the method applies, that uses a pre-estab-
9 lished protocol to—

10 “(A) comprehensively, objectively, trans-
11 parently, and consistently identify and evaluate
12 each stream of evidential information, including
13 the strengths, limitations, and relevance of any
14 study that is the basis for that evidential infor-
15 mation; and

16 “(B) integrate evidence as necessary and
17 appropriate based on the strengths, limitations,
18 and relevance described in subparagraph (A).

19 “(b) PROHIBITION.—

20 “(1) IN GENERAL.—Unless specifically author-
21 ized by a Federal statute, no department or agency
22 of the Federal Government, State, political subdivi-
23 sion of a State, or territory or possession of the
24 United States may establish or maintain a covered
25 declaration requirement unless the covered declara-

tion requirement satisfies the standards under paragraph (2).

“(2) STANDARDS FOR COVERED DECLARATION REQUIREMENTS.—

“(A) IN GENERAL.—A covered declaration requirement shall satisfy each of the following:

“(i) The covered information to be displayed or communicated—

“(I) is clear, accurate, and not misleading or deceptive to consumers with respect to the product to which the covered declaration requirement applies; and

“(II) is consistent with the requirements under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

“(ii) The covered information to be displayed or communicated is—

“(I) risk-based; and

“(II) based on—

“(aa) the best available science; and

“(bb) appropriate weight of the evidence review.

1 “(iii) The covered declaration require-
2 ment exempts non-functional constituents.

3 “(iv) The covered declaration require-
4 ment exempts naturally occurring constitu-
5 ents.

6 “(v) The covered declaration require-
7 ment—

8 “(I) exempts the inclusion of
9 trade secrets; and

10 “(II) does not otherwise require
11 the disclosure of information described
12 in section 552(b)(4) of title 5, United
13 States Code.

14 “(vi) The covered declaration require-
15 ment does not preclude the inclusion or de-
16 livery of supplemental or clarifying infor-
17 mation in the covered declaration require-
18 ment with respect to a covered product by
19 a responsible person, if that information
20 is—

21 “(I) clear and accurate; and

22 “(II) otherwise consistent with
23 the requirements under section 5 of
24 the Federal Trade Commission Act

1 (15 U.S.C. 45), as in effect on the
2 date of enactment of this section.

3 “(vii) Any requirement with respect to
4 a product constituent or the composition of
5 a product allows a responsible person to—

6 “(I) subject to clause (v), list in-
7 gredients in descending order of pre-
8 dominance;

9 “(II) subject to clause (v) and
10 subparagraph (C), list, in any order,
11 any ingredients that are present in
12 low concentrations; and

13 “(III) name constituents using
14 any internationally recognized nomen-
15 clature system.

16 “(B) BURDEN OF DEMONSTRATING COM-
17 PLIANCE WITH FEDERAL STANDARD.—

18 “(i) IN GENERAL.—Any entity de-
19 scribed in paragraph (1) that brings an ac-
20 tion to enforce a covered disclosure re-
21 quirement enacted by the entity, or that is
22 a party to a civil action brought under sub-
23 section (d) with respect to a covered disclo-
24 sure requirement enacted by the entity,
25 shall have the burden of establishing by a

1 preponderance of the evidence in the action
2 that the covered disclosure requirement en-
3 acted by the entity satisfies subparagraphs
4 (A) and (C).

5 “(ii) PREEMPTION IN THE EVENT OF
6 FAILURE TO MEET BURDEN.—If, in an ac-
7 tion described in clause (i), an entity de-
8 scribed in that clause fails to meet the bur-
9 den of the entity required under that
10 clause, the responsible person against
11 which the entity sought to enforce a cov-
12 ered disclosure requirement enacted by the
13 entity, or that brought the civil action with
14 respect to a covered disclosure requirement
15 enacted by the entity, shall not be subject
16 to the covered disclosure requirement en-
17 acted by the entity.

18 “(C) NO COVERED DECLARATION RE-
19 QUIRED.—A covered declaration requirement is
20 not required with respect to a covered product
21 if—

22 “(i) with respect to a constituent, the
23 concentration of the constituent in the cov-
24 ered product is below 0.1 percent; and

1 “(ii) with respect to the emission of
 2 radiation, the level of emission by the cov-
 3 ered product is below the risk-based de-
 4 minimis risk level established by the Com-
 5 mission.

