

Statement of Senator Dianne Feinstein

before the Senate Committee on Health, Education, Labor and Pensions
Full Committee Hearing on S. 3128, The National Uniformity for Food Act
Thursday, July 27, 2006, 10:00 AM, Dirksen 430

Mr. Chairman, thank you very much for holding this hearing today.

I hope that this hearing -- the first to be held on this issue -- will clarify the major negative impact of establishing uniform requirements for food safety warning labels nationwide.

This legislation effectively cancels strong food safety laws approved by state and local governments, such as California's Proposition 65 ("Safe Drinking Water and Toxic Enforcement Act") enacted into law 17 years ago by 63 percent of Californians.

This senate bill (S. 3128), like the house-passed bill, undermines hundreds of important food safety laws across the country. And it sets a dangerous precedent undermining states' rights.

There is strong bipartisan opposition to these proposed measures. Governors of eight states, including Governor Schwarzenegger, Attorneys General of 39 states, the Association of Food and Drug Officials, State Departments of Agriculture, Consumers Union and numerous national consumer and environmental groups oppose preempting state and local food safety requirements.

This Senate Bill Would:

- Preempt over 200 food safety state laws and regulations nationwide.
- Impede states and localities from enacting and implementing food safety regulations stronger than those required by the federal government, even if that authority is needed to respond quickly to an incident such as an act of bioterrorism.
- Threaten laws passed by California and at least eight other states limiting the sale of sodas and junk food in public schools aimed to promote healthy eating habits for children.

In September 2005, Governor Schwarzenegger signed two bills (one bill which takes effect in July 2007) restricting certain foods and beverages from being sold in California's public schools so that children are not exposed, for example, to such high levels of sugar in their food and beverages that contribute to the major issue of child obesity.

- Prohibit states, like California, to issue their own mercury warnings to pregnant women about the significant risks from high levels of mercury in seafood such as swordfish and shark. California requires that signs be posted in grocery stores where fresh fish is sold warning pregnant women about the high levels of mercury in seafood and would not be able to continue to post these warning signs that protect consumers.
- Force states to petition the FDA to maintain important food safety laws, imposing major financial burdens on the financially-strapped FDA and states. The Center for Science in the Public Interest estimates it will cost FDA at least \$120 million to process the

expected 300 waiver requests just for Proposition 65 (i.e. waivers for lead in calcium supplements and arsenic in bottle water).

This bill is a major assault on California's Proposition 65 and would cancel out major benefits under the law that protect California consumers from cancer causing chemicals to lead and arsenic poisoning.

Here are just a few examples:

- This year, the state used Proposition 65 to stop Pepsi from selling soda bottles with leaded labels which can cause birth defects and cancer.
- Lead in ceramic tableware: California required clear warnings for lead that leaches from ceramic tableware into food and beverages. The marketplace responded. Now these ceramics have disappeared from shelves.
- Lead in Calcium Supplements: Makers of calcium supplements, such as Tums and Rolaids, agreed to reduce levels of lead contamination in their products. This result was reached without posting warnings that might have discouraged women from taking calcium.
- Leaded crystal: Fully leaded crystal, especially when used for storage of beverages, leaches substantial amounts of lead. California requires point-of-sale signs, while FDA has provided a consumer advisory.
- Mercury in fish: California requires that information be posted in stores where fresh fish is sold warning pregnant women about the high levels of mercury in seafood and it would no longer be able to do so.

As you can see, this bill significantly undermines California's Proposition 65. This is not the first assault on the California law.

Earlier similar efforts to overturn Proposition 65 and preempt state and local food safety laws have been opposed by people on both sides of the aisle.

For example, the Reagan Administration conducted an economic analysis of the impact of Prop 65 in 1988, which the first President Bush Administration's later concurred with, that found industries claims of Prop 65's financial burden to "vastly overstate the potential impact on producers."

State and local governments should have the right to protect their citizens. Consumers deserve to know if the product they are purchasing may cause them harm.

The bottom line is this: Congress should NOT approve legislation that threatens hundreds of critical food safety laws across the country and puts at risk the health and safety of all Americans.

Thank you Mr. Chairman.