

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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March 1, 2006

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VICE PRESIDENT  
Lawrence Wasden  
*Attorney General of Idaho*

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William H. Sorrell  
*Attorney General of Vermont*

Dear Members of Congress:

We write to urge you to oppose the "National Uniformity for Food Act," H.R. 4167, 109<sup>th</sup> Cong. (2005) which undercuts states' rights and consumer protection. This bill, which the House Energy and Commerce Committee approved on December 15, 2005, would preempt all existing and future state and local food labeling requirements that expressly or indirectly imply that a particular food or its packaging "presents or may present a hazard to health or safety" unless identical to Food and Drug Administration requirements. Indeed, under this bill, states would be forbidden from adopting their own policies, even if the federal government had not acted in a particular area or adopted a particular warning. Important consumer warnings dealing with mercury in fish, arsenic in drinking water, and lead in cans are just a few examples of states food labeling requirements that would be eviscerated by this bill.

Food safety has been largely a matter of state law and oversight for well more than a century. State and local agencies perform more than 80 per cent of food safety work, with federal agencies often seeking their assistance. There is nothing in the public record showing that federal uniformity in this area provides a greater level of protection to consumers or is in the public interest. Indeed, although this bill would radically change the traditional allocation of power between the states and the federal government, it has never been the subject of public hearings.

This bill would strip state governments of the ability to protect their residents through state laws and regulations relating to the safety of food and food packaging. Some of the more obvious state-level warnings that almost certainly would be challenged include consumer warnings about mercury contamination of fish, arsenic in bottled water, lead in ceramic tableware, the alcohol content in candies, the content of fats and oils in foods, and post-harvest pesticide application to fruits and vegetables. Unscrupulous merchants could contend that this bill immunized their false claims of health benefits ascribed to their products from state prohibitions or remedies such as laws barring deceptive advertising of food. The same could occur with regard to inadequate warnings regarding a child's use of a product.

While HR 4167 provides states with a limited opportunity to petition the federal government for authorization to take action in a particular area, the petition process is slow, expensive and

uncertain, and certainly is no substitute for allowing states their traditional role of taking action on their own to protect consumers. The bill would create a new federal bureaucracy dedicated to evaluating, judging and even invalidating proposed state and local laws, a startling change in state-federal relations in the food safety area.

Without question, the target of this bill is California's Proposition 65, which was approved by California voters by initiative in 1986 and provides consumers with health and safety information concerning foods they may purchase and eat. There is no evidence that this popular initiative has harmed consumers or merchants.

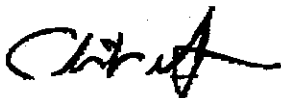
The Association of Food and Drug Officials, an organization comprised of state regulators with responsibility for ensuring food safety since 1896, strongly opposes this bill and, on January 16, 2006 wrote:

passage of this bill would undermine proven consumer protection programs....  
[t]he preemption provisions are broad, vague and sweeping and will likely dismantle the authority of state and local laws that address adulterated foods - which include food laws, dairy laws, animal feed laws, other agricultural commodity laws, anti-tampering laws, anti-terrorism laws, etc.

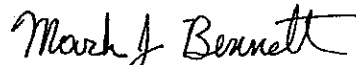
Letter from Association of Food and Drug Officials regarding HR 4167 to the Honorable Mike Rogers, January 16, 2006 (copy attached).

We need all levels of government to work together to protect food safety. State and local governments are often the first line of defense when problems emerge. Prohibiting state and local leadership and action in this area is a serious mistake. We respectfully request that you oppose H.R. 4167.

