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

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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.

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 ''Accurate Labels Act''.

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

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

"SEC. 14. STANDARD FOR PRODUCT LABELING INFORMATION REGARDING CHEMICAL COMPOSITION AND RADIATION.

''(a) DEFINITIONS.—In this section:

''(1) BEST AVAILABLE SCIENCE.—The term 'best available science' means science—

''(A) that is conducted in accordance with sound and objective scientific practices;

''(B) the findings and underlying data of which are—

''(i) reliable; and

''(ii) if available, peer-reviewed; and

''(C) that uses data that is collected by—

''(i) an accepted method; or

''(ii) the best available method if the reliability of the method and the nature of the decision to which the method applies justifies the use of the data.

''(2) CONSTITUENT.—The term 'constituent' means any organic or inorganic chemical substance of a particular molecular identity.

''(3) CONSUMER PRODUCT.—The term 'consumer product' has the meaning given the term in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)).

''(4) COVERED DECLARATION REQUIREMENT.—The term 'covered declaration requirement' means a legally enforceable requirement that—

''(A) requires a responsible person to display or communicate covered information to a consumer; and

''(B) may be provided through—

''(i) a statement;

''(ii) a notice;

''(iii) a caution;

''(iv) a warning;

''(v) a symbol;

''(vi) a pictogram;

''(vii) a vignette;

''(viii) packaging information;

''(ix) an insert;

''(x) a sign;

''(xi) a pamphlet;

''(xii) an instruction;

''(xiii) a list of ingredients;

''(xiv) ingredient declaration information;

''(xv) a database;

''(xvi) an internet website; or

''(xvii) other media, including social media.

''(5) COVERED INFORMATION.—

''(A) IN GENERAL.—The term 'covered information' means information that—

''(i) relates to—

''(I) a product constituent; or

''(II) radiation emitted by a covered product; and

''(ii) expressly or by implication conveys a claim regarding or characterizing the relationship between any constituent or radiation and—

''(I) a disease;

''(II) a toxicological endpoint; or

''(III) a health-related condition.

''(B) IMPLIED CLAIMS.—For the purposes of subparagraph (A)(ii), an implied claim includes a situation in which an item described in

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

"(i) a disease;

"(ii) a health-related condition; or

"(iii) the likelihood of a health-related condition.

"(6) COVERED PRODUCT.—The term 'covered product'—

"(A) means—

"(i) a consumer product; or

"(ii) a consumer commodity; and

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

"(7) DE MINIMIS RISK LEVEL.—The term 'de minimis risk level' means—

"(A) a level of risk that is based on the best available science and the weight of the evidence;

''(B) with respect to a constituent or radiation that is a carcinogen, that the level of risk described in subparagraph (A)—

''(i) is determined based on a safety evaluation that includes non-linear modeling approaches that are consistent with available data and scientific understanding of endogenous exposures and a mode of action in lieu of, or, at a minimum, in addition to, a linear default method;

''(ii) takes into consideration factors that include the weight of the evidence, data quality and study reliability, the nature and severity of any health effects involved, the size of any sensitive population that is at risk with respect to the constituent or radiation, as applicable, and the kind and degree of any relevant scientific uncertainties; and

''(iii) after applying the principles described in clauses (i) and (ii)—

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

of exposure to the constituent or radiation every day for 70 years that would result in a not greater than 1 in 100,000 chance of developing cancer for an individual who is exposed to the constituent or radiation; and

''(II) if the likely operative cancer mode of action with respect to the constituent or radiation is non-linear, is the level of exposure to the constituent or radiation every day for 70 years that would result in a not greater than 1 in 1,000 chance of developing cancer for an individual who is exposed to the constituent or radiation; and

''(C) with respect to a constituent or radiation that is a systemic toxicant, including a reproductive or developmental toxicant, the level of exposure to the constituent or radiation, as applicable, that would result in a not greater than 1 in 1,000 chance of a significant adverse health impact.

''(8) NATURALLY OCCURRING.—The term 'naturally 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;

"(ii) is, at insignificant levels, a breakdown product of an ingredient of the covered product;

"(iii) is a byproduct of the manufacturing process with respect to the covered product;

"(iv) has not been intentionally added as a separate substance during the manufacturing process with respect to the covered product; and

"(v) serves no technical or functional effect with respect to the covered product; and

"(B) the presence of which does not endanger public health.

