



STATE OF NEBRASKA

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Attorney General

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Senator Ben Nelson
United States Senate
720 Hart Senate Office Building
Washington, D.C. 20510

Re: HR 4167 – Food Labeling Legislation

Dear Senator Nelson,

I am writing to urge you to support The National Uniformity for Food Act when it is introduced in the Senate. Last month, 39 Attorneys General signed a NAAG letter to Congress urging you to oppose the House bill, H.R. 4167, which passed in the House by a large and bipartisan margin on March 8. I respectfully disagree with my colleagues regarding the effect of the bill and believe it would establish a consistent, science-based framework to ensure the security and safety of our food supply.

I am satisfied that H.R. 4167 in its current form will not compromise the ability of state and local officials to act decisively when faced with a food safety threat of any kind. Rather, the bill fosters consistency in the regulation of our food supply and ensures a framework in which State Attorneys General and our State agriculture and health officials will remain unencumbered and effective in protecting consumers.

Attorneys General across the country are generally protective of states' rights. However, food label warnings seem to be one area in which it makes sense to have a national standard. I do not believe that food manufacturers that ship their food all around the world should be required to potentially develop a different label for each state in the union. H.R. 4167 recognizes and preserves the essential role that States play in the day-to-day business of ensuring a safe food supply. For example, the bill would keep all existing State warning requirements in place while States petition the U.S. Food and Drug Administration (FDA) and both a public comment period and transparent review process are completed.

A similar petition procedure is also established for warnings requirements that are not currently the subject of State law. Expedited review is specifically required for petitions involving notifications relating to cancer, reproductive or birth defects, or that furnish information to parents that allows them to limit a child's exposure to cancer-causing agents, or reproductive or developmental toxins.

It is noteworthy that the bill specifically applies only to mandated warning statements. Nothing in H.R. 4167 infringes upon the right of any state agency or official to share food safety concerns (e.g., public education campaign) with their citizens. The sum of the parts of H.R. 4167 that address warning statements ensures that States participate in, and the federal government ultimately sets, national food safety policy. A close reading of the proposed legislation confirms that this balance would be achieved by H.R. 4167.

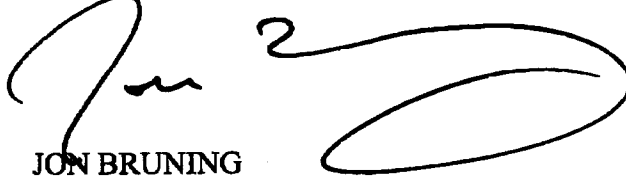
Certain food safety and adulteration provisions of the Federal Food, Drug, and Cosmetic Act are also subject to national uniformity under the bill, with several important limitations. It is my understanding that nearly all States have food statutes comparable to the food safety and adulteration provisions of federal law that are covered by the bill. The bill is not likely to have any practical impact on the content or application of such state food laws. Separately, I would note that H.R. 4167 completely excludes – and thus would not affect the federal and corresponding State provisions that are most often relied upon by State and local inspectors to seize, embargo or otherwise take immediate action against unsafe food (e.g., food held under unsanitary conditions, product unfit for food).

Where state food safety and adulteration law is the same as the federal, States are only restricted in adopting adulteration-related requirements that are already the subject of an FDA regulation or “final guidance” as that term is defined by federal regulation. If there is no FDA regulation or “final guidance,” States would be free to apply their food safety laws to a circumstance as they see fit.

Finally, the bill, once enacted, cannot become effective until the U.S. Department of Health and Human Services, in consultation with the U.S. Department of Homeland Security certifies to Congress that implementation of the new law would pose no additional risk to public health or safety from terrorist attacks on the food supply. State and local officials remain on the front-line in protecting our food supply and their rapid response is left intact under H.R. 4167. Accordingly, this office does not foresee any significant changes in how State and local officials protect consumers.

I urge your support for the Senate version of H.R. 4167, when introduced. The plain language of the bill suggests that a proper balance between uniform, consistent federal food safety policies and requirements can be achieved without compromising the critical role States play day-in and day-out in the marketplace.

Sincerely,



JON BRUNING
Attorney General