

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 238

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO NEW MEXICO CHILE PEPPERS; EXPANDING VIOLATIONS OF
THE NEW MEXICO CHILE ADVERTISING ACT; PROVIDING AN EXCEPTION TO
POTENTIAL RULE-MAKING; PROVIDING FOR STOP-SALE, USE OR REMOVAL
ORDERS TO BE ISSUED BY THE NEW MEXICO DEPARTMENT OF
AGRICULTURE.

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

SECTION 1. Section 25-11-1 NMSA 1978 (being Laws 2011,
Chapter 57, Section 1) is amended to read:

"25-11-1. SHORT TITLE.--~~[This act]~~ Chapter 25, Article 11
NMSA 1978 may be cited as the "New Mexico Chile Advertising
Act"."

SECTION 2. Section 25-11-3 NMSA 1978 (being Laws 2011,
Chapter 57, Section 3) is amended to read:

"25-11-3. UNLAWFUL ADVERTISING, LABELING OR SELLING OF
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underscored material = new
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1 NON-NEW MEXICO CHILE.--

2 A. It is unlawful for a person to:

3 (1) knowingly advertise, describe, label or
4 offer for sale chile peppers as New Mexico chile, or to
5 advertise, describe, label or offer for sale a product as
6 containing New Mexico chile, unless the chile peppers or chile
7 peppers in the product were grown in New Mexico; or

8 (2) knowingly advertise, describe, label or
9 offer for sale chile peppers, or a product containing chile
10 peppers, using the name of any city, town, county, village,
11 pueblo, mountain, river or other geographic feature or features
12 located in New Mexico in a misleading or deceptive manner that
13 states or reasonably implies that the chile peppers are, or the
14 product contains, New Mexico chile, unless the chile peppers or
15 chile peppers in the product were grown in New Mexico.

16 B. The prohibitions in this section do not apply to
17 a person whose business name, brand name or trademark was used
18 in advertising, product descriptions, labels or offers for sale
19 and was established prior to the effective date of the New
20 Mexico Chile Advertising Act; provided that, on and after July
21 1, 2013, the person, in all advertising, descriptions and
22 labels containing that business name, brand name or trademark,
23 shall include in a prominent location and in a prominent
24 typeface a disclaimer stating "NOT GROWN IN NEW MEXICO" if the
25 product contains chile peppers that were not grown in New

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1 Mexico.

2 C. The prohibitions in this section do not apply to
 3 a restaurant that describes a menu item using a geographic name
 4 provided for in Paragraph (2) of Subsection A of this section;
 5 provided that the origin of any chile in the menu item is not
 6 misrepresented."

7 SECTION 3. Section 25-11-4 NMSA 1978 (being Laws 2011,
 8 Chapter 57, Section 4) is amended to read:

9 "25-11-4. ADMINISTRATION--AUDIT--INSPECTION.--

10 A. The board may:

11 (1) enforce and administer the New Mexico
 12 Chile Advertising Act through the New Mexico department of
 13 agriculture; and

14 (2) promulgate rules, in consultation with the
 15 New Mexico chile industry, necessary for the administration of
 16 the New Mexico Chile Advertising Act [~~and~~

17 ~~(3) issue an order to immediately cease and~~
 18 ~~desist any activity in violation of the New Mexico Chile~~
 19 ~~Advertising Act].~~

20 B. Sales at a farmers' market of twenty thousand
 21 pounds or less of chile peppers per calendar year by the person
 22 that grew the chile peppers are exempt from any recordkeeping
 23 requirement that the board may establish by rule. For the
 24 purposes of this subsection, "farmers' market" means a physical
 25 retail market open to the public at which farmers sell produce.

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1 [B-] C. The New Mexico department of agriculture
2 through its authorized inspectors or agents is authorized to:

3 (1) audit the purchase and sales records of a
4 person dealing with the sale of chile peppers or products
5 containing chile peppers that are advertised, described,
6 labeled or offered for sale as New Mexico chile; ~~and~~

7 (2) enter, on a business day during the usual
8 hours of business, a store, market or other business or place
9 for the limited purpose of inspecting the establishment's
10 records related to chile peppers or products containing chile
11 peppers being advertised, described, labeled or offered for
12 sale as New Mexico chile or as containing New Mexico chile; and

13 (3) issue stop-sale, use or removal orders
14 with respect to any violation of the New Mexico Chile
15 Advertising Act."

16 SECTION 4. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2013.

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