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SENATE BILL 18

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO COMMERCE; AMENDING AND ENACTING SECTIONS OF THE NEW MEXICO FOOD ACT AND THE COMMERCIAL FEED LAW TO REQUIRE THE LABELING OF FOOD AND COMMERCIAL FEED THAT CONTAINS GENETICALLY MODIFIED MATERIAL; PROVIDING FOR MEASUREMENT, QUANTIFICATION AND INVESTIGATION OF GENETICALLY MODIFIED MATERIAL IN FOOD AND COMMERCIAL FEED.

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

SECTION 1. Section 25-2-1 NMSA 1978 (being Laws 1951, Chapter 169, Section 1) is amended to read:

"25-2-1. SHORT TITLE.--~~[This Act]~~ Chapter 25, Article 2 NMSA 1978 may be cited as the "New Mexico Food Act".

SECTION 2. Section 25-2-2 NMSA 1978 (being Laws 1951, Chapter 169, Section 2, as amended) is amended to read:

"25-2-2. DEFINITIONS.--For the purpose of the New Mexico .190296.2

1 Food Act:

2 A. "board" means the environmental improvement
3 board;

4 B. "dairy establishment" means a milk processing or
5 milk producing facility;

6 C. "division" means the department of environment;

7 D. "director" means the secretary of environment or
8 ~~[his]~~ the secretary's authorized representative;

9 E. "person" includes an individual, partnership,
10 corporation and association;

11 F. "food" means:

12 (1) articles used for food or drink for ~~[man]~~
13 humans or animals;

14 (2) chewing gum; and

15 (3) articles used for components of food or
16 drink or chewing gum for ~~[man]~~ humans or animals;

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

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1 H. "immediate container" does not include package
2 liners;

3 I. "genetically modified food product" means a food
4 that is composed of more than one percent of genetically
5 modified material, as determined in accordance with the
6 standards of measurement and quantification procedures that the
7 board has established pursuant to Section 5 of this 2013 act;

8 J. "genetically modified material" means a
9 substance that has been produced, enhanced or otherwise
10 modified through the use of recombinant deoxyribonucleic acid
11 technology, genetic engineering or bioengineering;

12 ~~[I.]~~ K. "labeling" means all labels and other
13 written, printed or graphic matter:

14 (1) upon an article or any of its containers
15 or wrappers; or

16 (2) accompanying such article;

17 ~~[J. if an article is alleged to be misbranded~~
18 ~~because the labeling is misleading or if an advertisement is~~
19 ~~alleged to be false because it is misleading, then in~~
20 ~~determining whether the labeling or advertisement is~~
21 ~~misleading, there shall be taken into account, among other~~
22 ~~things, not only representations made or suggested by~~
23 ~~statement, word, design, device, sound or in any combination~~
24 ~~thereof, but also the extent to which the labeling or~~
25 ~~advertisement fails to reveal facts material in the light of~~

1 ~~such representations or material with respect to consequences~~
2 ~~which may result from the use of the article to which the~~
3 ~~labeling or advertisement relates under the conditions of use~~
4 ~~prescribed in the labeling or advertisement thereof or under~~
5 ~~such conditions of use as are customary or usual;~~

6 K.] L. "advertisement" means all representations
7 disseminated in any manner or by any means, other than by
8 labeling, for the purpose of inducing, or [which] that are
9 likely to induce, directly or indirectly, the purchase of food;

10 [~~L.~~] M. "contaminated with filth" applies to any
11 food not securely protected from dust, dirt and, so far as may
12 be necessary by all reasonable means, from all foreign or
13 injurious contaminations, or any food found to contain any
14 dust, dirt, foreign or injurious contamination or infestation;

15 ~~[M. the provisions shall be considered to include~~
16 ~~the manufacture, production, processing, packing, exposure,~~
17 ~~offer, possession and holding of any such article and the~~
18 ~~supplying or applying of any such articles in the conduct of~~
19 ~~any food establishment;]~~ and

20 N. "federal act" means the Federal Food Drug and
21 Cosmetic Act, [~~21 USC § 301 et seq.~~] the Federal Meat
22 Inspection Act [~~21 USC § 601 et seq.~~] and the federal Poultry
23 Products Inspection Act [~~21 USC § 451 et seq.~~]."

