

1 SENATE BILL 18

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2020**

3 INTRODUCED BY

4 Cliff R. Pirtle

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9  
10 AN ACT

11 RELATING TO AGRICULTURE; ENACTING THE FOOD FREEDOM ACT;  
12 EXEMPTING CERTAIN FOOD SALES FROM LICENSURE, REGULATION AND  
13 INSPECTION REQUIREMENTS; ALLOWING THE ACQUISITION OF MEAT  
14 PURSUANT TO OWNERSHIP OF AN ANIMAL SHARE; DIRECTING THE  
15 ESTABLISHMENT OF A STATE MEAT INSPECTION PROGRAM; AMENDING AND  
16 ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

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

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

11           D. "home consumption" means food consumed within a  
12 private home;

13           E. "homemade food" or "homemade food product" means  
14 a food or drink that is prepared or processed by a producer in  
15 a private home kitchen that is not licensed, regulated or  
16 inspected;

17           F. "informed end consumer" means a person who is  
18 the last person to purchase the product, who does not resell  
19 the product and who has been informed that the product is not  
20 licensed, regulated or inspected;

21           G. "non-potentially hazardous food" means a food or  
22 beverage that, when stored under normal conditions without  
23 refrigeration, will not support the rapid and progressive  
24 growth of microorganisms that cause food infections or food  
25 intoxications, including pickled fruits and vegetables, spices,

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1 teas, dehydrated produce, nuts, seeds, honey, jams, jellies,  
2 preserves, fruit butters, candies, fruit empanadas, tortillas  
3 and baked goods;

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

10 I. "process" means operations a producer performs  
11 in the making or treatment of the producer's food or drink  
12 products;

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

20 K. "transaction" means the exchange of buying and  
21 selling.

22 SECTION 3. [NEW MATERIAL] HOMEMADE FOOD PRODUCTS--  
23 REQUIREMENTS FOR SALE.--

24 A. Homemade food products produced, sold and  
25 consumed in compliance with the Food Freedom Act are exempt

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1 from state or local government licensure, permitting,  
2 inspection, packaging and labeling requirements.

3 B. Transactions pursuant to the Food Freedom Act  
4 shall:

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

13 (2) be only for home consumption;

14 (3) occur only in New Mexico;

15 (4) not involve interstate commerce; and

16 (5) not involve the sale of meat or meat

17 products, with the following exceptions:

18 (a) the sale of poultry and poultry  
19 products; provided that: 1) the producer slaughters not more  
20 than one thousand poultry of the producer's own raising during  
21 any one calendar year; 2) the producer does not engage in  
22 buying or selling poultry products other than those produced  
23 from poultry of the producer's own raising; and 3) the poultry  
24 product is not adulterated or misbranded as to be dangerous or  
25 fraudulent within the meaning of the New Mexico Food Act;

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1 (b) the sale of portions of live animals  
2 before slaughter for future delivery to the informed end  
3 consumer; provided that the processing of the animals is done  
4 in a state or federally licensed processing facility;

5 (c) the sale of domestic rabbit meat;

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

7 (e) the acquisition of meat pursuant to  
8 an animal share.

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

16 D. For sales of non-potentially hazardous food at a  
17 commercial food establishment, the food shall be clearly and  
18 prominently labeled with the following: "This food was  
19 produced or processed in a private home kitchen that is not  
20 subject to state licensure, regulation or inspection and may  
21 contain allergens.". If a commercial food establishment where  
22 homemade food is sold offers for sale any food product that was  
23 inspected or produced in a licensed facility, the commercial  
24 food establishment shall comply with rules adopted by the  
25 department of environment that shall require:

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

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

7 (3) that each separate space include signs or  
8 other markings clearly indicating which spaces are offering  
9 inspected items for sale and which spaces are offering  
10 uninspected items for sale;

11 (4) separation of coolers, freezers and  
12 warehouse or other storage areas to prohibit the intermingling  
13 of inspected and uninspected products; and

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

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

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

20 (1) the meat is:

21 (a) received from the farm or ranch  
22 where an animal or herd subject to the animal share is located;

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

25 (c) obtained from the particular animal

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1 or herd subject to the animal share;

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

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

7 (4) information describing the standards used  
8 by the farm or ranch with respect to herd health and the  
9 processing of meat from the herd is provided to the owner of  
10 the animal share by the farmer or rancher.

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

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

19 D. A farmer or rancher shall not publish any  
20 statement that implies approval or endorsement by the New  
21 Mexico department of agriculture or the New Mexico livestock  
22 board of meat delivered pursuant to this section unless  
23 otherwise provided for in law or administrative rule.

24 SECTION 5. Section 25-1-2 NMSA 1978 (being Laws 1977,  
25 Chapter 309, Section 2, as amended) is amended to read:

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1           "25-1-2. DEFINITIONS.--As used in the Food Service  
2 Sanitation Act:  
3           A. "agency" or "division" means the department of  
4 environment;  
5           B. "board" means the environmental improvement  
6 board;  
7           C. "employee" means any individual employed in a  
8 food service establishment who transports food or food  
9 containers, who handles food during storage, preparation or  
10 serving, who comes in contact with any utensils or who is  
11 employed in a room in which food is stored, prepared or served;  
12           D. "food" means any solid or liquid substance  
13 intended for human consumption by eating or drinking;  
14           E. "general public" includes beneficiaries of  
15 governmental feeding programs and private charitable feeding  
16 programs and residents and employees of institutions that  
17 provide meals to their residents and employees either with or  
18 without direct payment to the institution by the residents or  
19 employees;  
20           F. "temporary food service establishment" means a  
21 food service establishment that operates at a fixed location in  
22 conjunction with a single event or celebration for a short  
23 period of time not exceeding the event or celebration or not  
24 exceeding thirty days;  
25           G. "person" means an individual or any other legal

