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SENATE BILL 5

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2021

INTRODUCED BY

Cliff R. Pirtle

AN ACT

RELATING TO AGRICULTURE; ENACTING THE FOOD ACCESSIBILITY ACT;
EXEMPTING CERTAIN FOOD SALES FROM LICENSURE, REGULATION AND
INSPECTION REQUIREMENTS; ALLOWING THE ACQUISITION OF MEAT
PURSUANT TO OWNERSHIP OF AN ANIMAL SHARE; DIRECTING THE
ESTABLISHMENT OF A STATE MEAT INSPECTION PROGRAM; EXEMPTING
MEAT FROM THE GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS
RECEIPTS TAX; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978;
DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 4 of this act may be cited as the "Food Accessibility
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Food Accessibility Act:

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1 A. "animal share" means an ownership interest in an
2 animal or herd of animals that entitles the owner of the animal
3 share to receive a share of meat from the animal or herd;

4 B. "commercial food establishment" means a place or
5 area of an establishment that is a wholesale or retail business
6 where foods, drugs, devices, cosmetics or other goods are
7 displayed for sale, manufactured, processed, packaged, held or
8 stored, but does not mean a farmers market, a restaurant or a
9 transaction directly between a producer and informed end
10 consumer;

11 C. "farmers market" means a common facility or area
12 where several vendors may gather on a regular, recurring basis
13 to sell a variety of fresh fruits and vegetables, locally grown
14 farm products and other items directly to consumers;

15 D. "home consumption" means food consumed within a
16 private home;

17 E. "homemade food" or "homemade food product" means
18 a food or drink that is prepared or processed by a producer in
19 a private home kitchen that is not licensed, regulated or
20 inspected;

21 F. "informed end consumer" means a person who is
22 the last person to purchase the product, who does not resell
23 the product and who has been informed that the product is not
24 licensed, regulated or inspected;

25 G. "non-potentially hazardous food" means a food or

1 beverage that, when stored under normal conditions without
2 refrigeration, will not support the rapid and progressive
3 growth of microorganisms that cause food infections or food
4 intoxications, including pickled fruits and vegetables, spices,
5 teas, dehydrated produce, nuts, seeds, honey, jams, jellies,
6 preserves, fruit butters, candies, fruit empanadas, tortillas
7 and baked goods;

8 H. "potentially hazardous food" means a food or
9 beverage that requires time or temperature control for safety,
10 including for limiting pathogenic microorganism growth or toxin
11 formation, including foods requiring refrigeration, dairy
12 products, quiches, pizzas, frozen doughs, meat and cooked
13 vegetables and beans;

14 I. "process" means the operations a producer
15 performs in the making or treatment of the producer's food or
16 drink products;

17 J. "producer" means a person who grows, harvests,
18 prepares or processes food or drink products on the person's
19 owned or leased property, who does not produce more than two
20 hundred fifty thousand individual food or drink products
21 annually and whose gross revenue from the sale of the food or
22 drink products does not exceed two hundred fifty thousand
23 dollars (\$250,000) annually; and

24 K. "transaction" means the exchange of buying and
25 selling.

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1 SECTION 3. ~~[NEW MATERIAL]~~ HOMEMADE FOOD PRODUCTS--
2 REQUIREMENTS FOR SALE.--

3 A. Except as provided in this section, homemade
4 food products produced, sold and consumed in compliance with
5 the Food Accessibility Act are exempt from state or local
6 government licensure, permitting, inspection, packaging and
7 labeling requirements.

8 B. Transactions pursuant to the Food Accessibility
9 Act shall:

10 (1) be directly between a seller of a homemade
11 food product and an informed end consumer. The seller of a
12 homemade food product consisting of non-potentially hazardous
13 food may be the producer of the product, the producer's agent
14 or a third-party vendor, including a commercial food
15 establishment. The seller of a homemade food product
16 consisting of potentially hazardous food shall be the producer
17 of the product or the producer's agent;

18 (2) be only for home consumption;

19 (3) occur only in New Mexico;

20 (4) not involve interstate commerce; and

21 (5) not involve the sale of meat or meat
22 products, with the following exceptions:

23 (a) the sale of poultry and poultry
24 products; provided that: 1) the producer slaughters not more
25 than one thousand poultry of the producer's own raising during

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1 any one calendar year; 2) the producer does not engage in
2 buying or selling poultry products other than those produced
3 from poultry of the producer's own raising; and 3) the poultry
4 product is not adulterated or misbranded as to be dangerous or
5 fraudulent within the meaning of the New Mexico Food Act;

6 (b) the sale of portions of live animals
7 before slaughter for future delivery to an informed end
8 consumer; provided that the processing of the animals is done
9 in a state or federally licensed processing facility;

10 (c) the sale of domestic rabbit meat;

11 (d) the sale of farm-raised fish; and

12 (e) the acquisition of meat pursuant to
13 an animal share.

