

1 SENATE BILL 161

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Cliff R. Pirtle and Pat Woods

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10 AN ACT

11 RELATING TO FOOD; DEEMING A FOOD PRODUCT MISBRANDED AS MILK IF
12 THE PRODUCT DOES NOT CONSIST OF MILK FROM A LACTATING MAMMAL;
13 AMENDING THE NEW MEXICO FOOD ACT; MAKING CONFORMING TECHNICAL
14 CHANGES.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 25-2-11 NMSA 1978 (being Laws 1951,
18 Chapter 169, Section 11) is amended to read:

19 "25-2-11. WHEN FOOD DEEMED MISBRANDED.--A food shall be
20 deemed to be misbranded:

21 [~~(a)~~] A. if its labeling is false or misleading in
22 any particular;

23 [~~(b)~~] B. if it is offered for sale under the name
24 of another food;

25 [~~(c)~~] C. if it is an imitation of another food,

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underscored material = new
[bracketed material] = delete

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[bracketed material] = delete

1 unless its label bears, in type of uniform size and prominence,
2 the word "imitation" and, immediately thereafter, the name of
3 the food imitated;

4 [~~(d)~~] D. if its container is so made, formed or
5 filled as to be misleading;

6 [~~(e)~~] E. if in package form, unless it bears a
7 label containing:

8 (1) the name and place of business of the
9 manufacturer, packer or distributor; or

10 (2) an accurate statement of the quantity of
11 the contents in terms of weight, measure or numerical count;
12 provided that under [~~clause (2) of~~] this paragraph reasonable
13 variations shall be permitted and exemptions as to small
14 packages shall be established by regulations prescribed by the
15 board;

16 [~~(f)~~] F. if any word, statement or other
17 information required by or under authority of [~~this~~] the New
18 Mexico Food Act to appear on the label or labeling is not
19 prominently placed [~~thereon~~] with such conspicuousness, as
20 compared with other words, statements, designs or devices in
21 the labeling, and in such terms as to render it likely to be
22 read and understood by the ordinary individual under customary
23 conditions of purchase and use;

24 [~~(g)~~] G. if it purports to be or is represented as
25 a food for which a definition and standard of identity has been

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1 prescribed by regulations as provided by Section [9] 25-2-9
2 NMSA 1978 unless:

3 (1) it conforms to such definition and
4 standard; and

5 (2) its label bears the name of the food
6 specified in the definition and standard and, insofar as may be
7 required by such regulations, the common names of optional
8 ingredients, other than spices, flavoring and coloring, present
9 in such food;

10 [~~(h)~~] H. if it purports to be or is represented as:

11 (1) a food for which a standard of quality has
12 been prescribed by regulations as provided by Section [9]
13 25-2-9 NMSA 1978 and its quality falls below [~~such~~] that
14 standard unless its label bears in such manner and form as
15 [~~such~~] the regulations specify a statement that it falls below
16 [~~such~~] the standard; or

17 (2) a food for which a standard [~~or standards~~]
18 of fill of container [~~have~~] has been prescribed by regulation
19 as provided by Section [9] 25-2-9 NMSA 1978 and it falls below
20 the standard of fill of container applicable [~~thereto~~] to it,
21 unless its label bears in such manner and form as [~~such~~] the
22 regulations specify a statement that it falls below [~~such~~] the
23 standard;

24 [~~(i)~~] I. if it is not subject to the provisions of
25 [~~paragraph (g)~~] Subsection G of this section, unless it bears

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1 labeling clearly giving:

2 (1) the common or usual name of the food, if
3 any [~~there be~~]; and

4 (2) in case it is fabricated from two or more
5 ingredients, the common or usual name of each [~~such~~]
6 ingredient, except that spices, flavorings and colorings, other
7 than those sold as such, may be designated as spices,
8 flavorings and colorings without naming each; provided that to
9 the extent that compliance with the requirements of [~~clause (2)~~
10 ~~of~~] this paragraph is impractical or results in deception or
11 unfair competition, exemptions shall be established by
12 regulations promulgated by the board; and provided further that
13 the requirements of [~~Clause (2) of~~] this paragraph shall not
14 apply to any carbonated beverage, the ingredients of which have
15 been fully and correctly disclosed in an affidavit filed with
16 the board;

17 [~~(j)~~] J. if it purports to be or is represented for
18 special dietary uses, unless its label bears such information
19 concerning its vitamin, mineral and other dietary properties as
20 the board determines to be, and by regulations [~~prescribed~~]
21 prescribes as, necessary in order to fully inform purchasers as
22 to its value for such uses;

23 [~~(k)~~] K. if it bears or contains any artificial
24 flavoring, artificial coloring or chemical preservative, unless
25 it bears labeling stating that fact; provided that to the

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1 extent that compliance with the requirements of this
2 ~~[paragraph]~~ subsection is impracticable, exemptions shall be
3 established by regulations promulgated by the board; or
4 L. if its labeling contains the word "milk", its
5 labeling implies the food contains milk or it is advertised,
6 sold or offered for sale as milk but its ingredients do not
7 consist of the whole, clean, lacteal secretion, practically
8 free from colostrum, obtained by the complete milking of one or
9 more healthy mammals."

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