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1 entity;

2 H. "food service establishment" means:

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

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

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

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

23 J. "dairy establishment" means a milk processing or  
24 milk producing facility."

25 SECTION 6. A new section of the Food Service Sanitation

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1 Act is enacted to read:

2 "[NEW MATERIAL] EXEMPTION--FOOD FREEDOM ACT.--A private  
3 home kitchen in which food is prepared or processed for sale in  
4 accordance with the provisions of the Food Freedom Act is  
5 exempt from the permitting and inspection requirements of the  
6 Food Service Sanitation Act."

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

9 "25-7-1. SHORT TITLE.--~~[This act]~~ Chapter 25, Article 7  
10 NMSA 1978 may be cited as the "Dairy Act"."

11 SECTION 8. A new section of the Dairy Act is enacted to  
12 read:

13 "[NEW MATERIAL] EXEMPTION--FOOD FREEDOM ACT.--Dairy  
14 products prepared, processed and sold in accordance with the  
15 provisions of the Food Freedom Act are exempt from the  
16 requirements of the Dairy Act."

17 SECTION 9. Section 25-7A-1 NMSA 1978 (being Laws 1993,  
18 Chapter 188, Section 1) is amended to read:

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

22 SECTION 10. Section 25-7A-2 NMSA 1978 (being Laws 1993,  
23 Chapter 188, Section 2) is amended to read:

24 "25-7A-2. DEFINITIONS.--As used in the New Mexico Dairy  
25 Product Act:

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

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

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

17           D. "dairy establishment" means a milk producing or  
18 milk processing facility, but does not mean a private home  
19 kitchen in which dairy products are prepared or processed for  
20 sale in accordance with the provisions of the Food Freedom Act;

21           E. "dairy product" means milk, whether fluid,  
22 dried, evaporated, stabilized, condensed or otherwise  
23 processed, cream, milk products, ice cream, frozen custard,  
24 French custard, ice milk, frozen dessert or any other food  
25 product derived principally from milk;

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1 F. "department" means the New Mexico department of  
2 agriculture;

3 G. "director" means the director of [~~agriculture~~]  
4 the department;

5 H. "federal act" means the Federal Food, Drug, and  
6 Cosmetic Act;

7 I. "immediate container" does not include package  
8 liners;

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

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

20 (1) upon a dairy product or any of its  
21 containers or wrappers; or

22 (2) accompanying such dairy product;

23 L. "milk" means the whole, clean, lacteal secretion  
24 obtained by the complete milking of one or more healthy cows or  
25 goats, properly fed and kept, delivered from the dairy farm to

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1 any receiving or distributing establishment or factory within a  
2 reasonable time, excluding that obtained within fifteen days  
3 before or five days after calving or such longer period as may  
4 be necessary to render milk practically colostrum-free; and

5 M. "person" includes an individual, partnership,  
6 corporation and association."

7 SECTION 11. A new section of the New Mexico Dairy Product  
8 Act is enacted to read:

9 "[NEW MATERIAL] EXEMPTION--FOOD FREEDOM ACT.--Dairy  
10 products prepared, processed and sold in accordance with the  
11 provisions of the Food Freedom Act are exempt from the  
12 requirements of the New Mexico Dairy Product Act."

13 SECTION 12. Section 25-7B-1 NMSA 1978 (being Laws 1993,  
14 Chapter 188, Section 20) is amended to read:

15 "25-7B-1. SHORT TITLE.--~~[Sections 20 through 30 of this~~  
16 ~~act]~~ Chapter 25, Article 7B NMSA 1978 may be cited as the  
17 "Dairy Establishment Sanitation Act"."

18 SECTION 13. Section 25-7B-3 NMSA 1978 (being Laws 1993,  
19 Chapter 188, Section 22) is amended to read:

20 "25-7B-3. DEFINITIONS.--As used in the Dairy  
21 Establishment Sanitation Act:

22 A. "board" means the board of regents of New Mexico  
23 state university;

24 B. "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 Freedom Act;

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

8 D. "department" means the New Mexico department of  
9 agriculture;

10 E. "director" means the director of [~~agriculture~~]  
11 the department;

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

19 G. "person" includes an individual, partnership,  
20 corporation and association."

21 SECTION 14. A new section of the Dairy Establishment  
22 Sanitation Act is enacted to read:

23 "[NEW MATERIAL] EXEMPTION--FOOD FREEDOM ACT.--A private  
24 home kitchen in which dairy products are prepared or processed  
25 for sale in accordance with the provisions of the Food Freedom

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1 Act are exempt from the requirements of the Dairy Establishment  
2 Sanitation Act."

3 SECTION 15. A new section of Chapter 76 NMSA 1978 is  
4 enacted to read:

5 "[NEW MATERIAL] STATE MEAT INSPECTION PROGRAM.--The board  
6 of regents of New Mexico state university, through the New  
7 Mexico department of agriculture, shall develop and administer  
8 a state meat inspection program with all necessary rules for  
9 ensuring food safety that meets or exceeds the standards and  
10 requirements for a state meat inspection program under the  
11 Federal Meat Inspection Act."

12 SECTION 16. EMERGENCY.--It is necessary for the public  
13 peace, health and safety that this act take effect immediately.