14 C. A seller of homemade food pursuant to the Food
15 Accessibility Act shall inform the consumer that the homemade
16 food has not been inspected and shall display a sign at the
17 point of sale indicating that the homemade food was produced or
18 processed in a private home kitchen that is not subject to
19 licensure, regulation or inspection and that the food has not
20 been inspected. The sign shall be at a minimum twenty inches
21 by twenty inches in size.

22 D. For sales of non-potentially hazardous food at a
23 commercial food establishment, the food shall be clearly and
24 prominently labeled with the following: "This food was
25 produced or processed in a private home kitchen that is not

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1 subject to state licensure, regulation or inspection and may
2 contain allergens.". If a commercial food establishment where
3 homemade food is sold offers for sale a food product that was
4 inspected or produced in a licensed facility, the commercial
5 food establishment shall comply with rules adopted by the
6 department of environment that shall require:

7 (1) that homemade food not be displayed or
8 offered for sale on the same shelf or display as food produced
9 in a licensed facility;

10 (2) that the retail space for homemade foods
11 be physically separated from other products with a separate
12 door and separate cash register or point of sale;

13 (3) that each separate retail space include
14 signs or other markings clearly indicating which spaces are
15 offering inspected items for sale and which spaces are offering
16 uninspected items for sale;

17 (4) separation of coolers, freezers and
18 warehouse or other storage areas to prohibit the intermingling
19 of inspected and uninspected products; and

20 (5) any other requirements specified by the
21 department of environment to ensure that the sale of homemade
22 food is made to an informed end consumer.

23 E. If a report of food-borne illness is made to the
24 department of environment, the department may immediately
25 suspend the sale of a homemade food without prior notice to the

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1 seller if the department determines, after inspection, that the
2 homemade food or the conditions of the sale of the homemade
3 food present a substantial danger of illness, serious physical
4 harm or death to consumers. A suspension action taken by the
5 department is effective when communicated to the homemade food
6 seller or any employee or agent of the seller and shall
7 continue in effect until the unsafe condition is abated by the
8 seller.

9 SECTION 4. [NEW MATERIAL] ANIMAL SHARES.--

10 A. A person may acquire meat from a farmer or
11 rancher pursuant to an animal share if:

12 (1) the meat is:

13 (a) received from the farm or ranch
14 where an animal or herd subject to the animal share is located;

15 (b) received by or on behalf of the
16 owner of an animal share; and

17 (c) obtained from the particular animal
18 or herd subject to the animal share;

19 (2) the slaughter is conducted pursuant to all
20 applicable laws and regulations;

21 (3) a prominent warning statement that the
22 meat has not been inspected is delivered with the meat or is
23 displayed on a label affixed to the meat packaging; and

24 (4) information describing the standards used
25 by the farm or ranch with respect to herd health and the

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1 processing of meat from the herd is provided to the owner of
2 the animal share by the farmer or rancher.

3 B. An animal share shall be created by a written
4 contract between the owner of the animal share and a farmer or
5 rancher and shall include a bill of sale for an ownership
6 interest in the animal or herd that entitles the owner of the
7 animal share to receive a share of meat from the animal or
8 herd.

9 C. A person who acquires meat pursuant to this
10 section shall not commercially sell or redistribute the meat.

11 D. A farmer or rancher shall not publish any
12 statement that implies approval or endorsement by the New
13 Mexico department of agriculture or the New Mexico livestock
14 board of meat delivered pursuant to this section unless
15 otherwise provided for in law or administrative rule.

16 SECTION 5. Section 7-9-18 NMSA 1978 (being Laws 1969,
17 Chapter 144, Section 11, as amended) is amended to read:

18 "7-9-18. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL
19 GROSS RECEIPTS TAX--AGRICULTURAL PRODUCTS.--

20 A. Exempted from the gross receipts tax and from
21 the governmental gross receipts tax are the receipts from
22 selling livestock and receipts of growers, producers, trappers
23 or nonprofit marketing associations from selling livestock,
24 live poultry, ~~[unprocessed]~~ agricultural products, hides or
25 pelts. Persons engaged in the business of buying and selling

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1 wool or mohair or of buying and selling livestock or meat on
2 their own account are producers for the purposes of this
3 section.

4 B. Receipts from selling dairy products at retail
5 are not exempted from the gross receipts tax.

6 C. As used in this section, "livestock" means all
7 domestic or domesticated animals that are used or raised on a
8 farm or ranch, including the carcasses thereof, and also
9 includes horses, asses, mules, cattle, sheep, goats, swine,
10 bison, poultry, ostriches, emus, rheas, camelids and farmed
11 cervidae upon any land in New Mexico; provided that for the
12 purposes of Chapter 77, Article 9 NMSA 1978, "animals" or
13 "livestock" have the meaning defined in that article.