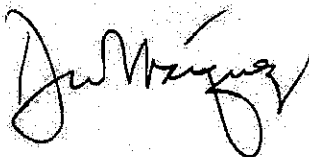
Sincerely,



Eliot Spitzer  
Attorney General New York



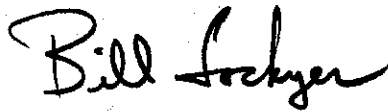
Mark J. Bennett  
Attorney General Hawaii



David W. Marquez  
Attorney General Alaska



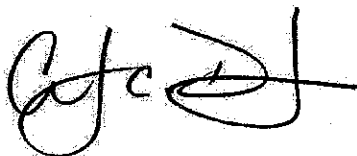
Terry Goddard  
Attorney General Arizona



Bill Lockyer  
Attorney General California



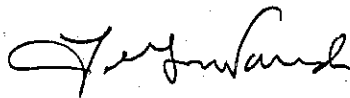
Richard Blumenthal  
Attorney General Connecticut



Carl C. Danberg  
Attorney General Delaware



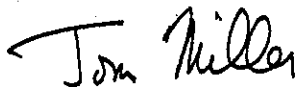
Robert Spagnoletti  
Attorney General District of Columbia



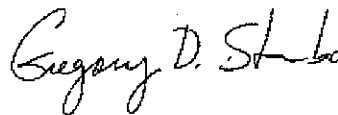
Lawrence Wasden  
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Lisa Madigan  
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Tom Miller  
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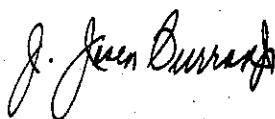
Greg Stumbo  
Attorney General Kentucky



Charles Foti  
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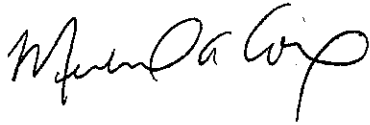
G. Steven Rowe  
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J. Joseph Curran Jr.  
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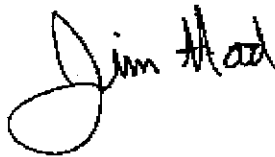
Tom Reilly  
Attorney General Massachusetts



Mike Cox  
Attorney General Michigan



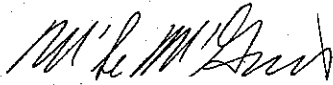
Mike Hatch  
Attorney General Minnesota



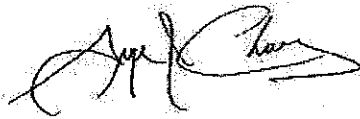
Jim Hood  
Attorney General Mississippi



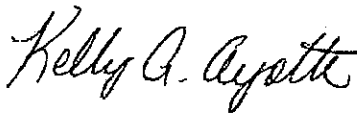
Jeremiah W. Nixon  
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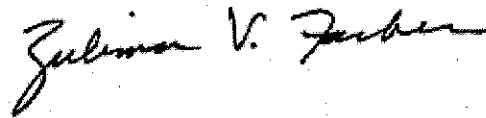
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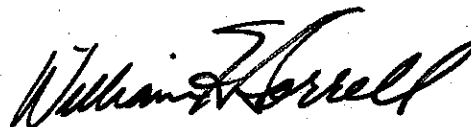
Paul G. Summers  
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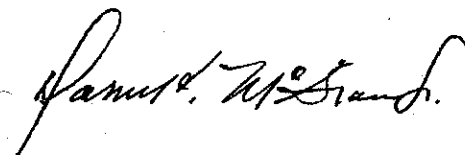
Greg Abbott  
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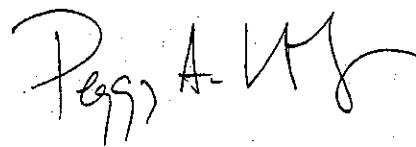
Mark Shurtleff  
Attorney General Utah



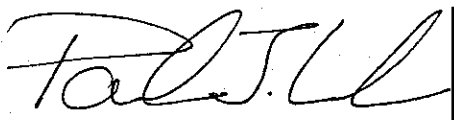
William H. Sorrell  
Attorney General Vermont



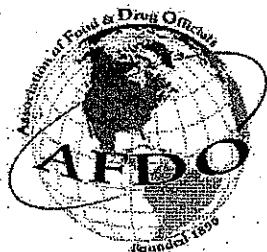
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# Association of Food and Drug Officials

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January 16, 2006

United States House of Representatives  
Washington, DC 20515

Via Fax Transmission

Dear Representative,

I am writing on behalf of the Association of Food and Drug Officials (AFDO) to express serious concerns regarding H.R. 4167, "The National Uniformity for Foods Act of 2005" introduced by Congressman Mike Rogers (MI-8). Originally introduced in the 108th Congress as H.R. 2699, the bill's stated purpose is to amend the Federal Food, Drug and Cosmetic Act (FFDCA) to provide for uniform food safety warning notification requirements - and for other purposes. It is the phrase "for other purposes" that alarms members of AFDO. The legislation has been reviewed by attorneys for eleven state food safety programs, and unfortunately, all of the reviews are unanimous in their conclusion that the bill will preempt states and local food safety and defense programs from performing their functions to protect citizens.

