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SENATE BILL 405

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

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 THE HOMEOWNER ASSOCIATION ACT AND  
ENACTING A STATE PREEMPTION FOR POLITICAL SUBDIVISIONS  
PROHIBITING THE ADOPTION OF BYLAWS, LAWS, POLICIES OR RULES  
THAT PROHIBIT THE KEEPING OF SIX OR FEWER CHICKENS OR DUCKS ON  
A LOT OR PREMISES; 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

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1 through 4 of this act may be cited as the "Food Accessibility  
2 Act".

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

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

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

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

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

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

25 F. "informed end consumer" means a person who is

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1 the last person to purchase the product, who does not resell  
2 the product and who has been informed that the product is not  
3 licensed, regulated or inspected;

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

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

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

21 J. "producer" means a person who grows, harvests,  
22 prepares or processes food or drink products on the person's  
23 owned or leased property, who does not produce more than two  
24 hundred fifty thousand individual food or drink products  
25 annually and whose gross revenue from the sale of the food or

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1 drink products does not exceed two hundred fifty thousand  
2 dollars (\$250,000) annually; and

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

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

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

12 B. Transactions pursuant to the Food Accessibility  
13 Act shall:

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

22 (2) be only for home consumption;

23 (3) occur only in New Mexico;

24 (4) not involve interstate commerce; and

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

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1 products, with the following exceptions:

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

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

14 (c) the sale of domestic rabbit meat;

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

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

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

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

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

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

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

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

24                   (5) any other requirements specified by the  
25 department of environment to ensure that the sale of homemade

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1 food is made to an informed end consumer.

2 E. If a report of food-borne illness is made to the  
3 department of environment, the department may immediately  
4 suspend the sale of a homemade food without prior notice to the  
5 seller if the department determines, after inspection, that the  
6 homemade food or the conditions of the sale of the homemade  
7 food present a substantial danger of illness, serious physical  
8 harm or death to consumers. A suspension action taken by the  
9 department is effective when communicated to the homemade food  
10 seller or any employee or agent of the seller and shall  
11 continue in effect until the unsafe condition is abated by the  
12 seller.

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

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

16 (1) the meat is:

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

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

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

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

25 (3) a prominent warning statement that the

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1 meat has not been inspected is delivered with the meat or is  
2 displayed on a label affixed to the meat packaging; and

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

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

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

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

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

22 "7-9-18. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL  
23 GROSS RECEIPTS TAX--AGRICULTURAL PRODUCTS.--

24 A. Exempted from the gross receipts tax and from  
25 the governmental gross receipts tax are the receipts from

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1 selling livestock and receipts of growers, producers, trappers  
2 or nonprofit marketing associations from selling livestock,  
3 live poultry, ~~[unprocessed]~~ agricultural products, hides or  
4 pelts. Persons engaged in the business of buying and selling  
5 wool or mohair or of buying and selling livestock or meat on  
6 their own account are producers for the purposes of this  
7 section.

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

10 C. As used in this section, "livestock" means all  
11 domestic or domesticated animals that are used or raised on a  
12 farm or ranch, including the carcasses thereof, and also  
13 includes horses, asses, mules, cattle, sheep, goats, swine,  
14 bison, poultry, ostriches, emus, rheas, camelids and farmed  
15 cervidae upon any land in New Mexico; provided that for the  
16 purposes of Chapter 77, Article 9 NMSA 1978, "animals" or  
17 "livestock" have the meaning defined in that article.  
18 "Animals" or "livestock" does not include canine or feline  
19 animals. For the purpose of the rules governing meat  
20 inspection, wild animals, poultry and birds used for human  
21 consumption shall also be included within the meaning of  
22 "animals" or "livestock".

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

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

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

4 B. "board" means the environmental improvement  
5 board;

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

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

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

19 F. "temporary food service establishment" means a  
20 food service establishment that operates at a fixed location in  
21 conjunction with a single event or celebration for a short  
22 period of time not exceeding the event or celebration or not  
23 exceeding thirty days;

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

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1                   H. "food service establishment" means:

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

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

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

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

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

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

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

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

8           "25-7-1. SHORT TITLE.--~~[This act]~~ Chapter 25, Article 7  
9 NMSA 1978 may be cited as the "Dairy Act"."

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

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

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

18          "25-7A-1. SHORT TITLE.--~~[Sections 1 through 19 of this~~  
19 ~~act]~~ Chapter 25, Article 7A NMSA 1978 may be cited as the "New  
20 Mexico Dairy Product Act"."

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

23          "25-7A-2. DEFINITIONS.--As used in the New Mexico Dairy  
24 Product Act:

25           A. "advertisement" means all representations

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

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

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

16 D. "dairy establishment" means a milk producing or  
17 milk processing facility, but does not mean a private home  
18 kitchen in which dairy products are prepared or processed for  
19 sale in accordance with the provisions of the Food  
20 Accessibility 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 12. A new section of the New Mexico Dairy Product  
8 Act is enacted to read:

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

13 SECTION 13. 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 14. 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  
3 Accessibility Act;

4 C. "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 D. "department" means the New Mexico department of  
10 agriculture;

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

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

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

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

24 "[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--A  
25 private home kitchen in which dairy products are prepared or

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1 processed for sale in accordance with the provisions of the  
2 Food Accessibility Act are exempt from the requirements of the  
3 Dairy Establishment Sanitation Act."

4 SECTION 16. A new section of the Homeowner Association  
5 Act is enacted to read:

6 "[NEW MATERIAL] POULTRY--LIMITING ASSOCIATION BYLAWS OR  
7 RULES.--An association shall not adopt a bylaw, policy or rule  
8 that prohibits a lot owner from keeping six or fewer chickens  
9 or ducks on a lot."

10 SECTION 17. A new section of Chapter 76 NMSA 1978 is  
11 enacted to read:

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

19 SECTION 18. [NEW MATERIAL] HOUSEHOLD POULTRY--STATE  
20 PREEMPTION.--A political subdivision of the state, including a  
21 home rule municipality, or an institution of the state shall  
22 not adopt a law, policy or resolution that prohibits a  
23 homeowner or renter from keeping six or fewer chickens or ducks  
24 on a premises.

25 SECTION 19. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect immediately.

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