

State Labeling/Warning Preemption Bill Summary

On June 6, 2018, Sen. Jerry Moran (R-KS) and Reps. Adam Kinzinger (R-IL) and Kurt Schrader (D-OR) introduced S. 3019/H.R. 6022, the inaccurately labeled “Accurate Labels Act.” The bill is designed to comprehensively preempt the ability of states and municipalities to require the disclosure of ingredients in consumer products that communicates the presence of harmful chemicals, such as carcinogens or reproductive toxins. The bill would likely overturn numerous state and local laws (and potentially some federal programs) including mercury warning labels, cleaning product ingredient disclosure, disclosure of toxic flame retardants in furniture, disclosure of dangerous chemicals in children’s products, and California’s Safe Drinking Water and Toxic Enforcement Act (Prop 65).

States’ consumer right-to-know and protection laws have informed consumers across the country and incentivized safer products in the marketplace. This bill would eliminate these laws allowing companies to hide cancer causing chemicals in their products from the public.

Summary of the legislation:

- Prohibits states and localities from establishing *or maintaining* a “covered declaration requirement” that does not meet *all* of the conditions (described below), which allow industry to hide harmful chemicals in their products. Federal agencies are also prohibited from establishing such a requirement unless specifically authorized by Federal law.
- A “covered declaration requirement” is defined as a legally enforceable requirement to provide information related to an ingredient or radiation level that, expressly or by implication, “claims a relationship to a health endpoint or the likelihood of a health endpoint” (such as warning that one or more ingredients may cause cancer or a requirement to disclose chemicals of concern in children’s products).
- The bill targets all types of disclosure including statements, notices, cautions, symbols, pictograms, pamphlets, databases, internet website, social media, etc.
- The bill’s preemption would take away state, local and some federal authority to address all manner of consumer products and commodities including food, beverages, personal care products, over-the-counter drugs and devices, cookware, clothing, textiles, furniture, carpets, cleaning products, and toys.
- Any requirement to communicate information to a consumer that concerns “covered information,” (meaning health concerns) even by implication, would be preempted unless it meets *all* of these conditions that allow industry to hide the presence of dangerous chemicals in their products:
 - 1) Exempts from any existing or future labeling and warning requirement “non-functional constituents” (*i.e. byproducts of manufacturing processes such as the carcinogens 1,4 dioxane, nitrosamines, and formaldehyde*) if they do not “endanger public health” (*this phrase is not defined and there is no mechanism to ensure chemicals do not endanger public health*).
 - 2) Exempts a broadly defined category of “naturally occurring” constituents. *Just because something occurs in nature does not make it safe. Arsenic, lead, mercury, essential oils (many of which have been identified as sensitizers in the EU) and numerous other substances known to cause cancer or other health impacts are “naturally occurring.” Consumers have a right to be informed about the presence of these constituents, whether they are “natural” or not.*

- 3) Allows companies to include “additional clarifying information” that is “clear and accurate.” *This would open the door to a confusing array of product statements from manufacturers seeking to downplay the significance of required warnings.*
 - 4) Risk-based and based on best available science and weight of the evidence *Industry has long sought to require a cumbersome, costly, years-long process of identifying “risk,” which virtually assures total gridlock that will block state and local action. Consumers, particularly groups such as expectant mothers, mothers of young children, cancer survivors – deserve information about the presence of chemicals in their products that could impact their health. Moms don’t want the carcinogen formaldehyde in baby shampoo, period.*
 - 5) Allows ingredients to be hidden under a broad definition of “trade secrets.” *Allowing unchecked trade secrets virtually assures companies will hide the presence of dangerous chemicals regardless of whether disclosure would result in economic harm to the company. Hazardous chemicals should be disclosed, as was recently agreed to by the cleaning product industry.*
 - 6) Allows ingredient disclosure using any internationally recognized nomenclature system. *Allowing companies to choose any nomenclature system will result in multiple, often completely different, names for a single chemical, making it very difficult for consumers to identify specific substances they wish to avoid. For instance, “acetone” is “2-propanone” in a different naming system.*
 - 7) The bill requires that labels and warnings must be “clear, accurate and not misleading or deceptive.” *While seemingly reasonable, these terms are not defined, and will result in endless litigations against states, who bear the burden of proof in defending their right to inform and warn consumers.*
- The state or locality seeking to adopt a labelling or other information disclosure requirement would face the elevated legal burden of showing, “by a preponderance of the evidence,” that all of these standards have been met. Failure to meet that burden would result in preemption of the requirement. A similar burden on EPA made the federal Toxic Substances Control Act (TSCA) a worthless law for 40 years.
 - The bill also exempts disclosure of any ingredient/constituent if it occurs at a concentration of below 0.1 percent, or 1000 parts per million. (For context, the CDC recent report on PFAS chemicals identified action levels as low as 7 parts per trillion.) In the case of radiation or a carcinogen, the exemption would be required if the exposure is below a “de minimis” risk level that could result in as many as *one in one thousand* people developing cancer. This is an extraordinarily unprotective standard – the common level of protection assumed in statutes and regulations is *one in one million* people.
 - Requires that companies be allowed to disclose the required information only through electronic or digital link and provide a phone number, which would result in no useful information on the actual product itself. This would deny critical information to people without access to smartphones or the internet or the time to go on the website of every product their interested in while standing in the grocery aisle.

For the reasons stated above, we strongly urge Congress to reject S. 3019/H.R. 6022, which violates states’ rights and denies consumers information they deserve to protect their families from chemicals that cause cancer and other health problems.

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