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SENATE BILL 118

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Cliff R. Pirtle

AN ACT

RELATING TO AGRICULTURE; ENACTING THE FOOD ACCESSIBILITY ACT;
EXEMPTING CERTAIN FOOD SALES FROM LICENSURE, REGULATION AND
INSPECTION REQUIREMENTS; ALLOWING THE ACQUISITION OF MEAT
PURSUANT TO OWNERSHIP OF AN ANIMAL SHARE; DIRECTING THE
ESTABLISHMENT OF A STATE MEAT INSPECTION PROGRAM; EXEMPTING
MEAT FROM THE GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS
RECEIPTS TAX; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;
DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 4 of this act may be cited as the "Food Accessibility
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Food Accessibility Act:

1 A. "animal share" means an ownership interest in an
2 animal or herd of animals that entitles the owner of the animal
3 share to receive a share of meat from the animal or herd;

4 B. "commercial food establishment" means a place or
5 area of an establishment that is a wholesale or retail business
6 where foods, drugs, devices, cosmetics or other goods are
7 displayed for sale, manufactured, processed, packaged, held or
8 stored, but does not mean a farmers market, a restaurant or a
9 transaction directly between a producer and informed end
10 consumer;

11 C. "farmers market" means a common facility or area
12 where several vendors may gather on a regular, recurring basis
13 to sell a variety of fresh fruits and vegetables, locally grown
14 farm products and other items directly to consumers;

15 D. "home consumption" means food consumed within a
16 private home;

17 E. "homemade food" or "homemade food product" means
18 a food or drink that is prepared or processed by a producer in
19 a private home kitchen that is not licensed, regulated or
20 inspected;

21 F. "informed end consumer" means a person who is
22 the last person to purchase the product, who does not resell
23 the product and who has been informed that the product is not
24 licensed, regulated or inspected;

25 G. "non-potentially hazardous food" means a food or

1 beverage that, when stored under normal conditions without
2 refrigeration, will not support the rapid and progressive
3 growth of microorganisms that cause food infections or food
4 intoxications, including pickled fruits and vegetables, spices,
5 teas, dehydrated produce, nuts, seeds, honey, jams, jellies,
6 preserves, fruit butters, candies, fruit empanadas, tortillas
7 and baked goods;

8 H. "potentially hazardous food" means a food or
9 beverage that requires time or temperature control for safety,
10 including for limiting pathogenic microorganism growth or toxin
11 formation, including foods requiring refrigeration, dairy
12 products, quiches, pizzas, frozen doughs, meat and cooked
13 vegetables and beans;

14 I. "process" means the operations a producer
15 performs in the making or treatment of the producer's food or
16 drink products;

17 J. "producer" means a person who grows, harvests,
18 prepares or processes food or drink products on the person's
19 owned or leased property, who does not produce more than two
20 hundred fifty thousand individual food or drink products
21 annually and whose gross revenue from the sale of the food or
22 drink products does not exceed two hundred fifty thousand
23 dollars (\$250,000) annually; and

24 K. "transaction" means the exchange of buying and
25 selling.

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1 SECTION 3. ~~[NEW MATERIAL]~~ HOMEMADE FOOD PRODUCTS--
2 REQUIREMENTS FOR SALE.--

3 A. Homemade food products produced, sold and
4 consumed in compliance with the Food Accessibility Act are
5 exempt from state or local government licensure, permitting,
6 inspection, packaging and labeling requirements.

7 B. Transactions pursuant to the Food Accessibility
8 Act shall:

9 (1) be directly between a seller of a homemade
10 food product and an informed end consumer. The seller of a
11 homemade food product consisting of non-potentially hazardous
12 food may be the producer of the product, the producer's agent
13 or a third-party vendor, including a commercial food
14 establishment. The seller of a homemade food product
15 consisting of potentially hazardous food shall be the producer
16 of the product or the producer's agent;

17 (2) be only for home consumption;

18 (3) occur only in New Mexico;

19 (4) not involve interstate commerce; and

20 (5) not involve the sale of meat or meat
21 products, with the following exceptions:

22 (a) the sale of poultry and poultry
23 products; provided that: 1) the producer slaughters not more
24 than one thousand poultry of the producer's own raising during
25 any one calendar year; 2) the producer does not engage in

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1 buying or selling poultry products other than those produced
2 from poultry of the producer's own raising; and 3) the poultry
3 product is not adulterated or misbranded as to be dangerous or
4 fraudulent within the meaning of the New Mexico Food Act;

5 (b) the sale of portions of live animals
6 before slaughter for future delivery to an informed end
7 consumer; provided that the processing of the animals is done
8 in a state or federally licensed processing facility;

9 (c) the sale of domestic rabbit meat;

10 (d) the sale of farm-raised fish; and

11 (e) the acquisition of meat pursuant to
12 an animal share.

