

1 HOUSE BILL 238

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Rodolpho "Rudy" S. Martinez

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10 AN ACT

11 RELATING TO NEW MEXICO CHILE PEPPERS; EXPANDING VIOLATIONS OF
12 THE NEW MEXICO CHILE ADVERTISING ACT; PROVIDING FOR STOP-SALE,
13 USE OR REMOVAL ORDERS TO BE ISSUED BY THE NEW MEXICO DEPARTMENT
14 OF AGRICULTURE.

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

17 SECTION 1. Section 25-11-1 NMSA 1978 (being Laws 2011,
18 Chapter 57, Section 1) is amended to read:

19 "25-11-1. SHORT TITLE.--~~[This act]~~ Chapter 25, Article 11
20 NMSA 1978 may be cited as the "New Mexico Chile Advertising
21 Act"."

22 SECTION 2. Section 25-11-3 NMSA 1978 (being Laws 2011,
23 Chapter 57, Section 3) is amended to read:

24 "25-11-3. UNLAWFUL ADVERTISING, LABELING OR SELLING OF
25 NON-NEW MEXICO CHILE.--

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1 A. It is unlawful for a person to:

2 (1) knowingly advertise, describe, label or
3 offer for sale chile peppers as New Mexico chile, or to
4 advertise, describe, label or offer for sale a product as
5 containing New Mexico chile, unless the chile peppers or chile
6 peppers in the product were grown in New Mexico; or

7 (2) knowingly advertise, describe, label or
8 offer for sale chile peppers using the name of any city, town,
9 county, village, pueblo, mountain, river or other geographic
10 feature or features located in New Mexico in a misleading or
11 deceptive manner that states or reasonably implies the product
12 contains New Mexico chile, unless the chile peppers or chile
13 peppers in the product were grown in New Mexico.

14 B. The prohibition set forth in this section shall
15 not apply to any business name or trademark established prior
16 to the effective date of the New Mexico Chile Advertising Act.

17 If a business name or trademark otherwise violative of this
18 section was established prior to the effective date of the New
19 Mexico Chile Advertising Act, all advertising, descriptions and
20 labels containing that business name or trademark shall include
21 in a prominent location and in a prominent typeface on the
22 advertising, description or label a disclaimer stating "NOT
23 GROWN IN NEW MEXICO" if the product contains chile peppers that
24 were not grown in New Mexico."

25 SECTION 3. Section 25-11-4 NMSA 1978 (being Laws 2011,
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1 Chapter 57, Section 4) is amended to read:

2 "25-11-4. ADMINISTRATION--AUDIT--INSPECTION.--

3 A. The board may:

4 (1) enforce and administer the New Mexico
5 Chile Advertising Act through the New Mexico department of
6 agriculture; and

7 (2) promulgate rules, in consultation with the
8 New Mexico chile industry, necessary for the administration of
9 the New Mexico Chile Advertising Act [~~and~~

10 ~~(3) issue an order to immediately cease and~~
11 ~~desist any activity in violation of the New Mexico Chile~~
12 ~~Advertising Act].~~

13 B. The New Mexico department of agriculture through
14 its authorized inspectors or agents is authorized to:

15 (1) audit the purchase and sales records of a
16 person dealing with the sale of chile peppers or products
17 containing chile peppers that are advertised, described,
18 labeled or offered for sale as New Mexico chile; [~~and~~

19 (2) enter, on a business day during the usual
20 hours of business, a store, market or other business or place
21 for the limited purpose of inspecting the establishment's
22 records related to chile peppers or products containing chile
23 peppers being advertised, described, labeled or offered for
24 sale as New Mexico chile or as containing New Mexico chile; and

25 (3) issue "stop-sale, use or removal" orders

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1 with respect to any violation of the New Mexico Chile
2 Advertising Act."

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