

State of New Mexico  
Senate

FIFTY-FIFTH LEGISLATURE  
FIRST SESSION

March 17, 2021

SENATE FLOOR AMENDMENT number   /   to HOUSE AGRICULTURE AND WATER  
RESOURCES COMMITTEE  
SUBSTITUTE FOR HOUSE BILL  
177, as amended

Amendment sponsored by Senator Cliff R. Pirtle

1. Strike House Health and Human Services Committee Amendments  
1 through 3.

2. On page 1, line 11, after the first semicolon, strike the  
remainder of the line and strike lines 12 through 17 in their  
entirety and insert in lieu thereof "ENACTING THE FOOD ACCESSIBILITY  
ACT; EXEMPTING CERTAIN FOOD SALES FROM LICENSURE, REGULATION AND  
INSPECTION REQUIREMENTS; ALLOWING THE ACQUISITION OF MEAT PURSUANT  
TO OWNERSHIP OF AN ANIMAL SHARE; EXEMPTING MEAT FROM THE GROSS  
RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX; AUTHORIZING THE  
NEW MEXICO LIVESTOCK BOARD TO CONDUCT MEAT INSPECTIONS TO ENSURE THE  
SAFETY AND QUALITY OF MEAT FOR HUMAN CONSUMPTION; AMENDING AND  
ENACTING SECTIONS OF THE NMSA 1978."

3. On page 1, line 20 through page 8, line 5, strike Sections  
1 through 8 in their entirety and insert in lieu thereof the  
following new sections:

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

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

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

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

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

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

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

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

G. "non-potentially hazardous food" means a food or beverage that, when stored under normal conditions without refrigeration, will not support the rapid and progressive growth of microorganisms that cause food infections or food intoxications, including pickled fruits and vegetables, spices, teas, dehydrated produce, nuts, seeds, honey, jams, jellies, preserves, fruit butters, candies, fruit empanadas, tortillas and baked goods;

H. "potentially hazardous food" means a food or beverage that requires time or temperature control for safety, including for limiting pathogenic microorganism growth or toxin formation, including foods requiring refrigeration, dairy products, quiches,



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pizzas, frozen doughs, meat and cooked vegetables and beans;

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

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

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

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

A. Except as provided in this section, homemade food products produced, sold and consumed in compliance with the Food Accessibility Act are exempt from state or local government licensure, permitting, inspection, packaging and labeling requirements.

B. Transactions pursuant to the Food Accessibility Act shall:

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

(2) be only for home consumption;

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- (3) occur only in New Mexico;
- (4) not involve interstate commerce; and
- (5) not involve the sale of meat or meat products,  
with the following exceptions:

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

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

(c) the sale of domestic rabbit meat;

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

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

C. A seller of homemade food pursuant to the Food Accessibility Act shall inform the consumer that the homemade food has not been inspected and shall display a sign at the point of sale indicating that the homemade food was produced or processed in a private home kitchen that is not subject to licensure, regulation or inspection and that the food has not been inspected. The sign shall be at a minimum twenty inches by twenty inches in size.



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

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

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

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

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

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

E. If a report of food-borne illness is made to the department of environment, the department may immediately suspend the sale of a homemade food without prior notice to the seller if the department determines, after inspection, that the homemade food or the conditions of the sale of the homemade food present a

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substantial danger of illness, serious physical harm or death to consumers. A suspension action taken by the department is effective when communicated to the homemade food seller or any employee or agent of the seller and shall continue in effect until the unsafe condition is abated by the seller.

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

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

(1) the meat is:

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

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

(c) obtained from the particular animal or herd subject to the animal share;

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

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

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

B. An animal share shall be created by a written contract between the owner of the animal share and a farmer or rancher and



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shall include a bill of sale for an ownership interest in the animal or herd that entitles the owner of the animal share to receive a share of meat from the animal or herd.

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

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

SECTION 5. Section 7-9-18 NMSA 1978 (being Laws 1969, Chapter 144, Section 11, as amended) is amended to read:

"7-9-18. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--AGRICULTURAL PRODUCTS.--

A. Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling livestock and receipts of growers, producers, trappers or nonprofit marketing associations from selling livestock, live poultry, [unprocessed] agricultural products, hides or pelts. Persons engaged in the business of buying and selling wool or mohair or of buying and selling livestock or meat on their own account are producers for the purposes of this section.

B. Receipts from selling dairy products at retail are not exempted from the gross receipts tax.

C. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and also includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico;

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provided that for the purposes of Chapter 77, Article 9 NMSA 1978, "animals" or "livestock" have the meaning defined in that article. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "animals" or "livestock".

