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## FISCAL IMPACT REPORT

SPONSOR Pirtle ORIGINAL DATE 1/29/2019  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Misbranding of Milk SB 319  
ANALYST Fischer

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Fiscal Implications					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Department of Agriculture (NMDA)

#### No Response Received

New Mexico Environment Department (NMED)

New Mexico Department of Health (DOH)

### SUMMARY

#### Synopsis of Bill

Senate Bill 319 (SB319) 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. SB319 duplicates Senate Bill 161, 2017 session, and all issues noted in the SB161 fiscal impact report still stand.

### FISCAL IMPLICATIONS

If enacted, SB319 would likely require NMED to add staff to enforce the provisions of the bill.

## SIGNIFICANT ISSUES

The language contained in SB319 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 SB319 contemplates all mammals).

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 SB319 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 SB319 does not contain an emergency clause, grocery stores and other entities selling such products would have 90 days from the adjournment of the 2018 legislative session to come into compliance.

In the fiscal impact report for SB161, 2017 session, the Attorney General’s office noted 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 states that when a consumer sees the word ‘milk’ on a food label it is assumed the food contains milk as the lacteal secretion from a mammal. The amended language will assist in consumer awareness.

In December 2018, the U.S. Court of Appeals for the Ninth Circuit ruled in *Cynthia Cardarelli Painter v. Blue Diamond Growers* confirming a lower district court decision that no reasonable consumer could be misled by unambiguous labeling or factually accurate nutritional statements on almond milk. Further, the court ruled that almond milk is not an “imitation” or “substitute” for dairy milk because almond milk does not involve literally substituting inferior ingredients for those in dairy milk.

## POSSIBLE QUESTIONS

If SB319 is enacted, how much staff time and administrative effort would NMED for enforcement?

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