

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 238

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

AN ACT

RELATING TO NEW MEXICO CHILE PEPPERS; EXPANDING VIOLATIONS OF
THE NEW MEXICO CHILE ADVERTISING ACT; PROVIDING AN EXCEPTION TO
POTENTIAL RULE-MAKING; PROVIDING FOR STOP-SALE, USE OR REMOVAL
ORDERS TO BE ISSUED BY THE NEW MEXICO DEPARTMENT OF
AGRICULTURE.

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

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

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

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

"25-11-3. UNLAWFUL ADVERTISING, LABELING OR SELLING OF
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underscoring material = new
[bracketed material] = delete

1 NON-NEW MEXICO CHILE.--

2 A. It is unlawful for a person to:

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

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

16 B. The prohibitions in this section do not apply to
17 a person whose business name, brand name or trademark was used
18 in advertising, product descriptions, labels or offers for sale
19 and was established prior to the effective date of the New
20 Mexico Chile Advertising Act; provided that, on and after July
21 1, 2013, the person, in all advertising, descriptions and
22 labels containing that business name, brand name or trademark,
23 shall include in a prominent location and in a prominent
24 typeface a disclaimer stating "NOT GROWN IN NEW MEXICO" if the
25 product contains chile peppers that were not grown in New

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1 Mexico.

2 C. A menu item served in a restaurant that
3 contains, in whole or in part, chile grown outside New Mexico
4 may use the term "New Mexico style" to advertise, describe,
5 label or offer for sale the menu item."

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

8 "25-11-4. ADMINISTRATION--AUDIT--INSPECTION.--

9 A. The board may:

10 (1) enforce and administer the New Mexico
11 Chile Advertising Act through the New Mexico department of
12 agriculture; and

13 (2) promulgate rules, in consultation with the
14 New Mexico chile industry, necessary for the administration of
15 the New Mexico Chile Advertising Act [and

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

19 B. Sales at a farmers' market of twenty thousand
20 pounds or less of chile peppers per calendar year by the person
21 that grew the chile peppers are exempt from any recordkeeping
22 requirement that the board may establish by rule. For the
23 purposes of this subsection, "farmers' market" means a physical
24 retail market open to the public at which farmers sell produce.

25 [~~B.~~] C. The New Mexico department of agriculture

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1 through its authorized inspectors or agents is authorized to:

2 (1) audit the purchase and sales records of a
3 person dealing with the sale of chile peppers or products
4 containing chile peppers that are advertised, described,
5 labeled or offered for sale as New Mexico chile; ~~and~~

6 (2) enter, on a business day during the usual
7 hours of business, a store, market or other business or place
8 for the limited purpose of inspecting the establishment's
9 records related to chile peppers or products containing chile
10 peppers being advertised, described, labeled or offered for
11 sale as New Mexico chile or as containing New Mexico chile; and

12 (3) issue stop-sale, use or removal orders
13 with respect to any violation of the New Mexico Chile
14 Advertising Act."

15 SECTION 4. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2013.