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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/2017

SPONSOR Pirtle/Woods LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Misbranding of Milk SB 161

ANALYST Dulany

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files  
Code of Federal Regulations  
U.S. Code

#### Responses Received From

Attorney General’s Office (AGO)  
New Mexico Department of Agriculture (NMDA)  
New Mexico Environment Department (NMED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 161 adds new language to the New Mexico Food Act deeming products labeled as “milk,” products with labels implying the food contains milk, or products offered for sale as milk to be misbranded if the food product does not consist of the whole, clean lacteal secretion practically free from colostrums, obtained by the complete milking of one or more healthy mammals.

### FISCAL IMPLICATIONS

If enacted, SB 161 would require NMED to enforce the provisions of the bill. NMED states “additional staffing to perform these inspections would be substantial.”

### SIGNIFICANT ISSUES

The new language contained in SB 161 differs from the description of “milk” in the Code of

Federal Regulation’s requirements for specific standardized milk and cream (21 CFR 131.110), which describes milk as “the lacteal secretion, practically free from colostrums, obtained by the complete milking of one or more healthy cows” (note CFR specifies cows, whereas SB 161 contemplates all mammals).

NMED notes the Dairy Act prohibits the sale of adulterated or mislabeled milk. Milk is adulterated if it does not conform in physical or chemical composition to the definition of milk in the Dairy Act, which is “...the whole, clean, lacteal secretion obtained by the complete milking of one or more healthy cows or goats, properly fed and kept, delivered from the dairy farm to any receiving or distributing establishment or factory within a reasonable time, excluding that obtained within fifteen days before and five days after calving or such longer period as may be necessary to render the milk practically colostrums free.” NMDA has regulatory oversight over the sale of adulterated milk.

NMED states labeling of food subject to a standard of identity is specifically preempted by federal law unless the state requirement is identical to the federal requirement (21 U.S.C. Section 343-1(a)(1)). As previously stated, SB 161 proposes labeling requirements that are not identical to the federal requirements.

The New Mexico Food Act prohibits “the manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded.” Several products containing plant-based liquids are sold in grocery stores and elsewhere that are branded as milk. These may include soy milk, almond milk, or coconut milk. If SB 161 is enacted, any person who manufactures, sells, delivers, holds or offers for sale such products in violation of the New Mexico Food Act would be guilty of a misdemeanor. As SB 161 does not contain an emergency clause, grocery stores and other entities selling such products would have 90 days from adjournment of the 2017 legislative session to come into compliance.

AGO points out that the New Mexico Food Act exempts dairy establishments from the act (25-2-20 NMSA 1978). A dairy establishment, therefore, could label a product as “milk” even if it was not obtained by the complete milking of one or more healthy mammals.

NMDA suggests, “When a consumer sees the word ‘milk’ on a food label it is assumed the food contains milk, or the lacteal secretion from a mammal. The amended language will assist in consumer awareness.”

## **ADMINISTRATIVE IMPLICATIONS**

NMED would be responsible for enforcing the provisions of SB 161. NMED reports staffing levels are such that would not allow for increased inspections or surveillance to address the products that would be considered misbranded per SB 161. NMED states it would have to spend “considerable time dealing with the import of such products.”

## **POSSIBLE QUESTIONS**

Would a federal preemption issue exist if SB 161 is enacted?

TD/jle/al