14 "Animals" or "livestock" does not include canine or feline
15 animals. For the purpose of the rules governing meat
16 inspection, wild animals, poultry and birds used for human
17 consumption shall also be included within the meaning of
18 "animals" or "livestock".

19 SECTION 6. Section 25-1-2 NMSA 1978 (being Laws 1977,
20 Chapter 309, Section 2, as amended) is amended to read:

21 "25-1-2. DEFINITIONS.--As used in the Food Service
22 Sanitation Act:

23 A. "agency" or "division" means the department of
24 environment;

25 B. "board" means the environmental improvement

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1 board;

2 C. "employee" means any individual employed in a
3 food service establishment who transports food or food
4 containers, who handles food during storage, preparation or
5 serving, who comes in contact with any utensils or who is
6 employed in a room in which food is stored, prepared or served;

7 D. "food" means any solid or liquid substance
8 intended for human consumption by eating or drinking;

9 E. "general public" includes beneficiaries of
10 governmental feeding programs and private charitable feeding
11 programs and residents and employees of institutions that
12 provide meals to their residents and employees either with or
13 without direct payment to the institution by the residents or
14 employees;

15 F. "temporary food service establishment" means a
16 food service establishment that operates at a fixed location in
17 conjunction with a single event or celebration for a short
18 period of time not exceeding the event or celebration or not
19 exceeding thirty days;

20 G. "person" means an individual or any other legal
21 entity;

22 H. "food service establishment" means:

23 (1) any fixed or mobile place where food is
24 served and sold for consumption on the premises;

25 (2) any fixed or mobile place where food is

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1 prepared for sale to or consumption by the general public
2 either on or off the premises, including any place where food
3 is manufactured for ultimate sale in a sealed original package,
4 but "prepared" as used in this paragraph does not include the
5 preparation of raw fruits, vegetables or pure honey for display
6 and sale in a grocery store or similar operation. For purposes
7 of this paragraph, "pure honey" means natural liquid or solid
8 honey, extracted from the combs or in the comb, taken from
9 beehives, with no processing or additional ingredients. "Food
10 service establishment" does not mean a dairy establishment or a
11 private home kitchen in which food is prepared or processed for
12 sale in accordance with the provisions of the Food
13 Accessibility Act; and

14 (3) meat markets, whether or not operated in
15 conjunction with a grocery store;

16 I. "utensil" means any implement used in the
17 storage, preparation, transportation or service of food; and

18 J. "dairy establishment" means a milk processing or
19 milk producing facility."

20 SECTION 7. A new section of the Food Service Sanitation
21 Act is enacted to read:

22 "[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--A
23 private home kitchen in which food is prepared or processed for
24 sale in accordance with the provisions of the Food
25 Accessibility Act is exempt from the permitting and inspection

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1 requirements of the Food Service Sanitation Act."

2 SECTION 8. Section 25-7-1 NMSA 1978 (being Laws 1977,
3 Chapter 375, Section 1) is amended to read:

4 "25-7-1. SHORT TITLE.--~~[This act]~~ Chapter 25, Article 7
5 NMSA 1978 may be cited as the "Dairy Act"."

6 SECTION 9. A new section of the Dairy Act is enacted to
7 read:

8 "[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--Dairy
9 products prepared, processed and sold in accordance with the
10 provisions of the Food Accessibility Act are exempt from the
11 requirements of the Dairy Act."

12 SECTION 10. Section 25-7A-1 NMSA 1978 (being Laws 1993,
13 Chapter 188, Section 1) is amended to read:

14 "25-7A-1. SHORT TITLE.--~~[Sections 1 through 19 of this~~
15 ~~act]~~ Chapter 25, Article 7A NMSA 1978 may be cited as the "New
16 Mexico Dairy Product Act"."

17 SECTION 11. Section 25-7A-2 NMSA 1978 (being Laws 1993,
18 Chapter 188, Section 2) is amended to read:

19 "25-7A-2. DEFINITIONS.--As used in the New Mexico Dairy
20 Product Act:

21 A. "advertisement" means all representations
22 disseminated in any manner or by any means, other than by
23 labeling, for the purpose of inducing, or that are likely to
24 induce, directly or indirectly, the purchase of food;

25 B. "board" means the board of regents of New Mexico

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1 state university;

2 C. "contaminated with filth" applies to any dairy
3 product not securely protected from dust, dirt and, so far as
4 may be necessary by all reasonable means, [~~from~~] all foreign or
5 injurious contaminations, or any dairy product found to contain
6 any dust, dirt, foreign or injurious contamination or
7 infestation; the provisions shall be considered to include the
8 manufacture, production, processing, packing, exposure, offer,
9 possession and holding of any such dairy product and the
10 supplying or applying of any such dairy product in the conduct
11 of any dairy establishment;