**SECTION 6.** Section 25-1-2 NMSA 1978 (being Laws 1977, Chapter 309, Section 2, as amended) is amended to read:

"25-1-2. DEFINITIONS.--As used in the Food Service Sanitation Act:

A. "agency" or "division" means the department of environment;

B. "board" means the environmental improvement board;

C. "employee" means any individual employed in a food service establishment who transports food or food containers, who handles food during storage, preparation or serving, who comes in contact with any utensils or who is employed in a room in which food is stored, prepared or served;

D. "food" means any solid or liquid substance intended for human consumption by eating or drinking;

E. "general public" includes beneficiaries of governmental feeding programs and private charitable feeding programs and residents and employees of institutions that provide meals to their residents and employees either with or without direct payment to the institution by the residents or employees;

F. "temporary food service establishment" means a food service establishment that operates at a fixed location in conjunction with a single event or celebration for a short period of



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time not exceeding the event or celebration or not exceeding thirty days;

G. "person" means an individual or any other legal entity;

H. "food service establishment" means:

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

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

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

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

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

SECTION 7. A new section of the Food Service Sanitation Act is enacted to read:

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

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

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

SECTION 9. A new section of the Dairy Act is enacted to read:

"[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--Dairy products prepared, processed and sold in accordance with the provisions of the Food Accessibility Act are exempt from the requirements of the Dairy Act."

SECTION 10. Section 25-7A-1 NMSA 1978 (being Laws 1993, Chapter 188, Section 1) is amended to read:

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

SECTION 11. Section 25-7A-2 NMSA 1978 (being Laws 1993, Chapter 188, Section 2) is amended to read:

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

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



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

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

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

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

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

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

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

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

J. "label" means a display of written, printed or graphic

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matter upon the immediate container of any dairy product. A requirement made by or under authority of the New Mexico Dairy Product Act that any word, statement or other information [~~appears~~] appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of such dairy product or is easily legible through the outside container or wrapper;

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

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

(2) accompanying such dairy product;

L. "milk" means 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 or five days after calving or such longer period as may be necessary to render milk practically colostrum-free; and

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

SECTION 12. A new section of the New Mexico Dairy Product Act is enacted to read:

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



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

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

SECTION 14. Section 25-7B-3 NMSA 1978 (being Laws 1993, Chapter 188, Section 22) is amended to read:

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

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

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

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

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

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

F. "milk" means 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

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

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

SECTION 15. A new section of the Dairy Establishment Sanitation Act is enacted to read:

"[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--A private home kitchen in which dairy products are prepared or processed for sale in accordance with the provisions of the Food Accessibility Act are exempt from the requirements of the Dairy Establishment Sanitation Act."

SECTION 16. Section 77-2-7 NMSA 1978 (being Laws 1967, Chapter 213, Section 6, as amended) is amended to read:

"77-2-7. ADDITIONAL POWERS OF THE BOARD.--In addition to the powers transferred from the cattle and sheep sanitary boards, the board may:

A. exercise general regulatory supervision over the livestock industry of this state in order to protect the industry from theft and diseases and in order to protect the public from diseased or unwholesome meat or meat products;

B. appoint and fix the salary of an executive director who shall file an oath and be bonded [~~in an amount fixed by the board~~]. The director shall manage the affairs of the board under the direction of the board. [~~He~~] The director shall be chosen solely on qualifications and fitness for the office. [~~He~~] The director shall devote [~~his entire~~] all time in office to the duties of the office;



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C. employ clerical help, provide office space and purchase equipment, including vehicles;

D. employ [~~livestock~~] inspectors [~~and brand inspectors~~] and other personnel necessary to carry out the purposes of The Livestock Code. All livestock inspectors appointed by the board shall have the same powers as any other peace officer in the enforcement of that code;

E. appoint a state veterinarian and subordinate veterinarians as are necessary to carry out the duties of the board;

F. adopt and promulgate rules to control the importation and exportation of animals;

G. establish livestock inspection districts;

H. establish quarantine, provide its boundaries and give notice of the quarantine and do all other things necessary to effect the object of the quarantine and to protect the livestock industry of this state from disease and prevent the spread of disease;

I. adopt and promulgate rules for meat inspection [~~including~~]:

(1) to ensure the safety and quality of meat for human consumption; and

(2) to include rules for the slaughter and disposition of the carcasses of livestock affected with diseases when the action appears necessary to prevent the spread of any contagion or infection among livestock;

J. adopt and promulgate rules governing the importation, manufacture, sale, distribution or use within the state of [~~serums, vaccine~~] sera, vaccines and other biologicals intended for

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diagnostic or therapeutic uses with livestock and regulate the importation, manufacture or use of virulent blood or living virus of any diseases affecting livestock;

K. set fees or charges, not to exceed one hundred dollars (\$100) per call, for any services rendered by the board or its employees that are deemed necessary by the board and for which no fee has been set by statute;

L. consider the views of the livestock industry in the administration of The Livestock Code;

M. adopt and promulgate rules to otherwise carry out the purposes of The Livestock Code;

N. hold hearings and subpoena witnesses for the purpose of investigating or enforcing The Livestock Code or rules established pursuant to that code; and

O. enter into joint powers agreements with Indian nations, tribes or pueblos to promote cooperation in carrying out the provisions of The Livestock Code."".

4. Renumber the succeeding section accordingly.



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Cliff R. Pirtle

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_