13 C. A seller of homemade food pursuant to the Food
14 Accessibility Act shall inform the consumer that the homemade
15 food has not been inspected and shall display a sign at the
16 point of sale indicating that the homemade food was produced or
17 processed in a private home kitchen that is not subject to
18 licensure, regulation or inspection and that the food has not
19 been inspected.

20 D. For sales of non-potentially hazardous food at a
21 commercial food establishment, the food shall be clearly and
22 prominently labeled with the following: "This food was
23 produced or processed in a private home kitchen that is not
24 subject to state licensure, regulation or inspection and may
25 contain allergens.". If a commercial food establishment where

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1 homemade food is sold offers for sale a food product that was
2 inspected or produced in a licensed facility, the commercial
3 food establishment shall comply with rules adopted by the
4 department of environment that shall require:

5 (1) that homemade food not be displayed or
6 offered for sale on the same shelf or display as food produced
7 in a licensed facility;

8 (2) that the retail space for homemade foods
9 be physically separated from other products with a separate
10 door and separate cash register or point of sale;

11 (3) that each separate retail space include
12 signs or other markings clearly indicating which spaces are
13 offering inspected items for sale and which spaces are offering
14 uninspected items for sale;

15 (4) separation of coolers, freezers and
16 warehouse or other storage areas to prohibit the intermingling
17 of inspected and uninspected products; and

18 (5) any other requirements specified by the
19 department of environment to ensure that the sale of homemade
20 food is made to an informed end consumer.

21 SECTION 4. [NEW MATERIAL] ANIMAL SHARES.--

22 A. A person may acquire meat from a farmer or
23 rancher pursuant to an animal share if:

24 (1) the meat is:

25 (a) received from the farm or ranch

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1 where an animal or herd subject to the animal share is located;

2 (b) received by or on behalf of the
3 owner of an animal share; and

4 (c) obtained from the particular animal
5 or herd subject to the animal share;

6 (2) the slaughter is conducted pursuant to all
7 applicable laws and regulations;

8 (3) a prominent warning statement that the
9 meat has not been inspected is delivered with the meat or is
10 displayed on a label affixed to the meat packaging; and

11 (4) information describing the standards used
12 by the farm or ranch with respect to herd health and the
13 processing of meat from the herd is provided to the owner of
14 the animal share by the farmer or rancher.

15 B. An animal share shall be created by a written
16 contract between the owner of the animal share and a farmer or
17 rancher and shall include a bill of sale for an ownership
18 interest in the animal or herd that entitles the owner of the
19 animal share to receive a share of meat from the animal or
20 herd.

21 C. A person who acquires meat pursuant to this
22 section shall not commercially sell or redistribute the meat.

23 D. A farmer or rancher shall not publish any
24 statement that implies approval or endorsement by the New
25 Mexico department of agriculture or the New Mexico livestock

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1 board of meat delivered pursuant to this section unless
2 otherwise provided for in law or administrative rule.

3 SECTION 5. Section 7-9-18 NMSA 1978 (being Laws 1969,
4 Chapter 144, Section 11, as amended) is amended to read:

5 "7-9-18. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL
6 GROSS RECEIPTS TAX--AGRICULTURAL PRODUCTS.--

7 A. Exempted from the gross receipts tax and from
8 the governmental gross receipts tax are the receipts from
9 selling livestock and receipts of growers, producers, trappers
10 or nonprofit marketing associations from selling livestock,
11 live poultry, [~~unprocessed~~] agricultural products, hides or
12 pelts. Persons engaged in the business of buying and selling
13 wool or mohair or of buying and selling livestock or meat on
14 their own account are producers for the purposes of this
15 section.

16 B. Receipts from selling dairy products at retail
17 are not exempted from the gross receipts tax.

18 C. As used in this section, "livestock" means all
19 domestic or domesticated animals that are used or raised on a
20 farm or ranch, including the carcasses thereof, and also
21 includes horses, asses, mules, cattle, sheep, goats, swine,
22 bison, poultry, ostriches, emus, rheas, camelids and farmed
23 cervidae upon any land in New Mexico; provided that for the
24 purposes of Chapter 77, Article 9 NMSA 1978, "animals" or
25 "livestock" have the meaning defined in that article.

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1 "Animals" or "livestock" does not include canine or feline
2 animals. For the purpose of the rules governing meat
3 inspection, wild animals, poultry and birds used for human
4 consumption shall also be included within the meaning of
5 "animals" or "livestock".