24 SECTION 3. Section 25-2-11 NMSA 1978 (being Laws 1951,
25 Chapter 169, Section 11) is amended to read:

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1 "25-2-11. WHEN FOOD IS DEEMED MISBRANDED.--

2 A. A food shall be deemed to be misbranded:

3 [~~(a)~~] (1) if its labeling is false or
4 misleading in any particular;

5 [~~(b)~~] (2) if it is offered for sale under the
6 name of another food;

7 [~~(c)~~] (3) if it is an imitation of another
8 food, unless its label bears, in type of uniform size and
9 prominence, the word "imitation" and, immediately thereafter,
10 the name of the food imitated;

11 [~~(d)~~] (4) if its container is so made, formed
12 or filled as to be misleading;

13 [~~(e)~~] (5) if in package form, unless it bears
14 a label containing:

15 [~~(1)~~] (a) the name and place of business
16 of the manufacturer, packer or distributor; or

17 [~~(2)~~] (b) an accurate statement of the
18 quantity of the contents in terms of weight, measure or
19 numerical count; provided that under [~~clause (2) of~~] this
20 [~~paragraph~~] subparagraph, reasonable variations shall be
21 permitted and exemptions as to small packages shall be
22 established by regulations prescribed by the board;

23 [~~(f)~~] (6) if any word, statement or other
24 information required by or under authority of [~~this~~] the New
25 Mexico Food Act to appear on the label or labeling is not

1 prominently placed [~~thereon~~] with such conspicuousness, as
2 compared with other words, statements, designs or devices in
3 the labeling, and in such terms as to render it likely to be
4 read and understood by the ordinary individual under customary
5 conditions of purchase and use;

6 [~~(7)~~] (7) if it purports to be or is
7 represented as a food for which a definition and standard of
8 identity has been prescribed by regulations as provided by
9 Section [9] 25-2-9 NMSA 1978 unless:

10 [~~(1)~~] (a) it conforms to such definition
11 and standard; and

12 [~~(2)~~] (b) its label bears the name of
13 the food specified in the definition and standard and, insofar
14 as may be required by such regulations, the common names of
15 optional ingredients, other than spices, flavoring and
16 coloring, present in such food;

17 [~~(4)~~] (8) if it purports to be or is
18 represented as:

19 [~~(1)~~] (a) a food for which a standard of
20 quality has been prescribed by regulations as provided by
21 Section [9] 25-2-9 NMSA 1978 and its quality falls below [~~such~~]
22 that standard unless its label bears in such manner and form as
23 [~~such~~] the regulations specify a statement that it falls below
24 [~~such~~] the standard; or

25 [~~(2)~~] (b) a food for which a standard

1 ~~[or standards]~~ of fill of container ~~[have]~~ has been prescribed
2 by regulation as provided by Section [9] 25-2-9 NMSA 1978 and
3 it falls below the standard of fill of container applicable
4 ~~[thereto]~~ to it, unless its label bears in such manner and form
5 as ~~[such]~~ the regulations specify a statement that it falls
6 below ~~[such]~~ the standard;

7 ~~[(1)]~~ (9) if it is not subject to the
8 provisions of Paragraph ~~[(g)]~~ (7) of this ~~[section]~~ subsection,
9 unless it bears labeling clearly giving:

10 ~~[(1)]~~ (a) the common or usual name of
11 the food, if any ~~[there be]~~; and

12 ~~[(2)]~~ (b) in case it is fabricated from
13 two or more ingredients, the common or usual name of each
14 ~~[such]~~ ingredient, except that spices, flavorings and
15 colorings, other than those sold as such, may be designated as
16 spices, flavorings and colorings without naming each; provided
17 that to the extent that compliance with the requirements of
18 ~~[clause (2) of]~~ this ~~[paragraph]~~ subparagraph is impractical or
19 results in deception or unfair competition, exemptions shall be
20 established by regulations promulgated by the board; and
21 provided further that the requirements of ~~[Clause (2) of]~~ this
22 ~~[paragraph]~~ subparagraph shall not apply to any carbonated
23 beverage, the ingredients of which have been fully and
24 correctly disclosed in an affidavit filed with the board;

25 ~~[(j)]~~ (10) if it purports to be or is

1 represented for special dietary uses, unless its label bears
2 such information concerning its vitamin, mineral and other
3 dietary properties as the board determines to be, and by
4 regulations [~~prescribed~~] prescribes as, necessary in order to
5 fully inform purchasers as to its value for such uses;

6 [~~(k)~~] (11) if it bears or contains any
7 artificial flavoring, artificial coloring or chemical
8 preservative, unless it bears labeling stating that fact;
9 provided that to the extent that compliance with the
10 requirements of this paragraph is impracticable, exemptions
11 shall be established by regulations promulgated by the board;
12 or

13 (12) if it is a genetically modified food
14 product that is not labeled as a genetically modified food
15 product.

