## Testimony before the Senate Committee on Health, Education, Labor, and Pensions Hearing on S. 3128, National Uniformity for Food Act

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"In all that we do, our purpose will be to strengthen the family by...promoting decision making at the level closest to the people – our communities, counties, schools districts and, most importantly, our homes." (emphasis added)

Mission Statement of Senator Michael B. Enzi for Senate Committee on Health, Education, Labor, and Pensions (on wall of Room 835 Hart Senate Office Building)

On behalf of its 800,000 members in the United States, the Center for Science in the Public Interest<sup>1</sup> is pleased to submit this testimony in strong opposition to the National Uniformity for Food Act, S. 3128, which was introduced by Senator Richard Burr on May 25, 2006.

The fallout from this thermonuclear attack on California's Proposition 65 could be the destruction of hundreds of other state and local food safety and labeling laws in every state (including six from North Carolina) (see attached table).<sup>2</sup> This destruction would occur even though Cal Dooley, President of the Food Products Association, admitted in March 2006 (according to a *USA Today* editorial opposing the bill) that he could not "cite a single instance in which manufacturers have to put *two* different labels on a [food] product, let alone 50."<sup>3</sup> (emphasis in original)

### Introduction

S. 3128 does not mention Proposition 65. Instead, it preempts any state or local food safety or labeling law – with the exception of returnable bottle labeling and ten other specific categories<sup>4</sup> – that is not "identical" to a requirement of the Food and Drug Administration ("FDA"). S. 3128 (but not its companion bill, H.R. 4167) would allow any state "policy such as a State regulation or an administrative decision, that is based on a state law that contains a requirement that is identical to" the adulteration requirement in section 402(a)(1) of the Federal Food, Drug, and Cosmetic Act <sup>5</sup> ("FFDCA") if the FDA has not issued "a regulation or adopted final guidance" on this matter. S. 3128 does not, however, identify which state laws, if any, are protected by this vague provision. Moreover, it certainly does not shield local government laws and may only protect state regulations – rather than state statutes.

A state can ask the FDA to waive this preemption by filing a petition. For state or local laws passed after the legislation is enacted, the state or local law – with the exception of one dealing with an "imminent hazard" – cannot take effect until the FDA grants the waiver; for state or local laws in effect on the day the legislation is enacted, the law remains in effect until the FDA denies the request for a waiver (which must be submitted within 180 days after enactment).

The FDA may grant the waiver if the FDA determines that the state or local law "protects an important public interest that would otherwise be unprotected" and "would not unduly burden interstate commerce."

In its February 2006 analysis of the companion House bill, H.R. 4167, the Congressional Budget Office ("CBO") estimated that roughly 200 petitions for existing laws and an additional 40 petitions for future laws could be filed with the FDA and that – at a cost of about \$400,000 per petition – it would cost the FDA about \$100 million (over five years) to process these petitions. This new burden on the FDA comes at a time when the number of FDA employees devoted to food issues has fallen steadily by ten percent over the last four years (from 3,167 in FY 2003 to 2,843 in FY 2006).

There has been a rising tide of bipartisan opposition to this legislation. Attorneys General of 37 states, Governors of eight states (California, Delaware, Illinois, Iowa, Michigan, New Jersey, New Mexico, and Oklahoma), food safety officials in seven states (Colorado, Florida, Georgia, Michigan, New York, Washington, and Wisconsin), and food safety officials in New York City and Baltimore have told Congress they oppose H.R. 4167.<sup>10</sup> The Association of Food and Drug Officials, the National Association of State Departments of Agriculture, numerous consumers groups and environmental organizations, the Humane Society of the United States, and labor unions also oppose the legislation.<sup>11</sup> As the Attorneys General put it, "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....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."<sup>12</sup>

I. The Ambiguity of the National Uniformity for Food Act Would Lead to Much Litigation About Its Scope, As Even the Food Industry is Uncertain As to Which State Laws It Threatens.

The CBO said "the scope of the state and local regulations that would be affected by the legislation is ambiguous." <sup>13</sup>

On April 24, 2006 Cal Dooley, the President and CEO of the Food Products Association, and C. Manly Molpus, the President and CEO of the Grocery Manufacturers of America, held a press conference; they were joined by Stuart M. Pape, an attorney with the Washington law firm of Patton Boggs, and John W. Bode, an attorney with the Washington law firm of Olsson, Frank and Weeda. In their summary statement they claim that H.R. 4167 affects only eleven state laws, <sup>14</sup> but in their accompanying (unsigned) detailed table they concede that at least 26 laws are preempted. <sup>15</sup> Five of these are food labeling laws: California's Proposition 65, laws in Connecticut and Michigan requiring warning of a possible allergic reaction to bulk foods containing sulfites, a Maine law requiring a warning on the risks of eating smoked alewives, and a Nevada law requiring a warning in restaurants and other food establishments that sell alcoholic beverages of the risks to pregnant women of drinking alcoholic beverages. The others are food

safety laws: food additive laws in 16 states; milk safety laws in Massachusetts, Michigan, and Nebraska; and laws in Michigan and Virginia banning the use of sulfites in restaurants and other food service establishments.

We, however, have identified at least 220 state and local laws that are threatened by S. 3128 (see attached table). We have also identified at least 240 state and local laws that are threatened by H.R. 4167 (see attached table). Our estimates are conservative, as — with a few exceptions — they ignore both state regulations (as distinct from state statutes) and food safety and labeling requirements of the more than 87,000 local governments.

This uncertainty about the scope of the legislation will, of course, lead to litigation in both state and federal courts.

II. The Food Industry Concedes that California Would Have to File About 300 Petitions with the FDA to Preserve the Requirements of Proposition 65 if Congress Were to Pass the National Uniformity for Food Act, Thereby Forcing the FDA to Spend About \$120 million Just on These Petitions.

The food industry concedes that California's Proposition 65 would be preempted by this legislation. Proposition 65 – passed by referendum in 1986 – requires a warning when a product contains a chemical that may cause cancer or birth defects if the amount of the chemical is above a certain threshold. California has established "safe harbor" ceilings for about 270 carcinogens and about 25 chemicals causing reproductive toxicity. Some – such as lead – have long been known to be present in some foods. Others – such as acrylamide and benzene – have only recently been discovered to be in foods.

The food industry admitted at its April press conference that in order to preserve these "safe harbors" California would have to file a separate petition for each chemical that may be in a food – as the science for each chemical and the impact of the required warning on interstate commerce would differ for each chemical. Thus, California would likely have to file about 300 waiver petitions in order to preserve its ability to enforce these Proposition 65 safe harbors. Using CBO's estimate of \$400,000 per petition, the FDA would have to spend \$120 million to handle these Proposition 65 petitions.

III. The Food Industry Concedes that at Least 17 States Would Have to File Petitions with the FDA to Preserve Their Law that Allows the State to Establish a Ceiling for a Food Additive that is More Protective of Public Health than One Established by the FDA.

At least 17 states – Alabama, California, Colorado, Florida, Hawaii, Illinois, Indiana, Kansas, Maryland, Massachusetts, <sup>18</sup> Montana, New Hampshire, North Dakota, Oregon, South Carolina, Texas, and Utah – have a law that authorizes the state to adopt standards for unsafe food and color additives that are more protective of human health than those the FDA has set.

The food industry concedes that these laws would be preempted by this legislation, but asserts this preemption would be of no "practical effect" because the state has never used this authority.<sup>19</sup> Even if this assertion were true, there may come a time when the state may want to use its authority because the FDA has not acted, and so each state would have to ask the FDA for a waiver in order to preserve the option of using these laws in the future.

IV. The Food Industry Has Not Refuted the Argument of State Food Safety Officials that at Least 100 State Laws Governing the Safety of Milk, Restaurant Food, and Shellfish or Fish Are Threatened by S. 3128.

S. 3128 (at page 2, lines 7-21) amends the FFDCA to preempt any state or local requirement that is not "identical" to ten sections of the FFDCA. Of particular relevance here, the state or local law must be identical to subsection 402(a)(1) and section 406 of the FFDCA. Subsection 402(a)(1) provides, in pertinent part, that a food is adulterated if it "contains any poisonous or deleterious substance which may render it injurious to health," and in order "to protect the public health" section 406 directs the FDA to set a ceiling for the amount of any poisonous or deleterious substance that can be added to a food if such substance is required to produce the food.