6 SECTION 6. Section 25-1-2 NMSA 1978 (being Laws 1977,
7 Chapter 309, Section 2, as amended) is amended to read:

8 "25-1-2. DEFINITIONS.--As used in the Food Service
9 Sanitation Act:

10 A. "agency" or "division" means the department of
11 environment;

12 B. "board" means the environmental improvement
13 board;

14 C. "employee" means any individual employed in a
15 food service establishment who transports food or food
16 containers, who handles food during storage, preparation or
17 serving, who comes in contact with any utensils or who is
18 employed in a room in which food is stored, prepared or served;

19 D. "food" means any solid or liquid substance
20 intended for human consumption by eating or drinking;

21 E. "general public" includes beneficiaries of
22 governmental feeding programs and private charitable feeding
23 programs and residents and employees of institutions that
24 provide meals to their residents and employees either with or
25 without direct payment to the institution by the residents or

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1 employees;

2 F. "temporary food service establishment" means a
3 food service establishment that operates at a fixed location in
4 conjunction with a single event or celebration for a short
5 period of time not exceeding the event or celebration or not
6 exceeding thirty days;

7 G. "person" means an individual or any other legal
8 entity;

9 H. "food service establishment" means:

10 (1) any fixed or mobile place where food is
11 served and sold for consumption on the premises;

12 (2) any fixed or mobile place where food is
13 prepared for sale to or consumption by the general public
14 either on or off the premises, including any place where food
15 is manufactured for ultimate sale in a sealed original package,
16 but "prepared" as used in this paragraph does not include the
17 preparation of raw fruits, vegetables or pure honey for display
18 and sale in a grocery store or similar operation. For purposes
19 of this paragraph, "pure honey" means natural liquid or solid
20 honey, extracted from the combs or in the comb, taken from
21 beehives, with no processing or additional ingredients. "Food
22 service establishment" does not mean a dairy establishment or a
23 private home kitchen in which food is prepared or processed for
24 sale in accordance with the provisions of the Food
25 Accessibility Act; and

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1 (3) meat markets, whether or not operated in
2 conjunction with a grocery store;

3 I. "utensil" means any implement used in the
4 storage, preparation, transportation or service of food; and

5 J. "dairy establishment" means a milk processing or
6 milk producing facility."

7 SECTION 7. A new section of the Food Service Sanitation
8 Act is enacted to read:

9 "[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--A
10 private home kitchen in which food is prepared or processed for
11 sale in accordance with the provisions of the Food
12 Accessibility Act is exempt from the permitting and inspection
13 requirements of the Food Service Sanitation Act."

14 SECTION 8. Section 25-7-1 NMSA 1978 (being Laws 1977,
15 Chapter 375, Section 1) is amended to read:

16 "25-7-1. SHORT TITLE.--~~[This act]~~ Chapter 25, Article 7
17 NMSA 1978 may be cited as the "Dairy Act"."

18 SECTION 9. A new section of the Dairy Act is enacted to
19 read:

20 "[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--Dairy
21 products prepared, processed and sold in accordance with the
22 provisions of the Food Accessibility Act are exempt from the
23 requirements of the Dairy Act."

24 SECTION 10. Section 25-7A-1 NMSA 1978 (being Laws 1993,
25 Chapter 188, Section 1) is amended to read:

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1 "25-7A-1. SHORT TITLE.--~~[Sections 1 through 19 of this~~
2 ~~act]~~ Chapter 25, Article 7A NMSA 1978 may be cited as the "New
3 Mexico Dairy Product Act"."

4 SECTION 11. Section 25-7A-2 NMSA 1978 (being Laws 1993,
5 Chapter 188, Section 2) is amended to read:

6 "25-7A-2. DEFINITIONS.--As used in the New Mexico Dairy
7 Product Act:

8 A. "advertisement" means all representations
9 disseminated in any manner or by any means, other than by
10 labeling, for the purpose of inducing, or that are likely to
11 induce, directly or indirectly, the purchase of food;

12 B. "board" means the board of regents of New Mexico
13 state university;

14 C. "contaminated with filth" applies to any dairy
15 product not securely protected from dust, dirt and, so far as
16 may be necessary by all reasonable means, ~~[from]~~ all foreign or
17 injurious contaminations, or any dairy product found to contain
18 any dust, dirt, foreign or injurious contamination or
19 infestation; the provisions shall be considered to include the
20 manufacture, production, processing, packing, exposure, offer,
21 possession and holding of any such dairy product and the
22 supplying or applying of any such dairy product in the conduct
23 of any dairy establishment;