You may have already received some information concerning this bill's impact from its proponents. This information claims that state regulators, and organizations such as AFDO, are erroneous in their legal evaluation of the bill. However, in addition to AFDO's attorney, attorneys in 11 states, after careful review of this bill (as HR 2699), have reached similar conclusions regarding its severe negative impacts to state programs. While it is not uncommon for legal authorities to differently interpret the meaning of a given law, because this disagreement is so profound and has such far-reaching implications, it is imperative to amend this bill and clearly specify Congress' intent to address solely food labeling. I urge you to oppose this bill until these differences can be resolved in Congress, and not leave it to the courts to decide while public health is put at risk.

Proponents of this bill emphasize that H.R. 4167 does not impact state sanitation laws, and thus, will not impact state programs. Nothing could be further from the truth. States perform sanitation inspections in an effort to assist food businesses in preventing contamination or adulteration of products, but one of the states' critical complementary functions is to take action when these preventative measures fail. Whether food becomes contaminated by accident, intent, or act of nature, it is critical that states retain their authorities to contain and remove food from the marketplace. Because we believe that H.R. 4167 compromises these authorities, it is our belief that the impact of this legislation is huge. If enacted, H.R. 4167 would significantly impede resolution of the unsafe conditions and removal of contaminated foods from the human food supply. Sanitation and adulteration are not identical, but rather complementary, and if public health is to be protected, states must retain their authority to respond to contaminated (adulterated) products - without seeking federal permission.

Please take note that FDA has adopted few adulteration standards for microbial contamination. While some guidance has been issued in the form of Action Levels, adulteration is frequently determined on a case-by-case basis. With states' rulemaking authority in question under H.R. 4167, states cannot take action unless they first confer with FDA and a determination is made, or unless the state concurrently petitions FDA. In 2001 alone, states took action in over 45,000 separate instances to embargo or remove adulterated foods from the market place. No additional resources have been provided to FDA to undertake such review of these petitions, and again - this is an issue that extends well beyond uniform labeling.

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A vote in support of H.R. 4167 puts at risk the health and wellbeing of all our citizens. While proponents argue that programs such as the cooperative milk and shellfish programs are not at risk, our attorney, along with 11 other state attorneys, read the bill quite differently. These are cooperative programs. The milk program, based on the Pasteurized Milk Ordinance (PMO), is written under the auspices of the Public Health Services Act. In order to participate in either program, a state must first demonstrate clear authority in adulterated foods - and this authority is lost under H.R. 4167. Under this bill, a state cannot have ANY law, not just a food law, which is not identical to the FFDCÁ.

Please note the differences in language between this "uniformity bill" and Section 11 of S.3, the "National Biodefense Act of 2005", which specifically states its intended uniformity applies to the labeling of drugs. AFDO does not oppose uniform food labeling; however, H.R. 4167 extends its reach well beyond this, and because of its ambiguity, it would be a disastrous step backwards in ensuring the safety of our nation's food supply.

Again, with so much at risk, I urge you to oppose this bill and to call for hearings to better delineate the impact and issues that are clouded by the broad, vague, sweeping language that comprises H.R. 4167. AFDO representatives would appreciate and welcome an opportunity to discuss our concerns with you and your staff.

Thank you in advance for your thoughtful consideration of our concerns. Should you or your staff have any questions, please do not hesitate to contact me at (850) 488-0295 or Mr. Cameron Smoak, Assistant Commissioner, GA Department of Agriculture at (404) 656-3627.

Sincerely,

Marion F. Aller, DVM, DABT  
President

cc: Cameron Smoak