SENATE BILL 654

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

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AN ACT

RELATING TO FOOD; BANNING THE USE OF THE ARTIFICIAL SWEETENER ASPARTAME IN FOOD PRODUCTS; MAKING AN APPROPRIATION.

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

Section 1. [NEW MATERIAL] LEGISLATIVE FINDINGS.--

A. The legislature finds it is imperative for the public health, safety and welfare to declare that aspartame and its derivative compounds, in all of their trade names, are poisonous and deleterious food additives due to their neurotoxic and carcinogenic metabolites.

B. The legislature finds federal authorities have not intended to or expressed an intention to occupy and preempt areas of concern regarding the prohibition of toxic, neurotoxic, carcinogenic, poisonous or deleterious food additives, and therefore the legislature may prohibit the sale

.161160.1

1   of products containing aspartame and its derivative compounds

2   in order to protect and ensure the public health, safety and

3   welfare.

4   Section 2. Section 25-2-2 NMSA 1978 (being Laws 1951,

5   Chapter 169, Section 2, as amended) is amended to read:

6   "25-2-2. DEFINITIONS.--For the purpose of the New Mexico

7   Food Act:

8   A. "aspartame" means the artificial sweetener with

9   the technical name L-aspartyl-L-phenylalanine methyl ester;

10   [A.] B. "board" means the environmental improvement

11   board;

12   [B.] C. "dairy establishment" means a milk

13   processing or milk producing facility;

14   [C.] D. "division" means the department of

15   environment;

16   [D.] E. "director" means the secretary of

17   environment or [his] the secretary's authorized representative;

18   [E.] F. "person" includes an individual,

19   partnership, corporation and association;

20   [F.] G. "food" means:

21   (1) articles used for food or drink for man or

22   animals;

23   (2) chewing gum; and

24   (3) articles used for components of food or

25   drink or chewing gum for man or animals;

.161160.1

1   [G.] H. "label" means a display of written, printed

2 or graphic matter upon the immediate container of any article.

3 A requirement made by or under authority of the New Mexico Food

4 Act that any word, statement or other information appear on the

5 label shall not be considered to be complied with unless such

6 word, statement or other information also appears on the

7 outside container or wrapper, if any, of the retail package of

8 such article or is easily legible through the outside container

9 or wrapper;

10   [H.] I. "immediate container" does not include

11 package liners;

12   [I.] J. "labeling" means all labels and other

13 written, printed or graphic matter:

14   (1) upon an article or any of its containers

15 or wrappers; or

16   (2) accompanying such article;

17   [J.] K. if an article is alleged to be misbranded

18 because the labeling is misleading or if an advertisement is

19 alleged to be false because it is misleading, then in

20 determining whether the labeling or advertisement is

21 misleading, there shall be taken into account, among other

22 things, not only representations made or suggested by

23 statement, word, design, device, sound or in any combination

24 thereof, but also the extent to which the labeling or

25 advertisement fails to reveal facts material in the light of

.161160.1

1   such representations or material with respect to consequences

2   which may result from the use of the article to which the

3   labeling or advertisement relates under the conditions of use

4   prescribed in the labeling or advertisement thereof or under

5   such conditions of use as are customary or usual;

6   [K.] L. "advertisement" means all representations

7   disseminated in any manner or by any means, other than by

8   labeling, for the purpose of inducing, or which are likely to

9   induce, directly or indirectly, the purchase of food;

10   [L.] M. "contaminated with filth" applies to any

11   food not securely protected from dust, dirt and, so far as may

12   be necessary by all reasonable means, from all foreign or

13   injurious contaminations, or any food found to contain any

14   dust, dirt, foreign or injurious contamination or infestation;

15   [M.] N. the provisions shall be considered to

16   include the manufacture, production, processing, packing,

17   exposure, offer, possession and holding of any such article and

18   the supplying or applying of any such articles in the conduct

19   of any food establishment; and

20   [N.] O. "federal act" means the Federal Food, Drug,

21   and Cosmetic Act, [21 USC § 301 et seq.] the Federal Meat

22   Inspection Act [21 USC § 601 et seq.] and the federal Poultry

23   Products Inspection Act [21 USC § 451 et seq]."

24   Section 3. Section 25-2-3 NMSA 1978 (being Laws 1951,

25   Chapter 169, Section 3) is amended to read:

.161160.1

- 4 -

1   "25-2-3. PROHIBITED ACTS.--The following acts and the

2   causing thereof within the state [of New Mexico] are [hereby]

3   prohibited:

4   [(a)] A. the manufacture, sale or delivery or

5   holding or offering for sale of any food that is adulterated or

6   misbranded;

7   [(b)] B. the adulteration or misbranding of any

8   food;

9   [(c)] C. the receipt in commerce of any food that

10 is adulterated or misbranded and the delivery or proffered

11 delivery [thereof] of the adulterated or misbranded food for

12 pay or otherwise;

13   [(d)] D. the sale, delivery for sale, holding for

14 sale or offering for sale of any article in violation of

15 Section [12] 25-2-12 NMSA 1978;

16   [(e)] E. the dissemination of any false

17 advertisement;

18   [(f)] F. the refusal to permit entry or inspection

19 or to permit the taking of a sample as authorized by Section

20 [16] 25-2-16 NMSA 1978;

21   [(g)] G. the giving of a guaranty or undertaking,

22 which guaranty or undertaking is false, except by a person who

23 relied on a guaranty or undertaking to the same effect signed

24 by and containing the name and address of the person residing

25 in the state [of New Mexico] from whom [he] the person received

.161160.1

- 5 -

1   the food in good faith;

2   [(h)] H. the removal or disposal of a detained or

3   embargoed article in violation of Section [6] 25-2-6 NMSA 1978;

4   [(i)] I. the alteration, mutilation, destruction,

5   obliteration or removal of the whole or any part of the

6   labeling of, or the doing of any other act with respect to, a

7   food if [such] the act is done while [such] the article is held

8   for sale and results in [such] the article being misbranded;

9   [(j)] J. forging, counterfeiting, simulating or

10   falsely representing or without proper authority using any

11   mark, stamp, tag, label or other identification device

12   authorized or required by [regulations] rules promulgated under

13   the provisions of [this] the New Mexico Food Act; and

14   K. the manufacture, sale or delivery or holding or

15   offering for sale of any food containing any amount of

16   aspartame and its derivative compounds in any of their trade

17   names."

18   Section 4. APPROPRIATION.--One hundred thousand dollars

19   ($100,000) is appropriated from the general fund to the office

20   of the attorney general for expenditure in fiscal year 2007 to

21   enforce the provisions of this act. Any unexpended or

22   unencumbered balance remaining at the end of fiscal year 2007

23   shall revert to the general fund.

24   Section 5. APPLICABILITY.--The provisions of this act

25   shall not apply to food products located within the state on

.161160.1

July 1, 2006.

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2006.

- 7 -

.161160.1