16 B. If an article is alleged to be misbranded
17 because the labeling is misleading or if an advertisement is
18 alleged to be false because it is misleading, then in
19 determining whether the labeling or advertisement is
20 misleading, there shall be taken into account, among other
21 things, not only representations made or suggested by
22 statement, word, design, device, sound or any combination
23 thereof, but also the extent to which the labeling or
24 advertisement fails to reveal facts material in light of such
25 representations or material with respect to consequences that

1 may result from the use of the article to which the labeling or
2 advertisement relates under the conditions of use prescribed in
3 the labeling or advertisement thereof or under such conditions
4 of use as are customary or usual."

5 SECTION 4. A new section of the New Mexico Food Act is
6 enacted to read:

7 "[NEW MATERIAL] The provisions of the New Mexico Food Act
8 apply to the manufacture, production, processing, packing,
9 exposure, offer, possession and storage of food."

10 SECTION 5. A new section of the New Mexico Food Act is
11 enacted to read:

12 "[NEW MATERIAL] LABELING OF GENETICALLY MODIFIED FOOD--
13 RULEMAKING--INVESTIGATIONS.--

14 A. A genetically modified food product that is
15 offered for sale in the state shall be labeled to indicate that
16 the product contains genetically modified material. The
17 information shall be displayed in a manner that is conspicuous
18 and easily understandable to consumers.

19 B. The board shall adopt and promulgate rules to
20 establish standards for measuring and quantifying the amount of
21 genetically modified material in food.

22 C. The division may conduct any investigation it
23 deems necessary to verify the accuracy of labeling of food
24 products pursuant to the New Mexico Food Act."

25 SECTION 6. Section 76-19-3 NMSA 1978 (being Laws 1961,
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Chapter 151, Section 3, as amended) is amended to read:

"76-19-3. DEFINITIONS.--As used in the Commercial Feed Law:

A. "person" ~~[includes]~~ means an individual, a partnership, a corporation ~~[and]~~ or an association;

B. "distribute" means to offer for sale, sell or barter commercial feed or customer-formula feed or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder;

C. "distributor" means any person who distributes;

D. "sell" or "sale" includes exchange;

E. "commercial feed" means all materials ~~[which]~~ that are distributed for use as feed or for mixing in feed for animals other than ~~[man]~~ humans except:

(1) unmixed or unprocessed whole seeds; or

(2) unground hay, straw, stover, silage, cobs, husks and hulls when not mixed with other materials;

F. "feed ingredient" means each of the constituent materials making up a commercial feed;

G. "customer-formula feed" means a mixture of commercial feeds or materials or both, each batch of which is mixed according to the specific instructions of the final purchaser or contract feeder;

H. "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients;

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1 I. "drug" means any article intended for use in the
2 diagnosis, cure, mitigation, treatment or prevention of disease
3 in animals other than ~~[man]~~ humans and articles other than feed
4 intended to affect the structure or any function of the animal
5 body;

6 J. "brand name" means any word, name, symbol or
7 device or any combination thereof identifying the commercial
8 feed of a distributor or registrant and distinguishing it from
9 that of others;

10 K. "product name" means the name of the commercial
11 feed ~~[which]~~ that identifies it as to kind, class or specific
12 use;

13 L. "label" means a display of written, printed or
14 graphic matter upon or affixed to the container in which a
15 commercial feed is distributed or on the invoice or delivery
16 slip with which a commercial feed or customer-formula feed is
17 distributed;

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

20 (1) upon a commercial feed or any of its
21 containers or wrappers; or

22 (2) accompanying such commercial feed;

23 N. "ton" means a net weight of two thousand pounds,
24 avoirdupois;

25 O. "percent" or "percentages" means percentages by
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1 weights;

2 P. "official sample" means any sample of feed taken
3 by the board or its agent and designated as "official" by the
4 board;

5 Q. "manufacture" means to grind, mix, blend or
6 further process a commercial feed for distribution;

7 R. "contract feeder" means a person who, as an
8 independent contractor, feeds commercial feed to animals
9 pursuant to a contract whereby such commercial feed is
10 supplied, furnished or otherwise provided to [~~such~~] the person
11 and whereby [~~such~~] the person's remuneration is determined all
12 or in part by feed consumption, mortality, profits or amount or
13 quality of product;

