PENDING BILL TO WEAKEN STATE FOOD SAFETY RULES WOULD MAKE U.S. MORE VULNERABLE TO PUBLIC HEALTH THREATS LIKE SPINACH CONTAMINATION

- The so-called “Uniformity for Food Act” — more appropriately titled the “Act to Weaken Food Safety Protections” — passed the House of Representatives in March and may be taken up by the Senate soon. This legislation, often referred to as the food safety preemption bill (H.R. 4167; S. 3128), passed the House without a hearing and with little notice or advanced debate. On the House floor, controversy erupted because the bill preempts state food safety laws that are stricter than often weak federal laws. The Senate Health, Education, Labor and Pensions Committee held a hearing on the bill in July, at which food industry representatives hailed the bill, and defenders of food safety, public health protection, and state authority denounced it.

- The bill preempts state food safety laws that are stricter than often weak federal standards. The bill includes two major provisions: first, it preempts state and local laws that are stricter than 10 enumerated provisions of the Federal Food Drug and Cosmetic Act;1 second, it preempts state and local labeling requirements for food that are stricter than federal rules.2 States and local governments would need to petition the Food and Drug Administration (FDA) for permission to adopt or enforce stricter state laws.3

- The bill would hinder state efforts to respond to an “imminent hazard” during a food safety emergency like spinach contamination. In the recent case of the outbreak of E. coli linked to spinach, states reportedly notified FDA Aug. 23 that individuals had become ill, but FDA did not issue a food safety warning until Sept. 14 and only relied on voluntary recalls. Under the bill, states theoretically are allowed to act on “imminent hazards,” but may have to wait for days or weeks before acting on their own under stricter state laws to protect their citizens. While states can use laws “identical” to federal law, state attorneys general and other state officials say the bill creates a cloud of uncertainty over the limits of state food safety inspection and enforcement authority. For example, Texas and Nebraska have stricter state laws than FDA, authorizing the states to recall or stop sales of a food, an authority FDA lacks.4 These state measures apparently would be preempted by the bill. The uncertainty and delays caused by the bill are risky.

- The bill would deal FDA a devastating blow, diverting $100 million dollars in already scarce resources away from food safety inspections and enforcement toward more bureaucratic red tape. The cash-strapped FDA has lost significant resources for food safety in recent years and already lacks adequate funding to carry out its food safety mission.5 According to the non-partisan Congressional Budget Office, the bill would require FDA to spend $100 million dollars over five years to implement, because laws in every state would be preempted, forcing states to submit over 200 petitions for stricter food safety standards.6

- In sum, the bill to weaken state food safety requirements could threaten protections for the public in a case like the spinach E. coli contamination incident, undermining public health and safety.
NOTES

1 S. 3128, new §403A(a)(6), page 2 lines 7-10, preempting any state or local “requirement for a food described in section 402(a)(1), 402(a)(2), 402(a)(6), 402(a)(7), 402(c), 404, 406, 409, 512, or 721(a), that is not identical to the requirement of such section.”

2 S. 3128, new §403B(a), pages 4-5.

3 S. 3128, new §403B(b) & (c), pages 6-12.

4 Texas Food, Drug, and Cosmetic Act, Title 6, Subtitle A, chapter 431, section 431.0495, gives the Commissioner of Health the power to order a "recall" of a food (along with drugs, devices, cosmetics, or consumer devices). The Nebraska Pure Food Act Title 81, section 81-2,287, gives the Director of Agriculture the power to issue a "stop-sale, stop-use, or removal order" for food if necessary to protect the public health.
