The Legislature
of the
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER 211

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILL 234, as amended

Introduced by
Chapter 211

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.--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 Mexico.

C. The prohibitions in this section do not apply 
to a restaurant that describes a menu item using a geographic 
name provided for in Paragraph (2) of Subsection A of this 
section; provided that the origin of any chile in the menu 
item is not misrepresented."

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.

B. Sales 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.

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;

(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."

SECTION 4. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2013.
John A. Sanchez, President
Senate

Lenore M. Naranjo, Chief Clerk
Senate

W. Ken Martinez, Speaker
House of Representatives

Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 5th day of April, 2013

Susana Martinez
Governor of the State of New Mexico