"(10) PRODUCT CONSTITUENT.—The term 'product constituent' means a chemical or chemical substance that—

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

"(B) is present in a covered product as—

"(i) part of a specified set of ingredients; or

"(ii) a non-functional constituent.

''(11) RADIATION.—

''(A) IN GENERAL.—The term 'radiation' means—

''(i) electromagnetic radiation, including the entire electromagnetic spectrum of radiation of any wavelength; and

''(ii) radiation from naturally occurring radioactive elements, including—

''(I) uranium, thorium, and potassium;

''(II) any radioactive decay products of an element described in subclause (I), trace concentrations of which may occur in materials such as stone or granite; and

''(III) any other naturally occurring radioactive material.

''(B) ELECTROMAGNETIC SPECTRUM.—For the purposes of subparagraph (A), the electromagnetic spectrum of radiation includes gamma rays, x-rays, ultraviolet rays, visible rays, infrared rays, microwaves, radiowaves, and low frequency radiation.

''(12) RESPONSIBLE PERSON.—The term 'responsible person' means—

"(A) the manufacturer, distributor, retailer, or packager of a covered product that is subject to a covered declaration requirement; and

"(B) the supplier of any constituent, component, material, chemical or chemical substance, food, or packaging to an entity described in subparagraph (A).

"(13) RISK-BASED.—The term 'risk-based' means, with respect to a covered declaration requirement or a de minimis risk level, that the requirement or risk level, as applicable, is based on—

"(A) the likelihood and degree of injury;

"(B) the integration and assessment of information, including data, regarding hazards resulting from specific exposures of 1 or more constituents in, or radiation in or emitted from, a covered product; and

"(C) the recognition of a mode of action within a systematic compilation of scientific data that, within a structured framework, supports a hypothesized, biologically plausible pathway.

''(14) TRADE SECRET.—The term 'trade secret' has the meaning given the term in section 1839 of title 18, United States Code.

''(15) WEIGHT OF THE EVIDENCE.—The term 'weight of the evidence' means a systematic review method, applied in a manner that is suited to the nature of evidential information or the decision to which the method applies, that uses a pre-established protocol to—

''(A) comprehensively, objectively, transparently, and consistently identify and evaluate each stream of evidential information, including the strengths, limitations, and relevance of any study that is the basis for that evidential information; and

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

''(b) PROHIBITION.—

''(1) IN GENERAL.—Unless specifically authorized by a Federal statute, no department or agency of the Federal Government, State, political subdivision of a State, or territory or possession of the United States may establish or maintain a covered 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.

"(iii) The covered declaration requirement exempts non-functional constituents.

"(iv) The covered declaration requirement exempts naturally occurring constituents.

"(v) The covered declaration requirement—

"(I) exempts the inclusion of trade secrets; and

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

"(vi) The covered declaration requirement does not preclude the inclusion or delivery of supplemental or clarifying information in the covered declaration requirement with respect to a covered product by a responsible person, if that information is—

"(I) clear and accurate; and

"(II) otherwise consistent with the requirements under section 5 of the Federal Trade Commission Act

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

''(vii) Any requirement with respect to a product constituent or the composition of a product allows a responsible person to—

''(I) subject to clause (v), list ingredients in descending order of predominance;

''(II) subject to clause (v) and subparagraph (C), list, in any order, any ingredients that are present in low concentrations; and

''(III) name constituents using any internationally recognized nomenclature system.

''(B) BURDEN OF DEMONSTRATING COMPLIANCE WITH FEDERAL STANDARD.—

''(i) IN GENERAL.—Any entity described in paragraph (1) that brings an action to enforce a covered disclosure requirement enacted by the entity, or that is a party to a civil action brought under subsection (d) with respect to a covered disclosure requirement enacted by the entity, shall have the burden of establishing by a

preponderance of the evidence in the action that the covered disclosure requirement enacted by the entity satisfies subparagraphs (A) and (C).

"(ii) PREEMPTION IN THE EVENT OF FAILURE TO MEET BURDEN.—If, in an action described in clause (i), an entity described in that clause fails to meet the burden of the entity required under that clause, the responsible person against which the entity sought to enforce a covered disclosure requirement enacted by the entity, or that brought the civil action with respect to a covered disclosure requirement enacted by the entity, shall not be subject to the covered disclosure requirement enacted by the entity.