The Wisconsin Secretary of Agriculture, Trade and Consumer Protection told Congress that his lawyers had examined H.R. 4167 and concluded that it "would severely hinder Wisconsin's ability to protect citizens from contaminated foods." He went on to point out that "there are no *federal laws* governing the inspection and regulation of grade A milk production for interstate commerce, shellfish harvester and processors, or regulation of retail food establishments like grocery stores and restaurants." (emphasis in original)<sup>21</sup> The Florida Commissioner of Agriculture and Consumer Services told Congress, after having H.R. 4167 examined by his lawyers, that H.R. 4167 would "place at risk our...programs for milk, dairy and shellfish." New York's Commissioner of Agriculture and Markets told Congress that "food inspection enforcement laws relating to grade A milk, grocery stores and shellfish would be preempted" by H.R. 4167.<sup>23</sup>

In order to fill the gaps in the FDA's regulations,<sup>24</sup> every state has a law to ensure the safety of milk and a law to ensure the safety of food served in restaurants, cafeterias, nursing homes, and other food service establishments. At least 16 states have a law to ensure the safety of shellfish, and Arizona has a law to ensure the safety of farm-raised fish. About 88 percent (100 of these 116 laws) are clearly threatened by S. 3128 (see attached table).<sup>25</sup>

The food industry claims that these laws – with the exception of milk safety laws in Massachusetts, Michigan, and Nebraska – are not affected by this legislation because they deal with food "sanitation" rather than with food adulteration.<sup>26</sup>

The Association of Food and Drug Officials rejects this argument. It told Congress "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 function is to take action when these preventive measures fail....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....While proponents [of H.R. 4167] 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."<sup>27</sup> (emphases added)

### V. S. 3128 Threatens at Least Ten Other Food Safety Laws (Including Bans on Lead in Candy) of at Least Nine States and New York City that Fill Gaps in the FDA's Regulations.

There are at least ten state and local government food safety laws (in addition to the milk, restaurant, and shellfish laws discussed above) that fill gaps in the FDA's current requirements and are not part of a state's general food safety law. California has a law limiting the amount of lead in candy and a law dealing with the adulteration of wine. Illinois has a law limiting the amount of lead in food. Maine, Mississippi, and Utah have laws governing the safety of honeybees. New York has a law prohibiting the combined amount of lead, cadmium, mercury, and hexavalent chromium in any package from exceeding 100 parts per million. New York City has a law banning lead in candy. Texas has a regulation setting a minimum chlorine residual level in water that is being hauled. Virginia has a law banning sulfites in foods served in restaurants and other food service establishments.

Consider, for example, lead in candy. In 1995 the FDA told the candy industry – via an unenforceable guidance document<sup>29</sup> rather than through a regulation – that the FDA would consider enforcement action against candy with lead levels exceeding 0.5 parts per million ("ppm"). In May 2005 the New York City Council determined that "lead poisoning is linked to many adverse health effects among children...[and] that certain candy products have been discovered to contain dangerously high levels of lead."30 So New York City banned the sale of candy products containing lead. In October 2005 Governor Schwarzenegger signed a California law limiting the amount of lead in candy to the amount that cannot be avoided by good agricultural, manufacturing, and procurement practices. Perhaps in reaction to these two bans, in December 2005 the FDA urged the candy industry to reduce the maximum amount of lead from 0.5 ppm to 0.1 ppm; the FDA explained that this new guidance "describes the Agency's current thinking on a topic and should be viewed only as recommendations."<sup>31</sup> In June 2006 Illinois's Governor signed a law banning the sale of food (and other items) containing lead in excess of 0.06 percent of the weight of the food. The National Uniformity for Food Act threatens these laws of New York City, California, and Illinois and, if enacted, would leave children and other consumers of candy protected only by the FDA's "recommendation" to the candy industry.

# VI. The Food Industry Concedes that the Legislation Threatens the Laws of at Least 17 States Requiring that Establishments Selling Alcoholic Beverages Post A Sign Warning Pregnant Women About the Risks of Birth Defects from Drinking Such Beverages.

The FDA shares jurisdiction over alcoholic beverages with the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.<sup>32</sup>

The food industry concedes that the legislation would preempt Nevada's law requiring that establishments selling alcoholic beverages post a sign warning pregnant women of the risks of drinking such beverages.<sup>33</sup> At least 16 other states – Alaska, Arizona, Delaware, Georgia, Kentucky, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, South Dakota, Tennessee, Washington, and West Virginia – have similar laws. (These state laws complement the Congressional requirement that bottles of alcoholic beverages carry such a warning.)

## VII. The National Uniformity for Food Act Threatens at Least 32 Other Food Labeling Laws in at Least 26 States and a County.

The legislation provides that a state or local government may not require any "notification" for "a food that provides for a warning concerning the safety of the food" unless it is "identical" to a notification requirement of the FDA.<sup>34</sup> The legislation goes on to say that "the term 'warning'... means any statement, vignette, or other representation that indicates, *directly or by implication, the food presents or may present a hazard to health or safety.*" (emphasis added).<sup>35</sup>

There are at least 31 state food labeling laws in 26 states<sup>36</sup> that the food industry claims are not affected by the legislation.<sup>37</sup> However, it is clear that these laws are "warnings" within the broad meaning of H.R. 4167 and S. 3128 because "directly or by implication," as the bills state, they may be about health or safety – and so they are threatened by S. 3128 and H.R. 4167. For example,

- Alaska requires the labeling of genetically modified fish or fish products. Many
  consumers believe that such fish would be less safe than fish that has not been genetically
  modified.
- At least four states require disclosure on whether fish are farm raised: Alaska (salmon), Arkansas (catfish), Louisiana (catfish), and Mississippi (catfish). Certain farm-raised fish may contain elevated levels of PCBs or other contaminants.
- At least three states New Hampshire, New York, and Vermont have statutes that require that a food labeled as "maple syrup" consist only of maple syrup. By contrast, the FDA permits a product labeled as "maple syrup" also to contain salt, chemical preservatives, and defoaming agents.<sup>38</sup> Consumers may believe that such an additive-

containing product is less healthy than pure maple syrup.

- At least ten states Connecticut, Georgia, Iowa, Minnesota, Montana, Nevada, New York, Ohio, Pennsylvania, and Washington have laws requiring that a food labeled as "honey" be only honey. Such honey labels may be challenged as preempted by the legislation under the guise that these restrictions are an implied warning to consumers who believe that natural food is healthier than foods that contain artificial sweeteners and flavorings, or highly refined sugar.
- Los Angeles County requires restaurants to display letter grade reports on what the county's inspectors found about the safety of the food in the restaurant.

## VIII. The Legislation Threatens Laws Passed by at Least Nine States that Restrict the Sale of Sodas and Certain Foods and Beverages in Schools in Order to Promote the Health of Children.

In September 2005 Governor Schwarzenegger signed two bills restricting what foods can be sold in California's schools. SB 12 requires local school districts to prohibit, beginning July 2007, the sale of certain foods and beverages. SB 965 requires local school districts to prohibit the sale of certain beverages during various times, depending on whether it is an elementary school or a middle or junior high school. The California legislature determined in section 1 of SB 12 that the ingredients in certain foods, including added sugar in soft drinks, contribute to the "growing epidemic of overweight children," which is "putting growing numbers of California children at risk for type 2 diabetes, hypertension, heart disease, and cancer."

Laws in at least eight other states – Arizona, Arkansas, Connecticut, Indiana, Kentucky, Louisiana, North Carolina<sup>39</sup>, and West Virginia – also restrict the sale of sodas and other foods and beverages in public schools.<sup>40</sup>

The FDA has broad power to restrict the sale of any food that, in the words of section 402(a)(1) of the FFDCA, contains a "deleterious substance which may render it injurious to health." Section 406 of the FFDCA authorizes the FDA to issue regulations to limit the amount of a deleterious substance as the FDA "finds necessary for the protection of public health." Section 409(a) of the FFDCA directs the FDA to establish conditions under which a food additive may be safely used. As discussed above, S. 3128 amends the FFDCA and provides, in pertinent part, that "any requirement [of any State or political subdivision of a State] for a food described in section 402(a)(1),...406, [and] 409" is preempted unless the state or local government's requirement is identical to a requirement of the FDA.<sup>41</sup>

As the FDA has not used its broad legal powers to issue any regulations restricting the sale of foods, including soft drinks containing added sugar or artificial sweeteners, to children, the laws of these nine states restricting sales in schools could be preempted by S. 3128 and H.R. 4167.<sup>42</sup>

Conclusion: Congress Should Not Tamper With the Federal-State Food Safety Partnership that the Food Industry Admits Is Not Now Broken.

More than 70 years ago Supreme Court Justice Louis D. Brandeis said "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." For decades the food safety partnership among the FDA, the states, and local governments has worked well. As discussed above, Cal Dooley, President of the Food Products Association, admitted to *USA Today* in March 2006 that he could not "cite a single instance in which manufacturers have to put *two* different labels on a [food] product, let alone 50." (emphasis in original) Congress should not tamper with this partnership merely because the food industry thinks there may be an unspecified problem in the future.

