

1 SENATE BILL 498

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Gerald P. Ortiz y Pino

5
6
7
8
9
10 AN ACT

11 RELATING TO FOOD; BANNING THE USE OF THE ARTIFICIAL SWEETENER
12 ASPARTAME IN FOOD PRODUCTS.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 Section 1. [NEW MATERIAL] LEGISLATIVE FINDINGS.--

16 A. The legislature finds it is imperative for the
17 public health, safety and welfare to declare that aspartame and
18 its derivative compounds, in all of their trade names, are
19 poisonous and deleterious food additives due to their
20 neurotoxic and carcinogenic metabolites.

21 B. The legislature finds federal authorities have
22 not intended to or expressed an intention to occupy and preempt
23 areas of concern regarding the prohibition of toxic,
24 neurotoxic, carcinogenic, poisonous or deleterious food
25 additives, and therefore the legislature may prohibit the sale

.164149.1

underscored material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 of products containing aspartame and its derivative compounds
2 in order to protect and ensure the public health, safety and
3 welfare.

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

6 "25-2-2. DEFINITIONS.--For the purpose of the New Mexico
7 Food Act:

8 A. "aspartame" means the artificial sweetener with
9 the technical name L-aspartyl-L-phenylalanine methyl ester;

10 ~~[A.]~~ B. "board" means the environmental improvement
11 board;

12 ~~[B.]~~ C. "dairy establishment" means a milk
13 processing or milk producing facility;

14 ~~[C.]~~ D. "division" means the department of
15 environment;

16 ~~[D.]~~ E. "director" means the secretary of
17 environment or ~~[his]~~ the secretary's authorized representative;

18 ~~[E.]~~ F. "person" includes an individual,
19 partnership, corporation and association;

20 ~~[F.]~~ G. "food" means:

21 (1) articles used for food or drink for man or
22 animals;

23 (2) chewing gum; and

24 (3) articles used for components of food or
25 drink or chewing gum for man or animals;

.164149.1

underscored material = new
[bracketed material] = delete

1 ~~[G-]~~ H. "label" means a display of written, printed
2 or graphic matter upon the immediate container of any article.
3 A requirement made by or under authority of the New Mexico Food
4 Act that any word, statement or other information appear on the
5 label shall not be considered to be complied with unless such
6 word, statement or other information also appears on the
7 outside container or wrapper, if any, of the retail package of
8 such article or is easily legible through the outside container
9 or wrapper;

10 ~~[H-]~~ I. "immediate container" does not include
11 package liners;

12 ~~[I-]~~ J. "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-]~~ K. 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

.164149.1

underscored material = new
[bracketed material] = delete

1 such representations or material with respect to consequences
2 [~~which~~] that may result from the use of the article to which
3 the labeling or advertisement relates under the conditions of
4 use prescribed in the labeling or advertisement thereof or
5 under 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.~~] N. the provisions shall be considered to
16 include the manufacture, production, processing, packing,
17 exposure, offer, possession and holding of any such article and
18 the supplying or applying of any such articles in the conduct
19 of any food establishment; and

20 [~~N.~~] O. "federal act" means the Federal Food, Drug,
21 and 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 25-2-3 NMSA 1978 (being Laws 1951,
25 Chapter 169, Section 3) is amended to read:

.164149.1

underscoring material = new
[bracketed material] = delete

1 "25-2-3. PROHIBITED ACTS.--The following acts and the
2 causing thereof within the state [~~of New Mexico~~] are [~~hereby~~]
3 prohibited:

4 [~~(a)~~] A. the manufacture, sale or delivery or
5 holding or offering for sale of any food that is adulterated or
6 misbranded;

7 [~~(b)~~] B. the adulteration or misbranding of any
8 food;

9 [~~(c)~~] C. the receipt in commerce of any food that
10 is adulterated or misbranded and the delivery or proffered
11 delivery [~~thereof~~] of the adulterated or misbranded food for
12 pay or otherwise;

13 [~~(d)~~] D. the sale, delivery for sale, holding for
14 sale or offering for sale of any article in violation of
15 Section [~~(h2)~~] 25-2-12 NMSA 1978;

16 [~~(e)~~] E. the dissemination of any false
17 advertisement;

18 [~~(f)~~] F. the refusal to permit entry or inspection
19 or to permit the taking of a sample as authorized by Section
20 [~~(h6)~~] 25-2-16 NMSA 1978;

21 [~~(g)~~] G. the giving of a guaranty or undertaking,
22 which guaranty or undertaking is false, except by a person who
23 relied on a guaranty or undertaking to the same effect signed
24 by and containing the name and address of the person residing
25 in the state [~~of New Mexico~~] from whom [~~he~~] the person received

.164149.1

underscored material = new
[bracketed material] = delete

1 the food in good faith;

2 [~~(h)~~] H. the removal or disposal of a detained or
3 embargoed article in violation of Section [~~6~~] 25-2-6 NMSA 1978;

4 [~~(i)~~] I. the alteration, mutilation, destruction,
5 obliteration or removal of the whole or any part of the
6 labeling of, or the doing of any other act with respect to, a
7 food if [~~such~~] the act is done while [~~such~~] the article is held
8 for sale and results in [~~such~~] the article being misbranded;

9 [~~(j)~~] J. forging, counterfeiting, simulating or
10 falsely representing or without proper authority using any
11 mark, stamp, tag, label or other identification device
12 authorized or required by [~~regulations~~] rules promulgated under
13 the provisions of [~~this~~] the New Mexico Food Act; and

14 K. the manufacture, sale or delivery or holding or
15 offering for sale of any food containing any amount of
16 aspartame and its derivative compounds in any of their trade
17 names."

18 Section 4. APPLICABILITY.--The provisions of this act
19 shall not apply to food products located within the state on
20 July 1, 2007.

21 Section 5. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2007.

23 - 6 -

24
25 .164149.1