"(C) NO COVERED DECLARATION REQUIRED.—A covered declaration requirement is not required with respect to a covered product if—

"(i) with respect to a constituent, the concentration of the constituent in the covered product is below 0.1 percent; and

''(ii) with respect to the emission of radiation, the level of emission by the covered product is below the risk-based de minimis risk level established by the Commission.

''(c) ADDITIONAL DECLARATION OPTIONS.—If a department or agency of the Federal Government, a State government, a political subdivision of a State, or a territory or possession of the United States requires a responsible person to display or communicate covered information to a consumer regarding a covered product, that governmental entity shall authorize the responsible person with respect to a covered product to meet the requirements under subsection (b)(2), including by allowing for the omission of information under subsection (b)(2)(C), by communicating the covered information to the consumer through an electronic or digital declaration method that ensures that—

''(1) information is provided on the accompanying package of the covered product that identifies or otherwise indicates—

''(A) an electronic or digital link that—

''(i) shall—

''(I) provide access to information about the composition of the cov-

ered product through an internet website or other landing page;

"(II) be accompanied by—

"(aa) the statement 'Scan here for more'; or

"(bb) equivalent language that reflects technological changes;

"(III) provide access to the covered information by means of a mobile device, internet website, or other landing page;

"(IV) include the telephone number described in subparagraph (B); and

"(V) be of a sufficient size to be easily and effectively scanned or read by a digital device; and

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

"(I) individuals who access—

"(aa) the electronic or digital link; or

''(bb) the telephone number described in subparagraph (B); or

''(II) the devices of individuals who access the electronic or digital link; and

''(B) a telephone number that shall—

''(i) provide access to additional information about the composition of the product; and

''(ii) be accompanied with the statement 'Call for more information about the composition of this product'; and

''(2) if, under other provisions of this Act, information described in paragraph (1)(A)(ii) is required to be collected under paragraph (1), that information—

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

''(B) may not be used for any other purpose by the responsible person.

''(d) PRIVATE CIVIL ACTIONS.—

''(1) IN GENERAL.—

''(A) AUTHORITY TO BRING SUIT.—Any responsible person that is subject to a covered declaration requirement, is otherwise required to display or communicate to a consumer covered information about a covered product, or is, or may be, subject to an enforcement action with respect to that requirement by a State or a political subdivision of a State, may bring a civil action in an appropriate district court of the United States against that State (or any private entity that is authorized to bring an enforcement action on behalf of that State) or that political subdivision, as applicable, if the requirement of the State or political subdivision does not comply with the requirements under subsections (b) and (c).

''(B) TIMING.—For the purposes of subparagraph (A), a responsible person shall be considered to be subject to an enforcement action beginning on the date on which a State, or a political subdivision of a State, as applicable, enacts a law or promulgates a regulation that maintains or imposes a covered declaration requirement, without regard to—

''(i) the date on which—

''(I) compliance is mandated under the law or regulation, as applicable; or

''(II) enforcement of the law or regulation, as applicable, begins; or

''(ii) any exemption or exclusion that the responsible person may invoke with respect to compliance with the law or regulation, as applicable.

''(2) REMEDIES.—In a civil action brought under paragraph (1), a court may grant an injunction to prevent any actual or threatened harm to a responsible person or interstate commerce.''.

(b) APPLICABILITY TO OTHER LAWS.—

(1) EFFECT ON STATE LAWS GENERALLY.—No State, or any political subdivision of a State, may impose a requirement or prohibition with respect to information, warning, and labeling requirements applicable to consumer commodities or consumer products that is in addition to, or different than, the requirements under section 14 of the Fair Packaging and Labeling Act, as added by subsection (a).

(2) FURTHER REQUIREMENTS.—

(A) DEFINITION.—In this paragraph, the term ''responsible person'' has the meaning

given the term in section 14(a) of the Fair Packaging and Labeling Act, as added by subsection (a).

(B) CONDITION.—A fee, fine, penalty, attorney's fee, or other cost may only be assessed against a responsible person by a State, or a private entity that is authorized to bring an enforcement action on behalf of a State, if the State or the private entity, as applicable, has satisfied the requirements under section 14(b)(2)(B) of the Fair Packaging and Labeling Act, as added by subsection (a).

(3) RULE OF CONSTRUCTION REGARDING ALLERGEN DECLARATIONS.—Nothing in this Act, or in the amendments made by this Act, may be construed as amending, altering, or otherwise affecting the requirements under the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108–282; 118 Stat. 905).

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