Attachment: Examples of state and local food safety and labeling laws and regulations threatened by either H.R. 4167 (as passed by the House of Representatives on March 8, 2006) or S. 3128, the National Uniformity for Food Act

#### Notes

- 1. The Center for Science in the Public Interest, a nonprofit organization based in Washington, D.C., is supported by about 900,000 members in the United States and Canada who subscribe to its *Nutrition Action Healthletter*. CSPI has been working to improve the nation's health through better nutrition and safer food since 1971.
- 2. This July 2006 table reflects criticisms by the food industry of a March 2006 table. My CSPI colleagues Hilary Kennedy and Samantha Williams were of great help in the preparation of these tables.
- 3. USA Today (March 27, 2006) at 12A.
- 4. The other exempt categories are "freshness dating, open date labeling, grade labeling, a State inspection stamp, religious dietary labeling, organic or natural designation, ...unit pricing, a statement of geographic origin, dietary supplements, or a consumer advisory relating to food sanitation that is imposed on a food establishment, or that is recommended by the Secretary, under part 3-6 of the [Model] Food Code issued by the Food and Drug Administration," the Centers for Disease Control, and the United States Department of Agriculture. H.R. 4167, page 14, lines 9-25 and S. 3128, page 14, lines 12-23. The Model Food Code is published periodically and deals with more than consumer advisories; it can be used by state and local governments in establishing their own regulations to ensure the safety of food served in restaurants, schools, hospitals, nursing homes, and other food service establishments.
- 5. This exception also applies to nine other enumerated parts of the FFDCA that deal with any poisonous or added deleterious substance added to food (subsection 402(a)(2)), a food container that contains a poisonous or deleterious substance (subsection 402(a)(6)), irradiated food (subsection 402(a)(7)), the safety of color additives in foods (subsection 402(a)(c)), emergency permits (section 404), tolerances for poisonous ingredients in foods (section 406), the safety of food additives (section 409), the safety of new animal drugs (section 512), and the safety of color additives in foods, drugs, devices, or cosmetics (subsection 721(a)). See S. 3128 at page 3, lines 5-12.
- 6. For example, in North Carolina it might refer to regulations adopted pursuant to the North Carolina Food, Drug, and Cosmetic Act ("NCFDCA"). North Carolina General Statutes, Chapter 106, Article 12, sections 106-120-106-145. However, other important North Carolina food safety laws such as those dealing with the safety of milk, food eaten in restaurants and other food service establishments, and shellfish, are not part of the NCFDCA and so are threatened by S. 3128.
- 7. H.R. 4176 at page 10, lines 1-13 and S. 3128 at page 10, lines 1-10. The courts will, of course, strike down any state or local food safety or labeling law that unduly burdens interstate commerce. For example, more than 60 years ago the United States Supreme Court held that a Madison, Wisconsin ordinance requiring that all pasteurized milk be bottled at an approved

pasteurization plant located within a five mile radius of the center of Madison violated the Commerce Clause of the United States constitution. Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951). See also Granholm v. Heald, 544 U.S. 460 (2005) (Michigan and New York laws banning out-of-state wineries from selling directly to consumers violate the Commerce Clause).

- 8. H.R. Rept. 109-379, 109th Cong. 2d Sess. (February 28, 2006) at 11.
- 9. FDA, Office of Management and Budget Formulation and Presentation, "Foods" www.fda.gov/oc/oms/ofm/budget/2007/pdf/3consolidatednarrative.pdf (visited May 1, 2006).
- 10. March 1, 2006 letter of National Association of Attorneys General; April 18, 2006 letter of Governor Arnold Schwarzenegger; March 2, 2006 letter of Governor Rod R. Blagojevich; March 7, 2006 letter of Governor Ruth Ann Minner, Governor Tom Vilsack, Governor Jennifer M. Granholm, Governor Jon S. Corzine, Governor Bill Richardson, and Governor Brad Henry; January 30, 2006 letter of Colorado Commissioner of Agriculture; February 14, 2006 letter of Florida Commissioner of Agriculture and Consumer Services; March 24, 2006 letter of Georgia Commissioner of Agriculture; February 17, 2006 letter of Michigan Director of Agriculture; March 1, 2006 letter of New York Commissioner of Agriculture and Markets; February 27, 2006 letter of Washington Assistant Director of Agriculture; December 12, 2005 letter of Wisconsin Secretary of Agriculture, Trade and Consumer Protection; April 21, 2006 letter of Baltimore Commissioner of Health; July 10, 2006 letter of New York City Commissioner of Health and Mental Hygiene. Many of these letters are available at http://www.house.gov/waxman/issues/health/food\_safety\_hr\_4167.htm and http://www.house.gov/waxman/issues/health/food\_safety\_hr\_4167 letters\_oppostion.htm.
- 11. See, e.g., January 16, 2006 letter of Association of Food and Drug Officials; June 1, 2006 letter of National Association of State Departments of Agriculture. These and other letters opposing H.R. 4167 are available at http://www.house.gov/waxman/issues/health/food\_safety\_hr\_4167.htm and http://www.house.gov/waxman/issues/health/food\_safety\_hr\_4167 letters opposition.htm.
- 12. March 1, 2006 letter of National Association of Attorneys General at 1.
- 13. H.R. Rept. 109-379, 109th Cong. 2d Sess. (February 28, 2006) at 11.
- 14. National Uniformity for Food Coalition press release (April 24, 2006) www.uniformityforfood.com/coalitionrelease042406pressconf.pdf.
- 15. Analysis of State Laws Cited in CSPI Report Shredding the Food Safety Net (hereafter cited as Pape-Bode paper). www.uniformityforfood.org/statelawanalysissummarydetails.pdf. The Pape-Bode paper deletes the first six pages of our March 2006 report, thereby making it appear that we were presenting the maximum number of laws rather than examples of laws that are threatened by H.R. 4167. The full text of our report -- Shredding the Food Safety Net, A Partial Review of 200 State Food Safety and Labeling Laws Congress is Poised to Effectively Kill with

- *H.R.* 4167 (Center for Science in the Public Interest and Natural Resources Defense Council March 2006) is available at www.cspinet.org/new/pdf/shredding.pdf.
- 16. Pape-Bode paper at 4.
- 17. www.oehha.ca.gov/prop65/pdf/Augt2005statusreport.pdf (visited May 1, 2006). California has identified about 770 chemicals that cause cancer or reproductive toxicity. www.oehha.ca.gov/prop65/prop65 list/files/060906p65single.pdf (visited July 19, 2006).
- 18. In 1988 the Massachusetts Supreme Court rejected a challenge by the food industry to the Massachusetts statute whereby the Massachusetts Department fo Public Health had set a ceiling for daminozide residue in processed apple products that was lower than what the FDA had established. Processed Apples Institute, Inc. v. Department of Public Health, 402 Mass. 392 (1988).
- 19. See, e.g., Pape-Bode paper at 4.
- 20. December 12, 2005 letter of the Wisconsin Secretary of Agriculture, Trade and Consumer Protection at 1.
- 21. Id. at 2.
- 22. February 14, 2006 letter from Florida Commissioner of Agriculture and Consumer Services at 2.
- 23. March 1, 2006 letter of New York Commissioner of Agriculture and Markets at 2.
- 24. The FDA prohibits the interstate shipment of both contaminated shellfish and unpasteurized milk. 21 CFR 1240.60 and 1240.61. However, its regulations do not deal with ensuring the safety of milk or shellfish within a state. The FDA has no regulations governing the safety of food in restaurants and other food service establishments.
- 25. Sixteen milk safety, restaurant safety, and shellfish safety laws in Alaska, Kentucky, Massachusetts, Michigan, Missouri, Nebraska, Ohio, Wisconsin, and Wyoming may not be threatened by S. 3128 because in these states these laws are part of the state law that resembles the FFDCA.
- 26. See, e.g., Pape-Bode paper at 1.
- 27. January 16, 2006 letter from Association of Food and Drug Officials at 1, 2.
- 28. At a press conference on March 7, 2006 the Attorney General of Utah said he opposed the legislation, in part because, in his opinion, it threatened Utah's honeybee safety law.
- 29. James T.O. Reilly, *Food and Drug Administration*, 2<sup>nd</sup> ed. (2005) volume 1 at 4-71-4-72 ("Guidelines have the legal status of advisory opinions, which are merely an indication of policy

directions....guidelines are legally unenforceable – rather a list of desires than of mandates...") (footnotes omitted). See 21 CFR 10.90(c).

