

103^D CONGRESS
1ST SESSION

H. R. 2893

To amend the Federal Trade Commission Act to require nutritional claims in food advertising to meet the requirements applicable to nutritional claims for food, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1993

Mr. MOAKLEY (for himself, Mr. WAXMAN, and Mr. STUDDS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Trade Commission Act to require nutritional claims in food advertising to meet the requirements applicable to nutritional claims for food, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nutritional Advertising
5 Coordination Act of 1993”.

1 **SEC. 2. FEDERAL TRADE COMMISSION RULES REGARDING**
2 **UNFAIR AND DECEPTIVE ACTS AND PRAC-**
3 **TICES IN CONNECTION WITH FOOD ADVER-**
4 **TISING.**

5 (a) REGULATIONS.—Section 5 of the Federal Trade
6 Commission Act (15 U.S.C. 45) is amended by adding at
7 the end the following:

8 “(n) The Commission shall prescribe rules to prohibit
9 unfair and deceptive acts and practices in food advertising.
10 Such rules shall require that claims in advertising for
11 food—

12 “(1) characterizing the level of any nutrient in
13 the food of the type required by section 403(q)(1) or
14 403(q)(2) of the Federal Food, Drug, and Cosmetic
15 Act to be in the labeling of the food, or

16 “(2) characterizing the relationship of any such
17 nutrient to a disease or health related condition,
18 shall be consistent, to the fullest extent feasible, with sec-
19 tion 403(r) of the Federal Food, Drug, and Cosmetic Act
20 and with the regulations of the Secretary of Health and
21 Human Services implementing such section and the cor-
22 responding regulations issued by the Secretary of Agri-
23 culture.”.

24 (b) RULEMAKING.—

25 (1) SECTION 18 RULE.—A rule issued under
26 section 5(n) of the Federal Trade Commission Act

1 (added by subsection (a)) shall be treated as a rule
2 issued under section 18(a)(1)(B) of such Act (15
3 U.S.C. 57a(a)(1)(B)).

4 (2) TIME AND PROCEDURE.—

5 (A) TIME PERIOD.—The Federal Trade
6 Commission shall issue proposed rules under
7 section 5(n) of the Federal Trade Commission
8 Act (as added by subsection (a)) within 180
9 days of the date of the enactment of this Act
10 and shall issue final rules under such section
11 within 360 days of such enactment.

12 (B) PROCEDURE.—The Federal Trade
13 Commission shall issue rules under section 5(n)
14 of the Federal Trade Commission Act (as added
15 by subsection (a)) in accordance with section
16 553 of title 5, United States Code.

17 **SEC. 3. ACTIONS BY STATES.**

18 (a) IN GENERAL.—Whenever an attorney general of
19 any State has reason to believe that the interests of the
20 residents of that State have been or are being threatened
21 or adversely affected because any person has engaged or
22 is engaging in a pattern or practice which violates any rule
23 of the Federal Trade Commission under section 5(n) of
24 the Federal Trade Commission Act, the State may bring
25 a civil action on behalf of its residents in an appropriate

1 district court of the United States to enjoin such pattern
2 or practice, to enforce compliance with such rule of the
3 Commission, to obtain damages on behalf of their resi-
4 dents, or to obtain such further and other relief as the
5 court may deem appropriate.

6 (b) NOTICE.—A State shall serve prior written notice
7 of any civil action under subsection (a) upon the Federal
8 Trade Commission and provide the Commission with a
9 copy of its complaint, except that if it is not feasible for
10 the State to provide such prior notice, the State shall serve
11 such notice immediately upon instituting such action.
12 Upon receiving a notice respecting a civil action, the Com-
13 mission shall have the right (1) to intervene in such action,
14 (2) upon so intervening, to be heard on all matters arising
15 therein, and (3) to file petitions for appeal.

16 (c) VENUE.—Any civil action brought under sub-
17 section (a) in a district court of the United States may
18 be brought in the district where the defendant transacts
19 business or where the violation occurred.

20 (d) INVESTIGATORY POWERS.—For purposes of
21 bringing any civil action under subsection (a), nothing in
22 this section shall prevent the attorney general from exer-
23 cising the powers conferred on the attorney general by the
24 laws of such State to conduct investigations, including ad-
25 ministering oaths or affirmations, compelling the attend-

1 ance of witnesses, or the production of documentary and
2 other evidence.

3 (e) LIMITATION.—Whenever the Federal Trade Com-
4 mission has instituted a civil action for violation of any
5 rule under section 5(n) of the Federal Trade Commission
6 Act, no State may, during the pendency of such action
7 instituted by the Commission, subsequently institute a
8 civil action against any defendant named in the Commis-
9 sion’s complaint for violation of any such rule as alleged
10 in the Commission’s complaint.

11 (f) ACTIONS BY OTHER STATE OR LOCAL OFFI-
12 CIALS.—

13 (1) IN GENERAL.—Nothing contained in this
14 section shall prohibit an official authorized by a
15 State or locality from proceeding in a court of a
16 State or locality on the basis of an alleged violation
17 of any general civil or criminal statute of such State
18 or locality.

19 (2) OTHER OFFICIALS.—In addition to actions
20 brought by an attorney general of a State under
21 subsection (a), such an action may be brought by
22 other officials authorized by a State or locality to
23 bring actions in such State for protection of consum-
24 ers and who are designated by the Commission to
25 bring an action under subsection (a) against persons

1 that the Commission has determined have or are en-
2 gaged in a pattern or practice which violates a rule
3 of the Commission under section 2(a).

4 (h) DEFINITIONS.—For purposes of this section:

5 (1) The term “attorney general” means the
6 chief legal officer of a State.

7 (2) The term “State” means any State of the
8 United States, the District of Columbia, Puerto
9 Rico, the Northern Mariana Islands, and any terri-
10 tory or possession of the United States.

11 (3) The term “locality” means any political
12 subdivision of a State as defined in paragraph (2).

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