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
NON-NEW MEXICO CHILE.--

A. It is unlawful for a person to:

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

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

B. The prohibitions in this section do not apply to
a person whose business name, brand name or trademark was used
in advertising, product descriptions, labels or offers for sale
and was established prior to the effective date of the New
Mexico Chile Advertising Act; provided that, on and after July 1, 2013, the person, in all advertising, descriptions and
labels containing that business name, brand name or trademark,
shall include in a prominent location and in a prominent
typeface a disclaimer stating "NOT GROWN IN NEW MEXICO" if the
product contains chile peppers that were not grown in New
C. A menu item served in a restaurant that contains, in whole or in part, chile grown outside New Mexico may use the term "New Mexico style" to advertise, describe, label or offer for sale the menu item."

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

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

A. The board may:

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

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

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

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

[BR] C. The New Mexico department of agriculture
through its authorized inspectors or agents is authorized to:

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

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

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