- 30. New York City Law No. 49 (May 19, 2005).
- 31. www.fda.gov/bbs/topics/NEWS/2005/NEW01284.html (visited March 1, 2006).
- 32. See <a href="https://www.fda.gov/ora/compliance-ref/cpg/cpgfod/cpg510-450.html">www.fda.gov/ora/compliance-ref/cpg/cpgfod/cpg510-450.html</a>. (visited July 6, 2006)
- 33. Pape-Bode paper at 21.
- 34. H.R. 4167 at page 4, lines 11-22 and S. 3128 at page 4, lines 8-19.
- 35. H.R. 4167 at page 5, lines 9-13 and S. 3128 at page 5, lines 5-9.
- 36. Alaska requires both the labeling of farm-raised salmon products and the labeling of genetically modified fish or fish products. Arkansas requires a label that catfish be labeled as "farm-raised," "river or lake," "imported," or "ocean." California requires labels to disclose both if the food contains more than ½ percent alcohol and if a food is perishable when not refrigerated. Connecticut, Georgia, Iowa, Minnesota, Montana, Nevada, New York, Ohio, Pennsylvania, and Washington each have a law governing when "honey" can be on the label of a food. Delaware requires that carbonated beverages containing artificial sweeteners be labeled as dietetic. Iowa also has a law governing when a food can have on the label the word "sorghum." Louisiana has a law requiring that any catfish product be labeled as farm-raised or naturally produced. Maine has laws requiring disclosure of whether fresh produce has had a post-harvest treatment and whether apples have been exposed to controlled atmosphere. Maryland has a law requiring disclosure of whether a "fresh" food has been previously frozen. Massachusetts has a law governing the labeling of halibut. Minnesota also has a law governing the labeling of various types of wild rice. Mississippi requires any catfish product to be label as "farm-raised," "river or lake," or "ocean." New Hampshire, New York, and Vermont have laws requiring that maple syrup be made solely from the sap of the maple tree. New York also requires a label to disclose whether a frozen food has previously been offered for sale in unfrozen form. North Carolina has a law governing the labeling of milk used in summer camps. Oregon has a law requiring that food that has been "salvaged" have a label stating that fact. Rhode Island has a law requiring disclosure of whether uncooked fish or shellfish have ever been frozen and a law governing the labeling of closed packages of apples. South Dakota requires a food label to disclose whether the food contains chloroform and various narcotics. Wisconsin has a labeling law governing the age of cheese made in Wisconsin.
- 37. See, e.g., Pape-Bode paper at 2. Depending on the particular state labeling law, the food industry gives one of three reasons why it is not affected by H.R. 4167: (1) the label is not a "warning" as defined in the bill, (2) the label deals with what the industry calls "economic adulteration" (a term that does not appear either in the National Uniformity for Food Act or the FFDCA), or (3) there is no comparable FDA requirement (even though for other state labeling requirements such as Proposition 65 the industry says the law is preempted although there is

no comparable FDA requirement).

- 38. 21 CFR 168.140(b).
- 39. The North Carolina law also bans the sale of foods containing trans fatty acids from partially hydrogenated vegetable oils.
- 40. For further discussion of state efforts to restrict the sale of certain foods and beverages in schools, see *School Foods Report Card* (CSPI June 20, 2006) available at http://cspinet.org/new/pdf/school\_foods\_report\_card.pdf.
- 41. S. 3128 at page 2, lines 7-21.
- 42. These state laws are not part of the state law resembling the FFDCA.
- 43. New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (dissenting opinion).
- 44. USA Today (March 27, 2006) at 12A.

# EXAMPLES OF STATE AND LOCAL FOOD SAFETY AND LABELING LAWS AND REGULATIONS THREATENED BY EITHER H.R. 4167 (as passed by the House of Representatives on March 8, 2006) or S. 3128, THE NATIONAL UNIFORMITY FOR FOOD ACT

### Revised July 24, 2006

Alabama	Statutory provision prohibiting terra alba, barytes, talc, chrome yellow, or burnt umber in confectioneries. 1 (Safe Food Act, Title 20, Chapter 1, § 20-1-23).  Statutory provision authorizing tolerances for infested, moldy, or decayed
	pecans and other nuts. 1 (Safe Food Act, Title 20, Chapter 1, § 20-1-90).
	Statutory provision governing the safety of milk. (Code of Alabama, Title 2, Chapter 13, Article 3, §§ 2-13-80- 2-13-94).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (Code of Alabama, Title 22, Title 1, Chapter 20, §22-20-5).
	Statutory provision governing shellfish safety (Code of Alabama, Title 22, Title 1, Chapter 2, §22-2-2 and Title 9, Chapter 12, Article 2, §9-12-126)
Alaska	Statutory provision requiring labeling of farm-raised salmon products. (Alaska Food, Drug and Cosmetic Act, Title 17, Chapters 17-20 §17.20.040 (12)).
	Statutory provision requiring labeling of genetically modified fish or fish products. (SB 25; signed by Governor May 19, 2005)
	Statutory provision barring "halibut" on a food label if the food is not either hippoglossus or hippoglossus stenolepsis (Alaska Food, Drug, and Cosmetic Act, Title 17, Chapters 17-20 §17.20.045).
	Statutory provision governing the safety of milk. 2 (Alaska Food, Drug, and Cosmetic Act, Title 17, Chapters 17-20 §17.20.005(4)).
	Statutory provision governing the safety of food in restaurants and other food service establishments. 2 (Alaska Food, Drug, and Cosmetic Act, Title 17, Chapters 17-20, § 17.20.005(1)).

<sup>1</sup>May not be preempted by S. 3128 because part of Alabama's Safe Food Act (Title 20, Chapter 1).

<sup>2</sup> May not be preempted by S. 3128 because part of Alaska's Food, Drug, and Cosmetic Act (Title 17, Chapter 17.20).

	Statutory provision governing shellfish safety. 2 (Alaska Food, Drug and Cosmetic Act, Title 17, Chapters 17-20, §17.20.005(5)).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Alaska Statutes, Title 4, Chapters 4-21, §4.21.065).
Arizona	Statutory provision governing the safety of milk and other dairy products (including raw milk).  (Arizona Revised Statutes, Title 3, Chapter 4, Article 1, §§ 3-601- 3-634).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (Arizona Revised Statutes, Title 36, Chapter 1, Article 1, §36-104(b)(i))
	Statutory provision governing fish safety (Arizona Revised Statutes, Title 3, Chapter 16, Article 1, §§3-2901- 3-2904).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Arizona Revised Statutes, Title 4, Chapter 2, Article 4, §4-261).
	Statutory provision prohibiting sale of certain foods and beverages in public schools.  (Arizona Revised Statutes, Title 15, Chapter 2, Article 2, §15-242.E).
Arkansas	Statutory provision authorizing regulations governing the safety of salvaged food. (Arkansas Code, Title 20, Subtitle 4, Chapter 57, Subchapter 1, §20-57-102).
	Statutory provision requiring any catfish product to be labeled as "farm-raised," "river or lake," "imported," or "ocean".  (Arkansas Code, Title 20, Subtitle 4, Chapter 61, Subchapter 2, §20-61-206).
	Statutory provision governing the safety of milk. (Arkansas Code, Title 20, Subtitle 4, Chapter 59, Subchapters 1-2, §§20-59-101-20-59-248).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (Arkansas Code, Title 20, Subtitle 4, Chapter 57, Subchapter 2, §§20-57-201-20-57-204).
	Statutory provision prohibiting the use of "honey" on a food label if the food is not pure honey.  (Arkansas Code, Title 20, Subtitle 4, Chapter 57, subchapter 4, §20-57-402).
	Statutory provision prohibiting vending machines offering food and beverages in elementary schools.  (Arkansas Code, Title 20, Subtitle 2, Chapter 7, Subchapter 1, §20-7-135 (c)).

<sup>2</sup> May not be preempted by S. 3128 because part of Alaska's Food, Drug, and Cosmetic Act (Title 17, Chapter 17.20).

### California

Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.

(Sherman Food, Drug, and Cosmetic Law, Cal. Health and Safety Code, Division 104, Part 5, Chapter 2, Article 1, §§110085 and 110090).

Statutory provisions requiring that consumers be notified of contaminants that are known to the state to cause cancer or reproductive toxicity.

(Proposition 65) (Cal. Health & Safety Code, Division 20, Chapter 6.6 §§25249.5 et seq.).

Statutory provisions on shellfish safety.

(Cal. Health & Safety Code Division 104, Part 6, Chapter 5, Article 2 §§112160 et seq.)

Statutory provision limiting the amount of lead in candy. (AB 121; signed by Governor October 7, 2005.)

Statutory provision requiring label to disclose if food contains more than ½ of one percent alcohol.

(Sherman Food, Drug, and Cosmetic Law, Cal. Health and Safety Code, Division 104, Part 5, Chapter 5, Article 6 §110695).

Statutory provision requiring label to disclose if food is perishable when not refrigerated.

(Sherman Food, Drug, and Cosmetic Law, Cal. Health and Safety Code, Division 104, Part 5, Chapter 5, Article 6, §110700).

Statutory provisions pertaining to the adulteration of wine.

(Sherman Food, Drug, and Cosmetic Law, Cal. Health and Safety Code, Division 104, Part 5, Chapter 5, Article 5, §110597).