6 “(c) ADDITIONAL DECLARATION OPTIONS.—If a de-
 7 partment or agency of the Federal Government, a State
 8 government, a political subdivision of a State, or a terri-
 9 tory or possession of the United States requires a respon-
 10 sible person to display or communicate covered informa-
 11 tion to a consumer regarding a covered product, that gov-
 12 ernmental entity shall authorize the responsible person
 13 with respect to a covered product to meet the requirements
 14 under subsection (b)(2), including by allowing for the
 15 omission of information under subsection (b)(2)(C), by
 16 communicating the covered information to the consumer
 17 through an electronic or digital declaration method that
 18 ensures that—

19 “(1) information is provided on the accom-
 20 panying package of the covered product that identi-
 21 fies or otherwise indicates—

22 “(A) an electronic or digital link that—

23 “(i) shall—

24 “(I) provide access to informa-
 25 tion about the composition of the cov-

1 ered product through an internet
2 website or other landing page;

3 “(II) be accompanied by—

4 “(aa) the statement ‘Scan
5 here for more’; or

6 “(bb) equivalent language
7 that reflects technological
8 changes;

9 “(III) provide access to the cov-
10 ered information by means of a mobile
11 device, internet website, or other land-
12 ing page;

13 “(IV) include the telephone num-
14 ber described in subparagraph (B);
15 and

16 “(V) be of a sufficient size to be
17 easily and effectively scanned or read
18 by a digital device; and

19 “(ii) subject to paragraph (2), may
20 not collect, analyze, or sell any personally
21 identifiable information about—

22 “(I) individuals who access—

23 “(aa) the electronic or dig-
24 ital link; or

1 “(bb) the telephone number
2 described in subparagraph (B);

3 or

4 “(II) the devices of individuals
5 who access the electronic or digital
6 link; and

7 “(B) a telephone number that shall—

8 “(i) provide access to additional infor-
9 mation about the composition of the prod-
10 uct; and

11 “(ii) be accompanied with the state-
12 ment ‘Call for more information about the
13 composition of this product’; and

14 “(2) if, under other provisions of this Act, in-
15 formation described in paragraph (1)(A)(ii) is re-
16 quired to be collected under paragraph (1), that in-
17 formation—

18 “(A) shall be deleted by the responsible
19 person as soon as practicable after fulfilling the
20 required purpose under this Act with respect to
21 the information; and

22 “(B) may not be used for any other pur-
23 pose by the responsible person.

24 “(d) PRIVATE CIVIL ACTIONS.—

25 “(1) IN GENERAL.—

1 “(A) AUTHORITY TO BRING SUIT.—Any re-
2 sponsible person that is subject to a covered
3 declaration requirement, is otherwise required
4 to display or communicate to a consumer cov-
5 ered information about a covered product, or is,
6 or may be, subject to an enforcement action
7 with respect to that requirement by a State or
8 a political subdivision of a State, may bring a
9 civil action in an appropriate district court of
10 the United States against that State (or any
11 private entity that is authorized to bring an en-
12 forcement action on behalf of that State) or
13 that political subdivision, as applicable, if the
14 requirement of the State or political subdivision
15 does not comply with the requirements under
16 subsections (b) and (c).

17 “(B) TIMING.—For the purposes of sub-
18 paragraph (A), a responsible person shall be
19 considered to be subject to an enforcement ac-
20 tion beginning on the date on which a State, or
21 a political subdivision of a State, as applicable,
22 enacts a law or promulgates a regulation that
23 maintains or imposes a covered declaration re-
24 quirement, without regard to—

25 “(i) the date on which—

1 “(I) compliance is mandated
 2 under the law or regulation, as appli-
 3 cable; or

4 “(II) enforcement of the law or
 5 regulation, as applicable, begins; or

6 “(ii) any exemption or exclusion that
 7 the responsible person may invoke with re-
 8 spect to compliance with the law or regula-
 9 tion, as applicable.

10 “(2) REMEDIES.—In a civil action brought
 11 under paragraph (1), a court may grant an injunc-
 12 tion to prevent any actual or threatened harm to a
 13 responsible person or interstate commerce.”.

14 (b) APPLICABILITY TO OTHER LAWS.—

15 (1) EFFECT ON STATE LAWS GENERALLY.—No
 16 State, or any political subdivision of a State, may
 17 impose a requirement or prohibition with respect to
 18 information, warning, and labeling requirements ap-
 19 plicable to consumer commodities or consumer prod-
 20 ucts that is in addition to, or different than, the re-
 21 quirements under section 14 of the Fair Packaging
 22 and Labeling Act, as added by subsection (a).

23 (2) FURTHER REQUIREMENTS.—

24 (A) DEFINITION.—In this paragraph, the
 25 term “responsible person” has the meaning

1 given the term in section 14(a) of the Fair
2 Packaging and Labeling Act, as added by sub-
3 section (a).

4 (B) CONDITION.—A fee, fine, penalty, at-
5 torney’s fee, or other cost may only be assessed
6 against a responsible person by a State, or a
7 private entity that is authorized to bring an en-
8 forcement action on behalf of a State, if the
9 State or the private entity, as applicable, has
10 satisfied the requirements under section
11 14(b)(2)(B) of the Fair Packaging and Label-
12 ing Act, as added by subsection (a).

13 (3) RULE OF CONSTRUCTION REGARDING AL-
14 LERGEN DECLARATIONS.—Nothing in this Act, or in
15 the amendments made by this Act, may be construed
16 as amending, altering, or otherwise affecting the re-
17 quirements under the Food Allergen Labeling and
18 Consumer Protection Act of 2004 (Public Law 108–
19 282; 118 Stat. 905).

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