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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/13  
 SPONSOR SJC LAST UPDATED 03/11/13 HB \_\_\_\_\_  
 SHORT TITLE New Mexico Chile Advertising Act Violations SB CS/234/aSJC/aSFl#1  
 ANALYST Hartzler-Toon

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	NFI	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of SFL Amendment#1

The Senate Floor Amendment #1 strikes the phrase “at a farmers’ market,” broadening the reporting exemption under the New Mexico Chile Advertising Act as amended by SB 234. The amendment excludes individual growers who sell 20,000 pounds or less of chile peppers, no matter where the peppers are sold, from reporting requirements issued pursuant to the act as amended.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Judiciary Committee substitute for Senate Bill 234 strikes Section 2, subsection C. The committee’s amendment states a restaurant will not violate the New Mexico Chile Advertising Act if the restaurant uses “New Mexico” or a geographic location to describe a menu item and does not misrepresent the origin of the chiles used.

#### Synopsis of Original Bill

The Senate Judiciary Committee substitute for Senate Bill 234 (SB 234), amending the New Mexico Chile Advertising Act, would change Chapter 25, Section 11 by making it unlawful to

“knowingly advertise, describe, label or offer” a chile pepper not grown in New Mexico while implying by an entity that suggests a New Mexico location. The bill, however, allows a restaurant that uses chile grown outside New Mexico to use the term “New Mexico style” to advertise, describe, label or offer for sale a menu item. The bill also requires clear and unambiguous labeling of chile products by entities and trademarks that existed prior to enactment of the New Mexico Chile Advertising Act. Lastly, the bill authorizes the NMDA inspectors to issue “stop-sale, use, or removal” of products found in violation of the act.

### **FISCAL IMPLICATIONS**

This bill does not contain an appropriation. The NMDA notes there is no fiscal impact from SB 234. The bill would simply grant additional authority to existing NMDA inspectors.

### **SIGNIFICANT ISSUES**

The NMDA reports that

This bill prohibits the use of deceptive or misleading representations of New Mexico cities, towns, villages, pueblos, mountains, counties, rivers, or other geographic locales in product advertising, descriptions, or labels for chile not grown in New Mexico or for chile products using non-New Mexico chile. It also establishes, if the representation is part of a business name that was established prior to the effective date of the New Mexico Chile Advertising Act, that the product shall include in a prominent location in the advertising, description, or labeling, a disclaimer statement that states “NOT GROWN IN NEW MEXICO” if the product contains chile that was not grown in New Mexico.

### **PERFORMANCE IMPLICATIONS**

The bill allows the NMDA inspectors to more timely respond to possible violations of the New Mexico Chile Advertising Act. Current law authorizes the New Mexico State University’s board of regents to issue an order to immediately cease and desist any activity in violation of the Act, and omits any enforcement or action by the NMDA inspectors (Section 25-11-4.A(3) NMSA 1978).

### **COMPANIONSHIP**

HB 238 is a companion bill.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

According to the NMDA, if SB 234 is not enacted, “it will be permissible to used New Mexico geographic locales in describing chile or chile products, which could mislead consumers into believing New Mexico chile is used in certain products or the fresh chile they are buying is New Mexico chile.”

THT/svb:blm