Statutory provision governing the safety of milk (including raw milk). (Food and Agriculture Code, Division 15, Part 1, Chapter 5, §§32901- 32921 and Division 15, Part 2, Chapter 2, Articles 1-8, §§35751-35928).

Statutory provision governing the safety of food in restaurants and other food service establishments.

(Cal. Health & Safety Code, Division 104, Part 7, Chapter 4, §§113700-114475).

Statutory provision prohibiting the sale of certain foods and beverages in public schools.

(SB 12; signed by Governor September 15, 2005).

Statutory provision prohibiting the sale of certain beverages during various times in public schools.

(SB 965, signed by Governor September 15, 2005).

Colorado	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Colorado Food and Drug Act, Title 25, Article 5, Part 4, §25-5-413(2)).
	Statutory provision governing the safety of milk. (Colorado Revised Statutes, Title 25, Article 5.5, Part 1, §§25-5.5-101- 25-5.5-117).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (Colorado Revised Statutes, Title 25, Article 4, Part 16, §§25-4-1601-25-4-1612).
	Statutory provision governing shellfish safety (Colorado Revised Statutes, Title 25, Article 4, Part 18, §§25-4-1803- 25-4-1813).
Connecticut	Statutory provision prohibiting the use of "honey" on the label of a food that does not contain honey.  (General Statutes of Connecticut, Volume 7, Title 21a, Chapter 417, §21a-24).
	Statutory provision prohibiting the sale of cider vinegar unless made wholly from apple juice.  (General Statutes of Connecticut, Volume 7, Title 21a, Chapter 417, §21a-25).
	Statutory provision requiring a warning about a possible allergic reaction when any sulfiting agent is present in any bulk food.  (General Statutes of Connecticut, Volume 7, Title 21a, Chapter 418, §21a-104a).
	Statutory provision governing the safety of milk (including raw milk). (General Statutes of Connecticut, Volume 8, Title 22, Chapter 430, §§22-127-22-203h).
	Regulatory provision governing the safety of food in restaurants and other food service establishments. (Public Health Code, Volume 6, Title 19a, Chapter 368a, §§19a-36a-19a-36b).
	Statutory provision governing shellfish safety (General Statutes of Connecticut, Volume 8, Title 26, Chapter 491, §§26-192a-26-192g).
	Statutory provision prohibiting the sale in schools of certain beverages during various times. (SB 373; signed by Governor May 19, 2006)
Delaware	Statutory provision requiring carbonated beverages containing artificial sweeteners to be labeled as "dietetic." (Delaware Code, Title 16, Part 4, Chapter 43, §4312).

	Statutory provision governing the safety of milk. (Delaware Code, Title 16, Part 1, Chapter 1, Subchapter 2, §122 (3)f.).
	Statutory provision governing the safety of food in restaurants and other food service establishments.
	(Delaware Code, Title 16, Part1, Chapter 1, Subchapter 2, §122 (3)u).
	Statutory provision governing shellfish safety (Delaware Code, Title 7, Part 2, Chapter 19, §§1901- 1902)
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages.  (Delayers Code, Title 4, Chapter 9, \$003)
	(Delaware Code, Title 4, Chapter 9, §903).
Florida	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.
	(Florida Food Safety Act, Title XXXIII, Chapter 500, §500.13(2)).
	Statutory provisions on shellfish safety.
	(Florida Aquaculture Policy Act, Title XXXV, Chapter 597).
	Numerous statutory provisions concerning labeling of citrus fruit, canned citrus
	juices, and frozen citrus juices.
	(Florida Agriculture, Horticulture, and Animal Industry, Citrus Code, Title XXXV, Chapter 601, §§601.99 et seq.).
	Statutory provision governing the safety of milk.
	(Florida Statutes, Title XXXIII, Chapter 502, §§502.012- 502.232).
	Statutory provision governing the safety of food in restaurants and other food service establishments.
	(Florida Statutes, Title XXXIII, Chapter 509, Part 1, §§509.013-509.101).
Georgia	Statutory provision permitting ingredients of a carbonated beverage to be disclosed through an affidavit to the Commissioner rather than on the label. (Georgia Statutes, Title 26, Chapter 26-2, §26-2-28(9)(c)).
	Statutory provision regulating when a food can have the label "honey." (Georgia Statutes, Title 26, Chapter 26-2, §26-2-32(a)).
	Statutory provision governing the safety of milk. (Georgia Dairy Act of 1980, Title 26, Chapter 26-2, §§26-2-230- 26-2-250).
	Statutory provision governing the safety of food in restaurants and other food service establishments.
	(Georgia Statutes, Title 26, Chapter 26-2, §§26-2-371- 26-2-373.1).
	Statutory provision governing the safety of fish and seafood (Georgia Statutes, Title 26, Chapter 26-2, §§26-2-318).

	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Georgia Statutes, Title 3, Chapter 3-1, §3-1-5).
Hawaii	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Hawaii Food, Drug, and Cosmetic Act, Volume 6, Chapter 328, §328-13(b)).
	Statutory provision governing the safety of milk. (Hawaii Revised Statutes, Volume 6, Chapter 321, §321-11(14)).
	Regulatory provision governing the safety of food in restaurants and other food service establishments. (Hawaii Administrative Rules, Title 11, Chapter 12).
Idaho	Statutory provision governing the safety of milk. (Idaho Statutes, Title 37, Chapter 4, §§37-402- 37-413).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (Idaho Statutes, Title 39, Chapter 16, §§39-1601-39-1608).
Illinois	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Illinois Food, Drug, and Cosmetic Act, Chapter 410, Subhead 620, §13(b)).
	Statutory provision deeming egg products adulterated if processed in a manner that increases the risk of microbial contamination. (Illinois Food, Drug, and Cosmetic Act, Chapter 410, Subhead 620, §10(f); Illinois Egg and Egg Products Act, Chapter 410, Subhead 615, §3.1(1)).
	Statutory provision limiting the amount of lead in food. (HB 4853; signed by Governor June 20, 2006).
	Statutory provision governing the safety of milk. (Grade A Pasteurized Milk and Milk Products Act, Chapter 410, Subhead 635, §§635-1-635-19).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (Food Handling Regulation Enforcement Act, Chapter 410, Subhead 625, §§1-3.1)
	Statutory provision prohibiting the use of "honey" on a food label if the food is not pure honey. (Illinois Food, Drug, and Cosmetic Act, Chapter 410, Subhead 620, §11(p)).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages.  (Liquor Control Act, Chapter 235, Subhead 5, §6-24b).

Indiana	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Indiana Food, Drug, and Cosmetic Act, Title 16, Article 42, Chapter 2, §16-42-2-5(b)).
	Statutory provision governing the safety of milk. (Indiana Code, Title 15, Article 2.1, Chapter 23, §§15-2.1-23-1- 15-2.1-23-17).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (Indiana Code, Title 16, Article 42, Chapter 5, §§16-42-5.05-16-42-5-28 and Chapter 5.2, §§16-42-5.2-1-16-42-5.2-15).
	Statutory provision banning vending machines that dispense food or beverages in elementary schools. (Indiana Code, Title 20, Article 26, Chapter 9, §20-26-9-19 (b)).
Iowa	Statutory provision regulating when a food can have the label "honey." (Iowa Code, Title V, Subtitle 4, Chapter 189, §189.14(2)).
	Statutory provision regulating when a food can have the label "sorghum." (Iowa Code, Title V, Subtitle 4, Chapter 189, §189.14(3)).
	Statutory provision governing the safety of milk. (Iowa Grade "A" Milk Inspection Law, Title V, Subtitle 4, Chapter 192, Section 192.101-192.127 and Chapter 194, Section 194.8).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (Iowa Code, Title IV, Subtitle 2, Chapter 137F, §§ 137.F1- 137F.19).
Kansas	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Kansas Food, Drug, and Cosmetic Act, Chapter 65, Article 6, §65-667(b)).
	Statutory provision governing the safety of milk (including unpasteurized milk). (Kansas Statutes, Chapter 65, Article 7, §§65-771-65-791).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (Kansas Statutes, Chapter 36, Article 5, §§36-507-36-515c).
	Statutory provision prohibiting the use of "honey" on a food label if the food is not pure honey.  (Kansas Food, Drug, and Cosmetic Act, Chapter 65, Article 6, §65-681).

