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SENATE BILL

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Cliff R. Pirtle

AN ACT

RELATING TO AGRICULTURE; 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; DIRECTING THE  
ESTABLISHMENT OF A STATE MEAT INSPECTION PROGRAM; EXEMPTING  
MEAT FROM THE GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS  
RECEIPTS TAX; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;  
DECLARING AN EMERGENCY.

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

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:

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

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

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

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

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

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

25           G. "non-potentially hazardous food" means a food or

1 beverage that, when stored under normal conditions without  
2 refrigeration, will not support the rapid and progressive  
3 growth of microorganisms that cause food infections or food  
4 intoxications, including pickled fruits and vegetables, spices,  
5 teas, dehydrated produce, nuts, seeds, honey, jams, jellies,  
6 preserves, fruit butters, candies, fruit empanadas, tortillas  
7 and baked goods;

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

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

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

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

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

3           A.   Homemade food products produced, sold and  
4 consumed in compliance with the Food Accessibility Act are  
5 exempt from state or local government licensure, permitting,  
6 inspection, packaging and labeling requirements.

7           B.   Transactions pursuant to the Food Accessibility  
8 Act shall:

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

17                   (2) be only for home consumption;

18                   (3) occur only in New Mexico;

19                   (4) not involve interstate commerce; and

20                   (5) not involve the sale of meat or meat  
21 products, with the following exceptions:

22                           (a) the sale of poultry and poultry  
23 products; provided that: 1) the producer slaughters not more  
24 than one thousand poultry of the producer's own raising during  
25 any one calendar year; 2) the producer does not engage in

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1 buying or selling poultry products other than those produced  
2 from poultry of the producer's own raising; and 3) the poultry  
3 product is not adulterated or misbranded as to be dangerous or  
4 fraudulent within the meaning of the New Mexico Food Act;

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

9 (c) the sale of domestic rabbit meat;

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

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

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

20 D. For sales of non-potentially hazardous food at a  
21 commercial food establishment, the food shall be clearly and  
22 prominently labeled with the following: "This food was  
23 produced or processed in a private home kitchen that is not  
24 subject to state licensure, regulation or inspection and may  
25 contain allergens.". If a commercial food establishment where

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1 homemade food is sold offers for sale a food product that was  
2 inspected or produced in a licensed facility, the commercial  
3 food establishment shall comply with rules adopted by the  
4 department of environment that shall require:

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

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

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

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

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

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

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

24 (1) the meat is:

25 (a) received from the farm or ranch

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1 where an animal or herd subject to the animal share is located;

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

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

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

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

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

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

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

23 D. A farmer or rancher shall not publish any  
24 statement that implies approval or endorsement by the New  
25 Mexico department of agriculture or the New Mexico livestock

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1 board of meat delivered pursuant to this section unless  
2 otherwise provided for in law or administrative rule.

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

5 "7-9-18. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL  
6 GROSS RECEIPTS TAX--AGRICULTURAL PRODUCTS.--

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

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

18 C. As used in this section, "livestock" means all  
19 domestic or domesticated animals that are used or raised on a  
20 farm or ranch, including the carcasses thereof, and also  
21 includes horses, asses, mules, cattle, sheep, goats, swine,  
22 bison, poultry, ostriches, emus, rheas, camelids and farmed  
23 cervidae upon any land in New Mexico; provided that for the  
24 purposes of Chapter 77, Article 9 NMSA 1978, "animals" or  
25 "livestock" have the meaning defined in that article.

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1 "Animals" or "livestock" does not include canine or feline  
2 animals. For the purpose of the rules governing meat  
3 inspection, wild animals, poultry and birds used for human  
4 consumption shall also be included within the meaning of  
5 "animals" or "livestock".

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

8 "25-1-2. DEFINITIONS.--As used in the Food Service  
9 Sanitation Act:

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

12 B. "board" means the environmental improvement  
13 board;

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

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

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

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1 employees;

2 F. "temporary food service establishment" means a  
3 food service establishment that operates at a fixed location in  
4 conjunction with a single event or celebration for a short  
5 period of time not exceeding the event or celebration or not  
6 exceeding thirty days;

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

9 H. "food service establishment" means:

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

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

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

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

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

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

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

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

16 "25-7-1. SHORT TITLE.--~~[This act]~~ Chapter 25, Article 7  
17 NMSA 1978 may be cited as the "Dairy Act"."

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

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

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

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

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

6 "25-7A-2. DEFINITIONS.--As used in the New Mexico Dairy  
7 Product Act:

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

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

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

24 D. "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  
3 Accessibility Act;

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

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

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

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

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

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

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

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

5 (2) accompanying such dairy product;

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

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

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

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

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

23 "25-7B-1. SHORT TITLE.--~~[Sections 20 through 30 of this~~  
24 ~~act]~~ Chapter 25, Article 7B NMSA 1978 may be cited as the  
25 "Dairy Establishment Sanitation Act"."

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

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

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

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

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

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

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

21           F. "milk" means the whole, clean, lacteal secretion  
22 obtained by the complete milking of one or more healthy cows or  
23 goats, properly fed and kept, delivered from the dairy farm to  
24 any receiving or distributing establishment or factory within a  
25 reasonable time, excluding that obtained within fifteen days

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1 before or five days after calving or such longer period as may  
2 be necessary to render milk practically colostrum-free; and

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

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

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

12 SECTION 16. A new section of Chapter 76 NMSA 1978 is  
13 enacted to read:

14 "[NEW MATERIAL] STATE MEAT INSPECTION PROGRAM.--The board  
15 of regents of New Mexico state university, through the New  
16 Mexico department of agriculture, shall develop and administer  
17 a state meat inspection program with all necessary rules for  
18 ensuring food safety that meets or exceeds the standards and  
19 requirements for a state meat inspection program under the  
20 Federal Meat Inspection Act."

21 SECTION 17. EMERGENCY.--It is necessary for the public  
22 peace, health and safety that this act take effect immediately.