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
Food Act:

A. "board" means the environmental improvement board;

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

C. "division" means the department of environment;

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

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

F. "food" means:

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

(2) chewing gum; and

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

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

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

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

K. "labeling" means all labels and other written, printed or graphic matter:

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

(2) accompanying such article;

[J. if an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of...}
such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

K. [bracketed material = delete] "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or [which] that are likely to induce, directly or indirectly, the purchase of food;

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

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


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

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

   A. A food shall be deemed to be misbranded:
   
   [(a)] (1) if its labeling is false or misleading in any particular;
   
   [(b)] (2) if it is offered for sale under the name of another food;
   
   [(c)] (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
   
   [(d)] (4) if its container is so made, formed or filled as to be misleading;
   
   [(e)] (5) if in package form, unless it bears a label containing:

   [(1)] (a) the name and place of business of the manufacturer, packer or distributor; or
   
   [(2)] (b) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided that under [clause (2) of] this paragraph [subparagraph, reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the board;]

   [(f)] (6) if any word, statement or other information required by or under authority of [this] the New Mexico Food Act to appear on the label or labeling is not
prominently placed [*thereon*] with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

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

\[(\text{h})\] (8) if it purports to be or is represented as:

\[(\text{h})\] (a) a food for which a standard of quality has been prescribed by regulations as provided by Section 25-2-9 NMSA 1978 and its quality falls below [such] the standard unless its label bears in such manner and form as [such] the regulations specify a statement that it falls below [such] the standard; or

\[(\text{h})\] (b) a food for which a standard
[or standards] of fill of container [have] has been prescribed by regulation as provided by Section [9] 25-2-9 NMSA 1978 and it falls below the standard of fill of container applicable [thereto] to it, unless its label bears in such manner and form as [such] the regulations specify a statement that it falls below [such] the standard;

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

[(4)] (a) the common or usual name of the food, if any [there be]; and

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

[(4)] (10) if it purports to be or is .190296.2

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represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the board determines to be, and by regulations prescribed as, necessary in order to fully inform purchasers as to its value for such uses;

\[(k)\] (11) if it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact;

provided that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board; or

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

B. If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in light of such representations or material with respect to consequences that
may result from the use of the article to which the labeling or
text of the conditions of use prescribed in
advertisement thereof or under such conditions
of use as are customary or usual."

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

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

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

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

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

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

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

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

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

A.  "person" [includes an individual, a partnership, a corporation 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;
I. "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than [man] humans and articles other than feed intended to affect the structure or any function of the animal body;

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

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

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

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

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

   (2) accompanying such commercial feed;

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

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

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

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

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

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

T. "pet food" means any commercial feed prepared
and distributed for consumption by pets;
U. "genetically modified commercial feed" means commercial feed that is composed of more than one percent of genetically modified material, as determined in accordance with the standards of measurement and quantification procedures that the board has established pursuant to Subsection D of Section 76-19-5 NMSA 1978; and

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

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

"76-19-5. LABELING.--

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

(1) the net weight;
(2) the name or brand under which the commercial feed is sold;
(3) the guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat and maximum percentage of crude fiber. For mineral feeds, the list shall include the following if added: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of
iodine (I) and minimum and maximum percentages of salt (NaCl).
Other substances or elements, determinable by laboratory
methods, may be guaranteed by permission of the board. When
any items are guaranteed, they shall be subject to inspection
and analysis in accordance with the methods and regulations
that may be prescribed by the board. Products sold solely as
mineral or vitamin supplements or both and guaranteed as
specified in this section need not show guarantees for protein,
fat and fiber;

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

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

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

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

(8) for genetically modified commercial feed,
an indication that the commercial feed contains genetically
modified material.

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

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

(1) name and address of the mixer;
(2) name and address of the purchaser;
(3) date of sale;
(4) brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added;
(5) adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the board may require by regulation as necessary for their safe and effective use; and
(6) such warning or caution statements as the board by regulation determines are necessary for the safe and effective use of the customer-formula feed.

D. The board shall establish standards for measuring and quantifying the amount of genetically modified material.
material in commercial feed.

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