Statutory provision governing the safety of milk (including unpasteurized goat milk).
(Kentucky Revised Statutes, Title XXI, Chapter 260, §§260.775- 260.845 and Title XVIII, Chapter 217C.090).
Statutory provision governing the safety of food in restaurants and other food service establishments.3
(Kentucky Revised Statutes, Title XVIII, Chapter 217, §§217.127).
Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Kentucky Revised Statutes, Title XX, Chapter 243, §243.895).
Statutory provision banning sale of certain beverages in vending machines in elementary schools.
(Kentucky Revised Statutes, Title XIII, Chapter 158, §158.854).
Regulatory provision requiring restaurants to display letter grade card on food
safety. (Title 8, Chapter 8.04, §8.04.225).
Statutory provision on shellfish safety. (Revised Statutes, Title 40, 40:5.3).
(Revised Statutes, Title 40, 40:5.5).
Statutory provision requiring any catfish product to be labeled as farm-raised or
naturally produced. (Revised Statutes, Title 56, 56:578.11).
Statutory provision governing the safety of milk. (Revised Statutes, Title 40, §§40:921-40:925).
Statutory provision governing the safety of food in restaurants and other food service establishments.
(Revised Statutes, Title 40, 40:5.5)
Statutory provision banning the sale of certain beverages in elementary and
secondary schools during certain times.
(Revised Statutes, Title 17, 17:197.1.B).
Statutory provision requiring disclosure of whether fresh produce has had a post-
harvest treatment. (Maine Revised Statutes, Title 22, Subtitle 2, Part 5, Chapter 551, Subchapter 1,
§2157.14).
Statutory provision requiring sign stating that eating smoked alewives poses a
health risk.  (Mains Parrised Statutes Title 22 Subtitle 2 Part 5 Chapter 551 Subshanter 1
(Maine Revised Statutes, Title 22, Subtitle 2, Part 5, Chapter 551, Subchapter 1, §2173).

<sup>3</sup> May not be preempted by S. 3128 because part of Kentucky's Food, Drug and Cosmetic Act (Title XVIII, Chapter 27, §§217.005-217.215).

	Statutory provision regulating the sale of apples that have been exposed to "controlled atmosphere."  (Maine Revised Statutes, Title 7, Part 2, Chapter 103, Subchapter 1, §539).  Statutory provision governing the shellfish of safety (Maine Revised Statutes, Title 12, Part 9, Subpart 2, Chapter 625, §6856).  Statutory provision governing the safety of milk. (Maine Revised Statutes, Title 7, Part 7, Chapter 601, §§2900- 2910-A).  Statutory provision governing the safety of food in restaurants and other food service establishments. (Maine Revised Statutes, Title 22, Subtitle 2, Part 5, Chapter 562, §§2491-2501).  Statutory provision governing the safety of honeybees (Maine Revised Statutes, Title 7, Part 6-A, Chapter 527, §2801).
Maryland	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Maryland Health Code, Food, Drug, and Cosmetics Act, Title 21, Subtitle 2, §21-239(c)).  Statutory provision requiring label to disclose if "fresh" food was previously frozen and thus should not be refrozen.  (Maryland Health Code, Food, Drug, and Cosmetics Act, Title 21, Subtitle 2,
	§21-210(b)(11)).  Statutory provision prohibiting the sale of frozen food that has been previously thawed from a prior freezing.  (Maryland Health Code, Food, Drug, and Cosmetics Act, Title 21, Subtitle 2, §21-207(b)(8)).  Statutory provision governing the safety of milk.  (Maryland Health Code, Food, Drugs and Cosmetics Act, Title 21, Subtitle 4, §§21-401-21-430).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (Maryland Health Code, Food, Drugs, and Cosmetics Act, Title 21, Subtitle 3, §§21-301-21-323.1).  Statutory provision governing the safety of shellfish
	(Maryland Natural Resources Code, Title 4, Subtitle 7, §4-742 and Sections 4-743)
Massachusetts	Statutory provision barring "halibut" on a food label if the food is not either hippoglossus hippoglossus or hippoglossus stenolepsis. (General Laws of Massachusetts, Part 1, Title XV, Chapter 94, §194B).

	Statutory provision governing the safety of milk. 4 (General Laws of Massachusetts, Part 1, Title XV, Chapter 94, §§13-48D).
	Statutory provision governing the safety of food in restaurants and other food service establishments. 4
	(General Laws of Massachusetts, Part 1, Title XV, Chapter 94, §§305A-305B).
	Statutory provision banning the sale of dead uncooked lobster and requiring frozen lobster to have a label indicating the date of processing. 4 (General Laws of Massachusetts, Part 1, Title XV, Chapter 94, §77G).
	Statutory provision allowing the state to adopt tolerances for food additives that are more protective of the public health than the applicable Federal tolerances. (General Laws of Massachusetts, Part 1, Title XV, Chapter 94, §192).
Michigan	Regulations on smoked fish. (Michigan Admin. Code, Regulation 569, r. 285.569).
	Statutory provision banning the use of sulfiting agents in restaurants and other food service establishments.5 (Michigan Compiled Laws, Chapter 289, Food Law of 2000, Chapter VI, §289.6139).
	Statutory provision requiring a warning about a possible allergic reaction when any sulfiting agent is present in any bulk food. (Michigan Compiled Laws, Chapter 289, Food Law of 2000, Chapter VIII, §289.8103).
	Statutory provision governing the safety of milk. (Michigan Compiled Laws, Chapter 288, Manufacturing Milk Law of 2001, Articles 1-13, §§288.471-288.711).
	Statutory provision governing the safety of food in restaurants and other food service establishments.5 (Michigan Compiled Laws, Chapter 289, Food Law of 2000, Chapter 6101, §§289.1105-289.6135).
Minnesota	Statutory provision regulating when a food may be sold as "honey." (Minnesota Statutes, Chapter 31, §31.74).
	Statutory provision requiring labeling of various types of wild rice. (Minnesota Statutes, Chapter 30, §30.49).
	Statutory provision prohibiting the sale of a confection containing alcohol to a person under the age of 21 and requiring labels on such confections.6 (Minnesota Statutes, Chapter 31, §31.76).

<sup>4</sup> May not be preempted by S. 3128 because part of Part 1, Title XV, Chapter 94 of General Laws of Massachusetts. 5 May not be preempted by S. 3128 because part of Michigan's Food Law (Chapter 289, §§289.1101-289.8111) 6 May not be preempted by S. 3128 because part of Minnesota's Food Law (Chapter 31, §§31.001-31.96)

,	Statutory provision governing the safety of milk.
	(Minnesota Statutes, Chapter 32, §§32.01-32.398).
	Statutory provision governing the safety of food in restaurants and other food service establishments.
	(Minnesota Statutes, Chapter 157, §§157.011-157.22).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Minnesota Statutes, Chapter 340A, Section 340.A.410, Subdivision 4b(3)).
Mississippi	Statutory provision requiring any catfish product to be labeled as farm-raised, river or lake, or ocean.  (Mississippi Code, Title 69, Chapter 7, Article 13, §69-7-607).
	Statutory provision governing the safety of milk (including raw goat milk). (Mississippi Code, Title 75, Chapter 31, Article 1, §75-31-65).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (Mississippi Code, Title 69, Chapter 1, §69-1-18).
	Statutory provision governing the safety of oysters. (Mississsippi Code, Title 49, Chapter 15, Article 1, §49-15-37).
	Statutory provision governing the safety of honeybees. (Mississippi Code, Title 69, Chapter 25, Article 3, §69-25-105).
Missouri	Statutory provision governing the safety of milk. 7 (Missouri Revised Statutes, Title XII, Chapter 196, §§196.520-196.610).
	Statutory provision governing the safety of food in restaurants and other food service establishments.7 (Missouri Revised Statutes, Title XII, Chapter 196, §§196.240-196.265).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Missouri Revised Statutes, Title XX, Chapter 311, §311.299).
Montana	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Montana Code Annotated, Montana Food, Drug, and Cosmetics Act, Title 50,
	Chapter 31, Part 1, §50-31-108).
	Statutory provision regulating when a food can have the label "honey." (Montana Code Annotated, Montana Food, Drug, and Cosmetics Act, Title 50, Chapter 31, Part 2, §50-31-204).

<sup>7</sup> May not be preempted by S. 3128 because part of Missouri's Title XII, Chapter 196.

	Statutory provision governing the safety of milk. (Montana Code Annotated, Title 81, Chapter 22, Parts 1-4, §§81-22-101-81-22-419).
	Statutory provision governing the safety of food in restaurants and other food service establishments.8
	(Montana Code Annotated, Montana Food, Drug, and Cosmetic Act, Title 50, Chapter 31, §§50-31-103-50-31-106).
Nebraska	Statutory provision governing the safety of milk. (Nebraska Statutes, Nebraska Manufacturing Milk Act, Title 2, §§2-3913- 2-3946).
	Statutory provision governing the safety of food in restaurants and other food service establishments.9 (Nebraska Statutes, Title 81, §§81-2,244.01-81-2,276).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Nebraska Statutes, Title 53, §53-148.01).
Nevada	Statutory provision prohibiting the use of "honey" on a food label if the food does not consist solely of honey. (Nevada Revised Statutes, Title 51, Chapter 585, §585.355).
	Statutory provision governing the safety of milk (including unpasteurized milk). (Nevada Revised Statutes, Title 51, Chapter 584, §§584.180- 584.210).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (Nevada Revised Statutes, Title 40, Chapter 446, §§446.017-446.945).
	Statutory provision requiring restaurants and bars to post a sign warning pregnant women of the risk of drinking alcoholic beverages. (Nevada Revised Statutes, Title 40, Chapter 446, Section 446.842).
New Hampshire	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.
	(New Hampshire Revised Statutes, Title X, Chapter 146, §146:21-II).
	Statutory provision prohibiting the sale of cider vinegar unless made solely from apple cider
	(New Hampshire Revised Statutes, Title X, Chapter 146, §146:14).
	Statutory provision requiring that maple syrup be made solely from the sap of the maple tree.
_	(New Hampshire Revised Statutes, Title X, Chapter 146, §146:13).