12 D. "dairy establishment" means a milk producing or
13 milk processing facility, but does not mean a private home
14 kitchen in which dairy products are prepared or processed for
15 sale in accordance with the provisions of the Food
16 Accessibility Act;

17 E. "dairy product" means milk, whether fluid,
18 dried, evaporated, stabilized, condensed or otherwise
19 processed, cream, milk products, ice cream, frozen custard,
20 French custard, ice milk, frozen dessert or any other food
21 product derived principally from milk;

22 F. "department" means the New Mexico department of
23 agriculture;

24 G. "director" means the director of [~~agriculture~~]
25 the department;

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1 H. "federal act" means the Federal Food, Drug, and
2 Cosmetic Act;

3 I. "immediate container" does not include package
4 liners;

5 J. "label" means a display of written, printed or
6 graphic matter upon the immediate container of any dairy
7 product. A requirement made by or under authority of the New
8 Mexico Dairy Product Act that any word, statement or other
9 information [~~appears~~] appear on the label shall not be
10 considered to be complied with unless such word, statement or
11 other information also appears on the outside container or
12 wrapper, if any, of the retail package of such dairy product or
13 is easily legible through the outside container or wrapper;

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

16 (1) upon a dairy product or any of its
17 containers or wrappers; or

18 (2) accompanying such dairy product;

19 L. "milk" means the whole, clean, lacteal secretion
20 obtained by the complete milking of one or more healthy cows or
21 goats, properly fed and kept, delivered from the dairy farm to
22 any receiving or distributing establishment or factory within a
23 reasonable time, excluding that obtained within fifteen days
24 before or five days after calving or such longer period as may
25 be necessary to render milk practically colostrum-free; and

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1 M. "person" includes an individual, partnership,
2 corporation and association."

3 SECTION 12. A new section of the New Mexico Dairy Product
4 Act is enacted to read:

5 "[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--Dairy
6 products prepared, processed and sold in accordance with the
7 provisions of the Food Accessibility Act are exempt from the
8 requirements of the New Mexico Dairy Product Act."

9 SECTION 13. Section 25-7B-1 NMSA 1978 (being Laws 1993,
10 Chapter 188, Section 20) is amended to read:

11 "25-7B-1. SHORT TITLE.--~~[Sections 20 through 30 of this~~
12 ~~act]~~ Chapter 25, Article 7B NMSA 1978 may be cited as the
13 "Dairy Establishment Sanitation Act"."

14 SECTION 14. Section 25-7B-3 NMSA 1978 (being Laws 1993,
15 Chapter 188, Section 22) is amended to read:

16 "25-7B-3. DEFINITIONS.--As used in the Dairy
17 Establishment Sanitation Act:

18 A. "board" means the board of regents of New Mexico
19 state university;

20 B. "dairy establishment" means a milk producing or
21 milk processing facility, but does not mean a private home
22 kitchen in which dairy products are prepared or processed for
23 sale in accordance with the provisions of the Food
24 Accessibility Act;

25 C. "dairy product" means milk, whether fluid,

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1 dried, evaporated, stabilized, condensed or otherwise
2 processed, cream, milk products, ice cream, frozen custard,
3 French custard, ice milk, frozen dessert or any other food
4 product derived principally from milk;

5 D. "department" means the New Mexico department of
6 agriculture;

7 E. "director" means the director of [~~agriculture~~]
8 the department;

9 F. "milk" means the whole, clean, lacteal secretion
10 obtained by the complete milking of one or more healthy cows or
11 goats, properly fed and kept, delivered from the dairy farm to
12 any receiving or distributing establishment or factory within a
13 reasonable time, excluding that obtained within fifteen days
14 before or five days after calving or such longer period as may
15 be necessary to render milk practically colostrum-free; and

16 G. "person" includes an individual, partnership,
17 corporation and association."

18 SECTION 15. A new section of the Dairy Establishment
19 Sanitation Act is enacted to read:

20 "[NEW MATERIAL] EXEMPTION--FOOD ACCESSIBILITY ACT.--A
21 private home kitchen in which dairy products are prepared or
22 processed for sale in accordance with the provisions of the
23 Food Accessibility Act are exempt from the requirements of the
24 Dairy Establishment Sanitation Act."

25 SECTION 16. A new section of Chapter 76 NMSA 1978 is

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enacted to read:

"[NEW MATERIAL] STATE MEAT INSPECTION PROGRAM.--The board of regents of New Mexico state university, through the New Mexico department of agriculture, shall develop and administer a state meat inspection program with all necessary rules for ensuring food safety that meets or exceeds the standards and requirements for a state meat inspection program under the Federal Meat Inspection Act."

SECTION 17. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.