

LFC Requester:	
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 19 January 2024

Bill No: HB 169

Sponsor: Rep. Luis M. Terrazas et al.

Short Title: Misrepresentation of Meat

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

House Bill (“HB”) 169 would prohibit the misrepresentation of lab-cultured protein (meat grown from cultures not part of an animal) as meat food product (meat from the carcass of an animal). The prohibition would apply to retail and restaurant sales, as well as to advertisements. The bill requires that lab-cultured protein be segregated from meat food in retail shops and presented in a separate area of restaurant menus. A violation would constitute a misdemeanor, and the Department of Environment would have the authority to enjoin violators.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES:

HB 169 requires that lab-cultured proteins be labeled, displayed, advertised, and packaged in specific ways. This raises a potential concern that the bill would unconstitutionally restrict the speech of manufacturers, advertisers, and vendors contrary to the First and Fourteenth Amendments. Courts apply a special, four-factor test derived from *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557 (1980), when reviewing state restrictions on commercial speech. First, a reviewing court would consider “whether the expression is protected by the First Amendment.” *Id.* at 566. To qualify, the speech must “concern lawful activity and not be misleading.” *Id.* If the speech is protected, then the court would consider whether the asserted government interest in regulating it is “substantial,” and whether regulation “directly advances the governmental interest” and “whether it is not more extensive than necessary to serve that interest.” *Id.*

Courts applying the *Central Hudson* test to similar restrictions on plant-based meats have reached differing results. In *Turtle Island Foods, SPC v. Soman*, 632 F.Supp.3d 909 (E.D. Ark. 2022), a federal district court partially enjoined Arkansas from enforcing some of its restrictions on marketing and selling plant-based meats. But the Western District of Missouri denied a similar challenge that the same company brought against Missouri officials, *Turtle Island Foods*,

SPC v. Richardson, 425 F.Supp.3d 1131 (W.D. Mo. 2019), and the Eighth Circuit affirmed based on the “limited record” before the district court. *Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694, 701 (8th Cir. 2021). Because such challenges turn upon a variety of factors, including the identity of the parties, the purported interests involved, and the presence of any implementing regulations, it is difficult to predict in the abstract how such a challenge to HB 169 would play out.

Because the bill could regulate the actions of manufacturers and advertisers located outside of New Mexico, it could raise concerns under the Dormant Commerce Clause or similar constitutional provision. In *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023), the U.S. Supreme Court rejected a dormant commerce challenge to California’s efforts to regulate the conditions that pigs are raised in if their meat would later be sold in the state. The Court’s reasoning was badly fractured, leaving this area of law unclear. However, a majority of the Court believed that *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) is still good law. Under *Pike*, a state may regulate an activity that affects interstate commerce if it does so “even-handedly to effectuate a legitimate local interest, and its effects on interstate commerce are only incidental” and the burden on commerce is not “clearly excessive in relation to the putative benefits.” *Id.* at 142. Because HB 169 appears to treat in-state commerce the same way that it does out-of-state commerce, the only question would be whether the burden that HB 169 imposes on out-of-state actors is “clearly excessive” in relation to its claimed benefits.

PERFORMANCE IMPLICATIONS

None for this office.

ADMINISTRATIVE IMPLICATIONS

None for this office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

To strengthen the bill against possible constitutional challenge, the drafters could raise the

threshold for the definition of “deceptively similar packaging” in Section 2(C)(1). The current language is very broad – it includes packaging that “could mislead a reasonable person to believe the product is a meat food product.” For example, replacing “could” with “would” or similar language might lead a court to conclude that the bill targets only truly misleading representations, strengthening the State’s chances of succeeding at the first, threshold step of the *Central Hudson* test.