14 S. "producer-formula feed" means a mixture of
15 commercial feeds or materials or both, each batch of which is
16 mixed for and according to the specific and signed instruction
17 of the final purchaser or contract feeder. The purchaser or
18 contract feeder shall have grown and furnished at least one of
19 the major components of the mixture. In classifying a feed as
20 a producer-formula feed, the purchaser or contract feeder
21 waives all protection afforded under the Commercial Feed Law
22 and [~~such~~] the feed is exempt from the provisions of [~~that act;~~
23 ~~and~~] the Commercial Feed Law;

24 T. "pet food" means any commercial feed prepared
25 and distributed for consumption by pets;

1 U. "genetically modified commercial feed" means
2 commercial feed that is composed of more than one percent of
3 genetically modified material, as determined in accordance with
4 the standards of measurement and quantification procedures that
5 the board has established pursuant to Subsection D of Section
6 76-19-5 NMSA 1978; and

7 V. "genetically modified material" means a
8 substance that has been produced, enhanced or otherwise
9 modified through the use of recombinant deoxyribonucleic acid
10 technology, genetic engineering or bioengineering."

11 SECTION 7. Section 76-19-5 NMSA 1978 (being Laws 1961,
12 Chapter 151, Section 5, as amended) is amended to read:

13 "76-19-5. LABELING.--

14 A. Any commercial feed distributed in New Mexico
15 except a customer-formula feed shall be accompanied by a
16 legible label bearing the following information:

17 (1) the net weight;

18 (2) the name or brand under which the
19 commercial feed is sold;

20 (3) the guaranteed analysis of the commercial
21 feed, listing the minimum percentage of crude protein, minimum
22 percentage of crude fat and maximum percentage of crude fiber.
23 For mineral feeds, the list shall include the following if
24 added: minimum and maximum percentages of calcium (Ca),
25 minimum percentage of phosphorus (P), minimum percentage of

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1 iodine (I) and minimum and maximum percentages of salt (NaCl).
2 Other substances or elements, determinable by laboratory
3 methods, may be guaranteed by permission of the board. When
4 any items are guaranteed, they shall be subject to inspection
5 and analysis in accordance with the methods and regulations
6 that may be prescribed by the board. Products sold solely as
7 mineral or vitamin supplements or both and guaranteed as
8 specified in this section need not show guarantees for protein,
9 fat and fiber;

10 (4) the common or usual name of each
11 ingredient used in the manufacture of the commercial feed
12 except as the board may by regulation permit the use of a
13 collective term for a group of ingredients all of which perform
14 the same function;

15 (5) the name and principal address of the
16 person responsible for distributing the commercial feed;

17 (6) adequate directions for use for all
18 commercial feeds containing drugs and for such other feeds as
19 the board may require by regulation as necessary for their safe
20 and effective use; ~~[and]~~

21 (7) such warning or caution statements as the
22 board by regulation determines are necessary for the safe and
23 effective use of the commercial feed; and

24 (8) for genetically modified commercial feed,
25 an indication that the commercial feed contains genetically

1 modified material.

2 B. When a commercial feed is distributed in New
3 Mexico in bags or other containers, the label shall be placed
4 on or affixed to the container. When a commercial feed is
5 distributed in bulk, the label shall accompany delivery and be
6 furnished to the purchaser at time of delivery.

7 C. A customer-formula feed shall be labeled by
8 invoice. The invoice, which is to accompany delivery and be
9 supplied to the purchaser at the time of delivery, shall bear
10 the following information:

- 11 (1) name and address of the mixer;
12 (2) name and address of the purchaser;
13 (3) date of sale;
14 (4) brand name and number of pounds of each
15 registered commercial feed used in the mixture and the name and
16 number of pounds of each other feed ingredient added;

17 (5) adequate directions for use for all
18 customer-formula feeds containing drugs and for such other
19 feeds as the board may require by regulation as necessary for
20 their safe and effective use; and

21 (6) such warning or caution statements as the
22 board by regulation determines are necessary for the safe and
23 effective use of the customer-formula feed.

24 D. The board shall establish standards for
25 measuring and quantifying the amount of genetically modified

1 material in commercial feed.

2 E. The board may conduct any investigation it deems
3 necessary to verify the accuracy of labeling of commercial feed
4 pursuant to the Commercial Feed Law."

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