<sup>8</sup> May not be preempted by S. 3128 because part of Montana's Food, Drug and Cosmetic Act (Title 50, Chapter 31). 9 May not be preempted by S. 3128 because part of Nebraska's Pure Food Act (Title 81, §§81-2,239-81-2,292).

	Statutory provision governing the safety of milk (including raw milk). (New Hampshire Revised Statutes, Title XIV, Chapter 184, §§184:30-a-184:30-h).
	Statutory provision governing the safety of food in restaurants and other food service establishments.
	(New Hampshire Revised Statutes, Title X, Chapter 143A, §§143.A:1-143. A:11).
·	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages.  (New Hampshire Revised Statutes, Title XIII, Chapter 175, §175:4.IV)
New Jersey	Statutory provision prohibiting the sale to a person under the legal age of a confection containing more than 1/2 percent alcohol.10 (New Jersey Statutes, Title 24, §24:5-9.1)
	Statutory provision governing the safety of milk. (New Jersey Statutes, Title 4, §§4:12A-19- 4:12A-21).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (New Jersey Statutes, Title 26, §§26:1A-7- 26:1A-10).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (New Jersey Statutes, Title 33, §33:1-12a).
New Mexico	Statutory provision governing the safety of milk (including raw milk). (New Mexico Statutes, Chapter 25, Article 7 and Article 8, §§25-7-1-25-7-8 and §§25-8-1).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (New Mexico Statutes, Chapter 25, Article 1, §§25-1-1-25-1-13).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (New Mexico Statutes, Chapter 60, Article 6A, §60-6A-30).
New York	Statutory provision prohibiting the combined amount of lead, cadmium, mercury, and hexavalent chromium in any package from exceeding 100 parts per million. (Chapter 43-B of the Consolidated Laws, Environmental Conservation Law, Article 37, Title 2, §37-0205).
	Statutory provision requiring label to disclose whether frozen food has previously been offered for sale in unfrozen form. (Chapter 69 of the Consolidated Laws, New York Agriculture and Markets Law, Article 17, §214-g).

<sup>10</sup> May not be preempted by S. 3128 because part of New Jersey's Title 24.

Regulations regarding processing of smoked fish. (Rules and Regulations of New York, Title I, Part 262, §262.5). Statutory provision governing the safety of milk. (Chapter 69 of the Consolidated Laws, Agriculture and Markets Law, Article 21, §254-258r). Statutory provision governing the safety of food in restaurants and other food service establishments. (Chapter 69 of the Consolidated Laws, Agriculture and Markets Law, Article 28, §500). Statutory provision governing the safety of shellfish (Chapter 43-B of the Consolidated Laws, Environmental Conservation Law, Article 13, Title 3, §13-0307). Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Chapter 3-B of the Consolidated Laws, Alcoholic Beverage Control Article 8, §105-b). Statutory ban on the sale of imitation maple syrup. (Chapter 69 of the Consolidated Laws, Agriculture and Markets Law, Article 17, §203). Statutory requirement that any mixture of olive oil and other oils indicate the specific percentage of olive oil. (Chapter 69 of the Consolidated Laws, Agriculture and Markets Law, Article 17, §204-a). Statutory ban on the use of "honey" on the label of a food that is not pure honey. (Chapter 69 of the Consolidated Laws, Agriculture and Markets Law, Article 17, §206). Regulatory provision prohibiting the sale of candy containing lead. New York City (New York City Administrative Code, Title 17, Chapter 1, §17-189). (New York) North Statutory provision on shellfish safety. (North Carolina General Statutes, Chapter 130A-, Article 8, §130A-230). Carolina Regulation requiring that in summer camps only grade A pasteurized milk be used and that the milk be served in the individual, original container so that the consumer can see the name of the milk distributor. (North Carolina Admin Code, Title 15A, Subchapter 18A, Section.1021(a)). Statutory provision governing the safety of milk. (North Carolina General Statutes, Chapter 106, Article 29, §§106-267- 106-268.1). Statutory provision governing the safety of food in restaurants and other food service establishments. (North Carolina General Statutes, Chapter 130A, Article 8, §§130A-247-130A-250).

Statutory provision prohibiting sale of soft drinks in certain schools at certain times. (North Carolina General Statutes, Chapter 115C, Article 17, §§115C-264.2).
Statutory provision banning the sale of foods in the school lunch program containing trans fatty acids from partially hydrogenated vegetable oils.  (North Carolina General Statutes, Chapter 115C, Article 17, §115C-264(b)).
Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (North Dakota Century Code, Title 19, Chapter 19- 01, §§19-02.1-12(2)).
Statutory provision governing the safety of milk. (North Dakota Century Code, Title 4, Chapter 4-30, §§4-30-01- 4-30-56).
Statutory provision governing the safety of food in restaurants and other food service establishments. (North Dakota Century Code, Title 23, Chapter 23-09.2, §§23-09.2-01-23-09.2-04).
Statutory provision prohibiting the use of "honey" on a food label if the food is not honey.  (Ohio Revised Code, Title XXXVII, Chapter 3715, §3715.38).
Statutory provision governing the safety of milk (including raw milk). (Ohio Revised Code, Title IX, Chapter 917, §§917.01- 917.99).
Statutory provision governing the safety of food in restaurants and other food service establishments.11 (Ohio Revised Code, Title XXXVII, Chapter 3717, §§3717.01-3717.33).
Statutory provision governing the safety of milk (including raw milk). (Oklahoma Statutes, Title 2, Article 7, §§2-7-402- 2-7-421).
Statutory provision governing the safety of food in restaurants and other food service establishments.12 (Oklahoma Statutes, Title 63, Article 11, §11-1118).
Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Oregon Revised Statutes, Volume 13, Title 49, Chapter 616, §616.366).
Statutory provision requiring food that has been "salvaged" to have a label stating that fact.  (Oregon Revised Statutes, Volume 13, Title 49, Chapter 616, §616.250(16)).

<sup>11</sup> May not be preempted by S. 3128 because part of Ohio Pure Food and Drug Law (Title XXXVII, Chapter 3715). 12 May not be preempted by S. 3128 because part of Oklahoma's Title 63, Chapter 1, Article 11

	Statutory provision governing the safety of milk (including raw milk). (Oregon Revised Statutes, Volume 13, Title 49, Chapter 621, §§621.003-621.300).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (Oregon Revised Statutes, Volume 13, Title 49, Chapter 624, §624.005-624.992).
	(Oregon Revised Statutes, Volume 13, 11the 43, Chapter 024, 9024.003-024.392).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Oregon Revised Statutes, Volume 12, Title 37, Chapter 471, §471.551).
Pennsylvania	Statutory provision governing the safety of milk. (Purdon's Pennsylvania Statutes, Title 31, Chapter 13, §§645-660f).
	Regulatory provision governing the safety of food in restaurants and other food service establishments.
	(Pennsylvania Administrative Code, Title 28, Part II, Chapter 17, §§17-81-17.85).
	Statutory provision governing the use of "honey" on the label of a food that is not pure honey.
	(Purdon's Pennsylvania Statutes, Title 31, Chapter 9A, §382).
	Statutory provision prohibiting the sale of a confectionary containing more than ½ of one percent alcohol.13 (Purdon's Pennsylvania Statutes, Title 31, Chapter 1A, §20.3(13)).
	Statutory provision prohibiting the sale of a food containing eggs or egg products derived from a process wherein whole eggs are broken using a centrifuge-type egg breaking machine that separates the egg's liquid interior from the shell. 13 (Purdon's Pennsylvania Statutes, Title 31, Chapter 1A, §20.8(12)).
Rhode Island	Statutory provision permitting ingredients of carbonated beverages to be disclosed
	in an affidavit to the Director of Health.
	(Rhode Island General Laws, Title 21, Chapter 21-31, §21-31-11(9)(ii)).
	Statutory provision requiring packaging or labeling to comply with the regulations of the Poison Prevention Packaging Act.
	(Rhode Island General Laws, Title 21, Chapter 21-31, §21-31-11(13)).
	Statutory provision requiring disclosure of whether uncooked fish and shellfish have ever been frozen.
	(Rhode Island Food General Laws, Title 21, Chapter 21-31, §21-31-3(13)).
	Statutory provisions regulating packing of various kinds of fish in casks. (Rhode Island General Laws, Title 21, Chapter 21-15, §§21-15-3 et seq.).
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<sup>13</sup> May not be preempted by S. 3128 because part of Pennsylvania's Food Act (Title 31, Chapter 1A, §§20.1-20.18).