24 D. "dairy establishment" means a milk producing or
25 milk processing facility, but does not mean a private home

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1 kitchen in which dairy products are prepared or processed for
2 sale in accordance with the provisions of the Food
3 Accessibility Act;

4 E. "dairy product" means milk, whether fluid,
5 dried, evaporated, stabilized, condensed or otherwise
6 processed, cream, milk products, ice cream, frozen custard,
7 French custard, ice milk, frozen dessert or any other food
8 product derived principally from milk;

9 F. "department" means the New Mexico department of
10 agriculture;

11 G. "director" means the director of [~~agriculture~~]
12 the department;

13 H. "federal act" means the Federal Food, Drug, and
14 Cosmetic Act;

15 I. "immediate container" does not include package
16 liners;

17 J. "label" means a display of written, printed or
18 graphic matter upon the immediate container of any dairy
19 product. A requirement made by or under authority of the New
20 Mexico Dairy Product Act that any word, statement or other
21 information [~~appears~~] appear on the label shall not be
22 considered to be complied with unless such word, statement or
23 other information also appears on the outside container or
24 wrapper, if any, of the retail package of such dairy product or
25 is easily legible through the outside container or wrapper;

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1 K. "labeling" means all labels and other written,
2 printed or graphic matter:

3 (1) upon a dairy product or any of its
4 containers or wrappers; or

5 (2) accompanying such dairy product;

6 L. "milk" means the whole, clean, lacteal secretion
7 obtained by the complete milking of one or more healthy cows or
8 goats, properly fed and kept, delivered from the dairy farm to
9 any receiving or distributing establishment or factory within a
10 reasonable time, excluding that obtained within fifteen days
11 before or five days after calving or such longer period as may
12 be necessary to render milk practically colostrum-free; and

13 M. "person" includes an individual, partnership,
14 corporation and association."

15 SECTION 12. A new section of the New Mexico Dairy Product
16 Act is enacted to read:

17 "[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--Dairy
18 products prepared, processed and sold in accordance with the
19 provisions of the Food Accessibility Act are exempt from the
20 requirements of the New Mexico Dairy Product Act."

21 SECTION 13. Section 25-7B-1 NMSA 1978 (being Laws 1993,
22 Chapter 188, Section 20) is amended to read:

23 "25-7B-1. SHORT TITLE.--~~[Sections 20 through 30 of this~~
24 ~~act]~~ Chapter 25, Article 7B NMSA 1978 may be cited as the
25 "Dairy Establishment Sanitation Act"."

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1 SECTION 14. Section 25-7B-3 NMSA 1978 (being Laws 1993,
2 Chapter 188, Section 22) is amended to read:

3 "25-7B-3. DEFINITIONS.--As used in the Dairy
4 Establishment Sanitation Act:

5 A. "board" means the board of regents of New Mexico
6 state university;

7 B. "dairy establishment" means a milk producing or
8 milk processing facility, but does not mean a private home
9 kitchen in which dairy products are prepared or processed for
10 sale in accordance with the provisions of the Food
11 Accessibility Act;

12 C. "dairy product" means milk, whether fluid,
13 dried, evaporated, stabilized, condensed or otherwise
14 processed, cream, milk products, ice cream, frozen custard,
15 French custard, ice milk, frozen dessert or any other food
16 product derived principally from milk;

17 D. "department" means the New Mexico department of
18 agriculture;

19 E. "director" means the director of [~~agriculture~~]
20 the department;

21 F. "milk" means the whole, clean, lacteal secretion
22 obtained by the complete milking of one or more healthy cows or
23 goats, properly fed and kept, delivered from the dairy farm to
24 any receiving or distributing establishment or factory within a
25 reasonable time, excluding that obtained within fifteen days

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1 before or five days after calving or such longer period as may
2 be necessary to render milk practically colostrum-free; and

3 G. "person" includes an individual, partnership,
4 corporation and association."

5 SECTION 15. A new section of the Dairy Establishment
6 Sanitation Act is enacted to read:

7 "[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--A
8 private home kitchen in which dairy products are prepared or
9 processed for sale in accordance with the provisions of the
10 Food Accessibility Act are exempt from the requirements of the
11 Dairy Establishment Sanitation Act."

12 SECTION 16. A new section of Chapter 76 NMSA 1978 is
13 enacted to read:

14 "[NEW MATERIAL] STATE MEAT INSPECTION PROGRAM.--The board
15 of regents of New Mexico state university, through the New
16 Mexico department of agriculture, shall develop and administer
17 a state meat inspection program with all necessary rules for
18 ensuring food safety that meets or exceeds the standards and
19 requirements for a state meat inspection program under the
20 Federal Meat Inspection Act."

21 SECTION 17. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.