	Statutory provision regulating labeling of closed packages of apples. (Rhode Island General Laws, Title 21, Chapter 21-18, §21-18-2).
	Statutory provision governing the safety of milk. (Rhode Island General Laws, Title 21, Chapter 21-2).
	Statutory provision governing the safety of food in restaurants and other food service establishments.
	(Rhode Island General Laws, Title 21, Chapter 21-27, §§21-27-1-21-27-11.13).
	Regulatory provision that eggs, milk, and molluscan shell stock be cooled to no more than 41 degrees Fahrenheit.
	(Rhode Island Food Code, Chapter 3, §3-501.14 (c)).
South Carolina	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.
	(South Carolina Code of Laws, Title 39, Chapter 25, §39-25-130(b)).
	Statutory provision governing the safety of milk.
	(South Carolina Code of Laws, Title 46, Chapter 49, §§46-49-10-46-49-90).
	Statutory provision governing the safety of food in restaurants and other food service establishments.
	(South Carolina Code of Laws, Title 44, Chapter 1, §44-1-140(2)).
	Statutory provision governing the safety of shellfish (South Carolina Code of Laws, Title 44, Chapter 1, §§44-1-150- 44-1-155).
South Dakota	Statutory provision deeming confectionaries adulterated if they contact any vinous, malt, or spirituous liquor or compound or narcotic drug. 14 (South Dakota Codified Laws, Title 39, Chapter 4, §39-4-3(2)).
·	Statutory provision requiring food label to disclose when food contains chloroform and various narcotics.  (South Dakota Codified Laws, Title 39, Chapter 4, §39-4-10).
	Statutory provision governing the safety of milk (including raw milk). (South Dakota Codified Laws, Title 39, Chapter 6, §§39-6-1-39-6-22).
	Statutory provision governing the safety of food in restaurants and other food service establishments.  (South Delete Codified Laws Title 24, Chapter 18, 8824 18, 25, 34, 18, 33)
	(South Dakota Codified Laws, Title 34, Chapter 18, §§34-18-25- 34-18-33).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (South Dakota Codified Laws, Title 35, Chapter 4, §§35-4-99- 35-4-100).

<sup>14</sup> May not be preempted by S. 3128 because part of South Dakota's Food and Drug Law (Title 39, Chapter 4).

Tennessee	Statutory provision governing the safety of milk. (Tennessee Code, Title 53, Chapter 3, Part 1, §§53-3-101-53-3-118).
<u></u>	Statutory provision governing the safety of food in restaurants and other food service establishments.  (Tennessee Code, Title 68, Chapter 14, Part 3, §§68-14-301-68-14-323).
	Statutory provision requiring the posting of a sign in bars and other establishments warning pregnant women of the risk of drinking alcoholic beverages. (Tennessee Code, Title 57, Chapter 1, Part 2, §57-1-211).
Texas	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Texas Health and Safety Code, Title 6, Chapter 431, §431.161(b)).
	Regulatory provision requiring that the internal temperature of potentially hazardous foods shall be no higher than 41 degrees Fahrenheit. (Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter N, §229.219 (2)(C)(i)).
	Statutory provision governing the safety of milk. (Texas Health and Safety Code, Title 6, Chapter 435, §§435.001- 435.021).
	Regulations governing the safety of molluscan shellfish. (Texas Administrative Code, Title 25, Part 1, Chapter 241, Subchapter B, §\$241.50-241.71)
	Regulatory provision governing the safety of food in restaurants and other food service establishments.  (Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter K, §§ 229.161- 229.177).
	Regulatory provision requiring a minimum chlorine residual of 0.5 mg./l in water being hauled (Texas Administrative Code, Title 25, Part 1, Chapter 229, Subchapter F, §229.83(3)(D).
Utah	Statutory provisions allowing the state to adopt tolerances for food additives and color additives that are more protective of human health than the applicable federal tolerances.  (Utah Agricultural Code, Title 4, Chapter 5, §§4-5-17(3) - (5)).
	Statutory provision governing the safety of milk (including raw milk). (Utah Agricultural Code, Title 4, Chapter 3, §§4-3-1- 4-3-14).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (Utah Health Code, Title 26, Chapters 15 and 15a, §§ 26-15-1-26-15a-107).

	Statutory provision governing the safety of bees and honey. (Utah Agricultural Code, Title 4, Chapter 11, §§4-11-1- 4-11-15).
Vermont	Statutory provision governing the safety of milk. (Vermont Statutes, Title 6, Chapter 151, §§2671- 2768).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (Vermont Statutes, Title 18, Chapter 85, §§4301-4309).
	Statutory provision prohibiting the carrying of unwrapped bread if it is to be sold. 15 (Vermont Statutes, Title 18, Chapter 81, §4023).
	Statutory provision governing the labeling of maple products. (Vermont Statutes, Title 6, Chapter 32, §490).
Virginia	Statutory provision banning the use of sulfiting agents in restaurants. (Virginia Code, Title 35.1, Chapter 2, §35.1-14.1).
	Statutory provision governing the safety of milk. (Virginia Code, Title 3.1, Chapter 21, §§3.1-420- 3.1-425).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (Virginia Code, Title 35.1, Chapters 1-5, §§35.1-1 to 35.1-28).
	Statutory provision governing shellfish safety (Virginia Code, Title 28.2, Chapter 8, §§28.2-800- 28.2-826).
Washington	Statutory provision governing the safety of milk (including raw milk).  (Revised Code of Washington, Title 15, Chapter 15.36, §§15.36.002-15.36.561).
	Statutory provision governing the safety of food in restaurants and other food service establishments. (Revised Code of Washington, Title 43, Chapter 43.20, §§43.20.050(2)(c) and 43.20.145).
	Statutory provision governing the safety of shellfish. (Revised Code of Washington, Title 69, Chapter 69.30, §69.30.050).
	Statutory provision requiring the posting of a sign in state liquor stores warning pregnant women of the risk of drinking alcoholic beverages. (Revised Code of Washington, Title 66, Chapter 66.16, §66.16.110).
	Statutory provision prohibiting the use of "honey" on a food if it is not pure honey. (Revised Code of Washington, Title 69, Chapter 69.28, §69.28.400(5)).

<sup>15</sup> May not be preempted by S. 3128 because part of Vermont's Title 18, Chapters 81 and 82.

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West Virginia	Statutory provision governing the safety of milk.
	(West Virginia Code, Chapter 19, §19-11A-1- 19-11A-10).
	Statutory provision governing the safety of food in restaurants and other food
	service establishments.
	(West Virginia Code, Chapter 16, §§16-6-3- 16-6-11).
	Statutory provision requiring the posting of a sign in bars and other
	establishments warning pregnant women of the risk of drinking alcoholic
	beverages.
	(West Virginia Code, Chapter 60, §60-6-25).
	Statutory provision prohibiting sale of soft drinks in certain schools at certain times.
	(West Virginia Code, Chapter 18, §18-2-6a).
Wisconsin	Statutory provision requiring label showing age of cheese made in Wisconsin.
	(Wisconsin Statutes, Chapter 97, §97.177(3)).
·	Statutory provision requiring that a food containing whole fish flour bear a
	label saying it is made only from edible portions of fish.
	(Wisconsin Statutes, Chapter 97, §97.13).
	Regulations regarding processing of smoked fish and a warning label for
	smoked fish.
	(Wisconsin Administrative Code, Agriculture, Trade and Consumer Protection,
	Chapter ATCP 70, §§ATCP 70.21 et seq.).
	Statutory provision governing the safety of milk. 16
	(Wisconsin Statutes, Chapter 97, §§97.20- 97.25).
	Statutory provision governing the safety of food in restaurants and other food
	service establishments. 16
	(Wisconsin Statutes, Chapter 97, §§97.30(1)- 97.30(2).
Wyoming	Regulatory provision governing the safety of milk.
	(Regulations of Department of Agriculture, Chapter 3, §§8(a)(i)-(iii)).
	Statutory provision governing the safety of food in restaurants and other food
	service establishments. 17
	(Wyoming Statutes, Title 35, Chapter 7, Article 1, §§35-7-120, 35-7-123,
	35-7-125).

<sup>16</sup> May not be preempted by S. 3128 because part of Wisconsin's Chapter 97.

<sup>17</sup> May not be preempted by S. 3128 because part of Wyoming's Food, Drug and Cosmetic Act (Title 35, Chapter 7).